Kathy Douglas, Rebecca Leshinsky** and Peter Condliffe†*

CONFLICT IN STRATA TITLE DEVELOPMENTS: THE NEED FOR DIFFERENTIATED DISPUTE RESOLUTION RULES

Abstract

Conflict arising in apartment buildings, medium-density housing and master planned estates is an important issue as strata title developments become more prevalent in Australia. In Victoria, the *Owners Corporations Act 2006* (Vic) ('*OC Act*') provides for a dispute resolution scheme for conflicts arising in strata developments. This article reports on research into dispute resolution under the *OC Act*, and in particular into the effectiveness of the model rules for dispute resolution provided in the associated regulations. The research, which was conducted in Victoria in 2011, gathered data from a range of key stakeholders in owners corporations, including 34 strata managers of owners corporations. This article reports on the range of conflicts experienced by the strata managers who participated in the study. Analysis of the data provided by the strata managers shows that difficulties with conflict and the model rules for dispute resolution under the *OC Act* were most evident in small and large developments. The participants most satisfied with the model rules were managers in medium-sized owners corporations. Whilst a majority of managers used the model rules, over a third used their own informal rules. These findings lead the authors to argue that there is a need for differentiated rules for dispute resolution that are dependent upon the size of the development. Additionally, the authors suggest that further research is needed into the informal rules applied by a significant proportion of managers to ascertain their effectiveness and to provide owners corporations with added choice in dispute resolution.

I Introduction

Strata title developments consist of individual lots founded on a legal structure where some shared areas and services are jointly owned. In Victoria, the legal entity holding shared assets is known as the owners corporation and the

* BA, LLM, Dip Ed, PhD; Associate Professor in Law, RMIT University.

** BA (Hons), LLB (Hons), LLM, PhD; Barrister, Victorian Bar; Senior Lecturer in Law, RMIT University.

† BSW, LLB, Dip Ed, LLM, PhD; Barrister, Victorian Bar. This research was funded by the Legal Services Board of Victoria. The authors acknowledge the research assistance of Dr Aron Perenyi and the editorial assistance of Dr Clare Coburn.

legislation that regulates ownership of shared assets is the *Owners Corporations Act 2006* (Vic) ('*OC Act*'). Strata title is increasingly being used by developers in Australia.[1] Wider use of strata title in urban planning encourages higher density living, thereby 'reducing the need for peri-urban development.'[2] Strata title developments are often in the form of high-rise tower buildings and medium density townhouse developments.[3] Less commonly, strata title can be included in master planned estates to allow for the provision of shared lifestyle assets,[4] environmental features[5] and, on occasion, private infrastructure including roads. This kind of communal living is on the rise globally[6] but with the increase in strata title development, various challenges, including conflict experienced by owners and residents, has arisen.[7]

Approximately 3 million Australians now live in strata titled homes.[8] In particular, strata title developments have increased in the two largest cities of Australia, Sydney and Melbourne.[9] In Australia, strata title systems date from the early 1960s[10] and each state and territory has its own strata legislation.[11] This legislation enables shared

1 Bill Randolph, 'The Changing Australian City: New Patterns, New Policies and New Research Needs' (2004) 22 *Urban Policy and Research* 481.

2 Hazel Easthope et al, 'How Property Title Impacts Urban Consolidation: A Life Cycle Examination of Multi-Title Developments' (2014) 32 *Urban Policy and Research* 289, 290. Peri-urban development is development where urban and rural areas meet.

3 Cathy Sherry, 'The Legal Fundamentals of High Rise Buildings and Master Planned Estates: Ownership, Governance and Living in Multi-Owned Housing with a Case Study on Children's Play' (2008) 16 *Australian Property Law Journal* 1.

4 Shared lifestyle assets can include gymnasiums, pools and tennis courts and may also include community facilities: Therese Kenna and Deborah Stevenson, 'Negotiating Community Title: Residents' Lived Experiences of Private Governance Arrangements in a Master Planned Estate' (2010) 28 *Urban Policy and Research* 435.

5 Environmental features may include marinas and lakes: Robin Goodman and Kathy Douglas, 'Life in a Master Planned Estate — Community and Lifestyle or Conflict and Liability?' (2010) 28 *Urban Policy and Research* 451. See also Rebecca Leshinsky and Clare Mouat, 'Towards Better Recognising "Community" in Multi-Owned Property Law and Living' (2015) 8 *International Journal of Housing Markets and Analysis* 484.

6 Sarah Blandy, Ann Dupuis and Jennifer Dixon, 'Introduction' in Sarah Blandy, Ann Dupuis and Jennifer Dixon (eds), *Multi-Owned Housing: Law, Power and Practice* (Ashgate, 2010) 1.

7 Easthope et al, above n 2, 297–8.

8 Hazel Easthope, Bill Randolph and Sarah Judd, 'Governing the Compact City: The Role and Effectiveness of Strata Management' (Final Report, City Futures Research Centre, May 2012) 1.

9 Bob Birrell and Ernest Healy, 'Melbourne's High Rise Apartment Boom' (Research Report, Centre for Population and Urban Research, September 2013) 4. Increased apartment blocks in Melbourne are driven by property investors and younger buyers who sometimes struggle to afford detached housing: at 23–4.

10 Adrian Bradbrook et al, *Australian Real Property Law* (Thomson Reuters, 5th ed, 2011) 609.

11 Kimberly Everton-Moore et al, 'The Law of Strata Title in Australia: A Jurisdictional Stocktake' (2006) 13 *Australian Property Law Journal* 1.

ownership and provides the governance mechanisms for the entity that holds the joint assets.[12] Such legislation is an important part of policy development in urban planning, providing the framework for the governance of shared property through by-laws or rules.[13] These by-laws/rules may be part of the rules adopted in the initial development plan[14] or they may be formulated by the management committee. They can impact on residents' lived experiences, including control over lifestyle choices[15] such as the keeping of pets or the fitting of awnings in outside areas. With the increasing use of strata title, particularly in the context of apartment living, research into the impact on residents of this type of legal arrangement is needed.[16]

What is of interest to the discussion in this article is the degree of conflict and methods of conflict resolution now used in strata title developments. The occupants of strata title properties generally live in close proximity and share a range of joint assets.[17] These two factors can result, at times, in significant levels of conflict[18] and therefore a dispute resolution scheme is needed in the relevant regulatory legislation.[19] The best ways to address conflict amongst owners and residents in strata title is a question debated in many jurisdictions. [20] For example, Canadian legislation regulating strata title, including dispute resolution schemes, was recently subject to review.[21]

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12 Neil McPhee, 'Big Changes for the World of Communal Living' (2008) 82 *Law Institute Journal* 38, 38–9.

13 Cathy Sherry, 'How Indefeasible is Your Strata Title: Unresolved Problems in Strata and Community Title' (2009) 21 *Bond Law Review* 159, 160–1.

14 Simon Libbis, 'Avoiding the Lot Knots' (2012) 86 *Law Institute Journal* 46, 48. In Victoria, under s 27E of the *Subdivision Act 1998* (Vic) these rules can be lodged with the plan of subdivision.

15 Cathy Sherry, 'Lessons in Personal Freedom and Functional Land Markets: What Strata and Community Title Can Learn from Traditional Doctrines of Property' (2013) 36 *University of New South Wales Law Journal* 280. See also in relation to children in strata developments: Cathy Sherry, 'Kids Can't Fly: The Legal Issues in Children's Falls from High-Rise Buildings' (2012) 2 *Property Law Review* 22.

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

17 Easthope et al, above n 2, 292–3.

18 See, eg, Ron Fisher and Ruth McPhail, 'Residents' Experiences in Condominiums: A Case Study of Australian Apartment Living' (2014) 29 *Housing Studies* 781.

19 Hazel Easthope and Bill Randolph, 'Governing the Compact City: The Challenges of Apartment Living in Sydney, Australia' (2009) 24 *Housing Studies* 243, 249.

20 See, eg, in relation to the United States of America, Hong Kong and Taiwan respectively: Evan McKenzie, *Beyond Privatopia: Rethinking Residential Private Government* (Urban Institute Press, 2011) ch 5; Ngai Ming Yip and Ray Forrest, 'Property Owning Democracies? Home Owner Corporations in Hong Kong' (2002) 17 *Housing Studies* 703, 715–16; Simon CY Chen and Chris J Webster, 'Homeowners Associations, Collective Action and the Costs of Private Governance' (2005) 20 *Housing Studies* 205, 215–17.

21 The City of Toronto is experiencing significant growth in private apartment (condominium) living. As a consequence, the province of Ontario is undergoing an extensive review of its *Condominium Act*, SO 1998, c 19.

Australian legislators have been considering the best ways to deal with disputes in strata title.[22] In Victoria, after a review of legislation governing strata title in 2006,[23] and in recognition of the heightened prospect of conflict occurring in strata developments, the *OC Act* established a three-tier dispute resolution scheme[24] for conflict resolution within owners corporations.[25] The *Owners Corporations Regulations 2007* (Vic) provide a set of model rules for owners corporations, which includes the requirements for an internal dispute resolution scheme.[26] There is presently a further review of the legislation being undertaken in Victoria that may address dispute resolution when considering issues relating to common property. [27]

This article reports on research on conflict and dispute resolution in owners corporations in Victoria. The research was conducted in 2011 and documented the range of conflict experienced by resident committees and managers in owners corporations. Analysis of the data gathered in the study shows that difficulty with conflicts arising in strata title developments, and with challenges implementing the dispute resolution provisions of the *OC Act*, is most evident in high-rise apartment buildings. Given that a great deal of development in strata title in Melbourne is now focused on high-rise apartment towers, this finding points to the need to change the present arrangements in relation to dispute resolution in Victoria. This leads the authors to recommend the provision of differentiated model rules for dispute resolution. The differentiated rules should take into account the size and magnitude of the development and available amenities. An understanding of the community (owners, investors, residents, tenants, older residents and younger people) who are affected by the rules, and of whether the rules are relevant to their lived experiences, is highly important but perhaps not

22 See, eg, Western Australian Land Information Authority, *Strata Reform* (2016) Landgate <https://www.landgate.wa.gov.au/corporate.nsf/web/Strata+Titles+Act+Reform>.

23 Consumer Affairs Victoria, 'Final Report of the Body Corporate Review: A Review of Effectiveness and Efficiency of the *Subdivision Act 1988* and *Subdivision (Body Corporate) Regulations 2001* as they Relate to the Operation of Bodies Corporate' (Final Report, Consumer Affairs Victoria, 2006).

24 The three-tier dispute resolution scheme is described in detail in Part IV below.

25 *OC Act* ss 152–62. Previously in Victoria, the legal entity holding the common assets was called a body corporate. *OC Act* s 3 defines 'owners corporation' as 'a body corporate which is incorporated by the registration of a plan of subdivision or a plan of strata or cluster subdivision'. The use of the term 'multi-titled development' to describe the forms of strata title has been recommended: Easthope et al, above n 2, 290.

26 *Owners Corporations Regulations 2007* (Vic) sch 2 r 6.

27 Consumer Affairs Victoria, Government of Victoria, *Consumer Property Law Review: Issues Paper 2 Owners Corporations* (24 May 2016) <https://www.consumer.vic.gov.au/resources-and-education/legislation/public-consultations-and-reviews/consumer-property-law-review/issues-paper-2-owners-corporations>. See also Consumer Affairs Victoria, 'Consumer Property Acts Review: Owners Corporations' (Issues Paper No 2, Government of Victoria, 2016), which canvasses issues for review in the *OC Act* and the *Subdivision Act 1988* (Vic) relating to common property and owners corporations.

easily achieved. To address this, the authors consider the complex factors that may potentially contribute to conflict in strata title developments.

II Strata Schemes in Australia

A strata scheme is a building or collection of buildings where individuals have title to a small portion known as a 'lot'[28] and share access to and responsibility for the maintenance of common property.[29] In an apartment building, for example, a buyer purchasing a unit would receive title to a 'lot' comprising a private apartment and a share in the common property that includes areas such as lifts, stairwells, access lanes, visitor car parks and recreation facilities such as function rooms, swimming pools and tennis courts. The plan of subdivision will determine the common property and the specification of boundaries will define shared areas.[30]

Prior to the development and introduction of strata title, the most common way of buying into an apartment building was through company title, where individuals would buy shares in the company that owned the building. These shares in turn gave the right to occupy one or more units. Over time, however, company title proved to be administratively onerous and strata title evolved to address concerns over the rights of 'shareholders' and other management issues.[31]

All Australian jurisdictions regulate the subdivision of land through a variety of legislative models (see Appendix 1). Unfortunately, there is no uniform regulatory template across the Australian jurisdictions, which has resulted in a kaleidoscope of arrangements. For example, there is no agreement across the states and territories about nomenclature, although historically the most common term has been 'strata title'.[32] Also, the various state jurisdictions lack a common approach to managing conflict and disputes in strata developments[33] (see Appendix 2).

Several commentators and legislative reviews have indicated that strata legislation in Australia is so diverse and complex that it poses very real practical problems for stakeholders, and, in particular, for practitioners operating across state borders.[34] There has so far been little research into, and analysis of, the differences between these state jurisdictions particularly relating to dispute management provisions.

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28 In South Australia the relevant terminology for 'lot' is 'unit' under *Strata Titles Act 1988* (SA) s 3 and 'community lot' under *Community Titles Act 1996* (SA) s 6.

29 Libbis, above n 14, 46.

30 Ibid 48.

31 Bradbrook et al, above n 10.

32 See Everton-Moore et al, above n 11.

33 See, eg, *Body Corporate and Community Management Act 1997* (Qld) ch 6.

34 Everton-Moore et al, above n 11; see generally Chris Guilding et al, 'An Agency Theory Perspective on the Owner/Manager Relationship in Tourism-Based Condominiums' (2005) 26 *Tourism Management* 409.

One of the significant players in engaging with conflict is the strata manager. The role of the strata manager is to assist with the administration of the owners corporation, including compliance issues. A common misunderstanding among lot owners is that the strata manager is responsible for the operation and decision-making within the owners corporation. In fact, the manager acts in an agency relationship with the owners corporation. A strata manager is considered therefore to be a fiduciary vis-a-vis their principal (the owners corporation). The relationship between an agent and their principal creates fiduciary obligations on the part of the agent to the principal, because the agent is acting on behalf of the principal. Trust and honesty underpin this relationship. As agent of the owners corporation, the strata manager undertakes a number of duties on behalf of the owners corporation. It is common for strata managers to sign a management agreement with the owners corporation and many of the duties and responsibilities of the strata manager are set out in this management agreement. As the relationship of agent and principal is predominately contractual, the manager's failure to observe their duties may result in a breach of contract, giving rise to liability for damages in favour of the principal. The main contractual and fiduciary duties owed by the manager to the owners corporation are to:

- follow instructions from the principal;[35]
- use reasonable care, skill and diligence;[36]
- act in the principal's best interests;[37]
- disclose conflicts of interest to the principal;[38]
- not make a secret profit;[39]
- act in person;[40] and
- keep and render accounts.

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35 Complications can arise where instructions are vague or ambiguous. The agent may be liable in negligence to the principal if they do not seek further clarification of such instructions: see, eg, *Bertram, Armstrong & Co v Godfray* (1830) 12 ER 364.

36 See, eg, *Mitor Investments Pty Ltd v General Accident Fire & Life Assurance Corp Ltd* [1984] WAR 365.

37 The strata manager, as agent, must avoid conflicts of interests, because the agent cannot put his or her interests before the interests of the owners corporation (principal).

38 The duty to disclose conflicts of interest is strictly enforced by the courts and an agent is only released from this obligation in the most exceptional of circumstances. If a conflict of interest does arise between the agent's personal interests and those of the principal, the agent must disclose the conflict to the principal and seek their approval. See, eg, *Dargusch v Sherley Investments Pty Ltd* [1970] Qd R 338.

39 See, eg, *Secret Commissions Act 1905* (Cth) and *Crimes Act 1958* (Vic) s 175.

40 At all times, the agent is to perform duties personally unless expressly or impliedly authorised by the principal to delegate authority. See, eg, *John McCann & Co v Pow* [1975] 1 All ER 129.

Some of these common law duties are codified in the *OC Act*. Under s 122 of the *OC Act*, for instance, a manager:

> (a) must act honestly and in good faith in the performance of the manager's functions; and
>
> (b) must exercise due care and diligence in the performance of the manager's functions; and
>
> (c) must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person.

Often, the strata manager is the first person to be notified of conflict and will attempt to address the issue of concern. As such, the strata manager plays a pivotal role in conflict resolution under the *OC Act*. The strata manager, however, as agent, cannot agree on a mediated outcome without first obtaining instructions from the owners corporation.

III Conflict and Strata Living

Strata living can exert a range of pressures that may result in disputes.[41] For instance, Hazel Easthope and Bill Randolph report a wide variety of conflicts in strata living.[42] There may be conflict between those who rent and those who own lots, as tenants are often concerned with amenity and most owners are concerned with return on investment.[43] Living in close proximity may engender disputes due to conflicts over rules or by-laws such as those relating to noise and pets. Easthope and Randolph note that:

> Mechanisms for resolving disputes in strata schemes therefore become very important in order to manage neighbour disputes that are compounded by both close living arrangements and more formal interactions that are of necessity conducted through the owners' corporation.[44]

Queensland has a large amount of strata title development, including both residential and tourist accommodation. In research conducted in Queensland assessing the experience of apartment owners living in a large apartment development, researchers found apartment owners in conflict with the caretaker of the development and the property manager over the letting of apartments to tourists.[45] They found that residents were largely dissatisfied with the dispute resolution processes available to

41 See, eg, Easthope et al, above n 2; Sherry, 'The Legal Fundamentals of High Rise Buildings and Master Planned Estates', above n 3; Kenna and Stevenson, above n 4; Goodman and Douglas, above n 5.

42 Easthope and Randolph, above n 19, 249.

43 Ibid.

44 Ibid.

45 Fisher and McPhail, above n 18, 8–9.

them to deal with this and other concerns.[46] Research in New South Wales found there was also significant conflict in strata title developments.[47] In a large study that consulted 1550 individuals involved in owners corporations, researchers found the major areas of conflict related to parking (61%), breaking of by-laws (59%) and noise (50%).[48] The research found that informal dispute resolution was common in developments in New South Wales, although around a third of disputes eventually required formal dispute resolution:

> in the majority of cases where disputes take place, a settlement is reached before formal measures need to be taken. This suggests that the informal mediation processes used by owners and managers are effective in defusing and resolving emerging disputes among parties. However, in around a third of cases where disputes were noted, more formal procedures had to be invoked, indicating a sizeable number of disputes proceed beyond informal mediation.[49]

The informal measures considered in the Easthope, Randolph and Judd study often involved personal discussion and negotiation led by the owners corporation manager and the committee using a variety of means including face-to-face meetings, telephone and email.[50] The next possibility available under the New South Wales legislation is a formal process of mediation through New South Wales Fair Trading or another agency. This process had some support amongst the respondents to the Easthope, Randolph and Judd study. However, some of those in conflict appear to give up at this stage rather than proceed to formal methods of conflict resolution.[51] The last option, a hearing before a tribunal resulting in adjudication, was found to be the least satisfactory of the options available to residents, committees and managers.[52] The findings from the study led the researchers to argue that 'some review of current practices may be needed to explore how the outcomes of the mediation and adjudication process can be improved.'[53]

The position of tenants in strata developments is a largely neglected area in the literature and legislation. Residents in strata developments include both owner-occupiers and

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46 Ibid 11.

47 Easthope, Randolph and Judd, above n 8, 1. This major research project included surveys and interviews with 1020 owners of strata title lots, 413 committee members and 106 managers. Other sources of data included peak bodies, strata databases and legislation.

48 Ibid 87. Other areas of conflict included rubbish (41%), repairs and maintenance of common property (39%), renovations within individual owners' lots (38%), use of common property (36%), pets (35%), financial costs to the owners corporation/owners (33%), actions of the strata manager (28%), access to common property (24%), laundry displayed on balconies (24%), smells (including smoking complaints) (22%), setting of levies (20%), short term letting (11%), actions of the building manager or caretaker (10%), other disputes over common property (11%) and other (26%).

49 Ibid 91.

50 Ibid 92.

51 Ibid 93.

52 Ibid 93–5.

53 Ibid 95.

occupiers under tenancy agreements. Whilst strata legislation such as the *OC Act* makes some reference to 'occupiers',[54] the legislation favours the position of owners and owner-occupiers. Due to the growth in Australia of private apartment living, strata legislation needs to 'catch up' to ensure that tenants have a greater contribution and share an active 'interest' in the governance of the buildings in which they reside. This will become increasingly important as the number of strata tenants increases due to affordability concerns over rising prices in Australian cities.[55]

IV Owners Corporation Dispute Resolution in Victoria

The *OC Act*, which was passed in 2006 and became operational in 2007, includes a three-tier (sometimes known as a three-step) process to deal with conflict in owners corporations.

A *First Tier*

Under s 152(2), the first tier of the dispute resolution scheme, parties have the opportunity for early conflict engagement through use of an internal dispute resolution under the model rules or under an alternative scheme registered by the owners corporation.

B *Second Tier*

The second tier provides for access to low cost dispute resolution. A state government department, Consumer Affairs Victoria, provides conciliation or mediation for disputes. Under s 161 of the *OC Act*, the Director of Consumer Affairs can direct a dispute to conciliation or mediation from:

- a current or former lot owner;
- a mortgagee of a lot;
- an insurer;
- an occupier of a lot;
- a purchaser of a lot; or
- a manager of an owners corporation.[56]

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54 See, eg, *OC Act* s 167 which deals with duties of occupiers of lots, including tenants and owner-occupiers.

55 Kath Hulse et al, 'The Australian Private Rental Sector: Changes and Challenges' (Positioning Paper No 149, Australian Housing and Urban Research Institute, July 2012).

56 See Consumer Affairs Victoria, Government of Victoria, *Complaint Handling in Your Owners Corporation* (3 May 2016) <https://www.consumer.vic.gov.au/housing-and-accommodation/owners-corporations/rules-and-resolving-disputes/complaint-handling>.

C *Third Tier*

The third tier is the option of a hearing at the Victorian Civil and Administrative Tribunal (VCAT). An owners corporation cannot apply to VCAT for an order in relation to an alleged breach unless the dispute resolution process required by the internal owners corporation rules has been followed and the owners corporation is satisfied that the matter has not been resolved through that process.[57] Section 18 provides that an owners corporation cannot take legal action, except upon the issue of repayment of overdue fees or to enforce the rules of the owners corporation, without a special resolution of the committee of management. Small two-lot allotments are exempt from many requirements of the *OC Act* including ss 152–61 of the Act.[58] This means that two-lot corporations do not need to comply with the internal dispute management process.

In terms of the third tier in the dispute resolution scheme, s 162 of the *OC Act* states that VCAT must be satisfied that there is a 'dispute' involving an owners corporation before it can intervene.[59] Section 165(1) of the Act provides that in determining an owners corporation dispute, VCAT may make any order it considers fair including, amongst a large range of options,[60] the right to require a party to:

- refrain from doing something;
- comply with the Act; and
- an order to require a lot owner to institute, prosecute, defend or discontinue specified proceedings on behalf of the owners corporation.

Additionally, s 124 of the *OC Act* provides that VCAT may make a 'declaration' that clarifies a legal question rather than an order that would bind the parties. This is a useful power to draw on when there is a dispute where the facts are agreed or relatively straightforward and the law or the statute in relation to the issue is vague or difficult to interpret.

Importantly, s 138 of the *OC Act* provides that:

> (1) By special resolution, an owners corporation may make rules for or with respect to any matter set out in Schedule 1.

Schedule 1 specifically provides for the making of a broad variety of rules, in addition to dispute resolution, including internal grievance, hearing and communication procedures. If an owners corporation does not make its own internal dispute

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57 *OC Act* s 153(3).

58 Ibid s 7(1).

59 See *Boyes v Owners Corporation No 1 PS 514665E* (Civil Claims) [2009] VCAT 2405 (10 November 2009).

60 See ss 165(1)(a)–(m) for the various orders available.

management rules, then s 139(2) of the *OC Act* provides that the default model rules will apply:

> 139 Model rules
>
> (1) The regulations may prescribe model rules in relation to any matter in respect of which rules can be made.
>
> (2) If the owners corporation does not make any rules or revokes all of its rules, then the model rules apply to it.
>
> (3) If the model rules provide for a matter and the rules of the owners corporation do not provide for that matter, the model rules relating to that matter are deemed to be included in the rules of the owners corporation.

The model rules provide as follows:[61]

> 6 Dispute resolution
>
> (1) The grievance procedure set out in this rule applies to disputes involving a lot owner, manager, or an occupier or the owners corporation.
>
> (2) The party making the complaint must prepare a written statement in the approved form.
>
> (3) If there is a grievance committee of the owners corporation, it must be notified of the dispute by the complainant.
>
> (4) If there is no grievance committee, the owners corporation must be notified of any dispute by the complainant, regardless of whether the owners corporation is an immediate party to the dispute.
>
> (5) The parties to the dispute must meet and discuss the matter in dispute, along with either the grievance committee or the owners corporation, within 14 working days after the dispute comes to the attention of all the parties.
>
> (6) A party to the dispute may appoint a person to act or appear on his or her behalf at the meeting.
>
> (7) If the dispute is not resolved, the grievance committee or owners corporation must notify each party of his or her right to take further action under Part 10 of the *Owners Corporations Act 2006*.

61 *Owners Corporations Regulations 2007* (Vic) sch 2 r 6.

The model rules are thus general in approach and therefore may not meet the needs of a particular owners corporation. [62] The model rules do not specifically address issues associated with the size of the development or the likely complexity of the issues of conflicts that may arise within a large development, such as an apartment tower.[63] The rules fail to provide detail or guidance about the process of forms of dispute resolution such as mediation. [64] Also, the 14-day period within which a meeting must be scheduled is a tight timeline that may be challenging for owners corporations to fulfil. Lastly, the rules mean that in some circumstances, for instance if there is no appointed grievance committee, the entire owners corporation committee must meet with the complainant.[65]

The *OC Act* permits the option of creating an alternative dispute resolution scheme for an owners corporation committee. However, the adoption of alternative rules can be a complex process involving:

- the promulgation of a set of model rules;
- presentation of a special resolution for ratification at an owners corporation meeting;
- setting up a dispute resolution committee; and
- registration of the new rules with the Registrar of Titles at the Land Titles Office (Victoria) to ensure they are enforceable.[66]

Day-to-day administration of the owners corporation is carried out by a committee of management elected from the owners corporation lot owners. The management committee then usually appoints and liaises with professional strata property managers.[67] Managers provide the necessary expertise in day-to-day management, facilitation of meetings and compliance with regulatory requirements under relevant legislation.[68] The committee of members is normally elected at the annual general meeting of the owners corporation. The number of votes held by an individual lot

62 Rebecca Leshinsky et al, 'Dispute Resolution under the *Owners Corporations Act 2006* (Vic): Engaging with Conflict in Communal Living' (2012) 2 *Property Law Review* 39, 40–2.

63 Ibid 56.

64 Ibid.

65 Ibid.

66 Ibid 45.

67 Sherry, 'How Indefeasible is Your Strata Title: Unresolved Problems in Strata and Community Title', above n 13, 161–2.

68 Easthope, Randolph and Judd, above n 8, 24.

owner is determined by his or her lot entitlement based on the relative value of that lot owner's property. This measure is proportional to a member's liability for levies.[69]

V Project Methodology

The research into conflict in owners corporations in Victoria was funded in 2011 by a grant from the Legal Services Board, Victoria. Data was obtained from three sources:

- a survey of owners corporation managers;
- semi-structured interviews with owners corporation committees; and
- a content analysis of websites dealing with the disputes within owners corporation or like entities.

In this article, the authors focus on the data from the owners corporation managers. The data was collected via a survey instrument that included a Likert scale of forced-choice questions and the opportunity for open-ended responses. The researchers received 34 responses to the survey of managers. At the time of collecting data, there were approximately 350 managers in Victoria. The survey included 30 questions, some dealing with participant demographic information and the bulk of the questions enquiring about the experience of managers using internal dispute resolution within owners corporations. Although the sample size of 34 surveys was small, the authors argue that useful inferences from the data analysis are possible.

In terms of the size of owners corporations managed by the 34 respondents, three portfolios[70] or categories were used when analysing the data. These were:

(i) small: up to 20 lots;[71]

(ii) medium: 21 to 100 lots; and

(iii) large: 101 to 250 lots.

Eleven respondents (32.3%) managed owners corporations of up to 20 lots. Nineteen respondents (55.9%) indicated that they managed owners corporations of 21–100 lots. Four of the managers (11.8%) were responsible for owners corporations of 101–250 lots. Participants were asked to provide open-ended comments at key moments in the survey. The responses to the questions were cross-tabulated and analysed for themes. Selected open-ended responses are included in the analysis below.

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69 Levies include insurance, maintenance, repairs and management of the common property. See, eg, *OC Act* ss 59–61, which require public liability for common property and replacement insurance of buildings. See also Libbis, above n 14, 48.

70 Portfolio in this context refers to the grouping of lots, ie up to 20 lots as 'small'.

71 In the data analysis, the small category is further divided with a sub-category of equal to or less than five lots.

VI Dispute Resolution and the Model Rules

One of the key concerns of this study was the use of the model rules under the *OC Act*. The aim was to discover whether the strata managers who participated in the study found the model rules effective in dealing with conflict in owners corporations. The *OC Act*, with the model rules, had been operating for approximately five years when the study was undertaken in 2011. The researchers reasoned that there had been sufficient time for managers to experience using the model rules to gauge their effectiveness. The researchers were also aware of the possibility that some managers, and the committees that they served, may not be using the model rules and instead may have devised their own, or are alternatively applying informal rules. These informal rules are not registered with the Land Titles Office.

Of the managers surveyed, the majority (55.9%) reported that they relied on the model rules. Of this group who relied on the model rules, almost half (48.4%) were not satisfied with these rules. The survey showed that 35.3% used informal rules.[72] This represents a high percentage of owners corporations that for some reason choose not to apply — or do not value — the model rules. Devising their own approaches to conflict indicates that the model rules were found to be deficient in some way.

The respondents reported that they dealt with the following kinds of conflicts:

- financial issues, including debt recovery for quarterly and special levies (73.5%);
- lifestyle concerns, including pet ownership and neighbour disputes (79.4%); and
- maintenance conflict, including owner repair and upkeep of joint assets (67.6%).[73]

In response to the main question on dealing with conflict (question 6 of the survey), 'have there ever been any disputes between owners and/or occupiers in any of the schemes you manage?' 76.5% of the 34 respondents indicated occasional disputes between owners and/or occupiers (see Table 1).

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72 8.8% of respondents did not provide answers to this question.

73 Additionally, 73.5% reported conflict with respect to the original formation of the owners corporation. This type of dispute would largely be confined to the beginning of an owners corporation's existence rather than ongoing throughout the life of an owners corporation. Qualitative data gathered in the study from members of owners corporation committees indicated a number of areas of conflict: compliance and enforcement with the owners corporation rules; the level and payment of owners corporation fees; disputes with owners corporation management companies and disputes with developers. See Rebecca Leshinsky et al, 'What are they Fighting About? Research into Disputes in Victorian Owners Corporations' (2012) 23 *Australasian Dispute Resolution Journal* 112, 115–19.

Table 1: Frequency of disputes between owners/occupiers

Q6. Have there ever been any disputes between owners and/or occupiers in any of the schemes you manage?

Frequency of Disputes Between Owners/Occupiers	Frequency N	Percent (%)	Cumulative Percent
Frequently	6	17.6	17.6
Occasionally	26	76.5	94.1
Never	2	5.9	100.0
Total	34	100.0	

Question 7 aimed to elicit the time managers spent on managing disputes and their degree of comfort with that amount of time. In answer to the question 'how much of your time is spent being involved in disputes between owners and/or occupiers?' 47.1% of respondents indicated that they spent up to 10% of their time on disputes. In addition, 23.5% spent 10–20% of their time on disputes. A further 14.7% spent 20–30% of their time on disputes leading to a cumulative total of 88.2% who spent 0–30% of their time on conflict. Only 2.9% of those surveyed reported that they spent none of their time on disputes (see Table 2).[74]

Table 2: Time spent on managing disputes between owner/occupiers

Q7. How much of your time is spent being involved in disputes between owners and/or occupiers?

Time Spent on Managing Disputes Between Owner/ Occupiers	Frequency N	Percent (%)	Cumulative Percent
0–none	1	2.9	2.9
0–10%	16	47.1	50.0
10–20%	8	23.5	73.5
20–30%	5	14.7	88.2
30–40%	4	11.8	100.0
Total	34	100.0	

Additionally, in answer to question 8 'are you comfortable with the amount of time you need to spend on resolving these disputes between owners and/or occupiers?' 41.2% of respondents indicated that they were uncomfortable with the period of time that they spent on dispute resolution (see Table 3).

74 Note in the data there is a slight overlap between categories of time for example, 0–10% overlaps with 10–20%.

Table 3: Comfortable with time spent on dealing with disputes of owners/ occupiers

Q8. Are you comfortable with the amount of time you need to spend on resolving these disputes between owners and/or occupiers? (Please select one option!)

Comfortable with Time Spent on Dealing with Disputes of Owners/Occupiers	Frequency N	Percent (%)	Cumulative Percent
Yes	8	23.5	23.5
Neither comfortable, nor uncomfortable	10	29.4	52.9
No	14	41.2	94.1
Don't know	2	5.9	100.0
Total	34	100.0	

Of the eight respondents who indicated that they were comfortable with the time commitment relating to dispute resolution, five provided open-ended responses. From these responses, it would appear that these managers saw dispute resolution as part of the role and only a relatively minor responsibility:

> It is a natural part of our role that we become involved in these disputes (Manager R8).

> Comfortable with the amount of disputes as it is manageable and not too time consuming and provides 'on the job' training in dealing with the issues (Manager R30).

Of the 10 respondents who stated that they were neither comfortable nor uncomfortable with the amount of time spent on disputes, six provided open-ended responses. Analysing these responses, it is evident that this group also saw disputes as an inevitable part of their position. Nevertheless, this group indicated some concern over the amount of time spent on resolving disputes. For example:

> It's always desirable to minimize dispute resolution time however its occurrence is unavoidable and simply needs to be dealt with (Manager R6).

> I am comfortable in dealing with them, however at the time they can be time consuming and in some cases people can be simply inflexible in the resolution process (Manager R16).

Responses to the survey showed that 14 (41.2%) of the managers did not feel comfortable with the level of time required to deal with disputes. Of these, 13 provided open-ended responses. The participants expressed frustration with the time taken to deal with disputes and also with the ways that lot owners engaged with conflict, reporting that this was often inconsistent and purely self-interested. For example:

> While I like helping people and inform people of their rights and obligations, often they are not honest with us and have long held misbeliefs about the situation, making it very hard to make them happy with the result (Manager R2).
>
> I charge for my time in handling disputes, but regularly only end up charging about 50% of the hours (Manager R3).
>
> They change their minds, do not participate, do not [give] a straight answer. [There are] communication difficulties. Most of the time they cannot be bothered with sorting the problem out or just don't respond (Manager R14).
>
> Dispute Resolution should be handled by the Committee; however, most Committee Members are reluctant to be involved which leaves the matter in the hands of the Manager (Manager R33).

Cross-tabulation analysis of the data showed that the frequency of disputes increased with the portfolio size of the strata manager. Respondents managing larger portfolios of owners corporations indicated they experienced more frequent conflicts than was the case for those handling smaller portfolios (see Table 4).

Table 4: Frequency of disputes between owners/occupiers according to number of owners corporations managed

Q6. Have there ever been any disputes between owners and/or occupiers in any of the schemes you manage? (Please select one option!)

Q1. How many owners corporations do you manage?

Frequency of Disputes Between Owners/ Occupiers	**Number of OCs Managed**				
	≤ 5 N (%)	**6–20 N (%)**	**21–100 N (%)**	**101–250 N (%)**	**Total N (%)**
Frequently	0 (0)	1 (2.9)	4 (11.8)	1 (2.9)	6 (17.6)
Occasionally	2 (5.9)	7 (20.6)	14 (41.2)	3 (8.8)	26 (76.5)
Never	1 (2.9)	0 (0)	1 (2.9)	0 (0)	2 (5.9)
Total	3 (8.8)	8 (23.5)	19 (55.9)	4 (11.8)	34 (100)

Larger portfolios reported the highest amount of time spent on disputes. In the large portfolios, three out of a total of four strata managers indicated time spent on disputes was in the 10–20% and 20–30% categories. For medium portfolios, nine out of the total of 19 managers responded that they spent 0–10% of their time on disputes. The rest indicated significant time spent on disputes, ranging from 10–40%. The managers of the small portfolios indicated the least time spent on disputes (see Table 5).

Table 5: Time spent on managing disputes between owner/occupiers according to number of owners corporations managed

Q7. How much of your time is spent being involved in disputes between owners and/or occupiers? (Please select one option!)

Q1. How many owners corporations do you manage?

Time Spent on Managing Disputes Between Owners/ Occupiers	Number of OCs Managed				
	≤ 5 N (%)	6–20 N (%)	21–100 N (%)	101–250 N (%)	Total N (%)
None	1 (2.9)	0 (0.0)	0 (0.0)	0 (0.0)	1 (2.9)
0–10%	0 (0.0)	6 (17.6)	9 (26.5)	1 (2.9)	16 (47.1)
10–20%	0 (0.0)	1 (2.9)	5 (14.7)	2 (5.9)	8 (23.5)
20–30%	1 (2.9)	1 (2.9)	2 (5.9)	1 (2.9)	5 (14.7)
30–40%	1 (2.9)	0 (0.0)	3 (8.8)	0 (0.0)	4 (11.8)
Total	3 (8.8)	8 (23.5)	19 (55.9)	4 (11.8)	34 (100)

The satisfaction with these time requirements seems to be counter-indicative of portfolio size. In fact, dissatisfaction with the time spent on resolving disputes between owners/ occupants seems to be relatively more frequent in both the case of respondents with the smaller and the larger portfolios. For instance, four strata managers of 11 with small portfolios indicated that they were uncomfortable with the time spent on disputes. In the category of large portfolios, three of the four strata managers indicated that they were not comfortable with the time spent on disputes. Whereas, seven out of 19 strata managers with medium portfolios indicated that they were not comfortable (see Table 6).

Table 6: Satisfaction with conflict time requirement between owners and/or occupiers across portfolio size

Q8. Are you comfortable with the amount of time you need to spend on resolving these disputes between owners and/or occupiers? (Please select one option!)

Q1. How many owners corporations do you manage?

Comfortable with Time Spent on Dealing with Disputes of Owners/ Occupiers	Number of OCs Managed				
	≤ 5 N (%)	6–20 N (%)	21–100 N (%)	101–250 N (%)	Total N (%)
Yes	1 (2.9)	1 (2.9)	6 (17.6)	0 (0.0)	8 (23.5)
Neither comfortable or uncomfortable	0 (0.0)	4 (11.8)	5 (14.7)	1 (2.9)	10 (29.4)
No	2 (5.9)	2 (5.9)	7 (20.6)	3 (8.8)	14 (41.2)
Don't know	0 (0.0)	1 (2.9)	1 (2.9)	0 (0.0)	2 (5.9)
Total	3 (8.8)	8 (23.5)	19 (55.9)	4 (11.8)	34 (100)

It is strongly displayed, that in the case of frequent disputes between owners/occupiers, respondents are dissatisfied with the model rules (see Table 7).

Table 7: Frequency of disputes between owners/occupiers according to degree of satisfaction with model rules if used

Q6. Have there ever been any disputes between owners and/or occupiers in any of the schemes you manage? (Please select one option!)

Q17. If you use the model rules process, are you satisfied with the model rules? (Please select one option!)

Frequency of Disputes Between Owners/ Occupiers	Satisfaction with Model Rules if Used			
	Yes N (%)	No N (%)	Don't know N (%)	Total N (%)
Frequently	0 (0)	5 (33.3)	0 (0.0)	5 (16.1)
Occasionally	10 (83.3)	10 (66.7)	4 (100.0)	24 (77.4)
Never	2 (16.7)	0 (0.0)	0 (0.0)	2 (6.5)
Total	12 (100.0)	15 (100.0)	4 (100.0)	31 (100.0)

The distribution of managers' time spent on resolving disputes between owners/occupiers does not seem to be consistently linked with the use of model rules. However, managers using their own informal rules indicated slightly higher time-consumption on attending to conflict, when comparing the distribution of responses between the two categories (see Table 8).

Table 8: Conflict time requirement between owners and model rules usage

Q7. How much of your time is spent being involved in disputes between owners and/or occupiers? (Please select one option!)

Q16. Do you have your own dispute resolution process or do you rely on the *Owners Corporations Act 2006* model rules? (Please select one option!)

Time Spent on Managing Disputes between Owners/Occupiers	*OC Act* Model Rules or Own Process for Dispute Resolution		
	OC Act Model Rules N (%)	Own Rules N (%)	Total N (%)
0–none	1 (5.3)	0 (0.0)	1 (3.2)
0–10%	8 (42.1)	6 (50.0)	14 (45.2)
10–20%	4 (21.1)	3 (25.0)	7 (22.6)
20–30%	4 (21.1)	1 (8.3)	5 (16.1)
30–40%	2 (10.5)	2 (16.7)	4 (12.9)
Total	19 (100.0)	12 (100.0)	31 (100.0)

Responses suggest that the managers spending over 10% of their time resolving disputes between owners/occupiers are less satisfied with using model rules. This indicates that frequent users of the model rules prefer to develop their own rules of dispute resolution (see Table 9).

Table 9: Conflict time requirement between owners/occupiers and model rules satisfaction

Q7. How much of your time is spent being involved in disputes between owners and/or occupiers? (Please select one option!)

Q17. If you use the model rules process, are you satisfied with the model rules? (Please select one option!)

Time Spent on Managing Disputes Between Owners/Occupiers	Satisfaction with Model Rules if Used			
	Yes N (%)	No N (%)	Don't know N (%)	Total N (%)
0–none	1 (8.3)	0 (0.0)	0 (0.0)	1 (3.2)
0–10%	6 (50.0)	6 (40.0)	2 (50.0)	14 (45.2)
10–20%	2 (16.7)	4 (26.7)	1 (25.0)	7 (22.6)
20–30%	1 (8.3)	3 (20.0)	1 (25.0)	5 (16.1)
30–40%	2 (16.7)	2 (13.3)	0 (0.0)	4 (12.9)
Total	12 (100.0)	15 (100.0)	4 (100.0)	31 (100.0)

It seems that the managers are less frequently uncomfortable with the time they spend on disputes between owners/occupiers if they are using their own informal rules in place of the model rules. This suggests that even though model rules may be saving them time, they tend to make managers feel less comfortable with the time they spend on these disputes (see Table 10).

Table 10: Satisfaction with conflict time requirement between owners and/or occupiers and model rules usage

Q8. Are you comfortable with the amount of time you need to spend on resolving these disputes between owners and/or occupiers? (Please select one option!)

Q16. Do you have your own dispute resolution process or do you rely on the *Owners Corporations Act 2006* model rules? (Please select one option!)

Comfortable with Time Spent on Dealing with Disputes of Owners/ Occupiers	*OC Act* Model Rules or Own Process for Dispute Resolution		
	OC Act Model Rules N (%)	Own Rules N (%)	Total N (%)
Yes	5 (26.3)	2 (16.7)	7 (22.6)
Neither comfortable nor uncomfortable	5 (26.3)	4 (33.3)	9 (29.0)
No	8 (42.1)	5 (41.7)	13 (41.9)
Don't know	1 (5.3)	1 (8.3)	2 (6.5)
Total	19 (100.0)	12 (100.0)	31 (100.0)

It is clearly shown in the data that managers who are not comfortable with the time spent on disputes between owners/occupiers are predominantly dissatisfied with the model rules, suggesting that they feel using the model rules is not an efficient use of their time (see Table 11).

Table 11: Satisfaction with conflict time requirement between owners and/or occupiers and model rules satisfaction

Q8. Are you comfortable with the amount of time you need to spend on resolving these disputes between owners and/or occupiers? (Please select one option!)

Q17. If you use the model rules process, are you satisfied with the model rules? (Please select one option!)

Comfortable with Time Spent on Dealing with Disputes of Owners/ Occupiers	Satisfaction with Model Rules if Used			
	Yes N (%)	No N (%)	Don't know N (%)	Total N (%)
Yes	5 (41.7)	1 (6.7)	1 (25.0)	7 (22.6)
Neither comfortable nor uncomfortable	4 (33.3)	2 (13.3)	3 (75.0)	9 (29.0)
No	2 (16.7)	11 (73.3)	0 (0.0)	13 (41.9)
Don't know	1 (8.3)	1 (6.7)	0 (0.0)	2 (6.5)
Total	12 (100.0)	15 (100.0)	4 (100.0)	31 (100.0)

Managers are experiencing more disputes within owners corporations committees that use their own rules as opposed to model rules. This could be an indication of a tendency of their own rules to bring such disputes to the committee level or of a shortcoming of the model rules to accommodate this possibility (see Table 12).

Table 12: Cross-tabulation of the frequency of conflict within owners corporations committees with the use of the model rules

Q9. Have there ever been any disputes within owners corporations committees?

Q16. Do you have your own dispute resolution process or do you rely on the *Owners Corporations Act 2006* model rules? (Please select one option!)

Frequency of disputes within Owners Corporations Committees	*OC Act* Model Rules or Own Process for Dispute Resolution		
	Model Rules N (%)	Own rules N (%)	Total N (%)
Yes, occasionally	12 (63.2)	9 (75.0)	21 (67.7)
No	7 (36.8)	2 (16.7)	9 (29.0)
Don't know	0 (0.0)	1 (8.3)	1 (3.2)
Total	19 (100.0)	12 (100.0)	31 (100.0)

Responses show that managers are much more often dissatisfied with model rules if disputes within owners corporations are frequent. Exposure to model rules and the obligation to apply them seems to lead to discontent with the way the rules function (see Table 13).

Table 13: Cross-tabulation of frequency of conflict within owners corporations committees and satisfaction with model rules

Q9. Have there ever been any disputes within owners corporations committees?

Q17. If you use the model rules process, are you satisfied with the model rules? (Please select one option!)

Frequency of disputes within Owners Corporations Committees	Satisfaction with Model Rules if Used			Total N (%)
	Yes N (%)	No N (%)	Don't know N (%)	
Yes, occasionally	7 (58.3)	11 (73.3)	3 (75.0)	21 (67.7)
No	5 (41.7)	4 (26.7)	0 (0.0)	9 (29.0)
Don't know	0 (0.0)	0 (0.0)	1 (25.0)	1 (3.2)
Total	12 (100.0)	15 (100.0)	4 (100.0)	31 (100.0)

Most respondents indicated that they managed medium-sized portfolios (between 21 and 100 owners corporations). The majority of the managers with medium-sized portfolios relied on model rules, while managers with smaller portfolios displayed a tendency of using their own rules (see Table 14).

Table 14: Cross-tabulation of portfolio size and model rules usage

Q1. How many owners corporations do you manage?

Q16. Do you have your own dispute resolution process or do you rely on the *Owners Corporations Act 2006* model rules? (Please select one option!)

Number of OCs Managed	*OC Act* Model Rules N (%)	Own Rules N (%)	Total N (%)
≤ 5	2 (10.5)	1 (8.3)	3 (9.7)
6–20	2 (10.5)	5 (41.7)	7 (22.6)
21–100	13 (68.4)	4 (33.3)	17 (54.8)
101–250	2 (10.5)	2 (16.7)	4 (12.9)
Total	19 (100.0)	12 (100.0)	31 (100.0)

An overwhelming proportion of managers of medium-sized portfolios indicated satisfaction with the model rules, while it was shown that managers of smaller portfolios were relatively less satisfied. This suggests that the model rules are tailored around the preferences of managers of medium-sized portfolios. It was also evident that managers of large portfolios were dissatisfied with the model rules, suggesting that they also had substantial difficulty with their implementation (see Table 15).

Table 15: Cross-tabulation of portfolio size and satisfaction with model rules

Q1. How many owners corporations do you manage?

Q17. If you use the model rules process, are you satisfied with the model rules? (Please select one option!)

Number of OCs Managed	Satisfaction with Model Rules if Used			
	Yes N (%)	No N (%)	Don't know N (%)	Total N (%)
≤ 5	2 (16.7)	1 (6.7)	0 (0.0)	3 (9.7)
6–20	1 (8.3)	3 (20.0)	3 (75.0)	7 (22.6)
21–100	9 (75.0)	7 (46.7)	1 (25.0)	17 (54.8)
101–250	0 (0.0)	4 (26.7)	0 (0.0)	4 (12.9)
Total	12 (100.0)	15 (100.0)	4 (100.0)	31 (100.0)

VII Conclusion

In summary, analysis of the data gathered for this study shows that conflict is common in owners corporations. From the perspective of the managers of owners

corporations, there were three main areas of conflict: financial issues, lifestyle issues and maintenance conflict. Significantly, although some managers saw conflict engagement as part of their role, many expressed dissatisfaction with the amount of time that they spent on conflict resolution. The internal dispute resolution scheme, with the provision of model rules, was a source of dissatisfaction.

The data in this study makes clear that for some managers in Victoria the present model rules are not adequate to engage successfully and efficiently with conflict. This is particularly the case in small and large owners corporations. Although those in medium-sized developments expressed some level of satisfaction with the model rules, managers who used the rules in small or large developments were more dissatisfied. This finding suggests that the model rules suit a medium-sized development but do not generally assist small or large developments. This suggests the need for differentiated rules to accommodate developments of varying sizes, amenities and land use. An added difficulty for providing one set of model rules for owners corporations in all kinds of strata development is that the developments differ in the types of services they offer, the demographics of their residents and the complexity of issues they need to address. A one-size-fits-all approach to formulating model rules does not appear to meet the needs of strata managers and the conflicts that they address in owners corporations.

The dissatisfaction with model rules in small and large developments is in contrast with the use of informal and undocumented rules adopted within some of the owners corporations, which the managers reported as useful. They indicated greater comfort and satisfaction with using informal rules, although managers reported that this approach may sometimes be more time consuming. This finding suggests that there is a degree of experience in dealing with conflict using informal rules that is currently undocumented. It would appear that some informal rules are proving effective in dealing with conflict but, unfortunately, the design and implementation of these rules were neither identified nor described in this study.

The authors can only speculate that the ability to apply informal rules and take action increased the likelihood of swift resolution of conflict. Informal rules may permit greater flexibility in their application and avoid unnecessary formality and better enable managers to adapt the rules to the specific needs of their owners corporation. The findings from this study suggest the need for further research to identify successful strategies and informal rules of dispute resolution that are being used in Victorian owners corporations and which better meet the needs of owners and occupants. This research will have relevance not just for owners and residents of strata developments managed by owners corporations in Victoria, but also for those in other states in Australia and internationally. Through assessment of the details and effectiveness of informal rules, it may be possible to draft a range of alternative model rules. Owners corporation committees could then be given the option of choosing amongst a range of model rules so that the needs of each type of development can be addressed. The high level of growth in strata title developments in urban and regional areas of Australia warrants careful attention to the provision of dispute resolution processes that are flexible and effectively meet the needs of all owners and residents in times of conflict.

APPENDIX 1: APPLICABLE LEGISLATION IN EACH STATE AND TERRITORY IN AUSTRALIA

State or Territory	Applicable Legislation
Queensland	*Body Corporate and Community Management Act 1997* *Body Corporate and Community Management (Accommodation Module) Regulation 2008* *Body Corporate and Community Management (Standard Module) Regulation 2008* *Body Corporate and Community Management Act (Commercial Module) Regulation 2008* *Body Corporate and Community Management (Small Schemes Module) 2008*
New South Wales	*Strata Schemes (Freehold Development) Act 1973* *Strata Schemes (Freehold Development) Regulation 2012* *Strata Schemes (Leasehold Development) Act 1986* *Strata Schemes (Leasehold Development) Regulation 2012* *Strata Schemes Management Act 1996* *Strata Schemes Management Regulation 2010* *Community Land Management Act 1989* *Community Land Management Regulation 2007* *Community Land Development Act 1989* *Community Land Development Regulation 2007*
Victoria	*Owners Corporations Act 2006* *Owners Corporations Regulations 2007* *Subdivision Act 1988* *Subdivision (Registrar's Requirements) Regulations 2011* *Company Titles (Home Units) Act 2013*
Tasmania	*Strata Titles Act 1998*
South Australia	*Community Titles Act 1996* *Community Titles Regulations 2011* *Strata Titles Act 1988*
Western Australia	*Strata Titles Act 1985*
Australian Capital Territory	*Unit Titles Act 2001* *Unit Titles Regulation 2001* *Unit Titles (Management) Act 2011* *Unit Titles (Management) Regulation 2011*
Northern Territory	*Unit Titles Act* *Unit Titles (Management Modules) Regulations* *Unit Title Schemes Act* *Unit Title Schemes (Management Modules) Regulations* *Unit Title Schemes (General Provisions and Transitional Matters) Regulations* *Unit Title Schemes Act 2009*

APPENDIX 2: A SUMMARY OF AUSTRALIAN STRATA LEGISLATION AND DISPUTE MANAGEMENT MECHANISMS

State or Territory	Victoria	Queensland	New South Wales	South Australia
Name of Primary Legislation	*Owners Corporations Act 2006*	*Body Corporate and Community Management Act 1997*	*Strata Schemes (Freehold Development) Act 1973; Strata Schemes (Leasehold Development) Act 1986; Strata Schemes Management Act 1996; Community Land Management Act 1989*	*Strata Titles Act 1988; Community Titles Act 1996*
Terminology	Owners corporation	Body corporate	Owners corporation	Strata title
Key Dispute Management Provisions	Part 10	Chapter 6 — Commissioner for Body Corporate and Community Management is responsible and refers out to a dispute process	*Strata Schemes Management Act 1996* ch 5 — mandatory conciliation before application to Civil and Administrative Tribunal	*Strata Titles Act 1988* pt 3A; *Community Titles Act 1996* pt 14
Formal Initiation of Dispute/ Complaint	Sections 155–57 — notice by owners corporation or on approved complaint form by various affected persons	Sections 238, 242, 248 and 250 — approved form after reasonable attempts using an internal dispute resolution procedure	*Strata Schemes Management Act 1996* s 45 — notice by owners corporation	*Strata Titles Act 1988* s 41A — application to Magistrates Court or District Court with leave
Forms of Dispute Management	Not specified — Conciliation by Director of Consumer Affairs Victoria	Commissioner for Body Corporate and Community Management can recommend conciliation, mediation or adjudication	Mediation by Department of Fair Trading; adjudication on the papers by Civil and Administrative Tribunal	Magistrates Court

State or Territory	Victoria	Queensland	New South Wales	South Australia
Appeal	From owners corporation to Director of Consumer Affairs or VCAT with usual appeal rights	From adjudicator to District Court on questions of law	Consumer, Trader & Tenancy Tribunal	Usual appeal rights from Magistrates Court
State or Territory	**Tasmania**	**Northern Territory**	**Australian Capital Territory**	**Western Australia**
Name of Primary Legislation	*Strata Titles Act 1998*	*Unit Title Schemes Act 2009*	*Unit Titles (Management) Act 2011*	*Strata Titles Act 1985*
Terminology	Body corporate	Body corporate	Owners corporation	Strata company
Key Dispute Management Provisions	Parts 9 and 10	*Unit Titles Regulations* sch 5 ('Model Dispute Resolution Procedure')	Part 8	Part 6
Formal Initiation of Dispute/ Complaint	Section 105 — Application for Relief	Section 106 — application to local court	Sections 125–28 set out application process to ACT Civil and Administrative Tribunal (ACAT)	Application to State Administrative Tribunal
Forms of Dispute Management	Written submission to the Recorder of Titles	Local Court	Section 129 lists the powers of ACAT to resolve disputes	State Administrative Tribunal
Appeal	To Resource Management and Appeals Tribunal	Usual appeal rights from Local Court	Appeals to the ACAT Appeals Tribunal	To Supreme Court on question of law per *State Administrative Tribunal Act 2004*