

STRATA-INDUCED HOUSING PRECARITY

Shelter NSW discussion paper

8 August 2024

Introduction

In New South Wales (NSW), the landscape of housing tenure has been significantly shaped by the proliferation of properties governed by strata schemes. This discussion paper examines the impacts of strata on housing affordability and accessibility in NSW, with a specific focus on understanding the experience of, and factors contributing to strata-induced housing precarity, especially for low-income people. While renters within strata communities are undoubtedly impacted, this paper primarily focuses on the challenges faced by low-income property owners within strata schemes.

Conservative estimates indicate that approximately 17% of NSW residents currently inhabit strata properties¹, a figure projected to surge to 50% in Greater Sydney alone by the year 2040² (according to forecasts by the NSW government). As of November 2022, the registry recorded a total of 89,049 strata schemes in NSW, comprising a staggering 1,043,690 individual lots or units³.

The ascendancy of strata properties has not been devoid of challenges, with various issues surfacing to undermine housing stability and exacerbate precarity for property owners. These challenges include hidden fees and unanticipated levies, instances of strata companies engaging in exploitative practices and the ramifications of declining building quality.

By delving into the multifaceted dimensions of strata-induced housing precarity, this paper attempts to provide practical insight to the various stakeholders and policy-makers focused on achieving more equitable and sustainable housing outcomes. This is especially the case as NSW enters an era of greater housing

¹ UNSW City Futures Research Centre (2022), *Australasian Strata Insights* – accessed 13 May 2024
<https://cityfutures.adfa.unsw.edu.au/2022-australasian-strata-insights/>

² NSW Department of Customer Service (2021), *Report on the statutory review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015* – accessed 22 May 2024
<https://www.parliament.nsw.gov.au/tp/files/81193/DCS%20%20Statutory%20Review%20on%20Strata%20Scheme%20Legislation.pdf>

³ UNSW City Futures Research Centre (2022), *op. cit.*

Data obtained from NSW Land and Property Information with registry information up to November 2022 and includes both residential and/or mixed use strata and community schemes as well as non-residential schemes.

density around its major transport corridors, likely to lead to much larger populations living in buildings governed by strata schemes.

Furthermore, and despite the complexities, the paper proposes pragmatic solutions aimed at mitigating the adverse effects of strata-induced housing precarity for property owners. These solutions range from enhanced education and awareness among prospective strata owners, legislative reforms to address issues of transparency and accountability within strata governance, and measures to streamline the complexity associated with strata schemes.

In many respects, this paper represents new ground for Shelter NSW. But given our long-term vision of 'A Secure Home for All', during a time of proliferating strata schemes, we feel the time has come for this issue to be examined.

Paper structure

The study is organised to cover different aspects needed to fully understand the complexities of the strata system. It includes a glossary of key terms; a historical overview of strata development; and an exploration of the current and changing demographics associated with strata living. These sections serve as foundational pillars for the subsequent analysis. Given the complexity of this area, readers are strongly encouraged to read the glossary of terms in detail.

The paper then continues with an examination of the types of challenges faced by low-income people and finally a summation of the various potential public policy avenues available to Government.⁴

⁴ Further to the issues already canvassed in the Equitable Density series commissioned by Shelter NSW
<https://shelternsw.org.au/?s=equitable+density>

Glossary

Administrative fund: (The everyday fund) An administrative fund manages the day-to-day costs of the strata scheme. This includes maintaining common property, paying for insurance, and other regular costs such as electricity, water, carpet cleaning, and garden maintenance.

Annual general meeting (AGM): A meeting of owners and other interested parties (as noted on the strata roll) that must be convened once a year in accordance with legislation. Legislation also defines the manner in which the AGM is convened, as well as the compulsory motions to be considered.

Capital works fund: (The fixing and maintaining fund) A capital works fund (previously called a 'sinking fund') is used to pay for capital expenses when they happen.

Common property: Strata is made up of layers of ownership, and you own a small part. There will then be aspects of the property that you own 'jointly' with others called common property (e.g., external walls, foyers, driveways). An owner's corporation manages the common property, and the owners contribute to maintenance via levies.

Company title: Dating back to the early 20th century, has diminished in NSW in favour of strata arrangements. Owners hold apartments through shares in a company rather than direct real estate ownership, owning Share Certificates instead of Titles. While potentially more cost-effective, securing finance for company title properties can be challenging due to stricter constitutions and director approvals.

Community title: Like strata schemes, there is shared ownership and maintenance costs for developments. It differs by including land boundaries along with buildings, seen in gated communities where owners have individual villas and shared amenities like roads, tennis courts, and pools.

Leasehold title: Common in government-owned properties, involves leasing instead of purchasing for long terms like 99 years. Lessees pay an initial fee and

ongoing rent, with all land in the Australian Capital Territory (ACT) being Commonwealth-owned and leased to residents.

Lot property: A lot is the property you own exclusively (e.g., apartment or townhouse). In NSW, the general rule is that you own the airspace – the lower surface of the ceiling to the upper surface of the floor, and from the inner surface of the walls.

Owners' Corporation: The legal entity comprising all property owners within the scheme, the Owners' Corporation is responsible for managing the building and common property.

Owners' Corporation Funds: The Owners' Corporation has two monetary funds it uses for expenses:

1. Administrative fund: for day-to-day expenses, for example paying the person who takes the bins out.
2. Capital works fund: for major works to the common property, like repainting the exterior of the building. The Owners' Corporation determines two yearly levies for these funds at its Annual General Meeting.

Special levies: Special levies are levied to fund unforeseen expenses that surpass the regular budget. These are raised by the strata manager following the committee's directives.

Strata Committee: Elected annually by members of the Owners' Corporation during the Annual General Meeting (AGM), the Strata Committee oversees the day-to-day operations of the scheme on behalf of the Owners' Corporation. The committee typically includes a chairperson, secretary, and treasurer, with secretaries often serving as the primary point of contact for owners and residents.

Strata levies: All owners are charged levies, usually paid quarterly. This pays for a range of costs that keep strata schemes running smoothly and in good condition, such as:

- Maintenance and repairs to the building/s and common property

- Insurance
- Administration costs (for example, management fees, insurance, or work costs)
- Utilities to any common areas (for example, electricity to run elevators or lighting).

Strata Manager: While not legally required, strata managers are often employed to assist Owners' Corporations and Strata Committees in managing strata schemes. These managers are appointed at AGMs and can be removed if deemed ineffective. In NSW, individuals interested in becoming strata managers must obtain a strata managing agent license, which requires specific training.

Strata plan: A surveyor creates a document known as a strata plan to subdivide the land into lots and common property. Either the surveyor, developer, or owners then lodge this with the Land and Property Information for registration.

Strata title: Primarily describes partial ownership within a building. Predominantly utilised in apartment complexes, duplexes, and townhouses, owners of strata title properties typically possess the interiors of their units while collectively sharing ownership of external and communal areas like hallways, gardens, and lifts. Strata schemes enforce specific by-laws delineating the rights and duties of owners concerning communal spaces. Owners contribute quarterly strata levies for communal upkeep and may face additional levies for significant repairs and upgrades. All proprietors in a strata scheme become members of a body corporate or strata company, tasked with managing the scheme.

Stratum title: Is a form of property ownership where individuals own a part of a larger property, typically in a vertical subdivision scenario, like an apartment in a high-rise building. Unlike strata title, where owners own both their unit and a share of common property, stratum title holders only own the airspace within their unit. The land and structures are owned by a separate entity, usually a company or individual. For example, a multi-story building on a city block may contain a carpark with four underground levels, commercial retail outlets at ground level, followed by ten floors of office space and finally five floors of residential units at the top of the building. The residential units and some of the

carpark may form a separate strata scheme subdividing one of the stratum lots, while leases may be created for the commercial offices and/or shops comprised in the other stratum lots known as the "head landlord" or "freehold owner."

Torrens title: The prevailing form of property ownership for detached properties across Australia, initially established in NSW in 1863. This system operates by registration, issuing a solitary title document endorsed by the NSW government for each landholding. With every property transaction, such as a change of ownership, being registered with the NSW government, the title document undergoes updating. The title deed records the legal owner's name for both the land and any structures. In cases of mortgage, a Certificate of Title is provided until the debt is fully settled.

Unit entitlement (UE): Each lot has an UE that determines the portion of levies owed by the owner and the voting capacity of the owner. The UE schedule is recorded on the strata plan or deposited plan at the time of registration. The UE schedule lists all the lots with the UE of each individual lot. The aggregate UE is the sum of all the entitlements.

History of Strata in NSW

Prior to the introduction of strata title, flats were often sold under company title or as Tenants In Common, but these forms of ownership did not provide separate ownership for individual occupants. This made it challenging for buyers to secure loans from banks, as interest rates were higher compared to those for houses. Due to pressure on the NSW government to facilitate borrowing for residential units, the Conveyancing (Strata Titles) Act was enacted in 1961, introducing the concept of strata title. The first strata-titled building, Lindsay Gardens, was approved in Sydney in 1961⁵.

⁵ Strata Community Association – accessed April 10 2024
[https://nsw.strata.community/strata/#:~:text=The%20Conveyancing%20\(Strata%20Titles\)%20Act.construction%2C%20on%2028%20July%201961.](https://nsw.strata.community/strata/#:~:text=The%20Conveyancing%20(Strata%20Titles)%20Act.construction%2C%20on%2028%20July%201961.)



Lindsay Gardens, the world's first ever strata-titled building

There has been small-scale low-rise flat developments in some Australian inner-city areas since the 1930s. The strata title legislation introduced in New South Wales in the 1960s allowed for the growth of higher density residential development by allowing the ownership of individual flats within apartment blocks. This satisfied banks' concerns and imposed positive obligations for maintenance in the form of levies. Around Australia, other state and territory governments followed the example set by New South Wales and passed their own strata-title legislation.

In New South Wales today, the principal legislation governing strata buildings is the Strata Schemes Management Act 2015 and the Strata Schemes Development Act 2015.

Demographics of Strata

In NSW, the demographics of people living in strata properties are evolving due to several key factors. The rising incidence of strata title ownership is primarily attributed to:

- population growth
- high land cost and scarcity
- new developments
- conversion of existing buildings
- government policies favouring higher density living to curb urban sprawl

According to data obtained from NSW Land and Property Information, as of November 2022⁶, there were 89,049 strata schemes registered in NSW, comprising 1,043,690 individual lots or units. Notably, 57% of these schemes were registered before 2000, while the remaining 43% were registered after 2000, underscoring the significant presence of older strata properties within a mix of both established and newer developments.

2021 census data reveals that 20% of households in NSW reside in apartments, totalling 1,287,377 private apartment residents. It's important to note that estimating the exact population living in strata properties is complex due to differing data sources and methodologies. Nonetheless, conservative estimates suggest that 17% of people in NSW live in strata properties⁷.

Australia's undersupplied housing market is heading for another development boom and strata buildings will lead the way. The NSW government projects that around **50% of Greater Sydney's population will reside in buildings governed by strata schemes by 2040**⁸. This forecast reflects the ongoing trend towards higher density living.

The widening price gap between units and houses in New South Wales suggests that apartments will increasingly become the primary option for prospective homeowners, especially among low-income individuals (who currently predominantly live in houses⁹). For many, particularly younger Australians,

⁶ UNSW City Futures Research Centre, op. cit

⁷ Note - We can assume the average household size for strata title households is between 1.7 and 2.6. This suggests a projected population of 1,383,933 to 2,116,603 people, or 17% to 26% of the total population in NSW.

⁸ *NSW Government Report on the statutory review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015* – accessed 26 March 2024

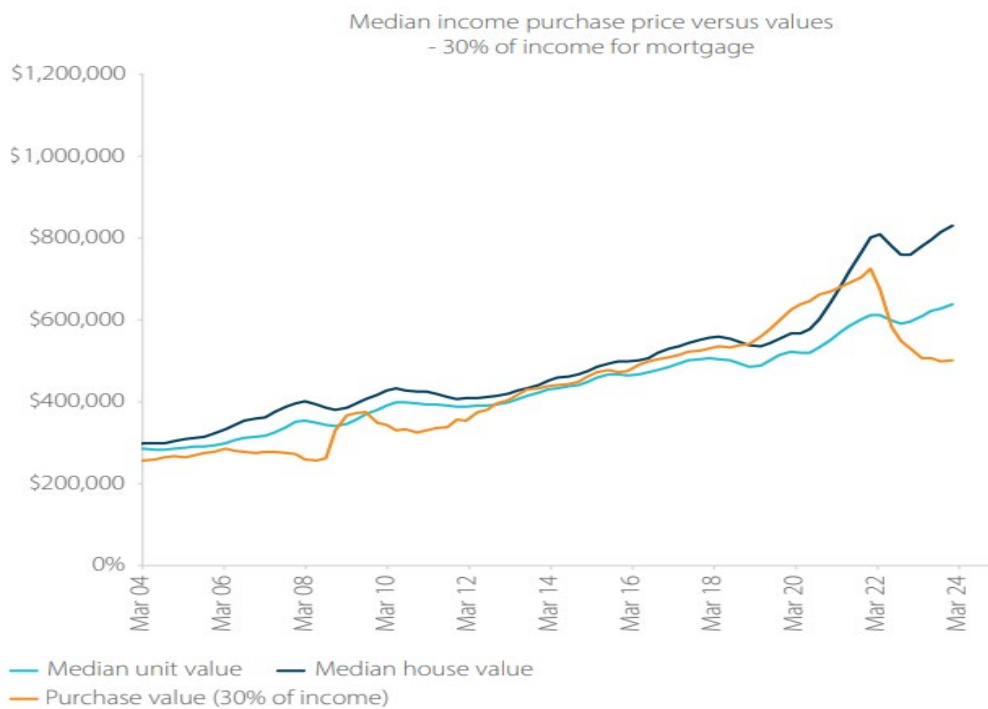
<https://www.parliament.nsw.gov.au/tp/files/81193/DCS%20%20Statutory%20Review%20on%20Strata%20Scheme%20Legislation.pdf>

⁹ Refer table 1 below

purchasing a unit or apartment may increasingly represent their only viable entry into the property market.

According to a recent CoreLogic report¹⁰ an affordable dwelling purchase in Australia would be approximately \$503,000, based on the latest national estimate of median annual household income (\$100,244 before taxes) and assuming 30% of this income is allocated to mortgage payments at current average variable rates. Ongoing increases in housing values render this affordable purchase price below most actual dwelling values, with the median Australian unit price around \$640,000 and the median house price around \$834,000. CoreLogic estimates that only 17.4% of dwelling stock is valued below \$503,000, assuming a 20% deposit and a 30-year loan term.

Purchase price of home, over time based on median household income, versus actual median house and unit value, Australia



Source: CoreLogic, ANU, RBA

¹⁰ ANZ CoreLogic, *Housing Affordability report* (April 2024) at pg. 12 – accessed 22 April 2024
<https://news.anz.com/posts/2024/april/anz-news-corelogic-hosing-affordability-report?pid=bln-link-td-blm-04-24-tsk-corelogic-har>

Note: Given the median house price in Sydney is \$1,627,625¹¹ we can assume this is more pronounced in New South Wales.

Table 1: Dwelling structure and tenure type by income groups, NSW, 2021

	Very low income (Q1)	Low income (Q2)	Other households (Q3-5)
Dwelling structure			
Separate house	57.22%	62.87%	68.66%
Semi-detached dwellings	16.02%	13.61%	10.47%
Flats/apartments	24.79%	21.63%	20.24%
Other	1.98%	1.89%	0.62%
Tenure			
Owned outright	49.33%	43.56%	23.90%
Owned with a mortgage	9.22%	15.79%	49.35%
Private rental	11.69%	21.01%	18.99%
Public rental	12.69%	4.33%	0.62%
Other social rental	2.83%	1.57%	0.17%
Other	14.24%	13.75%	6.97%

Source: ABS TableBuilder Pro, 2021 Census

This report is focused on low and very low-income households where households in the:

- first quintile (Q1) have very low incomes (less than \$25,999 gross annual household income);
- second quintile (Q2) have low incomes (less than \$64,999 gross annual household income).

In this report, these households are collectively categorised as ‘low-income households’.

Key observations from the data (Table 1):

¹¹ Domain, *March 2024 House Price Report* – accessed 18 April 2024
<https://www.domain.com.au/research/house-price-report/march-2024/>

- While low-income households are more likely than their higher-income counterparts to live in apartments
- A relatively high proportion of low-income households are outright owners (46.45%)¹².
- (the latter) households are most likely older singles and couples on low, fixed incomes (e.g. age pension) who paid off their mortgages prior to retirement.

Table 1 details the relationship between housing arrangements and tenure in accordance with income; however, it is important to acknowledge the availability of savings as an important factor. Savings assume heightened significance in instances where unforeseen special levies emerge, that are above and beyond routine and anticipated quarterly levies.

Table 2: Average Australian's savings by age

Age	Average savings for men	Average savings for women
18-29	\$18,712	\$11,153
30-49	\$27,005	\$24,081
50-64	\$106,236	\$22,759
65+	\$98,312	\$46,044

Source: NAB Australian Wellbeing Survey Q4-2022

According to data from the National Australia Bank (NAB)¹³, the average Australian had around \$34,000 in a savings account as of late 2022. However, the amount of savings varied significantly across various demographics.

¹² Trend likely to diminish over time as discussed earlier

¹³ NAB Australian Wellbeing Survey Q4-2022 – accessed 10 May 2024

<https://business.nab.com.au/wp-content/uploads/2023/02/NAB-Australian-Wellbeing-Survey-Q4-2022-1.pdf>

The amount a person holds in savings was found to differ between men and women. Men aged between 50 and 64 were found to have the healthiest savings accounts, with an average balance of \$106,000, while women of the same age had around \$23,000. This has relevance for the low-income demographic which includes older women.

Strata-induced precarity

Complexity of the decision-making process

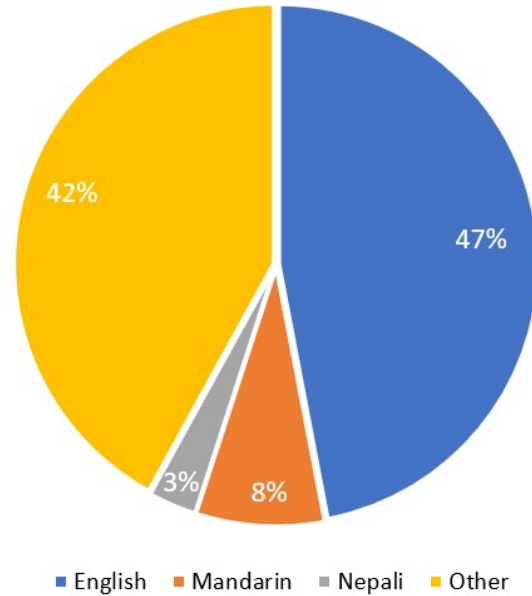
Many issues within strata management originate from the inherent complexity involved in decision-making processes. It is evident that decision-making is more straightforward for an individual or a single household compared to a group comprising six, twenty, or one hundred individuals. This phenomenon is akin to the challenges experienced when attempting to coordinate a group holiday or outing to a restaurant, a scenario with which many individuals are familiar.

This complexity can create barriers to sustainability in strata. For example, according to the Strata Community Association 18% of houses in New South Wales have adopted some form of solar power, the equivalent figure in strata properties is only 0.5%¹⁴, despite a similar level of interest in both groups. This discrepancy highlights how the collective decision-making process within strata can impede the adoption of beneficial technologies. The benefits of solar power

¹⁴ Strata Community Association (2021), Sustainability in strata: Cutting through the complexity – accessed April 22 2024
<https://inside.strata.community/sustainability-in-strata-cutting-through-the-complexity/#:~:text=It%20is%20no%20wonder%2018,or%2020%20or%20100%20people.>

are clear. Installing a 5.5 kW Solar PV system in Sydney can result in annual electricity bill savings of \$2647.5 and a 3.04 tonne reduction in CO2 emissions¹⁵. However, the difficulty of achieving consensus among multiple owners often stalls such initiatives. This is compounded by barriers that may be experienced by particular cohorts of owners. These include language, financial or numerical literacy; lack of experience with formal meeting procedures or power imbalances associated with socio-economic factors such as income or occupation. 2021 census data indicates that less than half of apartment residents communicate primarily in English at home. Consequently, such individuals may encounter challenges in articulating their concerns to the owners' corporation.

**Language spoken at home
(Apartments in NSW)**



This is a multifaceted problem with far-reaching implications. As the collective voice representing residents' interests, the owners' corporation relies on effective communication for informed decision-making. Yet, when a significant portion of residents face language barriers, their participation is hindered, potentially leading to overlooked concerns and decisions that fail to address their needs. This undermines the principles of democratic governance within the community but also risks non-compliance with legal and regulatory obligations.

Moreover, beyond meeting legal and administrative requirements, in strata, effective communication enables a sense of belonging and community cohesion. Conversely, language barriers may inhibit meaningful engagement, leading to social isolation and alienation and a heightened stress and dissatisfaction with the living environment. To address these challenges, proactive measures such as

¹⁵ Ramadas Narayanan, Prajapati Parthkumar, Roberto Pippia, *Solar energy utilisation in Australian homes: A case study*, *Case Studies in Thermal Engineering* (2021) – accessed May 23 2024
<https://www.sciencedirect.com/science/article/pii/S2214157X21007668>

providing translation services, establishing multilingual communication channels, and promoting cultural sensitivity are essential to ensure that all residents have equal opportunities to participate, contribute, and access vital information.

Hidden fees, unexpected rises in levies

There is a common misconception that owning an apartment will free one from maintenance costs. On the contrary, just like a house, owners in strata schemes are responsible for maintenance. Unlike house owners' however, decisions will require the negotiation with and agreement of multiple parties. You can't decide if, when, and how repairs might be done – taking account of just your own financial situation. Shared costs don't necessarily make maintenance affordable.

The truth is that apartment buildings are often much more expensive to maintain than a house, particularly in increasingly prevalent complex developments offering communal amenities like playgrounds, swimming pools, gyms, lifts, and underground carparks.

A recent article by The Guardian¹⁶ details the financial precarity unexpected special levies can put owners in. Three months after Jake and his partner bought their apartment in Sydney, they faced an unexpected special levy of more than \$100,000 for urgent waterproofing repairs. This levy was not flagged in the strata report or the previous year's annual meeting minutes that had informed their decision to buy the apartment.

"We did our due diligence, everything we were advised to do," says Jake, who has taken on another job to pay off the levy at \$10,000 a month.

Jake is one of an increasing cohort of strata property owners facing extra payments on top of regular levies to pay for maintenance. In NSW the increased need for special levies is partly due to the passing of the Building Legislation

¹⁶ Jordyn Beazley, Amanda Farmer cited in *Completely blindsided': new owners of strata properties shocked by special levies* (2024) - accessed 23 April 2024
<https://www.theguardian.com/australia-news/2024/apr/21/completely-blindsided-new-owners-of-strata-properties-shocked-by-special-levies>

Amendment Bill 2023 introduced to (necessarily) tighten building and construction standards.

Accomplished strata lawyer Amanda Farmer stated: "This [legislation] is a good thing ... but it's making work a lot more expensive and the owners are left footing the bill." -

The increasing need for special levies goes hand in hand with a large proportion of newly registered schemes having serious defects in common property, evidenced through a 2023 survey conducted by the Office of the Building Commissioner (OBC) and Strata Community Association (NSW)¹⁷. The survey found that 53% of the buildings (registered from July 2016 to June 2022) have had serious defects in common property, a phenomenon the Building Legislation Amendment Bill 2023 aims to combat.

The profit motive and Conflicts of Interest

Not all developers and those involved on the business side of the strata sector act unfairly or unethically. But there is enough evidence to suggest that poor practice is common, unchecked, and impacting a lot of consumers.

Developers and strata businesses are obviously driven to prioritise profit generation over the welfare of residents. The conduct of some strata companies has become a significant contributor to housing precarity, particularly for individuals with lower incomes. Developers often complicate building structures intentionally to necessitate the hiring of strata managers, thereby perpetuating a system where financial gain takes precedence. There is anecdotal evidence of developers maintaining ownership of enough units within their buildings in order to maintain control over the owners' corporation (and the decisions that body might otherwise make to hold the developer to account for defects).

Moreover, some stakeholders within the strata management industry actively encourage ignorance and apathy among owners, particularly investors, to

¹⁷ Office of the Building Commissioner (2023), *2023 Strata Defects Survey Report* – accessed April 2 2024 <https://www.nsw.gov.au/sites/default/files/noindex/2023-12/strata-defects-survey-report.pdf>

maintain control over decision-making processes and extract additional fees for services rendered.

The recent expose by the Australian Broadcasting Company (ABC) Investigations on Netstrata¹⁸, a prominent strata management firm in Australia, highlights the pervasive nature of misconduct within the industry. Allegations of charging exorbitant insurance brokerage fees, accepting kickbacks from contractors, and engaging in other questionable practices have underscored the urgent need for regulatory reform and increased transparency. These actions, which have impacted a substantial number of buildings and apartments in New South Wales, have provoked widespread outrage and calls for government intervention to safeguard the interests of strata scheme members.

Consequently, there is a pressing demand for enhanced accountability mechanisms and stringent disclosure requirements to mitigate the adverse effects of unscrupulous practices on vulnerable segments of the population.

What happens when people fall behind on strata levies

Amidst the current cost-of-living crisis and escalating mortgage repayments, homeowners are increasingly falling behind on strata levies. Financial Counselling Australia (FCA) highlights a concerning trend, noting that strata bankruptcy filings constitute a significant portion of total bankruptcy filings, particularly in New South Wales (NSW), where they make up 18%¹⁹.

When unpaid strata fees hit \$10,000, strata managers can pursue bankruptcy claims against homeowners, often inflating the debt with legal costs. Samantha Reece, CEO of the Australian Apartment Advocacy group, emphasises the impact: *"[Rising strata fees are] a real problem for those on fixed incomes who*

¹⁸ Linton Besser, Ninah Kopel (2024), *High-profile strata company Netstrata caught charging excessive fees and taking kickbacks*- accessed 25 March 2024

<https://www.abc.net.au/news/2024-03-21/netstrata-strata-charging-excessive-fees/103609380>

¹⁹ Financial Counselling Australia (2022) *Bankruptcy Filings* – accessed April 18 2024 – accessed at:

<https://www.abc.net.au/news/2023-08-30/strata-levy-bankruptcies-are-on-the-rise/102761594>

*haven't budgeted for this, and have chosen a strata property as an affordable option."*²⁰

The issue extends beyond forced bankruptcies. Advocates note a shift towards body corporates and strata managers resorting to legal action as a first step for even a single missed payment. Reece laments the loss of a personal touch, stating, *"Rather than knocking on people's doors or sitting down for a coffee to ask what's going on, they're just handed a legal notice."*

FCA advocacy lead, Lody Stewart, illustrates the consequences through a case where a man, relying on the age pension, accidentally missed one payment of a four instalment plan special \$1,500 levy for maintenance. *"As soon as he became aware he missed it, he made the payment but in that period of time the strata manager had already added an undefined recovery cost to his ledger without any court order or tribunal orders,"* she says. *"It made his difficulty paying his special levy even worse."*²¹

Even without knowing this individual's personal circumstances, you can well imagine how someone living on statutory incomes, potentially still paying a mortgage and with low savings is confronted by this type of scenario. As at June 2024, the age pension for single people is \$1,116.30 per fortnight²².

Negotiating payment plans proves challenging. Stewart recounts the experience of a 25-year-old in NSW who attempted to negotiate four times after losing her job due to a medical condition. Each time, the manager refused, resorting to legal action. *"Between the time of them refusing the payment plan and her applying to pay by instalments to the court, [the strata managers] had added a significant amount of interest in legal expenses to her ledger, which further deepened her debt cycle,"* Stewart says.²³

²⁰Jordyn Beazley, Samantha Reece quoted in *Lost its human touch': Australians ending up in court over missed strata fees in cost-of-living crisis* (2024) – accessed April 30 2024
<https://www.theguardian.com/australia-news/2024/mar/25/lost-its-human-touch-australians-ending-up-in-court-over-missed-strata-fees-in-cost-of-living-crisis>

²¹ *ibid.*

²² Australian Government, Services Australia – accessed 24 June 2024

<https://www.servicesaustralia.gov.au/how-much-age-pension-you-can-get?context=22526>

²³ Beazley, *op. cit.*

75% - the forced sales of strata buildings

In New South Wales, legislation introduced in 2015 enabled the sale and redevelopment of strata-titled property with the consent of 75% of owners.

Termination can occur in two circumstances – either a collective sale to a third party (e.g., a developer), or a collective renewal, where the scheme is terminated but owners retain an interest in the land, in order to redevelop collectively.

While moving from unanimous to majority decision aids urban renewal, it does not come without a range of risks, especially for vulnerable groups like lower-income and elderly residents. Modelling has shown that in high-value areas, gentrification is the likely outcome, with strata schemes of older, cheaper buildings terminated to allow redevelopment and resale at higher prices²⁴.

Importantly, NSW legislation does not require that the new development must contribute to an increase in residential density, or that the building be in serious disrepair. The only motivation developers have, is profit, and redevelopment at lower density can produce that result. In doing so, it opens a new pathway for displacement and gentrification, where private owners can force neighbours from their homes. A report commissioned by Shelter NSW stated:

“Lower income renters will likely be displaced by this process, and lower income owners may also struggle to buy a renewed apartment with the funds received for the old apartment. If this process occurs frequently, it will reduce an area’s socio-economic diversity over time, leaving remaining lower income residents feeling increasingly excluded from the neighbourhood.”²⁵

Professor Cathy Sherry, Macquarie University Law School and strident critic of NSW’s strata approach has spoken at length about the risk of greater density

²⁴ Laurence Troy, Bill Randolph, Laura Crommelin, Hazel Easthope & Simon Pinnegar, *Renewing the Compact City* (2015) - accessed (5 May 2024)

[Renewing the Compact City: Economically viable and socially sustainable approaches to urban redevelopment in a complex multi-stakeholder environment | City Futures Research Centre \(unsw.edu.au\)](#)

²⁵ Laura Crommelin, Hazel Easthope, Laurence Troy, *Equitable Density, Report 2* (2020) – accessed 4 June 2024

[Equitable-Density-The-Neighbourhood-Scale-2017.pdf \(shelternsw.org.au\)](#)

being accompanied by the greater application of strata schemes which carry little protection of currently diverse and low-cost housing²⁶.

This is most pronounced in Sydney's most exclusive suburbs where interwar low-rise apartment buildings are increasingly being demolished to make way for "ultra-luxurious" homes for many fewer residents. The Mayor of Waverley, Paula Massellos said the eastern suburbs were losing about 30 dwellings a year as a result of similar developments²⁷.



Pem Dechen outside her eastern Sydney home in an eight-unit apartment block. Set to be demolished and replaced with three luxury homes. Photograph: Jessica Hromas Source: The Guardian

²⁶ Professor Cathy Sherry, *Two missing words explain why Sydney's making a terrible housing mistake* – accessed 10 April 2024

<https://www.smh.com.au/national/nsw/two-missing-words-explain-why-sydney-s-making-a-terrible-housing-mistake-20240216-p5f519.html>

²⁷ Paula Massellos, Mayor of Waverly cited in *Battle over density: in Sydney's east, a rash of developments are housing fewer, richer people* (2023) accessed April 9 2024

<https://www.theguardian.com/australia-news/2023/sep/06/battle-over-density-in-sydneys-east-a-rash-of-developments-are-housing-fewer-richer-people>

“What’s left of our affordable housing stock comprised of older, smaller units is being snapped up by developers and is being replaced with large luxury apartments or houses that do not cater to the diverse housing needs of our community,” Mayor Massellos noted.

The risks for elderly and lower-income residents fall into three main categories: the impact of the diminution in property rights; shortcomings in the approach to compensation; and the personal and social impacts of displacement.

- **Diminution of existing property rights:** these changes indeed diminish property rights, reducing owners' control over their homes and jeopardising their security. 48% of NSW households living in apartments are private renters²⁸, who already have limited control over their living arrangements and few rights in case of scheme terminations. The 2015 legislative changes add further uncertainty for these renters, particularly vulnerable groups such as older individuals with low incomes, who can be pushed out of their homes due to redevelopment. Consequently, both property owners and renters may experience a diminished sense of control, affecting their wellbeing.

“I think the loss of security of tenure is the primary [issue]. These people bought into their homes on the understanding that it would be theirs for as long as they wanted it.” (Consumer Peak Body)²⁹

- **Inadequate compensation:** The lack of adequate compensation provided through the SSDA scheme poses a significant challenge, particularly in enabling displaced residents to secure housing of similar standards within their community. This issue sheds light on the shortcomings of adopting the compensation framework outlined in the Land Acquisition (Just Terms Compensation) Act 1991 (NSW), which fails to ensure residents receive compensation commensurate with the cost of purchasing equivalent housing in their current area. This is particularly

²⁸ UNSW City Futures Research Centre, op. cit

²⁹ Crommelin, L., Easthope, H., Troy, L., & Randolph, B. (2020). *A new pathway to displacement? The implications of less-than-unanimous strata renewal laws for vulnerable residents. Australian Planner*, 56(4), 261–269 – accessed 19 March 2024

<https://doi.org/10.1080/07293682.2020.1854798>

distressing for elderly individuals, pensioners, and retirees, who may find it difficult to afford comparable housing or face financial strain when compelled to relocate. Furthermore, it delves into the financial hurdles posed by escalating property prices in revitalisation zones and the considerable expenses associated with moving.

“For older people especially people in their 80s-plus, it’s extremely difficult for them to have to suddenly sell up and move because it’s likely that ... they won’t be able to buy back into the area in which they live.” (Low Income Pensioner Peak Body)³⁰

- **Personal and social impacts of displacement:** Personal and social impacts of forced displacement are multi-faceted. Concerns include but are not confined to the loss of connections to local communities and networks, access to essential services, and the potential impact on identity and attachment to home. Elderly residents are particularly vulnerable, facing the prospect of losing long-standing connections and being forced into unfamiliar living situations, such as nursing homes. The emotional toll on the elderly is also emphasised, as many have lived in the same place for a significant portion of their lives and fear change. These concerns go beyond mere financial assessments, highlighting the broader social and emotional dimensions of displacement that should be considered.

“For many it’ll be the end of the line – it’ll be a nursing home.” (Consumer Peak Body)³¹

“They might be able to say, there’s no financial hardship because they can go and buy a unit at Penrith Lakes. But that misses the point entirely, that these people will lose all their friends, all their connections in the sunset years of their lives. I just think that’s completely inappropriate.” (Legal Peak Body)³²

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

Policy Implications

Shelter NSW has identified the following areas as those requiring attention and with some options to address. Are there others?

Planning system to promote more medium density – to mitigate the worst impacts of strata schemes

- Promote medium-density development, as smaller buildings facilitate easier and more cost-effective housing for both homeowners and tenants.
- Regardless of being high or medium density, apartment buildings should, wherever feasible, be developed as stand-alone structures to avoid the legal complexities and expenses associated with community title and stratum subdivisions.
- Given the rising proportion of the population residing in apartments, New South Wales requires a Department of Strata Titles dedicated to overseeing both the development and ongoing management of complex housing.

Consumer protection - preventing and responding to financial hardship

- Establish mandatory requirements for the full and plain English disclosure of strata fee histories during property transactions.
- Establish requirements for levy notices to provide comprehensive and clear information to ensure transparency and understanding among stakeholders.
- Extend the legal requirements for strata-titled properties to develop maintenance plans to include reasonable budgeting requirements to meet those plans. Prominent Sydney strata lawyer Amanda Farmer states,

"There's no legal requirement to stick to it and to raise money in accordance with the plan. I think that needs to change."³³

- The bankruptcy threshold was increased from \$5,000 to \$20,000 in March 2020 as a temporary measure in response to the COVID-19 pandemic. It was subsequently reduced to \$10,000 on January 1, 2021. Given the ongoing cost of living crisis and rising mortgage repayments, there is a compelling argument for raising the threshold to \$20,000 or \$50,000.
- Strata companies should be required to offer financial hardship arrangements similar to those provided by banks for mortgages.
- There should be a cap on the fees and charges that can be added to an original strata debt.
- The current dispute resolution mechanisms for strata debts are inadequate, with legal action permissible within 21 days of a missed payment, leaving little time for amicable resolution. There should be more opportunities (and a requirement for) for constructive dialogue and negotiation before legal action is established.
- Strata title inherently involves legal intricacies that are unparalleled in other forms of property ownership suggesting the need for more specialised strata lawyers (accessible to low-income people).
- Improve and promote education and information to all stakeholders in strata schemes

³³ Jordyn Beazley, Amanda Farmer cited in *Completely blindsided': new owners of strata properties shocked by special levies* (2024) - accessed 23 April 2024
<https://www.theguardian.com/australia-news/2024/apr/21/completely-blindsided-new-owners-of-strata-properties-shocked-by-special-levies>

The NSW Government recently proposed new laws aimed at addressing some of the ongoing issues within the strata system. These changes, introduced by the Minister for Better Regulation and Fair Trading, include increased penalties, stronger disclosure requirements, and enhancing NSW Fair Trading's enforcement and compliance³⁴.

Shelter NSW additionally welcomes the \$11.8 million allocated in the recent NSW State Budget to allow the Strata and Property Services Commissioner to educate owners' corporations and hold strata agents to account, including \$3.5 million over two years towards the Strata Hub online platform to centralise information for those who live in or own a property in a strata scheme³⁵.

While these measures are a step towards improving transparency and accountability, ongoing vigilance and consultation with key stakeholders will be essential to ensure that these reforms effectively address the challenges faced by strata communities.

³⁴ NSW Government media release, (2024), *New strata laws to rise to the challenge of living in higher density homes* – accessed 27 June 2024

<https://www.nsw.gov.au/media-releases/new-strata-laws-to-rise-to-challenge-of-living-higher-density-homes>

³⁵ NSW Government media release, (2024), *A Budget to deliver more house and better home* – accessed 19 June 2024

<https://www.budget.nsw.gov.au/sites/default/files/2024-06/2024-25-nsw-budget-chanthivong-a-budget-to-deliver-more-houses-and-better-homes.pdf>

Appendix A – Available Strata information and advice

Consumer advice and support

General Strata Information

For general information about strata, visit the NSW Government's housing and construction page: [General Strata Information](#)

<https://www.nsw.gov.au/housing-and-construction/strata>

Serving on a Strata Committee

If you're interested in serving on a strata committee, find relevant details here: [Serving on a Strata Committee](#)

<https://www.nsw.gov.au/housing-and-construction/strata/serving-on-a-committee>

Strata Disputes

For information and guidance on resolving strata disputes, check the following page: [Strata Disputes](#)

<https://www.nsw.gov.au/housing-and-construction/strata/disputes>

Contact Information and Resources

NSW Land Registry Services: Phone 1300 052 637, <https://nswlrs.com.au>

Mediation Services Unit (NSW Fair Trading): Phone 13 32 20

Marrickville Legal Centre, Strata Collective Sales Advocacy Service:

<https://mlc.org.au/services/strata>

Community Justice Centres: Free call 1800 990 777 or TTY 1800 671 964

Community Legal Centres: Phone 9212 7333, <https://clcsw.org.au>

Seniors Rights Service, Strata Legal Service: Phone (02) 9281 3600 or 1800 424 079, <https://seniorsrightsservice.org.au/what-we-do/legal/strata-legal-service>