

26 March 2021

The Hon. Kevin Anderson MP
Minister for Better Regulation and Innovation
GPO Box 5341
Sydney NSW 2001

Dear Minister

Strata Reform

Over 80 per cent of homes in the Sydney electorate are apartments and apartment living continues to grow rapidly across the inner city. The vast majority of the community I represent lives in medium to high rise density homes and I regularly hear from constituents with strata concerns.

The 2015 strata law reforms resolved a number of issues however there remains a need for further reform, particularly in key areas affecting larger buildings where there are serious allegations of corruption or maladministration. The COVID-19 pandemic has also exposed issues that need to be addressed. My submission is based on the issues that have been raised with me since the introduction of the *Strata Schemes Management Act 2015* (the Act).

Voting

Upholding democracy is a vital objective of the voting regime supported by the Act. All owners and residents must have the opportunity to be informed and participate in decisions that affect their home and common property, and for owners, in decisions that affect the finances of a scheme and the levies they incur.

Social distancing as a tool to prevent the spread of COVID-19 exposed serious challenges in strata voting procedures. Suddenly all owners could not attend meetings and the legality of decisions came into question due to a statutory need to reach quorums and vote in attendance. A large number of strata owners contacted me at the start of the pandemic concerned that their scheme could not proceed with required meetings, and others concerned that they could not attend an extraordinary meeting planned to raise special levies.

The exclusion of people from participating in meetings and decisions if they are unable to attend has long created challenges, particularly in larger buildings with many investors. The inflexibility of the current law can disenfranchise people from the democratic process and have the perverse impact of encouraging proxy farming and the concentration of power in a few.

Across the globe, the pandemic has forced business meetings online or by phone and there is no reason not to adopt this approach in strata without the need to vote for these options at a meeting held in person.

All owners, and tenants, in appropriate circumstances, should be able to attend and vote at all meetings through electronic, televised or telephone forms of communication to ensure stronger participation and representation.

Restrictions on proxies introduced in 2015 stopped proxy farming in many buildings and I received positive feedback to that effect. Notwithstanding, I continue to hear from a number of larger schemes that the practice continues, leading to dysfunction, maladministration and corruption. In each of these schemes, I have heard from multiple owners, adding weight to their concerns.

In these schemes, proxy farming has persisted through a lack of limits on proxies from car space owners or company nominees, through small groups of owners banding together to secure a majority, and through unlawful means allegedly covered up by a strata manager. I have heard from owners of one building in which staff of the developer who also owned units took proxies from



overseas investors and investors with limited English to control meetings and prevent court action under statutory warranties.

Further reform is urgently needed to remove these loopholes, including to limit proxies from car spaces and company nominees.

Electronic, telephone and televised voting could allow for stronger limits to proxy rules, such as limiting proxies to people who need representation due to illness for example. Most people unable to attend a meeting in person could attend by phone or over the internet, or could email their voting intentions in advance. Where proxy voting is considered necessary, ***blind proxies where an owner gives their voting rights to a representative to cast in any way should be eliminated*** and instead proxy holders should be required to show that they have acted in accordance with an owner's wishes. Transparency is vital and any owner who has asked someone to act as their proxy in a meeting should be notified on how their vote was cast.

Common Property Duties

I have heard from a number of owners who have experienced long delays or outright inaction on common property repairs that affect the safety and/or functionality of their home. Examples include failure to repair roofs that leak water on electric stove tops, failure to repair a faulty fire door into a unit or failure to fix electrics after a pipe in a ceiling cavity burst and flooded light fittings. In each case, which were in different buildings, the strata committee refused to approve repairs arguing that they were not the responsibility of the owners corporation, even when owners received advice from Fair Trading or successfully secured an order in the NSW Civil and Administrative Tribunal (NCAT).

Responses to my representations on behalf of owners struggling to get urgent repairs have referred owners to mediation or action at NCAT, but these options only result in further, significant and unfair delays that have serious safety implications. Where NCAT is pursued, some owners have incurred significant legal fees including to fight against their case through use of their levies when the responsibility of the owners corporation was clear-cut.

Reforms are needed to ensure strata committees and strata managers fulfil their obligations to maintain and fix common property in situations where a unit's functionality or safety is compromised. Such urgent repairs should be subject to an independent oversight body empowered to inspect and issue orders without the need for court action to ensure safety is protected. I have called for a strata living commissioner to take on this oversight role and perform other duties. With additional resources, Fair Trading could also perform this function.

Disputes

The current disputes resolution scheme is effective in many circumstances however the most common strata complaint to my office comes from buildings where disputes concern serious mismanagement, maladministration and corruption, and which remain unresolved for years. I do not believe the current regime of mediation and NCAT provides relief for owners in such dysfunctional buildings.

The concerns raised with my office have been serious and include misuse and extortion of funds by strata committees, including adding unfounded charges to levy notices or engaging associates without a tender process for major works at inflated costs. Common to these complaints is that the alleged dysfunctional strata committee has the support of or is colluding with the strata manager who prevents transparency and accountability of decisions.

I have repeatedly raised concerns that owners who allege serious corruption and extortion of funds have few options to get justice when the behaviour is associated with collusion between committees and managers who can control funds, information and resolutions. In such cases, mediation is not useful and owners face challenges accessing evidence and significant financial costs if they take their concerns to the tribunal, with few guarantees of justice. Owners with whom I have spoken have all raised concerns about taking matters to the tribunal or court because they

say the committee can exhaust the building's funds to fight any case, forcing them to pay legal fees for and against their case. It seems unfair that if individual misconduct and possible corruption is proven that the culprits can defend themselves with strata funds.

The Owners Corporation Network reports that this sort of serious dysfunction occurs regularly. In other situations of corruption, serious maladministration or when someone's health and safety is at risk, there are oversight bodies to investigate, such as the police, the Australian Securities and Investments Commission or SafeWork NSW.

An oversight body such as a commissioner into strata living or expanded Fair Trading powers to investigate 'problem buildings' is urgently needed to safeguard owners' homes and investment from exploitation.

Pet By-Laws

The parliament has already passed legislation to best regulate pets in apartments; the review must now focus on establishing appropriate regulations to support strata communities manage pets. The regulations need to prescribe clear rules on when it is appropriate for a building to ban or refuse a pet, strictly limited to circumstances when it would unreasonably interfere with another occupant's use and enjoyment of their lot or common property.

In accordance with the recent laws passed, in developing these rules, Fair Trading must consider the following:

- the impacts of kept animals on the health and wellbeing of residents;
- the barriers faced by residents in the keeping of animals and by persons who require assistance animals, including vulnerable persons such as someone fleeing domestic violence;
- the welfare of animals kept in apartments;
- how to limit any adverse impacts of kept animals on common property, including the adequacy of existing laws to resolve disputes; and
- the effect of any change to the by-laws for a scheme that prohibit the keeping of an animal that was lawfully kept on a lot before the change.

Fair Trading may need to expand the scope of this current review to ensure each of these matters are considered.

The strata environment is continually changing as more people live in apartments and apartment buildings get larger. I welcome the opportunity to contribute to this review and ask that you ensure reforms are introduced to address the concerns of my constituents' and provide them with much needed relief.

Yours sincerely



Alex Greenwich
Member for Sydney