

Dispute Resolution Mechanism for Strata Schemes: **Comparison between Malaysia and Australia**

Strata title is a form of ownership devised for multi-level apartment blocks and horizontal subdivisions with shared areas. The 'strata' part of the term refers to apartments being on different levels, or "strata". Strata title was first introduced in 1961 in the state of New South Wales, Australia, to better cope with the legal ownership of apartment blocks. Previously, the only adequate method of dividing ownership was company title, which suffered from a number of defects, such as the difficulty of instituting mortgages. This term also applies to house-type strata title units in Australia. Other countries that have adopted the Australian system (or a similar variant) of apartment ownership include: Canada (Alberta, British Columbia); Singapore; South Africa; Indonesia; Malaysia; Fiji; Philippines; India; Dubai and Abu Dhabi (under draft as at 2010). Other countries have legislation based on similar principles but with different definitions and using different mechanisms in their administration.

Strata Title Schemes are composed of individual lots and common property. Lots are apartments, garages or storerooms and each is shown on the title as being owned by a lot owner. Common Property is defined as everything else on the parcel of land that is not comprised in a Lot, such as common stairwells, driveways, roofs, gardens and so on. Strata schemes cover residential, commercial, industrial, mixed use and retirement village developments and they range in size from two lots to over 700 lots. It is estimated that close to a quarter of the state's population live, own, or are employed within a strata scheme. The laws applying to strata schemes have been updated many times over the years to keep up with the increasing complexity and sophistication of strata developments. Strata schemes are effectively small communities where the activities and attitudes of residents can have a significant impact on the satisfaction and enjoyment of others. Therefore, it is important to be aware of your responsibilities and obligations when you own or live in a strata unit. Whilst

strata living can provide a friendly community style environment, it helps to remember that it is not the same as living in a freestanding house. Some activities may be more restricted in a strata scheme, for example, where you can park your car, hang your washing or when and how you can renovate. Understanding these differences before moving into a strata scheme can help reduce the likelihood of disputes over these activities later on.

A strata title is a title associated with town houses, home units and commercial uses such as shops or warehouses. The title is evidence of ownership of a unit in a strata plan. A strata plan divides a building and its associated land into units and common property, each of which has a title. The boundaries of the units are defined by reference to parts of the building, not by reference to the land. The units may also include unit subsidiaries set aside for the exclusive use of a particular unit, for example a carport or yard. Common property is the part of the land and building in the strata plan which does not form part of any unit and is for common use by all owners for example stairways, paths and driveways. A Strata Corporation is the legal body formed at the time the strata plan is deposited and comprises the registered owners of all the units in the strata plan. A Strata Corporation has powers and responsibilities to administer the building and care for such things as the land around the building, entrance, stairways and paths.

Disputes often arise when people live close together. In most cases they can be resolved by communication and often a community mediation service can assist to sort out problems. In a strata corporation, disputes can arise between unit holders or between unit holders and the corporation. The strata corporation can intervene where the dispute between neighbours involves a breach of the articles, for example where a unit holder continues to play loud music late at night. As varied as the world of Strata is, so are the types of disputes. So, here are just a few of the more common ones.

MALAYSIA	AUSTRALIA
<ul style="list-style-type: none"> - Varying the amount of insurance to be provided - Revoking an amendment to a by-law that affects all the parcel proprietors in strata scheme and invalidating a purported by-law that the Management corporation has no power to make - Varying the rate of interest fixed by the MC for late payment of contribution and requiring an MC to make or pursue an insurance claim in respect of damage to the subdivided building - Household Pets or keep any animals - Excessive noise, unruly or offensive behavior is not permitted. - structural renovation changes to the Parcel - Plants shall be maintained in a manner that will not create a nuisance to other Occupants. - Funeral & bereavement arrangements - Installation of iron grille - Damage or loss in usage of parking bays 	<ul style="list-style-type: none"> - Parking on common property without approval - Keeping pets without approval - Contribution and Levy issues - Enforcing restrictions on use of common property - Appointment/Dismissal of a Strata Managing Agent - Appointment/Dismissal of an Executive Committee member - Variation of Insurance and Unit Entitlement allocations - Excessive Noise - Enforcement of by-laws - Storage and collection of garbage issues - Damage to ceilings or walls due to water penetration - Exclusive use by-laws - Alterations or repairs to common property - Internal fencing & boundary issues - Validity of meetings or procedures

There are tribunal to solve the disputes among strata community. Here are the explanation about strata disputes tribunal in Malaysia and Australia.

A. Malaysia Tribunal for Strata Disputes

Tribunal

The Strata Management Tribunal has to work according to the provision of **Strata Management Act 2013**. Additionally it has to comply with regulations made under **Section 124** of the said Act.

The regulations may be made for the followings:-

- the duties and powers of members, the Secretary, and officers and staff of the Tribunal;
- the limit of the total amount in respect of which an award of the Tribunal can be sought;
- the procedure of the Tribunal;
- the forms to be used in proceedings;
- fees and providing for the manner for collecting and disbursing such fees;
- the costs or interest applicable to proceedings in the Tribunal; and
- any other matters for the better carrying out of the provisions of Strata Management Act 2013.

Organization

The organization of the tribunal is established under **Section 102 of Strata Management Act 2013**. **Section 103 of Strata Management Act 2013** explained about members, terms of office and allowances for tribunal members. Tribunal consists of a Chairman, Deputy Chairman and not less than twenty other members. According to **Section 104 of Strata Management Act 2013** there should be a secretary to the Strata Management of Tribunal, other officers and staff. Other than that, the secretary may make interlocutory orders under the directions of the Chairman. The term of their tenure is not more than three years, but can be reappointed after its expiry based on **Section 103 of Strata Management Act 2013**. Member may resign but have to give written three month notice to the minister:

- Minister may dismiss (revoke) the appointment of the a member
- Chairman and deputy chairman are having fixed remunerations

- Other member are to be paid allowance during the sitting of the tribunal and such lodging, traveling and substance allowances as fixed by the Minister.

Jurisdiction

As stated in **Section 105 of Strata Management Act 2013**, the tribunal can hear and determine any claims as specified in Part 1 of the Fourth Schedule as below:

- claim for an order to convene a general meeting.
- claim for an order to invalidate proceedings of meeting
- claim for an order to nullify a resolution where voting rights has been denied or where due notice has not been given
- claim for an order to nullify a resolution passed at a general meeting
- claim for an order to revoke amendment of by-laws having regard to the interests of all the parcel owners or proprietors
- a claim for an order to vary the rate of interest by management
- claim for an order to vary the amount of insurance to be provided.
- claim for an order to pursue an insurance claim.
- a claim for compelling management to supply information or documents.
- claim for an order to give consent to effect alterations to any common property; and
- order to affirm, vary or revoke the Commissioner's decision.

Furthermore, the Tribunal has the jurisdiction where the total amount claimed does not exceed two hundred and fifty thousand ringgit or such other amount as may be prescribed to substitute the total amount. The limitation Act 1953 does not apply to the proceedings of the Tribunal. Claims made to the title of any land, estate or interest in land and franchise are not included in the jurisdiction of the Tribunal based on **Section 105(3) of Strata Management Act 2013**. Apart from that, if a claim is filed with Tribunal by the same parties, it should not be the subject of court proceedings unless it is withdrawn, abandoned or struck out. Similarly the Tribunal cannot hear disputes which have been filed in court unless it is withdrawn, abandoned, or struck.

Pursuant to **Section 106(3) of Strata Management Act 2013** claim is deemed to have been made with the Tribunal when it is filed in accordance to **Section 108 of Strata Management Act 2013** stated as the claim has made in the prescribed form together with the prescribed fee and any regulations made under this part.

The persons entitled to claim are a developer, purchase, proprietor including original proprietor, joint management body, management corporation, subsidiary management corporation, managing agent and any other interested person with the leave of Tribunal as stated in **Section 107 of Strata Management Act 2013**.

Proceedings

The rights to appear at hearings in line with **Section 110 of Strata Management Act 2013** are every party to claim be entitled to attend the hearing and no lawyers for parties as a general rule but if the case is legally complex and may in the eyes of Tribunal cause severe financial hardship on one of the parties, if he is not represented by a lawyer then the other party also has to have a lawyer. Management can be represented by a full time paid employee of the management. Minor or any other person under a disability may be represented by represented by his friend or guardian ad litem. In the above cases the Tribunal may impose conditions to ensure that the other party is not substantially disadvantaged by such an appointment.

As stated in **Section 111 of Strata Management Act 2013** all proceedings in Tribunal open door proceedings.

Equal treatment of parties like fair and impartially have to give by the Tribunal through **Section 113 of Strata Management Act 2013**.

According to **Section 114 of Strata Management Act 2013** the Tribunal is free to conduct proceedings in a manner that it considers appropriate, necessary, or expedient for the purpose of ascertaining facts of the case or law. The powers by Tribunal are:

- The determination
 - of time and place for any part of proceeding
 - the language to be used or translation of any document to be supplied
- The making of temporary orders
- The determination of relevancy, admissibility and weight of any evidence with no regard to the rules of evidence under Evidence Act
- Drawing on its own knowledge and expertise
- The provision of further particulars in a statement of claim or statement of defense
- Order the giving of security for costs
- Making an on-site inspection of the building or land which form the subject matter of the claim
- Ordering samples to be taken from, or any observation to be made of or experiment conducted upon, any parcel or common property
- Ordering the discovery and production of documents or materials within the possession or power of a party
- Ordering the preservation and interim custody of any evidence for the purposes of the proceedings
- Ordering the interrogatories to be answered;
- Ordering that any evidence to be given on oath or affirmation; and
- Summoning (which is similar to that issued by court) the parties to the proceedings or any other person
 - to attend before it
 - to give evidence or
 - to produce any document,
 - records or
 - other thing in his possession or
 - otherwise to assist the Tribunal in its deliberations

The Tribunal is free to hold oral hearings for the presentation of evidence or oral arguments, and to conduct proceedings on the basis of documents and other materials as confirmed in **Section 115 of Strata Management Act 2013**. With the exception of, Tribunal must give to parties a reasonable prior notice of any hearing and of any meeting of the

Tribunal for the purposes of inspection of document or property. Besides that all statements, documents or other information supplied to the Tribunal by one party shall be communicated to the other party and expert report or evidentiary document shall be communicated to the parties too.

Some more, the Tribunal has to appoint one or more experts to report to it on specified matters as stated in **Section 116 of Strata Management Act 2013**.

Awards of Tribunal

Before the Tribunal makes an award under **Section 117 of Strata Management Act 2013**, it may refer to the High Court a question of law which arose during the proceedings, sufficient importance and determination of which by the Tribunal raises sufficient doubt about law. Once the question is answered by the Court, the Tribunal has to make its decision accordingly.

The award must be made faster within 60 days from the first day of hearing, state the reasons for its award and several orders made by the tribunal in accordance with **Section 117 of Strata Management Act 2013**. Tribunal may include in its award terms and conditions as it think fit and just. Aside from that, the orders must be in according to the provisions of Strata Management Act and the interest of all parcel owners or proprietors in the use and enjoyment of their parcels or the common property. Moreover, Tribunal may rectify and correct clerical mistake in any award or errors arising in the award from any accidental slip and omission at any time.

Just as **Section 119 of Strata Management Act 2013** the award has to be recorded in writing of every agreed settlement reached by the parties under **subsection 112(3) of Strata Management Act 2013** and every award made by it under **section 117 of Strata Management Act 2013**.

The party can apply to the High Court in the proceedings on the ground of serious irregularity as failure to comply with section 113, to deal with all the relevant issues that were put to it and uncertainty or ambiguity as to the effect of the award affecting the awards under **Section 121 of Strata Management Act 2013**. The high court can remit the award to the Tribunal in whole or in part for reconsideration or set the award aside in whole or in part.

According to **Section 122 of Strata Management Act 2013** order of a court the Tribunal dispose at the conclusion of the proceedings order that any document, record, material or other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it thinks fit. Furthermore, Tribunal make sure where no person has taken delivery of such materials after a period of six months their ownership shall be deemed to have passed to and become vested in the Government.

Enforcement

An award made under **subsection 112(3) or section 117 is of Strata Management Act 2013** final, binding on all parties to the proceedings and is deemed to be an order of a court and be enforced accordingly by any party to the proceedings under **Section 120 of Strata Management Act 2013**. For the purpose order of a court, in the case where the award has not been complied with, the Secretary can send a copy of the award made by the Tribunal to the court having jurisdiction in the place to which the award relates or the court shall cause the copy of the award to be recorded.

Any party who failure to comply with an award made by the Tribunal is an offence and liable for a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or both and in the case of a continuing offence to a further fine not exceeding five thousand ringgit for every day or part thereof in consonance with **Section 123 of Strata Management Act 2013**.

B. The Dispute Resolution at Australia

Tribunal

Organization

The organization of the tribunal is established under **Section 5 of the Consumer, Trader and Tenancy Tribunal Act 2001**. According to **Section 6 Consumer, Trader and Tenancy Tribunal Act 2001**, the Tribunal consists of the following members:

- (a) the Chairperson,
- (b) the Deputy Chairperson (Registry and Administration),
- (c) the Deputy Chairperson (Determinations),
- (d) senior members,
- (e) other members(who qualified)

Jurisdiction

According to **Section 21(1) Of Consumer, Trader And Tenancy Tribunal Act 2001**, The Tribunal has such jurisdiction to decide matters, and such powers to make orders and otherwise exercise any function in connection with any such decisions, as is conferred on it by this or any other Act. Under **Section 22 Of Consumer, Trader And Tenancy Tribunal Act 2001**, the tribunal has to decide or resolve any issue that is in dispute, whether through arbitration or conciliation or any other means.

Proceedings

The provisions of the **Consumer, Trader and Tenancy Tribunal Act 2001**, and of the regulations made under that Act, apply in relation to proceedings before the Tribunal under this Act, subject to any modifications prescribed by the regulations. In this section, a reference to proceedings includes a reference to the whole of proceedings, from the time an application is made to the Tribunal until the application has been finally determined. Under the proceeding process the Registrar must cause notice of the time and place that is fixed for the

hearing to be given to each party in the proceedings according to **Section 25 of Consumer, Trader And Tenancy Tribunal Act 2001**

Enforcement

After the proceeding over any party who failure to comply the Tribunal may specify in the order that the penalty under **Section 51 of Consumer, Trader and Tenancy Tribunal Act 2001**. The amount that should be paid is according to the purposes of the recovery of any amount ordered to be paid by the Tribunal (including costs, but not including a civil or other penalty), the amount is to be certified by the Registrar. However, under **Section 52 of Consumer, Trader and Tenancy Tribunal Act 2001** any person must not willfully contravene or fail to comply with an order of the Tribunal made under this or any other Act they can be penalized. The Maximum penalty is 50 penalty units or imprisonment for 12 months, or both.

In Malaysia this critical issue has been in existence for more than a decade already. It has become an issue of great urgency in the present day in view of various implications discussed earlier. As more and more strata title units are being constructed, couple with the not so well developed land administration system, the problem continues to increase in magnitude as days goes by. The trend of urban developments towards the next decade and beyond will be mainly in the form of medium and high density development and it is therefore very essential that the authorities together with the private sector take effective steps to resolve this understanding issue. Hopefully, with the coming up of the development, there will also be an extensive development in respect of the laws itself, so that the laws are handy in settlings problems and does not be left far behind from the development itself. In conclusion, the dispute between the management corporation and homeowner can be resolved when both of parties trying to discuss and solve problems wisely and not to the detriment of both parties. Indeed the situation a win-win situation can resolve this dispute.

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