



## Rental and Housing Affordability Crisis Inquiry

*Strata Community Association (Vic) Submission*

21 July 2023

## Introduction

Strata Community Association (Vic) Ltd is the peak body for the Owners Corporation sector, which comprises commercial, industrial, and residential properties ranging from two units in a suburban street to many hundreds of units in inner city apartment buildings. Owners corporations represent property valued at over \$300 billion and encompass commercial, retail, lifestyle resorts, retirement villages, car parks, storage facilities, industrial and, increasingly, mixed developments. More than \$1 billion per year is collected and spent within the sector. It is estimated that around 1.6 million Victorians – a quarter of the state’s population – either live in, or own property in, an owners corporation.

## Background – Strata Community Association (Vic)

SCA Victoria was established in 1990, it succeeds Owners Corporations Victoria (OCV) and Institute of Body Corporate Managers Victoria (IBCMV). SCA (Vic) members comprise a significant percentage of all professional owners corporation managers, with over 800 members managing upwards of 450, 000 lots. SCA (Vic) Associate members are industry suppliers, including waste management providers, Essential Safety Measures managers, quantity surveyors, insurers, lawyers, accountants, facility managers, property valuers, building maintenance and tradespeople. Members benefit from representation, support, advice, and promotion. With Continuing Professional Development (CPD), Best Practice Guidelines on regulatory and legislative amendments, updates on VCAT determinations and emerging issues, SCA members are best placed to manage OCs and empower Lot Owners and occupiers.

In Victoria, the *Owners Corporations Act 2006* defines an Owners Corporation as a ‘body corporate which is incorporated by registration of a plan of subdivision or a plan of strata or cluster subdivision.’ The individual Lot Owners form a collective known as an Owners Corporation (OC). This is a legal entity which must comply with its governing legislation and enabled regulations. The responsibility to maintain common property and shared services is that of the owners corporation.

Owners corporations can choose to appoint a registered manager who will act on their direction, including engaging contractors for maintenance and repairs, on behalf of the OC. The manager assists the OC to meet these and other obligations. As part of the Annual General Meeting, Lot Owners collectively agree on a budget to fund ongoing maintenance and shared service costs. Items agreed can include the management fee, caretaking costs including gardening, utility charges, repairs to essential services, insurance premiums and waste management expenses. These are funded through fees/levies.

**The growing number of people living and working in strata titled arrangements necessitates an increasing focus on regulatory responses for solutions to issues that are faced on a daily basis, including: the cost of housing, urban renewal, sustainable living, regulatory complexity, unlimited liability risks in relation to volunteer strata committee members, building defects and skills shortages.**

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## SCA (Vic)'s Response to the *Inquiry into the Rental and Housing Affordability Crisis in Victoria*

Strata Community Association Victoria welcomes the opportunity to contribute this submission to the Legislative Council's Legal and Social Issues Committee regarding the rental and housing affordability crisis in Victoria.

### Summary

SCA (Vic) has responded to the call for submissions by the Rental and Housing Affordability Inquiry with the following key recommendations to Government:

- Options to address insecurity, availability and affordability issues facing Victorian renters
  - **Strata living provides an answer to the cost-of-living crisis as well as housing affordability**
- The adequacy of regulation with regards to standards and conditions of rental housing
  - **Relevant regulations will need to be changed to reflect any addition of affordable housing to strata developments and their consequent impacts**
- The adequacy of the rental system and its enforcement
  - **The rental system and its enforcement mechanisms will need to be strengthened to represent the position of lot owners if social housing is planned for strata developments**

## Rental and housing affordability crisis – how strata living can assist

SCA (Vic) believes strata living can help provide solutions to the rental and housing affordability crisis in Victoria. 1.6 million Victorians live in strata and that figure has increased in recent years as reflected in figures released in the [Australasian Strata Insights 2022 Report](#) by the City Futures Research Centre at UNSW. Strata living serves as [a preferred housing choice for discerning owners wanting best in class location and amenity and also a cost effective entry point to the market.](#)

### How can strata living assist rental and housing affordability?

Living in strata, whether buying or renting, is generally more affordable for Victorians than buying or renting a house.

Recent figures indicate [the median house price across Victoria is \\$750,000 and the median unit price is \\$585,000, while in Melbourne the median house price is \\$850,000 and the median unit price is \\$601,000.](#)

As a result strata living, which includes properties such as units and townhouses as well as many hundreds of apartments in inner-city buildings, can inject a [much-needed affordable option into the housing mix.](#)

The benefits to strata living can be more broadly observed in regard to the cost-of-living situation, beyond the direct expense of owning or renting a property, by [reducing the need for two-car ownership, and long commutes on public transport or on congested roads where tolls may apply.](#)

Strata communities can, therefore, play a significant role in broader efforts to create a more sustainable Victoria.

SCA (Vic) supports the creation of [smarter, greener and more liveable strata communities](#) and will continue to work closely with the Victorian Government to expand initiatives to help achieve these aims.

### What factors need to be considered for strata development to assist in easing the rental and housing affordability crisis in Victoria?

Two key factors are essential to unlock the potential for strata living to provide ongoing solutions to the rental and housing affordability crisis in Victoria:

- Supply issues
- Regulatory reform

## Supply issues

Supply issues will be relevant to addressing the rental and housing affordability crisis in Victoria.

In particular, ensuring the number of properties available to Victorians on the market is able to keep pace with the demand from consumers.

Research has indicated [not enough medium-density housing, such as mid-rise and low-rise apartments, townhouses and terraces, has been built in established inner-city suburbs](#). Further, while there has been more high-rise apartments developed the [overall dwelling supply has not matched population growth, resulting in higher prices](#).

The high demand for unit rental, and limited supply, has seen [rental prices increase and the gap to house rental prices shrink](#). There are also concerns about the [impact short-term letting has had in terms of reducing the availability and expense of existing stock for long-term rentals](#).

It will be necessary for the Victorian Government to address supply issues to ensure Victorians are able to access affordable and sustainable housing, though additional input from SCA (Vic) would be beyond our scope.

## Planning reform

Planning issues are also important to help ease the rental and housing affordability crisis.

One option for consideration would be changes to the *Subdivision Act 1988* in relation to strata termination or renewal. Currently, in Victoria, the unanimous resolution of members of an owners corporation is required in order (amongst other things) to:

- Dispose of the fee simple;
- Purchase or otherwise obtain land;
- Increase or reduce the number of lots affected by the owners corporation;
- Create new lots or new common property;
- Dissolve itself (under specific circumstances);
- Merge with another owners corporation; or
- Consolidate into a single lot all the land affected by the owners corporation.<sup>1</sup>

As a result, it can be difficult for lot owners to pass resolutions and this difficulty is not necessarily addressed by additional provisions in the Act which are intended to allow VCAT power to make orders for applications.<sup>2</sup>

Other jurisdictions around Australia, such as New South Wales and Western Australia, currently have lower requirements for passing resolutions related to strata renewal.

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<sup>1</sup> *Subdivision Act 1988* (Vic) s32(a)-(m)

<sup>2</sup> *Subdivision Act 1988* (Vic) s34(3)(a)-(c)

In New South Wales, strata renewal plans require a minimum threshold of support from lot owners in order to be passed. This threshold is set as having the support of the owner or owners of at least 75% of the lots, other than utility lots, in the scheme.<sup>3</sup>

In Western Australia, a resolution to terminate a strata titles scheme can only be passed if the strata titles scheme has 5 or more lots and the number of votes cast in favour of the termination proposal is at least 80% of the total number of lots in the scheme.<sup>4</sup>

SCA (Vic) believes a reduction in the voting threshold from unanimous approval (100%) to a lower requirement of 75% or 80%, in line with legislation in New South Wales and Western Australia, would provide opportunities to open up the renewal of urban infill.

More broadly, Infrastructure Victoria recently released its [Policy Evidence for More Housing Options in Victoria](#) report which highlighted a number of potential planning reforms in this space.

Amongst the options considered by Infrastructure Victoria were improving standards for low-rise apartments as well as expanding where those apartments can be built, which would result in a larger number of homes on sites than is currently permitted and help increase supply.

In addition, reforms could be made to local planning processes to reflect the importance of strata living in addressing the rental and housing affordability crisis in Victoria while also balancing the concerns of existing neighbourhood residents. Objections to strata developments are notable [in inner-city suburbs, which can consequently add to rental concerns](#).

Community feedback is essential in relation to proposed developments though the positions of various stakeholders need to be carefully weighed and considered to ensure optimal outcomes.

It will be vital that governments and the property industry coordinate policy solutions to take into account factors such as millions who will be fresh entrants to the property market in the coming decades, better planning, better building quality and better governing regulation to improve quality of living.

Accordingly, consideration will need to be given to policy outcomes which reflect population growth and housing shortages, ageing building stock, and [the current construction slowdown and global economic challenges impacting on the building industry](#).

#### Recommendations:

- **Supply issues**
  - **Consideration by Victorian Government of reasonable steps to assist and alleviate housing supply issues.**
- **Planning reform**
  - **Changes to the minimum threshold of support for strata renewal from unanimous (100%) to a lower figure of between 75-80% in line with other states in Australia.**
  - **Streamlining local planning processes.**

<sup>3</sup> *Strata Schemes Development Act 2015* (NSW) s154 (definition of 'required level of support')

<sup>4</sup> *Strata Titles Act 1985* (WA) s182(7)(a)-(b)

## Regulatory change to reflect addition of affordable housing to, and its potential impact on, strata developments

Introducing, and making more widespread, affordable housing in strata communities may pose challenges to lot owners in relation to existing (or future) rights and obligations. These rights and obligations span across voting rights in owners corporation meetings as well as financial liabilities associated with lot ownership.

In Victoria, affordable housing is defined as ‘housing, including social housing, that is appropriate for the housing needs of any of the following – very low income households; low income households; moderate income households.’<sup>5</sup>

SCA (Vic) recommends considering changes to legislation affecting strata residents, in particular, the *Subdivision Act* and the *Sale of Land Act* as well as creation of an assistance fund for special levies.

### Subdivision Act

The *Subdivision Act* requires that a plan for the creation of an owners corporation, or merger of owners corporations, must specify details of lot entitlement and lot liability.<sup>6</sup> Lot entitlement refers to [the share of ownership of common property and determines voting rights](#), while lot liability represents [the share of owners corporation expenses that each lot owner is required to pay](#).

Understandably, the addition of affordable housing into existing or emerging strata communities has the potential to impact on how lot entitlement and liability is determined but also how those liabilities are met.<sup>7</sup>

Under existing legislation in Victoria, lot liability must be allocated equally unless:

- There is a substantial difference in size between the lots; or
- Different lots have a bearing on the consumption or use of common utilities or the cost of maintaining the common property; or
- The number of occupiers in each lot has a greater bearing on the consumption or use of the common utilities or the cost of maintaining the common property than the size of the lot.<sup>8</sup>

If the Victorian Government is to implement affordable purchase housing in existing or upcoming strata developments, there should be scope to recognise (through changes to the *Subdivision Act*) that buyers eligible for such lots may still face ongoing difficulties in fulfilling their lot liabilities. This is a situation which is broadly analogous, albeit contextually different, to that being faced by social housing tenants in New South Wales who face ongoing difficulties with rental payments.

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<sup>5</sup> *Planning and Environment Act 1987* (Vic) s3AA(1)(a)-(c)

<sup>6</sup> *Subdivision Act 1988* (Vic) s27F(1)(a)

<sup>7</sup> Charges can be passed on by operation of the benefit principle in the *Owners Corporation Act 2006* (Vic) in ss.23(3A), s23A, s24(2A) and (2B), and s49(2)

<sup>8</sup> *Subdivision Act 1988* (Vic) s27F(4)(a)(i)-(iii)



While the NSW situation is not perfectly analogous, in the sense that it reflects social housing tenants unable to pay rent rather than affordable housing residents unable to pay lot liabilities, it is illustrative of the challenges of incorporating affordable schemes into existing or upcoming strata developments.

[The challenge presented in the NSW example is that tenants are unable to pay rent and are at risk of losing their tenancy, and that not enough is being done to proactively identify and support tenants who regularly fail to make rental arrears.](#)

A similar situation could readily occur within the affordable housing space, where those eligible for an affordable purchase may be unable to manage (or experience difficulty managing) ongoing lot liability obligations. Were this to arise, it may place unfair financial burdens on ordinary lot owners to cover costs as well as place unfair financial burdens on affordable housing owners. These concerns could be mitigated by legislative changes to how lot liability is determined in the first instance, or by a special fund set up by the Victorian Government to provide financial assistance to help cover lot liabilities for affordable housing owners in existing or upcoming strata developments.

SCA (Vic) supports measures which would protect the entrance of affordable housing residents into strata communities and believes government should provide financial support where practicable to ensure affordable housing residents in strata can manage ongoing lot liabilities. This would also be a beneficial step in ensuring that existing and/or ordinary lot owners are not required to cover additional costs associated with these measures.

#### Sale of Land Act

SCA (Vic) believes that restrictions on who affordable housing lots can be sold to should be implemented. At present, there are domestic and international examples of affordable housing restrictions which determine the subsequent sale and purchase of affected lots.

In the United Kingdom, for example, [restrictions can be put in place with regard to affordable housing to determine the price a property can be sold for and who the property can be sold to.](#) This is known as a [Section 106 agreement and, where such an agreement is in place, allows government to approve any interested buyers for affordable housing via an application process before a sale can be made.](#)

In Australia, the South Australian Government introduced an [inclusionary planning requirement in 2005 which requires that 15% of all housing in significant residential developments should be affordable to low or moderate-income earners.](#) Under South Australia's affordable purchase model the dwelling must be [offered for sale at or below a nominated 'affordable' price, the dwelling must be offered for sale to eligible buyers, and the discount for affordable housing for the first purchaser is preserved for future purchasers.](#)

SCA (Vic) believes the Victorian Government, if introducing an affordable purchase option to existing or upcoming strata developments, should consider implementing restrictions similar to the aforementioned examples and set these forth in the *Sale of Land Act* to help make housing affordable into the future while also protecting respective property values for lot owners.

Another example of a safeguard the Victorian Government could implement is shared-equity arrangements for affordable housing in existing and upcoming strata developments. A shared-equity arrangement could [see the government \(or an appropriate community housing organisation\) own part of the property and the person eligible for affordable housing own the other part.](#)



Shared-equity arrangements provide assistance to people to buy a property that otherwise could not afford to do so and would provide some protection around who the lot could then be sold onto. By maintaining equity in affordable housing lots, the government could thereby maintain restrictions on sale of the lot to ensure only those deemed eligible could buy the lot.

SCA (Vic) believes there should be appropriate financial support from government for residents in affordable housing to ensure they are able to pay ongoing fees related to living in strata (such as levies) and appropriate mechanisms in place to proactively identify those in affordable housing who are at risk of being unable to meet levy commitments.

#### State Government fund for special levies

SCA (Vic) believes the Victorian Government should create a fund to provide financial support for special levies relating to building defect rectification, retrofitting of sustainable measures and insurance. A fund of this nature would help to ensure fairness and support for existing lot owners and prevent their incurring additional costs to cover the liabilities of affordable housing lots. It would also provide incentives for existing strata communities to make sustainable changes to buildings in line with broader government commitments.

#### **Recommendations:**

- ***Subdivision Act***
  - **Changes to how lot liability is determined or altered for strata schemes in recognition of the difficulty those in affordable housing may face in meeting ongoing liability obligations.**
- ***Sale of Land Act***
  - **Changes to how affordable housing can be bought and sold to ensure accessibility for those who qualify.**
- **Establishing an assistance fund for special levies**
  - **This would assist those in affordable housing, as well as those strata residents not within the affordable housing pool, to fairly cover funds for special levies.**

## Strengthening rental enforcement mechanisms to represent the position of lot owners if social housing is added to strata developments

Social housing in Victoria is understood as being [short and long-term rental housing that is owned and run by government or not-for-profit agencies](#). There are two types of social housing currently available in Victoria: [public housing which is a form of long-term rental managed by the Victorian Government](#), and [community housing which is long-term rental housing managed by not-for-profit organisations](#).

SCA (Vic) generally encourages steps to help address rental and housing affordability challenges in Victoria and believes the addition of social housing into strata communities needs to be carefully calibrated in order to balance the concerns and welfare of existing lot owners, as well as building safety and amenity.

Research and case studies have shown the implementation of social housing can pose some challenges.

A specific case study on inner-city Melbourne undertaken by The University of Melbourne found the social mix redevelopment model does [not necessarily lead to social mixing, that the purported benefits for public tenants are unlikely to materialise, and that the implementation of social mix policies can disadvantage existing residents](#).

Furthermore, the RMIT Centre for Urban Research released a report which indicated that when social mix is promoted [through tenure mixed redevelopment it most likely results in \(amongst other things\) low yields of affordable housing, displaced and further segregated residents, and antagonism and conflict within given areas](#).

There are also existing challenges facing Victorian social housing renters, with complaints about public and community housing having increased over the past five years with poor complaint handling as the most common issue raised. According to Victorian Ombudsman Deborah Glass, other concerns included [‘lack of maintenance making properties unsafe, and unruly neighbours who were themselves not properly supported.’](#)

If social housing is to be integrated into strata, SCA (Vic) believes the Victorian Government needs to appoint a responsible and accountable agency to help address such concerns. Further, SCA (Vic) recommends that such a government agency should provide:

### **Support to Owners Corporations and renters for community welfare matters**

SCA (Vic) believes that the Victorian Government should, as part of a support package for owners corporations and renters, provide an in-house psychology service operating around-the-clock to help address relevant matters arising from tenants within strata communities.

The Victorian Government has experience in providing around-the-clock phone support across a range of matters. Some of these matters include *EPA Victoria* (general enquiries), *homelessness* (24-hour state-wide support service), *Nurse-on-Call*, and *Road, Traffic and Hazardous Road Conditions* (24 hours).

The benefits of an around-the-clock service for strata-based social housing would be to provide advice and assistance in times of uncertainty and disruption, as well as providing support to help de-escalate situations where practicable. By having a dedicated service in this regard, the psychology service would be able to develop and impart expertise in common behavioural matters which can impact on strata communities.

### **Prompt and accountable response system for matters raised**

In addition, SCA (Vic) believes the proposed Victorian Government support service to be offered to strata communities should be prompt and accountable with clear guidelines to provide a strict response time of a maximum of 24 hours to owners corporations.

Strict guidelines on response times, with accountability measures in place to help achieve that, would help to generate community confidence in the service. As noted previously, in relation to social housing renters, the Victorian Ombudsman has flagged concerns about unruly neighbours not being properly supported.

SCA (Vic) believes that guidelines on a strict time limit of 24 hours to respond to owners corporations would help to ameliorate concerns about safety and support within strata communities.

### **Timely and effective dispute resolution mechanisms**

SCA (Vic) is advocating for dispute resolution mechanisms which provide clarity and timeliness in relation to matters which can arise within strata communities.

This would require a two-step process: the first step being a fast-track list to provide accurate information to assist in the timely hearing of matters, the second step being the provision of appropriate powers to the Victorian Civil and Administrative Tribunal (VCAT) to address and resolve matters.

#### Fast-track list

A fast-track list would provide the Victorian Government with an accurate history in relation to the conduct of individuals within social housing by providing a centralised record of relevant issues and complaints which have been raised. By maintaining such a list, the Victorian Government would be able to act with efficiency and expediency in hearing and addressing matters of complaint within strata communities emanating from social housing.

In addition, appropriate powers should be provided to VCAT to help address and resolve matters arising from social housing within strata communities. Already, VCAT has powers in relation to short-stay accommodation which would provide a strong platform for managing problematic tenants in social housing within strata communities.

#### Three-strike mechanism for enforcement

SCA (Vic) believes a three-strike system should be implemented for handling challenging tenants in social housing within strata communities.

Owners corporations currently have the power to issue a notice to rectify breach for short-stay accommodation arrangement complaints.<sup>9</sup> If breach notices are not addressed for an alleged breach by a short-stay occupant, VCAT has the power to make prohibitions on the use of a lot for the purpose of a short-stay accommodation arrangement.

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<sup>9</sup> *Owners Corporations Amendment (Short-stay Accommodation) Act (Vic) s159D*

Under this power, VCAT can make such a prohibition where a notice to rectify breach has been served on a short-stay provider on at least 3 separate occasions within 24 months (regardless of whether the short-stay provider was an agent provider or a lessee of the lot).<sup>10</sup>

In order to best represent the interests of those residing in strata communities, SCA (Vic) would advocate for a similar three-strike mechanism to handle problematic tenants of social housing within strata.

### **Summary of Recommendations:**

- **Ongoing support for strata communities as a solution to the rental and housing affordability crisis with scope for reform around supply and regulatory issues within the sector.**
- **Regulatory reform and financial support to protect lot owners in the event that affordable housing is introduced into existing or upcoming strata developments.**
- **Additional support and enforcement measures for owners corporations and lot owners to ensure ongoing safety and amenity of strata community**
  - **Around-the-clock support for OC's and residents including in-house psychology service.**
  - **Strict 24-hour response time for concerns raised by OC's.**
  - **A fast-track list and three-strike system to enhance powers for VCAT to handle challenging tenants.**

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<sup>10</sup> *Owners Corporations Amendment (Short-stay Accommodation) Act (Vic) s169(1)*