

To: Head of Secretariat, Financial System Inquiry

## **SUBMISSION TO THE FINANCIAL SYSTEM INQUIRY DEALING WITH LAND, HOUSING AND RELATED INSURANCE AND FUND MANAGEMENT**

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### **Key terms of references and related international and regional directions for planned, place-based services delivery and competition which drives manufacturing**

This submission to the Financial System Inquiry primarily addresses the following terms of reference in ***relation to land, housing and related insurance and fund management*** mainly in the context of reference (2) on ***the philosophy, principles and objectives*** underpinning the development of a well-functioning financial system, including:

- 2.1. balancing competition, innovation and efficiency, with stability and consumer protection
- 2.4. the role of government
- 3.5. corporate governance structures across the financial system and how they affect stakeholder interests

Land, housing and related insurance and fund management require regionally planned and competitive approaches to development which are also addressed later below through critical inquiry into the first NSW Government Strata and Community Title Law Reform Position Paper (2013) to meet the Financial System Inquiry policy options outlined under (4). These include (4.1) promoting a competitive and stable financial system that contributes to Australia's productivity growth; (4.2) promoting the efficient allocation of capital and cost efficient access and services for users, and (4.3) supporting individuals and businesses to be able to manage their finances by understanding risks and rewards in the financial sector.

The glossary in the NSW White Paper leading to the Planning Bill (2013) stated '***strategic planning***' *tells the story about a place, (sic.) including where it has come from, what it is like now, the vision for an area and what will need to change over time to achieve that vision. It provides structure to this story by identifying the long term goals and objectives and then determining the best approach to achieve the goals and objectives*'. **Sustainable Sydney 2030** is a related plan apparently produced as a result of consultation since 2004 which involves '*the full range of economic, social and environmental issues confronting us*'.

Anthony Roberts, NSW Minister for Fair Trading, states in the first NSW Government Strata and Community Title Law Reform Position Paper entitled '**Strata Title Law Reform**' that within 20 years half of the State's population is expected to be living or working in a strata or community scheme (2013 p. 2). Problems in this strata title paper in regard to roles of **the strata manager, the owners' corporation, its 'executive' committee, and mandated insurances** are considered later. These are also keys to a well-functioning financial system.

This recommended, openly shared policy direction and related competitive management practice was pioneered in NSW WorkCover, critically following general UN directions and conventions, which naturally also support the Universal Declaration of Human Rights.

Shared global and regional directions are necessary to set up structures for reasonable estimation of premiums and for the management of funds for better planned land, building and person rehabilitation, maintenance or reconstruction, as well as new projects.

In this international communications context, in which post-war Australia has accepted and effectively integrated higher rates of immigration from around the world than almost any other country, one naturally also accepts the definition of community put forward by the International Labour Organization (ILO), the United Nations Education, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO). In the context of community based rehabilitation (1994), these organizations defined 'community' as:

- a. a group of people with common interests who interact with each other on a regular basis, and/or
- b. a geographical, social or government administrative unit

This is a great definition of community because it is clear and allows services or goods to be managed transparently (openly, clearly) on related international and regional bases for the purposes of improving trade, wellbeing and understanding in Australia and beyond.

Everybody needs housing. Like health care provision, construction is a service. The Australian and New Zealand Standard Industrial Classification (ANZSIC) enables better planning and related data gathering for work and related community risk management purposes. The list of service industries includes the following:

- Construction
- Property and business services
- Accommodation, cafes and restaurants
- Finance and insurance

Land, housing and related insurances are ideally discussed in related place and activity categories, according to ANZSIC. This is already done in workers' compensation insurance and related injury, rehabilitation, maintenance and re-employment costs. Consider how the related safety net aspects of taxation, rates, insurance (risk or community rated) and levies, are ideally related to gaining more effective outcomes through data gathering.

Better designed housing investment and management approaches also appear necessary for effective state appraisal, following policy directions in health care, work related rehabilitation, compensation, disability care and related support. As US experience shows, the driving market routes to service provision in health care and housing fuelled economic instability, inequality and cost, via increasing global reach before a crash. For examples of this see key influences described in 'Freefall' (Stiglitz, 2010) and 'Red Ink' (Wessel 2012).

In this comparative global context, the report accepted by Australian Heads of Government after Hilmer's independent committee of inquiry into a national competition policy, defined competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects' (1993, p.2). He wrote:

Competition policy is not about the pursuit of competition per se. Rather it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts

with other social objectives. These accommodations are reflected in the content and breadth of application of pro-competitive policies, as well as the sanctioning of anti-competitive arrangements on public benefit grounds (1993, p. xvi).

This is recognition that the role of government is to intervene in the market to facilitate more effective competition or to attain other social objectives considered to be in the public interest. This position is consistent with effective design of competition to meet WHO and related UN goals and directions more effectively in the interests of all. Work ideally starts with the poorest communities, where natural environments are often increasingly degraded.

Hilmer pointed out Commonwealth, State and Territory governments agreed on the need to develop a national competition policy which would give effect to the following principles:

- (a) No participant in the market should be able to engage in anti-competitive conduct against the public interest
- (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership
- © Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review to demonstrate the nature and incidence of the public costs and benefits claimed
- (d) Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reform

The Productivity Commission (PC) later pointed out inherent difficulties in defining anti-competitive conduct in any objective sense. The PC's attitude to its own inquiry into allegations of unfair use of market power in telecommunications was summed up in its quote from the Hilmer Report:

The central conundrum in addressing the problem of misuse of market power is that the problem is not well defined or apparently amenable to clear definition.... .....Even if particular types of conduct can be named, it does not seem possible to define them, or the circumstances in which they should be treated as objectionable, with any great precision.....Faced with this problem.....the challenge is to provide a system which can distinguish between desirable and undesirable activity while providing an acceptable level of business certainty. (PC, 2001, p. 154)

This is also justification for the planned, government, industry and community approaches to land, housing, competition and fund management now proposed, consistent with the holistic aims of state Environment Protection Acts and the related aims of the **key** stakeholders. The latter are those for whose benefit the fund was established, and those who own the fund.

**Risk management requires more open, powerful scrutiny of any land, building and strata management, which an owners' corporation cannot provide adequately.**

Through examination of the NSW government Strata and Community Title Law Reform Position Paper '**Strata Title Law Reform**', one shows later that good governance by, or for, an owners' corporation under strata or any other title, can only begin at the investor tops, with clear and effective scheme management and investment structures, including for property management and related maintenance on shared land and buildings.

An owners' corporation cannot effectively oversee and should not be held responsible for actions of a strata manager. The owners' corporation or members of it have neither the knowledge nor power to manage any business but their own as individuals. For example, according to the papers produced by the strata manager for the AGM of St James Court (a body of eighteen town houses, where one lives under strata title), the total cost of the insurance premium in 2012 was \$15,872.41. The next largest expense was cleaning at \$5290. Eight forms of insurance are apparently required by the owners' corporation in compliance with the Strata Schemes Management Act 1996 and the Financial Services Reform Act. These are: **building; common contents; loss of rent; legal liability; personal accident; fidelity guarantee; office bearers and catastrophe insurance.**

One has no idea of the actual or ideal relationships between premiums, strata managers, brokers or insurance underwriters, claimants and related lawyers. In the light of the history of workers' compensation, Medicare, private health insurance and industry superannuation findings, policy and directions, these fund management directions '*related to balancing competition, innovation and efficiency, with stability and consumer protection*', also appear to be poorly understood by current government. For example, in the **Strata Title Law Reform** paper, the chapter '**Budgets and Levies**' is by far the shortest in the report - 3 pages.

It also seems, however, that management of the Land and Housing Commission (LAHC) in Family and Community Services would be better designed with **a manager for each LAHC property**, to liaise, for example, with real estate agents and strata managers responsible for managing the property affairs of those living under strata title, with help from an owners' corporation 'executive'. In the attached discussion one asks how current LAHC management systems for each property reflect the right to their effective control which is necessarily related to meeting diverse personal situations and environments, which may also be strongly affected, for example, by the National Disability Insurance Scheme (NDIS).

One assumes LAHC tenants do not pay strata levies towards the management and maintenance costs of the properties they live in. However, if governments are committed to mixed social arrangements, whatever they are, it seems unreasonable to deny many more people who wish to do so the opportunity to purchase their homes, as many people living under strata title are doing, via bank or private loans, etc. This opportunity superficially seems an appropriate trigger of more open government, private sector and voluntary support, so funds may also be cost-effectively moved on to support low-cost, well planned construction, rather than urban sprawl. For providing jobs, the importance of green and local approaches are also addressed later and attached. Local experience of urban development is that the community often values parks and open spaces above all.

## **NSW GOVERNMENT STRATA TITLE LAW REFORM POSITION PAPER: QUESTIONS**

### **Chapter 1: Governance**

The **Strata Title Law Reform** position paper points out that '**committee members on what is currently called the owners corporation executive committee do not have any special 'executive' status or authority over other owners in the scheme (p. 7).**

At St James Court, at the 2008 AGM, the strata manager tried to tell the 'executive' committee, that we are also controllers of premises under the Occupational Health and Safety (OHS) Act and should pay workers' compensation insurance in addition to the eight insurance categories now required. I was the only person on the committee who recognised

her view was wrong, because the strata manager is the only person with broad and historical knowledge about the state of the premises for each of the separate owners, and is also the one who chooses all those working on the common property, by seeking quotes for work. Members of an 'executive' committee are usually in no position to assess whether what happens on site is reasonable or safe practice.

As I wrote to the NSW Ministerial Advisory Council on Ageing (MACA) in 2008, *'my personal aim is to retain my current town house whilst getting out of as many as possible of all the body corporate initiatives and expenses that I do not wish to be part of and which may cause great dissention and cost. I would be grateful for any advice on how to go about achieving this. As an individual I want to be more fully responsible for my own townhouse and not held responsible for the condition of anybody else's at the St James Court complex. That is the logical regulatory situation for social mix and low-cost housing, whatever current law may suggest'*. As the owner of a single terrace house, for example, one would not be held responsible for whether all other terrace houses in the same row are re-roofed or not. The relationship of quoting to the performance of work and to related matters is discussed later.

**In the above context and as a result of other experience, one strongly supports the Strata Title Law Reform proposal 1.3 which is for introduction of 'an exclusion of personal liability clause for committee members who act in good faith for the purpose of carrying out their functions under the Act' (p. 13).**

**One also supports the change suggested in 1.6 from 'executive committee' to 'strata committee' (p. 13).** The term 'advisory committee' would be even more clearly explanatory. Making good decisions about most matters of common concern is often ideally related to having good comparative evidence and historical understanding of a plot and building, rather than just voting. In this context one also strongly supports the following recommendations:

**1.15 Greater disclosure requirements for agents who receive commissions** (I've never seen any such disclosure since purchasing my strata title town house in 1993)

**1.16 Limit the terms of strata management contracts** (I guess it would take dynamite to ever get our strata manager out otherwise, whatever she did, as she is overwhelmingly in possession of all the related historical memory and information from all quarters about any matter on site that counts, and may act accordingly, even though she does not live on or visit the premises herself, except for the AGM. I've never seen her contract or the strata roll.)

**1.18 Allow agency agreements to be inspected.** (Yes but what key agency agreements are there? We are too ignorant to know them, let alone compare them. How is this done?)

The **Strata Title Law Reform** Position Paper states that a common cause for concern is that owners' corporations are forced by the terms of their agency agreement to enter into service contracts that are not in their best interests (p. 9). What and where are these agency agreements? I've never seen one, except, perhaps, the contract for the total repainting and repair of the complex, including scaffolding. This contract and process were valuable and instructive. There are many related and larger financial matters. The position paper states the role of managing agents is often misunderstood by owners and residents. To address these misunderstandings, it is proposed the agency agreement must be kept on the strata roll and made available to any owner on request (p. 11). Good idea, whatever it is. As a person, let alone a supposed manager, one needs a vague idea of what one addresses.

One also wonders how current mandated insurances and related premiums for the owners' corporation: (building; common contents; loss of rent; legal liability; personal accident; fidelity guarantee; office bearers and catastrophe insurance) are currently and ideally arrived at and treated. I have unsuccessfully sought more information on this from the strata manager. Our contract, according to AGM information is with CHU Underwriting Agencies Pty Ltd. One assumes a broker is involved. An owners' corporation should not be asked to take the greatest management expense at face value, apparently without effective accountability.

In the above context, where people such as renting tenants, who have an interest in issues of daily living and good faith ownership, are ideally welcome to attend meetings of the owners' corporation, why should one support recommendation **1.12 that Non-owners with a financial interest in the scheme (for example, managing agents and letting agents) will be prohibited from being members of the committee?** Surely anyone should rather work with an informed person, rather than a more ignorant one, on broadly related matters. Why should one trust such people less than any other provider, including strata managers? I guess such providers are in constant contact with each other outside the committee arena.

## **Chapter 2: Managing the Built Environment (On competitive quotes)**

One agrees with the general thrust of this chapter, especially recommendation **(2.7) to establish a process to facilitate the collective sale or renewal of a strata scheme (p. 27)**. However, many related issues concerning the expected links between a current or proposed Building Management Statement and a Strata Management Statement require considerable clarification. There appear to be related problems in regard to administrative funds, sinking funds, and other funds ideally related to insurances and levies, mandatory or not. This is also addressed later in regard to Chapter 3 on Budgets and Levies.

**There appears to be a lot of wrong or confusing information in this chapter. It may be the case that the proposed plans for the collective sale or renewal of a strata scheme may be more effectively applied after coordinated action to improve related insurance design and practice, to increase related land, project and management stability and effectiveness, while reducing cost all round. The Inquiry should consider this closely.**

For example the chapter first states that fixing defects in strata buildings is often more difficult, costly and time-consuming because strata buildings are inherently larger and more complex than many other buildings and involve interdependent premises where a fault in one apartment may affect others nearby. Although this may be so, cost is also increased by the fact the strata manager primarily deals with contractors to the owners' corporation, rather than the individual householder doing so. This three or more way communication complicates and reduces good work liaison which can be costly for all. For example, my roof leaked and three separate men came from the same company at various intervals to look at it, rather than the first man who came out returning to fix it. When a man at last turned up to fix it, the materials had not been dropped off. I was home at all times.

Perhaps the above behaviour was a hint. One is not normally expected to go to another key service provider, for example a dentist, doctor or physiotherapist on the basis of being given three quotes for the job. However, the **Strata Title Law Reform** position paper states that *'the managing agent will be required to get at least three votes for certain products (for example, insurance) to ensure competition and choice for the owners corporation'* (p. 10).

The **Strata Title Law Reform** position paper also states that '*insurance policies can only be taken out with 'approved' insurance companies*' is an example of unacceptable regulation (p. 3). This is wrong on two counts. Were the writers of this position paper born yesterday?

For the traditional lawyer or economist, such as the writers in the case above, overcrowded markets cannot exist, but this has been shown wrong in relation to insurance. The NSW occupational health and safety act and its rehabilitation, insurance and investment system were established in 1987 after 7 out of 43 workers compensation insurers competing on premium price collapsed, leaving industry and taxpayers to pick up their debts. As market and underwriting cycles turned, the premium funds owned by the 43 competing insurers were insufficient to meet the increasing costs of court awards after workers' injury in NSW and an unknown range of related uncontrollable insurance company losses globally and locally.

With WorkCover, a new risk management system was established in which industry and government owned the premium fund instead of the premium being given to insurers to invest on the insurers' own behalf. WorkCover instead paid twelve insurers to administer services to injured workers, collect data and invest the premium fund on industry and government behalf. Brokers were banned from the scheme as unnecessary and unfair expenses. Thus one wonders about what broker intermediaries add in regard to the many forms of insurance which the owners' corporation is required to have under strata title. See more on the key relationships between work-based risk management, Medicare, private health insurance, non-profit industry superannuation and related charitable design at [www.Carolodonnell.com.au](http://www.Carolodonnell.com.au)

The NSW Office of Fair Trading Consumer Building Guide also suggests three quotes be gained for any building operation. This appears primarily to involve many producers in a lot of unpaid work while also encouraging those engaged in trade to cut their prices to unrealistic levels to win a contract, while trying to regain financial ground by any other means available. This fuels trouble. For example, the Discussion and Issues Paper by Bruce Collins QC, Chair of the Inquiry into Construction Industry Insolvency in NSW (2012) states:

*The ability to price risk accurately and a commensurate ability to manage that risk, diminishes as one moves down the contracting chain (p. 8).*

Collins is wrong. Logically, the least informed time in any undertaking is before the beginning of real work on the ground. Project risk cannot be priced accurately at the top of a chain, before work starts, but **can** be treated from the perspective of those valuing stability and good management, rather than from the perspective which involves crossing one's fingers for some personal or institutional return on risk before getting out of an apparently unavoidable financial mess as underwriting and related business cycles turn. The project and risk prices at the head of the contracting chain appear analogous to the scientific hypothesis before a practical experiment has been conducted. One assumes what Collins may mean is that the **amount of money** in any pool established to meet planned project costs may diminish as a result of many earlier costs which may also unexpectedly add themselves to the project contracting chains, especially in the early stages, before any real construction starts.

Collins should have said that the ability to pass on risk, rather than to manage risk, is much greater at the top of contracting chains than it is at the bottom. He points out that a large company, in trouble or not, may pay its debts to subcontractors as slowly as it likes. The need to protect current work arrangements and not damage prospects of securing future work means many subcontractors feel forced to accept this late payment and to take any further work offered to them at prices they may not agree to in other circumstances. They may also go into insolvency through no fault of their own. Collins states the Inquiry is presently of the view that 'subcontractors are not adequately protected' (p. 15). For the financial year 2011-12, the construction industry accounted for 22.1% of more than 10,000

insolvencies in Australia, with retail next, accounting for 10.2%. More than the 'elevation of the subcontractor's position above the ruck of general creditors' (p.20) is required.

The Inquiry into Construction Industry Insolvency in NSW also drew attention to the following suggestion of Craigs Coastal Landscaping Pty. Ltd. in Wollongong, for a proposed construction industry trust:

- The developer or owner has to have the funding for the project approved and money should be set aside in a trust
- A percentage amount for variations should be part of the trust arrangement
- As the builder makes claims, the owner and developer verifies that the work has been done and that payment to subcontractors and suppliers has been made before the next payment is made

The above may ideally be the structure for openly shared regional and non-profit fund and related project management, to which further work, education and certification may all be attached, as part of the contract and settlement process, to gain quality management and better outcomes. Make relations open, as this can prevent a lot of corruption cheaply.

**In this context one remains hazy about expected ideal relations between any Building Management Statements, Strata Management Statements, administrative funds, sinking funds, and other ideally related insurances and levies, mandatory or not.**

### **Chapter 3: Budgets and Levies**

This chapter states that in a strata scheme 'there may also be additional costs to do with the running of the scheme such as general administration costs, fees for a managing agent, workers compensation insurance or building valuations' (p. 29). This is very vague.

The position of building manager requires more broadly effective oversight and comparison of performance. As one of the committee of an owners' corporation, one mainly asks in regard to the size of levies, 'Has our particular common been comparatively unfairly or inefficiently overgrazed and are we the sheep'? This is a key management question. Collectively and individually, however, we usually don't have the time, expertise, information, experience, interest or money to find out, as distinct from whinging over whatever upsets us.

In recommendations **3.3 and 3.6**, in regard to the estimation of the size of sinking funds, administrative funds and related levies (p. 32), in any zone largely free of any meaningful comparisons, such as an owners' corporation or its committee, it is difficult to decide whether levies are unrealistic or not. For example, the strata manager informed us that as our 18 town houses will soon be 50 years old we should seriously consider total re-roofing. The fact Australians are the richest people in the world besides the Swiss, and that nearly all the people in the world have probably never had the spare cash to replace a roof just because somebody dreamed it was about time to do so, is a worry. Getting a single leak fixed was bad enough. While the total painting of the complex was a nightmare of scaffolding, at least we could easily see and compare the huge improvement painting had made to it after. (As in removing asbestos one is assured is in the ground, having men working on roofs is high risk.)

One wonders how strata management and levies should ideally relate to rates in many shared areas such as rubbish removal and is often grateful for information provided by the City of Sydney Council in regard to gaining more sustainable and beautifully planted development which may not only be new, but necessary to employ the world well in future. Planting trees and vegetation seems a comparatively quick and cheap way to reduce the effects of climate change and to encourage many greener forms of related employment. Vegetation is often better than the perennial concrete, to reduce flood run-off and in corridors

to protect vanishing wild life, planted alongside rivers, and elsewhere. Parks, trees and restorations raise values for people like us. Fences, on the other hand, may or may not matter. We also seek better ways of dealing with our common fences, trees and rubbish.

In regard to management here, at St James Court, there may be much to be said for the view that what you don't know as a resident or owner will save you time and probably not hurt you much. However, the broader ideal is having more cooperatively and openly managed competitive states (sale and purchase or rent, etc.), to reduce corruption, waste and cost from local and regional perspectives. Ideally more openly planned directions are also globally centred on cultivation and expansion of parks and related built heritage on common lands and water with bio-diverse resources. The gardens and estate have always been the mark of the cultivated life. Plan openly in the regional contexts discussed above, to create more stable and greener jobs and to cut costs. Management of rubbish is a key concern which is ideally addressed far more openly in related regional management contexts. One often feels larger interests treat us as a joke to be kept in the dark and is not impressed.

**Directions in Chapter 4 on By-laws and Chapter 5 on Managing Disputes seem fine.**

Thank you for the opportunity to make this submission. Yours truly, Carol O'Donnell  
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In regard to relations with China I first refer to a great talk by Martin Ferguson on the Chinese Studies Centre website, in which he discussed holistic clean energy development approaches designed by investors, consumers and planners. (What happened to the Clean and Renewable Energy White Paper, of which he speaks?)

According to the Australian Financial Review (1.10.13, News 9) Martin Ferguson now works for Kerry Stokes's Seven Group Holdings as group executive of natural resources. Seven apparently owns mining services business Westrac and is the major shareholder in Seven West Media. WesTrac is the sole Caterpillar Dealer in Western Australia, NSW, in the ACT and North-Eastern China.

This is a great position from which to implement not only clean energy directions but also the regional land, housing and related insurance and fund management directions, as discussed below. I would be grateful if you would discuss this direction with him and others. A related discussion of media direction is attached. One assumes Stephen Duckett and Kathy Egggar at Wollongong may know a lot about this housing policy direction in relation to the management of disability.