



**2009 DISCUSSION PAPER
PROPOSALS FOR STRATA
LEGISLATION REFORM**

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1. Development

Issue 1.1 Delivery of Documents from Original Owner

A developer is currently required to provide the Owners Corporation with a list of documents including plans, specifications, certificates, diagrams, insurance policies and accounting records, at the First Annual General Meeting.

Developers who do not fulfil this requirement can be fined up to \$11,000. But this fine is less than the costs to comply and often developers do not fulfil their duties, which can make the management of a building difficult and costly.

Proposals

- Increase penalty to the developer for not delivering documents adequately to \$50,000.
- Require delivery of documents within three months of being fined with additional fines for non-compliance.
- Require the Owners Corporation to present a report on the original owner's compliance at the First Annual General Meeting (FAGM).
- Require a motion at the FAGM to record the extent of the original owner's compliance and a resolution whether to pursue inadequate delivery. The original owner and persons connected to them must abstain from this vote.

Issue 1.2 Types of Documents Provided by Original Owner

The list of documents that the developer is required to deliver is inadequate and does not enable Owners Corporations to reasonably take over management of a building.

There is no certification that a building was constructed in accordance with development approvals, no drainage plans to assist with future plumbing works, no 10 year sinking fund plan or replacement valuation to show expected costs.

Proposals

- Expand the types of documents that the developer must deliver to the Owners Corporation at its First Annual General Meeting to also include:
 - a. Certificate by an independent engineer (not the private certifier) identifying whether the building was constructed in accordance with approved plans;
 - b. Updated Diagram of Sanitary Drainage;
 - c. 10-year sinking fund plan;
 - d. Valuation of the replacement cost of the building;
 - e. a report on compliance with reporting requirements.

Issue 1.3 Keeping of Documents

Documentation is sometimes misplaced when a new strata managing agent is appointed.

It can be difficult for an owner to carry out work on their lot or for an Owners Corporation to take action against a developer if they cannot access plans and documents.

Proposals

- Require the Owners Corporation to keep all documents from the Original Owner and report additions at every Annual General Meeting.
- Impose \$5,000 fine on strata managing agent for not maintaining records.

Issue 1.4 Private Development and Common Property

Often residents go ahead with construction that can damage common property, including removing supporting walls. The Owners Corporation is left to deal with the damage.

Proposals

- Require owners to get consent from Owners Corporations for Development Applications, Construction Certificates and applications for Building Certificates where work extends beyond a lot's boundaries or affects common property.
- Make it clear that owners would still need to go through normal planning processes (local government, private certifier etc) before work commences.
- Require a Consent Authority to notify an Owners Corporation of any Development Applications for the apartment building.

2. Administration

Issue 2.1 Proxy Votes

Where a strata managing agent, caretaker or original owner has more than 25 per cent of the owners' proxies, they have the deciding vote on most of the decisions made at Owners Corporation meetings, which can be detrimental to minority owners, particularly where the issue could result in a financial gain to the managing agent.

Proposals

- Ban proxy votes greater than 25 per cent of all votes by a strata managing agent, caretaker, original owner or person in a commercial relationship with the Owners Corporation.
- Include provisions on proxy forms to allow owners to provide their proxies with instructions for voting on the remuneration of the strata managing agent.

Issue 2.2 Chairperson's Role

The Executive Committee has three positions: Chairperson, Treasurer, and Secretary. The Act defines the powers of all positions except the Chairperson, leading to authoritarian or ineffective Chairpersons.

Proposals

- Clarify the powers of a chairperson during general meetings for motions, points of order and adjournments etc so that they mimic company Chairperson powers.

Issue 2.3 Disclosure of Connections

The strata managing agent can make decisions on the management of a strata scheme, but where it has a connection to a caretaker or original owner these decisions can be at the expense of minority owners.

Proposals

- Require a strata managing agent to disclose its connections with the original owner or caretaker.
- Introduce penalties for members of the Executive Committee (who already have to disclose their connections) and strata managing agents who fail to meet these requirements.

Issue 2.4 Strata Roll

The Owners Corporation can enter into a licence with owners or third parties for the use of common property such as al fresco dining for a restaurant or transmitters on tall buildings.

Prospective owners do not always know about licence arrangements because the information is not readily available which may effect their decision to purchase an apartment.

The strata roll of an Owners Corporation contains information such as the details of owners, mortgagees, tenants, executor etc as well as common property information like the Strata plan number, and strata scheme.

Proposal

- Require all licence arrangements for the use of common property to be recorded on the Owners Corporation strata roll.

Issue 2.5 Inspection of Owners Corporation Records

Owners, mortgagees, and covenant chargees can view Owners Corporation records but tenants, purchasers and lessees cannot. These bodies should have access to these records, particularly in the case of purchasers.

Proposal

- Expand the persons entitled to view Owners Corporation records to also include any person having an interest in a lot (eg a tenant, purchaser, lessee).

Issue 2.6 Service of Legal Documents

Legal documents and notices can be served on an Owners Corporation by leaving them with the Chairperson, secretary or Executive Committee. Their contact details can be obtained from the Certificate of Title for Common Property, but this is expensive (\$99 +GST) and often out-of-date, delaying a process that may have time limits or require urgent action.

Proposals

- Introduce an additional method for the service of legal documents and notices to allow delivery to the strata managing agent. If there is no strata managing agent, this should apply to the secretary, chairperson or treasurer.
- Require the strata managing agent to keep their details on the common property Certificate of Title up-to-date. Impose fines of up to \$1,100 for failure to comply.
- Allow the service of legal documents and notices at the address for service recorded in the folio of the Register comprising the common property, or with the Owners' Corporation's managing agent.

Issue 2.7 Updating Records

Currently it is difficult and time-consuming to determine valid By-laws and Strata/Community Management Statements because additions and amendments are continually made. When legal advice is required, it is time consuming and therefore costly to work out which documents are relevant.

Proposal

- Require amendments to By-laws, Community Management Statements and Strata Management Statements to *replace* earlier versions which should be archived.

Issue 2.8 Use of Electronic Technology for Meetings

Current strata legislation fails to recognise electronic forms of communication like telephone conferencing.

Proposal

- Update legislation to provide definitions for electronic documentation and electronic conferences for the purpose of Executive Committee meetings.

Issue 2.9 Service of Notices

Sometimes when a notice is served about a building, such as by the developer, it is purposely sent to the wrong address so it is never seen or acted upon.

Proposals

- Require that Strata Management Statement documents are served on the managing agent of the Building Management Committee. Service of notice at any other address will not be

effective unless it is part of a Court or Tribunal order. Where there is no agent, documents should be served at the address identified on the Statement.

- Require that Building Management Committees keep their details on a Strata Management Statement up-to-date (this being the only thing members can change in a Statement).

Issue 2.10 Strata/Community Management Statements

Often owners and their representatives are not aware of Strata/Community Management Statements when looking at documents for their lots.

Proposal

- Require reference to the Strata/Community Management Statement on the register of each folio (page) relating to a lot.

Issue 2.11 Signing of Major Contracts

At the beginning of a Strata Scheme, the Owners Corporation must sign a number of contracts with the Caretaker and the Strata Managing Agent, yet the Owners Corporation does not have the knowledge and experience to understand the implications of these contracts, which can be significant and long-term. Owners need time to understand relevant issues before contracts are signed.

Proposal

- Require Caretaker and Strata managing agent contracts with the Owners Corporation to be approved at a General Meeting not earlier than 18 months after the first AGM, and only after holding three Executive Committee meetings that have contracts on the agenda.
- Require disclosure of any commission or fee paid in connection with an agency agreement for strata management or caretaker services.

Issue 2.12 Executive Committee Training

Executive Committee members do not always have the knowledge and expertise to manage the complex issues of strata schemes, particularly in larger buildings. To protect owners' investments it is important that they get an adequate level of training to perform their duties.

Proposal

- Require candidates running for re-election to establish that they have obtained a certain number of mandatory strata education credit points, depending on the size of the strata title.
- Attendance at these courses to be funded by these strata schemes.

Issue 2.13 Transparency

New owners and tenants often complain that they were not aware of the By-laws or that they thought certain By-laws were not enforced.

Proposal

- Require the Owners Corporation to create a Lifestyle Statement at each AGM that clarifies the issues in the By-laws that they push, such as carpeting floors. The Lifestyle Statement to be limited to one page, kept in the Strata Role and attached to all sales contracts.

3. Finance

Issue 3.1 Sinking Fund Plans

There is a perception that developers underinsure buildings in order to underestimate levy charges, so that potential buyers don't know the initial and ongoing costs.

Currently Owners Corporations are required to prepare a 10-year sinking fund budget but there is no requirement to engage an expert resulting in some budgets not reflecting true anticipated costs.

Proposals

- Require the Developer to include an initial 10-year sinking fund budget in sale contracts and have liability for its accuracy.
- Require that the 10-year sinking fund budget be prepared by an expert such as a quantity surveyor.

Issue 3.2 Time of Levy Payment

Owners can only vote at General Meetings of the Owners Corporations if they have paid their levies, however some demand to vote even though payment has not actually reached the Owners Corporation's account.

Proposal

- Deem levy payments as paid only when payment reaches the Owners Corporation account.

Issue 3.3 Reduction for Early Levy Payment

There is a legislative requirement to give owners a 10 per cent reduction in levy fees for early payment. This makes it impossible for the Owner Corporations to budget as they must prepare for everyone paying early. Those who pay on time, but not early, subsidise those who pay early.

Proposal

- Remove provision for 10 per cent reduction in owners' contribution levies for early payments.
- Charge interest on unpaid levies in line with Office of State Revenue rates for unpaid duties and taxes.

Issue 3.4 Unit Entitlements

The same unit entitlements used for a building destruction or strata scheme termination valuation are also used to calculate levies. This means owners of higher valued apartments contribute more to common property costs, even though they are shared equally by all lot owners. Victoria has a more equitable model that calculates unit entitlement allocations separately for valuations and for levy calculations.

Proposal

- Provide for two distinct calculations of unit entitlements. The existing calculation for building destruction or strata scheme termination valuations would remain for that purpose but levies to be calculated based on the size and cost of constructing the lots.

Issue 3.5 Valuations

Owners have the right to apply for a reallocation of unit entitlements but the Courts will not accept a valuation as evidence unless the valuer has inspected every single lot. In some cases lot owners refuse to let a valuer inspect their apartment to prevent the reallocation of unit entitlements.

Proposal

- Legally enable a valuer to value all lots when valuing an apartment block for an application to reallocate unit entitlements, to ensure the courts do not reject the valuation.

Issue 3.6 Insurance

Building valuations for insurance purposes are required every five years, which can lead to strata schemes being significantly undervalued. Managing agents report that this is common.

Proposal

- Require valuations every two years.

4. Resident Amenity

Issue 4.1 Short-Term Rentals and Breaches of Law

Short-term rentals in strata schemes can impact significantly on residential amenity and owners' costs. Impacts include noise, traffic, car space trespassing, obstruction of common property, theft, damage to common property such as lifts from frequent movement of luggage, building deterioration, and increased use of water.

The legislation however prevents by-laws from restricting short-term leases.

Even when short-term rentals, or other purposes like brothels, are prohibited in a council LEP, Owners Corporations are powerless to do anything.

Proposals

- Add a proviso to specify that the prohibition on by-laws restricting leases does not apply to by-laws that ban short-term rentals. Define short-term rentals as leases less than three months.
- Make prohibition of short-term rentals an option in the By-Laws Schedule.
- Empower Owners Corporations to obtain an order from the Tribunal to prohibit the use of a lot for a purpose that is prohibited by an LEP or other law.

Issue 4.2 Car Spaces Required by Council

Often Councils require car spaces for visitors, emergency or other services but sometimes owners convert these into private car parking for profit. If Councils require these spaces, only Councils should be allowed to permit a change in their use.

Proposal

- Prevent By-Laws that convert use of visitor, emergency, or service car spaces without Council approval.

Issue 4.3 Damage to Common Property

Owners Corporations pay for damage to common property, regardless who caused it. Where an owner or their occupant causes the damage, it is only fair that they cover the costs to fix it.

Proposal

- Introduce a provision that an owner or occupier should not cause damage to common property. If they do, they must pay and be responsible for fixing the damage.
- Introduce a provision that makes owners liable for the actions of their tenants where a tenant causes damage to common property.

Issue 4.4 Identity of Unit Occupants

It is a common problem that persons other than owners or tenants live in an apartment and create disturbance within the building including on common property. The Owners Corporation is powerless to identify them and therefore cannot take effective action against them, particularly in the Courts.

Proposal

- Require an owner or lessee to notify the Owners Corporation if anyone other than a lessee, sublessee or assignee lives in a lot for more than a specific period (eg one week).

Issue 4.5 Trees

Trees are a common cause of damage to common property or neighbouring properties and can interfere with common structures or services, or other occupants' views.

Proposal

- Empower the Owners Corporation to enter any lot or strata scheme land to lop or remove a tree if it is growing outside the lot boundary or its roots are causing damage to property. Provide residents with an avenue to appeal a decision to lop or remove a tree before it is carried out.

Issue 4.6 Visitor Car Spaces

Some residents frequently use visitor car spaces but deny that they are residents.

Proposal

- Define “visitor” as a person residing in the building for seven consecutive nights or less.

Issue 4.7 Pets

Legislation allows an Owners Corporation to ban pets in apartments even when there are no problems. Most strata titles do this, which can cause significant distress to people moving into a new apartment and is unreasonable when there are no problems.

Proposal

- Prevent By-laws that ban pets outright.
- Enable an owner to keep an animal in a unit or on common property with the Owners Corporation consent, which can be given with or without conditions, but cannot be “unreasonably” withheld.
- Give the Owners Corporation power to withdraw consent in circumstances where an animal unreasonably causes problems such as noise or amenity impacts.

Issue 4.8 Flooring

Carpet can provide acoustic insulation that protects residents on lower floors from noise impacts. But some owners replace carpets with wooden or tiled floors and use rugs instead, but this is largely reported as inadequate.

Proposal

- Standard By-laws to clarify that flooring must provide acoustic insulation to a certain defined standard.

5. Jurisdiction

Issue 5.1 Dispute Resolution

Conflict about proxy issues often requires urgent and immediate resolution but mediation must take place before a Consumer Trader and Tenancy Tribunal (CTTT) application can proceed. This can result in considerable delays.

Proposal

- Remove the requirement for mediation for disputes about proxies allowing them to go straight to the CTTT.

Issue 5.2 Boundaries

From time to time disputes over boundaries arise, but the boundaries are not clearly defined in plans. Unlike boundaries for detached dwellings, the Office of Land and Property Information does not determine boundaries within a strata scheme.

Proposal

- Require preparation of boundary plans in line with the Office of Land and Property Information standards with By-law definitions to reflect these boundaries.

- Give the Registrar General of the Office of Land and Property Information the power to resolve boundary disputes. Clarify that Supreme Court decisions have priority over these decisions.

Issue 5.3 CTTT Decisions

CTTT decisions on strata matters vary in quality.

Existing CTTT adjudicators are not necessarily experienced in strata law and applicants often feel their case has not been properly heard or understood. Orders are reportedly often unfair or contradictory and it is common for Adjudicator's Orders to leave no real resolution to many complaints particularly for complex matters.

Evidence for cases is sometimes submitted at the very last minute denying the opportunity to respond before a determination.

Applicants often have to appeal to the courts which comes at a greater cost.

Proposal

- Require CTTT panel members to include senior or legal practitioners who have predominantly practiced in strata law.
- Require all submissions to the CTTT to be available to all parties with an opportunity to respond before determinations are made.
- Require the CTTT to deliver reasons for the outcome they plan to deliver before a final decision, as done by the Equity Division of the Supreme Court, to enable parties to respond.

Issue 5.4 Powers of the Supreme Court

The Supreme Court has refused to issue orders to cease illegal work because legislation only provides for these cases in the CTTT. But the Tribunal can only issue an Interim Order, lacks the expertise to resolve complex matters, and does not have the power to award costs, leaving applicants out-of-pocket and without an adequate order.

Proposal

- Give the Supreme Court clear jurisdiction for significant issues, so it can use its power to make orders including to cease work.

Issue 5.5 Strata Management Statements

Legislation does not currently provide for the resolution of disputes about the creation and interpretation of Strata Management Statements in the CTTT. Disputes are common when statements are being drafted and when the Building Management Committee includes members other than the Owners Corporation.

Proposal

- Permit proceedings about the construction and interpretation of Strata Management Statements in the CTTT and the Supreme Court.

Issue 5.6 Contempt Power

While the CTTT can issue orders, these are often not complied with. Currently the only option for an applicant to get compliance is to apply again to the CTTT for a further Order requiring the person to pay a penalty for non-compliance with the original Order.

Proposal

- Make it an offence to disobey a CTTT order in-line with contempt of the Tribunal, with higher penalties for the original owner.

Issue 5.7 Vexatious Applications

While the CTTT has power to order a person to pay costs if their case fails, many report that it does not use these powers and as a result it is inundated with vexatious cases with owners having to pay legal costs.

Proposal

- Amend the CTTT powers to award costs to include a presumption in favour of awarding costs where the Tribunal considers a case to be frivolous or vexatious.

Issue 5.8 Office of Fair Trading

Fair Trading deals with a wide range of problems, from broken kettles to internet scams. Strata title issues are very complex and require background knowledge and expertise to be able to respond to questions and incorrect or inadequate information can create serious problems.

Proposal

- Create a separate division of the Office of Fair Trading dedicated to strata matters only.