



17 July 2023

Committee Secretary
Senate Standing Committee on Community Affairs
VIA WEBSITE UPLOAD

Dear Secretary

RE: COMMITTEE ENQUIRY – THE WORSENING RENTAL CRISIS IN AUSTRALIA

Thank you for the opportunity to provide a submission to this Enquiry.

Our submission is based on our expertise in the strata sector, primarily in Queensland although with relevance to other jurisdictions as well.

Executive Summary

Housing availability and affordability means that living in high-density strata schemes will be the only realistic option into the future for tenants Australia-wide. Despite high numbers of tenants living in strata schemes, tenants have limited rights in strata. Each State and Territory administers often complex pieces of differing strata legislation, presenting challenges for tenants, owners, and the strata committees tasked with the day-to-day responsibility of managing the scheme.


Both tenants and strata committees should have greater autonomy to make decisions in how schemes are run. Tenants, especially long-term tenants, should have a decision-making role while strata schemes should also be empowered to set their own rules.

In the initial establishment of a strata scheme, developers play a crucial role and should be incentivised to put in place rules and contractual arrangements which also encourage more tenant and investor-friendly buildings.

State and Territory strata legislation should be harmonised. Tenants have differing experiences in their strata schemes, depending on which State or Territory they live in. Strata legislation harmonisation can create more streamlined governance and training requirements for committees, strata managers and building caretakers, which can in turn ensure more harmonious strata schemes that become more attractive for investors to provide tenant-friendly options.

About Strata Solve

[Strata Solve](#) is a Queensland-based consultancy working with clients in the strata sector. Strata Solve provides dispute resolution, dispute prevention and strategic communication services for strata owners, committees, management rights holders (aka, onsite managers, or caretakers), strata managers, service providers and not-for-profit groups. The Director of Strata Solve is [Mr Chris Irons](#). Chris is Queensland's former Commissioner for Body Corporate and Community Management. That role is the only role of its type in the world. In that role, Chris was responsible for the delivery of statutory information and dispute resolution services for more than 50,000 strata schemes in Queensland. The perspective and insight gained from 5 years as Commissioner has in turn led Chris



to be a strong advocate for mediation, information and education, and communication-based outcomes, as better options than legal proceedings to resolve strata issues.

Chris has over two decades of experience in the Queensland public sector, including fair trading, real estate and liquor and gaming policy and legislation. He is past-President of Strata Community Association (Qld), the peak body for the Queensland strata sector.

Chris is a frequent media commentator on strata issues. He is in the unique position of being both a tenant in a strata scheme in Queensland, as well as an owner in a strata scheme in New South Wales.

Chris is also the President of Northside Connect Inc, which provides community legal services on Brisbane's Northside. He is an experienced volunteer and leader in the not-for-profit sector.

Strata Solve is an independent consultancy. It is not affiliated with other entities. Nor does it purport to represent the views of a specific sector group. Instead, Strata Solve provides unparalleled and holistic voice in the strata sector.

Background

Known by the terms 'body corporate', 'owners corporation' and other descriptors across Australian jurisdictions, 'strata' refers to high-density living and can be in the form of high-rise apartments, townhouses, duplexes, villas, short-term holiday accommodation, hotels, retirement villages and commercial precincts. According to [the 2020 Australasian Strata Insights report](#), which collates strata-related data from States and Territories, over 2 million Australians make strata their home, living in over 340,000 schemes which in turn translates to almost 3 million individual lots. The economic value of strata schemes is over \$1 trillion in insured value.

Strata differs markedly from freehold living in myriad ways, including:

- Decision-making is made as a collective of owners and according to prescribed procedures and timeframes;
- Finances are managed based upon projected maintenance obligations, with those obligations being mandated and absolute (i.e., unlike in a freehold home, a strata scheme cannot choose to not perform maintenance); and
- Insurance is also mandated, with owners contributing to the scheme's premium based upon their proportionate liability.

Strata legislation is often complex and technical. Day-to-day operations of a strata scheme are the responsibility of a volunteer committee, who are required to make challenging financial, maintenance, administrative and other decisions. While committees do so with the assistance of professionals such as strata managers and other service providers, responsibility and attendant liability rests with the committee. Despite holding significant financial interests in the scheme, owners are not obliged to participate in the running of the scheme – voting at meetings is not compulsory, for example – and the apathy which results means decisions can be significantly delayed, or not taken at all. This places property values and substantial financial investments in jeopardy and can, in the case of insurance at least, pose significant public policy challenges as a result.

It is within this context that Governments across all jurisdictions offer support and resources, albeit of varying degrees and utility, to strata stakeholders to enable them to carry out their obligations. Even so, there is rarely if ever any proactive compliance activity in relation to strata, with parties generally required to initiate their own proceedings to enforce their rights or resolve disputes.

Housing affordability is such that strata is likely to be the only viable option for most Australians into the future, whether as owners or as tenants.

Issues

- *Inconsistent Strata Legislation Across Jurisdictions*

Each State and Territory has its own strata legislation. Provisions markedly differ amongst the jurisdictions, including the role of tenants in strata. For example, in Queensland, a 'tenant' is not defined under strata legislation and is instead referred to as an 'occupier'.

Tenants moving interstate and used to arrangements in one jurisdiction will need to adjust to a changed set of rights and obligations. Acquiring strata knowledge and information is challenging and the resultant information asymmetry leads to disharmony and disputes in the strata scheme. This inconsistency of strata legislation is in addition to different residential tenancy legislation across the jurisdictions. Harmonised strata legislation would mitigate against disharmony and dispute, improve relations amongst tenants, owners, managing agents and strata committees and this in turn could make it more attractive and viable for investors to provide rental stock in strata schemes.

In addition, consideration could be given by the Commonwealth to establishing an agency with cross-jurisdictional responsibilities for liaison and information-sharing across jurisdictions in relation to strata, with focus on tenancy matters. That agency could also work with States and Territories to deliver education and information to tenants which would enable them to live in strata schemes more confidently when they move across borders.

Recommendation: That the Commonwealth work with States and Territories to encourage greater harmony of strata legislation across jurisdictions, particularly with reference to the rights, roles and obligations of tenants in strata schemes, and that the Commonwealth establish an agency to coordinate, liaise, share information and provide information and education across jurisdictions in relation to strata and tenants

- *Limited Rights for Tenants In Strata*

In strata schemes, registered owners have voting rights. Owners may also have other rights. For example, in Queensland, an owner has a [right to submit a motion](#) to a committee meeting and have it decided upon in a specified time period.

Tenants generally do not have similar rights. For example, under Queensland strata legislation, a tenant does not have the right to submit a motion to a strata committee to seek approval to keep a pet. In most cases, where a tenant has a concern at a strata scheme, they would need to rely upon the owner, or their owner via their property manager, to raise the concern in the form of a vote or motion. Generally, tenants also do not have rights to attend and speak at strata meetings. One

exception is in New South Wales where, in some circumstances, a tenant representative [can be elected to a strata committee](#).

Despite this, legislation tends to regard long-term tenants in virtually the same light as an owner. For example, in Queensland, leases of more than six months are [required to be provided to the body corporate](#) along with details of the managing real estate agent, with such information then becoming widely and transparently available to other parties. It is arguable that a long-term tenant has a greater stake and participation in the scheme than some owners. Voting in strata meetings is not compulsory, which means that an owner can own in the scheme for years on end and yet make little tangible contribution to its operation. Conversely, it is not uncommon for a tenant who lives in the scheme for years on end to contribute, for example, by participating in working bees or being the on-the-ground 'eyes and ears' for the strata committee, especially in schemes where there are few, if any, owner-occupiers in residence.

Our view is that the contribution of tenants in strata should be recognised through legislative provisions which give tenants appropriate voting rights, the right to submit motions and the right to participate in meetings, with some decision-making capacity also. Such provisions should be linked to the duration of the tenancy, thereby incentivising long-term tenants to have a stake in the operations of the strata scheme. The scheme, and all owners in it, benefit from the tenant's retained knowledge of the scheme and the ability of owners in the scheme to market the scheme as one which is stable and supportive of long-term tenancies. This in turn contributes to property values of all owners and can make the scheme more attractive for investors to provide rental stock.

Recommendation: That the Commonwealth work with States and Territories to provide for legislation that gives tenants greater rights and recognition in strata schemes

- *Restricted Autonomy for Strata Schemes*

While strata legislation provides that schemes, via their committees, will be responsible for the day-to-day management of the scheme, schemes are restricted in the amount of autonomy they have. For example, schemes are generally unable to fine residents for contravention of by-laws. Schemes are also challenged in being able to respond promptly and practically to issues such as towing or smoking, where a financial penalty might provide suitable disincentive to the offending behaviour. Government agencies do not generally undertake proactive enforcement in relation to strata contraventions, which means that enforcement is initiated by a party and often through a complex process which requires considerable investment of time and resources. In Queensland, dispute resolution occurs through [the Commissioner's Office](#) and an outcome from that process may take up to 12 months. In other jurisdictions, formal resolution may occur through a Tribunal or the Courts.

Strata schemes also do not have autonomy in relation to setting rules (e.g., by-laws) applicable to the scheme. Legislation provides for types of by-laws that will be invalid, while caselaw also can create limitations in the extent to which schemes can govern their own affairs. In Queensland, for example, legislative provisions make it practically impossible for strata schemes to prohibit short-term letting such as Airbnb.

Our view is that by giving strata schemes more autonomy for how they govern their schemes, this will in turn create schemes that are more tenants-friendly, or more attractive for investors to provide stock for longer-term tenancies. Enabling a scheme to prohibit short-term letting, for

example, may make the scheme a more attractive prospect in which to provide long-term rental stock.

Recommendation: That the Commonwealth work with States and Territories to provide for legislation which gives strata schemes greater autonomy, and in particular, on issues that will encourage more tenant-friendly outcomes

- *Role Of Developers Of Strata Schemes*

Developers play an integral part in how the strata scheme operates, through things such as entering into contracts which bind the strata scheme in the future and setting the by-laws which will apply to the scheme. Incentivising or requiring developers to make provision for tenants will establish the scheme at an earlier stage and make clear to prospective owners how the scheme is likely to be operated in the future. While we do not have a view on whether to require developers to set aside a percentage of lots in the strata scheme for low-cost housing, we do see a role for government in having legislative provisions which account for tenant-specific activities. For example, in Queensland, there are a series of Regulation Modules, drafted as subordinate legislation, which each strata scheme is registered under as relevant for the nature of their scheme. Consideration could be given to a Regulation Module specific for a scheme largely intended for tenants, or other legislation which is specific to a largely tenant-operated scheme. This legislation could in turn incentivise (or compel) developers to act in a way that is more aligned to tenant interests.

Recommendation: That the Commonwealth work with States and Territories to provide for legislation provides for a greater and clearer role for developers in relation to strata schemes, which would ultimately provide for more tenant-friendly outcomes

Summary

While strata legislation remains in the jurisdiction of the States and Territories, it is essential that its interaction with tenants and tenancy issues be given greater recognition at the Commonwealth level. Relatively simple reforms to strata legislation can result in strata schemes in which tenants and owner-occupiers coexist more harmoniously and in which there is greater clarity about the rights and roles of tenants in those schemes. Long-term tenants can contribute considerable benefit to strata schemes. Greater harmonisation across jurisdictions, along with a coordination and facilitation role for the Commonwealth, can better empower tenants and contribute to more harmonious and better operated strata schemes.

We appreciate the opportunity to provide this submission for the Committee's consideration. We would be pleased to expand upon its contents in more detail at a Hearing or as otherwise required.

Yours sincerely,

Chris Irons
Director, Strata Solve

