



Australian College of Strata Lawyers

11 September 2024

MEDIA STATEMENT

Australian College of Strata Lawyers (ACSL) calls upon all State and Territory governments to enforce laws to better protect strata owners

ACSL welcomes the reporting by ABC's Four Corners team Monday night on the 'Strata Trap'. While the strata management sector in Australia contains some very professional, competent and caring managers, there is an element, which has grown over recent years, of managers who adopt a profit / growth drive mindset, at the expense of their clients, professional ethics and ultimately, the law.

Based on the extensive experience of ACSL members working in the strata sector, often side by side with strata managers, ACSL agrees that all State and Territory governments must take action to address the behaviour of the bad actors. What is missing, crucially, is an independent, empowered, and properly resourced enforcement agency, in each State/Territory. In essence, there is no 'Strata Cop' on the beat, in any Australian jurisdiction. There needs to be.

In ACSL's view, it should not fall to strata owners, to identify, investigate, and ultimately prosecute breaches of strata law by their strata managers. The absence of an effective enforcement agency is one of the most significant reasons that the behaviours reported upon by the ABC have become prevalent.

Another crucial reason is the misapprehension of strata managers that 'disclosure' cures all, with respect to commissions and conflicts of interest. As the ACCC Chair, Gina Cass-Gottlieb elegantly, and succinctly commented, *'Enhanced disclosure obligations don't get to the root of the problem, which is the financial incentive'*. As fiduciaries of their owners' corporations, strata managers have stringent obligations upon them, to not profit by virtue of their fiduciary position. Fully informed, effective disclosure can forgive some breaches of fiduciary duties, but not all. Disclosure cannot be, and should not be, a panacea.

Sector-wide structural change is required with respect to insurance commissions, and related party commissions, profit-sharing structures and the prohibition of kickbacks. Vertical integration in the strata management sector is undoubtedly leading to poor outcomes for strata owners, exacerbating the cost-of-living crisis, across the nation. If we don't fix these issues, how can more strata be an appropriate solution to our housing crisis.

In March 2024, the ACSL called for strata managers to discontinue the practice of accepting commissions as things currently stand. It is encouraging to hear that the ACCC is now doing the same.

ACSL calls upon all State and Territory governments to remedy the glaring lack of enforcement of current laws, to strengthen the existing laws to better protect strata owners and to remove the financial incentives for strata managers to engage in anti-competitive conduct.

CONTACT:

Tim Graham, President, ACSL

president@acsl.net.au

PH: 03 8639 9800

