

**Proposed Changes to
Strata Schemes Management Act
and the
Strata Schemes Management Regulations**

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Executive Summary

This proposal puts forward significant changes to:

- Section 10A - A new section that explicitly makes it an offence for an individual to make a decision on behalf of the owners corporation.
- Section 45 - New subsections added to provide owners/residents a simple method to kick-start by-law compliance and gives executive committees a clear process to enforce by-laws, similar to that enacted by the Queensland government.
- Schedule 10 - A new schedule within the regulations that provides a consolidated, detailed, and clear definition of who is responsible to maintain property associated with a lot.
- Section 31 - New subsections are added that strengthen and clarify the requirement to provide appropriate audit trails on the authority to spend monies and to reduce the temptation to a Strata Manager to pilfer sinking funds.
- Section 109 - A new subsection that requires new purchasers be advised as to the state of funding of the required 10-year maintenance plan.
- Section 65A - A new subsection that gives back the power to executive committees to approve normal repairs. The power was inadvertently removed by the introduction of section 65A in 2004.
- Section 21A - A new section that provides a code of conduct for the executive committee members similar to that enacted by the Queensland and Australian Capital Territory governments.
- Subsection 22(i) - A new subsection that requires the secretary to keep a log of standing resolutions.

This proposal also puts forward minor changes to;

- Schedule 2 - New clauses to make the keeping and the distribution of general meeting minutes consistent with the requirements governing executive committee minutes
- Schedule 3 - A new sub-clause to clarify how an acting member of the executive committee is accepted into an executive committee meeting.
- Section 75 - New subsections are added to clarify into which fund estimates and spending are to be allocated.
- Section 80AA - A new section that clarifies the authority of a treasurer to spend money for all schemes including those of less than 100 lots thereby giving consistency with, and placing it into the context of, that required for large schemes [s 80A].
- Section 236 - A new subsection extending the use of e-mail to all schemes.
- Section 109 - A new requirement to give the owner a complete set of by-laws.

General

The order of items within this document is related to the impact or the importance of the item on the lives of strata owners or residents. The most significant items are placed first.

All proposed changes are in pursuit of what is believed to be the original intent of the Strata Schemes Management Act. The proposed changes make the intent clearer, and more accessible, to an average lot owner or resident.

Section 10A - An Individual Cannot Decide

Argument

One of the most common problems facing an owner is to understand who is in charge of the running of an owners corporation. Most owners seek an individual who might be in charge as the typical owner is more familiar with autocratic systems that governed his/her school and working life. Most owners do not have a working understanding of a democratic system even though they may support democracy to govern their council, state or country.

Other individuals take advantage of this lack of understanding and promote themselves as the person authorised to make decisions on behalf of the owners corporation. There are many cases of chairpersons, treasurers, secretaries, and strata managing agents who make unilateral decisions on behalf of the owners corporation and often those decisions are in the interest of themselves.

A fundamental principle of the Strata Schemes Management Act is that the owners corporation will be managed within a democratic framework. The principle holds that decisions made, on behalf of the owners corporation, can only be within a properly convened and democratic meeting.

Even the Office of Fair Trading's Strata Living booklet tries to make this point clear by including the wording of 'No individual executive committee member can make a decision for the owners corporation'. But there is no direct section within the Act that supports this assertion. A reader has to understand the entire Act to deduct, that generally, there is no provision for an individual to make a decision on behalf of the owners corporation so therefore it's implicitly not allowed.

Proposal

Make it explicitly clear that autocratic decision-making will not be tolerated by making it an offence for an individual to make decisions on behalf of the owners corporation.

Sometimes an individual making a decision on behalf of the owners corporation can lead to either serious property damage or significant misappropriation of funds. A suitable deterrent penalty should apply that reflects the seriousness of this misconduct.

The proposed **new wording** of the Act is;

10A Who may make decisions on behalf of the owners corporation?

- (1) Persons entitled to vote at a general meeting may make decisions on behalf of the owners corporation but only within the time of a general meeting. Any decision made within a general meeting is subject to the limitations imposed by schedule 2.
- (2) The executive committee may make decisions on behalf of the owners corporation but only within the time of an executive committee meeting. Any decision made within a committee meeting is subject to the limitations imposed by section 21 and schedule 3.

- (3) An individual must not make a decision on behalf of the owners corporation excepting:
- (a) The secretary may convene an executive committee meeting subject to section 22.
 - (b) The secretary may convene a general meeting subject to schedule 2, clause 31 or clause 37.
 - (c) An executive committee member may convene an executive committee meeting subject to schedule 3, clause 7.
 - (d) An executive committee member may convene an extraordinary general meeting subject to schedule 2, clause 31(3).
 - (e) The original owner or lessor, who may convene the first annual general meeting subject to schedule 2, clause 2.

Maximum penalty: 20 penalty units.

- (4) For the purpose of this section, subsection (3) does not provide authority to spend monies on meeting venues or any other facility or service.

There also needs to be a clarification to the functions of the secretary - section 22(f). At the moment the Act implies that the secretary can decide to hold an owners corporation's general meeting without restriction. Section 22(f) needs to be changed from:

22 What are the functions of the secretary of an owners corporation?

- to;
- (f) to convene meetings of the executive committee and (apart from its first annual general meeting) of the owners corporation,
 - (f) to convene meetings of the executive committee **subject to schedule 3, clause 6 and clause 7.**
 - (h) **to convene meetings (apart from its first annual general meeting) of the owners corporation subject to schedule 2, clause 31 and clause 37,**

Section 45 - A Simple Method for An Owner to Start By-Law Compliance

Argument

One of the problems that frequently confront owners is 'how do I deal with inconsiderate neighbours?'. The answer is to first talk with them. Failing that then there's generally a by-law infringement that has taken place so the question now translates into 'how to I initiate a process to enforce the strata scheme's by-laws?'.

There needs to be a method for an owner to initiate by-law enforcement for it is reasonable for an owner who buys into a scheme to expect the by-laws will be enforced guaranteeing the owner a reasonably peaceful and/or pleasant living experience.

Currently the Act does contain a process but it is so obscure most people are not aware it's there. First it has to be realised the issue of a 'section 45 – notice to comply' is a function that can only be done by the owners corporation. Next it has to be realised that an owner can write to the owners corporation asking that it exercise the section 45 function and that it has 2 months to effect that action (section 138(2)(b)). If the owners corporation fail to act, the owner can then ask the Tribunal to issue an order for the owners corporation to issue a section 45 – Notice to comply.

The wording of section 138(2)(b) is:

“an owners corporation or building management committee is taken to have failed to exercise a function if ... application is made to it to exercise the function and it fails for 2 months after the making of the application to exercise the function in accordance with the application or to inform the applicant that it has decided not to exercise the function in accordance with the application.”

A truly horrible process with truly horrible wording but it's there.

The second major hurdle confronting the owner is the executive committee inactivity in enforcing by-laws. Most executive committee members don't know they have a responsibility in the enforcement of by-laws. If they are confronted with an owner's complaint, they simply ignore the issue.

It would be much better if there were a simple laid out process that details what is required of an owner who wishes to initiate the process of by-law enforcement and that there is also a straight forward process that lays out what is required of the executive committee in the issuing of a 'notice to comply'.

Also the current penalty for a by-law infringement is set at 5 penalty units. Some by-law infringements can have a catastrophic effect on people's lives and the Tribunal ought to have more scope to issue a fine that reflects the seriousness of the infringement.

Proposal

The Queensland government has enacted a set of processes that stipulates what an owner has to do to initiate the by-law infringement process and it details out the executive committee's

responsibilities. The required process is also well laid out. *Refer to Queensland's Body Corporate and Community Management Act 1997 - section 182 through section 188.*

The Queensland's Body Corporate and Community Management Act also provides a straight forward form for the owner/resident to fill in to kick-start the process. The form, in itself, is self-explanatory and doesn't require the owner/resident to either read or understand the Act. Also the form is on-line and can be filled in a printed off on most home PC set-ups. See following link:

www.justice.qld.gov.au

The proposal is to enact, in principle, similar legislation to that of the Queensland government.

Also an increase of the penalty points from 5 to 20 would reflect the potential seriousness of the offence and brings the penalty into line with that offered by the Queensland government. That is not to say a Tribunal will order higher penalties; it is to give the Tribunal the scope.

Proposed Section 45 Wording

The proposed sections are similar in intent to the Queensland Act but there are several problems with the Queensland Act such as;

- It's not easy for an individual to locate the process he/she needs to follow. The process is a number of sections down within the group ([s 185] within [s 182] to [s 188]) and it does not stand out. In all cases it is an individual that first brings a by-law infringement to the attention of the owners corporation.
- There is no provision for the EC to reject an owner's application.
- In practice there is difficulty in trying to decide which section ([s 182] Continuing contravention notice or [s 183] Future contravention notice) is applicable when there is not a clear-cut difference between whether a person is contravening or is likely to contravene a by-law. For example, a person illegally parking and sometimes their car is on common property and sometimes it's not and, at the intended time of serving the notice to comply, will they be contravening or will they be likely to contravene the by-law in the future? It's impossible to predict.
- There is no provision for an individual to ask the executive committee to make application to the Tribunal for civil penalties where a notice to comply has been served and the respondent continues to contravene the by-law.

The following proposed wording addresses those problems by;

- Places the process for an individual to follow at the front of the group, making it easier to find and the overall process follows what would be the natural progression for the vast majority of cases.
- Gives the executive committee a provision to reject an owner's application.
- Takes away the difficulty in trying to decide which section is applicable (between contravening or is likely to contravene) by rolling those two sections into one.
- Makes provision for an individual to ask the executive committee to make application to the Tribunal for civil penalties where a notice to comply has been served and the respondent

continues to contravene the by-law.

The proposal is to change the wording of section 45 from:

45 How can an owners corporation enforce the by-laws?

- (1) An owners corporation may serve a notice, in a form approved by the Director-General, on the owner or occupier of a lot requiring the owner or occupier to comply with a specified by-law if the owners corporation is satisfied that the owner or occupier has contravened that by-law.
- (2) A notice cannot be issued under this section unless a resolution approving the issue of the notice, or the issue of notices for the type of contravention concerned, has first been passed by the owners corporation or the executive committee of the owners corporation.
- (3) Subsection (2) does not apply to the issue of a notice under this section by a strata managing agent if that function has been delegated to the strata managing agent in accordance with this Act.

Note. The Tribunal may impose a pecuniary penalty on a person for failing to comply with a notice under this section (see section 203).

To:

45 How can an owners corporation enforce the by-laws?

- (1) An owners corporation may serve a notice to comply with the provisions of a by-law subject to section 45B.
- (2) Repealed
- (3) An owners corporation may delegate to a strata managing agent, in accordance with this Act, the function to serve a notice to comply with the provisions of a by-law subject to section 45B(2)(b).
- (4) An owner or occupier of a lot may ask the owners corporation to serve a notice to comply subject to section 45A.

Note: The Tribunal may impose a pecuniary penalty on a person for failing to comply with a notice under this section (see section 45B and section 203).

And adds:

45A How can an owner or occupier apply for resolution of a by-law contravention?

- (1) This section applies if -
 - (a) a dispute exists between the owner or occupier of a lot included in a strata scheme (the *complainant*) and the owner or occupier of another lot included in the scheme (the *respondent*); and

- (b) the dispute arises because the complainant reasonably believes that -
 - i. the respondent has contravened, or is contravening, a provision of a by-law for the scheme; and
 - ii. the circumstances of the contravention make it likely the contravention will continue or be repeated.
- (2) The complainant may make an application under chapter 5 for mediation of the dispute concerning the by-law infringement but only if -
 - (a) the complainant has, in the approved form,
 - i. asked the owners corporation to serve a notice on the respondent to comply with the by-law being the subject of the dispute, or
 - ii. asked the owners corporation to make application to the Tribunal for an order where a notice to comply has been served and the respondent has since contravened the by-law,and
 - (b) the owners corporation does not advise the complainant,
 - i. as required under section 45B(3) that a notice to comply has been served on the respondent; or
 - ii. as required under section 45D(2) that application for an order has been lodged with the Tribunal.
- (3) Nothing in this section limits the complainant to making application under chapter 5 for issues other than by-law contravention.

Note: An owner/lot occupier may not make an application for civil penalties to be applied subject to section 203 but he/she may make an application under a different section for mediation. For example under section 117 – Owners, occupiers and other persons not to create a nuisance.

45B How can an owners corporation serve a notice to comply?

- (1) This section applies if the body corporate for a strata scheme reasonably believes that -
 - (a) a person (the *respondent*) who is the owner or occupier of a lot included in the scheme is contravening, or has contravened, a provision of the by-laws for the scheme; and
 - (b) the circumstances of the contravention make it likely that the contravention will continue, or the circumstances of the contravention make it likely that the contravention will be repeated.
- (2) The owners corporation may serve a notice, in a form approved by the Governor, on the respondent requiring the respondent to remedy the contravention provided that;
 - (a) the executive committee has passed a resolution approving the serving of the

notice, or

- (b) under the delegation offered by section 45(3), the strata managing agent is satisfied that subsection (1) criteria have been met.
- (3) If the notice to comply is served following a request under section 45A(2), the owners corporation must, within 28 days after receiving the request, advise the owner or occupier, who made the request, that the notice to comply has been given to the respondent.
- (4) If the notice to comply is not served following a request under section 45A(2), the owners corporation must, within 28 days after receiving the request, advise the owner or occupier, who made the request, of the reason, or reasons, why a notice to comply was not served on the respondent.
- (5) The notice to comply must state -
 - (a) that the owners corporation believes the respondent is contravening, or has contravened, a provision of the by-laws; and
 - (b) the specific by-law the owners corporation believes is being, or has been, contravened; and
 - (c) details sufficient to identify the contravention or contraventions, and
 - i. the period (which must be reasonable in the circumstances) within which the respondent must remedy the contravention, or
 - ii. that the respondent must not repeat the contravention,and
 - (d) that if the respondent does not comply with the notice the owners corporation may, without further notice;
 - i. start proceedings in the Tribunal for the failure to comply with the notice, or
 - ii. if there are claimed damages outside of the jurisdiction of the Tribunal to grant, start proceedings in the local or other appropriate court.
- (6) The respondent must comply with the notice.

Maximum penalty: 20 penalty units.
- (7) However, the respondent does not commit an offence under subsection (6) if, when the notice to comply is given to the respondent, the respondent is not contravening, or likely to contravene, the provision mentioned in subsection (5)(b) in the way detailed for subsection (5)(c).

45C Copy of notice to comply to be given to owner

- (1) If, under this division, the owners corporation for a strata scheme serves a notice to comply to a person who is not the owner of a lot included in the scheme, the owners corporation must give a copy of the notice to the owner of the lot.

- (2) The copy of the notice must be given to the owner when, or as soon as practicable after, the notice is served on the person mentioned in subsection (1).

45D Who may apply to the Tribunal for an order?

- (1) An application for an order, under section 203, for a by-law contravention may only be initiated by the owners corporation that served the notice to comply provided that the subject of the application is the same subject as the notice to comply.
- (2) If an application for an order, under section 203, for a by-law contravention has been made following a request under section 45A(2), the owners corporation must, within 28 days after receiving the request, advise the owner or occupier, who made the request that an application for an order has been made.
- (3) If an application for an order, under section 203, for a by-law contravention has not been made following a request under section 45A(2), the owners corporation must, within 28 days after receiving the request, advise the owner or occupier, who made the request, of the reason, or reasons, why an application for an order was not made.
- (4) An application for the Tribunal to issue an order under this section must be made by the owners corporation within 12 months after the notice to comply under section 45B was served.
- (5) Nothing within this section limits the owners corporation, an owner, or a lot occupier making an application for an order, under chapter 5, for reasons other than by-law contravention.

Note: An owners corporation may also apply to the Tribunal for an order as to costs subject to section 204.

To reflect the changes to section 45, section 203 will need to be changed from:

203 Civil penalties for contravention of notice of owners corporation

- (1) The Tribunal may, on application by an owners corporation, by order require a person to pay a pecuniary penalty of an amount of up to 5 penalty units if the Tribunal is satisfied that:
 - (a) the owners corporation served a notice under section 45 on the person requiring the person to comply with a particular by-law, and
 - (b) the person has since contravened the by-law.
- (2) An application for an order under this section must be made by the owners corporation within 12 months after the notice under section 45 was served.

To:

203 Civil penalties for contravention of notice of owners corporation

- (1) The Tribunal may, on application by an owners corporation, by order require a

person to pay a pecuniary penalty of an amount as specified in section 45B if the Tribunal is satisfied that:

- (a) the owners corporation, or the delegated strata managing agent, served a notice under section 45B on the person requiring the person to comply with a particular by-law, and
- (b) the person has since contravened, or continues to contravene, the by-law.

(2) Repealed

Sample Section 45 Form

The following is a sample of the form referred to within the QLD Act.

BCCM		Form 1	
Notice to body corporate of a contravention of a body corporate by-law			
<i>Body Corporate and Community Management Act 1997</i>		ABN: 13 846 673 994	
This form is effective from 29 August 2011		Department of Justice and Attorney-General	
Section 1—Body Corporate details			
Name and address of person authorised to receive notices on behalf of the body corporate.	Name Postal address Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		
Section 2—Complainant			
Person making the complaint.	Name Postal address Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Lot number		
Section 3—Respondent details			
Person/s against whom the complaint is made.	Name Postal address Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Lot number		
Section 4—Complaint details			
Insert number and text of the body corporate by-law.	TAKE NOTICE that I/we believe that the respondent has contravened a provision of the following by-law and the circumstances of the contravention make it likely that the contravention will continue or be repeated:		
Provide details of how the by-law is being contravened.	I/we believe that the respondent has contravened the by-law in the following manner:		
Signature of complainant/s	I/we ask that the body corporate give the respondent a contravention notice for the contravention of the by-law. Signature of complainant/s Dated: <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		

Schedule 10 - Define Who is Responsibility to Maintain Property

Argument

One of the most vexing questions facing a lot owner is 'what is my responsibility to maintain and what is the owners corporation's responsibility to maintain. This question has been the subject of many documents produced by strata managers, strata lawyers, the Office of Fair Trading, and the NSW Lands and Property Information . All, in some aspect, have differing views. If these professional people cannot agree, what chance is there for an owner to have a clear understanding of his/her responsibility to maintain?

The problem is further exacerbated by the need to have a clear understanding of;

1. the Strata Schemes Management Act 1996, and
2. the Strata Schemes (Freehold Development) Act, and
3. the Strata Schemes (Leasehold Development) Act, and
4. the intent of the legislators at the time the part of the Act was introduced.

Fundamental Principle of Law

One the fundamental principles of all laws is 'an individual has the freedom and autonomy to do whatever he/she likes as long as it doesn't adversely affect anyone else'. The strata community professionals seem to have lost this overview as they focus on the detail of the wording of the Acts and have come up with opinion that unreasonably limits an individual's freedom. We, as a community, need a clear rethink as to what is right, what is wrong and what is the intent of the Act, and we need to translate that clarity back into the Act.

Applying that fundamental principle to determining who is responsible to maintain an item within a lot we get;

1. the lot owner is to be afforded as much freedom and autonomy as is possible to maintain or alter items within the lot, and
2. the lot owner is only to be limited in altering or maintaining items where such alterations, maintenance, or tampering could have repercussions extending beyond what is contained within a lot.

Therefore, by applying that fundamental principle for specific items within a lot and in broad terms, the freedom of the owner is removed and the owners corporation is responsible to maintain;

1. common walls and common floors, and their associated doors and/or windows.
2. the water sealing of a lot, in rooms that are designated wet areas, where failure of one of the building's seals could allow water to leak through a common floor or through a common wall into an adjoining lot or into a common area.
3. a services which;
 - (a) is located within a common property wall, floor or ceiling, or

- (b) passes through a lot, or
- (c) if removed or tampered with, could effect the operation of another lot's service or could effect a communal service.

The owner has the freedom to alter or maintain in all other cases.

I believe the Act and related Acts do support above principles and there is a body of professional opinion which also supports the same notion.

Also the prime intent of laws is to give people a framework within which to conduct their lives. If we, as a society, cannot make it clear to the average lot owner what is his/her responsibility to maintain then the we have failed the most basic and prime intent of writing and introducing laws.

Proposal

The proposal is to introduce a schedule within the regulations that makes it clear to an owner what is his/her responsibility to maintain.

Propose Wording

The bulk of the following proposed Act/Regulation wording has been produced by drawing on the intent of documents produced by;

1. Institute of Strata Title Management Ltd publication 'Who's responsible? A guide to common property'.
2. Lands and Property Information - Circular 2011/07 & Circular 2011/08
3. Office of Fair Trading - 'Buying into a Strata Scheme' - ISBN 0 7347 6075 2
4. Network Strata Services - newsletter - 'Maintenance Responsibilities - Owner or Owners Corporation?'
5. Alex Ilkin (of Alex Ilkin & Co) - 'Who Fixes What'

For the always vexed question of who's responsible for floor or wall tiles, this proposal draws heavily on an excerpt from an article by Alex Ilkin which reads:

It is the view of the former Strata Titles Commissioner that the following items are also common property if installed at or before the date of registration of the strata plan:

- Floor tiles and the floor of the bathroom and laundry;
- the shower recess,
- the shower tray,
- the hob, and
- the tiles on the common property at and below the hob level.

However, not included as common property are:

- The wall tiles affixed to internal walls;
- Shower screens and bathtubs; and

- Tiled floors in rooms that do not have wet areas, because the Building Code of Australia does not require tiles in those areas

This article clears away all the mystique and makes perfect sense when considering who maintains tiles. The article brings a clarity as to why an owner's freedom and autonomy are restricted from maintaining all floor or wall coverings within his/her lot and it provides a clear delineation as to what is included and what is excluded. Basically the owners corporation is responsible to maintain the minimum amount of a lot's common wall or a lot's common floor 'wet area' water sealing (as required by the Building Code of Australia) that prevents water leaking into areas outside the lot. In all other areas, the owner has the freedom to maintain or alter.

Changes to Act

To enable the regulations to be able to define who is responsible the following **addition** is required to the Strata Schemes Management Act 1996

Section 246 Regulations

- (4) A regulation may define an owner's responsibility, or an owners corporation's responsibility, to maintain items within, or directly associated with, a lot's stratum provided that such regulation is consistent with this Act and;
- the Strata Schemes (Freehold Development) Act, and
 - the Strata Schemes (Leasehold Development) Act, and
 - the Dividing Fences Act.

Changes to the Regulation

The proposed wording of the **new schedule** within the regulation is as follows;

Schedule 10 Definition of responsibility to maintain

(Clause ??)

Nothing within this schedule excludes an owners corporation from making and adopting a by-law that alters the maintenance responsibility provided that such a by-law is within the limitations imposed by the Strata Schemes Management Act 1996.

This schedule is only applicable if there is no contradictory by-law in force and there is no contradictory note or contradictory indication on the strata plan.

How to use the following table;

The table on the following pages provide a general list of who is responsible, the owner (O) or owners corporation (OC), for repairs and maintenance. Additional information on some items can be found in the following part titled 'Further definition supporting the above table'

Type	Item	Responsibility	Refer
Balcony	Awnings	O/OC	17

	Columns	OC	31
	Door Flyscreens	O/OC	14
	Door, window & wall	O/OC	19
	Painting of Balcony Ceiling	O/OC	20
	Railings	OC	
	Security door	O/OC	19
	Tiles	O/OC	27
	Water leaking through wall	O/OC	19
Bathroom/Laundry	Blocked floor drain	OC	
	Cabinets	O	
	Cracked bath/handbasin	O	
	Mirrors	O	
	Plug and waste in bath or laundry	O	9
	Shower Screen repairs	O	
	Toilet bowl	O	
	Toilet Cistern	O	
	Water Leaking From Bath	O/OC	11, 9
	Water leaking from shower	O/OC	11
	Water leaking from shower taps	O	
	Water leaking through tiles	O/OC	11
Ceilings/Roof	Ceiling cornices	O/OC	22
	Exhaust fans	O/OC	6
	False ceilings	O/OC	23
	Membranes	O/OC	28
	Paintwork	O/OC	12
	Plastered Ceilings	O/OC	12
	Vermiculite Ceilings	OC	
Courtyard	Deck, pergola or steps	O	17
	Fencing	O/OC	15
	Pavers	O	17
	Tree trimming/removal	O/OC	21
Electrical	Fuses/Circuit Breakers	O/OC	4
	Hot Water Service - Communal	OC	

	Hot Water Service - Exclusive to a lot	O/OC	29
	Intercom handset	O/OC	34
	Intercom Wiring	O/OC	1
	Light and power wiring	O/OC	1
	Light Fittings	O/OC	5
	Light switches	O	
	Power point socket	O/OC	1
	Smoke detectors	O/OC	3
	Stoves	O	
	Telephone (additional wiring required)	O	2
	Telephone sockets	O	
	Telephone wiring broken	O/OC	1
	TV (Foxtel wiring required)	O	2
	TV aerial	OC	
	TV cabling	O/OC	1
	TV socket	O/OC	1
	Air-conditioning systems	O/OC	7
Entrance Door	Door locks	O/OC	18
	Entrance door automatic closer	OC	14
	Entrance door to lot	OC	14
	Security door repair	O/OC	14
Floor	Floating Floorboards/Parquetry flooring	O	24
	Floor and wall tiles	O/OC	11
	Internal Carpet	O/OC	12
	Lino/vinyl/cork tiles	O	
	Linoleum	O	
	Magnasite Floor Base	OC	
	Mezzanines within lots	O/OC	32
	Skirting boards	O/OC	30
General	Architraves	O/OC	30
	Built-in wardrobes/cupboards	O	
	Cracks in Walls	O/OC	22
	Damage to common property by tenant	OC	25

	Damage to lot after OC repair	O/OC	12
	Ducting covering stack	O/OC	23
	Internal Doors	O	
	Internal Paintwork	O/OC	12
	Keys, Security cards etc	O	26
	Letter Boxes	OC	
	Stairs in Lot	O/OC	32
Kitchen	Dishwasher	O	
	Hot Water Service - Exclusive to a lot	O/OC	29
	Insinkers	O	
	Kitchen cupboards	O	
	Stoves	O	
Parking	Carports	OC	13
	Door controller button	O	26
	Door hinge mechanism	O/OC	13
	Electric Garage Door Opener	O/OC	13
	Garage Door auto opening mechanism	O/OC	13
	Garage Door auto remotes	O	26
	Garage Door Lock	O/OC	13
	Garage Door Opener	O/OC	13
	Garage Doors	O/OC	13
	Garage Lights	O/OC	5
	Line marking	OC	
	Mesh between garages	O/OC	15
	Water ingress into garage	O/OC	16
Plumbing	Blocked sewer	OC	
	Burst pipe general	O/OC	8
	Dripping "S" bend under sink	O	
	Guttering and Downpipes	O/OC	33
	Leaking pipes under sink	O	
	Main stop cock to unit	OC	
	Mould Within A Lot	O/OC	10
Plug and waste in sink	O	9	

Windows	Cleaning outside	O/OC	35
	Flyscreens	O/OC	14
	Locks	O/OC	18
	Repairs	O/OC	19
	Sash cord replacement	O/OC	19
	Seal to window	O/OC	19
	Curtains or Blinds	O	36

Further definition supporting the above table

1. Wiring, Cabling, or Sockets

The owner is responsible to maintain any wiring, cabling or socket that is for the exclusive use of the lot and where it is located within the lot's stratum boundaries.

The owners corporation is responsible to maintain any wiring, cabling or socket in all other cases.

For example;

- (a) the owners corporation is responsible to maintain all wiring within a common wall.
- (b) the owner is responsible to maintain wiring within an internal wall and where that wiring is for the exclusive use of the owner's lot.
- (c) the owner is responsible to maintain all switches and power points located within the bounds of the lot.

Note: Common walls are shown on the strata plan as thick lines and are not necessarily limited to boundary walls.

2. Additional Wiring for Phone / Foxtel

If not installed at the time of registration of the strata plan then the owners corporation is not required to install them.

3. Smoke Detectors

The owner is responsible to maintain smoke detectors located within the stratum boundaries of the lot if they are not connected to a fire board within the building.

The owners corporation is responsible to maintain smoke detectors in all other cases.

4. Fuses / Circuit Breakers

The owner is responsible to maintain a fuse or circuit breaker located within the stratum boundaries of the lot.

The owners corporation is responsible to maintain a fuse or circuit breaker in all other cases.

5. Light Bulbs / Fittings

If a light fitting installation is designed to only illuminate an area within a lot, then it is the lot owner's responsibility to replace the light globe, bulb or tube regardless of the location of the light fitting.

The owner is responsible to maintain recessed downlights and their associated equipment that are installed within a false ceiling and where the false ceiling is within the stratum's boundaries.

Within a lot's stratum the light fittings are the responsibility of the owner to maintain except it is the owners corporation's responsibility to maintain when the light fitting is;

- (a) Installed on a balcony where the strata plan details the upper height of the balcony as being less than the location of the light fitting.
For example; the strata plan reads "The upper height of the balcony extends 2.3 metres above the concrete slab" and the light fitting is installed 2.5 metres above the concrete slab.
- (b) Connected to common power and is installed in a carport, garage, or parking space and its installation is designed to also illuminate other areas within the scheme

6. Exhaust Fans / Associated Ducting

The owners corporation is responsible to maintain where:

- (a) the exhaust fan is located outside a lot's stratum.
- (b) the associated ducting is located outside a lot's stratum.
- (c) the exhaust fan or ducting is part of an integrated communal system and where removal of that fan or ducting could affect the operation of that communal system.
- (d) removal or replacement of a fan or its associated ducting could affect the lot's fire containment rating.

The owner is responsible to maintain exhaust fans and their associated ducting in all other cases.

7. Air-conditioning Systems

The owner is responsible to maintain all parts of an air-conditioning system that are within the lot's stratum boundaries and where the air-conditioner is for the exclusive use of that lot.

The owners corporation is responsible to maintain all parts of an air-conditioning system that services more than one lot.

The owners corporation is responsible to maintain all parts of an air-conditioning system that are outside a lot's stratum boundaries except where those parts are subject to a maintenance by-law.

For example;

The owner is responsible to maintain a lot's air-conditioner mounted within the lot's

balcony.

The owners corporation is responsible to maintain water drainage pipes extending beyond the balcony if there is no by-law to the contrary.

8. Burst or Leaking Water Pipes

The owner is responsible to maintain burst or leaking water pipes where;

- (a) the water pipe is for the exclusive use of the lot, and
- (b) the water pipe is located within an internal wall (not a common wall) or the water pipe is located within the lot's stratum air space, and
- (c) the water leak is located after the lot's water stop cock.

The owners corporation is responsible to maintain burst or leaking water pipes in all other cases.

Note: For emergencies, the owners corporation may enter a lot to effect repairs [s 65(3)]

9. Plug or Waste Connection

The owner is responsible to maintain any plug or waste connection that is located within the lot's stratum airspace even if the water is leaking into an adjacent lot.

Note: For emergencies, the owners corporation may enter a lot to effect repairs [s 65(3)]

10. Mould Within A Lot

The owner is responsible to stop mould which is being fed by condensation.

The owners corporation is responsible to stop mould which is being fed by moisture seeping through a common wall, floor or ceiling.

Notes:

Condensation is determined to be the cause if;

- (a) the mould is black spot mould, (*Aspergillus niger*), and
 - i. the wall paint is not lifting and the mould is on the surface of the paint, or
 - ii. furnishings and/or other items exhibit mould, or
 - iii. window glass and/or blinds exhibit mould.

Seepage is determined to be the cause if;

- (a) the mould is white powdery mould, or
- (b) the wall paint is lifting and the mould is underneath the paint work, or
- (c) there is a predominate 'tide mark' on the wall.

11. Water Leaking and Tiles

Provided there is no by-law to the contrary:

The owners corporation is responsible to maintain a lot's common wall and a lot's

common floor water sealing in wet area rooms to the minimum extent required by the Building Code of Australia. The owners corporation is therefore responsible to maintain within a bathroom, shower, laundry or sanitary compartment;

- (a) floor tiles and the sealing membrane on a common floor, and
- (b) wall tiles on a common wall and within a shower recess up to a height of 1800mm above the floor, and
- (c) the shower's common floor;
 - i. tray and all aspects of that shower tray, or the
 - ii. base membrane, or the
 - iii. preformed plastic, fibreglass, or steel floor tray and all aspects of that tray, and
- (d) the sealing and joining of any common floor membrane, and any common floor shower tray, to a common wall, and
- (e) the common floor shower hob (if there is a shower hob), and
- (f) wall tiles on a common wall that are located outside of a shower recess;
 - i. but only up to the level of the lowest wall tile above the common floor, and
 - ii. which are within 150mm above the upper edge of a bath, basin or tub, and
- (g) the seal or grouting between the common wall and the upper edge of a bath, basin or tub.

The owner is responsible to maintain a lot's internal wall water sealing, floor tiles, and wall tiles in all other cases within a bathroom, shower, laundry or sanitary compartment. The owner is also responsible to maintain all tiles in all other rooms including, but not limited to, a kitchen, a bar area, kitchenette, or a domestic food and beverage preparation area.

Note: Townhouses whose strata schemes were registered before 1 July 1974 did not designate the upper floor as being a common floor. Townhouses whose strata schemes were registered after 1 July 1974 did designate the upper floor as being a common floor.

Examples are:

The owners corporation is responsible to stop water leaking from a shower recess into an adjoining lot.

The owner is responsible to stop water leaking from a shower recess into an adjoining room within the lot.

The owner is responsible to maintain all wall and floor tiles within a kitchen.

12. Damage to Lot

The owners corporation is responsible to repair any damage to lot or its contents caused by, or arising out of, the carrying out of any work by the owners corporation, or caused by the exercise of power of entry, unless the damage arose because the owners corporation was obstructed or hindered.

The owner is responsible to repair all other damage.

Examples of who is responsible to repair damage are:

- (a) A burst pipe occurs in a common wall and the owners corporation have to knock a hole in the wall to fix it. The owners corporation is responsible to fix the hole and repaint the wall afterwards.
- (b) A burst pipe occurs in a concrete slab. The owner's corporation is responsible to fix the leak, but water stained the ceiling paintwork of the unit below. The owner is responsible to repaint the ceiling because it was not the fixing of the repair by the owners corporation that caused the damage.
- (c) A burst hot water service soaked the magnesite in a unit and the owners corporation had to take up the carpet to dry the magnesite. Once the magnesite had dried, the carpet could not be re-laid because it had shrunk. The owners corporation would be responsible for the carpet as the carpet was damaged because the owners corporation had to take it up.
- (d) A burst hot water service soaked the carpet. The owner would be responsible for the carpet.
- (e) An entry door had to be broken to gain entry and where the owner refused the owners corporation lawful entry. The owners corporation would be responsible to repair the door because it is common property but the owner would be responsible to pay for the repairs to the door.
- (f) An internal door or lock had to be broken to gain entry and where the owner refused the owners corporation lawful entry. The owner would be responsible to repair the door or lock.

13. A Lot's Carport / Garage Doors, Locks and Openers

The owners corporation is responsible to maintain;

- (a) a lot's carport
- (b) a lot's garage door if the lot's garage door is shown as a thick line on the strata plan
- (c) all of a lot's garage door components if the owners corporation is responsible to maintain the door and if the components that were there at the time of strata plan registration.
- (d) the lot's garage door components that have been replaced by the owners corporation.

The owner is responsible to maintain the door and/or its components in all other

cases

14. Lot Entry Doors / Closers / Security Doors / Flyscreens

The owners corporation is responsible to maintain entry doors.

The owners corporation is responsible to maintain closers, security doors, flyscreens if they were there at the time of strata plan registration.

The owner is responsible to maintain closers, security doors, flyscreens if they were not there at the time of strata plan registration.

Note: Most strata schemes have a by-law (refer to the scheme's by-laws) that allows owners to install door flyscreens and/or security doors after registration of the strata plan and the by-law makes the owner responsible to maintain those parts. If there is no by-law in place then the owners corporation is responsible to maintain all door parts.

15. Lot Boundary Fencing

If the boundary is shown as a thick line on the strata plan then the owners corporation is responsible to maintain the fencing. If the boundary is shown as a thin, dotted or no line on the strata plan then the responsibility to maintain is as follows:

(a) **Divides two lots.**

Each owner is responsible 50/50

(b) **Divides one lot from common property.**

The owner is responsible 50% & the owners corporation is responsible 50%

(c) **Divides one lot from the adjoining property.**

The owners corporation is responsible for 100% of its share with the adjoining property.

16. Water Ingress Into a Lot's Garage or Carport

The owners corporation is responsible to stop water dripping onto a car's paintwork

The owners corporation is not responsible to ensure a garage or carport area remains dry nor is it responsible for any damage to items stored within a garage or carport area.

17. Awnings, Garden Areas and Courtyards

The owner is responsible to maintain awnings, courtyards or garden areas attached to a lot where;

(a) it is for the exclusive use of that lot, and

(b) it is not a common wall (shown a thick black line on the strata plan), and

(c) is within the vertical boundaries of the strata plan.

For example;. the strata plan states 'The stratum of the courtyards are limited to a depth of 3 metres below and except where covered to a height of 10 metres above the concrete ground floor of its respective adjoining lot'.

The owners corporation is responsible to maintain awnings, courtyards or garden areas in all other cases

18. Lot Entrance Door Locks and Window Security Locks

In nearly all cases there is a by-law present, when considered, in which:

- (a) The owners corporation is responsible to maintain the original lock, or its subsequent replacement of that lock by the owners corporation.
- (b) The owner is responsible to maintain any lock, or additional lock, installed by the owner/occupant, or installed by a previous owner/occupant.
- (c) If an owner/occupant installs a lock that prevents the a door complying with fire certification, and the owner refuses to replace it with a complying lock, the owners corporation may replace the lock and charge the owner as a debt owing.

In the cases where there is no by-law; the owners corporation is responsible to maintain security locks.

19. Unit Balcony Walls / Windows / Doors

Unless otherwise stated on the strata plan and for all parts that were installed at the time of strata scheme registration;

- (a) the lot owner is responsible to maintain the unit balcony wall including the any windows or doors and their working parts if the strata plan was registered before 1 July 1974 and the balconies are not shown on the strata plan.
- (b) the owners corporation is responsible to maintain the unit balcony wall including any windows or doors and their working parts if the balconies are shown on the strata plan.
- (c) the owners corporation is responsible to maintain all windows and their working parts that are mounted within a common wall that is not a balcony wall.
- (d) the owner is responsible to maintain all windows and their working parts that are not mounted within a common wall.

Note: Most strata schemes have a by-law (refer to the scheme's by-laws) that allows owners to install window flyscreens and/or security doors after registration of the strata plan and the by-law makes the owner responsible to maintain those parts. If there is no by-law in place then the owners corporation is responsible to maintain all window and door parts.

20. Painting Of Balcony Ceiling

The owner is responsible to paint the balcony ceiling unless there is a notation on the strata plan limiting the height of the balconies stratum to a height less than the under surface of the balcony above.

However, the owners corporation may resolve to include the painting of this area when the building is repainted.

21. Tree Trimming and Removal of Dropped Branches / Fronds

The owner corporation is responsible to maintain the parts a tree, or parts of any other plant, that extend past the stratum limits and where;

- (a) the tree, or plant, existed at the time of strata plan registration, and
- (b) the tree, or plant, extended past the stratum limits at the time of strata plan registration

For these trees or plants, the owners corporation is also responsible to removal of dropped branches or palm fronds and to make good any damage caused by, or associated with, the tree or plant.

The owner is responsible to maintain in all other cases;

- (a) the parts a tree, or parts of a plant, and
- (b) to remove any dropped branches or fronds from any lot or common property, and
- (c) to make good any damage to any lot or common property caused by, or associated with, the plant.

22. Cracks in a Lot's Wall or Cornice

The owner is responsible to maintain;

- (a) all internal walls.
- (b) any crack in a boundary wall, or cornice where the crack is less than 2 millimetres thick.

The owners corporation is responsible to maintain;

- (a) Any crack in a boundary wall, or cornice where the crack is 2, or more, millimetres thick.

Note: Boundary walls, and their associated cornices, are shown as a thick line on the strata plan.

23. False Ceilings and Enclosing Ducting

In all cases, an owner must not interfere with any structure that could compromise the integrity of piping, ducting, wiring, or a service, that is provided for the use of;

- (a) another lot or lots; or
- (b) the owners corporation.

If the false ceiling, enclosing ducting, or enclosing structure provides support, or direct protection, to communal piping, ducting or wiring etc. then the owners corporation is responsible to maintain the parts of the structure that provides that support, or direct protection.

In all other cases, the owner is responsible

Examples of an owner's responsibility are:

- (a) Where a false ceiling is covering sewage piping for an above lot and the false ceiling has been installed for aesthetic reasons.

- (b) An enclosing structure provides support for exhaust vent ducting but the ducting is for the exclusive use of that lot and removal of that duct would have no effect on other lots.

An example of shared responsibility is:

- (a) One or more false ceiling joists provide direct support for communal ducting then the owners corporation is responsible to maintain those joists. The owner is responsible to maintain all other aspects of the ceiling.

24. Floating Floorboards / Parquetry Flooring

The owner is responsible to maintain floating floorboards and parquetry flooring.

25. Damage to Common Property

The owners corporation is responsible to maintain common property regardless of how the damage was caused.

For deliberate or malicious damage, the owners corporation may pursue the person, or persons, responsible to reimburse the owners corporation the cost to make good that damage.

For 'normal wear and tear' the owners corporation is responsible solely and alone.

An example of 'normal wear and tear' is where there is markings of the walls in the stairwell after a tenant, or owner, moves in.

26. Keys, Security Cards, Auto Remotes

The owner is responsible for any loss, damage or for failure of the device to operate.

27. Unit Balcony Tiles

In all cases the owner is responsible to keep the tiles clean and to ensure they are not a slip hazard.

Unless otherwise stated within a by-law, the owners corporation is responsible to maintain the balcony tiles where;

- (a) the balcony is shown on the strata plan, and
- (b) the balcony floor is a common floor, and
- (c) water sealing or water drainage is required part of the design (as stipulated by the Building Code of Australia).

The owner is responsible to maintain balcony tiles in all other cases.

Note: In the cases where the owner is responsible to maintain the balcony tiles, in most schemes there is a by-law which prohibits the owner from making any change that is visible outside of the lot and that is not in keeping with the rest of the building.

28. Ceiling / Roof Membranes

The owner is responsible to maintain membranes on flat roofs where the strata plan was registered prior 1 July 1974 and where the roof area is located directly above the

lot.

The owners corporation is responsible to maintain membranes on flat roofs in all other cases.

29. A Lot's Exclusive Hot Water Service

The owner is responsible to maintain a hot water service located within a lot's stratum boundaries and which is for the exclusive use of that lot.

The owners corporation is responsible to maintain a hot water service in all other cases.

30. Skirting Boards and Architraves

The owners corporation is responsible to maintain;

- (a) a skirting board which is part of the joint of a common wall to a common floor, and
- (b) an architrave which is part of a common wall.

The owner is responsible to maintain skirting boards and architraves in all other cases.

31. Columns Within a Lot

The owners corporation is responsible to maintain a column which supports a structure above a lot's stratum even if the column is not shown on the strata plan.

32. A Lot's Stairs or Mezzanine

The owner is responsible to maintain stairs and mezzanines within a lot where the strata plan was registered before 1 July 1974.

The owners corporation is responsible to maintain stairs and mezzanines within a lot in all other cases.

33. Guttering, Drainage and Downpipes

The owners corporation is responsible to maintain guttering, drainage and downpipes that were in place at the time of registration of the strata plan.

The owner is responsible to maintain guttering, drainage and downpipes;

- (a) that have been installed within a lot's stratum boundaries since the time of registration of the strata plan,
- (b) unless there has been the creation of an easement or there is a maintenance by-law which places the onus to maintain onto the owners corporation.

34. Intercom Handsets

The owners corporation is responsible to maintain intercom handsets where the handset is part of an integrated system and where a faulty handset or tampering could affect the overall workings of the intercom system

The owner is responsible to maintain the intercom handset in all other cases.

35. Window Cleaning

The lot owner is responsible to clean the lot's windows unless there is a by-law in place that reduces an owner's responsibilities.

Note: Strata schemes registered after the 1st July 1997 may have adopted the Strata Schemes Management Regulation model by-laws which has a by-law sharing the onus to clean windows

36. Curtains or Blinds

The owner is responsible to maintain a lot's curtains or blinds but, in most cases, the owner must not change the style or colour of the curtain or blind without written approval of the owners corporation.

Note: Most strata schemes have a by-law that prevents an owner maintaining anything within the lot that is visible from outside the lot and is not in keeping with the rest of the building.

Section 31 - Clarify Strata managing agent to record exercise of functions

Argument

Since 2004 there has been a requirement to maintain a 10 year sinking fund plan [s. 75A] and to collect monies for future maintenance events. Strata Schemes are now developing a situation that didn't exist previously. That is, the coffers of owners corporations (OCs) are now many times more than they were in the past. These new savings are growing and are tempting to pilfer. When fully established across all strata schemes they will collectively sum up to be billions of dollars. It would be naive to think that these funds are inherently safe in the hands of all strata managing agents.

In the past the monitoring of spending was largely self-regulating as the funds would often be just enough to cover the yearly expenses and any significant unauthorised spending would show up as a need to impose special levies to cover a shortfall. But now, with all that money banked away, OCs will need to maintain better audit trails on expenditure to help identify and deter illegal access of those funds.

Currently most OCs and their agents have good audit trails on a receipt of invoices and the payment of those invoices. But what most OCs don't have is a good audit trail on the who, what, why of the approval to procure goods or services. For those people with criminal intent; this is an easy path to pilfer funds. There currently is a requirement for the agent to maintain a log detailing who decided to procure these items and by what authority. And for the agent to make that log available to the OC on a regular basis but it is very rare (if at all) agents are complying with the current law.

Many strata managing agents treat OC funds as their own domain and will often make unilateral decisions without the knowledge or the authority of the OC. In many cases the first notification an owner gets of expenditure of his/her money is the presentation of accounts at the annual general meeting. Some of these expenses may have occurred up to 12 months ago and, without a 'log of function', agents are typically unable to recall the who, what, where and why of the approval to procure those goods and/or services.

There are recent news releases that give a good indication there is now occurring an increasing trend of theft by agents. Better audit trails will not stop all theft but better audit trails would mean less propensity for this type of theft to occur.

The following referenced articles all talk about significant amounts of money going missing from Strata funds (follow the web links for the full articles):

The Office of Fair Trading (Anthony Roberts) and Real Estate Business:

“Trust monies had been accessed over a two year period without authorisation”

[31st May 2011: Eastern suburbs real estate agents disqualified over trust monies](#)

[2nd June 2011: Real Estate Business - Dodgy Agents Disqualified](#)

ABC TV:

“Millions of dollars of Strata funds misappropriated”

[15th July 2011 : Sydney CBD Rental Scam Exposed](#)

Illawarra Mercury:

“\$1 million missing”

[31st January 2012 : \\$1 million missing: Warilla estate agency under investigation](#)

There is already legislation in place that addresses this audit trail need and the intent is clear when put in context within the whole of the Act. But read on its own its intent is vague and needs to be clarified. Currently it reads;

31 Strata managing agent to record exercise of functions

- (1) A strata managing agent who exercises a function of an owners corporation must, immediately after its exercise, make a written record specifying the function and the manner in which it was exercised.
- (2) The strata managing agent must serve a copy of the written record on the owners corporation.

As the Act stands there is an option for the agent to assert that the OC has never asked for a copy therefore a copy has never been served. Reason would dictate that the original intent of the Act was to serve a copy on a regular basis.

Proposal

Therefore section 31 is proposed to be clarified as follows:

31 Strata managing agent to record exercise of functions

Note: This section is to provide to the owners corporation with a central reference for the otherwise disparate functions performed by a strata managing agent on behalf of the owners corporation.

- (1) A strata managing agent who exercises a function of an owners corporation must, immediately after its exercise, make a written record specifying the function and the manner in which it was exercised.
- (2) The strata managing agent must serve a copy of the written record on the owners corporation
- (3) The copy, referred to in subsection (2), must be served at least on an annual basis.
- (4) The written record, referred to in subsection (1), must include, but is not limited to:
 - (a) the person's name exercising the function, and
 - (b) the date the function was exercised, and
 - (c) a description of the function, and
 - (d) the authority by which the function was exercised.

This clarification leaves no doubt about the intent of the Act and the importance of this section.

Section 109 - Certificate to include 10-year plan

Argument

The need to maintain a 10-year sinking fund plan was introduced in 2004 [s. 75A]. The intent is to prevent investment owners selling out just before major repairs are due without fairly contributing to their use of the building over their tenure. Also the intent is to protect unsuspecting purchasers buying into a property and then being hit with a huge levy shortly after their purchase.

In practice, for medium-sized schemes, this legislation is not working. What generally happens is

- The number of investment owners number about 50% of the total owners within a strata scheme
- The investment owners are more intense and more vocal than the other owners. That is the nature of an investor relative to a resident owner. Resident owners mainly consist of young couples, retirees, and pensioners.
- By their very nature; investment owners are more likely to attend an annual general meeting than resident owners.
- When the annual general meeting item of raising levies to cater for the 10-year plan is voted on; the will of the investment owners prevails and the amount is often far lacking.

For those resident owners who are aware and concerned, it is difficult to press the law as, to be compliant, all an owners corporation (OC) has to do is to 'take account' of the 10 year plan [s. 75(4)] in determining its levies. At a recent seminar, the Institute of Strata Title Management advised that 'No cases have been brought to the Tribunal' and 'the legislation has never been tested'. This observation adds credence to the view that the legislation is not effective.

The following reference is to a colourful article from a journalist working for the Sydney Morning Herald and it adds another perspective to the view that the legislation is not working (follow the link for the full article):

[Jimmy Thomson – Sinking Fund Rules Sunk](#)

Investment owners are driven by Return On Investment (ROI) and it would be a most unusual investment owner who would vote to increase levies knowing it would take away from his/her ROI. Also lower levies offer a better selling point, to uninformed purchasers, for the investment owner. Lower levies are a two-way win for investors.

Inexperienced buyers are still being unfairly caught purchasing a property where there are looming major expenditures and the sinking fund is low on funds.

Options

Trying to make the law more explicit would be difficult. The law needs to be flexible enough to cater for all Strata Schemes ranging from the relative informal processes, appropriate for very small schemes, to the relative formal processes employed by large schemes.

Proposal

To include a statement of the condition of the 10-year plan within the section 109 certificate.

The prospective owner is actually buying a portion of the sinking fund relative to the 10-year plan and that portion is very real. It can either be an asset or a serious liability. Often it is a liability. Considering that Section 109 is to provide the prospective owner with a '*Certificate by owners corporation as to financial and other matters relating to lot*' it would be logically remiss of the OC not to include an owner's funding obligations relative to the 10-year plan.

The impact on the OC / Agent would be minor. The plan would be on file and will have planned sinking fund amounts to meet the needs. It would be a simple clerical exercise to prorate the asset/liability to a particular lot. If people were to argue that they cannot deduce these amounts then they have not produced a plan that meets the intent of the Act, and this retort holds good even for relatively informal plans (refer [s. 75(4)]).

With prospective buyers being made aware of the condition of their funds relative to the 10-year plan, an investment owner would then have to weigh the options of saving monies on levies verses reduced resale price. That is, a property with a healthy sinking fund will sell easier than one where the owner is aware of significant looming financial liabilities. The judgement on ROI would not be as simple as it now is under the current regime where most prospective buyers are unaware as to inadequate sinking funds and where owner investor view reduced levies as being attractive to their buyers.

This proposal is not a panacea for all the problems associated with s.75A, but it would go a long way to help. The following is wording of the proposed new requirement;

109 Certificate by owners corporation as to financial and other matters relating to lot

(9) Include condition of 10-year plan funding relative to the lot

If a 10 year plan has been finalised in accordance with Section 75A then this certificate will include:

- (a) a statement of sinking fund balance prorated with respect to the lot.

To make this complete; I propose the s.109 form within the regulations be amended to include the Strata Scheme's fund balances:

18 Condition of sinking fund relative to 10 year plan

If a 10 year plan has been finalised in accordance with section 75A then;

Sinking fund balance last determined with respect to the Strata Scheme

.....

Date on which determination made

.....

Sinking fund planned balance with respect to the Strata Scheme (section 74(5) of the Act)

.....

Date of planned balance

Sinking fund outstanding (if any) prorated with respect to the lot

Sinking fund credit (if any) prorated with respect to the lot

Note; there is similar legislation within Queensland [*Section 206 Information to be given by seller to buyer - Body Corporate and Community Management Act 1997 and related BCCM Form 13*] that effects similar coverage.

Section 65A - Clarification to Allow EC to approve specific changes

Argument

Section 65A was introduced in 2004 and currently reads:

65A Owners corporation may make or authorise changes to common property

- (1) For the purpose of improving or enhancing the common property, an owners corporation or an owner of a lot may take any of the following action, but only if a special resolution has first been passed at a general meeting of the owners corporation that specifically authorises the taking of the particular action proposed:
 - (a) add to the common property,
 - (b) alter the common property,
 - (c) erect a new structure on the common property.
- (2) A special resolution that authorises action to be taken under subsection (1) in relation to the common property by an owner of a lot may specify whether the ongoing maintenance of the common property once the action has been taken is the responsibility of the owners corporation or the owner.
- (3) If a special resolution under this section does not specify who has the ongoing maintenance of the common property concerned, the owners corporation has the responsibility for the ongoing maintenance.
- (4) A special resolution under this section that allows an owner of a lot to take action in relation to certain common property and provides that the ongoing maintenance of that common property after the action is taken is the responsibility of the owner has no effect unless:
 - (a) the owners corporation obtains the written consent of the owner to the making of a by-law to provide for the maintenance of the common property by the owner, and
 - (b) the owners corporation makes such a by-law.
- (5) A by-law made for the purposes of this section:
 - (a) may require, for the maintenance of the common property, the payment of money by the owner concerned at specified times or as determined by the owners corporation, and
 - (b) must not be amended or repealed unless a special resolution has first been passed at a general meeting of the owners corporation and the owners corporation has obtained the written consent of the owner concerned.
- (6) The provisions of sections 52 (3), 54 (2) and (3) and 55 apply to a by-law made for the purposes of this section in the same way as those provisions apply to a by-law to which Division 4 of Part 5 of Chapter 2 applies.

In effect, this section means that any alteration to common property requires a special resolution and makes it clear the executive committee can only approve repairs. But there are many necessary repairs that unavoidably require an alteration to common property. For example;

- Repair a leak in an old rusting steel water pipe would require the laying of a new pipe.

Galvanised steel pipe is no longer used for water supply and the only option would be alter it by replacing it with a copper pipe or high pressure plastic pipe.

- A crack in a wall where the only option is alter the common property wall by applying a patch.
- The addition (to common property) of a plate over a sagging beam to repair and add strength to that beam.
- A light fitting that had been broken and a direct replacement cannot be found. The only option would be to alter the common property by replacing it with one as close as possible to the original.
- Repair any obsolete component where the only option is to alter common property by replacing it with a later model component.

Reading s.65A; there is no ambiguity. Common property cannot be altered without a special resolution. Therefore this excludes the executive committee approving many minor repairs. I am sure this is not what the legislators had in mind when s.65A was introduced.

Proposal

To remove unintended restriction of the Act, the following is proposed to be added to **s.65A**:

- (7) The provisions of this section do not apply for alterations or additions needed to effect a repair to an existing component, fitting or structure and where it is not possible to restore that component, fitting or structure to its original state and provided that the repair results in a component, fitting or structure that is as close as possible to the original.

Section 21A - Executive Committee Code Of Conduct

Argument

Many executive committee members simply join the executive committee to ensure their own interests are served without any deference to other owners. Also many of the members who hold a position (Chairperson, Secretary or Treasurer) will override other members. This type of conduct should not be condoned by the Act.

Proposal

Although it could never be a panacea to all rogue committee members, a code of conduct would go some way to bring these people into line with what the community believes is reasonable behaviour.

Proposed Wording

In the most part, the following wording is a direct lift from the words used in Queensland's and the Australian Capital Territory's Acts.

21A Executive committees code of conduct

(1) Understanding of Act and code

An executive member must have -

- (a) a commitment to acquiring an understanding of the Act, as relevant to the member's role on the executive committee; and
- (b) a good understanding of this code.

(2) Honesty and fairness

An executive member must act honestly and fairly in exercising the member's functions as an executive member.

(3) Care and diligence

An executive member must exercise reasonable care and diligence in exercising the member's functions as an executive member.

(4) Acting in owners corporation's best interests

An executive member must act in the best interests of the owners corporation in exercising the member's functions as an executive member, unless it is unlawful to do so.

(5) Complying with Act and code

An executive member must take reasonable steps to ensure that he/she complies with the Act, including this code, when exercising his/her functions as an executive member.

(6) Nuisance

An executive member must not -

- (a) cause a nuisance on the land; and
- (b) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a unit or the common property.

(7) Unconscionable conduct

An executive member must not engage in unconscionable conduct in exercising his/her functions as an executive member.

Examples are;

- (a) improperly using the executive member's position on the executive committee to gain, directly or indirectly, an advantage personally or for someone else
- (b) exerting undue influence on, or using unfair tactics against, the owner of a unit in the strata scheme.

(8) Conflict of interest

An executive member must disclose to the executive committee any conflict of interest the member may have in a matter before the committee.

Subsection 22(i) – Secretary to Keep a Log of Standing Resolutions

Argument

Within the democratic framework that provides governance for a strata scheme there is a need to enable the keeping and recording of resolutions that may have been made at an AGM many years ago but, by their nature, remain in force until they are rescinded by the owners corporation.

For example;

- Under section 45(3), the owners corporation may have a standing resolution delegating a managing agent the authority to issue section 45 - notices to comply with a by-law.
- Under section 79(3) or (4), the owners corporation may have a standing resolution on how to handle interest or discount on contributions.
- Under section 87(1)(c), the owners corporation may have a standing resolution on insuring against owners joint liability.
- An owners corporation may have given the secretary/treasurer pre-approval to repair certain common property items which obviously must be repaired without delay. For example; pre-approval to repair a communal hot water system failure, main entry door lock failure, or other specified urgent repairs.
- An owners corporation may have given, in principle, approval for any owner to install an air-conditioner at any time in the future provided the owner meets certain criteria. This type of resolution (legally and properly) gets around the need to go to a general meeting, for a special resolution, every time a person wants to install an air-conditioner.

Without a method of recording standing resolutions these items easily get lost in the archives that store the meeting minutes. And, for prospective owners, it is practicably impossible to find these standing resolutions even as part of a section 108 search of documents. Prospective owners ought to be able to readily find these type of resolutions for they could easily have a bearing on his/her decision to buy.

Proposal

To provide a method and instruction how to handle standing resolutions and a method enabling the storage and retrieval of those resolutions.

Therefore the following amendments, to the Strata Schemes Management Act, are proposed:

To **add** within the definitions:

standing resolution means a resolution which;

- (a) is an extended form of a special resolution or a unanimous resolution, and

- (b) remains in force until rescinded at a duly convened general meeting of the owners corporation.

To amend the *special resolution* definition from:

special resolution means a resolution which is passed at a duly convened general meeting of an owners corporation and against which not more than one-quarter in value, ascertained in accordance with clause 18 (2) and (3) of Part 2 of Schedule 2, of votes is cast

To;

special resolution means a resolution which;

- (a) is passed at a duly convened general meeting of an owners corporation and against which not more than one-quarter in value, ascertained in accordance with clause 18 (2) and (3) of Part 2 of Schedule 2, of votes is cast, and
- (b) unless the resolution is the extended form of a special *standing resolution*, remains in force for no longer than two years after the time of the making of the resolution.

To amend the *unanimous resolution* definition from:

unanimous resolution means a resolution which is passed at a duly convened general meeting of an owners corporation and against which no vote is cast.

To;

unanimous resolution means a resolution which;

- (a) is passed at a duly convened general meeting of an owners corporation and against which no vote is cast, and
- (b) unless the resolution is the extended form of a unanimous *standing resolution*, remains in force for no longer than two years after the time of the making of the resolution.

To add a subsection to section 22:

22 What are the functions of the secretary of an owners corporation?

- (i) to maintain a register of special standing resolutions and unanimous standing resolutions. The register must contain a copy of the resolution in full, and a reference to the date of the meeting that made the resolution, and a reference to the minuted item within that meeting.

To amend schedule 2, sub-clause 35(2) from:

Schedule 2, clause 35 Forms of motions

- (2) The notice must clearly indicate which motions require a special resolution for their

passage and which motions require a unanimous resolution for their passage.

To:

- (2) The notice must clearly indicate;
 - (a) which motions require a special resolution for their passage, and
 - (b) which motions require a unanimous resolution for their passage, and
 - (c) which special resolution motions are being put in the extended form of a special standing resolution, and
 - (d) which unanimous resolution motions are being put in the extended form of a unanimous standing resolution.

To add to schedule 2, clause 35 a new sub-clause

- (4) On a matter that does not require a special resolution or a unanimous resolution for its passage, the matter may alternatively be put as a special standing resolution and the matter will then require the same count of votes for its passage as of that required for a special resolution.

Note: This sub-clause provides for a normal resolution to be elevated and held on the owners corporation register as a special standing resolution. See subsection 22(i).

Schedule 2 - General Meeting Minutes - Consistency

Argument

Within Schedule 3 '*Constitution of executive committee of the owners corporation and meetings of executive committee*' clauses 12 and 16 read:

12 Records and minutes to be kept

An executive committee must cause to be kept a record of its decisions and of any notices given to its secretary under clause 11 (2) and full and accurate minutes of its meetings.

16 Display of minutes

- (1) **Within 7 days** after a meeting of the executive committee of a large strata scheme, the executive committee must:
 - (a) give each owner and executive committee member a copy of the minutes of the meeting, and
 - (b) if the owners corporation is required by the by-laws to maintain a notice board, cause a copy of the minutes of the meeting to be displayed on the notice board.
- (2) **Within 7 days** after the executive committee of a large strata scheme passes a resolution in accordance with this Schedule, the executive committee must:
 - (a) give each owner and executive committee member a copy of the minute of the resolution, and
 - (b) if the owners corporation is required by the by-laws to maintain a notice board, cause a copy of the minute of the resolution to be displayed on the notice board.
- (3) **Within 7 days** after a meeting of the executive committee of a strata scheme that is not a large strata scheme, the executive committee must:
 - (a) cause a copy of the minutes of the meeting to be displayed on the notice board, or
 - (b) if the owners corporation is not required by the by-laws to maintain a notice board, give each owner and executive committee member a copy of the minutes of the meeting.
- (4) **Within 7 days** after the executive committee of a strata scheme that is not a large strata scheme passes a resolution in accordance with this Schedule, the executive committee must:
 - (a) cause a copy of the minute of the resolution to be displayed on the notice board, or
 - (b) if the owners corporation is not required by the by-laws to maintain a notice board, give each owner and executive committee member a copy of the minute of the resolution.
- (5) A copy of a minute or minutes required to be displayed on a notice board under this clause must be kept displayed on the notice board for a period of not less than 14 days.

Here there is concise and full instruction as to the time frame in posting the minutes from an executive committee meeting (*Schedule 3, 16 Display of Minutes*) but there is no instruction as to the posting of General meeting minutes except to say the Owner must have a copy before the next general meeting (*Schedule. 2 – 33 Notice of general meeting to include copy of previous minutes*) which could be 12 months later. It is quite bizarre that the relatively minor executive committee meetings have more stringent minute posting requirements compared to the larger and more formal general meetings.

Therefore it is appropriate the entire Act, with regard to meeting minutes, be at least made consistent.

Proposal

Accordingly the following is proposed for Schedule 2 clauses be added and to read;

Schedule 2 Meetings and procedure of owners corporation

33A Records and minutes to be kept

- (1) An owners corporation must cause to be kept a record of its decisions and full and accurate minutes of its meetings.

33B Distribution of minutes

- (1) Within 7 days after the owners corporation passes a resolution in accordance with this Schedule, the Secretary must give each owner a copy of the minutes of that resolution.
- (2) Nothing in this clause requires an owner to serve on himself or herself minutes of a general meeting.

Schedule 3 – Clarify Acting Members of the Executive Committee

Argument

Currently Schedule 3, clause 3 reads:

3 Acting members of the executive committee

- (1) A member of the executive committee may, with the consent of the executive committee, appoint an owner or company nominee of a corporation which is an owner to act in his or her place as a member at any meeting of the executive committee.
- (2) The owner or company nominee so appointed is, while so acting as a member, taken to be a member.
- (3) An owner or company nominee of a corporation may be so appointed whether or not he or she is a member of the executive committee already.
- (4) If a person so appointed is a member of the executive committee the person may, at any meeting of the executive committee, separately vote in the person's capacity as such a member and on behalf of the member in whose place the person has been appointed to act.

For the instance where a member requires an owner to act for just one meeting, the problem is that it is not clear how 'the consent of the executive committee' is obtained. Often the acting owner is needed to make the number for a quorum so the meeting can legally commence. So this 'consent' cannot be by a normal voting of the executive committee which can only happen within the time frame of a meeting. The 'consent' is also excluded from a meeting proper because, in this case, it could not be part of the 'detailed agenda' (sched 3 clause 6(3)) as it is only after the agenda is posted and the meeting date-time is known that a member might ask for someone to act on his/her behalf.

Proposal

The proposal is to have paragraphs added to Schedule 3, clause 3 as follows;

- (5) The consent of the executive committee, under sub-clause (1), maybe obtained immediately prior to the meeting commencement by the majority of elected executive committee members in attendance agreeing to allow the appointment to occur. The consent given or refused must be noted within the meeting minutes.
- (6) For the purpose of obtaining a quorum, if a person so appointed is already a member of the executive committee, the appointment is counted separately as a member attending the meeting.

Section 75 - Clarification of Fund Estimates and Spending

Preamble

When viewing the administration and sinking funds, the questions have to be asked, why bother? Wouldn't it be easier with just one fund? What was the need for creating two funds?

A good comprehension of all of 'Part 3 Finances of strata scheme' of the Act gives an understanding for the purpose of having two funds. It is to separate the routine expenditure from the non-routine expenditure thereby providing the owners, at an annual general meeting, with two quite separate expenditure reports;

1. In a sinking fund report there ought to be a recent matching and explicit meeting minute authorising expenditure for each and every item of expenditure. The meeting minuted item would normally be within the previous 12 months. To reconcile the authority to spend with the expenditure should be straight forward. These are non-routine expenditure items. The itemised sinking fund expenditure report would be relatively small compared to the administration fund report.
2. In an administration fund report the expenditure has been authorised by a contract to supply a recurring service of some kind. Some of these items are mandated; others may have been instigated by a meeting minuted item but many years ago. To reconcile the authority to spend with the expenditure should be traceable to an ongoing contract. These are routine expenditure items. The itemised administration fund expenditure report would be relatively large compared to the sinking fund report.

Having these two funds and two expenditure reports makes it easier for the inexperienced owners (Mums, Dads, retirees, young couples) to better monitor and control expenditure by separating the mundane from the important. The report that matters most to them is the sinking fund expenditure report. Put another way; the sinking fund expenditure are those discretionary items where the owners can vote to optionally include or exclude. The administration expenditure items are not normally optional (in a practical sense).

Background

What can and cannot be paid out from each fund (s.68 & s.71) is governed by the items listed in s.75 . Currently s.75 of the Act reads;

75 Estimates to be prepared of contributions to administrative and sinking funds

- (1) An owners corporation must, not later than 14 days after the constitution of the owners corporation and at each annual general meeting after that, estimate how much money it will need to credit to its administrative fund for actual and expected expenditure:
 - (a) to maintain in good condition on a day-to-day basis the common property and any

personal property vested in the owners corporation, and

(b) to provide for insurance premiums, and

(c) to meet **other** recurrent expenses.

Note. Recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawnmowing services and the like and minor expenses relating to maintenance of the common property.

(2) An owners corporation must, at each annual general meeting, estimate how much money it will need to credit to its sinking fund for actual and expected expenditure:

(a) for painting or repainting any part of the common property which is a building or other structure, and

(b) to acquire personal property, and

(c) to renew or replace personal property, and

(d) to renew or replace fixtures and fittings that are part of the common property, and

(e) to replace or repair the common property, and

(f) to meet **other** expenses of a capital nature,

Note. Expenses of a capital nature would include expenses in relation to major repairs or improvements to the common property or personal property of the owners corporation, such as painting of a building or replacement of roofing, guttering or fences and the like.

To understand the difference between sections 75(1) and 75(2) (and hence the sinking fund and administration funds) the use of the word 'other' is an important consideration. Dictionaries define the word 'other' as 'deriving meaning from or giving meaning to the remainder of the group'. Section 75(1)(c) [administration fund] uses the phrase 'other recurrent expenses' thereby defining the entire group as being of recurrent expenses.

Section 75(2)(f) [sinking fund] uses the phrase 'other expenses of a capital nature' thereby defining the entire group as being expenses of a capital nature.

The overarching explanatory note, following the 'Part 3 Finances of strata scheme' heading, clearly supports this view:

The **administrative fund** is generally used to meet **recurrent expenses**, such as expenses involved in maintaining the common property from day-to-day in good condition and insuring the property. The **sinking fund** is generally used to meet **expenses of a capital nature**, such as painting buildings or replacing fixtures or fittings.

Argument – Include Services – Section 75(2)

Another significant problem is there is no provision for expenses related to one-off services which are not recurrent nor are they of a capital nature.

Paying services or for a person's time has been overlooked or omitted from s.75(2). Items such as;

- solicitor's fees,
- non-recurrent building inspections,
- non-recurrent strata management agent assistance,
- registration of by-laws or

- any other non-recurrent or discretionary service.

Services need to be included and clarified.

S.75(2)(f) uses the phrase 'other expenses of a capital nature' which defines all of s.75(2) [sinking fund] as being for capital expenditure and s.75(1)(c) uses the phrase 'other recurrent expenses' which defines all of s.75(1) [administration fund] as being for recurrent expenses. The reader is left wondering what to do with non-capital non-recurrent related expenditure.

The sinking fund ought to be simply defined as everything else that is not covered by the administration fund. To achieve this clarity and simplification, the following additional subparagraphs to s.75(2) [sinking fund] are proposed.

- (f) (repealed)
- (g) to meet expenses for a service, and
- (h) to meet other non-recurrent expenses,

S.75 is also unclear as to what 'recurrent' means. A liberal view could be that all maintenance items/expenses recur at some interval in time. To reduce the amount of ambiguity there is a need to add clarification to this section by adding to the section what is meant by 'recurrent'. The following is proposed;

- (6) For the purposes of sections 75(1) and 75(2), recurrent expense means any expense that recurs:
 - (a) at a 12 month or less interval, or
 - (b) at an explicit contractual repeat interval greater than 12 months.

Note; the proposed section 75(6)(b) refers to a 'contractual repeat interval' so as to differentiate between, and exclude, statutory requirements like the 10 year plan or the building valuation that has to be repeated every 5 years.

Argument – Section 75(1) - Explanatory Note

The explanatory note following s.75(1) currently reads;

Note. Recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawnmowing services and the like and minor expenses relating to maintenance of the common property.

Within the strata community and amongst strata management agents the above note causes a lot of confusion for it can be read, in isolation, that any minor maintenance expenses maybe funded from the administration fund. For instance, our strata manager (also a board member of the Institute of Strata Title Management) tells me, with authority, that all minor maintenance items are funded from the administration fund.

This is an erroneous view for it ignores s.75(1)(c) which talks of 'other recurrent expenses'. Hence, in this context, all expenses within s.71(1) must be recurrent expenses. Also this popular erroneous

view fails to recognise s.7 which tells the reader that any notes are for guidance and cannot be used as legal argument to define the meaning of the Act.

Also this explanatory note is at odds with the overarching explanatory note (following the 'Part 3 Finances of strata scheme' heading) which reads, in part, and correctly 'The administrative fund is generally used to meet recurrent expenses,'.

What the current note is trying to explain is that s.75(1) caters for the recurrent replacement of items like light bulbs and it would be crystal clear if it instead read:

Note. Recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawnmowing services, replacement of light bulbs and the like.

Argument – Section 75(2) - Explanatory Note - 1

The explanatory note following s.75(2) currently reads;

- (2) An owners corporation must, at each annual general meeting, estimate how much money it will need to credit to its sinking fund for actual and expected expenditure:
- (a) for painting or repainting any part of the common property which is a building or other structure, and
 - (b) to acquire personal property, and
 - (c) to renew or replace personal property, and
 - (d) to renew or replace fixtures and fittings that are part of the common property, and
 - (e) to replace or repair the common property, and
 - (f) to meet other expenses of a capital nature,

Note. Expenses of a capital nature would include expenses in relation to major repairs or improvements to the common property or personal property of the owners corporation, such as painting of a building or replacement of roofing, guttering or fences and the like.

The note uses the phrase 'major repairs or improvements' thereby introducing a concept of 'major' verses 'minor'. There is absolutely no mention of the concept of minor verses major within s.75(1) & s75(2) and the notes are not part of the Act. (s.7). For example s.75(2)(d) simply and unambitiously refers to replacement of any and all fixtures. Expenses of a capital nature are not limited to 'major' improvements. They include any improvements.

This explanatory note is at odds with the overarching explanatory note (following the 'Part 3 Finances of strata scheme' heading) which reads, in part, and correctly 'The sinking fund is generally used to meet expenses of a capital nature, such as painting buildings or replacing fixtures or fittings'.

To bring the concept of minor verses major expenditure into the definition of the two funds would need a significant amount of effort to clearly delineate where the split might occur. With this note in place, the reader is left wondering what does major mean and what to do with improvements that are not major and non-recurring. For example, how would a person determine the difference between major and minor painting of the common property? Or how to determine if the

replacement of a light fitting is a major or minor repair?

All the above is indicative of the confusion experienced where there is not a clear delineation between the administration fund (75(1)) and the sinking fund (75(2)).

Argument – Section 75(2) - Explanatory Note - 2

There are two paragraphs concerning the acquisition and maintenance of 'personal property';

- (b) to acquire personal property, and
- (c) to renew or replace personal property, and

It takes an uninitiated reader some time to realise this 'personal property' is not the property belonging to a person but property belonging to the OC and that the OC is considered (in legal terms) to be 'a person' and that it refers to items not fixed to the building. Within the broader community, this choice of wording is not common and an explanatory note here would assist.

Proposal

To include general services and to correct the explanatory notes, the following wording of s.75 is proposed;

75 Estimates to be prepared of contributions to administrative and sinking funds

- (1) An owners corporation must, not later than 14 days after the constitution of the owners corporation and at each annual general meeting after that, estimate how much money it will need to credit to its administrative fund for actual and expected expenditure:
 - (a) to maintain in good condition on a day-to-day basis the common property and any personal property vested in the owners corporation, and
 - (b) to provide for insurance premiums, and
 - (c) to meet other recurrent expenses.

Note. Recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawnmowing services, replacement of light bulbs and the like.

- (2) An owners corporation must, at each annual general meeting, estimate how much money it will need to credit to its sinking fund for actual and expected expenditure:
 - (a) for painting or repainting any part of the common property which is a building or other structure, and
 - (b) to acquire personal property, and
 - (c) to renew or replace personal property, and
 - (d) to renew or replace fixtures and fittings that are part of the common property, and
 - (e) to replace or repair the common property, and
 - (f) (repealed)
 - (g) to meet expenses for a non-recurring service, and
 - (h) to meet other non-recurring expenses.

Note. Expenses of a non-recurrent nature would include expenses in relation to repairs or improvements to the common property such as painting or replacement of roofing, guttering or

fences and the like. The owners corporation's 'personal property' would include items, such as tooling or equipment, that are not fixtures. A 'service' would include items such as solicitor services or non-recurrent strata management agent assistance.

- (6) For the purposes of subsections (1) and (2), recurrent expense means any expense that recurs:
- (a) at a 12 month or less interval, or
 - (b) at an explicit contractual repeat interval greater than 12 months.

Also Part 3's overarching notes will need to reflect the changes:

Part 3 Finances of strata scheme

Introductory note. This Part requires an owners corporation for a strata scheme to establish an administrative fund and a sinking fund and to levy contributions to those funds from owners of lots in the scheme. The administrative fund is generally used to meet recurrent expenses, such as expenses involved in maintaining the common property from day-to-day in good condition and insuring the property. The sinking fund is generally used to meet **non-recurrent** expenses, such as **specialist services**, painting buildings or replacing fixtures or fittings.

Section 80AA - Clarification on Spending for Most Schemes

Reference Parts of the Act

Sections 75, 80A, and 80C read as follows:

75 Estimates to be prepared of contributions to administrative and sinking funds

- (1) An owners corporation must, not later than 14 days after the constitution of the owners corporation and at each annual general meeting after that, **estimate** how much money it will need to credit to its administrative fund for actual and expected expenditure:
- (a) to maintain in good condition on a day-to-day basis the common property and any personal property vested in the owners corporation, and
 - (b) to provide for insurance premiums, and
 - (c) to meet other recurrent expenses.

Note. Recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawnmowing services and the like and minor expenses relating to maintenance of the common property.

- (2) An owners corporation must, at each annual general meeting, **estimate** how much money it will need to credit to its sinking fund for actual and expected expenditure:
- (a) for painting or repainting any part of the common property which is a building or other structure, and
 - (b) to acquire personal property, and
 - (c) to renew or replace personal property, and
 - (d) to renew or replace fixtures and fittings that are part of the common property, and
 - (e) to replace or repair the common property, and
 - (f) to meet other expenses of a capital nature.

Note. Expenses of a capital nature would include expenses in relation to major repairs or improvements to the common property or personal property of the guttering or fences and the like.

- (3) When estimating amounts needed to be credited to the administrative fund or the sinking fund the owners corporation must have before it, and take into account, a statement of the existing financial situation of the strata scheme and an estimate of receipts and payments.
- (4) In estimating amounts to be credited to the sinking fund, an owners corporation that is required to prepare a plan under section 75A is to take into account anticipated major expenditure identified in the plan for the 10-year period to which the plan relates.
- (5) An owners corporation of a large strata scheme must include in the estimates prepared under this section at an annual general meeting **specific amounts** in relation to each item or matter on which the owners corporation intends to expend money, or on which the owners corporation is aware money will be likely to be expended, in the period until the next annual general meeting.

80A Limit on spending by executive committees of large strata schemes

- (1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent.
- (2) The owners corporation of a large strata scheme may by resolution at a general meeting remove the limitation imposed by subsection (1) generally or in relation to any particular item or matter.

80C Exceptions in relation to emergencies

Sections 80A (1) and 80B do not apply to expenditure undertaken for emergency purposes, including, for example, expenditure to remedy any of the following:

- (a) burst or blocked water or sewerage pipes,
- (b) serious damage caused by fire or by storm or any other natural disaster,
- (c) unexpected electrical or security system failure,
- (d) glass breakages that affect the security of any building in the strata scheme or could result in damage to the inside of any such building.

Argument

For large strata schemes, s.80A and 80C were introduced in 2004 and, in doing so, revealed the intent of the legislators with respect to approval of spending monies. Although not found directly in the words of S80A & S80C, there is an underlying requirement for the executive committee (EC) to meet and approve an increased spending limit if the owners corporation (OC) is likely to exceed any singular budgeted item.

That is, if the OC has an itemised budget approved at a general meeting then the spending limit set on any single item cannot be exceeded without the prior approval of the EC. And s.80C offers no exceptions; even in an emergency EC approval has to first be obtained so it is clear the legislators take seriously the setting of an amount for a singular budget item.

I find, that for other than large strata schemes, there is no need to itemise a budget. All the Act requires is an estimate [s. 75] and there is no need to resolve to agree to those estimates. It follows that if there has been no agreed itemised budget and the expenditure on an estimated item is likely to be exceeded then there is no need to get EC approval. In this case the only time EC approval is required is if the sum total of the budget is likely to be exceeded. That is, for other than large strata schemes, the treasurer may spend any amounts as she/he sees fit on any item as long as the overall budget amount is not exceeded.

This type of unitemised budget would be appropriate for small Strata Schemes where the OC don't hire a strata managing agent and the OC would estimate in an informal way. The Act is worded quite appropriately to allow this kind of flexibility and allows these small Strata Schemes to operate without undue legislated restriction.

But what provision is there for medium size Strata Schemes (not being a large scheme) where the

OC hires an agent and wants better control of its monies; where the OC **elects to itemise** its budget? Reason would dictate that the specific amounts, set and agreed to by the OC, cannot be exceeded by any individual without first obtaining the approval of the OC (or the EC acting as though it was the OC). Reading and understanding the entire Act, it is clear its intent is that the OC will operate as a democratic body and that any democratic resolution made by the OC cannot be overridden by an individual; to override it needs another democratic resolution to be passed. Unfortunately an in-depth understanding of the Act is required to gain that level of insight.

Also the delineation between the roles of the executive committee and the treasurer are muddled by s.80A for it concerns itself with limits on **spending** for the executive committee. In reality and in crystal clear terms, the executive committee do not spend monies. They first resolve to procure goods and services and (maybe) set a **specific amount** that may be spent. The treasurer then **spends** the money to address those resolutions. Within the Act there is no clear delineation between the approval process to agree to procure goods and/or services and the subsequent treasurer's obligation to pay for those goods and/or services.

It is my experience that many strata managing agents interpret the Act as saying; 'for any scheme that is not a large one, I can exceed any set budget item without referring back to the OC'. I have many documented examples of where this attitude prevails and where the set amounts are being exceeded without reference to the OC. I will not swamp you with those documents, but I can supply them if you require.

Proposal

To clarify the intent of the Act and to make it explicit where the line is drawn on authority to spend monies, the following subsection and section is proposed to be added;

75 Estimates to be prepared of contributions to administrative and sinking funds

(6) An owners corporation of a strata scheme other than a large scheme may include in the estimates prepared under this section at an annual general meeting specific amounts in relation to each item or matter on which the owners corporation intends to expend money, or on which the owners corporation is aware money will be likely to be expended, in the period until the next annual general meeting.

80AA Limit on spending by treasurers of all strata schemes

(1) If a specific amount has been determined as referred to in section 75 on any item or matter, the treasurer of the owners corporation must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined without first obtaining, from the owners corporation or the executive committee, a resolution setting a new specific amount.

And to clarify the delineation between the setting of an amount by the executive committee and the subsequent expenditure of money by the treasurer, I propose the following section;

80A Limit on spending by executive committees of large strata schemes

- (1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent.

To be amended to read;

80A Limit on spending amount increases by executive committees of large strata schemes

- (1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, resolve to increase the specific amount on the item or matter an amount greater than that determined on the item or matter plus 10 per cent.

Section 236 - Extending the Use of E-mail to All Schemes

Background

In August 2010 the Strata Schemes Management Regulation 2010 was introduced by the then Minister of Fair Trading, Virginia Judge. In the lead up to the Regulation's introduction (June 2010) Fair Trading produced a document called 'Regulatory Impact Statement for the Strata Schemes Management Regulation 2010' Within this document is the assertion that:

“The proposed new model by-law regarding electronic transmission of documents will allow greater use of e-mail communications, and will provide more flexibility for owners corporations and strata managing agents. The use of electronic communications instead of hard copies could deliver costs savings to owners corporations, particularly in the case of large strata schemes.” This sounds like a good and common sense approach given the current predominance of electronic communications.

Argument

What was not explained by the government of the time is that there are over 70,000 current strata schemes in NSW that do not and will not have access to this method unless they amend their existing by-laws. s.41(2) of the act states (in part) : 'The by-laws in force for a strata scheme are the by-laws adopted by or lodged with the strata plan registered by the Registrar-General for the strata scheme, as in force at the date of lodgment,'

Existing schemes have always had the option to make a new by-law for their scheme to enable the use of e-mail for transmission of notices. s.236(4)(e) of the act states 'A document may be served on the owner of a lot in any manner authorised by the by-laws for the service of notices on owners.' The new Regulation model by-laws have no impact whatsoever on existing schemes.

Legal costs to draft and register a new by-law typically range between \$300-\$500. For those schemes that employ a strata managing agent, the cost would be borne by the scheme yet the benefit would be realised by the agent. Maybe in the longer term there might be benefits for the scheme, in the form of lower agent rates, but in the short-term the scheme would be hard pressed to justify the legal fees expenditure. This is not a trivial amount for across NSW the legal costs would sum to be about \$30 Million

Yet all this confusion, effort and cost can be avoided if the Act itself were changed rather than the model by-laws within the regulations.

Proposal

The following amendment is proposed to s.236 of the Act;

236 Service of documents by owners corporation and others

(4) Service on owner of lot

A document may be served on the owner of a lot:

- (a) personally, or
- (b) by post at the address of the lot, or
- (c) by leaving it on a part of the lot that is the owner's place of residence or business (otherwise than on a part of the lot provided for the accommodation of a vehicle or as a storeroom), or
- (d) by leaving it in a place provided on the parcel for receiving mail posted to the lot, or
- (e) in any manner authorised by the by-laws for the service of notices on owners, or
- (f) by electronic means if the person has given the owners corporation an e-mail address for the service of notices and the document is sent to that address.

Section 109 – Owner to be given a complete set of all by-laws

Problem

The vast majority of new owners don't have a clue as to what laws apply to, and what is expected of, them when they buy into a Strata Scheme. It would be utopia if new owners were required to pass a competency test similar to getting a motor vehicle driver's licence. But that's an impracticable dream.

But we don't even try to help the new owner. At the moment there is the bizarre situation that a tenant has to be given a set of the current by-laws [s 46] but a new owner doesn't get a set at all! All that is required to be provided to the new owner is the by-laws that have been approved within the last 2 years but not yet registered, which maybe nothing. (refer the Act - [s 109] and the Regulations - Schedule 8 - Form1 - part 12).

Proposal

What can be done, at least, is to provide information to new owners. As part of the Section 109 Certificate to Owners, each owners should be provided with a complete set of the adopted and registered by-laws. It would give new owners, who are interested, a good place to start to understand their new environment.

There is also good reason to include a copy of the Office Of Fair Trading's booklet 'Strata Living' but there could be problems with procurement or supply of these booklets and to mandate inclusion of a copy of Strata Living could cause unintended problems.

It therefore is proposed the Regulations sub-clause 28(1) be amended from:

28 Forms and certificates

- (1) A certificate given by an owners corporation under section 109 of the Act must be in or to the effect of Form 1 in Schedule 8.

To;

28 Forms and certificates

- (1) A certificate given by an owners corporation under section 109 of the Act;
 - (a) must be in or to the effect of Form 1 in Schedule 8, and
 - (b) must include a copy of the strata scheme's adopted and registered by-laws, and
 - (c) may include a copy of the Office of Fair Trading's booklet 'Strata Living'.