

8 January 2013

The Hon Anthony Roberts MP
Minister for Fair Trading
Level 36 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Review of strata and community title laws: Submission

I write to contribute to the Government's review of Strata and Community title law.

The 2011 Population Census identified that more than three quarters of occupied dwellings in the Sydney Electorate are flats, units or apartments. Apartments are a vital part of sustainable living and will need to become a greater proportion of the housing mix in other areas if we are to environmentally, socially and economically address population growth.

Strata reform was a common concern raised with me while campaigning for the Sydney by-election and has been raised with me since taking office by many constituents. My predecessor Clover Moore introduced strata legislation following an extensive consultation process which began in 2009.

My submission focuses on the key issues constituents have raised with me and has been informed by submissions from Clover Moore's consultation process and discussions with numerous constituents and strata experts. I look forward to engaging further with the Government's process this year.

Awareness of Rights and Responsibilities

Concern is regularly raised about the qualifications of those assigned to manage what can be multimillion dollar assets under the requirements of complex legislation. Compulsory training for executive committee members, particularly office bearers, should be explored but also balanced with the cost it could create for members or schemes and whether it would create a disincentive to joining executive committees.

Participation

Proxy votes can concentrate power in one person or a small number of people to the detriment of the majority of owners. I hear regular reports of situations where owners use proxies to make decisions that benefit themselves personally, despite opposition from the majority of owners who attend general meetings, particularly in larger schemes and schemes with investors.

This is unfair and undemocratic and I agree with my constituents' concern that ***urgent reform to rules about proxies is needed.***



Proxies should have an expiry date so that holders must seek reappointment on a regular basis. Blind proxies are problematic and owners should be required to direct holders how to vote on items. Providing the opportunity for ballot voting would remove the potential for proxy holders to take advantage of their voting power and this is supported.

I support the proposal to provide tenants with the opportunity to participate in decisions that affect them. Tenants use common property and are affected by decisions like waste management. Their input would be beneficial for them and for other residents.

Communication

The legislation needs to provide for electronic forms of communication. Many owners would prefer to receive documents electronically only and should be given this option, particularly given it can reduce a scheme's expenditure.

Transparency

Disclosure requirements need to be strengthened. Strata schemes must run transparently and democratically and ensure owners can make informed decisions about management of their assets.

Strata managing agents should be required to disclose any connections with the original owner, caretaker, letting agents for lots, builders who carried out work on the scheme, or any commissions or potential commissions from contractors.

Any person whether a strata managing agent, member of the executive committee, or owner should be ***required to disclose any potential conflict of interest*** relevant to an issue prior to that issue being discussed.

Legislated disclosure requirements must have corresponding offences and penalties for breaches to encourage compliance.

Caretaker and strata managing agent contracts are signed when a strata scheme begins, which is a time when owners are least likely to have the knowledge or experience to understand the implications of the contracts. Such contracts should be limited or be subject to a trial period to enable owners to discuss and assess them before entering in to long term relationships.

Accountability

While the Act defines the functions of the executive committee office bearers, there are reports of inappropriate conduct, particularly during meetings, with some office bearers not fulfilling their duties and others taking an autocratic approach to duties. It would be worthwhile to codify the role and powers of the chairperson, secretary and treasurer in the law. I also support a code of conduct for executive committee members.

My office has received a number of complaints about compulsory management. These constituents say it is undemocratic with many owners losing any say in the way their building is managed. The Consumer Trader and Tenancy Tribunal should consider other methods to help an owners corporation perform its duties first and only issue an order for compulsory strata management as a last resort.

Urban Renewal

Moving house can be very traumatic, particularly for frail, socially isolated and elderly people, and for those who have lived in one location for many years. One's home is essential to their wellbeing and many people see their homes as the place they will stay in until they die.

An owner may make a profit from a sale based on what they paid for their apartment, however whether they could afford a new place particularly in a larger apartment block with high levies, which is what is likely to be on the market, is another thing.

Any strata scheme that moves away from unanimous agreement before termination to allow the forced sale of one's home must have strong safeguards to ensure the approach is only taken as a last resort and that it is not detrimental to any owner.

Overcrowding and Short-Term Rentals

Short term rentals in residential apartment blocks can be detrimental to residential amenity and increase costs for owners. Impacts include noise from successive residents who are always on holiday, damage to common property from frequent movement of luggage and increased use of common facilities, and reduced security due to constantly changing residents and greater numbers of visitors.

Current strata by-laws cannot restrict leases and therefore cannot ban short-term leases. This should be amended to ***allow for prohibitions on short term rentals in the by-laws schedule.***

Overcrowding is a serious problem in some apartments. Unscrupulous landlords and subletting tenants cram people into bedrooms and living rooms for profit. Overseas students and new residents are targeted and neighbours and owners suffer from noise, higher water rates and wear of common property. Compliance with fire standards and ordinary safety procedures, such as locking doors, are ignored.

The City of Sydney consent conditions to limit adult occupants in apartments to two per bedroom have enabled it to take action against overcrowding in apartments approved since 2006. This approach has been useful and should be adopted in strata law to give an owners corporation power to address overcrowding. While schemes can adopt these provisions in by-laws, some owners are the culprits and use their proxies to prevent such by-laws. There is also a need to ensure that where there is strong evidence of overcrowding, an owners corporation can inspect a property.

I support proposals to give the Consumer Trader and Tenancy Tribunal power to prohibit certain letting arrangements for a lot where there is a proven pattern of anti-social behaviour, if the powers are specifically aimed at overcrowding and short term rentals.

Building Defects

Pursuing defects is stressful and arduous for owners, and I have heard numerous stories from constituents and in the media about how difficult it is to address these problems. Some constituents have suffered significant financial loss when caught up in years of dispute, with their lives on hold in circumstances where they had no control over building standards or certification.

The defects process requires engaging expensive technical experts to assess buildings and write reports, and lawyers to advise and represent in court; meeting a range of deadlines depending on the circumstances; and lengthy court cases with no guarantees of success. Constituents who have contacted my office about defects report major cost burdens, protracted court cases, losses due to technicalities, and reduced value of investments. Some have lost their homes because they cannot afford to pay special levies introduced to fix building faults.

The State Government needs to look at measures to encourage good development and reduce building defects including removing private certification and ensuring owners are able to make insurance claims for structural defects.

I support making defects a compulsory agenda item for the first annual general meeting. Owners of new apartments should assess, discuss and consider the possibility of defects in their building at an early stage. Anyone connected with the developer or builder should be excluded from discussions and votes about pursuing defects.

The developer is required to deliver documents to enable the owners corporation to take over management of a building, but the fine for not complying is less than the cost of getting the documentation together. This fine should be increased to encourage compliance.

The list of documents required to be provided in new strata buildings is inadequate with vital documents like drainage plans, the location of electrical and communications cabling, and certification that a building was constructed in accordance with development consent not required. These and many other documents would greatly assist owners pursuing defects and the list should be expanded to ensure owners are able to effectively manage a building and investigate possible defects.

Unit Entitlements

A number of constituents raise complaints that developers issue lower unit entitlements for higher valued properties that they give or sell to their associates who in turn pay lower strata levies. This is not fair, and I agree with proposals to require a qualified valuer to determine unit entitlements.

Insurance

Minimum public liability insurance for owners corporations is \$10 million, which has not changed for an unrealistically long period. The potential for multi-person injury such as a balcony collapse should be covered in the minimum public liability insurance and I support it being set to \$20 million.

Jurisdiction and Powers

A number of apartment owners complain about having to defend vexatious or frivolous proceedings in the Consumer Trader and Tenancy Tribunal. The tribunal should have the power to dismiss such applications either on its own motion or on the application of the respondent before substantial defence costs are incurred.

Parking

Illegal parking on strata property and residents using visitor car parking is a major concern frequently raised by owners. They say clamping laws need to be reintroduced. This option needs to be explored. The proposal to delegate parking laws to councils should also be explored in consultation with local government.

Pets

Australia has the highest rate of pet ownership in the world and pets play a very important role in people's lives. Pets give pleasure, love, companionship, and particularly in the case of dogs, encourage their owners to exercise. It has been reported that pets save the national health bill \$4 billion a year.

I regularly hear constituents and media reports about petty bans on pets that could not cause problems for neighbours.

Outright pet bans should not be allowed. Most residents will be able to keep pets in an apartment without creating impacts for neighbours. Instead conditions should be placed to stop impacts on noise and amenity, and to encourage responsible pet ownership.

Smoking

More families with children are living in apartments and this trend will increase as apartments become the more common form of development. The number of people raising concern about drift smoke from neighbouring apartments and balconies has been increasing, particularly from parents concerned about constant passive smoke risks to children who are more at risk of long term damage.

Everyone should be able to live in a smoke-free home, but strata residents are currently limited in the action they can take to prevent drift smoke. A blanket ban on smoking on balconies in all apartments is not appropriate given it may not cause impacts in many cases. I support the proposal to empower an authority such as the strata managing agent to issue orders and notices to ban smoking where second-hand smoke drifts into another apartment.

Apartments are an important part of the housing mix and reform is needed to ensure it remains an attractive choice. I congratulate the Government for taking on this issue, which is particularly important in the inner city, and encourage prompt reform action.

Having said that, a complete rewrite of the act is a dangerous approach; it will be difficult for both owners and experts to assess properly and understand the implications. There is a serious risk that expertise in the field will be lost and case law will no longer apply with provisions needing re-litigation. Unintended consequences are likely to occur in a field of law that is complex and affects people's day to day lives.

Reforms are needed in a number of key areas and a better approach would be to amend the relevant sections, keeping the act intact.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AG', written in a cursive style.

Alex Greenwich
Member for Sydney