



ACN 001 767 997

## 2012 POLICY POSITION

## IMPROVING NSW COMMUNITIES

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Strata Community Australia (NSW), formally the Institute of Strata Title Management and founded in 1980, is the peak body for the strata sector in NSW. SCA (NSW) represents approximately 1,300 strata managers, suppliers to the sector and lot owners. There are currently 65,490 Strata Schemes in NSW, of which 65% are in Sydney. Further, there are 567,421 Strata Lots in NSW, of which 81% are in Sydney<sup>1</sup>.

SCA (NSW) membership ranges from large corporate companies to small family businesses to volunteers. They have expertise in all facets of strata management, service provision and governance. About 3.5 million Australians live in, own, or directly work in a strata titled complex, putting the strata title management and service industry in Australia in touch with almost 15% of Australians<sup>2</sup>.

Owners corporations comprise of all of the registered owners of all the units in the strata plan. An owners corporation and its executive committee have powers and responsibilities to administer the building on behalf of all owners<sup>3</sup>.

Whilst owners enjoy the rewards that strata living provides, an owners corporation is an unlimited liability legal entity, thereby exposing owners to financial loss to the full extent of their net wealth. This can occur in the event of a shortfall in funds to meet statutory requirement to maintain and repair, or the uninsured or underinsured losses following an accident or incident.

Strata is the fastest growing residential segment in New South Wales. SCA (NSW) estimates that more than half of all new residences built in NSW over the next decade will be strata titled<sup>4</sup>. Further, that by 2032 more than 3 million people in NSW will live under a strata titles arrangement.

The growing number of people living and working under strata titled arrangements in NSW now require solutions to issues that are faced on a daily basis, including: the cost of housing, urban renewal, sustainable living, regulatory complexity, unlimited liability risks in relation to volunteer executive committee members and skills shortages.

The State Government and SCA (NSW) are in a unique position to be able to provide these solutions, through the provision of education, boosting the capacity of the sector and ensuring that equity is applied to both strata and non-strata residences.

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<sup>1</sup> City Futures, Governing the Compact City November Workshop, 2010

<sup>2</sup> Conference Chair's Report on the Strata & Community Title in Australia for the 21st Century Conference, 31st Aug - 3rd Sept 2005

<sup>3</sup> <http://www.lawsociety.com.au/community/publicationsandfaqs/legalquestions/Buyingastrataunit/index.htm>

<sup>4</sup> Residential Strata in NSW: A summary analysis, Issue 1, April 2010, City Futures Research Centre

## BACKGROUND

When compared to non-strata residents and property owners, government programs and policies often fail to take into account the role of owners corporations and their relationship with owners and residents. The results can be iniquitous and perverse particularly where they result in lesser access to assistance or support than for residents of detached housing. Examples of policy's with inequities include:

- Renewable energy subsidies;
- Disaster relief;
- Alignment of the NSW Fire Services Levy policy with all other major Australian states;
- Household assistance for the digital switchover;
- Tax treatment of non-mutual income of owners corporations; and
- The lack of provision in local government rating mechanisms for offsets where services are provided through owners corporation or community association levies.

## SCA (NSW) RECOMMENDATION

A whole-of-government approach to strata and community living that recognises the role of owners' corporations and community associations in service delivery. This may include a requirement that all regulatory impact statements, a standard requirement for new legislation, specifically include examination of the impact on these entities.

## FUNDING IMPLICATIONS

SCA (NSW) seeks funding for a state wide engagement programme designed to identify and quantify the unique needs and requirements of those strata residents for the purpose of appropriately addressing the existing inequities.

## BACKGROUND

In 2003, the NSW Government through the Department of Fair Trading commenced a consultation process in a bid to simplify the laws around termination of strata schemes, unfortunately no final decision was made. In 2004 a further consultation paper was circulated.

Except for applications to the Supreme Court, the only current method of terminating a strata scheme is under section 51A the Strata Schemes Freehold Development Act 1973. It permits the Registrar General to terminate a strata scheme but only if the application is signed by all the owners, lessees and mortgagees.

The reasons for terminating a strata scheme will differ from scheme to scheme and location to location, but include the need for all of the following:

- The replacement of building stock that has deteriorated through age to a point where repair or refurbishment is no longer economic;
- A reduction of our carbon footprint through more energy efficient living;
- A more efficient and effective use of our current and planned infrastructure;
- Compliance with current building and safety standards; and
- Rebalancing the rights of strata owners.

SCA (NSW) acknowledges that 100% agreement on wind-up of schemes can be extremely difficult to achieve and presents a major barrier to improvement in strata stock in NSW. This presents a significant challenge for government and regulators. Further details regarding this policy position are outlined in SCA's policy, *Community Renewal* (2012).

## SCA (NSW) RECOMMENDATION

SCA (NSW) recommends that consideration be given to establishing a widespread, open and transparent community consultation process that provides strata owners with sufficient time to:

- Gather the required information and seek further clarification and information as needed;
- Provide a democratic process whereby a clear majority prevails;
- Provide certainty and security to strata owners through a process that is independent, transparent and accessible; and
- Provide a judicial mechanism that can facilitate mediation and deliver binding decisions with which the overwhelming majority are content.

## BACKGROUND

SCA (NSW) recognises and supports Self Managed Schemes (SMS's), typically administered by volunteer residents. These volunteers are equally responsible for the compliance and regulatory administration of their scheme as is a professional Strata Manager.

SCA (NSW) recognises that most office bearers govern with the best of intentions. Owners in SMS's have an unlimited (joint & several) liability to the scheme, most of whom are not aware of their liability. Further, many officer bearers will have little or no protection due to either as a result of underinsurance or no insurance at all.

The regulatory and administrative environment for all schemes is becoming increasingly complex – as highlighted by the recently introduced Strata Schemes Management Regulation 2010, OH&S requirements and ongoing financial prudential obligations.

Such requirements continue to impose considerable time, resources and specialist knowledge on volunteers. SCA (NSW) is concerned that many volunteers do not have the necessary resources or knowledge to appropriately and adequately discharge their obligations on behalf of the tens of thousands of people living under strata titled arrangements.

SCA (NSW) has a robust track record, established over many years, in the provision of quality education to professionals in the strata sector as well as the delivery of consumer awareness seminars. This is evidenced by member and public attendances at various event and educational forums.

## SCA (NSW) RECOMMENDATION

SCA (NSW) has the infrastructure in place to provide those involved in Self Managed Schemes with quality information and education in relation to compliance as well as developing and enhancing the skills of executive committee members.

## FUNDING IMPLICATIONS

SCA (NSW) seeks funding for a state wide education campaign of executive committees involved in SMS's. The provision of education, via the SCA (NSW) RTO, would include the necessary knowledge for volunteers to appropriately and adequately discharge their obligations as members of executive committees.

## BACKGROUND

The nature of strata living requires lot owners and their tenants to reside in close proximity. Modern building design coupled with by-laws has evolved to address many of the issues that residents face. However, it remains the case that a small number of residents can (intentionally or otherwise) place substantial burdens on the majority of residents, examples of these inequities include:

- Short term letting in buildings not designed for that purpose;
- Excessive, ongoing or inappropriate noise;
- Overcrowding;
- Disparate wear and tear on common property; and
- Excessively disproportional utility usages.

Activities such as these can:

- Increase the risk of fires and hazards;
- Increase the expense burden to residents by way of:
  - Increased wear and tear on common property; and
  - Excessive or inappropriate use of utilities;
- Impact on the value of the lot;
- Increased levels of community friction and resultant police and CTTT complaints; and
- Isolate individuals and/or decrease the social cohesion of communities.

## SCA (NSW) RECOMMENDATION

When a scheme is registered it carries with it an *Intention of Scheme Living Statement*, that provides a broad direction to all future residents as to the intended use of the scheme (i.e. short term rentals, pet friendly, child friendly, retirement orientated etc).

SCA (NSW) recommends that there be legislative reform that enables the distinction between strata scheme governance and strata scheme use. Further, that *Intention of Scheme Living Statements* be achieved either by way of notation on the strata plan or by reference in by-laws.

## BACKGROUND

One of the main disputes in strata schemes centres on repairs and maintenance. The common concern to those who own strata title residences is the uncertainty as to what defines individual property and the ambiguity of what is common property. This concern can lead to anxiety when the issues of responsibility, cost and liability are introduced.

A robust definition of 'responsibility' is not clear. SCA (NSW) developed a document called *Who is Responsible*. This document seeks to address many of the queries that the various stakeholders have in relation to roles and responsibilities. This document has been an invaluable tool for our members as a reference tool and to pass on to their Executive Committees.

SCA (NSW) notes that the LPI recently utilised the framework of the SCA (NSW)'s *Who is Responsible* document as the foundation for their memorandum. This memorandum is a positive step, however, it provides a prescriptive interpretation for strata properties that may not factor in the unique and plan specific characteristics for each scheme. Consequently, the adoption of the memorandum should be tempered with a review against the applicability to each individual scheme to ensure the interpretation of responsibility is consistent and applicable in each circumstances.

## SCA (NSW) RECOMMENDATION

SCA (NSW) recommends that LPI's memorandum be further developed to provide consumers with the same level of guidance and flexibility as the *Who is Responsible* document and that LPI work collaboratively with SCA (NSW) in drafting such a document. SCA (NSW) further recommends that a consumer awareness campaign occur in relation to this document.

## FUNDING IMPLICATIONS

SCA (NSW) seeks funding for a state wide education campaign of strata owners to clearly describe what common property is, identify other grey areas and further develop and promote SCA (NSW)'s *Who is Responsible* document.



## BACKGROUND

It is broadly accepted that the Federal Government will move to some form of carbon-pricing in the near future. The objective is to create a clear price signal to reduce consumption of carbon-emitting energy sources and to encourage the utilisation of low-carbon and renewable energy.

This has specific issues for strata and community living due to the role of common property in energy consumption patterns and the limited ability of individual households and lot owners to directly control energy consumption, particularly in older buildings with shared metering. To date, policy responses have not adequately addressed the role of owners corporations. A failure to explicitly identify owners corporations as eligible entities has effectively denied many buildings access to renewable energy credits and therefore considerable cost savings for solar installations.

The primary policy focus to date has been on detached housing via “green building” initiatives. SCA (NSW) asserts that “green building” initiatives must be extended, on an equitable basis, to all strata residents.

## SCA (NSW) RECOMMENDATION

Any meaningful impact on overall energy consumption must include measures directed at the existing housing stock.

Apart from a few local government level initiatives, no substantive government programs have yet specifically targeted energy consumption in the medium and high density housing sector. This presents an opportunity for the provision of “green building” program incentives specifically targeted at common property areas and owners corporations. It might also include subsidies for installation of sub-metering, for example.

## FUNDING IMPLICATIONS

Potential areas for funding from an effective “green building” program could include:

- Support for consumer education and awareness programs;
- The development and delivery of specific “green building” training modules; and
- The development and delivery of specific “green building” assessment and ratings programs.

## BACKGROUND

When repairs and maintenance for a strata complex fall due, ambiguity exists as to the clarification and appointment of the Controlling Officer for OH&S purposes. A common concern of those who own strata title residences is the uncertainty and ambiguity as to what defines individual property and common property. This concern leads to anxiety when the issues of responsibility, cost and liability are introduced.

A robust definition of who is responsible for OH&S as the Controlling Officer is not clear. It is loosely captured between the relevant OH&S legislation, the registered strata plan and the by-laws registered with the strata scheme, but there is still considerable uncertainty around:

- Definition of the controller for OH&S purposes;
- The assignment of a controlling officer for OH&S purposes;
- The interpretation or application of laws or governing documents when repairs are carried out; and
- Exemption of the requirements, if appropriate.

## SCA (NSW) RECOMMENDATION

SCA (NSW) recognises National Review into Model Occupational Health and Safety Laws the intent to harmonise safety laws. SCA (NSW) seeks clarity and consistency as to the definition and appointment of the Controlling Officer for OH&S purposes in the strata context.

Further, as it is the Executive Committee that determines the appointment, scope and direction of works on common property, SCA (NSW) seek exemptions from the relevant OH&S legislation for strata managers as the controlling officer.

## FUNDING IMPLICATIONS

SCA (NSW) seeks funding for a state wide information and education campaign. The campaign would include the definition and appointment of the Controlling Officer for OH&S purposes as well as the obligations of strata managers, suppliers & executive committees. In the context of this issue, the campaign would also include the further development and promotion of SCA (NSW)'s *Who is Responsible* document.

## BACKGROUND

Building defects are a national problem. Building practice and certification has not improved to warrant the massive erosion of consumer rights since 2002. There have been two (2) major areas where consumer rights have been eroded and where those rights should be reinstated:

1. Buildings which are more than 4 storeys as defined under the *Home Building Act 1989* do not require home warranty insurance. Although, NSW followed the national direction, there is no justification from the consumers perspective for the loss of protection. The government is now the sole underwriter for all home warranty insurance. SCA (NSW) asserts that equitable treatment of consumers be applied and that home warranty insurance should be a mandatory requirement for all dwellings regardless of the number of stories in the building.
2. Effective from 1 February 2012, NSW will have a minimalist statutory warranty framework against builders in Australia, with the warranty periods being 2 years for non-structural and 6 years for structural defects, both reduced from 7 years. It is not practical or reasonable for owners corporations to identify and commence proceedings within 2 years of completion of the works, particularly in circumstances when an owners corporation may have only had one general meeting with a fixed agenda excluding consideration of these types of issues and where the scheme is still controlled by the developer. Important defects such as leaking shower trays and fire safety measures would be considered non-structural defects under the current statutory warranty framework.

## SCA (NSW) RECOMMENDATION

SCA (NSW) recommends that all dwellings be afforded the protection of home warranty insurance and seeks that the *Home Building Act 1989* be amended to make this a mandatory protection, irrespective of the number of storeys a building contains.

SCA (NSW) recommends that the *Home Building Act 1989* be amended to revert back to its previous position of a 7 year statutory warranty.

## BACKGROUND

There are mandatory requirements for owners corporations with fire measures recorded with Council that an annual fire safety statement be certified by a competent person that the fire measures in the scheme are compliant.

This has been a requirement for a number of years now and the following shortcomings have been identified:

1. Reference to a competent person allows inappropriately insured, experienced or qualified persons to provide certification.
2. There is no reference to a standard to be met when certifying with a result that many defective items are not properly identified in buildings and are unsafe, despite years of certification that those systems exist and function.
3. Contractors who certify are more often than not the contractors who perform the works and are frequently known to recommend works not related to certification but to general upgrades, causing confusion and unwarranted expense.

## SCA (NSW) RECOMMENDATION

SCA (NSW) recommends amendments to the Environmental Planning & Assessment Regulation 2000 to:

- a. Define a competent person referencing relevant education requirements;
- b. Define and specify an appropriate standard to be met when certifying; and
- c. Provide that certifiers cannot be installers or companies related to installer companies.