



Owners Corporation Network (ACT)

Newsletter

Issue 7 - December 2019

As President of the OCN (ACT)

I invite you to read our latest Newsletter and attend our next Annual General Meeting (AGM) and Public Forum on Monday 2 December 2019 at the Federal Golf Club with the AGM starting at 5 pm. By now, you should have received details for both events. The OCN is making an impact but there is still much more to do if strata is to be a viable cost effective housing choice and this choice should include the preference of many community members for medium density duplexes through to townhouses and lower rise (Class B) complexes.

As commercial premises are also becoming a regular feature within strata complexes the OCN is engaging with business groups such as in Fyshwick and Manuka. Various Canberra Precincts have unique features and these are often in addition to common issues faced by all strata complexes.

The last twelve months has continued to see massive increases in rates and land tax, now approaching the prediction of triple increases over just a few years. There must be alternate ways to raise the revenue needed to provide the services we need including quality health and education.

Building defects particularly in high rise complexes have been brought into close focus by the highly publicised evacuation of residents in Opal and Mascot Towers in Sydney and by our own Canberra problems. The problems with flammable cladding in residential complexes and the impact on insurance is still to be recognised sufficiently by Government. Strata reform is

finally happening with an emphasis on adding a 'user pays' principle to the calculation of body corporate levies.

More details of OCN activity and government action:

- The Government has announced consultants will be engaged to review the impact on the community and the ACT economy of the past years of Tax Reform. OCN and the Strata Managers peak body SCA jointly offered several months ago to engage on such a review but we have since had no response to this. A credible consultancy review will need significant community engagement and broad terms of reference, and **independence**. The OCN is highlighting these issues to the media.
- The Minister for Building Quality Improvement has taken steps with proposed legislation to address the liability of Building Company Directors to rectify building defects. This is a step to address company phoenixing but it does not address the role of developers at all. The OCN has provided a Submission to the Assembly Committee on this proposed Legislation, and notes the recent suggestion of Developer licensing models and will enquire further.
- The OCN together with SCA, Master Builders (MBA) and a local specialist strata lawyer have written to the Minister requesting Government address the cladding issue and insurance implications and seeking a meeting to discuss but a satisfactory response was not received.
-

- The Strata Reform Draft Bill is intended to be tabled by the end of November.
- OCN continues to support taking individual and OC issues to Access Canberra to address management compliance and often these issues relate to insurance. We hope more comprehensive strata legislation resulting from the Strata Reform activity will reduce some of the concerns in this area.

The ACT Election will provide an opportunity for the Canberra community to consider the support our Government has given and will give in the future to our housing choices.

If you are unable to come to the AGM, you are always welcome to contact our executive committee members via the contact details on the website or at the end of this newsletter.

Regards
Gary Petherbridge

Transfer of management contract

The sale of ACT Strata Management to Whittles has highlighted the issues with the process undertaken commercially in transferring a strata management.

S53 of the UT(M)A provides that a manager can seek to transfer their contract to another party and the owners corporation (OC) has to agree or not within 30 days.

Given that time frame, many Executive Committee (ECs) decide to do nothing and don't even inform owners a transfer has been requested.

Commercially, a strata manager that acquires a new strata management will want contracts to transfer quickly and smoothly and we understand that ECs have been advised by the proposed new strata manager that a general meeting cannot decide in the 30 day time frame, especially if it is likely to be under reduced quorum rules.

So, ECs assume they are validly exercising their powers. But they are not. The decision maker in S53 of the UT(M)A is the OC not the EC.

In the case of ACT Strata Management a few executive committees demanded and got an extension of time and did the right thing. They informed all owners what was happening, provided information, had the discussion at a general meeting and the OC made its decision.

A small amendment in S53(3) extending the time period to 60 days would mean that owners get to exercise the powers they already have without fuss and confusion.

We are lobbying for ACT Government to give due consideration to this amendment.

Do not lodge a claim against the OC insurance yourself

You might be made to pay the excess. Much to the consternation of most observers, ACT Civil and Administrative Tribunal (ACAT) recently decided that if the owner lodges the insurance claim the owner pays the excess.

In the case in question *Woolmer v UP346*, two units were flooded by water flowing over common property and not going down a totally inadequate drain. (ACT building approvals fail yet again!) The manager came to inspect the significant damage but insisted that the owners lodge the claim. Up to their knees in water, they complied.

ACAT decided it was obliged to make this decision because S100 does not require the OC to lodge a claim when damage occurs.

Again, we are lobbying for Government to address this issue.

With excesses as high as \$20,000 in ACT high rises, there are likely to be election votes in such an amendment.

Do you have to have an EC?

Just when we thought it was clear that owners corporations have to elect an EC at an AGM and that the days of the dysfunctional “all owners” executive committees are over, we have a new problem.

ACAT has decided that we don't have to appoint the minimum 3 members of the EC. If only one or two people put up their hands to be EC members at the AGM, an EC has been properly appointed.

There might be as many as 600 units, but an EC of one or two can make all the decisions.

ACAT found that S39(2) is deficient because it says the OC has to decide the number of people to elect but that it doesn't say that number actually has to be elected.

Government must address this issue.

Who owns glass walls joining a balcony?

ACAT recently decided that a wall of glass or windows bordering a balcony or other unit subsidiary is the maintenance responsibility solely of the owner of the unit. (*McMillan & Anor v Owners Corporation- Units Plan No 79 (Unit Titles)* [2019] ACAT 86)

This decision presents two problems. One could argue in reliance on the decision that the OC now does not have ownership of the outside of a Class A building, where there are walls of glass fronting a balcony or potentially an outdoor restaurant or other business areas. It only owns bits of the exterior of the building. It owns the cement, or brick or cladding but not the glass. If an owner refuses to maintain the glass and causes problems for other owners, the OC might not be able to demand it be fixed.

Meanwhile, under the decision, the individual owner was found to be responsible for the maintenance of both sides of the glass not just the inner surface. It might be huge panes of double glazing six or more floors up and the owner hasn't a feasible way of performing maintenance, but it's now the owner's problem.

The definition of *wall* and *subsidiary* in the Unit Titles Act have led ACAT to this conclusion.

We will propose to lobby Government to clarify and fix this anomaly.

Disability Access

Or should we say access for all?

With the Disability Royal Commission getting into full swing, people with a disability may be emboldened to demand the rights they have already been given by the Disability Discrimination Act (DDA). See <https://www.ocnact.org.au/17-complying-with-the-commonwealth-disability-discrimination-act-1992>

Owners corporations are subject to the DDA. New Buildings should be accessible for all. But many executive committees still dispute whether they are liable to retrofit older buildings to meet the accessibility needs of residents, be they owners or tenants.

There is now a wealth of material available on the web explaining that where owners corporations provide services like access to individual units or subsidiaries, including carparks, they must comply with the requirements of the DDA.

If a resident raises their need with the EC, get information and negotiate.

Mixed use strata

The day to day operations of mixed use strata title complexes in the ACT are handicapped by a lack of effective legislation to allow Owners Corporations to allocate costs fairly and equitably on a "user pays" basis.

Canberra apartment owners are surprised after an apartment purchase in mixed use precincts to find that there is just one water meter and that they are paying massively for water consumption by commercial owners. Analysis has shown that up to 50% of water consumption is commercial, but where residential unit owners are 80% of the owners, they are subsidising water costs of commercial owners. To fix this situation the

current, appallingly inadequate legislation, says there must be 100% agreement of all owners to install commercial water meters. It's not surprising some commercial owners say, well I don't agree, and continue to take advantage of the unfair situation.

One mixed use complex after 6 years operations questioned the high common power electricity costs and investigations revealed that rooftop commercial air conditioning was on a common power circuit. This was a cost saving for the developer, one power cable instead of 10 to the roof, but no-one knew. So commercial owners were paying just 17% of their electricity costs and residential owners were paying their own electricity costs plus 83% of the commercial owners costs. When Access Canberra were asked to look at this they did nothing as they said the legislation was a problem.

On trying for rectification with costs of some \$120,000 involving major electrical works in commercial units, 9 of 10 commercial owners voluntarily agreed to fund the works and the 10th owner went legal stating he wanted the legislation to apply. The owners corporation appealed to ACAT to adjudicate and resolve the issue. ACAT in its wisdom ruled against the OC, according to a strange interpretation of the legislation that it was all common property, despite services being exclusively for the benefit of individual commercial units and major new infrastructure items being entirely within their units. Plus, these owners had the benefit of 6 years electrical supply paying just 17% of the actual cost. The outcome is ACAT thought it was acceptable for all unit owners to pay for new switchboards and a new air conditioning system for commercial owners. ACAT have demonstrated they do not consider fairness and equity issues. Nine of the 10 commercial unit owners have always agreed to pay for the works, just one refused. Since the works were completed the common power electrical bills have more than halved now that commercial owners are paying for their own consumption.

These two examples show the current legislation is manifestly inadequate. Made even clearer by the fact there is not a single mention of "mixed use" in the entire legislation. The government is now acknowledging the need for strata law reform over a painful 5-year period when there have been 5 senior government executives in a "musical chairs" scenario.

We are eagerly waiting for the new legislation. It must be better than what we have!

OCN Education

The OCN is committed to working with its members to provide appropriate opportunities for ongoing education, particularly with the new legislation proposed which will significantly impact, positively, the ability for OC's to tailor rules, levies and special privileges to work with the functions of the building and its use. There are also changes proposed to enable meetings to be held electronically and electronic voting processes. In addition to the specific strata reforms ACT Government is also proposing to introduce electronic conveyancing platforms, as have been successful in NSW, Victoria and Queensland.

To this end we will be hosting a seminar run by Susan Proctor of Proctor Legal in February 2020 on the specifics of the proposed strata changes and what it means for you as owners and executive committee members. This may extend to a series of seminars, should there be sufficient need. Please watch this space for further details.

OCN Website

The OCN website www.ocnact.org.au has lots of great articles, information and resources. Please have a look and tell us what more you want.

Find OCN ACT on Facebook

Keep up to date with the OCN. 'Like' us on Facebook by clicking on the link <https://www.facebook.com/ocnact> or search Facebook for Owners Corporation Network – Australian Capital Territory. Please share the link with others or send them a 'suggestion' request to 'like' the page.

Renew your membership

If you haven't already done so, please pay your subscription. It's \$20 for an individual or \$20 plus \$2 per unit for corporate members. You can do it either by cheque sent to:

The Treasurer OCN (ACT)
15/81 Crozier Circuit
Kambah ACT 2902

Or direct deposit to OCN's account
BSB 082-980
Acc No 829382063

Please then email the Treasurer at treasurer@ocnact.org.au that you have paid your fee.

Registration of Corporate Membership Contact Person with OCN

Our membership database works on the basis that one person is the contact person for a corporate OCN membership. As more and more OCs create a gmail.com account for the OC, (UP123@gmail.com) the chair (UP123chair@gmail.com) the secretary etc an individual may not be the best contact. If your OC now has an email address that connects direct to the EC and transfers to EC changing membership, please let us know. If you don't have a UP@gmail account, you aren't sure who the contact person is and the mail is not getting through, or you want to change the contact person, please contact Libby Amiel and the database will be updated.

OCN Contacts

Gary Petherbridge, President
Phone: 02 6273 0186 or 0414 627 080
Email: galyn1@bigpond.net.au

Libby Amiel
Phone: 02 6296 6596
Email: libri@homemail.com.au

Gary Green, Vice President
Phone: 0411 550 280
Email: garygreen2@mac.com

