



# ACSL

Australian College of Strata Lawyers

# 15th Annual ACSL Strata Law Conference 2020

Wednesday 19 –  
Friday 21 February 2020

**Softel Noosa Pacific Resort**  
**14-16 Hastings Street, Noosa Heads, Queensland**  
*(Entrance via Noosa Parade)*





**ACSL**  
Australian College of Strata Lawyers

# Conference Program

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## Join Us for an Exceptional Event

I invite you to join us at the 15th Annual ACSL Strata Law Conference in Noosa.

The ACSL Conference is the premier event of the strata legal community's calendar, presenting an unequalled opportunity to exchange knowledge and to create and renew associations with other delegates.

The 2020 program includes 23 sessions from the pre-eminent experts in the field.

The ACSL Conference is open to non-members and aspiring members. I recommend that you take the opportunity to attend and add value to your practice and consider joining ACSL to receive ongoing benefits and generate relationships in the increasingly specialised area of Strata Law.

I wish to thank the Conference Committee for their commitment to bring to you the 2020 conference program.

Tim Graham  
President, ACSL  
HWL Ebsworth Lawyers

### ACSL Conference Committee

- Tim Graham, (ACSL President)
- Michael Allen, NSW (ACSL Former President)
- Allison Benson, NSW
- Gary Bugden OAM, QLD (ACSL Former President)
- Thomas Gibbons, NZ
- Michael Kleinschmidt, QLD (ACSL Council Member)
- St John Lord, QLD
- Vicki Toan, NZ

WEDNESDAY 19 FEBRUARY 2020			
Session	Time	Topic	Presenter
	4.00 pm	Conference Registration	
	4.15 pm	ACSL Annual General Meeting	Tim Graham, President, ACSL, HWL Ebsworth Lawyers, VIC
	7.00 pm	Noosa Beach House Restaurant & Bar (Entrance through the Sofitel)	14-16 Hastings Street, Noosa Heads

THURSDAY 20 FEBRUARY 2020 – All sessions will be held in the Sofitel Ballroom			
Session	Time	Topic	Presenter
	8.00 am	Conference Registration	
	8.30 am	Welcome	Tim Graham, President, ACSL, HWL Ebsworth Lawyers, VIC
Session 1	8.35 am	CPD Session <b>A momentary lapse of reason</b> Why do (strata) legal practitioners get into ethical trouble? Based on reported disciplinary and other cases, this session zeros in on the crucial moment/s when it all goes wrong. Learn how real lawyers got into real trouble, so that you can recognise those crucial moments in your practice. This session will be interactive and co-presented by counsel with extensive experience in prosecuting breaches of the ASCR. Designed to satisfy 1 unit/1 hour of your 'core' continuing professional development requirements.	Michael Kleinschmidt, Stratum Legal, QLD Michael Nicolson, Barrister-at-Law, QLD
Session 2	9.35 am	<b>Enforcement of Operational Rules and Bylaws</b> Operational rules and bylaws establish expectations around the day-to-day behaviour of owners and occupiers of units and lots. While there is a wealth of case law and commentary dealing with the creation and lawfulness of rules and bylaws, there is less said about enforcement. Significant breaches and persistent non-compliance are of equal concern to owners and occupiers who have to live with the consequences. This session will look at the various methods, legal and otherwise, of enforcing compliance with operational rules and bylaws.	Vicki Toan, Glaister Ennor, NZ
Morning Tea	10.15 am	Lilly Pond Room – 2	
Session 3	10.50 am	<b>Coach will depart at 11.00 am sharp</b>  <b>Noosa Waters Development</b>  <b>Noosa Springs Development</b>	Introduction by Gary Bugden OAM, Bugden Allen Lawyers QLD/NSW  James Taylor, President, The Noosa Waters Residents Association  Sam Scanlon, Residents Group, Noosa Springs
Lunch Break	1.00 pm	Noosa Beach House Restaurant & Bar	
Session 4	2.00 pm	<b>Case Law VIC – One Key Decision</b> Principles – Facts – Lessons	Tim Graham, President, ACSL, HWL Ebsworth Lawyers, VIC
Session 5	2.20 pm	<b>Democratisation of Energy Movement in Strata Schemes</b> Creating a sustainable environment in which people have access to energy, can participate directly in energy markets and improve their lives and the lives of others.	Dr Jemma Green, Curtin University, WA
Session 6	3.00 pm	<b>Greening Cities</b> How we can get productive green space in our cities and on our buildings.	Dr Cathy Sherry, University of New South Wales

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Session	Time	Topic	Presenter
Afternoon Tea	3.40 pm	Lilly Pond Room – 2	
Session 7	4.00 pm	<b>Report on the ACSL QCAT Management Rights Sub-Committee</b>	Gary Bugden OAM, Bugden Allen Lawyers, QLD/NSW
Session 8	4.20 pm	CPD Session <b>Look, I'm on TV! An introduction to media training for lawyers</b> An interactive introduction into the importance of the media industry, finding and pitching positive stories, how to avoid 'foot in mouth' by providing great 10-second soundbites, personal presentation (is there really such a thing as a wrong tie?) and why you should think twice before running from the cameras. This session has been designed to satisfy 1 unit/1 hour of your 'core' continuing professional development requirements. Essential for firm principals and those who find themselves in the media spotlight – whether they like it or not!	Maya Gurry, Fresh PR & Marketing Director
Session 9	5.20 pm	<b>Case Law QLD - One Key Decision</b> Principles- Facts – Lessons	Rebecca Weir, MBA Lawyers, QLD
	5.40 pm	Sessions Conclude	
	6.40 pm	<b>Conference Dinner</b> Rickys River Bar & Restaurant 2 Quamby Pl, Noosa Heads	Sofitel Hotel Jetty departing by Ferry on time at 6.50 pm Return ferry at 10.30 pm

**FRIDAY 21 FEBRUARY 2020** – All sessions will be held in the Sofitel Ballroom

Session	Time	Topic	Presenter
	8.15 am	Registration/ Information Desk	
Session 10	8.30 am	<b>The importance of research in solving the building defects crisis</b> The presentation will: <ul style="list-style-type: none"> <li>• highlight the findings from Dr Johnston's recent study that investigated building defects in residential multi-owned properties;</li> <li>• outline the role that research can and should play in solving this problem; and</li> <li>• provide an overview of the next steps in the building defects research agenda.</li> </ul>	Dr Nicole Johnston, Deakin University, VIC
Session 11	9.10 am	<b>Case Law NSW - One Key Decision</b> Principles- Facts – Lessons	Adrian Mueller, J S Mueller & Co Lawyers, NSW
Session 12	9.30 am	<b>Building Defects Role Play – Beyond the advice and into the sausage factory</b> Communicating effectively and making informed decisions with respect to building defects can be hard for specialist lawyers, let alone owners and strata managers. Develop your Professional Skills (core CPD) with a little honest, and humorous, feedback into what happens after you deliver that superbly written, 12 page advice. Starring the world's best (and only) Commissioner for Body Corporate and Community Management, Mr Chris Irons, with a supporting ensemble cast of ring ins, this session will reveal a little of what the Commissioner's team sees (and sometimes has to deal with!) with when building defects strike. Topical and useful for all members	Chris Irons, Commissioner for Body Corporate and Community Management, QLD
Morning Tea	10.00 am	Lilly Pond Room 2	

**FRIDAY 21 FEBRUARY 2020** – All sessions will be held in the Sofitel Ballroom

Session	Time	Topic	Presenter
Session 13	10.15 am	<p><b>The Content and Requirements of Strata Management Statements and Building Management Statements</b></p> <p>This will be followed by a panel session to discuss the questions posed by Joe and others. Panel topics to include -</p> <ul style="list-style-type: none"> <li>• Including provisions for compulsory revision of BMS/SMS at a fixed date in the future;</li> <li>• How voting rights of BMS/SMS Members should be apportioned;</li> <li>• What matters should be restricted for unanimous decisions or other form of decision making process.</li> </ul>	<p>Chair – St John Lord, Accor Hotels, QLD Joe Welch, Hickey Lawyers, QLD</p> <p>Panel Members: Joe Welch, Hickey Lawyers, QLD Michael Allen, Bugden Allen Lawyers, NSW/QLD Matthew Derrick, Norton Rose Australia, QLD Lauren Shaw, Dynamic Property Services, NSW</p>
Session 14	11.15 am	<p><b>Case Law NZ - One Key Decision</b></p> <p>Principles- Facts – Lessons</p>	John Greenwood, Greenwood Roche, NZ

**Building Defects – Part 1**

Session 15	11.35 am	<p><b>Designing a Regulatory Response to Building Defects in Strata - More Disclosure is Not the Answer</b></p> <p>As the prevalence and extent of building defects increases greater financial burden is placed on building owners to rectify defects. In the context of strata this burden falls on the owners of the lots in the scheme often at a time when recourse to usual legal remedies offering compensation or rectification is, for evidentiary or time reasons, difficult or near impossible to obtain. Suggested regulatory responses tend to focus on ensuring potential owners of strata lots are fully informed pre-contract of existing defects in buildings and compliance by previous owners with legal requirements. Information disclosure may warn of financial risk but does not adequately deal with the disproportionate financial burden imposed on lot owners, as opposed to builders, arguably resulting in a market failure that should be addressed by regulation. This paper seeks to outline the impact of building defects in the strata context, identify current market failures and identify potential regulatory improvements to address these failures. The paper will propose key elements for regulators to consider in the development of a regulatory response to the current market failures.</p>	Professor Sharon Christensen, Queensland University of Technology, QLD
Session 16	12.15pm	<p><b>What about me? It isn't fair': the mantra of Queensland bodies corporate in the management and letting rights sphere an investigation into the limited statutory termination rights</b></p> <p>Multi-owned properties are an increasingly popular housing product in Australia. With the growth, a supporting industry has flourished, particularly in Queensland. Management and letting rights (MLR) as the arrangement is colloquially known in Queensland, facilitates the provision of caretaking services to the community titles scheme (CTS) and letting services for investment owners. With the growth of MLR, the Body Corporate and Community Management Act 1997 (Qld) (BCCM Act) and Regulation Modules have been progressively amended to increase protections for MLR contractors and their financiers. The MLR-related literature has been reviewed and a conclusion reached that the interests of both lot owners and the CTS governing body (the body corporate) have been subjugated to the commercial imperatives of the original owner, the MLR contractor and financiers. Key court and tribunal decisions are analysed to demonstrate a high threshold before the body corporate may validly terminate MLR arrangements. Consequently, the embedded statutory protections may trap a body corporate into inappropriate or undesirable contractual arrangements created and sold by the original owner before its establishment. Arguably, the BCCM Act has failed in its secondary consumer protection objective when bodies corporate are bound in the long-term by a statutory system designed to protect others.</p>	Chair and Comments - Col Myers, Small Myers Hughes, QLD Dr Melissa Pocock, Griffith University, QLD
Lunch	12.55 pm	Noosa Beach House Restaurant & Bar	

**FRIDAY 21 FEBRUARY 2020** – All sessions will be held in the Sofitel Ballroom

Session	Time	Topic	Presenter
<b>Building Defects – Part 2</b>			
Session 17	2.00 pm	<p><b>Common issues in building disputes concerning defects in subdivision property – a barrister’s perspective</b></p> <p>This presentation will provide a barrister’s considerations and practical experience when briefed in a building dispute concerning defects in subdivision property and the issues confronting the owners and owners corporations including:</p> <ol style="list-style-type: none"> <li>a. Alternative causes of action (eg breach of warranty claims, breach of contract, negligence (property damage and pure economic loss))</li> <li>b. Relevant parties including Owners Corporation or individual owners or both (common property and private property)</li> <li>c. Proving causation – expert evidence</li> <li>d. Proving loss and damage</li> <li>e. Jurisdiction – which court</li> <li>f. Limitation periods</li> <li>g. Apportionment of responsibility and settling with concurrent tortfeasors</li> <li>h. Settling cases – options available</li> </ol>	Joe Forrest, Barrister-at-Law, VIC
Session 18	2.40 pm	<p><b>Building Defects Summary of current situation from each Jurisdiction</b></p> <p>New Zealand Queensland New South Wales Victoria Western Australia Australian Capital Territory</p>	<p>Tim Rainey, Barrister-at-Law, NZ Jane Macdonnell, McColm Matsinger Lawyers, QLD Amanda Farmer, Lawyers Chambers on Riley, NSW Joe Forrest, Barrister-at-Law, VIC Rachel Cosentino, Barrister-at-Law, WA Allison Benson, Kerin Benson Lawyers, NSW</p>
Afternoon Tea	3.10 pm	Lilly Pond Room – 2	
Session 19	3.30 pm	<b>How should proceeds from the sale of a collective strata scheme be divided among strata proprietors?</b>	Assistant Professor Edward TI, School of Law, Singapore
Session 20	4.10 pm	<p><b>Case Law WA - One Key Decision</b></p> <p>Principles- Facts – Lessons</p>	Mark Atkinson, Atkinson Legal, WA
Session 21	4.30 pm	<p><b>Unit Titles as the law of Buildings</b></p> <p>A recent theme in NZ case law that the whole is more important than the sum of the parts, and how this undermines individual ownership and property rights.</p>	Thomas Gibbons, McCaw Lewis Lawyers, NZ

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<b>Session</b>	<b>Time</b>	<b>Topic</b>	<b>Presenter</b>
Session 22	4.45 pm	<b>College of Community Association Lawyers Law Seminar Report</b> To be held in Las Vegas in January 2020, the Law Seminar is a one-of-a-kind event exploring trends and practices in association law attorneys, management professionals and other industry leaders in the United States.	Gerard Doyle, DEA Lawyers, NSW
Session 23	5.05 pm	<b>Local urban governance: The transformative potential of the condominium</b> Condominiums (strata developments) are important but overlooked institutions that have the potential to contribute to significant positive change in modern cities. They provide a ready-made structure for political action and engagement at the local level that can facilitate public participation. They provide the potential to enable local-level resident action, mobilise place-based politics, and facilitate the creation of local social ties. With the rise in globalisation and neo-liberal ideals, traditional social organisations that used to perform this function, such as municipal governments, unions and community groups, have been in decline, whereas the condominium is in ascendance. The condominium therefore needs to be recognised for what it is (an important institution) and not just what it was created to be (a way to encourage home ownership and property development profits). Governments at all levels would benefit by moving beyond the devolution of responsibility for local politics and practices to condominiums towards recognising and supporting their important role in city governance. This paper draws on interviews in seven countries with over 100 experts on condominium living to make the case for the potential for the institution of the condominium to play a central role in transformative disruption in urban governance structures, and the implications of this for wider questions of distributional justice, democracy and urban citizenship.	Associate Professor Hazel Easthope, Faculty of Built Environment UNSW SYDNEY, NSW
	5.35 pm	Post Conference Social	Drinks and Refreshments will be served



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### REGISTRATION DETAILS

Please complete the Registration Form and return to  
ACSL General Manager  
PO Box 182 Moorooka Qld 4105  
E: [generalmanager@acsl.net.au](mailto:generalmanager@acsl.net.au)

### DELEGATE INFORMATION

*Registrant - please use block letters with black ink to avoid illegibility*

Title: \_\_\_\_\_ Given Name: \_\_\_\_\_ Surname: \_\_\_\_\_

Firm Name if applicable: \_\_\_\_\_

Preferred Name label: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Special Requirements: *Please indicate any special needs (including dietary, allergies, medical, other)* \_\_\_\_\_

### ACCOMPANYING GUEST:

*Registrant - please use block letters with black ink to avoid illegibility*

Title: \_\_\_\_\_ Given Name: \_\_\_\_\_ Surname: \_\_\_\_\_

Special Requirements: *Please indicate any special needs (including dietary, allergies, medical, other)* \_\_\_\_\_





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### REGISTRATION DETAILS – FOR DELEGATES ONLY

Registration inclusive of social events	Fees	Qty.	Total
Early Bird <b>Member</b> Delegate ( <b>payment before 14 December 2019</b> )	AUD\$1500.00		
Full <b>Member</b> Delegate Registration ( <b>payment after 14 December 2019</b> )	AUD\$1700.00		
1st Registrant (Member or Non-Member of 3 or more delegates who register at the same time)	AUD\$1400.00		
2nd Registrant (Member or Non-Member of 3 or more delegates who register at the same time)	AUD\$1280.00		
3rd and up (Member or Non-Member of 3 or more delegates who register at the same time)	AUD\$1250.00		
Academic Member Registration	AUD\$750.00		
Associate Member Registration	AUD\$750.00		
Non-Member Registration	AUD\$1950.00		

Social Events for ACCOMPANYING PERSONS Registration	Fees	Qty.	Total
<b>For delegates, this item is included in the registration above. This is for accompanying persons only</b>			
Wednesday and Thursday Dinners	AUD\$450.00		
		Total	

### PAYMENT DETAILS

Cheque payable to Australian College of Strata Lawyers in Australian dollars

Direct Deposit Details: Bank: National Australia Bank BSB: 084-004 Account Number: 59 984 6415

\*Reference your payment: Conference + (Surname of Delegate) No credit card facilities are available.

For International attendees please ensure that all transfer fees are included in payment

This form constitutes an Invoice upon Receipt of payment. No GST is included in the amount payable as ACSL is not registered for GST. ABN Number 81 931 647 242



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### THE COLLEGE (ACSL)

Australian College of Strata Lawyers (ACSL), established in 2005, is an association to promote high standards and a system of specialist accreditation for lawyers skilled in the practice of strata and community titles. Representing all stakeholders in the area of strata law, including owners, occupiers, owners corporations, community associations, managing agents, consent authorities, developers, financiers and building managers.

### ABOUT THE CONFERENCE

The Conference Committee has worked hard to ensure that expert speakers will share valuable insights into experiences within the Strata sector, and delegates will gain new inspiration, new learnings into the latest industry trends and best practices.

### WHO SHOULD ATTEND?

If you are interested and involved in Strata Law and the way it is changing and evolving, you will not want to miss this opportunity to be part of the commentary and discussion on the current state of knowledge and related issues in the field.

### THE VENUE

The conference venue is the Softel Noosa Pacific Resort, Entrance – Via Noosa Parade, Noosa Heads Qld

### ACCOMMODATION

Softel Noosa Pacific Resort Accommodation Booking Form

[ACSL Conference 19-21 February 2020 Accommodation Booking Form Softel Noosa Pacific](#)

### AIRPORT TRANSFERS

Con-X-ion Airport Transfers are available from Brisbane and Sunshine Coast Airports. For bookings view – [www.cxn.au](http://www.cxn.au)

- Shared Seat Shuttle - Please note that the shared shuttle makes other stops on the way to the resort.
- Private Charter rates are available. You may care to group together with other delegates attending the conference.

### REGISTRATION DESK

The conference registration desk will be in operation prior to the commencement of the conference and throughout the day on Thursday and Friday.

### Fees include

- Attendance at all working sessions
- Conference materials, including any available speakers' papers submitted to ACSL by Friday 21 February 2020
- Wednesday and Thursday evening dinners
- Lunch on Thursday and Friday
- Tea and coffee during breaks
- Please note that registrations are transferable

### CONFIRMATION

Confirmation of your registration will be forwarded to you by email.

### EARNING CPD POINTS

Attending the ACSL Conference is also a valuable way to earn CPD points. You can earn self-assessed 1 point per hour of education for each State and Territory CPD programs. New Zealand Lawyers – Self-assessment applies. There are two compulsory sessions included in the program for 2020.

### CONFERENCE EVALUATION

A conference evaluation form will be provided to assist ACSL with planning future conferences. Please complete the form and return it to the registration desk prior to your departure.

### CANCELLATION POLICY

An administration fee of \$250.00 per registrant will apply for cancellations before 30 January 2020. No refunds will be payable for cancellations made after this date.

### DRESS

Smart casual is appropriate for conference sessions. A light jacket may be required in air-conditioned seminar rooms and for the cooler weather. Smart casual is also appropriate for the conference dinner.

### DIETARY REQUIREMENTS

If you have any special dietary requirements please note these on your registration form when registering.

### INSURANCE

Conference registrations fees do not include insurance or cover for loss or personal injury. There is no insurance provided by the conference organiser. Delegates should arrange their own personal and travel insurance.