

**OWNERS CORPORATION NETWORK  
POLICY STATEMENT  
5 April 2020**

**Economic and Operational impact of COVID-19  
Action Plan**

**INTRODUCTION**

Despite housing over a million people, residential strata communities remain a blind-spot for Government. There was no provision made for strata schemes in the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (NSW)* to guarantee operations. There is also no provision to make an emergency by-law to address imminent threat to public health or safety, or imminent risk of substantial economic loss for the period of the pandemic. This has left strata committees to navigate around the law while protecting health and safety and swathes of Owners Corporations unable to make crucial decisions.

The economic impact of COVID-19, with the closure of businesses, disruption to supply chains, massive loss of jobs and drop in pension incomes is hitting the residential strata sector.<sup>1</sup> The initial impact will be felt immediately, and become a serious and compounding problem over next three to six months impacting on scheme finances for several years. The public health measures are also severely impacting on the ability of schemes to continue to operate in a fully functional way. There COVID-19 pandemic is a serious threat to the strata housing model as well as to the health and well-being of these communities.

Residential strata schemes house over a million people in over 80,000 schemes and are now worth about \$36 billion to the national economy.<sup>2</sup> The strata levies paid by owners will be high on the list of expenses to be deferred, delayed or unpaid for those needing to cut household expenditure or simply taking advantage of the present situation.<sup>3</sup>

The size and scale of strata levy default needs to be estimated and the impacts modelled for the sector. The model would estimate percentage of defaults across the whole sector and the estimate of total reserves held in capital works funds at a sector level. At the scheme level, the percentage of lots defaulting on levies, the accumulating defaults over multiple quarters and the size of the capital works fund held by the individual scheme, needs to be forecast and managed. There is a real possibility that some schemes will fail completely.

---

<sup>1</sup> The financial year for a strata scheme commences on the date of registration and does not necessarily follow the tax year. Levies are collected on a quarterly basis.

<sup>2</sup> The National Strata Data Report 2018 provides basic data on the profile and economic value of the strata sector to the economy <https://cityfutures.be.unsw.edu.au/research/projects/national-strata-data-analysis/>

<sup>3</sup> There has also been a growth of mixed-use schemes over the last ten years, where commercial lot owners whose businesses have declined or closed will go into arrears impacting the entire scheme – residential and commercial.

Supported by



Thanks to our premium sponsors



## **EQUITY BETWEEN STRATA OWNERS AND RENTERS**

Apartment living is mainstream, with approximately 60 percent resident owners and forty percent renters - everyone will feel the pain of the economic downturn. Renters are being looked after with temporary eviction protection and rent relief (deferral). The wage subsidies commencing in May will assist a proportion of employees. Others will be forced to rely on job seeker allowance. Owners are a cross section of the population. Many will get temporary mortgage relief (deferred and capitalised) for six months depending on their bank but will still have to pay the other housing cost component - the strata levies.

Crucially, if strata levies are unpaid, the owner becomes unfinancial and loses the right to vote at General Meetings or sit on the Strata Committee. If this occurs on a large scale, the scheme cannot make the necessary decisions. Decision making will become concentrated in the hands of a small number of people shouldering the responsibility, or, in some cases without necessarily the good of the community at heart. This may happen very quickly in a small scheme. It also poses to a challenge to larger schemes, and exposes to strata committees endeavouring to act in the best interest of the scheme to criticism.

### **Early Warning Signs**

Tens of thousands of financially and emotionally distressed owners who have lost work or whose businesses have closed or declined, will potentially be unable to pay their levies despite government assistance.<sup>4</sup>

In March, an increasing number of owners had already started notifying that strata levies will not be paid, higher numbers of people have actually delayed payment, and some owners are asking for a six-month strata levy “holiday” or to go into “hibernation”. The protection from eviction accorded to residential tenants impacted by COVID 19 is also likely to cause losses for landlords, which will flow through to the entire group of owners at the scheme level.<sup>5</sup> By 3 April 2020, the Property Owners Association was reporting confusion in the market with a high demand from tenants for a ‘rent moratorium’, rather than rent relief, and thousands of job losses resulting in unpaid rent.<sup>6</sup>

The residential strata sector is facing a perfect storm.

Strata levies are a key element of housing costs but, unlike Government taxes, are not something that can be entirely waived or given an extended ‘holiday’ – residential strata schemes cannot ‘hibernate’.

The inability to pay strata levies will negatively impact the finances and the ability of a strata scheme to fulfil its legislative duties, which impacts on all residents. In some complexes more than fifty per cent of owners may be unable to pay levies which will affect the ability to provide even basic services. It will lead to greater debt for all owners, and it will have a

---

<sup>4</sup> There is no existing published data on how many owners are already in arrears, accumulating interest and facing debt collection fees. The City Futures research team at the University of NSW will include strata levies in the 2020 National Strata Sector Data Report, but this will be both historic and partial

<sup>5</sup> There is no data on the percentage or profile of overseas investors currently holding their wealth in Australian real estate. Nor is there any data on the profile of local investors, the extent of their property holdings or reliance on negative gearing to support their wealth creation strategy.

<sup>6</sup> Property Owners Association of NSW, Media Release, *No Moratorium on Paying Rent*, 3 April 2020.



cascading effect on the many small businesses serving owners corporations, and of course their staff and contractors.

### **UNAVOIDABLE COSTS AND MAINTAINING OPERATIONS**

Under s. 106 of the *Strata Schemes Management Act 2015* (NSW) (the Act) the Owners Corporation must maintain and repair the common property. The lifts, air conditioning and ventilation, fire safety measures, among others, are all critical infrastructure. The services such as pest control, cleaning and garbage collection are essential services and there are unavoidable costs such as council rates. All Owners Corporations have mandatory fire and safety obligations. The Owners Corporation is also required by law to hold strata insurance, which can range from ten per cent to twenty-five per cent of the annual administration budget.<sup>7</sup>

Every scheme must have a 10-year Capital Works Plan. Hundreds of schemes are undertaking defects rectification, remediating cladding, repairing or replacing lifts, carrying out fire safety upgrades or other major works that are in the pipeline. Contracts are underway or imminent. These expenditures often rely on a special levy. Defaults over the next six months (at least) will have a cumulative effect and Capital Works Funds will be quickly drained if not replenished each quarter with strata levies.<sup>8</sup>

### **Cashflow Management and Limited Capacity to adjust Budget**

Owners Corporations need to be encouraged to start planning and managing cash flow now, and work out how to manage large expenditures such as strata insurance, defect rectifications and large maintenance programs (including fire safety). The OCN has developed a tool to assist schemes to model the shortfall under various scenarios and the impact on budgets.

While Owners Corporations can review and re-calibrate their budgets to plan for peaks in expenditure, most will have a very limited capacity to do so. Most tailor their budget and fees to meet essential items precisely because so many are already living under cost of living pressures. In some small schemes, the budget is planned within a few hundred dollars and levy default will impact immediately.

Under s 76 of the Act, the Owners Corporation can transfer money from one fund to the other, or make a payment from one fund that should have been paid by the other. The Owner's Corporation must repay that fund within three months after the transfer of monies.

One option is to extend the period for a scheme to pay back monies into the Capital Works Fund. This would enable schemes that have the capacity, to make some temporary borrowings to fund immediate expenses without going into external debt.<sup>9</sup>

---

<sup>7</sup> The ACCC has estimated that insurance commissions paid to strata agent management companies pushes the price of strata insurance up by as much as fifteen percent.

<sup>8</sup> For example: a high-end scheme with 67 lots has reported non-payment by 20 lots on 1 April 2020. Double the usual rate. If that rate of non-payment continues, the entire capital works fund of over \$400,000 will be exhausted by the end of the year. It illustrates that even in a financially healthy scheme, the impact is very significant.

<sup>9</sup> [http://classic.austlii.edu.au/au/legis/nsw/consol\\_act/ssma2015242/s76.html](http://classic.austlii.edu.au/au/legis/nsw/consol_act/ssma2015242/s76.html)

**OCN recommends that the period for a scheme to pay back monies into the Capital Works Fund should be extended to reduce pressure to go into external debt.**

OCN does not support the proposal to enable an Owners Corporation to borrow from the Capital Works Fund and not be required to pay those funds back. This defeats the purpose of the compulsory Capital Works Fund provisions and is counterproductive in the medium and longer term.

Schemes that substantially deplete their Capital Works Funds, and with limited capacity to recover, will be left with no choice but to borrow from the market to fund essential capital works. It will be some of the poorest schemes that are faced with that choice. Low Capital Works Funds also reduces the attractiveness of property to prospective purchaser, especially for older schemes (that are more affordable) but have aged infrastructure. The sector may see a spike in strata renewal proposals as a result.

**Financially Distressed Schemes**

It is untenable to leave a group of owners unable to pay Local Council rates, garbage, cleaning and building management, or unable to repair a lift, ensure fire safety compliance or pay for strata insurance. This dire situation is not confined to smaller schemes. Historically, low strata levies resulted in compulsory Capital Works Fund planning but this has not yet built reserves across the sector. The prospect of a 7 per cent or more commercial line of credit, higher fees to cover the future arrears and more indebtedness for all owners is not an option for many schemes.

If the economic downturn is longer term, these buildings and housing conditions will deteriorate. This is an outcome with consequences for tenants and for resident owners that will go under the radar unless the data and social impacts are captured.

**EMERGENCY MEASURES - DECISION MAKING**

The public health measures are also severely impacting the ability of Owners Corporations to meet. This is a critical business operation requirement and a serious weakness.

There was no provision made to address business continuity issues for residential strata schemes in the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No. 1* passed by the NSW Parliament. There is also no provision to make an emergency by-law to address imminent threat to public health or safety, or imminent risk of substantial economic loss for the period of the pandemic. This has left Strata Committees to navigate around the law while protecting health and safety and swathes of Owners Corporations unable to make crucial decisions. In contrast, in the USA homeowner association have been able to respond using established temporary emergency powers.

The inability to hold face to face meetings of the Owners Corporation, especially in larger schemes, is hampering the ability of schemes to respond to the COVID-19 emergency. In particular, the physical distancing rules prevent larger Owners Corporations from making urgent and vital decisions. This is likely to persist for six months.



Few schemes have adopted the option of virtual conferencing for owners' general meetings because of the need and preference to discuss options and have the ability to answer questions. In contrast, Owners Corporations in Victoria are able to pursue this without the need for prior resolutions.

To re-set budgets and lower (where possible) strata levies and, for example, to decide to accept repayment plans requires a special resolution at a General Meeting.<sup>10</sup>

**OCN recommends that Government tell Owners Corporations that if they need to meet that they can and should conduct their general meeting by video conference.**

The vast bulk of strata schemes are less than 50 Lots, and, although cumbersome, it is possible to hold an electronic meeting for these schemes. However, for large schemes of 100 + and the "mega schemes" of 500+ lots there needs to be a solution to this particular and urgent predicament.

It is simply not possible to hold a dial-in General Meeting with 700 Lots. For a mega scheme this inability to meet will have dire consequences.<sup>11</sup>

These Owners Corporations cannot wait six months for the pandemic to pass.

There needs to be an immediate policy response from Government to enable Owners Corporations to function with procedural integrity and lawful decision making.

It has been reported that some strata schemes are dramatically reducing strata levies after carefully analysing the budget impact. The reduction in levies are to be ratified by paper extraordinary general meeting. This methodology is a practical response to an emergency situation that will work for scheme but would cause havoc in others, and there is no provision for it in the Act.

In contrast, a scheme that requires a \$1.5-2M 'levy assist loan' must be able to get it approved and is now faced with the challenge of doing that without the ability to hold a face-to-face or virtual meeting. These schemes cannot wait. They need action now.

As an absolute last resort, it may be necessary in some very difficult and individual cases to apply to the Tribunal for an order to appoint a Strata Manager for a time limited period to carry out specific functions.<sup>12</sup> This may be the only practical 'solution' for a very large scheme with pressing need to resolve financial matters and compliance.

This would be a completely unsatisfactory outcome because it removes from all Owners the power to govern their own property on matters that will have significant impacts on all owners. The OCN is also concerned that existing arrangements for a compulsory Strata

---

<sup>10</sup> Section 85 *Strata Schemes Management Act 2015* (NSW).

<sup>11</sup> For example, a member scheme is currently in the process of raising special levies for defect rectification and essential lifts repair and replacement

<sup>12</sup> [http://classic.austlii.edu.au/au/legis/nsw/consol\\_act/ssma2015242/s237.html](http://classic.austlii.edu.au/au/legis/nsw/consol_act/ssma2015242/s237.html)

Manager provides no supervision by the Tribunal or a Strata Commissioner/ Fair Trading Commissioner.

**OCN recommends that Government respond by creating a mechanism that will enable the Strata Committee to present the 10-year plan, the reason for borrowing, implications for levy defaults to an independent body or office of Strata Commissioner.**

#### **RELIEVING FINANCIAL HARDSHIP AND INDEBTEDNESS OF OWNERS CORPORATIONS**

The Commonwealth is encouraging people to first try to negotiate an informal payment agreement” before undertaking formal procedures.<sup>13</sup> This exhortation has little relevance to the strata sector, where strong disincentives to fall into arrears are built into the model of joint ownership and shared obligations to ensure the body corporate can function.

The threshold at which a creditor can apply to make someone bankrupt has been lifted from \$5000 to \$20,000 and the intention of the Commonwealth is clear.<sup>14</sup> This increases the pressure on strata schemes to cut their budget or take on external debt.

In NSW, the current statutory interest on levy arrears is ten percent. This might be considered punitive by many in the present environment but the objective and purpose of the statutory rate serves as an important deterrent to opportunistic defaults disrupting the Owners Corporation. For this reason, OCN does not support a reduction of the statutory interest rate from ten to two or three per cent as has been suggested elsewhere. It would support a reduction of the statutory rate to seven per cent for six-month period.<sup>15</sup>

Importantly, the Owners Corporation can, by resolution, decide not to charge interest at all and also to accept re-payment plans or defer statutory interest and some delegate this to their strata committee. Each financial hardship application will need to be judged on its merits. The criteria would be “experiencing temporary financial hardship as a direct result of COVID-19 but not limited to loss of employment (e.g. stood-down with no pay, redundancy).”

The capacity of any scheme to offer a financial hardship package depends entirely on its financial position.

It is important, however, for owners to understand that a strata committee alone cannot defer or reduce strata levies. In the current crisis, these committees are likely to come under increased pressure and criticism.

The schemes with a low capital fund and minimal administrative fund and a high level of defaults will be forced into relying on an unsecured loan typically for 7 per cent interest or more.

The levy assist credit facility available from commercial providers is paid for by future levies over the agree term of loan. In effect those who still pay levies subsidise those that do not. If

---

<sup>13</sup> <https://www.afsa.gov.au/insolvency/owed-money/make-someone-bankrupt>

<sup>14</sup> <https://www.afsa.gov.au/insolvency/owed-money/make-someone-bankrupt>

<sup>15</sup> This could be achieved by regulation.

there is no mechanism to break the cycle and defaults remain high, all owners are paying and debt increases. This in turn also increases financial pressure on other owners, many of whom are already on fixed or reduced income and financial strain. If the loan cannot be repaid, the Owners Corporation will be in breach of the loan. In the case of a Building Management Committee, it is the BMC that is the unsecured creditor.

The Government needs to plan for the prospect that some schemes will be massively impacted by the strata levy defaults, and have very limited capacity to undertake further debt.

The impact of strata default is not just on the individual, but on the entire Owners Corporation because it creates greater indebtedness for all Owners and can lead to dangerous conditions in the buildings, for example, broken lifts, unrepaired water ingress, fire safety measures and utility services. If the National Cabinet's strategy is to provide economic stimulus through personal assistance and assistance to businesses the omission of a major housing stakeholder may undermine those objectives. The provision for a low or not cost loans to highly distressed scheme must come under serious consideration.

### **Strata Levy Assistance to Individual Owners**

The alternative approach would be to provide low interest loans to lot holders with circumstances preventing them from paying their levies. Strata Levy Assistance to individual lot owners would be an emergency response to COVID-19 and it could be organised similar to the High Education Contributions Scheme.

OCN would not support the provision of strata levy assistance or hardship relief to "Airbnb Hosts", who have converted residential housing to the tourist and visitor market. There are thousands of illegally let apartments on the tourist market and Owners Corporations have sought, for years, to have clarity and the ability to govern their own property. There has never been any provision to re-allocate costs to Hosts, despite evidence the short term letting increases strata levies. The forced subsidy of commercial exploitation of common property means that there is no appetite within Owners Corporation to absorb costs and debts due to the collapse of the tourist market. Tourism is not an objective of residential strata housing or the *Strata Schemes Management Act 2015* (NSW).

Financial assistance measures should only be available to a resident owner or an investor who is participating in the residential housing market and will contribute to relieving their housing costs and better able to absorb deferred rent, without passing on their debt to the entire strata scheme.

It means that Government would only be assisting owners who really need it – as opposed to an Owners Corporation as a whole and it would not be fuelling the loss of housing supply that affects vacancy rates, pressure on rents and housing affordability.

It would remove the issues with owners having to assess and determine hardship applications from fellow owners, which is an additional administrative burden and would not see other owners having to finance or guarantee the debts of owners who need to borrow

to pay their levies. Borrowed levy payments should be paid directly to the Owners Corporations by the ATO.

## **CONCLUSION**

There needs to be a capability within Government to respond the diverse range of issues impacting on the residential strata sector. This will require some dedication of departmental resources, cross portfolio coordination with other relevant agencies including health, local government and treasury. It also requires a significant upgrade in the quality and targeting of communications. This will take a significant pivot from the existing position, which treats strata housing and strata owners as a 'property service', and the institutionalised resistance to cater for the needs of these residential communities.

The time is long overdue for a residential strata-facing government agency that comprehends and can deliver the social and economic analysis appropriate to one of Australia's largest housing markets.

The sector is facing myriad issues with systemic failure of regulatory and market performance resulting in widespread building defects, flammable cladding, inconsistent local government approaches to matters such as fire safety standards. At the scheme level there is questionable strata agency performance, and governance issues ranging from value for money procurement, transparency and accountability, insufficient Strata Committee support and limits on tribunal jurisdictions. The disruption and exploitation by investors in the "Airbnb market" remain unchecked. The sector is now facing the social and financial impacts of COVID 19. These attributes of strata living are making strata property increasingly unattractive.

There must be data collection and analysis of what is occurring within schemes to inform policy; and, as a starting point we suggest, data collection should be regularised through the Strata Portal mechanism that is currently being established.

**In relation to immediate financial impacts of COVID-19, OCN recommends that the Government responds to the need for low or no interest loans for severely impacted schemes that are unable to go to the external market.**

**Alternatively, that a low or no interest loan be extended to an individual lot owner who, due to COVID-19, is prevented from paying strata levies and that such a scheme be implemented through the Australian Taxation Office, similar to the High Education Scheme. It will be necessary to pay strata levies directly to the Owners Corporation.**

**OCN would not support financial assistance to a non-resident Owner using a residential property for short term letting purposes in breach of planning law or by-laws.**

It also needs to create a mechanism for large schemes unable to meet via electronic means to ensure their schemes are able to function under independent oversight on a temporary basis under these emergency conditions.





The size and scale of strata levy defaults needs to be measured. The data can be collected from schemes and should be part of a research project commenced as quickly as possible in cooperation with the Owners Corporation Network. This data collection should also be regularised through the Strata Portal, which is currently under development.

## RECOMMENDATIONS

The Owners Corporation Network recommends:

- 1. Establish a Residential Strata Sector Focal Point:** Establish a residential strata specific focal point within Office of Fair Trading to coordinate the policy, communication and government response to the residential strata sector during and following the COVID-19 pandemic. This will require some additional resources. The functions will:
  - (i) coordinate with agencies on public health and building management guidance;
  - (ii) coordinate with the Office of Local Government to promote consistent approach by Local Councils to strata compliance matters;
  - (iii) provide clear policy on strategies to ameliorate the financial distress and impacts on individual schemes of COVID-19 in line with National Cabinet objectives;
  - (iv) address the procedural and operation constraints facing the sector due to public health orders;
  - (v) provide simple clear communication strategy for the sector.
- 2. Low interest loans facility for schemes in severe financial distress:** Where a scheme is unable to fund essential services or meet statutory requirements and has a high level of strata levy default, there should be access to a low or no interest loan from Government.
- 3. Strata Levy Assist to Individual Owners:** work with the NSW Treasury and the Commonwealth to create an emergency financial measure to assist individual resident owners and landlord (residential) to borrow for specific strata levy purposes similar to a High Education Contributions schemes, but pay that strata levy directly to the Owners Corporation.
- 4. Flexibility:** Extend the period for a scheme to borrow from the Capital Works Fund to six months.
- 5. Reduction in statutory interest:** reduce the statutory interest on arrears from ten to seven per cent for six-month period.
- 6. Electronic Meeting:** Enable Owners Corporations to conduct electronic meeting if they have not already passed a special resolution to do so for the next twelve months.



7. **Mega Schemes:** address the specific needs of mega schemes which are 500 plus lots to enable them to make critical decisions.
8. **Independent Commissioner:** develop a mechanism that gives the Strata Committee the ability to present the 10-year plan, the reason for borrowing, and implications for levy defaults to an independent body or office of Strata Commissioner.
9. **Treasury:** Treasury should be tasked immediately to model the impact of COVID-19 on the residential strata sector and produce some predictions of the potential level of levy defaults.
10. **Strata Portal:** The phase two design of the Strata Portal should include data collection on financial health of strata schemes.

Jane Hearn BA LLB GAICD  
Deputy Chair  
Owners Corporation Network of Australia Limited  
5 April 2020

*Thanks to all contributors.*

*This is an advanced draft pending official adoption by the Board of OCN.*

