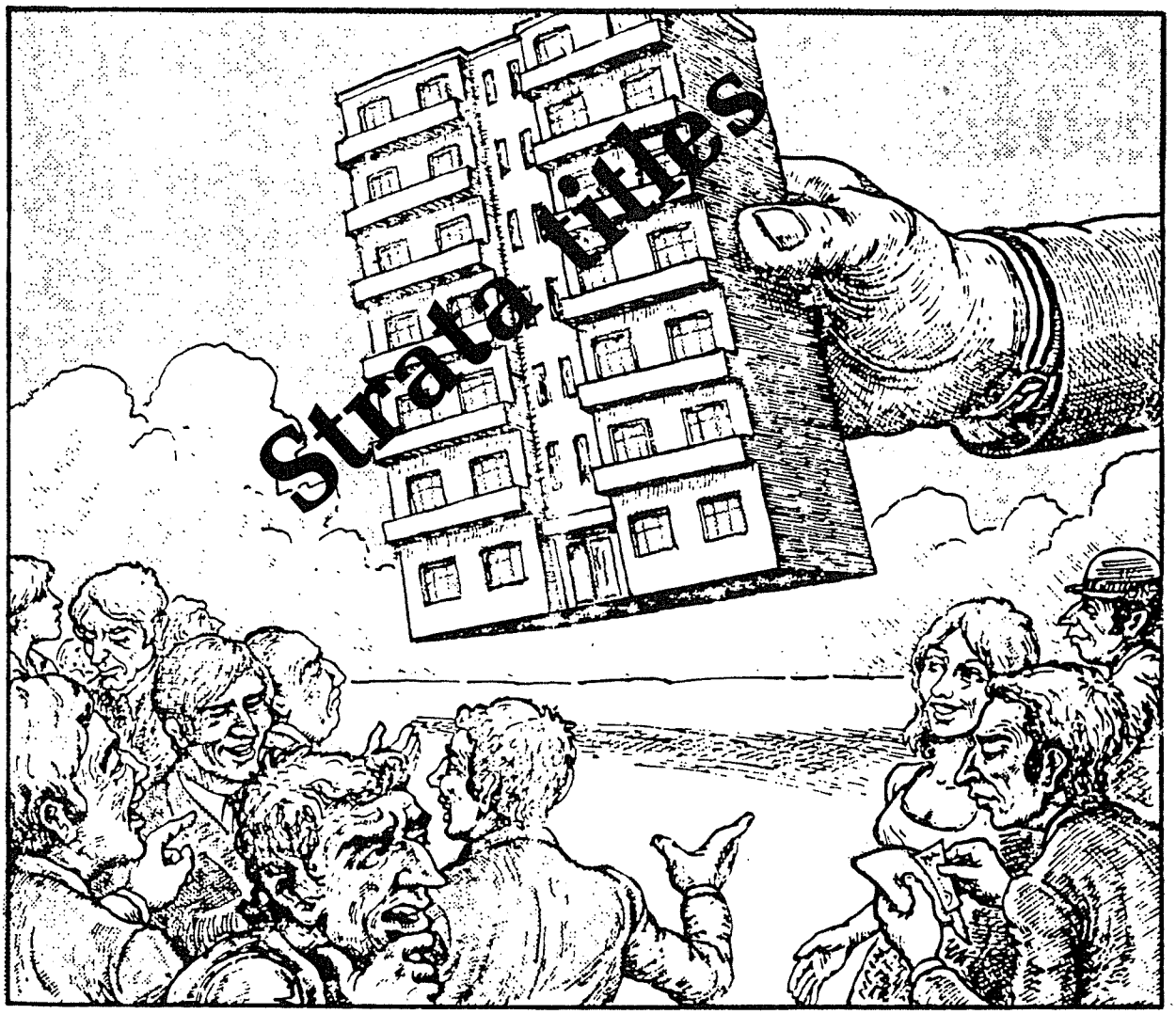

Problems and prospects

by Rafe Champion

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Flat dwelling is as old as Roman times, and more recently in France the Code Napoleon provided a statutory basis for condominium ownership. In its Australian form strata title is generally regarded as a distinctly homegrown invention along with the rotary clothes hoist, the rotary motor lawnmower and Torrens title for conveyancing land. Among the many unexpected and unintended consequences of this innovation are the transformed skylines of most Australian cities and the mass movement of hundreds of thousands of people into a form of living which many regard as second rate in comparison with the conventional house and garden.

Such a phenomenon is clearly worthy of investigation and some of the little research already done debunks the popular myth about the origin of the legislation in New South Wales. But the role of strata title in urban change is not properly appreciated. For example, an important study that clearly showed the impact of unit development on urban renewal during the 1960s did not even mention the legislation that made such development possible.

The purpose of this article is to review some of the problems that have emerged from the experience of strata title, especially in New South Wales where it all began in 1961. In this state the Act has been subjected to radical amendments and the management provisions of the Act (as distinct from the registration provisions) have been under active review for some years. This article examines some of the limitations imposed by the law in the registration of strata developments, the problems of management of the affairs of the scheme and the problems of human relations that arise among the occupants of strata dwellings. The problems in these three areas indicate a need for a thorough review of the aims and function of the legislation. It may be that one of the primary purposes of strata, namely complete freedom of sale and lease, needs to be revised to allow special types of development (i.e. for old people only, or for people without children only, or for owner-occupiers only). Less radical changes may be desirable to streamline management procedures and to facilitate new forms of development that were never envisaged when the Acts were first drafted.

A new ecological niche in the urban environment

New South Wales pioneered strata title with the *Conveyancing (Strata Titles) Act* 1961. Subsequently all states and territories and New Zealand introduced similar legislation[1].

These Acts aim to do three things:

- To provide clear or marketable title to parts of a building or to parts of a strata scheme that consists of more than one building.
- To provide for proper insurance, management and maintenance of the whole scheme.
- To formulate a set of rules for people living in close proximity.

The first function has certainly been well served because strata title is similar to conventional home ownership in that it provides unrestricted rights of sale, lease and mortgage. These rights cannot be interfered with by other owners in the scheme acting singly or collectively, unlike the situation with 'company title'. Under company title you do not actually own your part of the building, instead you own shares in a company and this ownership gives you the right to occupy and use the flat. This is generally regarded as a slightly messy way to own real estate. For example, problems can arise in evicting tenants (if the company will even allow you to lease your unit) and money cannot be raised for purchase at the conventional home loan rate, if at all. The decisive advantage of strata for people who do not have large amounts of cash in hand is that lending institutions, mostly banks and building societies, will lend money to buy strata dwellings on the same terms as for houses and land. This opened up a major new sector of the real estate market both for owner-occupants and investors and the popularity of the area is indicated by the statistics. As shown in the table there are over sixty thousand strata developments in Australia, containing more than half a million lots or units, mostly dwellings.

Units and Plans, 1982

	Plans	Units or lots
New South Wales	19,000	216,000
Victoria	16,400	178,000
Western Aust.	9,700	47,000
Queensland	5,500	42,500
South Aust.	4,900	27,600
Tasmania	1,370	3,160 (since 1974)
A.C.T.	360	4,400
Nthn. Territory	114	535

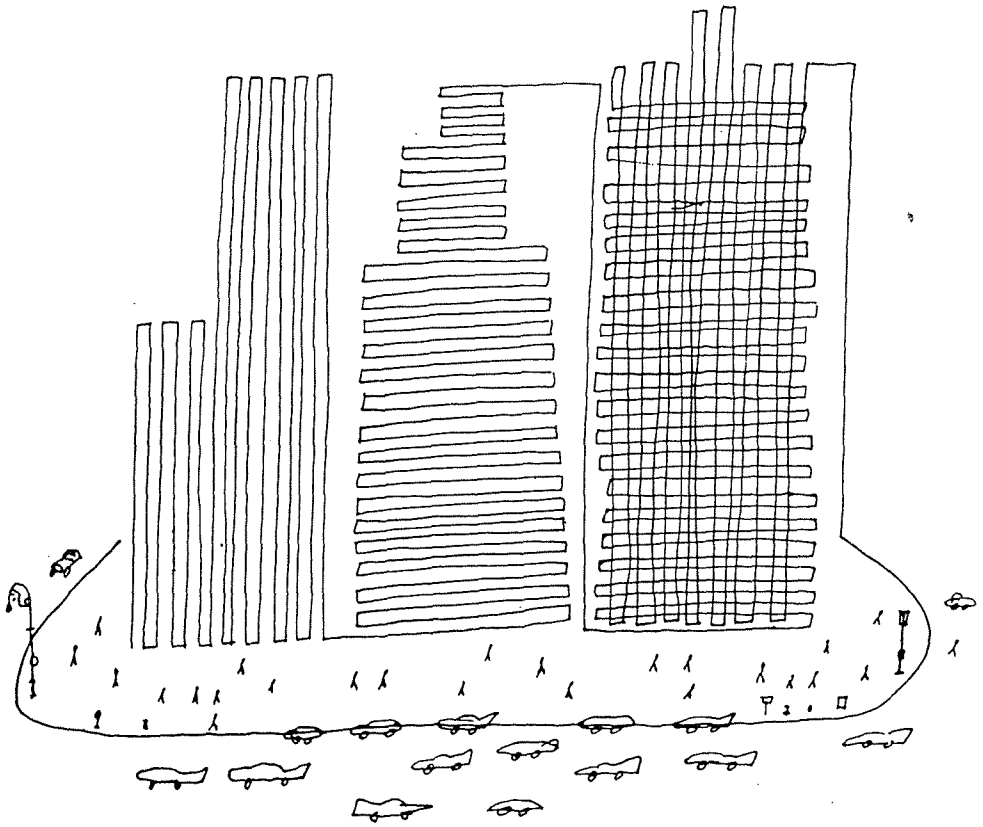
No figures are available for New Zealand.

Fairly clear patterns have emerged in the location and occupancy of strata dwellings[2]. They are concentrated in the central and inner areas of the larger cities, with clusters elsewhere to capitalise on special attractions, particularly beaches as at Surfers Paradise and the beach suburbs of Sydney. Compared with detached houses, units are more likely to be occupied by renters (a cause of considerable distress among owner-occupiers as noted later). Occupants tend to be either young and childless or considerably older people, often retired — though this pattern is being modified by the need for many families with children to stay in units because of economic necessity. The 1981 national census data could be used to probe further into the linkages between unit occupancy and a range of demographic and socioeconomic indicators but these calculations appear not to have a high priority with the Bureau of Statistics.

Who are the major beneficiaries of all this development? Governments have been saved the infrastructure costs of developing and servicing the new housing estates that would have been required to contain the unit dwellers. Developers gain economies by placing numerous units on the one site, and of course many very expensive residences can be placed on a prime block with "million dollar" views. Smaller investors have moved into units as a hedge against inflation and a source of tax-free capital gains. In addition to the lower cost, one of the obvious advantages of an investment unit over a house is that

1. Tasmania; the Conveyancing and Law of Property Act, with a section on Stratum Titles added in 1962. Queensland; the Building Units Titles Act 1965, superseded by the Building Units and Group Titles Act, 1980. Western Australia; the Strata Titles Act, 1966. Victoria; the Strata Titles Act, 1967, and the Cluster Titles Act, 1974. South Australia; the Real Property Act with the Division of Land by Strata Plan added in 1967. The Australian Capital Territory; the Unit Titles Ordinance, 1970. New Zealand; the Unit Titles Act, 1974. The Northern Territory; the Unit Titles Ordinance, 1975.

2. R. V. Cardew, *Flats: A Study of Occupants and Locations,* Ian Buchan Fell Research Project on Housing, University of Sydney, Research Paper 4, 1970. Indicative Planning Council for the Housing Industry *Report on Multi-Unit Dwelling Development in Australia,* Australian Government Publishing Service, Canberra, 1980.



the body corporate takes care of the maintenance.

What has the humble owner-occupier and the even more humble renter gained? It is generally accepted that this form of title arose in response to public demand and according to the fairytale version of history "once upon a time the people of NSW wanted strata title so in 1961 a generous and responsive government provided it for them". However, research has shown that strata title came into being because a group of property developers wanted it, lobbied the government in New South Wales for it, and paid a team of consultants to draft a "Stratified Titles Bill"[3].

For its part, the government took 'stratified titles' on board following an election promise to do something about housing. With the wisdom of hindsight it is clear that the likely impact of such legislation should have been evaluated in the context of urban plans for the whole Sydney region and perhaps even for the whole state (if such plans existed at the time). In the event, the Act has undoubtedly aggravated the problems of over-development in the older parts of Sydney, as noted by Stretton[4].

He described the disturbance of neighbourhoods and the human and economic costs involved in constructing freeways and upgrading radial transport links to cope with the problems of access to the city centre, where land values skyrocket and the rapid cycle of development and redevelopment destroys amenity and historical treasures alike.

At present satellite 'centres' are developing in Sydney but Stretton predicted that developments at Parramatta would simply mimic the problems at the heart of the city, namely congestion, escalating land prices and much destruction of things worth preserving. He argued that a radical alternative is required to replace the *ad hoc* tinkering employed to cope with urban problems in most Australian cities up to the time he wrote in the late 1960s. Among the alternatives considered were decentralisation of population to new towns, to existing inland cities and to well-planned centres of population on the fringe of the existing capitals. This requires massive Government expenditure in infrastructure to lead the way in the desired direction and it is possible that this option has been rendered politically unrealistic because of the concentration of population in the older parts of Sydney, aided by strata developments in those areas. This does not mean that the strata titles legislation is the sole or even the major cause of urban congestion but it has undoubtedly contributed to the problem[5].

Further plans for increasing housing density in Sydney have been rejected by local residents and their councils. On Stretton's arguments this is a good thing, though the motives for resistance are fairly clear and are not obviously informed by his egalitarian spirit; the residents of better areas simply do not want their amenities cluttered up with more people (particularly the kind of people who live on the other side of the tracks).

But to return to the history of the Strata Titles Act.

3. A. Kondos, *The Sociology of Housing,* unpublished PhD. thesis, University of New South Wales, Sydney, 1975.
4. H. Stretton, *Ideas for Australian Cities,* Georgian House, Melbourne, 1970.
5. M. Neutze, *Urban Development in Australia,* George Allen and Unwin, Sydney, 1977, especially Chapter 3, "Where People Live".

With the legislation in place, the developers presumably made some money by subdividing the airspace on prominent knolls and ridges such as Blues Point (immediately to the west of the Sydney harbour bridge). At the same time a new "ecological niche" was created in the urban environment, first in Sydney and later elsewhere, and this niche has been colonised in a great many ways by new 'species' of developments[6].

For example, moving from Blues Point to the other end of the market, developers erected drab and noisy boxes in the vicinity of railway stations or converted old blocks of apartments with cheap carpet on the floor and a coat of paint over the rest of the inside. Prospective owners with limited means could then choose, for a similar price, to have a unit in a reasonably convenient location or a house and garden much further from the workplace and quite likely in a suburb lacking services ranging from hospitals to corner shops. Advantages of location account for the previously mentioned mass movement into units, despite evidence that the great majority of unit dwellers would prefer to have more space, particularly outdoors and especially if they want to have children and pets.

The needs of families are partially met by more imaginative developments that have evolved in the course of time, including villa units and townhouses. A villa unit complex is a single storey development with some open space or garden attached to each unit. Townhouses resemble the old terrace houses with multi-storeys and some yard or parking space attached to each dwelling. These developments represent a compromise between the traditional house and garden and the more confined unit. They offer some private outdoor space though not enough to worry people who are shy of lawnmowing and gardening.

Another recent development especially facilitated by the legislation in Victoria and Queensland is the cluster or group title complex. These can range in size from two dwellings to a mini-suburb. The individually-owned parts consist of free-standing houses with gardens and the commonly-owned areas can be simply open space or in large developments can contain access roads and communal recreational facilities. In Victoria the development of "broadacres" schemes on the American model were expected but so far the Cluster Titles Act has been mostly used for small-scale "infill" in established areas. In Queensland, smaller developments were expected and schemes with more than 50 lots require special consent from the Attorney-General, on advice from the local authority.

Subject to zoning restrictions a strata scheme may contain commercial or industrial premises or various combinations of commercial, industrial and residential. An ambitious example of this species could contain a railway station in the basement, with several floors of shops, offices and professionals' rooms, some levels of carparking, then some floors of residentials with a luxury penthouse as the icing on the many-layered cake.

Development problems

Developers encountered many problems from the very start. In New South Wales for instance the Act originally required the development to occur on different levels (strata). In at least one case where the units were built on the one level, expensive and time-consuming modifications had to be made at the end of construction to adjust floor levels to provide a difference (in the order of one inch) between the floor levels of adjacent units, simply to meet the requirements of the Act and allow the plan to be registered.

Due to the substantial capital expenditure required for large schemes it is desirable from the developers' point of view to build part of the development and sell off the units to finance the remainder of the project. "Stage development", as this is called, is not permitted by any Australian act though in 1979 New Zealand modified its legislation to allow it. In New South Wales a committee was at work for some time attempting to devise suitable amendments. The heart of the problem is the need to protect the interests of the people who purchase initially; they need to be clearly informed of the impact of the later stages on their amenity. At last report the issue was still under consideration.

Other problems posed by the Acts in New South Wales and elsewhere are that *parts* of buildings cannot be subjected to strata subdivision (it must be the whole of the building) and leasehold land cannot be incorporated into a strata plan. The first of these limitations can cause legal problems of great complexity where the project aims to allow full private ownership of part of a complex while around it the property and structures are part of a strata plan. This can be done, but at great cost in time and money devoted to the complicated details of designing the plan and effecting the necessary transfers and easements.

The requirement for all land in a strata plan to be freehold places restrictions on developments where part of the parcel is, or could be, leased from a government agency. For example there are stretches of waterfront where strata development could incorporate land leased from the Maritime Services Board. This need not involve building on that land — which could form part of the common property for recreational use. But at present such developments cannot be contemplated and similar restrictions apply in other places where suitable parcels of land could be leased from other agencies. It may of course be argued that private development should be kept off these pieces of public property but the point is

6. This idea derives from Karl Popper's theory of evolution, spelled out in *Unended Quest: An Intellectual Autobiography*, Fontana, 1976.

that at present only *strata* development is prohibited, quite accidentally, due to the way the Act is worded. This is an entirely unintended consequence and one that could be subjected to review.

Another limitation for certain types of development derives from the original intention of the acts (to allow unrestricted sale and lease). Overseas there has been something like a boom in 'limited use' schemes, especially for older people. But this type of scheme, restricted to people of a designated age or status, is absolutely prohibited by all the strata legislation in Australia. Other types of limited occupancy could include people without children, or owner-occupiers only. These restrictions might appear to discriminate against the people who are excluded but this exclusion is unlikely to apply to more than a small segment of the housing stock and should be weighed against the substantial benefits. These benefits will be discussed further in the section below dealing with human relations in strata schemes.

Problems of management

New South Wales has apparently taken the lead in a trend towards reduced flexibility in strata management procedures and more regulation of professional managing agents. The acts bestow exclusive ownership on parts of the property and create a shared responsibility for management and maintenance of the remainder (the common property). Alleged dissatisfaction with the standard of management in New South Wales led to major amendments in 1973, increasing the size of the Act sixfold. Queensland moved in the same direction in 1980 and Western Australia is contemplating similar steps after a major review of their Act by the Law Reform Commission of Western Australia.

The revised Acts in NSW and Queensland make certain forms and procedures of management compulsory where previously the law merely provided guidelines or "model" forms and procedures that could be modified within broad limits by the body corporate. The changes reduce the capacity for developers and bodies corporate to provide individualised systems of management. At the same time the management procedures became more complicated and even experts in the field confessed to feelings of confusion in the early days of the new provisions. Not surprisingly there is now much more reliance on professional managing agents to look after the management and maintenance of schemes.

In New South Wales the Minister for Consumer Affairs convened a Strata Titles Act Review Committee to advise on ways to rationalise and simplify the parts of the Act concerned with management. The committee discovered that these objectives are incompatible because correction of anomalies and obscurities in the Act will inevitably increase both its size and its complexity. A substantial body of amendments recently came into force, with the possibility of more to follow, so permanent revolution could prevail for the Act in NSW. While some unit-owners are becoming very sophisticated in their understanding of the law, many others have long since given up and rely entirely on the expertise of professional managing agents. This is not such a bad thing in itself, given the quality of service that can be provided by good managers but it is unfortunate that people should feel forced to hand over the management of their property because of the complicated nature of the Act.

Since 1981 all professional managing agents in New South Wales have been required to obtain licences from the Council of Auctioneers and Agents and must regularly provide detailed financial statements to the bodies corporate of the schemes that they handle. These controls were prompted by some cases of malpractice by managing agents but the response is probably not appropriate to the problem. It is not certain that the financial reports will eliminate the risk of malpractice (there were already avenues for the victims of fraud to obtain compensation) and the best defence consists of eternal vigilance by the elected office-bearers of the body corporate. One sure effect of the new regulations will be to put up the cost of management though this has been held off by intense competition for shares of the unit management trade. Some managers have been providing their services virtually at cost price and are still being undercut by competitors so there must soon be a shakeout in the industry.

In conclusion it appears that events support the view that the successive changes which began in 1973 in New South Wales were not for the better. This is corroborated by a review in New Zealand which concluded that their (old style) management provisions were essentially sound, though there appeared to be a need for a simple handbook explaining how strata schemes should be managed to comply with the Act.

Civil war and related problems

The third function of the various strata titles acts is to provide rules and regulations for people living in close proximity. Acrimonious disputes between neighbours in free-standing houses are common enough and in strata units it is possible to have several neighbours who are only one wall, floor, or ceiling, removed from your own territory. Disagreements on management can be aggravated by differences in life-style and inflamed by clashes of personality. Owner-occupiers take a particularly dim view of renters who are often perceived to be second class citizens, slovenly, ill-mannered and improvident, with a callous disregard for peace and quiet and the good order of the common property. Clearly nothing enhances a proprietor's sense of the

value of the property more than the sight of someone else abusing it.

The acts in all states except New South Wales and Queensland ensure that conflicts are very rarely solved by litigation since it is necessary to proceed to the equity section of the Supreme Court to remedy such simple matters as encroachments on parking spaces or violations of the by-laws of the building. New South Wales and Queensland have rectified this situation to some extent by providing access to cheap and relatively prompt mechanisms for adjudicating on a wide range of disputes, though court action is still required on major issues. In New South Wales the office of the Strata Titles Commissioner (in the Department of Consumer Affairs) is the point of entry to this mechanism and it is also a source of general information on the Act. The office receives hundreds of telephone calls each week, mostly seeking advice on the enforcement of by-laws to control the behaviour of people in the scheme. Few people go on to initiate formal proceedings but these hundreds of callers are no doubt the tip of an iceberg of irritation and vexation.

Most strata dwellers have horror stories of disputes, sometimes culminating in one of the parties feeling forced to move out of the building. In addition to clashes between individuals the whole community may divide into rival factions and various forms of power politics and lobbying occur in strata schemes. New residents should not become unduly disturbed by the behaviour of other people during disputes; it is recommended that they maintain a good-humoured approach, pretending that they are anthropologists observing the rituals of an interesting tribe of savages. Various types of unit-dweller will probably be observed; for example, the officious secretary — often a retired public servant getting back at the world which did not adequately appreciate his or her creativity and sagacity on the job. This type of secretary has been known to go through the garbage bins and untie a double-knotted plastic bag to discover a chop bone. A note turned up in the offender's letter box: "Would you please make sure that all garbage is securely wrapped . . . There was meat not wrapped but just placed in a tied plastic bag, an ideal target for blowflies".

Clearly there is scope for the neighbourhood justice centre concept to be expanded so that feuding neighbours may be brought together under non-threatening circumstances and helped to see each other's point of view. A more radical approach to the problem could address the basic cause of much discontent. At present a person buying or moving into a strata unit is forced to accept a high degree of unpredictability about the future population of the building. For example a person may buy into a scheme when almost all the residents are childless owner-occupiers. Within the space of a year or two many of these owner-occupiers may move out to be replaced by tenants with large numbers of children. This can have a drastic and devastating effect on the quality of life of the remaining owner-occupiers, often old people wanting nothing more than peace and quiet. This situation faces people in many schemes at present and it is not a trivial problem to be solved by exhorting people to be more tolerant and neighbourly, however desirable that may be. One tentative solution that is well worth considering is the creation of 'special purpose' schemes — for example for people over a certain age, or people without children. This of course is contrary to one of the original intentions of the Act (unrestricted sale and lease) but it would enable people with strong preferences to buy into a scheme with the assurance that there would be no major changes in the type of people around them.

The original Act in New South Wales may be described as a "developers' Act" and in the light of Stretton's arguments in *Ideas for Australian Cities* and *Housing and Government* the impact of this legislation has been in many ways unfortunate. This applies especially to the build-up of population in the central and inner areas of the major cities. In the light of this experience (if we are prepared to learn from it) it is clear that the potential effect of new legislation needs to be much better assessed, in the light of alternative futures. This need is particularly pressing where the outcomes weigh heavily on the quality of people's lives, the sharing of amenities and the regional allocation of public funds. Of course simply assessing effects, however well done, does not obviate the need for evaluation (which requires a point of view) nor the problem of political reality, which is mostly to do with power and "getting the numbers". But still the social sciences should not baulk at this task, even if the best we can hope to do is to avoid some things that everyone would later accept as mistakes.

Alleviating the development problems described in this article may be seen as a further concession to developers. But there now seems to be little purpose in making innovative strata developments more difficult since they will probably go ahead anyway and the current impediments simply increase the development costs. Some changes could relatively easily be made to facilitate the registration of large, complicated or unusual schemes.

More radical amendments could enable special purpose schemes to be created, with benefits for both developers and occupants. Something can be gained from overseas experience, particularly in America, and some local experts have already begun comparative studies which could be used in any future review of the strata legislation.

The problems that exist at present, ranging from the development stage to matters of management and human relations, appear to amply justify a thorough review of the purposes of the legislation and the extent to which these purposes could be better served by some major and some relatively minor changes.