The Ineffectiveness of Strata Law Reform

Why are we not evaluating our laws?

STRATA KNOWLEDGE

Background

Law reform around strata and community title is happening frequently. Australia has eight jurisdictions with their own suite of regulations. One would assume that research and cross-jurisdictional evaluations are taking place to ensure reforms are effective and are producing better outcomes. The states and territories learning from each other would surely produce improved regulations and perhaps reduce the need for constant reform?

There is commonality across the states and territories in terms of strata governance structures and the issues that regularly impact strata schemes and residents. What is not so common and is becoming less so, are the processes employed within these governance structures. For example, all jurisdictions impose a voting process when decisions are to be made by the governing entity. However, the specifics of the voting process, (e.g. the number of voters required to pass a motion) varies and in some instances the variations are considerable.

What is clear from our research is that governments frequently rely on a singular methodology in the reform process - consultation. What is lacking, is a reliable and rigorous methodology that incorporates research and cross-jurisdictional evaluations.[1]

[1] Note: In 2013, the Queensland Government engaged the Commercial and Property Law Research Centre at the Queensland University of Technology to conduct an independent and broad - ranging review of Queensland's property laws including Body Corporate laws.

Research

An in-depth case study was undertaken of the last Victorian reform process (specifically focusing on the *Owners Corporations Act 2006*). An analysis of the process included the issues papers, initial consultations and public submissions. The research found that the response rate for public submissions was relatively low (63 submissions) and very few submissions responded to all areas of the issues paper. The median response rate for each issues paper part (12 parts) was 24% (15 responses). The most responses related to questions regarding scheme rules (45% of submitters), specifically the incorporation of rules relating to smoking and pets.

Although a number of suggestions were advanced in the issues paper and by submitters, very limited empirical evidence or research was highlighted. Although the purpose of a consultative approach is to draw out evidence, experiences and opinions, many comments made by submitters (particularly strata owners) were off-topic. Submissions made by professional bodies did not detail any internal processes undertaken that collated member views or how members supported the submission.

A comparative analysis of the issues paper submissions and proposed reforms (Bill) showed general to substantial alignment in areas that submitters generally agreed were in need of reform. No legislative changes were made in areas where there was no agreement. There were several reforms where only singular (professional bodies) submissions were advanced.

Lessons and Implications

Although a consultative approach to strata law reform is valuable and should form part of the reform process, an over reliance on a singular method can lead to poor reform outcomes. If the goal is to improve the quality and effectiveness of our strata laws, it is imperative that the process is transparent and incorporates independent research and evaluation.

In Australia, we are in the unique position to learn from multiple jurisdictions that have similar strata governance structures and similar issues. Applied comparative legal research would be beneficial when undertaking state-based law reforms.

The position of Strata Knowledge is that better reform outcomes could be achieved if investment is made in research and evaluation.

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