

NT Strata Issues Paper

Paper 1: Legislative Reform

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Strata Community Association (SA/NT)

About Us

SCA (SA/NT) is the peak professional association to provide a forum for improved standards and education in the industry. The South Australia Body Corporate and Community Title Management industry which was formed in 1984 and has recently merged with NT in 2020.

Membership includes strata managers, support staff, committee members and suppliers of products and services to the industry. SCA proudly fulfills the dual roles of a professional institute and consumer advocate.

SCA (SA/NT) is a chapter of the Strata Community Association, which represents practitioners throughout Australasia. The Strata Community Association has formal links with the Community Associations Institute in the USA.

1. Introduction

With an expanding population and an increasing push towards urbanisation, the strata landscape in the Northern Territory (NT) is uniquely positioned to experience tremendous growth over the coming years.

[According to the UNSW City Futures Research Centre](#), from 2020 – 2022, the total property value of insured strata schemes in the Northern Territory increased by nearly \$600m.

However, the current state of the NT's strata landscape presents a unique set of challenges, challenges that warrant a focused examination by industry and government alike.

In exploring the current state of affairs, SCA (SA/NT) seeks to contribute to and progress the ongoing discourse on strata and strata management in the NT, with the goal of fostering a more sustainable and prosperous environment for the industry as a whole.

By fully understanding the policy concerns of the SCA (SA/NT) membership, and all strata management firms in the NT, we may begin the process of meeting our overarching goal of introducing much needed legislative reform to the Territory.

The goal of this issues paper is to identify and prioritise advocacy issues that require action in the Northern Territory. The proposed issues will be presented in two tranches, with the first focused on previously identified areas of legislative reform that require addressing, and the second on bigger picture issues that have continued to rise alongside the growth of strata in the NT.

2. Legislative Reform & Consolidation

The rapidly changing dynamics of the property market, both globally and locally, have put a greater emphasis on the growing demand for strata living.

Unfortunately, the governing pieces of strata legislation in the Northern Territory have been slow to react to the evolving needs of strata stakeholders, industry participants and consumers that have come as a result of the shifting landscape.

The Northern Territory strata industry currently relies on two distinct and separate pieces of legislation, namely the [Unit Titles Act 1975](#), and the [Unit Title Schemes Act 2009](#).

It is not uncommon for jurisdictions to have two sets of governing legislation. For example, New South Wales (the jurisdiction with the highest strata density in Australasia) relies on two sets of governing legislation, the Strata Schemes Management Act 2015 and the Strata Schemes Development Act 2015 (and associated regulations). However, as the names suggest, each piece of legislation governs differing areas, with little to no crossover.

Currently, the overarching issues with the legislative provisions in the Northern Territory have been identified as a result of the differing and significant conflict between the policy provisions in the 2 sets of legislation, causing confusion.

Whilst the *Unit Titles Act 1975* has seen recent attention, the NT's strata legislation has not exhibited the responsiveness to the dynamic and growing challenges of the strata sector that other jurisdictions across Australia have, and obstacles to effective body corporate governance and strata management are rife in the territory as a result.

SCA (SA/NT) members have raised concerns that the *Unit Titles Act 1975* is quite broad, and covers other types of accommodation alongside strata. Similarly, the instruction of the *Unit Title Schemes Act in 2009* did not replace the previous legislation but instead layered on top of it, causing friction between the two governing pieces of legislation.

In fact, the pieces of legislation conflict in some areas, and as a result it can be exceedingly confusing for strata managers and consumers alike to ensure that they are complying with the requirements as prescribed by the legislation.

SCA (SA/NT)'s goal is for the current governing strata legislation in the Northern Territory is for it to be consolidated and simplified, to create greater uniformity between the two acts and ensure that the role of the strata manager is adequately defined.

3. Issues

3.1 Debt Recovery and Financial Hardship

Section (if relevant): *Unit Title Schemes (Management Modules) Part 5 Division 1*

Issue: Under the current legislation, recovering debts and subsequent legal fees in strata communities in the NT can be extremely challenging, and is a systematic problem being faced by bodies corporate across the territory.

Discussion:

Currently, the unit titles legislation does not entitle a body corporate to claim recovery costs as a statutory debt, as it is in other jurisdictions across Australia.

Unfortunately, logistical hurdles in legal processing in the NT make the enforcement of debt recovery extremely challenging, and may cause costs and harm to other members of strata schemes, eroding consumer confidence and compromising the effective management of strata properties.

In the Northern Territory, debt recovery claims under \$25,000 are made as civil claims and are addressed through the Northern Territory Civil and Administrative Tribunal (NTCAT).

According to SCA (SA/NT) membership, strata managers are consistently experiencing circumstances whereby often a scheme resident will refuse to pay their levies on time and will take the body corporate and the dispute to NTCAT for resolution.

With only 1 bailiff in the NT, disputes in the NTCAT can take a significant amount of time to be addressed, all the while the resident involved in the dispute is not paying their levies.

The *Unit Titles Act 1975* is silent on interest. Recovery of debt collection and legal fees has been supported by NT Tribunal in the past, but there have also been decisions made where it has been reversed and only the contribution debt allowed. Notably, the *Unit Title Schemes Act 2009* also does not support debt collection and legal fees. Under the *Unit Title Schemes (Management Modules) Regulations*, it states:

Part 5 Financial and record management

Division 1 Annual contributions and other levies

52 Interest on late payment

- (1) *The body corporate may charge interest for the late payment of contributions and special levies.*
- (2) *The interest rate is:*
 - (a) *an amount, decided by the body corporate, not more than the rate fixed from time to time for section 85 of the Supreme Court Act 1979; or*
 - (b) *if the body corporate does not decide an amount – the rate fixed from time to time for section 85 of the Supreme Court Act 1979.*
- (3) *The body corporate may decide to waive the interest in a particular case.*

53 *Recovery of amount owing*

An amount owing to the body corporate by a unit owner under this Division is a debt due and payable to the body corporate.

However, there is yet to be (as far as SCA (SA/NT) is aware) a precedent set in the NT Tribunal under the Schemes Act for any decision on this matter.

Due to the difficulties in recovering both interest and accrued legal fees, owners are essentially able to utilise unpaid levies as interest free loans, until such time that they are forced to repay.

When some owners default on payments, the financial burden often shifts to the remaining owners, who may be required to cover shortfalls through increased levies or special assessments.

Recommendations:

Improving Recoverability: The lack of robust enforcement mechanisms within the legislation means that even when a debt is legally recognised, collecting the owed amounts can be problematic. Bodies corporate frequently encounter difficulties in enforcing judgments, especially against owners who may be experiencing financial hardship or are unwilling to cooperate.

SCA (SA/NT) believes that the unit titles legislation should be amended so that interest in these cases is recoverable, as well as legal costs and all other incidental expenses.

Financial Hardship Provisions: Introducing financial hardship provisions, such as payment plans, as a method to manage financial difficulties and improve debt recovery within strata schemes in the Northern Territory may be a viable solution.

Other Australian jurisdictions have implemented similar provisions that support the use of payment plans in strata schemes, providing a model for the Northern Territory to build off of:

New South Wales: In NSW, the owners corporation can arrange a payment plan for an owner owing money. If owners are having difficulty setting up a payment plan, lot owners are encouraged to seek the assistance of NSW Fair Trading, which provides free mediation services.¹

Victoria: Under the *Owners Corporations Act 2006*, owners' corporations can enter into payment plans with lot owners to manage overdue levies. The legislation provides a framework for these plans, ensuring they are structured and fair.

SCA (SA/NT) believes that the strata legislation should be amended to allow for the creation and implementation of payment plans. This includes detailing the conditions under which payment plans can be offered, the rights and responsibilities of both parties, and the consequences of non-compliance.

Importantly, Bodies corporate must have mechanisms in place to monitor adherence to payment plans and take action if the terms are not met. This may include regular reviews of payment status and prompt communication with owners who miss payments. However, payment plans should be implemented compassionately, and managed at the committee level only when being provided to a resident, to ensure privacy.

¹ *Strata levies, finances and insurance*. NSW Fair Trading. 30 May 2024. Accessed at: <https://www.nsw.gov.au/housing-and-construction/strata/living/levies-finances-insurance#:~:text=The%20owners%20corporation%20can%20arrange,for%20up%20to%2012%20months>.

3.2 Definitions of Boundaries

Section (if relevant): *Unit Title Schemes Act 2009* Chapter 2 Part 2.3 Division 3; *Unit Titles Act 1975* Part IIIA 21B

Issue: The current legislation makes the definitions of boundaries within a given strata scheme unclear. This can cause complications when considering the implementation, operation and repair of internal infrastructure such as waterproofing and plumbing.

Discussion:

The clarity of boundary definitions within a strata scheme is crucial for the effective management and maintenance of shared and individual property areas.

Under the *Unit Titles Act 1975*, common property is defined as:

common property means so much of a parcel as is not within a unit.

Under the *Unit Title Schemes Act 2009* it states:

Division 3 Scheme land

Subdivision 2 Common property

33 Common property

(1) The common property of a scheme is the part of the scheme land specified as the common property in the scheme statement.

SCA (SA/NT) believes that the current definition of boundaries as prescribed in the legislation is too vague, and leaves too much room for interpretation when considering the individual characteristics of specific strata schemes.

Ambiguity regarding where common property ends and individual property begins often leads to disputes over responsibility for repairs and maintenance. This is especially problematic for shared infrastructure like plumbing and waterproofing, which can span both common and individual areas.

Disputes and delays can increase the overall cost of maintenance and repairs. Critically, legal fees may also begin to accumulate as owners seek resolution through formal dispute mechanisms, including through NTCAT, putting pressure on the already overloaded tribunal.

Other Australian jurisdictions have adequately addressed these issues, specifically by providing clearer boundary definitions within their strata legislation. For example:

South Australia: In South Australia, common property is defined explicitly under the *Strata Titles Act 1998* as:

Part 2—Division of land by strata plan

Division 1—The strata plan

(6) The common property comprises—

- (a) any land or space that is not within a unit;*
- (b) any pipe, cable, wire, duct or drain that is not for the exclusive use of a unit;*
- (c) any structure that is not for the exclusive use of a unit installed before the deposit of the strata plan;*
- (d) any structure installed by a strata corporation as part of the common property;*
- (e) any other structure on the site committed to the care of a strata corporation as part of the common property.*

This clarity helps in assigning responsibility for maintenance and repairs.

Recommendation:

SCA (SA/NT) recommends that the Northern Territory's strata legislation be consolidated and amended to clearly define boundaries within strata titled schemes.

To enhance the clarity of boundary definitions in strata schemes, the Northern Territory should consider adopting similar approaches as seen in other jurisdictions across Australia, where boundaries are explicitly defined.

Revisions may include the introduction of detailed descriptions and examples within the legislation to illustrate what constitutes common property versus individual property, and the establishment of default boundary definitions that apply unless otherwise specified in the strata plan.

3.3 Voting

Section (if relevant): *Unit Title Schemes Act 2009* Part 3.2 Division 2 Meeting and voting; *Unit Titles Act 1975* Part 2; (7) Methods of Voting

Issue: The NT generally requires clearer guidelines on the right to vote.

Discussion:

The right to vote within strata schemes is a fundamental aspect of strata governance, enabling owners to participate in decision-making processes that affect the management and maintenance of their properties.

Under the *Unit Title Schemes (Management Modules) Regulations*, it states:

Subdivision 3

Right to vote 42 Loss of right to vote for failure to pay contributions

(1) A member of the corporation who fails to pay an amount of contributions to the corporation under section 36 of the Act by the date it is required to be paid may not, while the amount is outstanding, vote on a motion of the corporation.

(2) Subclause (1) does not apply to a motion required to be passed by a unanimous resolution or a resolution without dissent.

SCA (SA/NT) understands that there is widespread confusion within the strata industry in the Northern Territory regarding what constitutes the 'due date'. Specifically, this confusion pertains to whether or not the due date is the date of the contribution invoice, or the first day after the previous quarter when considering that owners pay in advance, and it may be interpreted that the due date is the end of that quarter.

Under the *Unit Title Schemes Act 2009*, it states:

Section 79 – Methods of Voting

(9) A unit owner who fails to pay an amount of annual contributions or levies to the body corporate by the date it is required to be paid may not, while the amount is outstanding, vote on a motion of the corporation.

SCA (SA/NT) believes that the legislation is unclear when considering committee members being able to vote on decisions at committee meetings when un-financial (as-above).

Similarly, SCA (SA/NT) believes the legislation lacks comprehensive provisions for voting, electronic voting, and the use of proxies, leading to inefficiencies and potential disputes. Addressing these gaps is essential for ensuring transparent, inclusive, and effective governance within strata communities.

Alternate Jurisdictional Provisions:

Across Australasia, strata legislation has continued to be updated to include provisions to support the facilitation of electronic committee meetings and voting (particularly in a post COVID environment). Models include:

New South Wales: Under the Strata Schemes Management Act 2015, owners can vote in person, by proxy, or electronically. The legislation provides detailed guidelines on the use of proxies, limiting the number of proxies one person can hold and ensuring transparency. Electronic voting is explicitly permitted, facilitating broader participation.

New Zealand: Recent changes to the *Unit Titles Act 2010 (UTA 2010)* have allowed owners and committee members in New Zealand to attend a general meeting or body corporate committee meeting online, by audio link, audio-visual link or other remote access facility.

Unit owners can now vote electronically before a body corporate meeting, and the (UTA 2010) stipulates that comprehensive information about remote attendance and electronic voting is to be provided to unit owners prior to the convention of the meeting.

Recommendation:

The NT generally requires clearer guidelines on the right to vote. This includes clarification surrounding what constitutes the 'due date' within the legislation, and SCA (SA/NT) believes it should be specifically prescribed in the legislation. The legislation should also be clarified when considering committee members being able to vote on decisions at committee meetings whilst un-financial.

Committees should be permitted to make decisions electronically, rather than solely through attendance at committee meetings, thereby allowing for ad hoc decision-making via email.

This will enable more owners to participate in meetings and votes, regardless of their physical location. Implementing secure and user-friendly electronic voting platforms will be crucial to ensure the integrity of the voting process, left to the discretion of the strata manager.

Similarly, the legislation should establish clear rules for the appointment and use of proxies. This should include limits on the number of proxies one individual can hold, and addressing proxy farming

3.4 Statutory Restrictions on Spending

Section (if relevant): *Unit Titles Act 1975 Part V Division 3 (53); Unit Title Schemes (Management Modules) Regulations*

Issue: The currently established legislation regarding expenditure restricts the ability of strata schemes (and by proxy, strata managers) to efficiently and effectively allocate sufficient funds for necessary maintenance, repairs, and improvements.

Discussion:

Currently, under the *Unit Titles Act 1975*, it states:

Part V Management corporations

Division 3 Committees of corporations

53 Statutory restrictions on powers of corporation or committee

- (1) *Unless otherwise determined pursuant to a special resolution of the corporation, a committee shall not, in any one case, undertake expenditure exceeding the amount determined under section 36(1).*
- (1A) *Notwithstanding subsection (1), a corporation or committee shall not cause an improvement to be made to the common property that, in any one case, exceeds the prescribed amount (or where no amount is prescribed, exceeds the amount calculated by multiplying 300 monetary units by the number of units) unless:
 - (a) *it does so in pursuance of a resolution passed in general meeting without dissent; or*
 - (b) *it resolves by special resolution in general meeting that the improvement is essential for the health, safety or security of users of the common property; or*
 - (c) *it does so to comply with a notice or order served on it by a public authority or local government council.**
- (2) *Where proposed expenditure would exceed an amount referred to in subsection (1), the committee shall:
 - (a) *submit the proposal for determination at an extraordinary general meeting of the corporation convened for the purpose of, or for purposes which include, consideration of the proposal; and*
 - (b) *if the proposed expenditure is in respect of work to be performed or the purchase of personal property, submit at least 2 tenders to that meeting with the proposal.**

Similarly, under the *Unit Title Schemes (Management Modules) Regulations* it states:

Part 2 Committee of body corporate

Division 3 Power of committee

24 Restriction on spending by committee

- (1) *The body corporate may decide a maximum amount of expenditure that the committee may undertake for repairs or improvements to the common property of the scheme.*

- (2) *The committee must not undertake expenditure above the amount unless authorised by the body corporate.*

Part 3 Meetings of body corporate

Division 3 Calling general meetings

32 Notice of general meetings

- (3) *The notice must:*

(e) if a resolution to authorise expenditure for repairs or improvements above the amount mentioned in clause 24(1) will be moved – include 2 quotations for the cost of the repairs or improvements;

The statutory provisions on spending outlined in the legislation present barriers to the effective management and maintenance of strata properties.

The costs associated with building rectifications in strata schemes can be significant. However, these rectifications can include essential repairs, maintenance of common property, and addressing building defects, all of which are critical for ensuring the safety, liveability, and long-term value of strata properties.

One of the most notable challenges in the Northern Territory's strata legislation as a result, is the threshold requirement for a special resolution or resolution without dissent to approve spending on building rectifications.

Obtaining agreement among all owners can be extremely challenging, particularly in larger strata schemes with diverse ownership interests. Dissenting votes can halt necessary repairs, leading to delays and increased costs.

These limitations prevent timely and adequate responses to maintenance needs, hinder the adoption of sustainable practices, and may create further financial instability within strata communities.

Recommendation:

SCA (SA/NT) would like to see the legislation in the Northern Territory aligned with the model that is currently implemented in South Australia.

South Australia's tiered approach to spending in bodies corporate represents a progressive and flexible framework designed to address the varying needs and complexities of strata schemes.

This approach, detailed under both the South Australian [Community Titles Act 1996](#) & the South Australian [Community Titles Regulations 2011](#), categorises bodies corporate into tiers based on the number of lots within a scheme, tailoring financial management and decision-making processes to suit the scale and

nature of each scheme. This tiered system aims to enhance efficiency, accountability, and responsiveness in managing common property and community assets.

Under the *Community Titles Act 1996*, it states:

Financial management—Part 11

General—Division 1

119—Limitation on expenditure

Expenditure of an amount exceeding the amount prescribed for that purpose by regulation must not be made by a corporation unless the expenditure has been specifically authorised by an ordinary, special or unanimous resolution of the corporation depending upon the amount involved.

Under the *Community Titles Regulations 2011*, it states:

Part 3—Administration of community schemes

Division 1—General

21—Resolutions authorising expenditure (section 119 of Act)

Expenditure by a community corporation—

- (a) of less than an amount that is equivalent to \$2 000 multiplied by the number of community lots in the scheme must be authorised by an ordinary resolution of the corporation;*
- (b) of an amount that is equal to, or more than, the amount referred to in paragraph (a) must be authorised by a special resolution if—*
 - (i) the expenditure is reasonably required for completing works that are required by a council (or a body established by 1 or more councils) or a public authority, or for works that are required in connection with or as a consequence of such works; or*
 - (ii) the expenditure is less than an amount that is equivalent to \$5 000 multiplied by the number of community lots in the scheme;*
- (c) of an amount that is equal to or more than the amount referred to in paragraph (b)(ii) (but is not expenditure of a kind referred to in paragraph (b)(i)) must be authorised by a unanimous resolution.*

SCA (SA/NT) believes that South Australia's tiered approach to spending in bodies corporate offers a balanced and effective model for managing the financial aspects of strata schemes. By aligning requirements with the scale and complexity of each scheme, this approach enhances financial sustainability, promotes transparency, and ensures efficient management across the diverse landscape of schemes.

3.5 Breaches

Section (if relevant):

Issue: The breaching of by-laws in strata communities can lead to significant problems, undermining the harmony and functionality of the residential environment. These breaches not only erode trust and cooperation but can also impact property values and overall quality of living.

Currently in the Northern Territory, there is the absence of a robust enforcement framework to ensure that strata residents follow the rules of the corporation, which can significantly undermine the governance and sustainability of the strata community as a whole.

Recommendation:

SCA (SA/NT) recommends the inclusion of the ability to place a financial penalty for breaches of by-laws. Specifically, this provision should be able to be implemented *without* the initial involvement of the tribunal (as it does in other jurisdictions).

Direct financial penalties create immediate consequences for breaches of by-laws, encouraging lot owners to comply more readily. The prospect of a swift penalty serves as an effective deterrent to non-compliance with by-laws.

From there, the person in question has the ability to dispute the fine at the tribunal. The onus being on the individual should bypass a significant amount of lengthy and costly tribunal processes (removing pressure from NTCAT), and ensuring that breaches are addressed promptly and effectively.

3.6 Appointment of Office Bearers

Section (if relevant):

Issue: In the NT, the appointment of office bearers is not done at the AGM. It is done at the first committee meeting to be held after the AGM. The issue with this is the calling of a committee meeting is via the Chair, Secretary or an ordinary resolution. If the positions have been vacated at the AGM and need to be set at the first committee meeting who holds the office bearer position to call a meeting.

Recommendation:

SCA (WA) recommends that in regard to the election of a committee at the AGM, the legislation should be adjusted to reflect that as long as there is a quorum able to be established by the committee members attending the AGM, then the office bearers should be able to be appointed immediately after the election.