

Policy Purpose

This is one of the difficult issues that Australian strata schemes will increasingly face: balancing the interests of adults and children. Either through economic necessity or a desire to be close to work, transport and the cultural life of the city, many families are choosing to remain in apartments as their children age.

Strata Community Association WA provides this policy as a guideline for its members to use when necessary to educate owners of property within a scheme. It has been created for the members to distribute should the question arise about SCA WA's position regarding making schemes more children and family friendly.

Policy Basis

Strata living is now the preferred choice for those buying a home. The majority of new homes now being built in Australia are strata-titled. Whilst exact numbers are difficult to come by, it is probably safe to say that many families are now choosing to live in strata titled properties. It is important to balance the interests of both adults and children living in a strata scheme.

Children use open space differently to adults. They can be noisy and they run and skip, often unpredictably. Sometimes, this can be a problem for adults. However, these sorts of activities are essential for the sound physical, emotional and intellectual development of children.

Western Australian legislation

The *Strata Titles Act 1985* (WA) allows each scheme to write by-laws or rules appropriate for it.

That Act also provides default by-laws that apply to every scheme unless the developer or the strata company have deleted, added to, or changed them.

Schedule 2 by-law 5 in the default by-laws provides that:

A proprietor, occupier, or other resident of a lot shall not permit any child of whom he has control of to play upon common property within the building or, unless accompanied by an adult exercising effective control, to be or to remain upon common property comprising a laundry, car parking area or other area of possible danger or hazard to children.

Other relevant default by-laws (that apply to all ages) are those that address the right to quiet enjoyment of the common property and the lot in schedule 1 by-law 1(2)(a) – (c):

- (2) A proprietor, occupier or other resident of a lot shall –
 - (a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other proprietors, occupiers or residents, or of their visitors; and
 - (b) not use the lot or permit it to be used in such manner or for such purpose as causes a nuisance to any occupier of another lot (whether a proprietor or not) or the family of such an occupier; and
 - (c) take all reasonable steps to ensure that his visitors do not behave in a manner likely to interfere with the peaceful enjoyment of the proprietor, occupier or other resident of another lot or of any person lawfully using common property;.....

Schedule 2 by-law 12(b) may also be relevant:

A proprietor, occupier or other resident shall not –

- (a) ...
- (b) make undue noise in or about any lot or common property...

If an owner intends to lease his lot, Section 56 *Residential Tenancies Act 1987* (WA) provides that:

- (1) A person shall not refuse, or cause any person to refuse, to grant a tenancy to any person on the ground that it is intended that a child should live in the premises.

Penalty: a fine of \$5 000.

- (2) A person shall not –
 - (a) instruct any person not to grant; or
 - (b) state the person's intention, whether by advertisement or otherwise, not to grant,

a tenancy to any person on the ground that it is intended that a child should live in the premises.

Penalty: a fine of \$5 000.

Making it work

Strata companies ought to consider the welfare and well-being of families and children living in the strata scheme and those that may want to live in the scheme in the future.

By-laws should not attempt to restrict, other than for safety reasons, the reasonable use of common property open space or facilities by all owners and occupiers, including children and families.

In order to facilitate harmonious living within a scheme for all ages of owners and occupiers, strata companies could consider the following:

- installing play equipment
- providing sporting or recreation areas
- providing outside eating or barbeque areas
- imposing maximum speeds on common property driveways
- placing signs to remind owners and occupiers of the presence of children;
- requiring the installation of window safety devices
- ensuring that any pool in the strata scheme is properly maintained including the fencing and surrounds
- educating owners and occupiers that experiencing some noise (whether that is from adults or children) is within the realm of daily activity and experience in a strata scheme

Specific issues or needs arising in a scheme may be addressed by new by-laws. A lawyer can draft by-laws to suit the specific circumstances of each scheme. Any proposed by-laws must be sent out to all owners and then voted on at a general meeting of the owners. If adopting new by-laws, owners must be mindful of all owners' (including families) existing rights and obligations.