

31 January 2024

COVID-19 Response Inquiry
Commonwealth Government

Dear Panel,

This submission relates to the application of NSW stay at home orders to high density apartments, which house almost a quarter of the population of Sydney. I am mindful of the fact that public health orders fall within state powers, but as the Inquiry terms of reference include the ‘responsibilities of state and territory governments’ I thought my submission may fall within your remit. There has also been no inquiry in NSW, which is unfortunate, as we need to avoid the repetition of mistakes made during COVID lockdowns.

My expertise relates to land, which was the trigger for almost all lockdowns. That is, public health orders rarely applied directly to individuals (with the exception of those who were COVID positive or a close contact), but rather applied to populations with reference to the land on which they were present - sections of the state, local government areas, publicly accessible property and residential properties. Consequently, an accurate legal understanding of categories of land was necessary for the public health orders to be effective and rational. In the case of high density and master planned housing, a proper understanding of strata and community title was necessary. Unfortunately, that understanding was almost completely absent from the NSW public health orders making them ineffective and irrational in relation to apartment buildings and master planned estates. In the worst instances, the public health orders constituted serious violations of the rule of law. As stay at home orders are a necessary and justifiable tool for managing pandemics, it is essential that governments draft public health orders that properly account for *all* kinds of homes, including the high density apartments that house increasing numbers of Australians.

By way of background, I am a professor in the Law School at Macquarie University and on the executive of the research group, Smart Green Cities. I am the author of *Strata Title Property Rights: Private governance of multi-owned properties* (Routledge 2017), as well as multiple academic articles on land.¹ I have been engaged by governments in Australia and overseas to advise on their laws in relation to high density development. I am a long-term Academic Fellow of the Australasian College of Strata Lawyers, the peak industry body for

¹ See Cathy Sherry – Research Outputs — Macquarie University (mq.edu.au)
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lawyers working in strata industry and am currently a member of the Strata and Building Consumer Roundtable, chaired by the NSW Building Commissioner, David Chandler.

The substance of my submission is contained in the article attached: C Sherry, 'All about the land: the (mis)application of public health orders to strata schemes during the Delta variant COVID-19 outbreak in Sydney, Australia', (2023) 45(2) *Sydney Law Review* 279-303. This is a peer reviewed article.

I wish you the very best of luck with the Inquiry.

Yours sincerely,

Professor Cathy Sherry

Macquarie Law School, Centre for Environmental Law and Smart Green Cities