

**The Property Owners Association of New South Wales**  
**SUBMISSION**

**REVIEW OF**  
**STRATA MANAGEMENT ACT 2015**  
**MARCH 2021**

## INTRODUCTION

The SMA 2015 was a good first step in updating the Act and provides a good basis for further improvement in many areas.

## ISSUES REQUIRING ATTENTION

1. Inclusion of a common property memorandum to clarify Owner's Corporation responsibility.
2. Clarification of the tax deductibility of the repairs component of capital works levies.
3. Situations where a minority of strata committee members approve an action/quote and other committee members do not respond.
4. Situations where strata committee members seek guidance from strata managers and refuse to decide to accept quotes or actions.
5. More straight forward mechanism to pass on costs for damage to common property caused deliberately by owners or occupants actions. A typical example is tenants moving into and out of a building.
6. Greater penalties for parking illegally on common property when found guilty at NCAT.
7. Improved ability under the standard pet by-laws to remove delinquent pets or disallow unconventional pets.
8. The ability to complete bathroom renovations including waterproofing as a minor renovation in certain circumstances.
9. Compulsory contents insurance minimum of \$50,000 for owners and occupants in strata. This can cause extreme anxiety for owners. Standard by-laws excluding claims on items such as floorboards, etc are inadequate.
10. Emergency access by the Owners Corporation to undertake repairs to fire protection ,waterproofing, etc
11. Building security to be provided by licenced professional security organisations.
12. Independent technical guidance to strata committees for structural, fire, electrical, BCA compliance and mechanical issues.
13. Requirement to use professional consultants for design and supervision of large projects
14. Annual review of capital works programme and compulsory adherence.
15. Biosafety of Owners Corporations requiring them to have policies and procedures to ensure duty of care during pandemics, etc.

16. Ensuring routine maintenance programs are established and adhered to.
17. Fire compliance - AFSS random audits.
18. Outlawing proxy farming via on-site security staff.
19. Pre-meeting voting.
20. By-law breaches

## DISCUSSION OF ISSUES

1. Common Property Memorandum - The purpose of this document is to clarify the exact limit of responsibility the Owners Corporation has for maintenance of common property. This was not included in the 2015 Act but must be included in the current revision. A standard version should be included as part of the standard bylaws but should be allowed to be modified to suit individual strata plans. The lack of clarity regarding responsibility is causing problems for many strata plans.
2. Subsequent to the renaming of “Sinking Fund” to “Capital Works Fund ” in the 2015 Act the ATO has taken the view that Capital Works Fund levies are all capital in nature and therefore not tax deductible by investor strata owners. It is a requirement of the Strata Management Act that strata plans establish a 10 year Capital Works Plan forecasting all significant long term maintenance required by the plan and set Capital Works levies to ensure sufficient funds are raised prior to the requirement to expend these funds. Agreement on the deductibility of the repairs component of Capital Works levies must be sought and agreed with the ATO. If necessary a third fund should be established for “Capital Improvements” where non-deductible levies are accumulated to for any future non-deductible works whilst the “Capital Works Fund ” should be renamed the “Future Repairs Fund”.
3. In situations where a minority of Strata Committee members approve quotes/actions and other committee members do not respond after 14 days it should be automatically deemed those non-responders abstain from voting and the quotes/actions should be accepted.
4. Strata Committees which cannot decide on what action to take and rely completely on the strata manager for all direction and implementation should be dismissed and either reappointed or replaced by a compulsorily appointed strata manager. A complete lack of guidance from the strata committee places undue responsibility on the strata manager and is not their role or responsibility.

5. The cost of repairs to damage caused to common property by owners and occupiers must be recovered as a personal debt owed by the individual, payable within 14 days, subject to legal recover thereafter. Cost recovery by-laws and bonds to cover damage should be introduced.
6. Penalties for illegal parking on lots or common property must be enforceable, quick, and substantial, issued by the strata committee with appeal to NCAT. Waiting weeks for NCAT orders which are difficult to enforce is unacceptable. A suitable model by-law should be drafted. Section 651 of the Local Government Act should be modified to allow wheel clamping. A model by-law granting permission to wheel clamp all owners should be introduced to make wheel clamping legal.
7. Pets which defecate on common property, continually disturb owners/occupants and are otherwise disagreeable should be able to be removed from the strata plan by the strata committee. Unconventional pets such as snakes, various insect types, mice, rats, rodents, etc should be automatically excluded from consideration. Section 158 empowers NCAT to make orders for removal of unacceptable pets however enforcement requires Ministerial approval. Capacity for enforcement needs to be given to NCAT.
8. Renovations to bathrooms should be included as minor renovations subject to strict controls/oversight of new, adequate waterproofing and it's certification, fire protection (eg. fire dampers in exhausts penetrating fire barriers) and noise issues. This would be contingent on no new penetrations through common property walls or floors and no relocation of existing services such as toilets, shower, etc.
9. Many owners and occupants in strata do not have contents insurance. This causes problems for them and owners corporations in a variety of circumstances such as storm damage, fires, etc. A minimum contents insurance coverage of \$50,000 should be mandatory.
10. Emergency access by the Owners Corporation into lots to undertake urgent repairs such as leaking pipes, deficient/missing waterproofing, rectify/install fire protection equipment, etc is an ongoing difficulty for Owners Corporations. An order by the strata committee to allow access for such emergencies must be included in the revised ACT. Proceedings in NCAT are slow and often exacerbate the required repair action and cause undue problems to effected neighbours for example in waterproofing issues. Section 122.1.(a) states the Owners Corporation has power to enter and undertake work such as installing window locks but this needs expansion to encompass fire protection, rectify structural deficiencies, etc. The definition of "Emergency" in Section 122.3 must be included. Without any guidance it leads to controversy.

11. Large strata plans (100+ lots) which contract security services for afterhours onsite presence must tender such contracts at least every two years with reputable, well known, established, fully licensed security companies and not use small backyard operators which do not have proper policies, procedures, and training, etc in place.
12. Owners Corporations and strata committees do not have the knowledge/skills to undertake significant structural, fire protection, mechanical, electrical or hydraulic upgrades or repairs and must be guided by relevant professional engineers/architects. Many strata plans or their strata managers engage contractors/builders directly without any guidance from independent experts which invariably leads to future problems. The strata community has abundant examples of poor repair outcomes for older building as well as the defective recently completed buildings. If the potential cost of such a repair is more than \$100,000 then the Owners Corporation must engage an independent expert consultant with experience in the relevant field to assess the work required, tender and supervise the work.
13. Large 100+ lot strata plans must undertake 10 yearly compliance audits for fire protection services, structural issues, BCA issues, mechanical, electrical, and hydraulic services to ensure buildings are safe and compliant. There are many large 100+ lot strata plans which owners are totally unaware of building deficiencies, some of which may present serious safety concerns. The findings of these audits must be rectified within the following 5 years or less, depending on the nature of the findings. The audits must be undertaken by independent expert consultants in the relevant field.
14. The Capital Works program forecasts significant items of future building repair expenditure required. Review of this program every 3 years should be mandatory especially for large 100+ lot schemes.
15. In the Covid-19 environment biosafety of building occupants is important. The NSW government allows the employment of security, cleaning and other staff working in Covid-19 hotels to working in other environments such as 100+ lot strata buildings. There is a duty of care to strata occupants who in most circumstances are unaware that some of their building staff present a low risk of exposure to the virus. This is especially necessary for building occupants with poor or compromised health. There should be an exception that security, cleaning and other staff working in Covid-19 hotels must not be employed in high density 100+ lot strata buildings.
16. Ongoing building maintenance is required especially in large 100+ lot strata schemes. Many strata committees which do not understand the future impact of reducing maintenance levels seek to cut costs by avoiding or minimising maintenance or utilising backyard type providers, often to the dismay of other owners. It is essential that building

managers/strata committees be audited by independent expert consultants every five years to ensure they are undertaking adequate levels of maintenance.

17. Large strata plans have been the subject of fraudulent AFSS wherein defective or non-existent fire systems are signed off as present or working. In discussions with NSW Fire & Rescue (or similar services) they agree there should be a requirement to undertake random audits of large 100+ lot schemes every 10 years to ensure that contractors undertaking AFSS are doing so honestly.
18. All contractors engaged by Owners Corporations must be prohibited from proxy farming on behalf of owners and others seeking to gain votes to gain election to strata committees. This prohibition should extend to the provision of letter drops, provision of owners contact details, etc. There are 100+ lot schemes where multiple owners have been talked into providing proxies, by unscrupulous on-site contractors, which are then distributed to interested parties in lots below the 5% threshold to gain support of an owner who has a close relationship with the contractor concerned. Schedule 1 clause 25.7 does not include contract security staff and does not preclude contractors from gathering proxies on behalf of an owner.
19. Pre-meeting email voting should be outlawed since amendments or discussion during the meeting may influence/change decision making. Owners cannot vote on amended motions by pre-voting. The use of Zoom meeting is preferred.
20. Sections 146 and 147 permit NCAT to impose fines for by-law breaches. Enforcing those fines is a breach of legislation which requires Ministerial approval, which has never happened. Enforcement action must be delegated to NCAT.

## RECOMMENDATIONS

The Strata Management Act needs modification to ensure all of the above issues are addressed.

Yours faithfully,

Simon Ruben

Executive Committee – Strata Issues