

RESPONSE TO DISCUSSION PAPER

INTRODUCTION

My wife and I purchased our Hobart apartment in October, 2011. As incipient retirees, the apartment seemed to suit our needs to a very large degree. Unfortunately our life there has been far more unpleasant than we could ever have imagined. Over the past nine years we have had many opportunities to think about the adequacy of The Strata Titles Act 1998.

I made an application for relief on the following matter in 2012 and, whilst it was successful, our problems in relation to this issue did not end there. Our purchase (we received our title straight away as opposed to having it reside in a bank under loan conditions) exposed, what I can only describe, as fraudulent activity (let us not forget that a car parking space within the Hobart CBD is worth a considerable amount of money). The application for relief addressed a situation whereby certain people re-arranged some of the car parking spaces to advance their own needs and in doing so took away a space from Lot 2 and allocated an extra one to Lot 1 (which was owned by one of these people). It should be noted that all of the car parking spaces in our apartment block are privately owned under title, except for three visitor spaces which form part of the common property. Even though the car parking spaces were re-arranged in accordance with the Recorder's directions, we suffered ongoing defamation and persecution. We are not "thieves." We are law abiding citizens and we believe that adherence to the law is the most civilizing plank in our society.

I have very strong feelings about this matter, so much so, that I strongly recommend, that, as a part of this review, the Recorder be given powers to refer matters of a suspected criminal nature to Tasmania Police.

The Discussion Paper is somewhat overwhelming in its scope and clearly the product of a considerable amount of research and thoughtful deliberation. Therefore, it is my intention to address only some of the identified Areas of Focus. I certainly believe that the Act needs to be improved to meet current needs.

6. Common Property.

I also made an application for relief on the following matter, and, despite my best attempt at espousing the virtues of Australian democracy, was defeated by 120 (4) which, to my shame, I overlooked. In picking up this issue again, I want to refer to a specific situation where local government has, as part of the planning process leading to the construction of an apartment block, directed that there be a set number of body corporate controlled visitor car parking spaces on the common property. This situation is also based on one where all owners hold car parking spaces under title. It is my belief that such common property spaces should not be available for exclusive use. Their purpose has been clearly delineated by local government and the Recorder should not become entangled in such a situation (and certainly not act in any way which compromises the integrity of local government planning decisions). The body corporate controlled visitor spots in our apartment have been allocated and then re-allocated for exclusive use on a number of occasions. Not only has this caused a lot of aggravation and resentment amongst owners, it has also used up body corporate funds in repeated registrations. As things stand, two of the three body corporate

spaces in our apartment block have been clearly marked and regulated for visitor parking only and the third will, under the terms of the Act, expire in the near future.

I recommend that an addition be made to 7 94 of the Act which forbids the exclusive use of any common property parking space which is subject to a local government planning provision, such as for visitor parking. I also ask that a critical light be focussed on the status of 120 (4).

8. Meeting procedures

Consider a situation whereby an owner in an apartment block has been constantly tardy in paying body corporate levies over a period of three or more years, has had to be threatened on a number of occasions that if they are not paid by a certain date an application for relief will be submitted, and yet, this person is the biggest user of body corporate infrastructure, including such things as the elevators, the garage roller door and security lighting. It makes a good case for such a person to be deemed ineligible to vote at body corporate meetings whilst levies are outstanding.

Some other Australian jurisdictions have determined that a person such as this is not entitled to vote and I believe that Tasmania should adopt a similar policy.

11. Roll or register for a body corporate

All owners should be required to provide an Australian postal address for the roll or register.

13. Dispute Resolution

I believe that as many disputes as possible should be solved at the body corporate level. I also believe that there will always be a need for independent arbitration of some kind.

14. Strata Managers

I believe that, where appropriate, the body corporate should be managed by an informed and skilled practitioner. There have been situations where developers have decided to become body corporate managers. In my experience, such people lack the necessary skills and should be encouraged to move onto their next project and leave body corporate management to the professionals.

I further believe that body corporate management should be regulated and that strata managers should publish a professional code of practice as part of their business model. It is the responsibility of strata managers to be highly familiar with both the Act and the relevant building regulations. This will take the pressure off owners so that they can pursue their mainstream activities without having to slave over the intricacies of the Act.

18. Compliance and Enforcement

This is an area in which requires further action.

A strata environment is much more intimate than that of the a house on a suburban block. It is therefore an environment suited to residents who are able to shown a little more self-restraint when it comes to the rights of others. All strata plans have by-laws which bespeak of the levels of self-restraint that residents need to exercise. In my experience most owner/occupiers are very considerate of their neighbours. The problems, when it comes to noise disturbance, are usually

Submission from Peter Tyrell

attributable to renters. Where there is a problem with noise disturbance, the essential interface rests between body corporate management, acting on behalf of other owners, and the owner of the unit which has an unruly tenant. The first course of action should be to provide the tenant with a copy of the body corporate by-laws. If, after that, the tenant refuses to comply with the by-laws, body corporate management should issue a formal written notice. If the tenant still will not comply, body corporate management should make an application for relief against the owner. If the Recorder is satisfied that the substance of the application is both valid and sufficient in evidence, the owner in question should be issued with a strong and unequivocal order (one directed at either getting the tenant to comply with the by-laws or removing the tenant from the apartment). It would help if owners include a clause in the tenancy agreement that the tenant must act in accordance with the body corporate by-laws. Experience has taught me that such matters are best dealt with at body corporate level rather than the needless involvement of Tasmania Police and local government environmental officers.

The apartment block in which I live is located within the Hobart CBD. Unfortunately some tenants have seen this as an opportunity to invite their mates around for rowdy, drunken parties which go long into the night. Even inner-urbanites have rights to peace and quiet at certain times of the day.

The other key issue which needs to be addressed is smoking. Again, an intimate, tiered environment is not one in which smoking can be conducted without having a significant impact on other people. Passive smoking is a serious health issue for which it has been determined by authorities that there is no safe level. In my opinion bodies corporate are entirely justified in making their apartment blocks smoke free environments. The new strata titles act could play an important role in dealing with this public health concern.

At risk of being seen as xenophobic, I want to make some comments on overseas ownership of apartments in Tasmania, most particularly those which are tenanted. I have observed that some such owners take the attitude that what applies in their own country should also apply in Tasmania. Sorry, that is not the way it should work. Overseas owners, in buying property located in Tasmania, are beholden to Tasmanian law. Maybe this is something that the Tasmanian Government should look at, as has been done in other states of Australia. If overseas owners will not comply with Australian law and, in the process, render themselves incommunicative, their ownership rights within Australia should be challenged. Australia is a sophisticated democracy based on the Westminster system of law and governance - something that we should all treasure and protect.