

## **Abstract**

### **Tenancies, Committees of Management and the Strata Environment**

The Australian Bureau of Statistics data reveals that in Australia one in four people live in strata titled housing in its various forms (apartments, gated and master planned communities). While there is an increasing body of academic research in this field, it has primarily been from a developer-buyer perspective, private or social housing tenant perspective, or from a land lord perspective. The view of the committee of management, or the strata manager has not previously been considered.

This research presents findings from a larger qualitative research project and is focussed on the interaction between the owner committee of management and strata managers. Set within the Melbourne apartment context, it highlights tenancy and landlord issues that committees of management address as part of their usual business. The actor raised issues fell into four categories: long term residential tenants, short term apartment lets, commercial tenants and social housing tenancy mix. All discussed the high proportion of renters within their complexes compared to owner occupiers. This poses serious policy implications not just for the organisation, but for tenants and government agencies.

## **Key Words**

Apartments, Governance, Rental, Landlords, Tenants, Maintenance, Conflict, Housing

## **Introduction**

This chapter examines the phenomena of strata titled apartment developments in Melbourne. Government initiatives believe that increased density is addressing residential housing shortage, however, the research presented here suggests otherwise. Through consideration of relevant literature, it will review the reasons behind the substantial growth in high density living; increasing social division; the overlap between residential and commercial premises paying particular attention to the role of the committee of management and strata manager in moderating tenant issues.

The chapter then examines a range of tenancy related issues addressed by committees of management as part of their legislated duties. Taking a qualitative approach, the research outlines the constraints within which the volunteer committee of management operate. The semi structured interviews with seven committee chairs and six strata managers outline four key areas of concern: long term residential tenants, short term apartment lets and commercial tenants, social housing tenancy mix and difficulties associated with getting government landlords to act. It taps into the committee's need to negotiate outcomes with multiple actors, highlights increasing resident dissatisfaction particularly with short term commercial rentals; the lack of consultative mechanisms for tenants, and safety issues accruing from a disconnect between the actors involved.

The high rate of investor apartment sales is used to outline policy implications for government given the high rate of investor owned property in these complexes; the disjunct between the needs of short term serviced apartments and long term tenancies within the same building; and the difficulties of volunteer run committees of management dealing with resultant complex behavioural problems within the commonly held property.

## **Literature Review**

Australia has traditionally been a home owning nation with much of that home ownership occurring within a suburban setting dominated by free title land holdings as opposed to strata title. Randolph (2006, p. 474) notes that with 'the suburban option is increasingly curtailed, Australians of all levels will be expected to spend substantial proportions of their lives in a form of housing that hitherto has only been a minority choice'. The differentiation is not just between suburban and urban dwellers however. Policy debate also occurs around the home ownership verses rental division.

Australia has much to contribute to research on high density living. There has been significant debate as to where and how strata titled properties first originated. McKenzie (1996) traces this back to a corrupted version of Ebenezer Howard's Garden City in Nebraska, USA while Webster and Le Goix (2005) note that Paris was a mid-19<sup>th</sup> century centre for similar types of property. Nevertheless, the introduction of the strata title mechanism to the Eastern states of Australia in the early 1960s has meant that there is a fifty year period of accumulated experience with this property type in Australia. Easthope and Randolph (2008, p. 244) note that Australian legislation has formed a basis for jurisdictional reform in other countries such as Canada, New Zealand, South Africa, Singapore, Indonesia, Brunei and Malaysia. The take up of Australia's legislative framework by so many other countries highlights the significance of our urban consolidation policies and frameworks to an international audience.

Yet it is only in the past decade and a half that urban consolidation has become the dominant paradigm of planning policy. This paradigm has generated significant interest from urban researchers in associated fields. There has been a tendency to concentrate on management issues (Budgen 2005; Pouder & Clark 2009; Warnken & Guiding 2009), socio-cultural issues such as diversity, segregation and security (Brunn 2006; Low 2006; Kern 2007; Webster & Le Goix 2005), economic issues including housing stock planning, price and renewal; life cycle costs and building termination (Easthope & Randolph 2009; Johnston & Reid 2013; Warnken & Guiding 2009;) and environmental issues (Altmann 2013; Randolph 2006; Troy 2002). Issues of governance where addressed concentrate on owner experiences, committees of management, building and strata managers or developer influence (Bajracharya & Khan 2010; Goodman & Douglas 2010; Randolph 2006). Few give serious attention to the tenants that live within these complexes, or their interaction with governance systems in place. Where mentioned, it is more as a passing glance that acknowledges presence but not the impact for governance processes and practice. Guiding, et al. (2004) for example note that apartment buildings may contain a mix of long and short term tenancies and that short term tenancies may be favoured by resident property managers in tourist centric places. Guiding et al.'s (2005) comprehensive list of stakeholders includes owner-occupiers, investor owners, resident property managers, building or site managers, strata managers, maintenance and repair companies,

real estate agents, letting agents, management rights brokers; legal practitioner, developers, financiers, local, state and federal government agencies, local residents, tourist accommodation management companies, hotel and motels, insurance industries, energy and communication service providers, media and aged care industries. Again, no mention of the committee *per se* or the tenants renting from investor owners. Though Everton-Moore et al. (2006) note that recent changes to strata title legislation are attempts to mitigate conflict of interest problems that stem from such diverse stakeholder groups, tenants, their needs and their relationship with the committee of management are not discussed. This gap is surprising since as early as 1999, Blakely and Snyder noted in the American context that strata titled property was more likely to be tenanted than owner occupied.

Within Australia, there are reasons why this omission has developed. Australia's housing tenure system is market dominated (Yates & Bradbury 2010). Despite significant discussion about Australia's declining housing affordability, home ownership rates have remained relatively steady at around 70% of total occupancy over a sixty year period. Nevertheless there has been a significant focus on the expansion of the private rental market since 2001 (Wulff et al. 2011). Australia's social rental market has contracted to just 5% as housing authorities have divested themselves of older stock requiring significant maintenance upgrade. At the same time the days of 'government as developer' building broad acre low income housing has largely ceased. The regulatory role of 'government as developer' on house and land prices is rarely discussed in housing studies. Housing costs are increasingly dominated by market outcomes (Yates & Bradbury 2010) whether owned or rented; whether private or public. Hence there is an increased focus on housing affordability, both in the home ownership and rental areas. Rental is no longer seen as a transitional step to home ownership, but a long term tenure necessity or choice as the housing markets respond to increased population, short term employment contracts and product differentiation pressures.

Market differentiation has also occurred within rental markets. The experiences of renters within the private rental market differ according to household type and income and cultural background (Wulff et al. 2011). Randolph and Tice (2013) detail different sub-markets within the Melbourne and Sydney apartment sector. At the lower end of the market there is a severe shortage of affordable properties. Randolph and Tice (2013) confirm the differentiation between Sydney and Melbourne markets at the lower end of the apartment market. Sydney's market is characterised by economic 'battlers' whereas the Melbourne market is characterised by a student population. Economic battlers, young people, those employed or more educated, partnered and English speaking are more likely to forgo public housing rental applications to seek accommodation within the private sector (Burke, Neske & Ralston 2005). At the same time high income, young people are more likely to prefer inner city dwellings such as apartments. Families have a greater tendency to move toward the middle and fringe suburbs where larger suburban homes are still relatively affordable (Fincher & Gooder 2007). Families with children

are scarce in high density, inner city Melbourne apartments (Whitzman & Mizrachi 2012). Older people, particularly home owners have been slow to take up higher density living options (Fincher 2007; Wulff et al. 2004) despite Melbourne planners seeing high density homes as a solution to increasingly smaller households and aging populations. Within the Victorian context, strata titled properties make up an increasing volume of rental stock. Overwhelmingly, the inner city Melbourne apartment market is an investor driven market dominated by short and long term rental properties leaving few owner occupiers in situ. In 2010, the Owner Corporation of Victoria (OCV) reported that 95% of strata titled properties were sold to investors.

Other submarkets are characterised by substantial numbers of centrally located apartments becoming short term lets or unregulated tourist accommodation. These apartments are often missed or miscalculated in housing stock counts. Planners have approved these apartments as long term residential accommodation, however once in the hands of letting agents, they may become short term lets or tourist accommodation, despite this type of accommodation falling within a different building class within the Building Code of Australia. Guilding (2003; Warnken & Guilding 2008; Warnken et al. 2003) have written extensively in this area. However the experience they describe is Queensland based, and an indication of the mature tourism industry along the Gold and Sunshine coasts. The use of residential building managers is a feature of that market not seen in other jurisdictions to the same extent. The ability of the residential building manager to influence letting and sub-letting practices within a particular building is therefore not a significant feature of other jurisdictions, though highly relevant to the Queensland context and its impact on governance issues generally. As Randolph and Easthope (2009, p. 247) note, 'governance refers to structure, processes and practices that determine how decisions are made in a system and what actions are taken within that system'. It is a complex system.

There is a significant amount of variety in the legislation and legislative terminology between the Australian states and territories. Both Everton-Moore et al. (2004) and Johnston and Reid (2013) provide comparative analysis of the jurisdictional terminology used to describe the strata title mechanism within Australia. However since the focus of this research is on the Melbourne apartment sector, terms relevant in that jurisdiction are used. The term 'owner corporation' is used instead of 'body corporate', 'HOA', 'CID' or 'condominium'. Within these schemes, all lot owners make up the owner corporation and have shared rights over the common property. Some owners are elected to the 'committee of management'. The committee of management acts as the elected governing board. The decision making power sits largely with this group of owners though all owners have voting rights along with the ability to nominate for a position on the committee of management. Increasingly, strata managers are appointed to assist in the administrative duties undertaken by owner corporation.

Ownership is therefore both individual and collective in nature. The tiered ownership system encompassing individual and collective ownership, rights and responsibilities has the potential to obfuscate owners and tenants within this type of complex. The situation is complicated by product differentiation created by developers and real estate markets. These include age exclusive retirement villages, lifestyle villages or e-communities. 'Nesting' in which tiered structures are developed may also be present. This occurs when several smaller owner corporation are governed by a larger, overarching one (Townshend 2006) and may entail designated mixed use property within the one strata scheme. Melbourne's inner city apartment sector has several nested developments.

Governance is further complicated by the disconnect between tenant legislation and strata legislation. As Kemp (1987) explains, bundles of duties and rights are embedded in tenancy legislation for both owners and landlords. Easthope (2014) contextualises these duties and rights within an Australian context but fail to place these within the context of a rental sector that increasingly interacts with strata legislation and accompanying committees of management. Hulse et al. (2011, p. 65) notes that where blocks of flats are owned by a single investor, then tenancies are more stable. This may account for the higher rates of tenant stability in many European countries where the strata title mechanism is a relatively recent event. Within strata titled buildings there may be multiple investor owners, and stability may therefore be impacted. In Victoria, there is no clear extension of tenant obligation towards the owner corporation within long or short term rentals. The Residential Tenancy Agreement requires that other owners are to have 'quiet enjoyment' of their premises. Short term rental contracts are treated more like hotel bookings. On the other hand, the Owner Corporation Act 2006 requires the upholding of their by-laws by occupiers (including tenants). Likewise, in Victoria, tenant needs are to some extent acknowledged within current strata legislation. For example, Section 163 of the Owner Corporation Act 2006 allows the occupier (including tenants) of an apartment to seek adjudication of complaints by the Victorian Civil and Administrative Tribunal. However under tenancy legislation, there is no reciprocation for the owner corporation seeking to remedy a tenant issue, such as the negation of 'quiet enjoyment' by others within the complex. The tenancy contracts and legislation deal only with the landlord-estate agent-tenant relationship. Yet the tenant, whether short or long term will use the common property for a variety of purposes, may not uphold the by-laws enacted by the owner corporation or may damage common property. There is no clear remedy other than as a civil complainant. This is because the tenant signed their contract for a specific property or apartment with a specific landlord, not the owner corporation.

That tenants form a significant portion of the apartment population is acknowledged. The public tenant experience of apartment living has been explored in depth (Kearns et al. 2000) However these interviews occurred in largely one owner buildings associated with public or cooperative housing (Mee 2007). Though the experience of long term, private tenants has had increasing focus, it has

centred on landlord interaction, affordability and standard of accommodation. Short term tourist lets have also had an increasing focus, though in a largely Queensland legislative setting. What is missing from the current discussion is the placement of owner corporation relative to the increasing number of tenanted properties within the apartment sector. How do the processes and procedures developed by strata managers and committees of management relate to tenanted properties? Tenants live within apartment complexes; as such they are a significant stakeholder group within the sector. Without conceptualising this lacuna, there can be no holistic understanding of how high density living will play out within Australian society or how governments might introduce policies and legislation that would assist in closing this gap.

## **Case study**

### *Method*

The data for this analysis is drawn from a larger study on medium and high-density housing in Melbourne, Australia. As part of this research a series of qualitative interviews with strata managers and committee of management Chairs was conducted. The research reported here draws on a subset of 13 interviews where participants responded with tenancy related issues. All of the interviewees, including the committee Chairs came from a business or professional background.

Notwithstanding the limitations associated with drawing conclusions from small sample sizes, this dataset draws attention to emergent issues in the governance of strata title properties in Australia. The issues raised in these interviews are relevant to an increasingly dense living environment characterised by high numbers of renters and investor landlords. The data collected is both *rich* and *thick*. The interviews expose the detailed lived experiences of strata title governance, in a way that larger studies are unable to. The data provides much needed insight into individual behaviour, societal attitudes and to some extent legislative attitudes as it applies to the strata environment. Owner corporations are set up to provide stewardship of collectively owned property. The structure, processes and procedures provide an insight into how that governance operates in a rental environment.

A thematic approach was used for analysis of the data. All participants were interviewed in relation to their knowledge and experience of governance within apartment complexes in Melbourne's CBD. The apartments had either been built within the past decade or had undergone substantial

redevelopment within that time frame. Of the 13 interviews, five were able to provide insight on apartment buildings containing in excess of 100 lots in tower configuration and were part of larger building precincts that incorporated Townshend's (2006) concept of nesting. Three of these owner corporations collected in excess of \$1 million in annual levies and were therefore required to have five-year rolling maintenance plans. The other eight interviews brought to the project knowledge and experience of governance within small apartment complexes. In this study, apartment complexes had high rates of rental properties which ranged between 50 per cent and 75 per cent. The research highlights the views of committee Chairs and Strata managers on tenancy issues. It explores a gap in understanding the complexity of governing within apartment rental markets.

### *Findings*

This section is divided into a number of broad themes that deal with the impact of structural arrangements, processes and procedures relating to strata title governance generally rather than the actual issues raised according to tenancy type. The first is the various types of tenants that a strata title property will attract. Additional themes relate to process and procedural governance issues.

#### *Tenants Leasing Strata Lots – Managing Behaviour*

The interviews confirmed the use of apartments as unregulated tourist accommodation. Their growth in numbers is seen as problematic and difficult to regulate.

We have issues of parties. We have issues with bucks' nights, hens' nights, grog being left out, bottles being left out in the hallways and other common property areas. They don't know where the recycling rooms are. They park wherever they feel like it. They're pretty loud and unruly, and unfortunately cause damage to the building as well when they are drunk. (Chair K)

Committee Chairs commented on their inability to effect change through the implementation of by-laws that prohibited short-term letting from their buildings. Structurally they were unable to implement change:

The problem is by stealth they've (short-term rentals) grown ... – the vote has to be 70 per cent to change any owners' corporation rules. We would really struggle, because we probably have more than 30 per cent of the building now in serviced apartments. (Chair K)

What the committee was doing was making a new by-law to get rid of all short-term leasing from the building. ... Before we knew it, there were 30 partitions against the new by-law. (Chair N)

In hotels and the regulated serviced apartment industry, there are appropriate securities in place to deal with the issues outlined by Chair K. In Queensland, strata titled properties used in this way usually employ residential building managers to live within the building complex and are available to unruly behaviour if necessary. Such managers were missing from the Melbourne apartment sector. Even where concierge services were provided within the apartment buildings, disruption caused by short-term tenants did not appear to be dealt with by them. To the Chairs, the investor profit motive and the disturbance caused by the high rate of overnight rentals meant that preferred long-term renters were displaced.

I didn't even realise just to what extent it was (profitable). \$320 a night for a three-bedder. A night!! ... It is not possible for long-term renters to compete with that. (Chair K)

This short-term commercial activity has the potential to displace preferred long-term tenants from the building. Committees of management and strata managers see long-term, stable residential tenancies as advantageous, since it is easier to induct them into processes and procedures within the building. However there were exceptions noted. Social housing tenants for example, were deemed to be unstable and as problematic as short-term lets due to noise and violence issues:

The previous Chair had difficulty with the violence when it erupted. Her response was to pack up her husband, go and rent somewhere else and put a tenant in here and leave them to deal with it. (Chair L)

It's almost impossible to get government landlords to act. They are the most disinterested owners. It took me two years and an appeal to the Minister to get a meeting to discuss the issues we have with their [social housing] tenants. (Chair L)

Indeed Burke (2004) noted that within suburban settings, a noisy minority of social housing tenants could hold whole streets or suburbs to ransom with antisocial behaviour. Within apartment complexes, where there is an additional layer of governance albeit by a volunteer-run committee of management, how much more difficult it is to mediate issues of violence, unruly behaviour, or basic adherence to by-laws. Though Habibis et al. (2007) suggests that additional support be given to public

housing tenants with complex needs and demanding behaviour lest they spiral into homelessness, the difficulties of managing such tenancies for an owner corporation is lost despite several decades of infill apartment purchase by housing authorities. In any case, within this passage, the key problem identified by the committee Chair was the unwillingness of government departments, as owners, to acknowledge that such problems existed, let alone work towards a solution with the owner corporation. There were no processes in place to cover this situation.

Then to, there were structural and procedural issues within mixed-use buildings. The commercial activities of cafés, takeaway food outlets and restaurants in particular created governance difficulties for committees of management. Noise and additional waste disposal were significant problems, as were café patrons wandering through private gardens and lift lobbies. In one interview, part of the common property had been included in a restaurant lease without the agreement of the owner corporation, making enforcement of by-laws especially problematic while protracted legal proceedings took place.

#### *Procedural Challenges of Governing Strata Title Properties*

Strata managers in particular noted that they took care to advise new owners and tenants about the by-laws that were in operation within a building complex.

If I know that a property or tenancy has changed hands I ask the chairman to knock on the door, introduce themselves and hand over a copy of the by-laws to the new occupants. It nips trouble in the bud so to speak. (Strata manager G)

It is difficult for the committee of management and strata managers to argue for the enforcement of by-laws where occupants remain unaware of them. Even where no specific by-laws are in force, the model by-laws take effect. This means that no existing strata complex is without by-laws of some sort. The requirement within Victoria is for all prospective purchasers to receive information about the owner corporation prior to purchase. However, the by-laws still came as a shock to some:

I had no idea these things existed [at the time of purchase]. (Chair L)

The situation for long-term tenants is different. Long-term tenants are not required to be given a copy of the by-laws for inspection prior to signing their lease. They may, however, be presented with them after the lease is signed. Thus the tenant may not know what living conditions they will need to meet

until after the lease is signed. While many real estate agents may provide a set of by-laws to the incoming tenant, it was noted that they were not always the ones relevant to the building complex.

So she [the tenant] showed me a copy and it was the wrong ones. Our company have a standard set of by-laws that are different to the model ones which are the ones she had. Ours are much more explicit and we ask all owner corporation to adopt them [when they sign with us]. (Strata manager D)

Strata managers are persuasive in influencing the structure, processes and procedures within apartment buildings. However the preferred structure is not always implemented due to process or procedural breakdown. This breakdown is best demonstrated through maintenance issues.

### *Tenant Involvement in Maintenance*

Owner corporations are tasked with maintaining the common property as part of the legislative requirements. The owner corporations in this study had periodic maintenance contracts and strata managers in place. Yet there was no clear process in place to allow tenants to report maintenance problems identified within the common property. Moreover, there was confusion as to where the responsibility for actioning maintenance issues lay. Issues may arise between what the tenant believes needs to be maintained and what has been approved by the various stakeholders involved:

If someone [the tenant] rings us we need to know what the situation is but we have found in past experiences that tenants have rung up wanting some works to be done which haven't been approved by the committee, owner or the agent. (Strata manager D)

However, if a maintenance issue exists within the common property, the landlord and estate agent have no right of veto except within the owner corporation structure. The landlord and estate agent have jurisdiction only for the leased apartment. Problems occur when systems such as air-conditioning, water reticulation and plumbing are deemed to be part of the tenant landlord responsibility when these reticulation systems usually remain part of the common property and under the control of the committee of management. There is no reference to the owner corporation in the above extract. A process failure occurs when tenants have to contend with a convoluted route in getting maintenance problems attended to within the common property. This places both the tenant and the owner corporation in a position of powerlessness relative to property maintenance. The owner

corporation cannot undertake maintenance if it is not advised of the need for maintenance by a series of other stakeholders (tenants, land lord, estate agents or the strata manager). Though the tenant has the right to take action through VCAT, as Wulff et al. (2009) notes, it is more probable that the tenant will seek alternate accommodation:

I lost a tenant. A good tenant. The window was leaking and I wanted it fixed. So I arranged with the estate agent to get someone in to fix it and the next thing all work had stopped because the strata manager said it was common property and there was no budget for it. ... She [the tenant] moved. (Chair N)

The above passage highlights the difficulty of actioning items. While the structure is in place to facilitate maintaining common property, there is a lack of process and procedure that assist in positive outcomes. It may take significant amounts of time for the landlord to get agreement from the owner corporation for unscheduled maintenance to be completed. Other owners may not wish to share the cost and veto the repair unless it impacts directly on them. Meanwhile their property deteriorates and the tenant may seek alternative accommodation. The danger here is that where there is a process failure, buildings will spiral into a dilapidated state. Because so many high-density buildings are relatively new, it is sometimes difficult to imagine their decline. However the building that Chair N spoke about was less than ten years old, and already experiencing a number of significant maintenance issues. In addition to this, there is an uneven allocation of cost to owners for damage, wear and tear. This is because levy proportions are set and linked to each apartment at the development stage of the property rather than being based on actual usage or tenancy type. Post-development, no additional surcharge can be recouped by the committee of management to cover the additional cleaning and maintenance, wear and tear of common areas attributable to long-stay, short-stay or commercial tenants and associated maintenance issues. Alternately, owners may have been unaware of upcoming maintenance needs of the common property when they purchased their apartment, and therefore have failed to adequately budget for their share of the cost. One suggested way of addressing this and other procedural issues was presented by Strata manager D:

I actually read an interesting article recently where it said that each property should have two voting rights. One for the owner and one for the tenant and if they are just unoccupied then the owner gets two voting rights because you see a lot of tenants that

love their property and they do more to it than what the actual investor does. (Strata manager D)

For private rental housing within strata developments, tenant participation in governance is not considered a necessity at present and is unlikely to become so. One of the reasons for this is the current push for termination clauses to be included within current legislation. Investor owners are more likely to make a decision to sell or demolish and rebuild based on financial considerations. Increasing maintenance costs and high annual levy payments are more likely to be weighed against sale price, rebuilding costs or higher rental for new properties. These considerations do not, or will adversely impact tenants were they to be allowed to vote on this issue. For this reason it is likely that tenants will remain a sidelined stakeholder group without a voice within their residential communities despite the adverse effect on tenant security and housing availability that termination legislation may cause (Altmann 2011).

#### *Tenants and Issues of Occupational Health and Safety*

Finally, there is the issue of occupational health and safety (OHS). The following committee Chair raises a lack of knowledge by tenants as an OHS issue. The situation is discussed in the context of sub-letting and overcrowding (there were ten international students living within a two bedroom apartment), however her comments are relevant to leased apartments generally:

They are always subletting and moving out and someone else moving in. And so no-one ever sees the documentation and no one knows where the stop cock for your room or apartment is. They don't know that. Where do you assemble if there is an alarm? Which fire alarm do you take notice of? No-one knows! (Chair E)

There are serious issues identified here. The owner-investor, strata manager and committee of management all have a role to play in informing people of the evacuation points and plans for their buildings. In case of a fire, who is responsible for evacuation? How do the police, fire fighters or the committee of management know how many people live within each apartment when there is no obligation for landlords to tell the owner corporation. How do emergency services people gain access an electronically gated apartment building in an emergency situation? Failure to address these issues may have serious insurance consequences for the owner corporation, as well as the injured. In a single dwelling, not knowing where a stop tap is located may have serious flooding consequences for that

dwelling. In an apartment complex, damage to common areas and other apartments may be the result, creating significant repair and insurance difficulties. In case of illness requiring medical assistance or a domestic violence issue, police and ambulance officers may need to negotiate a variety of electronic swipe card access issues to access the door of the apartment. The time taken to do this, may mean the difference between life or death for the injured person, whether owner, tenant or visitor. In Australia, such issues have not yet been put to the test. Until this occurs, liability will remain a hidden risk for many owner corporations.

### *Discussion*

Committees of management are presented with a variety of governance issues that relate to short and long-term tenants, social and commercial tenancies, and the economic activity of landlord owners. In these interviews, the proportion of rental properties within the complexes was significantly higher than for all residential rentals (up to 75 per cent against 30 per cent of the total population). Unregulated short-term letting within medium- and high-density apartments located within central business districts accounted for approximately one third of the apartments. These apartments were designated as residential housing units within planning schemes. The failure to regulate short-term letting combined with the high nightly tariffs has the potential to severely impact on the availability and price of housing within Melbourne's CBD. Counts of available residential housing by planning authorities potentially overestimate the amount of available housing through their failure to adequately regulate and assess the number of residential apartments lost to unregulated tourist accommodation. For owner corporations there are structures in place that may potentially limit the number of short-term lets within their buildings. However the likelihood of getting investor owners to vote for such by-laws is unlikely. Investor owners living elsewhere are not subjected to the noisy rituals of drunken revellers within the building or difficulties associated with other types of commercial lets. Committees of management have no ability to ban individuals from accessing their rental accommodation via the common areas. The additional clean-up costs are rarely attributable to the landlord, short-term tenants or leasing agents as there is no process in place to facilitate this. There is no simple contractual remedy to this situation. Unlike the tourist-based state of Queensland, live-in building managers are rarely employed. There is little likelihood of them being economically effective

based on the existing rates of short-term lets, since the building managers in Queensland take a management fee for overseeing each short- or long-term tenancy.

The situation is unlikely to be a concern to policy makers at state and federal level. For the two higher tiers of government there are the advantages in terms of economic growth that tourist short-stays bring. Though issues of noise in short-term lets is being addressed, in several states (Stacks/ The Law Company 1 May 2013), court cases appear to rely on zoning requirements in third tier, local government planning schemes to gain wins. However, within apartment buildings the zoning of short and long-term lets often co-exist with commercial tenancies. The issue of noise (particularly party noise and violence) is therefore more difficult to address. There are fewer owner occupiers in place to object. Because of the higher rental yield attached to short-term letting, short-stay apartments are more likely to be positively geared within the taxation system rather than taking financial resources through negative gearing. Thus they provide income to treasury coffers. On the other hand, long-term tenancies have become synonymous with negatively geared properties in which rental yields are as low as 2–3 per cent in capital cities and no longer keeping pace with inflation.

Committee Chairs see the unsettled nature of the building complexes whether through commercial leases, tourist lets, private or social housing as a disincentive for long-term tenants on standard residential contracts to stay. To what extent the unregulated short-term leases impact on long-term residential lease renewal is unknown. Getting maintenance repairs to the common property undertaken in a timely manner was raised as an issue that impacted on keeping long-term tenants in place. Tenants were more likely to move rather than wait for the convoluted approvals processes to result in repairs. The distinction between repairs actionable by the landlord or real estate agent and those that require owner corporation approval is not straight forward since each apartment complex may have a different allocation of responsibility defined within their title documents. While the inclusion of maintenance plans and sinking funds have been included within the overarching legislation for some time, in Victoria they are only applied where more than \$1,000,000 in levies are collected per annum. In these interviews having available funds to cover repairs identified by tenants and landlords was still problematic for committees of management who are the responsible actioning

party. Moreover, within this research, sinking funds and maintenance plans were not in place even where there was a requirement for them to exist.

It has been proposed that owner corporation voting rights are also allocated to tenants as one way to overcome some of the process problems involved in getting owners (including landlords) to act in the collective interest to the benefit of long-term tenants. However, this is unlikely to occur due to the effect it may have on owner finances. This is particularly true in states where termination legislation is being considered such as New South Wales. Termination legislation will allow owners to vote to end the owner corporation scheme and allow the building to be demolished after buyout by building developers (Sherry 2006). It will make way for new developments that may better meet the changing needs of society. However, the possible effects of termination legislation on tenants are little understood (Easthope et al. 2013).

A lack of processes to ensure the safety of residents was raised in relation to building evacuation procedures. However this lack of procedures can also be extended to where ambulance, police and other emergency service personnel need to access individual apartments within electronically gated apartment building without dedicated concierge services. None of the Chairs or strata managers appeared to have an appropriate remedy.

## **Conclusion**

A compact, walkable city in which home, work, shopping and entertainment are easily reachable is supported through current planning policies. Governments approve medium- and high-density apartment complexes, in part because of their supposed ability to mitigate the current housing shortage and bring workers closer to employment opportunities within the city centre. In this chapter I have outlined a range of tenancy related issues addressed by committees of management as part of their legislated duties. The high rate of investor-owned, inner-city apartments is a reversal of the overall rental figures available for Australia indicating the formation of a rental sub-market. The use of rental agents puts distance between the landlord and committee of management making it difficult for the renter and committee of management to interact effectively. Rental properties within strata titled complexes place renters within a complex organisation with little probity and in which the propensity to engage in self-interested behaviour rather than collective action occurs. It is an

organisation in which renters have no direct voice and may be powerless to effect change. It is also one in which committees of management find it difficult to undertake their legislated duties of governing the common property, creating policy implications for government given the increasing overall numbers of apartments, and the range of tenants. Governance of strata titled complexes is made difficult not only by the range of stakeholder groups and their competing interests, but by the disconnect between various impacting pieces of legislation.

For governments to overcome these issues first tenants need to be provided with a greater voice, particularly in relation to maintenance and behavioural control issues and second, owner corporation need be more closely linked to the tenant leasing processes and have some redress within tenant contracts. A larger research project is required to probe these issues further, one in which the voices of the tenant is also heard.

By international standards, Australian tenants have little legislative protection afforded to them. Australia's early adoption and export of strata title legislation to other nations, makes what happens to tenants living within strata title schemes relevant to international audiences. By signalling the challenges faced by Australia in relation to tenancy issues in this area, other nations are able to develop pre-emptive actions that assist tenants.

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