

# **2013 Strata Community Australia (NSW) Convention**

*Speech by the NSW Minister for Fair Trading Anthony Roberts*

***‘Preparing NSW for Change’***

**Saturday, 2 November 2013**

Good morning everyone.

It is a pleasure to be here today and I would like to thank Strata Community Australia for the opportunity to present to you.

Ladies and gentlemen, I must begin by warmly welcoming the theme of this year's Convention – *Preparing for change*.

Change is what the O'Farrell-Stoner Government is all about.

Change to get the NSW economy moving.

Change to make our communities safer and more liveable.

Change to ensure that NSW reclaims its rightful place as number one in Australia.

One important aspect of this Government's commitment to change has been responding to the community's calls to modernise this state's strata laws.

NSW was the first jurisdiction in the world to introduce strata title laws, back in 1961.

These laws became the model for similar laws in other Australian jurisdictions and in many other countries around the world.

Since its inception over fifty years ago, the growth of strata title in NSW has been tremendous.

It is the most common land title system for apartment buildings in NSW, and is increasingly popular for commercial and industrial land uses.

Today, there are more than 72,000 strata schemes in NSW, and it is estimated that more than 30 per cent of the State's population live or work in strata.

And these numbers are growing.

On average, five new strata schemes are registered each day and it has been estimated that within 20 years approximately half of the state's population will be living or working in strata.

This means that, for the first time in history, most property owners will find themselves in a legally binding relationship with their neighbours regarding the communal upkeep and maintenance of their property.

Strata touches the lives of millions of people in NSW.

It is crucial that the sector is supported by good, efficient laws.

The case for reforming the laws is strong.

We have received strong messages from business and the community that the laws are outdated and do not meet the current or future needs of this sector in an efficient or effective way.

For example, the laws were introduced before the age of social media and other flexible forms of communication.

They do not cater for today's world where, for example, many investor-owners do not live in NSW and cannot physically attend strata meetings.

The legislative framework is overly formal and complex.

It is confusing for both tenants and owners, who often do not understand their rights and obligations, and the dispute mechanisms can be onerous and unclear.

For these reasons, the Government has undertaken a landmark reconsideration of the strata and community schemes legislation, which will lead to important reforms in the sector in 2014.

The Government is keen to ensure that NSW is once again able to demonstrate world's best practice in strata and community title management.

The reform of strata forms part of the Government's broader agenda, including improvements in the areas of home building, environmental planning and assessment, and dispute resolution.

We are a Government of reform and are dedicated to ensuring that the changing needs of the community are met.

This is all part of the Government's efforts to make NSW number one again.

From the outset, I understood that this reform would be an enormous task.

I am also aware of the importance of getting it right.

NSW strata laws intimately affect the lives and economic circumstances of millions of people, so I understood the importance of involving and listening to the community.

We have employed a highly innovative consultation process involving both public consultation and more targeted consultation with key stakeholders – including Strata Community Australia.

This process commenced in December 2011 with an online discussion forum hosted by public policy think tank, Global Access Partners – commonly known as GAP.

More than 1,200 comments from all corners of the state were received through the GAP consultation.

Many of you would have heard me talk about GAP before, and I will continue to praise the utility of this initiative.

It gave members of the community the opportunity to share their experiences, raise specific issues of concern and suggest possible solutions in advance of the formal review of the legislation.

It also offered a unique opportunity for experts to contribute to the debate through featured articles and blogs.

A particular highlight of this format for me was that it allowed organic conversation between participants.

People could respond to comments, agree or disagree with each other, and refine and develop solutions.

Comments received through GAP informed a discussion paper which we released in September 2012.

More than 1,900 written submissions were received in response to this paper.

We also held roundtables on:

- maintenance and building defects;
- governance and dispute resolution; and
- termination and redevelopment.

The roundtables enabled stakeholders with specific expertise to discuss details of the reforms and ensured that they were truly industry-led.

Strata Community Australia was involved in each of the roundtables.

In my view, the proposed reforms are balanced and fair.

They provide an appropriate level of consumer protection without imposing unnecessary regulation that may impede industry growth and investment.

In particular, we have listened and will continue to, when you have outlined concerns on a possible ban on commissions in the industry.

As the Commissioner for Fair Trading, Mr Rod Stowe, indicated yesterday, we are exploring options in this area and remain engaged with your organisation and its leaders.

We are confident that in working together, we will reach an agreeable outcome that balances the interests of all stakeholders.

I am proud of what we have achieved together across a range of reform areas.

This process has shown that robust results can be achieved when all stakeholders pool their expertise and work together in a collaborative and supportive manner.

I will shortly release a position paper that outlines a large number of reforms to the strata legislation.

These reforms aim to:

- build a culture of community and co-operation by encouraging participation and inclusion;
- support democratic and accountable decision-making in strata schemes;
- empower communities to chart their own future; and
- improve the everyday things that people in strata schemes care about.

I have previously discussed these aims in a very broad sense.

Today I will outline some of the specific reforms that will promote these goals.

Strata schemes work best when owners and residents take an active interest in the management of the scheme.

It can be an ongoing challenge to get people actively engaged in the scheme they own or live in, including getting people to serve on committees and attend meetings.

This difficulty is reinforced by the current laws, which provide barriers to participation.

For example, owners are required to be physically in attendance if they want to personally vote on a motion, and meeting papers often need to be supplied in hard copy.

In today's world, where many owners cannot physically attend meetings and where other forms of flexible communication are widely used in business and the home, this type of thinking in strata is outdated and needs to change.

Our new laws will help to facilitate this change.

For example, we will give owners corporations the flexibility to use modern technology, like teleconferencing and online tools, to hold meetings and vote on motions if they wish to do so.

We will allow managing agents and committees to distribute papers and hold records electronically.

We will give schemes the flexibility to adopt voting methods that suit the needs and circumstances of their members, including the option of voting via secret ballot.

Schemes will also be allowed to accept postal or electronic votes from owners who are not able to physically attend meetings.

We will also make a number of smaller changes that will remove unnecessary red tape and make it easier to run a strata scheme, particularly for committee members who often volunteer their time to a scheme.

This will include giving owners corporations more flexibility about when to hold annual general meetings.

We will remove the strict requirement for meetings to be held within one month of the anniversary of the first annual general meeting.

The new laws will simply provide that an annual general meeting must be held each financial year.

We will also remove the current requirement for a second meeting to be called before a quorum can be declared.

This stringent requirement often results in participants having to attend two meetings before important issues can be discussed and decided upon.

I am also keen to encourage a greater level of tenant participation in strata communities.

While it is generally agreed that tenants should not be involved in the financial affairs of owners, they are often willing and able to make a positive contribution to schemes.

I am therefore proposing a number of reforms that will support greater opportunities for tenant participation.

It is proposed that the law give tenants the right to attend and participate in meetings of the owners corporation.

In schemes where more than half the residents are tenants, we will give them the opportunity to have a non-voting representative on the strata committee.

The laws will balance this increased tenant participation with the overarching rights of the owners corporation.

Tenants will not be given new voting rights and the owners corporation can choose to exclude tenants from deliberations on certain matters.

I often refer to strata schemes as the fourth tier of government.

Owners corporations are able to develop their own rules to influence people's behaviour.

These rules have legal standing and can be enforced through tribunals and courts.

Committees and managers handle budgets and make decisions in the interests of the owners and residents.

And decisions are made by owners every day that impact the lives and economic circumstances of others.

We therefore need to ensure that the people making decisions in strata do so in a transparent and accountable way.

Conflicts of interest, real or perceived, are very common in strata and are at the heart of many complaints to Fair Trading and the Consumer, Trader and Tenancy Tribunal.

Trust can be eroded if conflicts are allowed to exist, and can lead to decisions being made that are not in the best interest of the owners or residents.

The current strata laws in NSW contain only a few provisions dealing with conflicts of interest.

Submissions repeatedly raised the need for the laws to be stronger in this regard.

In particular, they highlighted the proxy voting arrangements, and the role of strata managing agents, as areas most in need of reform.

Proxy farming is a major issue in some schemes and can lead to decisions being made that are not in the best interest of the strata community.

The practice also builds resentment and further discourages participation by owners.

I therefore propose to limit the number of proxies that one individual can hold.

An individual will only be entitled to hold five percent of the lots in a scheme of more than 20 lots, and only one proxy vote in a scheme of 20 lots or less.

These reforms reduce the potential for misuse of proxy voting arrangements and further support democratic processes within strata schemes.

The reform package also includes specific disclosure requirements.

Committee members will be required to disclose any conflict of interest in a matter to be considered by the committee and will then be excluded from any vote unless the committee decides that the conflict does not warrant this.

In addition, non-owners with a financial interest in a scheme, including managing agents, letting agents and building managers, will not be able to become committee members.

I am also proposing other reforms that will make strata managing agents more accountable to owners corporations.

The Commissioner discussed these reforms yesterday, so I will not go into them in detail again today.

I will briefly say that I am proposing to limit the terms of management contracts and will increase managing agents' disclosure requirements.

This reform will ensure owners are fully aware of the cost of management services, including the previously hidden costs related to the receipt of commissions.

It will ensure owners corporations can make informed decisions and have the information they need to chart their own futures.

These reforms will further professionalise the strata management sector, safeguarding its independence and ensuring managing agents make decisions in the best interests of their clients.

The strata sector is constantly changing.

The establishment of new schemes with varied structures and diverse methods of management is now a fact of life.

The new laws will account for this diversity by empowering strata communities.

The reforms I am proposing will introduce flexibility while still providing legislative backing and an effective dispute resolution system.

For example, we will allow schemes to set their own meeting dates, recognise internal dispute resolution and devise their own by-laws.

We will also expand the leasing powers granted to strata schemes.

We will allow an owners corporation with a temporary need for additional common property within a scheme, such as for a caretakers office or a meeting room, to lease whole or part of a lot.

Similarly, a scheme looking for additional common property, to be used for parking or some other purpose, will be able to lease nearby land that does not strictly adjoin the strata parcel.

By-laws are central to the things that people living in strata care about, including pets, parking, parties, smoking and hard wood floors.

They are an important tool for promoting harmonious living.

Concerns were raised in submissions about ignorance of the by-laws among residents.

It is a particular problem among tenants, who may not have been given a copy of the by-laws when they moved in.

It is only fair that people are made aware of the rules that apply to them.

Other concerns raised about by-laws included that:

- they are not always fair;
- they are inconsistently applied;
- they are sometimes difficult to enforce; and



- the model by-laws need to be updated to better reflect changing community attitudes.

The reforms that I am proposing will address all of these matters.

We will:

- ensure that a consolidated copy of the by-laws is made readily available;
- streamline enforcement options for owners corporations; and
- give the Consumer, Trader and Tenancy Tribunal greater powers to ensure by-law compliance.

We will produce a new set of model by-laws that account for the matters raised in submissions, and will provide guidance to help schemes through the process for reviewing and updating their by-laws.

The community consultation process revealed that the current model by-laws, which many schemes adopt by default, need to be updated to better reflect changing community attitudes.

For example, there is currently no model by-law that deals with smoke drift, and those by-laws that deal with hard wood floors are only concerned with fixing noise-related problems after installation.

Approval from the owners corporation may not be required to install hard wood floors, even though this could have a significant impact on other residents.

We are also looking to make changes to by-laws dealing with pets.

Fair Trading receives numerous complaints from people who are forced to choose between living in strata and keeping a pet.

While many schemes would be happy to allow pets, it is often the default rule that they be banned, and potential owners and tenants are not always in a strong position to see the by-laws changed.

The Government continues to work with key stakeholders to finalise the reform package ahead of a bill being introduced to Parliament early next year.

It is my aim to commence the new laws by the middle of the year.

This reform process has been an excellent example of Government and stakeholders working together to develop a relevant and adaptable legislative package.

We have talked honestly with the community and given people a say on decisions that affect them.

This reform package is the result of this extensive process of consultation.

The Government is firmly focused on delivering an outcome that will meet the needs of the strata community for the next fifty years as we strive to make NSW the leading jurisdiction on strata once again.

In closing, I would like to thank Strata Community Australia again for its valuable contribution to the strata legislation review processes and for inviting me here today.

**ENDS**