

NT Strata Issues Paper

Paper 2: Bigger Picture

3 JULY 2024

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 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. Bigger Picture Issues

2.1 Insurance

Section (if relevant): *Unit Title Schemes Act 2009* Chapter 2 Part 2.3 Division 3 (6)

Issue: Strata insurance products in the Northern Territory are being heavily impacted by a hardening insurance market, which is in turn passing a severe increase in insurance costs and premiums on to consumers. This is particularly impactful on strata insurance consumers, as strata insurance, unlike some other forms of insurance, is almost always necessary.

Discussion:

Under the current market conditions, there is a considerably lower appetite for risk, leading to a severe decrease in competition, and strata insurance offerings as a result.

Currently, SCA (SA/NT) members have indicated that there are only 2 active insurers in the Northern Territory residential strata insurance market, namely Territory Insurance Office (TIO) and CHU Underwriting Agencies.

The lack of competition, supply and diversity of strata insurance options makes it incredibly difficult for strata managers to find insurance options that are appropriate or cost effective for their consumers, in the face of skyrocketing insurance premiums (managers have indicated that insurance premiums are facing a year-on-year increase of roughly 15% p.a over the past 5 years).

It is important to note that the availability, affordability and transparency of strata insurance remains a crucial priority for the strata sector. However, there is no quick fix to these issues, and systemic changes are required over a long period of time to ensure that consumers have access to cost effective insurance options and are adequately protected from an unforgiving strata insurance market.

Underinsurance

SCA (SA/NT) understands that consumers in the market are seeking alternative options in an attempt to lower costs, such as going direct to market.

Whilst this option may lower premiums for consumers, it leaves body corporates at the significant risk of being underinsured. Alternatively, another option consumers are looking at is increasing their excesses, in order to mitigate the costs of premiums, however with premiums rising regardless this option has become less and less attractive.

Northern Australia Reinsurance Pool

The introduction of the Northern Australia Reinsurance Pool was intended to act as a mechanism to remove risk and soften market conditions in Australia's most affected areas.

However, whilst SCA (SA/NT) understands that some areas of Queensland have started to experience a slight impact on premium reductions since the introduction of the pool, members have indicated that the Northern Territory is yet to see any real benefits or impact as a result of its implementation.

Recommendations:

SCA (SA/NT) recommends that the Northern Territory Government investigate potential solutions that seek to soften strata insurance market conditions in the Territory. Solutions that the government could consider may include:

Mandatory Sinking Funds & Maintenance Plans

A sinking fund is a reserve of money set aside for future capital expenses, which helps mitigate the financial burden on owners and enhances the overall financial health of the strata scheme.

In response to similar challenges, various jurisdictions across Australia have implemented mandatory sinking fund and maintenance plan requirements, to ensure that strata schemes are financially prepared for both long-term maintenance and unexpected repairs, which can produce downward pressure on insurance premiums:

New South Wales: The [Strata Schemes Management Act 2015](#) mandates that strata schemes establish a sinking fund, referred to as the 'capital works fund', to cover major expenditure:

Part 5 Financial Management

Division 1 Funds and accounts of owners corporation

74 Capital Works fund

(1) **Establishment of fund** An owners corporation must establish a capital works fund.

Similarly, the strata scheme must make a 10-year plan of expected major work that will be paid with the fund, reviewed at a minimum of every 5 years, and considered at every AGM. The amount required in the capital works fund differs between strata schemes, and considers factors like the age and features of the building.

Victoria: Victoria requires strata schemes to maintain a maintenance plan and a sinking fund under the Owners Corporations Act 2006:

Part 3—Financial management

Division 4—Maintenance fund

40 Establishment of maintenance fund

An owners corporation that has an approved maintenance plan must establish a maintenance fund in the name of the owners corporation.

42 Payments into maintenance fund

(1) If an owners corporation has established a maintenance fund, the following must be paid into that fund—

(a) any part of the annual fees that is designated as being for the purpose of the approved maintenance plan;

Queensland also mandates a sinking fund for strata schemes under the Body Corporate and Community Management Act 1997, ensuring that sufficient funds are available for future capital works. Other states, such as Western Australia and South Australia, have similar requirements in their respective strata legislation.

Introducing a mandatory sinking fund in the Northern Territory could provide a robust financial safety net for strata schemes, ensuring they are better equipped to handle the rising costs and challenges posed by the hardening insurance market.

Mandatory Valuations

The implementation of mandatory valuations would ensure that strata properties in the Northern Territory are adequately insured, providing a clear and accurate assessment of their value and reducing the risk of underinsurance. Furthermore, mandatory valuations contribute to market stability by providing insurers with reliable data for risk assessment and premium calculation. Mandatory valuations have been integrated into strata management frameworks across some Australian jurisdictions:

Queensland: The *Body Corporate and Community Management Act 1997* stipulates that if the body corporate insures one or more buildings, it must get those buildings valued for the full replacement cost. An independent valuation must be undertaken at least every 5 years. Each owner must pay part of the cost to have the property valued. How much they pay depends on their share of the building insurance premium.¹

New South Wales: In 2015, the NSW government removed the requirement for buildings to obtain an insurance valuation every 5 years from the legislation. However, whilst there is now no legal obligation for regular valuations, owners corporations are legally obliged to ensure there is no shortfall between the sum insured and the building's replacement costs. Any shortfall will be payable by the owners.

SCA (SA/NT) would also recommend the implementation of financial penalties and enforcement mechanisms, to ensure that lot owners comply with the legislative requirements.

¹ *Building insurance and valuation*. Queensland Government. 13 January 2023. Accessed at: <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/finance-insurance/insurance/building>

2.2 Building Reform

Section (if relevant):

Issue: In the Northern Territory (as in the rest of the country), building quality issues within strata buildings pose significant concerns for consumers, impacting both their financial investments and their overall safety and well-being.

Discussion:

Almost all jurisdictions across Australia have begun to investigate and pay attention to the development and quality of their buildings, as it becomes clearer and clearer that Australia will have to have an even greater reliance on multi-unit buildings as we move forward.

For example, a recent SCA (NSW)'s recent strata defects survey identified that 53% of buildings in the survey have had serious defects in common property, up from 39% in 2021.

Common defects in strata include inadequate waterproofing, faulty fire safety systems, and substandard construction materials, all of which can lead to costly repairs, legal disputes, and potential safety hazards for occupants.

Members in the Northern Territory have indicated that there are similar examples and instances of poor building quality in the NT that they are aware of, which is exacerbated by a lack of building regulation and oversight.

Defects can cost people a significant amount of time, money and emotional distress, and governmental assistance is required to ensure that buildings are of a better quality, more affordable, and environmental factors are mitigated. Consumers must be able to own, occupy and use safe and resilient buildings, in order for their confidence in the industry to be increased.

Recommendation:

SCA (SA/NT) recommends that the Northern Territory Government investigate potential solutions that seek to improve building quality and condition in the Territory. Solutions that the government could consider may include:

Strengthening building & developer compliance and enforcement

Strengthening the professionalism of the development sector through reforms, including revisions on the current education license for builders and developers in the NT, to seek to address ongoing and widespread poor practices.

Building Bond Scheme

New South Wales has introduced the Strata Building Bond and Inspections Scheme, requiring developers to lodge a building bond equal to 2% of the contract price for high-rise residential strata buildings. This bond serves as security against potential defects identified during the initial two-year warranty period, providing funds for rectification works if necessary.

Mandatory insurance for Builders

Mandatory building insurance for builders ensures that financial resources are available to builders rectify defects, thereby protecting consumers and enhancing overall building quality. In New South Wales, the Home Building Compensation Fund (HBCF) mandates that builders take out and show proof of insurance for residential building work valued over \$20,000.

Similarly, Queensland's Queensland Building and Construction Commission (QBCC) administers a statutory insurance scheme, that provides coverage for defective work, ensuring builders' accountability and financial responsibility for rectifications.

Measures such as the ones outlined above may serve to increase consumer protection by providing recourse for addressing building defects and ensuring that developers and builders are held accountable for substandard workmanship.

2.3 Smoke Drift

Section (if relevant): *Unit Titles Act 1975* Schedule 1 (4)(f)

Issue: Strata schemes in the Northern Territory are currently hindered by inadequate regulatory measures to effectively manage the issue of 'smoke drift'.

Discussion:

'Smoke Drift' is the term that describes the circumstance where smoke from tobacco or (other sources such as vapes, barbeques etc.) drifts between lots within a strata scheme, which may create significant health and comfort concerns for residents.

Smoke drift has the potential to exacerbate respiratory conditions, trigger allergies, and contribute to serious health issues such as heart disease and lung cancer. Additionally, the persistent presence of smoke can diminish quality of life for other residents, causing discomfort and disputes.

Presently, the Northern Territory lacks specific provisions in its strata legislation to address smoke drift effectively. Enhanced regulatory measures to address smoke drift have the potential to facilitate a healthier and more harmonious strata living environment.

Several jurisdictions have already implemented legislative measures to address the issue of smoke drift, with Queensland's recently implemented changes being the most prescriptive across all jurisdictions in Australasia.

Alternate Jurisdictional Provisions:

New South Wales

Legislation introduced in 2016 in NSW makes considerations that recognise that smoking may cause nuisance or hazard to another person. Under the [Strata Schemes Management Act 2015](#):

Part 8 Obligations of owners, occupiers and others relating to lots

Division 1 Obligations relating to lots

153 Owners, occupiers and other persons not to create nuisance

(1) An owner, mortgagee or covenant charge in possession, tenant or occupier of a lot in a strata scheme must not—

(a) use or enjoy the lot, or permit the lot to be used or enjoyed, in a manner or for a purpose that causes a nuisance or hazard to the occupier of any other lot (whether that person is an owner or not

Note— Depending on the circumstances in which it occurs, the penetration of smoke from smoking into a lot or common property may cause a nuisance or hazard and may interfere unreasonably with the use or enjoyment of the common property or another lot.

Alongside this provision, the legislation introduced model by-laws that regulate smoke drift, that may force strata schemes to either enforce a by-law that prevents anyone from smoking on common property (except in designated areas) as well as ensure that the smoking occurring on a private lot does not penetrate both common property and the surrounding lots. Contraventions of these by-laws may be enforced by the NSW Civil and Administrative Tribunal.

Queensland

Recent changes introduced under the [Body Corporate and Community Management and Other Legislation Amendment Bill 2023](#) allow:

- Bodies corporate to make by-laws that prohibit smoking (including vapes) on common property or an outdoor area such as a balcony;
- Make clear that regularly exposing a person in another unit or on common property to second-hand smoke is a nuisance, unreasonable interference and a **health hazard** that should not be occurring.²

Recommendation:

It is recommended that the Northern Territory's strata legislation be amended to incorporate specific regulations addressing smoke drift.

SCA (SA/NT) recommends the adoption of best practice regulatory interventions for smoke drift that have been adopted in Queensland. By following this model, the Northern Territory can significantly improve the living conditions within strata communities, as well as ensuring strata residents' health and well-being are being protected from the adverse effects of smoke drift.

² Key property reforms tackle sunset clauses, smoking and pets in units. (Qld) Ministerial Media Statements. 24 August 2023. Accessed at: <https://statements.qld.gov.au/statements/98513>

2.4 Pets

Section (if relevant): *Unit Titles Act 1975* Schedule 1 (4)(f);

Issue: Currently, the Tenancy Act in the Northern Territory (*Residential Tenancies Act 1999*) permits a tenant to request a pet from the landlord. However, current strata law supersedes this provision, requiring the unit owner to request approval at a General Meeting. This process necessitates a 14-day notice period and is often challenging to secure approval. This situation highlights the confusion and conflict between the Tenancy Act and Strata legislation in the Northern Territory, complicating the process for tenants and unit owners alike.

Recommendation:

SCA (SA/NT) recommends that the strata legislation in the Northern Territory regarding pets is revised. The NT Government may look to other jurisdictions to formulate a more robust legislative framework, such as the jurisdictions below:

New South Wales

Recent changes under the [Strata Schemes Management Amendment \(Sustainability Infrastructure\) Act 2021](#) have been made in NSW, to make the ownership of pets within a strata lot fairer and more equitable.

Key components of the changes include:

- Pets may only be allowed to be refused from a strata scheme if it causes an ‘unreasonable interference,’ i.e a hazard or nuisance for other occupants.
- An owners corporation cannot charge a resident a fee or bond, or require insurance to be taken out for a pet.
- Owners corporations can create their own rules and by-laws for pets. However, by-laws banning all pets are not valid and banning animals based on size, type, or quantity, will not be valid in most circumstances.
- Tenants may require permission from a landlord as to whether or not a pet is allowed.

For the full scope of information, please visit the NSW Fair Trading information page [here](#).

South Australia

In South Australia, strata and community title properties are subject to their own by-laws regarding pet ownership, which occupants will be required to follow.

Under the [Strata Titles Act 1998](#) it states:

Schedule 3—Articles of strata corporation

3. *Subject to the Strata Titles Act 1998, A person bound by these articles must not, without the strata corporation's consent, keep any animal in, or in the vicinity of, a unit*

This default rule means that a resident must have the approval of the strata corporation in order to own and have a pet reside within the scheme. However, corporations may modify their by-laws to ease the facilitation of pet ownership (via special resolution) if they wish to do so.

Australian Capital Territory

Under changes implemented to the *Unit Titles (Management) Act 2011*, an animal may be kept in a strata scheme without the direct consent of the owners corporation as long as the scheme has previously implemented a “pet-friendly rule.” In this case, the owner only has to notify the owners corporation of the pet ownership in writing and include details of the animal. Without a pet-friendly by-law being implemented, owners must obtain consent from the OC.

According to [Vantage Strata](#), owners corporations will have until their second annual general meeting to decide whether to adopt the new pet friendly rule, determine their own pet friendly rule, or retain the consent process prescribed under the Act for the keeping of pets.

3.1 Parking

Section (if relevant): *Unit Title Schemes Act 2009* Schedule 2 (3)

Issue: There is currently a lack of effective powers to deal with illegal parking in strata schemes in the Northern Territory.

Discussion:

Unlike other jurisdictions that have implemented robust enforcement mechanisms, the Northern Territory's strata legislation does not provide sufficient authority or clear processes for dealing with parking violations within strata properties.

This regulatory gap often results in persistent issues that disrupt the harmony and functionality of strata communities, causing frustration among residents, visitors and administrators.

Recommendation:

SCA (SA/NT) recommends that the legislation is strengthened to include *explicit powers* for enforcing parking regulations, issuing fines, and removing unauthorized vehicles.

Enhancing these legislative provisions would greatly improve the management of common property, ensuring that strata schemes operate smoothly and efficiently while maintaining the integrity and intended use of shared spaces.

3.2 Sustainability Infrastructure

Section (if relevant):

Issue: There is a need to incorporate provisions within the strata legislation in the Northern Territory that specifically allow for the introduction of sustainability infrastructure, with barriers lower than that of an ordinary resolution, mirroring advancements observed in jurisdictions such as New South Wales.

Recommendation:

New South Wales has introduced comprehensive reforms that empower strata schemes to adopt sustainable practices more efficiently.

These reforms facilitate the installation of solar panels, energy-efficient systems, and water-saving devices through streamlined approval processes, thereby fostering environmental stewardship and long-term cost savings for residents.

The [Strata Schemes Management Amendment \(Sustainability Infrastructure\) Act 2021](#) introduced several amendments to the Strata Schemes Management Act, notably including:

Section 5 Resolutions of owners corporations

Omit section 5(1)(b). Insert instead—

(b) of the value of votes cast—

(i) not more than 25% are against the resolution, or

(ii) if the resolution is a sustainability infrastructure resolution—less than 50% are against the resolution.

SCA (SA/NT) recommends that the government consider the introduction of similar legislative updates in the Northern Territory. Such an implementation would significantly promote the adoption of green technologies, reduce carbon footprints, and align with the territory's broader environmental objectives.

3.3 Additional Recommendations

The following is a series of additional recommendation that SCA (SA/NT) believes would provide additional benefits to the strata industry in the Northern Territory.

Unit Titles Reform Committee

SCA (SA/NT) suggests the formation of a Unit Titles Reform Committee, with participants from the strata sector in the Northern Territory providing formal feedback that can be provided to government, alongside the NT Government's participation.

SCA has successfully implemented similar processes in other jurisdictions across both Australia and New Zealand, guiding the formation of committees that have resulted in having a tangible and practical impact on changing governing strata legislation. SCA (SA/NT) would be happy to guide that process in the Northern Territory as well as to facilitate and act as the secretariat of such a committee.