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# Strata title, dispute resolution and law reform in Queensland

*Michael Weir\**

*Although strata title relies upon standard property law concepts, the inherent nature of this hybrid statutory-based property interest and its importance in housing a large and increasing part of the population creates specific policy and legal problems. This article will analyse the nature of strata title, how it differs from a standard unit of real property and its requirement for joint obligations between other lot owners and the body corporate. The reform of strata title in the Queensland's property law review will provide a context to analyse some of the problems that arise in this complex area of property law. This law reform initiative lays bare some of the tensions involved in this type of property interest and the difficulty in achieving fair and effective outcomes. This article will outline the significant conflict that arises in strata title and the power differential that exists between stakeholders. The article analyses how best to avoid and alleviate disputes between the various parties.*

## I Introduction

The Commercial and Property Law Research Centre of the Queensland University of Technology is undertaking a review of Queensland's property laws for the Queensland Government involving an examination of issues arising under legislation governing ownership, use and dealings in property in Queensland. This review includes the *Property Law Act 1974* (Qld) and the *Body Corporate and Community Management Act 1997* (Qld) ('*BCCM*'). The review of property law in Queensland<sup>1</sup> ('Review') is the most significant review of property law in Queensland since the enactment of the *Property Law Act 1974*.

One significant focus of the Review is the reform of the *BCCM*. Although some consider Queensland to be a leader in this area of regulation,<sup>2</sup> there has been a substantial level of dispute between stakeholders including bodies corporate, body corporate managers and lot owners often involving the fairness of financial arrangements and decision-making processes. This high level of disputation has placed pressure on government for law reform and improved governance of strata title schemes. The article will discuss the data, recommendations and implications of the Review as it relates to the *BCCM*. In addition, this article will canvass theoretical concepts at the basis of the establishment and development of strata title and the practical issues which lead to good governance of what is increasingly the preferred type of urban

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\* Professor, Bond University. This article was presented at 14<sup>th</sup> Australasian Property Law Teachers Conference 2017 in Perth last 26–9 September 2017.

1 Department of Justice and Attorney-General (Qld), *Review of Property Law in Queensland* (13 September 2017) Queensland Government <<http://www.justice.qld.gov.au/corporate/community-consultation/community-consultation-activities/current-activities/review-of-property-law-in-queensland>>.

2 Lisa Toohey and Daniel Toohey, 'Achieving Quality Outcomes in Community Title Disputes: A Therapeutic Jurisprudence Approach' (2011) 37 *Monash Law Review* 298, 300.

property ownership. This article raises significant issues about the nature of ownership of strata title interests and private/public rights and obligations that have and will continue to give rise to dispute with suggestions for the means to reduce such disputation.

## II The nature of strata title

Typically, most real property in Australia is a standalone parcel of land owned solely or jointly by a registered indefeasible owner under the Torrens system focused on private property rights.<sup>3</sup> This unit of real property provides for registered owners the security of indefeasible title or for an occupier, possession under a tenancy with clear physical and legal differentiation from the neighbouring property.<sup>4</sup> This lot will have surveyed defined right-line boundaries<sup>5</sup> or other natural boundaries<sup>6</sup> specifying the extent of the property interest associated with that land with the plan of subdivision duly registered in the relevant title office. These lots are subject to the normal limitations on usage provided by planning and environmental legislation, levies for local authority rates and charges and other state and local government legislative requirements. Other than these limitations, freehold real property provides great individual freedom of use within the envelope of that unit of real property.<sup>7</sup> Within this individualised title system there is scope for joint and community rights.<sup>8</sup>

Strata title by comparison is a development in which its structure or vision is crafted by the original owner or developer of the strata plan based upon ownership of the real property where the strata plan is developed. The original owner's role will normally finish after the initial development and marketing period.<sup>9</sup> This type of property interest provides a familiar registered indefeasible ownership of a unit of real property that involves many features of a standalone parcel of land. In the case of building format developments,<sup>10</sup> lots providing for sole occupation by lot owners and occupiers are defined by registered surveys of walls, floors and ceilings which are part of joint structures with other lot owners. This structure necessarily requires physical closeness involving lot owners and occupiers who may have different

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3 John Page, 'Common Property and the Age of Aquarius' (2010) 19 *Griffith Law Review* 172, 176.

4 Faizal Bin Kamarudin, *The Development of an Effective and Efficient Dispute Resolution Processes for Strata Scheme Disputes in Peninsular Malaysia* (PhD Thesis, Queensland University of Technology, 2014) 174, 198–9.

5 *Survey and Mapping Infrastructure Act 2003* (Qld) s 62.

6 Anne Wallace, Les McCrimmon and Michael Weir, *Real Property Law in Queensland* (Lawbook Co, 4<sup>th</sup> ed, 2015) 103; Kamarudin, above n 4, 174.

7 Cathy Sherry, *Strata Title Property Rights: Private governance of multi-owned properties* (Routledge, 2017) 12.

8 Page, above n 3, 176.

9 Hazel Easthope et al, 'How Property Title Impacts Urban Consolidation: A Life Cycle Examination of Multi-title Developments' (2014) 32 *Urban Policy and Research* 298, 300, 304.

10 Cathy Sherry, 'Long-term Management Contracts and Developer Abuse in New South Wales' in Sarah Blandy, Ann Dupuis and Jennifer Dixon (eds), *Multi-owned Housing: Law, Power and Practice* (Ashgate, 2010) 159–60.

socio-economic backgrounds, age, habits and agendas.<sup>11</sup> Major differences from typical real property ownership are that strata title developments also involve tenancy in common ownership with others of that part of the development not included in the defined unit of real property (common property), use of joint facilities and the creation of a separate legal entity in the form of a body corporate with the members of the body corporate being the lot owners. Commonly, a body corporate manager and other service providers such as a letting agent or service contractors are appointed by the body corporate, and there is an obligation for owners and occupiers to abide by the by-laws promulgated by the body corporate; for owners to satisfy financial contributions with the viability of the body corporate relying on the financial input from other lot owners.<sup>12</sup> The inherent nature of strata title raises issues of how to deal with joint, individual private and public property interests with satisfactory outcomes.

Management of the relationships between lot owners and occupiers is pivotal in strata title. In Australia, many purchasers focus on the purchase or leasing of a lot rather than entering into a community with the required focus on the relationship with other owners or occupiers. There may also be a tendency to see strata title as a temporary housing option more suitable for investors rather than resident owners. The short-term nature of leases in Australia leads to high turnover rates with impacts on community and governance issues.<sup>13</sup>

The distinction between the legal and social context for these types of units of property as against standard real property ownership is stark. Strata title in Australia is a hybrid form of property involving a statutorily created amalgam of torrens title or secure ownership rights in land involving elements of joint ownership, organs of self-governance (often by untrained hesitant owner-managers),<sup>14</sup> financial and behavioural obligations and parameters provided through bylaws, statutory provisions and general law.<sup>15</sup> It has been described as a governance structure of civic cooperation based upon mutual interest.<sup>16</sup>

Community title schemes have proven popular in Australia for governments and for owners and tenants due to the need to increase development density to deal with increasing population, provide greater diversity in housing, promote urban renewal and deal with land scarcity, and the opportunity to

11 Professor Sharon Christensen and Anne Wallace, 'Links between physical and legal structures of community title schemes and disputes' (2006) 14 *Australian Property Law Journal* 90, 91; Laurence Troy et al, "'It depends what you mean by the term rights": strata termination and housing rights' (2017) 32 *Housing Studies* 1, 1.

12 Tyler P Berding, *It's Your Neighbours, Stupid: Who, not what, is a Homeowners Association?*, Berding | Weil <<http://www.berding-weil.net/articles/its-your-neighbors-stupid.php>>; Kamarudin, above n 4, 172.

13 Easthope et al, above n 9, 303.

14 Evan McKenzie, 'Emerging Regulatory Trends, Power and Competing Interests in US Common Interest Housing Developments' in Blandy, Dupuis and Dixon, above n 10, 53, 59; Ngai Ming Yip and Ray Forrest, 'Property owning democracies? Home owner corporations in Hong Kong' (2002) 17 *Housing Studies* 703, 703–4.

15 Sherry, above n 7, ch 1 (about the development of this form of tenure in Australia using freehold interests).

16 Alan Harding, Stuart Wilks-Heeg and Mary Hutchins, 'Business, Government and the Business of Urban Governance' (2000) 37 *Urban Studies* 975, 984.

provide a range of lifestyle facilities for residents.<sup>17</sup> Typically, strata title continues to be designed to provide high-density housing with trends strongly suggesting that this form of development will continue to be a significant primary form of development in Australia and elsewhere as population pressure and environmental considerations strengthen.<sup>18</sup> Strata title is focused on improving ease of investment as lots created under strata title have all the advantages of standard parcels of land and houses which are readily traded where mortgagees can secure their loan over an indefeasible asset.<sup>19</sup> The movement away from detached houses may perhaps reflect a desire to avoid the implied 'alienation from others, a fragmentation of one's life, one's identity' with a movement towards connectedness.<sup>20</sup> In 2007, there were 3.5 million people living in body corporate schemes in Australia of which 2/3 is rental property so the impact of the regulation framework on tenants and absent landlords is significant as well as their impact on the management of these developments.<sup>21</sup> Currently, more than 25 per cent of dwelling stock in Sydney is under strata title, with that percentage likely to increase as a majority of new dwellings are likely to be strata title.<sup>22</sup> The significance of this strata title is reflected in the view expressed that bodies corporate are often regarded as the 'fourth tier of government'.<sup>23</sup> This article will deal with these law reform proposals to consider some of the reasons behind continuing issues about the regulation of strata title in Australia; the theoretical underpinnings of how these developments are regulated; the level of disputation that they create; and the means to reduce the level of dispute for the benefit of the stakeholders.

### III Queensland property law review

The Review has delivered a number of documents in relation to the *BCCM* including:

- Queensland Government Property Law Review Issues Paper No 2: Lot entitlements under the *Body Corporate and Community Management Act 1997* ('Lot entitlements paper');<sup>24</sup>
- Property Law Review Issues Paper: Procedural Issues under the *BCCM* ('PI paper');<sup>25</sup>

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17 Ron Fisher and Ruth McPhail, 'Residential Experiences in Condominiums: A Case Study of Australian Apartment Living' (2014) 29 *Housing Studies* 781, 783.

18 Gary F Bugden, 'Strata and Community Title in Australia — Issues 1: Current Challenges' (Paper presented at Strata and Community Title in Australia for the 21<sup>st</sup> Century Conference, Griffith University, 2005) 4.

19 Troy et al, above n 11, 1.

20 Gregory S Alexander, 'Dilemmas of Group Autonomy: Residential Associations and Community' (1989) 75 *Cornell Law Review* 1, 9–10.

21 Hazel Easthope and Bill Randolph, 'Governing the Compact City: The Challenges of Apartment Living in Sydney, Australia' (2009) 24 *Housing Studies* 243, 245.

22 Troy et al, above n 11.

23 Easthope and Randolph, above n 21, 248.

24 Department of Justice and Attorney-General (Qld), *Lot entitlements under the Body Corporate and Community Management Act 1997*, Issues Paper No 2 (2014) ('Lot entitlements paper').

25 Department of Justice and Attorney-General (Qld), *Procedural issues under the Body Corporate and Community Management Act 1997*, Issues Paper (2015) <<https://publica>

- Queensland Government Property Law Review Options Paper: Body corporate governance issues: By-laws, debt recovery and scheme termination<sup>26</sup> ('Options paper');
- Government Property Law Review Options Paper Recommendations: Body corporate governance issues: By-laws, debt recovery and scheme termination<sup>27</sup> ('Recommendations paper');
- Property Law Review: Lot entitlements under the *Body Corporate and Community Management Act 1997* — Final Recommendations<sup>28</sup> ('Final Recommendations').

With this being the most recent and law reform process in this area, it is worthwhile to consider the issues that have arisen from the law reform process as it will reflect what is happening on the ground for government, regulators, consumers and other stakeholders. This law reform process is required to deal with the private/joint/public issues that necessarily arise.

### A Property law review, issues paper, procedural issues

The Ministerial foreword to the Review suggests that '[i]t is vital that Queensland's body corporate governance framework is fair, efficient and as simple and easy to follow as possible.'<sup>29</sup> The legislative background to the Review is expressed by the legislative purpose of the *BCCM* which is to provide for flexible and contemporary communally-based arrangements by a number of means, including balancing the rights of individuals with the responsibility for self-management as an inherent aspect of community titles schemes.<sup>30</sup>

The Lot entitlements paper underlines the complexity of the *BCCM*.<sup>31</sup> The *BCCM* comprises 476 pages of legislation with five different regulation modules for different types of schemes being Small Schemes (135 pages), Specified Two-lot (70 pages), Standard (202 pages), Accommodation (203 pages) and Commercial (160 pages) each with their own regulatory requirements and options. This means that even for the least complex Two-lot scheme module there are nearly 550 pages of legislation and for the most

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tions.qld.gov.au/dataset/dac949f9-911f-4527-bb90-24f5954f8279/resource/72d4b93b-8e94-490d-a544-5ff7bf2620c0/download/propertylawreviewissuespaperproceduralissuesunderthebccmact1997.pdf> ('PI paper').

26 Department of Justice and Attorney-General (Qld), *Body corporate governance issue: By-laws, debt recovery and scheme termination*, Options Paper (2014) <[http://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0003/334758/Property-law-review-Body-Corporate-Governance-Options-Paper-1.pdf](http://www.justice.qld.gov.au/__data/assets/pdf_file/0003/334758/Property-law-review-Body-Corporate-Governance-Options-Paper-1.pdf)> ('Options paper').

27 Department of Justice and Attorney-General (Qld), *Body corporate governance issues: By-laws, debt recovery and scheme termination*, Options Paper Recommendations (2017) <[http://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0007/508714/qut-recommendations-by-laws-debt-recovery-and-scheme-termination.pdf](http://www.justice.qld.gov.au/__data/assets/pdf_file/0007/508714/qut-recommendations-by-laws-debt-recovery-and-scheme-termination.pdf)> ('Recommendations paper').

28 Department of Justice and Attorney-General (Qld), *Lot entitlements under the Body Corporate and Community Management Act 1997 — Final Recommendations* (2016) <<https://publications.qld.gov.au/dataset/400d0899-3ce7-4eb0-a242-6db01521e8db/resource/d0803718-372e-41ce-a918-344bdafcf5f6/download/property-law-review-lot-entitlements-report.pdf>> ('Final Recommendations').

29 Department of Justice and Attorney-General (Qld), PI paper, above n 25, 6.

30 *Body Corporate and Community Management Act 1997* (Qld) ss 2, 4(a) ('*BCCM*').

31 Department of Justice and Attorney-General (Qld), Lot entitlements paper, above n 24, 9.

common Standard module there are 678 pages of legislation.<sup>32</sup> The complexity of the legislation in Australia described as ‘undoubtedly the most complex and unworkable system of common interest community regulation in the world’<sup>33</sup> may reflect how law reform occurs in this area. In the political process, government reacts to complaints to local members, or submissions by pressure groups to Ministers with political imperatives resulting in legislative amendments. These amendments are prepared with limited evidence by inexperienced policy personnel at the basis of the reforms meaning law reform may reflect noisy minority views from a particular perspective.<sup>34</sup> It is hoped the well-ordered evidenced-based Review involving public and expert input will avoid this approach to law reform. The complexity of the legislation may mean lot owners misunderstand the true nature of their property interest, for bodies corporate, it may lead to a resort to expensive body corporate management contracts and overall a retreat from a connection to the nature of strata title living.

The PI paper underlines the difficulty in dealing with complex arrangements involved in strata title schemes. The PI paper is focused on the minutia of dispute resolution and decision-making in a complex democratic governance environment that includes:

- procedures in relation to holding meetings and eligibility to vote;
- procedures in relation to holding committee meetings including codes of conduct;
- removing committee members;
- financial limits on committee spending;
- use of electronic notices, minutes and voting;
- requirements for the first general meeting of a scheme;
- powers of a body corporate to engage a body corporate manager without an extraordinary general meeting; and
- dispute resolution in regard to layered schemes.

The PI paper is heavily focused on meeting procedures, the difficulty in obtaining majority decisions (where it requires 50 per cent of the lots when many do not participate) leading to suggestions that resolutions without dissent or special resolutions may be preferred where the vote is determined by those who actually vote.<sup>35</sup> Issues of appropriate representation arise for very large schemes where there are, say, 300 lots where the maximum number of committee people (7) also applies to a scheme where there are 8 lots.<sup>36</sup>

In regard to voting in committee and general meetings, the issues of proper service of notices need to deal with absent owners sometimes overseas, the cost of postage to confirm the required notice periods and the use of virtual attendance at meetings.

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32 Department of Justice and Attorney-General (Qld), PI paper, above n 25, 11.

33 Bugden, ‘Strata and Community Title in Australia’, above n 18, 20 [8.13].

34 Ibid.

35 Department of Justice and Attorney-General (Qld), PI paper, above n 25, 22.

36 Ibid.

## B Property law review: Lot entitlements under the *Body Corporate and Community Management Act 1997* (Qld) — Final recommendations

This Final Recommendations report denotes under the heading ‘A difficult history’ that in regard to unit entitlements, the current strata title Queensland legislation involves complex and difficult to apply provisions and problematic transitional provisions as well as legislative backflips.<sup>37</sup> This area involved concerns by lot owners who were unhappy with paying body corporate fees when it appeared that larger units or units that generated more costs to the body paid the same levies. Disputes arose as there was no clear relationship between the body corporate-determined levies applied to individual owners and the real cost to the body corporate. Controversial legislative changes were made in 1997 allowing an adjustment of lot entitlements through a court or adjudicator decision.<sup>38</sup> This has been a matter of some controversy in Queensland in recent years involving lot owner unrest and a number of changes to legislation which did not seem to satisfy all stakeholders. Based on the difficulty in reaching agreement, the Final Recommendations report provides a more nuanced approach to this issue to reflect more perspectives than currently incorporated in the law to reduce conflict.

Many states in Australia allocate financial contributions to each lot based on the relative market value, as a percentage of the total value of all lots in the scheme.<sup>39</sup> The approach specified in the Final Recommendations is to have three categories of expenses: Category 1 where it is appropriate that the expense be shared equally as the expenses benefit all lots; Category 2 being expenses of a capital or non-recurrent nature (including insurance) should be shared among all lots on the basis of their interest schedule lot entitlement (generally based upon market value) while Category 3 relates to expenses that benefit only some lots which suggests that they should be shared either equally or on the basis of the interest schedule lot entitlement, among the lots that receive some benefit from the expense.<sup>40</sup>

## C Queensland government property law review options paper, property law review options paper recommendations

The Options paper suggests the perception that the body corporate is a toothless tiger in regard to enforcement of rules caused by legislative limits on enforcement of by-laws, the sometimes flagrant flouting of by-laws and the non-payment of BC contributions by lot owners.<sup>41</sup>

The feedback received by the law reform process is that these limitations avoid unnecessary impact on the lot owner or occupier individual and

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37 Department of Justice and Attorney-General (Qld), Recommendations paper, above n 27, 8 ch 2.2.

38 Department of Justice and Attorney-General (Qld), Lot entitlements paper, above n 24, 10.

39 Department of Justice and Attorney-General (Qld), Final Recommendations, above n 28, 9.

40 Department of Justice and Attorney-General (Qld), Recommendations paper, above n 27, 22–6.

41 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 9–10.

collective rights, and protects from difficult or unreasonable committees who may be too harsh or intrusive in their activities. Any increase in powers of the body corporate might heighten the potential for these outcomes.<sup>42</sup>

In all cases, the body corporate will continue to have the obligation to act reasonably in anything it does. However, the issues of bias, interpersonal conflict and malice cannot be entirely removed from the equation in a community titles scheme. For these reasons, the options presented in this Options paper are balanced by strong mechanisms to protect important individual rights, where appropriate.<sup>43</sup>

The issue of dispute resolution in strata schemes in Queensland is dealt with through a process of internal self-resolution or through communication between relevant parties. If self-resolution fails, the procedure requires BCCM Commissioner conciliation and if necessary then adjudication which will involve a binding agreement subject to an appeal to Queensland Civil and Administrative Tribunal ('QCAT') on a question of law.<sup>44</sup> The Options paper suggests that the provision for the body corporate to fine for breaches of the by-laws may assist in resolving or avoiding some disputes as the dispute resolution process described above may not work well in the case of flagrant by-law breaches.<sup>45</sup>

Also prominent in issues discussed in the Options paper is the burgeoning issue of parking in breach of by-laws and towing. As the density of urban areas increase and local authorities are moving to regulate parking, this has an impact on parking on common property, including on exclusive use areas.<sup>46</sup> Invalid parking may occur on common property, on exclusive use by-law areas or part of a lot. Bodies corporate have dealt with this issue through issuance of visitor passes or allowing towing of vehicles which are not permitted to park — though there is no clear legislative authority for this action.<sup>47</sup> The Options paper noted the problems that may arise for a body corporate if a lot owner or occupier has their vehicle towed by a body corporate without a contravention notice and adjudicator order.<sup>48</sup> There may be common law rights to tow an illegally parked vehicle on common property.<sup>49</sup> The Options paper suggests possible statutory rights or clarity on the common law or use of by-laws to deal with this issue.<sup>50</sup>

Significant issues also arise for keeping pets, smoke drift, overcrowding and rights of body corporate to allow entry into lots by fire services and local authority officials. Other issues raised and discussed relate to improvement in the ability of the body corporate to enforce by-laws; the need for a positive

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42 Ibid; Bugden, 'Strata and Community Title in Australia', above n 18, 3.7–3.10; Easthope and Randolph, above n 21, 254.

43 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 11 (footnote omitted).

44 *BCCM* ch 6.

45 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 33.

46 Ibid 15.

47 Ibid 16.

48 *City Connection II* [2013] QBCCMCCmr 487 (6 December 2013).

49 *Aztec on Joyce* [2013] QBCCMCCmr 28 (29 January 2013).

50 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 18–20.

obligation to comply with by-laws; and the improvement in the capacity to recover body corporate debts.<sup>51</sup>

Of particular interest discussed in the Options paper is the ability to terminate a scheme. This will become a significant issue in the future in many jurisdictions. The first strata titles legislation was introduced in New South Wales in 1961.<sup>52</sup> Unless expensive maintenance and repair occurs, the most economic option for some for older strata title buildings may be to avoid costly repair and renovation, and to simply demolish and redevelop.<sup>53</sup> In Queensland, currently, this will require a resolution without dissent to proceed in this way,<sup>54</sup> which may involve owners entering into a collective sales arrangement with a developer who agrees to purchase all the lots, terminate the scheme and redevelop the site. Any dissent will mean this option is not available.<sup>55</sup> Although the *BCCM* allows a scheme to be terminated without unanimous support of lot owners by an order of the District Court on the basis of just and equitable grounds — to date, only one termination using that process has occurred in Queensland while five have occurred in New South Wales by the Supreme Court since 1961.<sup>56</sup> The Options paper discussed possible options for dealing with this possible impasse including requiring a lower level of support of a termination from lot owners with other measures to deal with an aggrieved minority.<sup>57</sup> The difficulty in achieving terminations is an example of the fact that strata title involves separate lots but some decisions will have joint impacts.<sup>58</sup> Some clear themes emerge from the Review involving the issue of dispute resolution caused by the inherent nature of the strata title based upon a constant issue of balancing individual property rights with joint property interests.<sup>59</sup> It should be understood that any termination of a strata title scheme without unanimous approval from all lot owners has an impact on the law's normal capacity to protect property interests and is a form of private compulsory acquisition. This will result in minority lot owners being obliged to move their 'home' which they have lived in for many years and without necessarily receiving compensation to allow resettlement in the same neighbourhood to the same quality.<sup>60</sup>

Although protection of individual rights is fundamental to any property interest in the context of the group/private context of strata title, this may result in less than satisfactory results not only economically but in terms of broader social aims. The views of property theorists are relevant to some understanding of how to deal with the theoretical background to making strata title work and to deal with inevitable disputes that arise in the fulcrum of individual and joint interests in land. One tendency is to deal with these

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51 This was recommended in the Department of Justice and Attorney-General (Qld), Recommendations paper, above n 27, 5–8.

52 Sherry, above n 7, 5.

53 Troy et al, above n 19.

54 *BCCM* s 78.

55 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 20.

56 *BCCM* s 78; *Body Corporate for Nobbys Outlook CTS 14822 v Lawes* [2013] QDC 301 (5 December 2013); Lauren Troy, above n 11.

57 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 21.

58 Easthope and Randolph, above n 21, 254.

59 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 10.

60 Troy et al, above n 11.

disputes through further balancing in favour of the public focusing on obligations of property owners. This may reflect some democratic principles suggested by property theorists about the need to appreciate that the protection of property interests also involves others accepting that a property right has attached to it some moral obligations which are significant in the context of strata title. These concepts will be addressed later in this article.

The Recommendations paper suggests a reduction in the required majority for termination for economic reasons (such as uneconomic maintenance requirements or structural defects) to allow a majority decision with access the dispute resolution process. In other cases, a majority vote of 75 per cent would be accepted.<sup>61</sup>

#### IV Reasons for and level of disputes in strata title

The particular issues involved in strata title are complex and subject to dispute for a number of reasons involving the reality that it involves large numbers of people living in close proximity where although they have separate ownership of a lot, they are at the same time joint owners of common property.<sup>62</sup> According to Berding, '[a] common interest development is a unique blend of law, business and sociology. It is a multidimensional mix of principles of real estate law ... corporate law ... business and economics ... sociology ... and psychology ... all marinating in an active political environment.'<sup>63</sup> There is a significant level of disputes arising in medium and high-density living with potential for those disputes to be ongoing.<sup>64</sup> The legal and economic aspects of development of strata title sometimes cause tension based upon the social and ownership requirements of the nature of strata title leading to dispute.<sup>65</sup>

Specific issues in strata title relate to the variation in demographic groups, young and old, living in close quarters involving tenants both residential and commercial.<sup>66</sup> Each occupies or owns lots alongside other owner occupiers and occupiers with absent landlords with relationships required with real estate agents and letting agents, a developer, a body corporate, a body corporate manager, shared facilities service contractors and visitors.<sup>67</sup> All these connections and required relationships have the potential to create disputes. For many owner residents and tenants, they are obliged to observe legal obligations in relation to other owners. Owners may be pressured to undertake management functions without necessarily having a commitment to community issues emphasised in the context of non-resident owners. Most strata title schemes are in cities which suggest a predominance of busy urban

61 Department of Justice and Attorney-General (Qld), Recommendations paper, above n 27, 11–12.

62 Bugden, 'Strata and Community Title in Australia', above n 18, 19.

63 Tyler P Berding, *The Uncertain Future of Common Interest Developments*, Berding | Weil <<http://www.berding-weil.net/articles/uncertain-future-of-common-interest-developments.php>>.

64 Christensen and Wallace, above n 11, 90.

65 Troy et al, above n 11.

66 Predominantly, strata title is residential — see Sherry, above n 7, 10.

67 Toohey and Toohey, above n 2, 301–2; Chris Guilding, Graham L Bradley and Jessica Guilding, 'Examining psychosocial challenges arising in strata titled housing' (2014) 32 *Property Management* 386, 387.

lifestyles which may focus on the internalisation of lifestyle within home, which may work against the development of a community feel.<sup>68</sup> The reality is that living in condominiums or strata title developments imposes constraints on personal freedom, demands cooperation, and provides less independence to lot owners against conventional housing.<sup>69</sup>

The level of strata title disputes in Queensland is reflected in the number of adjudications in recent years. Between 2000 and 2017, there were 10 943 applications for adjudication under the dispute resolution provisions of the *BCCM* at a rate of 643 applications per annum.<sup>70</sup> As these applications involve what is often the final aspect of the dispute resolution process after the completion of options such as self-resolution or conciliation, it is likely that the number of adjudications is just the tip of the iceberg in terms of the number of disputes. Some disputes involving issues relating to strata title have involved violence.<sup>71</sup>

The Queensland Body Corporate and Community Management Commissioner has outlined some recent statistics about the level of disputes.<sup>72</sup> There are, at June 2016, 45 663 schemes in Queensland and 435 887 lots. For the 2015–16 period, there were 1423 applications for dispute resolution with the Office and 26 620 client contacts with 72.8 per cent of conciliation applications resolved by agreement. On another hand, 0.7 per cent of adjudication orders were overturned or altered on appeal through QCAT on a question of law. The primary dispute types for conciliation relate to:

- maintenance;
- by-laws;
- by-laws — other; and
- improvements — owner.<sup>73</sup>

In regard to adjudication, the primary issues relate to:

- general meetings — motions;
- general meetings — procedure;
- change of financial year;
- maintenance;
- improvements — owner; and
- by-laws — other.

Leshinsky et al suggest that the primary disputes in Victoria relate to financial issues such as debt recovery for levies; lifestyle issue such as pet ownership, clothes hanging, car parking; maintenance, repairs and maintenance providers

68 Dianne Dredge and Eddo Coiacetto, 'Strata Title: Towards a Research Agenda for Informed Planning Practice' (2011) 26 *Planning Practice and Research* 417, 421.

69 Fisher and McPhail, above n 17; Guilding, Bradley and Guilding, above n 67.

70 *Queensland Body Corporate and Community Management Commissioner — Adjudicators Orders*, Australasian Legal Information Institute <<http://www.austlii.edu.au/au/cases/qld/QBCCMCmr/>>.

71 Justin Norrie and Kelly Burke, 'Manager kneecapped after complaining about apartment defects', *Brisbane Times*, 26 February 2007.

72 Chris Irons and Christine Patridge, Office of the Commissioner for Body Corporate and Community Management, *SCA (Qld) Webinar Series October 2016: Role of the Commissioner's Office* (2016) Department of Justice and Attorney General (Qld) <<https://publications.qld.gov.au/dataset/9ae703b3-1137-47cd-b117-1c1000dcfc3a/resource/2b8b160e-77ea-483a-ae5d-95a812c9f72b/download/role-of-the-commissioners-office.pdf>>.

73 See also Christenson and Wallace, above n 11, 97–8.

and conflicts between bodies corporate and developers.<sup>74</sup> Christensen and Wallace suggest similar categories arise for dispute resolution in the United States and Canada.<sup>75</sup>

Christensen and Wallace have analysed the link between physical or legal design and disputes among community title schemes. The issues include matters such as:

- the ability to provide improvements to the amenity of lots affected by inadequate physical and legal provision for later installation of air conditioning, garden sheds and shade sails;
- use of common property interfering with other lot owners such as parking, signage, defacto exclusive use of adjoining land;
- improvement to a lot that creates a nuisance, such as changes in floor coverings and air conditioning, and inadequate by-laws to deal with that;
- interference with the body corporate duty to maintain caused by a refusal to allow access to lots;
- conflicts between the responsibility of the body corporate and lot owner in relation to leaking roofs and repairs to pipes; and
- inadequate or uncertain legislation and by-laws.<sup>76</sup>

Christensen and Wallace calculated that 489 of the total number of disputes over the period of 2001–05 were linked to the physical design of the scheme or legal structure. This confirms that the physical make-up of the scheme and the supporting legal structure does matter in dealing with disputes.<sup>77</sup>

Earlier data quoted by Toohey and Toohey suggests that a large percentage of complaints comes from a particular subset of schemes. For the 1997–2009 period in Queensland, 12 per cent of the schemes filed disputes and those schemes made 2.2 applications per scheme with 20 per cent of the disputes coming from just 145 schemes. The most heavily disputed schemes averaged 30.4 disputes per scheme in the 1997–2009 period.<sup>78</sup> Toohey and Toohey suggest that once a scheme becomes involved in formal statutory dispute resolution processes, it is likely to foster multiple disputes perhaps on the basis of the parties becoming factionalised.<sup>79</sup>

Are there any ways to reduce disputes? Most of the law reform in the Review deals with dispute resolution issues or a lack of congruence between expectations, understanding and outlook. Drawing upon research in psychology and its relationship to property interests, Nash and Stern have discussed the role of landholder perceptions regarding their property rights, based upon the paradigm of property as a ‘discrete asset’ reflected in the ‘home as castle’ rhetoric. They suggest that this perception has promoted a tendency to fiercely and inflexibly protect what they consider should be totally

74 Rebecca Leshinsky et al, ‘Dispute resolution under the *Owners Corporation Act 2006* (Vic): Engaging with conflict in communal living’ (2012) 2 *Property Law Review* 39, 48–9.

75 Christensen and Wallace, above n 11, 92.

76 Ibid 96–7.

77 Ibid 111.

78 Toohey and Toohey, above n 2, 303.

79 Ibid.

secure property rights.<sup>80</sup> This has led to ‘property behaviour that extends beyond the formal scope of the property right and may create negative externalities’.<sup>81</sup> Nash and Stern have completed empirical research that suggests that based upon the provision of information to landholders, forewarning landholders about those limitations can, if internalised by the landholder, reduce the landholder’s resistance to the reality of the imposition of limitations on property rights.<sup>82</sup>

This might suggest that in determining any dispute resolution procedure, it is important that the parties to the dispute understand and accept not only their entitlements but also their obligations as joint owners of common property and that their actions may impact on the rights of others. People place ‘considerable financial, temporal and psychological resources in their homes, residential satisfaction plays a key part in an individual’s overall quality of life’.<sup>83</sup> For many the ownership of a standalone parcel of land provides an individual property interest that relates to autonomy which provides more limited need to focus on issues of collective action; mutual dependence and democratic action.<sup>84</sup> The structural and legislative basis for strata title involves the partial loss of sovereignty over their domain and a need to understand broader concepts involving the rights of other lot owners.<sup>85</sup>

Yip and Forrest suggest that:

the association between homeownership, individualism and freedom needs some qualification in a situation in which owners, from necessity, must associate for a common purpose. Indeed, Wekerle et al in 1980 suggest that the introduction of the condominium form of home ownership in North America required for its success: major shifts in attitudes towards home ownership, shared responsibility and increased involvement in community life. They also argue that while the condominium form may satisfy some of the economic dimensions of the desire for homeownership, they fall far short on the socio-psychological aspects.<sup>86</sup>

For individual proprietors and residents, there are inevitable ‘trade-offs’ that must be made between individual interests and the collective interests, and the welfare of the strata neighbourhood as a whole; for example, in relation to keeping pets, playing loud music or washing cars on common property. These social interdependencies and trade-offs in turn generate tremendous potential for disputes, misunderstanding and conflict within the strata neighbourhood beyond those found in standalone lots.<sup>87</sup> As Kamarudin remarked:

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80 Jonathan Remy Nash and Stephanie M Stern, ‘Property Frames’ (2010) 87 *Washington University Law Review* 449, 451, 454, 495, 501.

81 *Ibid* 452.

82 *Ibid*.

83 Toohey and Toohey, above n 2, 301; Christopher Guilding and Graham Bradley, *Settling in to Strata Titled Housing: A Study of the Psychological Challenges Arising for a Move to Large Scheme Body Corporate Living* (Queensland Development Research Institute, 2008) 8.

84 Yip and Forrest, above n 14, 703–4.

85 Michael Bounds, ‘Governance and residential satisfaction in multi-owned developments in Sydney’ in Blandy, Dupuis and Dixon, above n 10, 144–58.

86 Yip and Forrest, above n 14, 706.

87 Troy et al, above n 11, 9.

In order for strata neighbours to live peaceful and harmonious lives, every member of the community must develop good relations with each other, a higher sense of belonging, strong emotional bonds, mutual respect, active community participation, shared values, a sense of responsibilities and liabilities, emotional equity and reciprocity.<sup>88</sup>

There appears to be limited appreciation among strata title unit purchasers of the psychosocial challenges that can arise in such complexes. As Cradduck notes:

The unfettered capacity of an owner to control the use of their strata lot or who visits or stays with them is, therefore, considerably reduced in comparison with more traditional forms of property ownership. Many people clearly do not understand this different way of living and as such resident expectations of their control and/or answerability to others can exacerbate many disputes.<sup>89</sup>

## V Theoretical perspectives

Theoretical perspectives may assist in the elucidation of the means to understand the dynamics of strata title property relationships with the aim of generating maximum cohesion between stakeholders. If incorporated into the outlook of occupiers, this might deal with the level of disputes and create more satisfactory neighbourhoods in these developments. Overemphasis on legal and individual rights has been identified as having an impact on the level of disputes in strata title schemes.<sup>90</sup>

Carol Rose in her article *The Moral Subject of Property*<sup>91</sup> suggests that private property which Blackstone suggests (in a misunderstood statement) provides the owner with complete dominion, includes as a flip side the reality that the value of the property interest relies upon other non-owners accepting the ownership of the owner as a moral imperative. Without this reliance an owner would need day-to-day protection against the loss of the property. In this way, Rose, while acknowledging the clear issues of self-interest involved in property interests, suggests that an inherent cooperation is required for the protection of property interests.

Rose argues that:

People have to accept property for it to work in any meaningful way. And, very often, they do, relieving owners of the onerous necessity to guard their things all the time. Whatever the lapses, property regimes generally mediate issues of resource use and discourage feuds while encouraging trades instead. As to trade, people meet others in market relationships; they learn to trust one another and to behave in trustworthy ways, and out of those relationships of trust they can develop general habits of civility and more specific friendships, sometimes quite remarkable ones.

88 Kamarudin, above n 4, 201; Philippa Williams and Barbara Pocock, 'Building "community" for different stages of life: physical and social infrastructure in master planned communities' (2010) 13 *Community, Work and Family* 71, 72.

89 Lucy Cradduck, 'Parking, Parties and Pets: Disputes — the Dark Side of Community Living' (Paper presented at 19<sup>th</sup> Annual Pacific-Rim Real Estate Society Conference, RMIT University, Melbourne, 13–16 January 2013) 4.

90 Kamarudin, above n 4, 213.

91 Carol M Rose, 'The Moral Subject of Property' (2007) 48 *William and Mary Law Review* 1897, 1925.

Property accepts people as they generally are — self-interested, to be sure, but capable of cooperation — and of course it leverages both traits into productive activity.<sup>92</sup>

Rose's arguments connect well with Singer's view that property is something 'we collectively construct'.<sup>93</sup> Rose argues that the co-operative angle is beyond the larger public utility of working together rather than applying self-interest entirely.<sup>94</sup> Rose considers that moral issues are important 'because we deal with property virtually constantly, property as an institution raises an unusually large number of moral complaints'.<sup>95</sup> These ideas are particularly emphasised in the context of strata title where physical connection between owners, spatial contact, is maximised and constant, financial management is joint, and self-government will involve other owners. In that instance, the need for fairness is underlined.

These principles are a valuable source for an understanding of what will make for more effective dispute resolution processes and harmony in strata title. Rose suggests that generally, an acceptance of the fairness of a property regime is helpful in avoiding disputes between parties to the property interest.<sup>96</sup> Not inconsistent with Rose's thesis is the role of a property interest in a democratic state. Strata title developments involve a system of self-government under the structure of legislation, by-laws, and local authority and state legislation. On a day-to-day basis, the regulation is based upon a rule by the body corporate which of course is constituted by member lot owners. In one sense, this is the very epitome of a democracy based upon a constitution derived from Queensland's Community Management Statement ('CMS');<sup>97</sup> the administrative module, the *BCCM* boundary riding on the validity of actions and by-laws passed involving elected committees and general assembly meeting — the general meetings.<sup>98</sup> This raises the impact of democratic aspects of property law discussed by Singer in 'Democratic Estates: Property Law in a free and democratic society'.<sup>99</sup>

Singer suggests:

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92 Ibid.

93 Quoted in Sherry, above n 7, 50.

94 Rose, above n 91, 1903.

95 Ibid 1902.

96 Ibid 1924.

97 In Queensland, the Community Management Statement ('CMS') is lodged with the plan of subdivision and is in effect the constitution for the development setting out the details of the land being developed, the name of the developer, lot entitlements, regulation module and by-laws, etc — see *BCCM* s 66.

98 The key components of democracy have been described as:

[a] mode of decision-making about collectively binding rules and policies over which the people exercise control, and the most democratic arrangement is that where all members of the collectivity enjoy effective equal rights to take part in such decision-making directly — one, that is to say, which realizes to the greatest conceivable degree the principle of popular control and equality in its exercise. David Beetham, 'Liberal Democracy and the Limits of Democratization' (1992) 40 *Political Studies* 40, 40; Sherry, above n 7, 48.

99 Joseph William Singer, 'Democratic Estates: Property Law in a Free and Democratic Society' (2009) 94 *Cornell Law Review* 1009.

Property is a social and political institution and not merely an individual entitlement. For this reason, the legal structure of property reflects norms and values that are not fully expressed by reference to the market value of property rights.<sup>100</sup>

Property interests are held in rem and provide rights against the world, not just against particular individuals as applies with contract law.<sup>101</sup> Singer suggests that there is another element where any absolute property right is limited by the need to deal with substantial externalities such as nuisance rights, land use and environmental impacts.<sup>102</sup> In a sentence that echoes for the issue of dealing with how people live under strata title, Singer suggests:

Those externalities are not limited to physical harms or discomfort but include effects that alter the character of the environment and the neighbourhood in which the property is situated. When this happens, the law consistently limits the rights of owners to protect the legitimate interests of both other owners and non-owners who interact with owners.<sup>103</sup>

If one is considering analysing the nature of the concept of ownership of strata title, the democratic model of property law resonates with this form of property particularly when one is concerned about the qualitative nature of social relationships in a strata title plan.<sup>104</sup> This model can explain the obligation to understand the impact on others.<sup>105</sup> Singer writes:

We are obligated to recognize that the definition of property rights does not merely involve promoting the autonomy of the owner; the allocation and exercise of property rights imposes externalities on others and on social life in general. Property owners have obligations to use their rights in ways that are compatible with the basic norms of our society, some of which are fundamental structural matters and some of which are more specifically related to consumer protection policies. In both cases, property law must comply with minimum standards for social relationships. In defining rights and obligations with respect to property, we are obligated to consider the full range of human values we care about rather than merely thinking quantitatively about how to maximize preferences.<sup>106</sup>

## VI Application of power and its impact

The concepts discussed by Rose and Singer are significant but in the complex world of strata title, this may not work effectively owing to the nature of power relationships that may arise for individuals based upon the legal context and power relationships.

One of the concerns that arises when dealing with disputes in relation to strata title schemes is the reality that the complexity of regulation found in strata title may leave the unit holder in the dark in relation to the nature of their obligations and responsibilities covering financial, procedural and social issues. Studies suggest that many owners, though understanding their rights as a property owner, find that they lack control over the management of their

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100 Ibid 1010.

101 Ibid 1021.

102 Ibid 1027.

103 Ibid 1029.

104 Ibid 1046.

105 Ibid 1048.

106 Ibid 1059.

property and facilities.<sup>107</sup> In addition, lot owners may not understand or appreciate their obligations and the impact on their property interests. This may have the result that some of the bundle of rights associated with their property interest may be delivered to other property professionals. This may arise when the property right to manage is transferred to a property manager based upon a contractual provision with little or no proprietary link to the property interest. This entitlement is often contracted by the developer to agents with this continuing after the developer or original owner is no longer involved in the development, leaving the power with the agent.<sup>108</sup>

This transfer of rights has been said to be associated with ‘legal silence or murkiness’ in facilitating this transfer and exercise of power.<sup>109</sup> Foucault speaks of the discourse of power relations and emphasises the importance of silence in that ‘we should be aware of what is not said, as much as what is said (or written)’.<sup>110</sup> Bourdieu suggests that rather than law being a ‘given’, impartial and disinterested, in reality it is a vector of the application of power.<sup>111</sup> The application of power is applied despite the rhetoric of neutrality and impersonality through what Bourdieu suggests is the juridical field (defined as the site of a competition for monopoly of the right to determine the law) where professional power is exercised through the ‘magic words’ of the law.<sup>112</sup>

Foucault provides a resonating discourse analysis which suggests that knowledge is power and it is produced through language by a highly trained elite.<sup>113</sup> At the various stages of the process of conveyancing, because of ‘the form and content of the relevant legal agreements at each stage’ it is difficult for lay persons to discern the nature of the process and the impact on their bundle of rights for the future.<sup>114</sup> This starts with the control over the juridical field.<sup>115</sup> From the time the developer acquires the land used for the development, this leads quickly to the contractual arrangement between the developer and the managing agent, and the subsequent creation of the body corporate dominated by the developer for at least the initial period of the development.<sup>116</sup>

Research suggests there may be either silence or lack of clarity in the

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107 Sarah Blandy, Jennifer Dixon and Ann Dupuis, ‘Theorising Power Relationships in Multi-owned Residential Developments: Unpacking the Bundle of Rights’ (2006) 43 *Urban Studies* 2365, 2369.

108 *Ibid* 2371.

109 *Ibid*.

110 Blandy, Dixon and Dupuis, above n 107, 2371.

111 *Ibid* 2372.

112 *Ibid*; Pierre Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’ (1987) 38 *Hastings Law Journal* 805, 817. It could be argued that lawyers for prospective unit holders focus too much on ‘good title’ and not enough on the quality of title drawn from the more limited external issues arising from standard lot conveyancing. A focus on the quality of title in strata title conveyancing could include considering the impact of associated documents outside of registration of title. No doubt the question of cost for such advice, the level of understanding by lawyers in these areas and the reality that the legal structures have been determined do not support this level of support.

113 Blandy, Dixon and Dupuis, above n 107, 2372.

114 *Ibid* 2372.

115 Bourdieu, above n 111, 817.

116 Blandy, Dixon and Dupuis, above n 106, 2373–4.

respect of the rights and obligations of lot owners.<sup>117</sup> The power granted to developers to sign significant documents such as management agreements, determine unit entitlements, physical structures and substantial voting control over the development has significant long-term impacts.<sup>118</sup> This has been described as ‘power by proxy’ which is ‘embedded within legal contracts and passed from developer to managing agent at a critical point’.<sup>119</sup> This gives the developer great power in impacting on the structure of governance, appointment of management, and protecting their interests.<sup>120</sup> Often, lot owners are not aware of the nature of these documents, decisions made already and the obligations of ownership and management processes leading to powerlessness. Developers are said to be able to employ specialists in the juridical field through the ability of lawyers to determine the bones of the development often involving management companies with connections to the developer. This has led to ‘financially burdensome contracts, which compel owners to pay for services that they do not want’.<sup>121</sup>

After a period, a developer will step away without fully understanding the implications of the legal structure provided to the development. The complexity of documentation and the opaque nature of the information sources may lead to owners concluding that it is appropriate for the agent to take control, thus cementing their power over the development.<sup>122</sup> This all leads to a sense of powerlessness as silence, murkiness and complexity lead to impeding owners’ ability to apply their ownership rights in the development. It should be noted that many issues arise not because of a loss of power or input by lot owners but by an apathy of some lot owners.<sup>123</sup> Many absent owners will perceive their role in the development as based upon the economic asset, the lot, with maintenance farmed out to others for the appropriate fee sometimes involving tenants in place. This leads to a hesitancy or inability to be involved, thus further disconnecting lot owners and managers, and impacting on any franchise of lot owners.

## VII Suggestions for reform

Any suggestions for reform should first start with the acceptance that disputes will arise in circumstance of high-density living — that is a given. Clearly, prospective unit holders and other stakeholders (such as managers and developers who may be concerned to maximise their reputation and market competitiveness above the bottom line) should consider raising understanding of the issues discussed here. Although education is essential, an intellectual exercise will not necessarily change behaviour regardless if parties read any material or in fact understand it.<sup>124</sup> Easy to read documentation would also improve comprehension. This educative process should focus on lot owners

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117 Ibid 2374–5.

118 Ibid.

119 Ibid 2374.

120 Yip and Forrest, above n 14, 118.

121 Sherry, above n 7, 232.

122 Blandy, Dixon and Dupuis, above n 107, 2378.

123 Ibid 2371; Guilding and Bradley, above n 83, 6; Easthope et al, above n 9, 299.

124 Guilding, Bradley and Guilding, above n 67, 398.

and occupier responsibilities noting the trade-off of loss of autonomy and control against safety, security and social relatedness.

One point made in the Review is that unlike other jurisdictions, the *BCCM* does not directly require lot owners to abide by the by-laws; rather, the Community Management Statement<sup>125</sup> is deemed binding on the lot owners, BC and occupiers, and if the CMS includes by-laws, they are accordingly bound.<sup>126</sup> This indirect legislative approach was not followed under the previous legislation and a change to reflect a direct approach may assist in dispute resolution.

Clearly, training of body corporate managers is essential to ensure that they understand their role, and deal effectively with disputes in a manner that is transparent and fair to unit holders.<sup>127</sup> This training should include an understanding of the fiduciary duty that may apply for body corporate managers acknowledged in New South Wales and perhaps in other jurisdictions which should provide a chilling impact on excesses.<sup>128</sup>

A national code incorporating these types of reforms may assist in the understanding by stakeholders. This could also include the control over physical infrastructure requirements and the need for planners, architects, builders, developers, government, owners and occupiers understanding the complexity of strata schemes.<sup>129</sup>

Building community is clearly one aspect of the process for dealing with disputes in strata title plans on the basis of satisfaction of basic psychological needs — autonomy, competence, and relatedness.<sup>130</sup> Legislation does not focus on community building but on maintenance, law enforcement and administration. This has resulted in developers being focused on aesthetically attractive buildings with the minimum facilities to meet the market without considering the social and human interactions of occupants.<sup>131</sup> The best market result will be to engage developers and consumers to understand the importance of community and that the market imperative is upon favouring those types of developments.

Each development involves aspects of physical environment and social attributes incorporating the physical design of the development, the use of common spaces, how people interact socially and a sense of community.<sup>132</sup> There is evidence that good communities have a significant impact on human behaviour.<sup>133</sup> Bugden has suggested that a community could be described as ‘sharing of common interests and values’ and ‘communality of spirit and culture’. Bugden suggests that this is being driven by consumer

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125 See above n 97.

126 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 31.

127 Leshinsky et al, above n 74, 57.

128 Sherry, above n 7, 158.

129 Easthope et al, above n 9, 299.

130 Guilding, Bradley and Guilding, above n 67.

131 Christensen and Wallace, above n 11, 91.

132 Kamarudin, above n 4, 150.

133 Joshua N Hook, Everett L Worthington, Jr and Shawn O Utsey, ‘Collectivism, Forgiveness, and Social Harmony’ (2009) 37 *Counselling Psychologist* 821, 827; Kamarudin, above n 4, 91.

preferences.<sup>134</sup> To maximise the sense of community, a number of matters can be emphasised such as:

- (a) the physical layout and facilities — gym, parks, pools, virtual or physical activities or newsletters;<sup>135</sup>
- (b) the management structure must empower use of resources to community build and to drive community building;<sup>136</sup>
- (c) use of strategic plans to focus on community development; and
- (d) focus on connection and congregation of residents; facilitate communication and interaction; organised events both active and passive.

## VIII Conclusion

The regulation of strata title is significant because real property is important to people, real property does not go anywhere, and will remain throughout the generations as a basis of a feeling of ‘place’ that resonates with many people.<sup>137</sup> These issues will only increase in importance as high-density urban life remains the choice or necessity for many, urban life becomes more complex, and a sense of place may be emphasised in a post-modernist world where certainties are doubted. This will found the precursors for disputes, so some attention to the substructure of dispute resolution will yield more harmonious community title. The Queensland version of strata title provides a good model of dispute resolution as it focused on self-regulation, access to assistance with negotiation and adjudication.<sup>138</sup> Perhaps, steps beyond the ken of lawyers and regulation will be needed to look at structural issues — physical, psychological and philosophical — to provide the basis of our relationship to property law. In the context of high-density residential developments, this may lead to a focus not just on rights but on obligations and provide a deeper understanding of the lived understanding of the implications of living close to others. For future research, it is suggested that interdisciplinary research is required about the sources of discontent in strata title and the most efficient and effective dispute resolution structure to deal with disputes. This research should analyse how a number of jurisdictions deal with these problems in high-density living but noting the importance of context in the conclusions reached.

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134 Gary Bugden, ‘When developers won’t let go’, *The Sydney Morning Herald* (online), 27 February 2007 <<http://www.smh.com.au/news/national/when-developers-wont-let-go/2007/02/26/1172338547144.html>>.

135 Easthope et al, above n 9, 300.

136 Christensen and Wallace, above n 11, 94; Williams and Pocock, above n 88, 76.

137 Sherry, above n 7, 47–8; Williams and Pocock, above n 88, 73.

138 Department of Justice and Attorney-General (Qld), Options paper, above n 26, 14.