Submission cover sheet

Inquiry into the management of strata properties

Submission number: 028

Submitter: Kerin Benson Lawyers

Date authorised for publication: 12 March 2025

28 February 2025

Standing Committee on Legal Affairs
ACT Legislative Assembly

BY EMAIL: LACommitteeLegal@parliament.act.gov.au

Dear Committee Secretary,

Inquiry into the Management of Strata Properties

Thank you for the opportunity to provide a submission to the above Inquiry.

I have been advising and acting for owners corporations and apartment owners in the ACT since 2010. In that time, I have advised 100s of lot owners and owners corporations in relation to strata issues. I am the author of the *Guide to ACT Strata Law* (first published in 2017), and which has been cited in a number of strata decisions in the ACT.[1]

Terms of Reference

The Terms of Reference are that the Committee will inquire into the application of the *Unit Titles (Management) Act 2011* (**UTMA**) and its current performance, including in relation to:

(1) the role of strata managers, including their qualifications and licensing, conflicts of interest, fee models and other related issues;
(2) the roles and responsibilities of executive committee members, including training and skills required;
(3) decision-making models in strata developments;

[1] e.g. *The Owners - Units Plan No 14 v Wright (Appeal)* [2021] ACAT 55; *McMillan & Anor v Owners Corporation - Units Plan No 79 (Unit Titles)* [2019] ACAT 86; *Corby v The Owners Corporation – Units Plan No 1035 (Unit Titles)* [2019] ACAT 45; *SDNM Pty Limited v The Owners - Units Plan 3908 (Unit Titles)* [2018] ACAT 102

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(4) issues that arise in mixed-use buildings between residential and commercial tenants;
(5) strata leaders and managers accessing environmental initiatives for their residents;
(6) the remit for a potential Strata Commissioner in the ACT; and
(7) any other related matters.

(1) Role of Strata Managers

Currently the only provision in the UTMA in relation to the disclosure of commissions is section 2.3(1)(h) of Schedule 2 of the UTMA which provides:

(h) the amount and type of any financial or other benefit given, or to be given, by the insurer, for the insurance being taken out, to any person.

The *Agents Act 2003* also has a disclosure requirement (see section 100 of the Agents Act), but it would likely not occur to lot owners or strata managers to refer to the Agents Act.

It should also be noted that there is a disclosure requirement for insurance commissions arising from the fiduciary duty owed by strata managers to owners corporations.

However, in NSW, their equivalent of the UTMA, the *Strata Schemes Management Act 2015 (NSW)* has a much more extensive regime requiring the disclosure of commissions and training. This legislation was recently amended[2] following the ABC 7:30 and Four Corners programs last year.

Increased training and licensing requirements for strata managers will likely make the recruitment of strata managers more difficult in circumstances where the recruitment and retention of strata managers is already difficult as a result of the demands of working as a strata manager.[3] This will likely result in an increase in management fees.

On the issue of fee models, the unanimous view of the approximately ten (10) strata managers in the ACT and NSW with whom I have spoken is that the removal or prohibition of insurance commissions will almost certainly result in a substantial increase of management fees. In the McGrath Nicol report to the NSW Fair Trade Commissioner on 25 February 2025 in respect of

[2] *Strata Managing Agents Legislation Amendment Act 2024 No 65 (NSW)*
[3] c.f. https://www.mrisoftware.com/au/blog/10-key-takeaways-from-voice-of-the-strata-manager-report/

Network Strata Services Pty Ltd, it was found that the charging of insurance commissions in respect of Strata Insurance creates consumer outcomes that "*generally reflect market costs*." (at [5.26])

Finally, I am regularly approached by lot owners who have concerns about the way a building is being managed (i.e. at least once a week) and usually there is some explicit or implicit criticism of the strata manager. However, such issues usually fall away once I explain what the strata manager is required to do (or not do) under the management agreement as well as the fact that the strata manager is usually the messenger of a decision by an executive committee with which the lot owner is upset.

In NSW, the *Strata Schemes Legislation Amendment Bill 2024*, which was passed by the NSW Parliament on 18 February 2025, specifically introduced greater obligations in respect of executive committee members. As stated by the responsible Minister, the Hon. Anoulack Chanthivong, in this second reading speech to this bill (on 20 November 2024):

> *The bill also improves the governance of strata and association committees. Currently, committee members must carry out their functions for the benefit of the owners' corporation or association and with due care and diligence. While many members take this duty seriously, there are concerns that many are falling short of expectations. The bill introduces additional duties and obligations on members, including complying with strata and community land scheme laws and acting with honesty and fairness. This will be a big change for some committees, so the Government will work with the sector to roll out mandatory training to support committee members in meeting their duties under the Act.*

In short, many of the issues which confront stakeholders in strata titled buildings arise from a lack of education and knowledge as to how the sector operates. This likely arises from the large number of people transitioning from the "quarter acre block" to medium and high density living and the fact that there is a learning process involved.

(2) Roles and Responsibilities of Executive Committee Members

In the first instance, clause 1 of the executive committee Code of Conduct of the UTMA provides as follows:

An executive member must have— (a) a commitment to acquiring an understanding of the Act, as relevant to the member's role on the executive committee; and (b) a good understanding of this code.

The Code of Conduct also sets out the responsibilities of executive committee members.

Consequently, there is already a pre-existing obligation on executive committee members to complete at least some informal training (e.g. reading relevant materials or cases). As to education material for executive committee members, there are resources available, for example the *Guide to ACT Strata Law* (currently in its second edition), which would assist executive committee members (amongst others) in their task of governance.

However, it is already very difficult to persuade lot owners to take on executive committee member responsibilities. Indeed, in my experience, it is not uncommon for executive committee members to quickly resign once additional work is required of them (noting that it is not uncommon for a lot owner to join an executive committee to specifically address a personal concern and then leave once that issue has been resolved).

Therefore, to add burdens to the role such as mandatory training or pre-qualification will simply reduce the potential pool of candidates who are able or willing to join an executive committee.

In short, executive committee members are volunteers who are required to take on an ever-increasing burden. Further where an owners corporation is involved in a building defects dispute (or some other major project), there are usually one or two executive committee members who commit literally hundreds of hours of time to that project. It should be noted that this work is unpaid, rarely appreciated (or even necessarily widely known within the building) and sometimes even criticised. To add the burden of mandatory training or pre-qualification will simply further limit the pool of people prepared to commit time to an executive committee. The strata sector is not immune to the general decline in the number of Australians prepared to volunteer.[4]

In short, additional regulation is not always the remedy.

[4] c.f. https://www.abc.net.au/news/2024-09-23/young-australians-encouraged-to-take-up-volunteering/104349378

Finally, while the existing executive committee Code of Conduct (see Part 1.1 of Schedule 1 of the UTMA) has been in place for many years, the ACT Civil and Administrative Tribunal (**ACAT**) is yet to make a finding that an executive committee member has breached that Code (despite at least a couple of applications in this regard). Having said that, if such a breach were made out, there is no sanction for such a breach. In this regard, I believe some consideration should be made as to a penalty which might apply for breaching the Code of Conduct.

(3) Decision Making Models

Perhaps the most pressing need for amendment here would be that absentee votes should be counted for the purposes of a quorum (see section 3.31(4) of Schedule 3 of the UTMA). It appears odd that a person who casts an absentee vote under section 3.31 is taken to be present at the general meeting at which the motion is moved and to have voted on the resolution but is not taken to be present for the purposes of making up a quorum.

Given the difficulties most owners corporations have in reaching a quorum at general meetings, this amendment might make reaching a quorum easier (and reduce the need and burden of relying upon the reduced quorum provisions).

Further given the increase in the number of owners corporations with more than 100 units in the ACT, consideration might be given to the introduction of similar measures to NSW in relation to dollar thresholds for expenditure by large owners corporations. This might provide greater comfort to lot owners that there are protections in place for expenditure (although I am not personally aware that this is an issue particular to large owners corporations). The introduction of mandatory quotations for an item or matter greater than a prescribed value might also be of some comfort (see section 102 of the Strata Schemes Management Act for an example of this).

Generally, consideration should be given to amend the UTMA to account for the increase of larger owners corporations (e.g. more than 100 units) in the ACT. For example, section 137 of the UTMA, a section of Part 10 of the UTMA, which is in respect of any application to ACAT to apply for an administrator, requires the applicant to “serve a copy of the application on every other interested party, except the creditors (or the other creditors) of the owners corporation and the director-general”: at subsection (2). Such a requirement becomes ever more costly and barrier to a unit owners applying for an administrator as owners corporations grow in size. Consideration should be given to amend such provisions, especially where the owners corporations has immediate ability to direct such applications to all unit owners.

Finally, in my discussions with strata managers, a question has been raised as to whether at least some decisions might be made via email in lieu of the need for meetings. Given the lack of training and experience of most executive committee members, there could be problems if executive committee members depart too far from a regime of public meetings with mandatory agendas, etc. The casual use of emails, in my experience, leads to non-compliance with and disregard of the provisions of the UTMA.

(4) Mixed Use Buildings

Many problems were cured by the introduction of the alternative method for striking contributions (see section 78(2)(b) of the UTMA) as well as where there is more than one crown lease granted for a building, the presence of a building management statement (since 1 November 2020).

In relation to the latter, the question is whether many developers have taken advantage of this development? I have not seen the use of building management committees for new developments. Anecdotally I have heard that obtaining the approval building management statements by Government has been difficult to obtain but note that the amendments which came into force on 1 July 2023 loosened the requirements in relation to this approval.

Again anecdotally, the recent amendments to the UTMA requiring that one EC member be from a “non-residential” unit (see section 39A(2) of the UTMA) have been difficult to comply with given the lack of interest by “non-residential” unit owners in being EC members.

Completing fit-outs in commercial units in mixed-use buildings is commonly a source of friction (where drilling into slabs or installing grease traps is required). Usually, a commercial lot owner is in a hurry to complete a fit-out and commence trading but to comply with the requirements of the UTMA, at least a month is usually required. Occasionally such delays are sought to be avoided by the commercial lot owner simply progressing without approval thereby exacerbating the usual friction between commercial and residential owners.

In addition, noise issues and smells are commonly an issue in mixed-use developments but this issue is one which should be addressed by proper planning rather than reforms to the UTMA. Having said that, a Strata Commissioner could have a role in relation to the planning of mixed use developments to ensure that residential owners are not adversely affected.

(5) Environmental Initiatives

The ACT has a well-known reputation for the uptake of solar panels.

The solar panels loans scheme has a requirement that tenants must share in the benefits of the solar panels but the terms of this scheme make it onerous to use the scheme and thus the likely low uptake in applications (see https://gosolarquotes.com.au/charging-tenants-for-solar-power/ for some of the conditions to be met).

In relation to EVs, I am aware of two buildings that have retrospectively installed infrastructure for EVs but note that the time and effort required to achieve this was very significant.

There are also significant costs associated with the some of the other ACT Government initiatives. For example, converting buildings from gas to electricity will be a cost most owners will not be prepared to accept. Further, the retrospective introduction of EV charging stations in buildings require expensive items such as additional fire suppression systems, power supply upgrades and potential concrete slab upgrades (given the additional weight of EVs).

Finally, there is usually an excess of lot owners desiring power supply for EVs (ie more lot owners wanting EV power supply than power available) thus requiring prohibitively expensive power upgrades to facilitate EVs.

(6) Strata Commissioner

Queensland has an Office of the Commissioner for Body Corporate and Community Management which provides information and dispute resolution services for those who live, invest or work in body corporate schemes in Queensland.[5]

[5] https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/bccm

NSW has a NSW Strata and Property Services Commissioner which appears to have a role similar to the Queensland Commissioner but without the dispute resolution services. [6] The conciliation/mediation function being performed by NSW Fair Trading and adjudication function being performed by NCAT. Presently, the ACT is similar to NSW, with ACAT performing an adjudication function.

Presumably the concept of a Strata Commissioner for the ACT draws upon the above Offices although there is nothing to indicate this.

However, it should be noted that:

1. the 2024-25 New South Wales budget included $11.8 million for the Strata and Property Services Commissioner (see page 23 of the NSW Budget Overview https://www.budget.nsw.gov.au/sites/default/files/2024-06/NSW-Budget-2024-25-overview-glossy-accessible.pdf); and

2. the 2024-25 Queensland budget included at least $4.6 million for the Office of the Commissioner for Body Corporate and Community Management (see page 225 of the Queensland Budget Strategy and Outlook 2024 – 2025 https://budget.qld.gov.au/files/Budget_2024-25_BP2_Strategy_Outlook.pdf - noting that this figure only addresses Dispute Resolution and the Office has other responsibilities).

Enclosed are the 2024 Costings for a Strata Commissioner for ACT Labor ($154,300 for FY 2026-27) and Canberra Liberals ($339,500 for FY 2026-27) (noting that no costings were put forward by the ACT Greens). Both are clearly inadequate for the task given the likely workload involved.

It is inappropriate to effectively compel people to live in strata titled units and not properly regulate the sector. Consequently, any such office should be properly resourced. Any under resourced office, while politically expedient, would be inappropriate in the circumstances.

[6] https://www.nsw.gov.au/departments-and-agencies/fair-trading/about/strata-and-property-services-commissioner

However, were the ACT Government to implement something akin to Strata Hub in NSW (https://www.nsw.gov.au/housing-and-construction/strata/strata-hub) the construction and management cost might be paid for via same funding model of an annual fee of $3 per lot paid by unit plans (noting that the funding base in NSW is significantly greater than the ACT given the respective number of schemes).

Some Considerations as to the Role

Ideally there would be one point of interface between Government and strata owners but instead there is the Office of Fair Trading (for issues in relation to agents), ACAT (for disputes) and JACS (for enquiries as to the legislation).

The introduction of a dispute resolution regime overseen by a strata commissioner might result in more consistent decisions in strata disputes. Unfortunately, the outcomes in ACAT can sometime vary between tribunal members. In addition, a Strata Commissioner could act as a filter for disputes and reduce the cost of hearing disputes in the Unit Titles Division of ACAT.

If a strata commissioner were appointed, the official should exist as an independent office rather than as part of an existing Department.

Finally, given the history of failure by the ACT Government in establishing administrative bodies in connection with the Residential Disputes Scheme, the Professional Engineers Act and the Property Developers Act, it is difficult to have confidence in the ability of the ACT Government to effectively establish a Strata Commissioner administration.

(7) Any Other Related Matters

The Kerin Benson Lawyers Guide to ACT Strata Law raises a number of issues which perhaps warrant addressing by amendments to the UTMA but this is not the forum for articulating them all.

Having said, two examples of issues which could be addressed more immediately are the following. Firstly, my understanding is that in the ACT (unlike NSW) there is no requirement for vendors to include the certificate of currency for any residential building insurance policy (HWI equivalent in the ACT) in sale of land contracts. This means that lot owners need to get the building file from Access

Canberra when a builder becomes insolvent and in order to make a claim, must work out if the insurer was QBE or the MBA Fidelity Fund. As a result, in my experience, most homeowners in the ACT are completely oblivious to the existence of this insurance and its benefits.

Secondly, while the Unit Titles (Management) Act requires developers to provide drawings, specifications, etc. to owners corporations (see clause 3.4 of Schedule 3 of the UTMA), this obligation is honoured more often in the breach. Consequently, owners corporations often struggle to get this material when asked (e.g. by a building expert, etc.). Further, Access Canberra may not have been given all the relevant materials (or may have lost the file); I have seen this more than once. Further, the relevant design consultants block attempts to get this information with spurious arguments about copyright, etc. The UTMA should be amended to include a significant penalty for developers who fail to provide this material.

Please contact the writer if you have any questions in relation to the above.

Yours faithfully,

[redacted]

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Encl.

2024 Election Commitment – ACT Labor

Name of Commitment:	**Appoint a Strata Commissioner**
	Reference Number: LAB088
Request Submitted by:	Andrew Barr MLA, ACT Labor
Date Request Received:	14-Oct-24
Additional Information Requested (details and date)	N/A
Additional Information Received (details and date)	N/A

Financial Implications

Impact On:	**2024-25 $'000**	**2025-26 $'000**	**2026-27 $'000**	**2027-28 $'000**	**TOTAL $'000**
Revenues [(a)]	0.0	0.0	0.0	0.0	**0.0**
Expenses [(a)(b)]	0.0	0.0	-154.3	-158.5	**-312.8**
- Employee Expenses	0.0	0.0	-154.3	-158.5	**-312.8**
- Other Expenses	0.0	0.0	0.0	0.0	**0.0**
- Cost of Financing	0.0	0.0	0.0	0.0	**0.0**
Depreciation	0.0	0.0	0.0	0.0	**0.0**
Net Operating Balance	**0.0**	**0.0**	**-154.3**	**-158.5**	**-312.8**
Capital Requirement	0.0	0.0	0.0	0.0	**0.0**
Cash Surplus/Deficit	0.0	0.0	-154.3	-158.5	**-312.8**

(a) A negative number indicates a decrease in revenue or an increase in expenses.
(b) Excludes depreciation

Other Information

Costing Methodology Used:

- Costing Technique:

This costing is to establish a Commissioner for Strata Matters, with the role being assigned to an existing Deputy Director-General (DDG) in the Environment, Planning and Sustainable Development Directorate (EPSDD) from 1 July 2026. The Commissioner would be supported by one additional full-time equivalent (FTE) position at the ASO 6 level from 2026-27, with salary costs calculated using the 2024-25 Average Salary Costing Template.

- Proposal Parameters:

• The costing assumes that any staffing requirements to support the role of Commissioner, other than the additional one FTE at the ASO 6 level included in the costing, would be absorbed by the Building Construction policy development area within EPSDD.

• The costing also assumes that any other administrative expenses would be absorbed by EPSDD.

Caveats or qualifications to the costing:
• Treasury notes the expense profile would be subject to the recruitment of a suitably qualified staff member and their start date. • Treasury notes Access Canberra within the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) currently has regulatory responsibility for building and construction regulation with 114 FTEs, and clarification would be required as to the roles and responsibilities of the new Commissioner to determine if any administrative changes are required to implement the proposal. • Treasury notes this proposal should be considered in light of other policies requiring EPSDD and Access Canberra to absorb costs, and may require a re-prioritisation of the Directorates' resources and activities. • Subject to a clarification of the role's scope and responsibilities, Treasury considers it is likely EPSDD and Access Canberra would have to reduce or cease existing services to support associated administrative and staffing costs associate.
Other Comments:
Treasury notes the New South Wales (NSW) Government allocated $24 million to set up the NSW Building Commission in 2019. Should the proposal be similar to, or based on, the NSW model, the resourcing implications would need to be carefully considered for EPSDD and Access Canberra.
- Statistical Data Used:
Treasury estimates.

[redacted]

Stuart Hocking PSM
Under Treasurer
17 October 2024

Request for Costing an Election Commitment

Name of proposal:	Housing – Strata and Building Quality Commissioner
Person requesting costing:	Elizabeth Lee MLA
Date of request:	11 October 2024
Summary of proposal:	A Canberra Liberals Government will establish a Strata and Building Quality Commissioner to create a single point of contact for issues in strata living and building quality, and advise on leiglsative changes.
Issue the proposal will address:	Improve the quality and liveability of strata complexes in the ACT.
Proposal's public announcement details (media release or policy statement published on a party website)[1]:	Canberra Liberals website (see media release)

What are the key assumptions that have been made in the proposal?

Note: The costing will be developed on the basis of information and assumptions provided in the costing request. The professional judgment of the Under Treasurer will determine whether these assumptions are adopted in the costing of the proposal.

The costing assumes the role of Commissioner will be at the level of SES 2.1. Staff supporting the Commissioner will be seconded from EPSDD.

What are the estimated revenue and operating costs each year (if available) and what are the capital requirements for this proposal and estimated costs each year (if available)?

	2024-25	2025-26	2026-27	2027-28	Total
	$'000	$'000	$'000	$'000	$'000
Revenue[(a)]	0	0	0	0	0
Expenses[(a)]	0	-331	-340	-348	-1,018
Capital[(a)]	0	0	0	0	0
Depreciation[(a)]	0	0	0	0	0
Offset - Expenses[(a)]	0	0	0	0	0
Offset - Capital[(a)]	0	0	0	0	0
Full-time equivalent employees	0	1	1	1	1

(a) A negative number indicates a decrease in revenue or an increase in expenses, depreciation or capital outflows. A positive number indicates an increase in revenue or decrease in expenses, depreciation or capital inflows. The expenses row is not to include depreciation costs.

[1] As per Part 2, section 5 of the *Election Commitments Costing Act 2012*

Has any specific information or data been utilised in generating the proposal? Please provide links or attach information/data sources referenced.
The costing is based on the Average Salary Costing Template provided by ACT Treasury.
Where relevant, is funding for the proposal to be demand driven or a capped amount?
Capped at one role.
Will third parties, for instance the Commonwealth or other State/Territories, have a role in funding or delivering the proposal? Does the proposal provide additional funding to, or redirect, any existing Commonwealth/State or Territory funding arrangements?
No.
Will funding/the cost require indexation?
As above.
Who will administer the proposal?
EPSDD.
How will the proposal be administered?
The role will be administered in the same way as the Commissioner for Sustainability and the Environment.
Is the proposal part of a broader package? If so, please identify the other elements of the package.
No.
Has an allowance been made for expenses necessary to support the implementation of this proposal? – If no, will the government agency be expected to absorb expenses associated with this proposal? – If yes, please specify the key assumptions.
Any administrated expenses will be absorbed by EPSDD.
Will the proposal generate savings or offsets? If so, please quantify any savings or offsets.
No.
Has the proposal been previously costed by an external (third) party? If so, will a copy of this material, including any assumptions, be made available to Treasury?
No.
What are the community impacts associated with the proposal? Who and how many people will be affected?
Residents of strata complexes in the ACT will benefit from the proposal.
Are there any transitional considerations associated with implementation of the proposal? If so, how will they be managed?
No.
What is the intended implementation date of the proposal?
Funding will be included in the 2025/26 Budget.
When is the proposal expected to be fully operational? Please provide details such as the start and end dates, the level of commitment during each period etc.

It is expected that recruitment will be undertaken after the Budget and a Commissioner will be appointed in 2025.
Will the proposal cease, and if so, when?
The appointment is ongoing.
Is there any additional information relevant to this proposal?
No.