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Submission to State Government regarding Strata and Community Title Legislation Review

We set out below a brief outline of those aspects of Strata and Community living which, in our experience, give rise to frequent disputes and therefore ought to be the focus of a reform agenda.

In making this submission we note the four questions that have been posed by the NSW Government in relation the legislation to be reviewed. The four questions all relate to the better management of strata and community schemes with the aim of minimising disputes and resolving them quickly.

The subject items that are set out on the following pages in this submission are not organised in any particular order of priority.

1. Education

- 1.1 In general, there is a lack of knowledge both on the part of strata managing agents, members of executive committees, and owners in respect of Strata and Community Title legislation.
- 1.2 Strata managers are subject to mandatory training requirements but this should be enhanced.
- 1.3 There needs to be education readily available for owners and executive committee members. As part of that education, owners and executive committees may gain a greater appreciation of what is involved in being an effective strata manager and may become amenable to providing better remuneration for strata managers. Greater remuneration may bring about a larger pool of interested persons who are willing to be trained as strata managing agents.
- 1.4 At the local level as far as training is concerned, organisations such as the Owners Corporation Network (**OCN**) should be better funded by the government to augment the services it already provides in respect of educating executive committees and owners that we perceive is urgently needed.

2. Compliance with By-Laws

- 2.1 Consideration needs to be given as to whether owners corporations should be required by statute to enforce their by-laws.
- 2.2 At present, by-laws are binding on owners corporations, owners and occupiers, but there is no obligation on owners corporations to enforce these by-laws. This means that the onerous task of enforcing by-laws falls on individual owners..

3. Compulsory Appointment of a Strata Managing Agent

- 3.1 At present, Section 162(7) of the *Strata Schemes Management Act 1996 (SSMA)* does not provide for an owners corporation to make an application. This should be remedied.

4. Documents to be provided by Developer/Lessor at the First Annual General Meeting

- 4.1 In order to better manage strata schemes, owners and strata managers require ready access to information about the construction of their strata complex.
- 4.2 At present, Schedule 2 Part 1, Clause 4 of the SSMA sets out what the original owner (developer) must deliver at the First Annual General Meeting
- 4.3 In our experience, this requirement is usually ignored. Changes to the legislation governing the provision of information by councils (even upon request of owners corporations in the respect of their own strata complex) has made the obtaining of information from councils harder not easier. There must be a separate penalty prescribed by regulation which is sufficiently significant to ensure compliance.

5. Timing of Annual General Meeting

- 5.1 We consider that the time stipulation set out in Clause 31, Schedule 2 of the SSMA is too restrictive.
- 5.2 A more appropriate timeframe would be that an Annual General Meeting must be held in each calendar year two months either side of the anniversary of the First Annual General Meeting.
- 5.3 The opportunity to make application to the CTTT to vary the time should be preserved.

6. Proxy Farming

- 6.1 There is concern about the practice of "proxy farming." We recognise that there are risks with a small number of people obtaining proxies under false pretences and by that we mean, enlisting the support of the proxy giver by imparting to that person false information as to why the proxy should be given, or how it is to be used. Often those proxy givers do not realise for months, or even a year later that they would not have provided a proxy had they known the true facts of the situation.
- 6.2 Restricting the number of proxies that any person may hold would address this problem, but this creates another problem. That problem is that restricting proxies significantly inhibits the ability of concerned owners to address legitimate issues of concern in their strata scheme. We do not know the solution to this problem.

7. The Consumer Trader and Tenancy Tribunal (CTTT) – Resources and Training

- 7.1 The CTTT needs to be better resourced and managed. In particular there should be ready access to senior staff, particularly for legal practitioners who are engaged by owners corporations and owners to assist them with dispute resolution.
- 7.2 The access to senior administrative staff within the CTTT should be similar to that access afforded legal practitioners in the registries of the District and Supreme Courts.
- 7.3 The senior staff of the CTTT should be as competent as the senior staff of the registries of the District and Supreme Courts.
- 7.4 The training and competence of adjudicators/tribunal members requires review now and on an ongoing basis. The competence of adjudicators/tribunal members should be at least at the level of Local Court Magistrates. In our experience, the competence displayed by adjudicators/tribunal members, as a general rule, falls well below the standard of competence displayed by Magistrates in the Local Court.
- 7.5 Within the CTTT, there needs to be a Senior Member or higher level person whose role it is to receive complaints/suggestions from the legal profession and who is authorised to take immediate action to investigate the complaint/suggestion and report the outcome of that investigation to the legal practitioner who made the complaint/suggestion.
- 7.6 The person appointed as chairperson of the CTTT should have experience and demonstrated competence in the management of a Court or Tribunal of at least District Court level.
- 7.7 The CTTT produces a body of decisions which vary significantly in respect of disputes which have similar facts. There needs to be greater consistency in decision making by adjudicators and tribunal members.

8. Appointment of a Substitute for Executive Committee Members

- 8.1 An executive committee member should be able to appoint a “proxy” to stand in for that committee member at an executive committee meeting in the same way as an owner can appoint a proxy for a general meeting. Schedule 3 Clause 3 of the SSMA is too restrictive.

9. Amendment of Strata Management Statement

- 9.1 There is an inconsistency to Schedule 1C of the Strata Schemes (Freehold Development) Act 1973 (**SSFDA**) in respect of Strata Management Statements. Schedule 1C of the of the SSFDA provides that a Strata Management Statement must *inter alia* set out how the Strata Management Statement is to be amended. Section 28U(1) of the SSFDA provides that a Registered Strata Management Statement may be amended but only with the support of a special resolution of each of the strata schemes subject to the Strata Management Statement.
- 9.2 Schedule 1C must be amended to make it clear that any amendment to the Strata Management Statement must provide for that special resolution approval of each of the constituent strata schemes. Strata Management Statements frequently overlook Section 28U which must be crossed reference in Schedule 1C.

10. Illegal Parking and Wheel Clamping

- 10.1 Sections 651A, 651B and 651C of the *Local Government Act* (1993) prohibits wheel claiming or removal of illegally parked cars. This means that owners corporations and community associations cannot properly regulate unlawfully parked vehicles on owners corporation or community association property.
- 10.2 The SSMA and the *Community Land Management Act* (1989) (**CLMA**) should be amended to exclude those sections of the *Local Government Act*.

11. Revising the Schedule of Unit Entitlement for Community Associations

- 11.1 The *Community Land Development Act* (1989) (**CLDA**) and the CLMA both provide for the lodgement of a Revised Schedule of Units Entitlements once the Community Scheme has been completed.
- 11.2 The lodgement of the Revised Schedule requires the approval of a special resolution of the Community Association and must be based on the Valuer General's table of values.
- 11.3 Section 78 of the CLMA provides for the CTTT to make orders for an initial schedule of unit entitlements and for a revised schedule of unit entitlements. However, the wording of Section 78(1) and Section 78(3) is so inconsistent that it is impossible to obtain an order for the lodgement of a revised schedule of unit entitlements, unless there is already a revised schedule of unit entitlements already registered.
- 11.4 In section 78(3)(a) the word "further" should be deleted.

12. Strata Legislation Amendment Bill 2011

- 12.1 We support the Strata Legislation Amendment Bill 2011 introduced into Parliament by The Hon. Clover Moore MLA and applaud the introduction of greater accountability into the management of strata schemes and the enhanced empowerment of owners and the CTTT as enshrined in that Bill.

In conclusion, we re-iterate that the above points are an outline only of those issues which we consider require urgent reform or at least further investigation. We would be very pleased to participate in any ongoing review process arising out of the submissions made to the current enquiry.



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