Multi-owned properties in Australia: a governance typology of issues and outcomes

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Abstract
Purpose – The purpose of this study is to develop a governance typology which identifies governance issues and outcomes. Multi-owned properties (MOPs) are a unique property type due to the incorporation of a private governance association. Although there are jurisdictional differences, these associations are generally responsible for the management, maintenance and control of the commonly owned property; determining the contributions payable by each lot owner to the operation of the association; enforcing the rules of the association; and ensuring that records meet legislative requirements. Legislation for MOP schemes was enacted in different jurisdictions to guide the governance and management of these matters. However, challenges relating to the governance of MOPs have continued to be a problem as identified in the literature and practice.
Design/methodology/approach – The study first reviewed the legislation in three Australian states to identify specific governance categories and the legislative requirements related to those categories. To gain group opinion about the specific governance issues and outcomes, the Delphi method was utilised whereby industry experts participated in a two-round survey questionnaire.
Findings – A typology was developed as a result of consensus found between participants. The findings identified key governance issues and outcomes for MOPs.
Practical implications – The governance typology forms the basis for the development of a more comprehensive audit tool for the assessment of governance quality in individual schemes.
Originality/value – This paper is the first of its kind to collate issues impacting upon effective owners' corporation governance and the potential outcomes associated with poor governance practices in MOPs.
Keywords Quality, Governance, Typology, Delphi technique, Multi-owned properties, Owner's corporations
Paper type Research paper

Introduction

Multi-owned properties (MOPs) is a generic term used to describe a property type consisting of at least two lots tied to communally held common property with an incorporated separate entity (owners' corporation) created to govern and manage the common property. At times also referred to as "strata title", "community title", "common interest", "condominium", "unit title", "sectional title" or "subdivisions with owners' corporations", this property arrangement has been used prolifically and will continue to be used in developed countries. In Australia, it has been forecast that within the next half century, most people in urban areas will reside in a lot within an MOP scheme (Easthope and Randolph, 2009; Johnston and Reid, 2013).

Unlike traditional forms of homeownership, ownership in an MOP requires collective decision-making and action by all owners to ensure that the MOP scheme is maintained. The owners' corporation, in which all owners are automatic members, is the governing entity ultimately responsible for those decisions and actions. Although a separate legal entity, the owners' corporation can only govern with the consent of the owners. It is the forced decision-making responsibility aspect of the owners' corporation that creates challenges for the owners of this property type. However, the success of the owners' corporation, like the success of any governing entity (e.g. a company, an association or government) is dependent upon the quality of the governance system employed. A scheme's reputation, its ability to attract investors or owners, how it addresses problems and how it safeguards its internal community are all predictors of how well a scheme is governed. Ineffective or poor governance practices can result in failures that impact upon, not only the individual scheme community but also the wider property market. Analogies can be drawn from the poor governance practices of US public companies like Enron and WorldCom (Branson, 2006) and Australian companies like One.Tel and HIH Insurance (Watts, 2002) in the early 2000s. These corporate collapses resulted in the codification of good governance practices for companies to safeguard investors (Aguilera and Cuervo-Cazurra, 2009).

Given that a large proportion of the population in urban areas will be living in MOPs in the future, it is imperative that good governance practices are employed by owners' corporations to meet legal requirements and ensure the long-term viability of schemes. To date, much of the literature on MOP governance has highlighted challenges associated with governing these types of properties (Easthope et al., 2014). Although governance quality in schemes has not been assessed, the literature suggests that schemes regularly practice poor governance or are confronted with difficulties in ensuring good governance practices are employed (Easthope et al., 2014). The purpose of this paper is, therefore, to determine which common owners' corporation practices are leading to poor governance outcomes for schemes.

This paper, therefore, aims to develop a governance typology for MOPs by identifying the following:

- issues which impact upon effective governance; and
- outcomes associated with poor governance practices.

This paper is the first of its kind to collate issues impacting upon effective owners' corporation governance and the potential outcomes associated with poor governance practices in MOPs. This contribution is new and lays the framework for additional research which can evaluate governance quality in individual MOP schemes.

The remainder of this paper is structured as follows. First, a literature review is provided which focuses on the concept of governance, the differences between governance and management, governance in the MOP context and the importance of good governance practices. A methodology section follows, which outlines the methods utilised in this study including a legislative analysis and the Delphi technique. The final section provides findings, discussion and conclusion.

Governing MOPs

Governance is an elusive term. It is a concept associated with words like government, governing and control (Klakegg et al., 2008). “Corporate governance” has been the prominent governance system debated in the literature in terms of conceptualisation and determining governance characteristics. The definition of corporate governance is, therefore, often drawn upon to provide insights when conceptualising governance in other non-corporatised organisational settings. The often cited Cadbury Report (1992, p. 14) provides a strong foundation defining corporate governance (of public companies) as:

> [...] the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.

Extrapolating further, governance incorporates, “[...] [t]he structures, processes and practices that determine how decisions are made in a system and what actions are taken within that system” (Easthope et al., 2014, p. 41).

In the MOP context, the substance of Cadbury Report definition holds true to the extent that MOP governance is a system by which owners’ corporations (as opposed to companies) are directed and controlled. Key stakeholders also have specific roles and responsibilities within the governance system; however, the separation of ownership and control (Berle and Means, 1932) is not as segregated as publicly listed companies. In the MOP context, both the owners collectively (at a general meeting) and the committee (drawn from the owners group) are responsible for governance. Ownership and control are bound up in the one stakeholder group, the owners. The owners’ role (akin to shareholders in this comparison), in governing is to appoint the committee and auditor (if required) but also make a number of specifically reserved decisions about the governance of the owners’ corporation. Their role in governance is more substantial than shareholders in a company arrangement. The role of the committee is to make decisions not reserved for the owners collectively in a general meeting. Their responsibilities should include setting strategic aims, providing leadership, supervising the management of the owners’ corporation and reporting to the owners collectively.

The rise to prominence of the idea of governance stems from difficulties of hierarchical coordination by organisations or the state (Miller and Lessard, 2000). In the context of organisations, governance provides a framework for decision-making, responsibility and managerial action within an organisation that is based on defined roles (Muller, 2009). In the MOP context, however, roles and responsibility are muddled. Owners’ corporations tend to focus on management, not governance. It is arguable that this is a result of the language used in the respective legislation governing owners’ corporations. “Management” and “self-management” is emphasised, whereas the term governance is largely ignored except, for statements confined to the respective explanatory memorandums drafted to explain the legislation.

In any event, the design of the governance system in the MOP context is largely determined by the framework imposed by legislation. The responsibility and accountability for governance, the quality of governance and the monitoring of the performance of the management system remain with the owners' corporation. The owners' corporation is responsible for setting strategy and ensuring that resources are used effectively. The owners' corporation must ensure that an effective management system is developed that meets the governance needs of the MOP, irrespective of whether management is delegated to an external management provider or not.

It is essential that the governance system and the management system are distinguishable and recognised as fulfilling different organisational needs. Often, the terms governance and management are used interchangeably, especially in organisational types like owners' corporations where the role of the owners' corporation is not only to govern but also to self-manage [1]. The roles, therefore, are often corrupted by a lack of understanding of the distinct nature of the roles. In any organisational setting where there is an onus on an entity to govern and manage, it is essential to differentiate between governance responsibilities and managerial responsibilities. The governance system defines the structures used by the organisation, allocates rights and responsibilities within those structures and requires assurance that management is operating effectively and properly within the defined structures. Management is responsible for creating an organisation capable of achieving the objectives defined by the governance system. Management also has the responsibility for providing assurances to the governance system that resources of all types are being effectively and ethically used. Hence, the role of management is to manage the organisation within the framework defined by the governance system. Governance is not management, and the functions must be separated (Shleifer and Vishny, 1997; Letza et al., 2004; Too and Weaver, 2014).

It is clear that the MOP governance system cannot operate without the effective support of the MOP management system. In this context, the role of MOP management is the mirror image of MOP governance. The primary role of MOP management is to make decisions within the framework set by the MOP governing body to achieve the objectives, also set by the governing body. The primary output from MOP management is information and instructions that have to be communicated to assure that the right decisions have been made and the right things are being produced in the right ways. Success is heavily reliant on the effective management within the governance framework.

Governance quality

An organisation operating within a governance system cannot automatically guarantee effective outcomes (Cadbury Report, 1992). The quality of the governance system is, to a certain extent, dependent upon the level of standard reached on a number of governance dimensions or characteristics (Ruhanen et al., 2010). Although there are a number of different dimensions commonly cited, the most noted dimensions include accountability, transparency, involvement, monitoring, effectiveness, equity and fairness (Cadbury Report, 1992; Grindle, 2010; Ruhanen et al., 2010). Therefore, if the standard reached on these governance dimensions is high, the organisation is practicing good governance. According to the Cadbury Report (1992), good governance characteristics are admirable and highlight how an organisation ought to be run.

The purpose of and necessity for good governance is the creation and maintenance of sustainable value for the organisation and its stakeholders. Good governance attracts investors and promotes confidence in an organisation (Aguilera and Cuervo-Cazurra, 2009), affords a positive or favourable reputation (Shleifer and Vishny, 1997), addresses common governance problems (Aguilera and Cuervo-Cazurra, 2009), strengthens organisational trust (Cadbury Report, 1992), minimises risks (e.g. fraud) (Cadbury Report, 1992) and provides safeguards (Cadbury Report, 1992). Good governance is established when best practices for an organisation are implemented.

In the Australian MOP context, the relevant legislation providing the governance framework allows for both mandatory and discretionary provisions. The mandatory provisions require compliance, whereas the discretionary provisions allow the owners' corporation to decide whether the provisions are suitable for the specific scheme. Although an owners' corporation may fulfil its obligations under the legislation and comply with its requirements, good governance is not guaranteed nor does compliance thwart negative scheme outcomes. As outlined in the Cadbury Report (1992, p. 3, 13):

> [...] [r]aising standards of corporate governance cannot be achieved by structures and rules alone. They are important because they provide a framework which will encourage and support good governance, but what counts is the way in which they are put to use.

Researchers have highlighted some common governance practices and/or outcomes associated with poor governance in owners' corporations, including a lack of participation by owners in the owners' corporation and its committee (Easthope et al., 2014; Bugden, 2009); lack of attention to repairs and maintenance leading to dispute (Easthope, 2009; Lujanen, 2010; Randolph, 2006); financial distress due to lump sum capital expenditure for repairs and maintenance (Arkcoll et al., 2013); mismanagement by professional managers (Easthope et al., 2012; Yip and Forrest, 2002); undisclosed agreements between stakeholders, leading to conflict (Easthope et al., 2014); underestimated levies, leading to financial distress and accumulating budget deficit (Easthope et al., 2014; Johnston et al., 2012); unequal power relations and concentration of power by specific stakeholders (Easthope et al., 2012; Yip and Forrest, 2002; Blandy et al., 2006); conflicts of interest involving stakeholders (Easthope et al., 2013; Johnston et al., 2012); decrease in engagement and participation by owners (Easthope et al., 2013; Easthope et al., 2012); special levy funding, leading to adverse impacts on community harmony (Arkcoll et al., 2013); and legislative enforcement problems and lack of incentives to abide by the law (Easthope et al., 2014; Easthope et al., 2012). These practices and outcomes do not form a comprehensive list of the issues impacting MOP schemes. To date, there has been no examination or development of an MOP governance model either in Australia or internationally. This paper aims to close this research gap by providing a comprehensive list of the common governance practices and outcomes impacting negatively on MOP schemes in Australia. It is envisaged that this research will lay the groundwork for the development of a governance typology in other international jurisdictions with similar frameworks.

Methodology

Two methodological approaches were used in this study. The first approach is an analysis of governance-based provisions outlined in the legislation of the three identified jurisdictions. The second approach utilises the Delphi technique to seek stakeholder consensus of the pertinent governance issues and outcomes.

Method 1: legislative review
As an owners' corporation is a creation of statute, each Australian jurisdiction has enacted regulations, which, as noted in the previous sections, creates an internal and comprehensive governance framework. The framework primarily relates to the owners' corporations dealings with the common property and assets, the management of operations, the financial management, the dispute resolution process, the operational aspects of the committee and functions and powers granted to the owners' corporation and its committee.
A review of the legislation relating to MOPs in the states of New South Wales, Queensland and Victoria [2] was undertaken to determine the provisions which require compliance (mandated) and the provisions which are discretionary in nature. This review allowed the provisions to be cross-referenced by jurisdiction. Common legislative provisions were then collated and categorised, and formed the basis for the draft matrix (outlined in Method 2).

Method 2: Delphi technique
A modified Delphi technique was used to identify the most relevant issues and outcomes impacting upon effective governance in MOP schemes. The Delphi technique was used to produce valid opinion through collective agreement (Keeney et al., 2001) and to seek group consensus by "measuring the variance in responses of participants over rounds, with a reduction in variance being taken to indicate that greater consensus ha[d] been achieved" (Rowe and Wright, 1999, p. 363).
The lynchpin of the technique is the engagement of experts or specialists in the selected field (Keeney et al., 2011). In this study, the opinions of experts in the area of MOPs, specifically specialist lawyers and MOP managers, were engaged to:

- affirm, amend or delete the issues and outcomes identified in the draft matrix; and
- generate new relevant issues and outcomes impacting upon effective governance in schemes.

Eighteen MOP industry experts were purposively selected and invited to participate in the study. The participants selected were members of relevant professional industry bodies and/or regularly attended, presented and engaged in discussions at industry conferences. Thirteen agreed to participate, and all 13 completed Round 1, with 12 completing Round 2.

Round 1 – governance issues and outcomes matrix
The matrix was sent to each participant in an online survey questionnaire. Participants were asked to respond to the statement: I believe that the following governance issues may impact on (or lead to) the following outcomes. In answering the questions, participants were asked to:

- check boxes (tick) for the outcomes that are relevant to each individual governance issues; and
- review the matrix and amend, add or delete the pre-identified governance issues and outcomes.

The data were then analysed, and a consensus level of 70 per cent or above was employed. The outcomes reaching the consensus level were then extracted, and a new matrix was developed.

Round 2 – questionnaire survey

The analysis from the Round 1 data formed the survey template for Round 2. An online questionnaire survey was developed and distributed to each participant via email. In Round 2, participants were asked to undertake two separate tasks:

> (1) to review the results obtained from Round 1 and to affirm whether the identified governance outcomes related to (impacted on) the governance issues identified (controlled feedback). The feedback provided, identified the outcomes which received a high level of consensus (70 per cent or more of participants agreed with the outcome). All factors receiving moderate or low levels of consensus (under 70 per cent) were excluded from the feedback round; and
> (2) to decide the relevant outcomes for the new governance issues identified by more than one participant in Round 1.

In between rounds, collective feedback was provided to each participant (Rowe and Wright, 1999; Keeney et al., 2011). The iteration process allowed participants to change their position based on the collective feedback provided. The feedback was provided to enable participants to reflect on their original answer to a specific question and take into consideration the collective answers. This refinement process allowed for greater consensus to be achieved. The data were then analysed, and a consensus level of 80 per cent or above was employed.

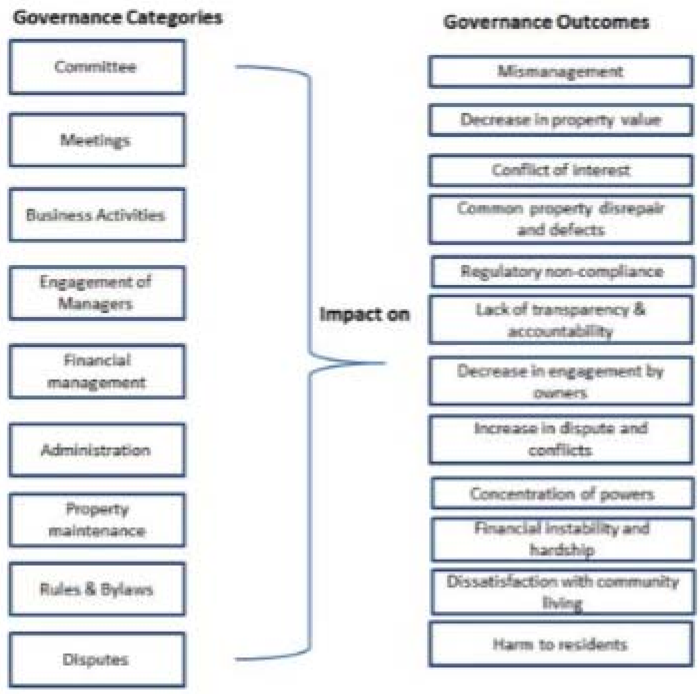
Findings and discussion

Drawing on the existing literature and legislation [3], a conceptual framework was developed first (Figure 1) which categorises governance issues and the likely outcomes on the schemes. Governance indicators were determined by extracting, through analysis, provisions from the respective legislation that require decisions to be made by the owners' corporation.

As owners' corporations are commonly challenged by implementing good governance strategies, the indicators were worded to reflect this position as "issues". The identified issues and outcomes were then presented in a matrix format. Seventy issues over nine categories were identified. Table I outlines the categories and number of issues identified from the legislation and the literature. Table II identifies the 13 potential outcomes which were identified from the literature.

The next part of the paper provides a summary of the findings based on each governance category after the completion of two rounds of analysis using the Delphi technique. Although it is important to consider divergent results, for the purpose of this paper, the findings presented represent the issues and outcomes that achieved the highest level of group consensus across the two rounds. The number of governance issues identified reduced from 70 in the original matrix to 43 after the two rounds. The outcomes reduced from 13 to 12, with the removal of the outcome "decrease in engagement and participation by owners". One of the original categories, disputes, did not receive an 80 per cent agreement for any of the issues.

Figure 1. A conceptual framework



Governance category: committees

Committees are an essential component in the governance of MOPs. The legislation in each jurisdiction requires a committee to be formed and prescribes the minimum number (usually three) of members required to form a valid committee [4]. Subject to limitation under the relevant legislation, committees make the majority of decisions on behalf of the owners' corporation and, therefore, the owners collectively. Ideally, the members of the committee would be educated on the owners' corporation affairs, be independent from other stakeholders involved in the scheme, implement a strategic plan for the future management of the owners' corporation and have an understanding of the regulations relating to owners' corporations.

Table I. Governance categories and issues

Categories	Governance issues
Committee	6
Meetings	9
Business activities	5
Engagement of manager	6
Financial management	16
Administration	9
Asset and common property maintenance	11
Rules/bylaws	4
Disputes	4

Table II. Governance outcomes

Mismanagement	Lack of transparency and accountability	Increase in disputes and conflicts
Decrease in property value	Financial instability or hardship	Concentration of power by specific stakeholders
Conflicts of interest	Decrease in engagement and participation by owners	Dissatisfaction with community living
Common property hazards/ disrepair and defects	Increase in liability	Harm to residents and invitees
Regulatory non-compliance		

Five governance issues were identified with agreed outcomes. Table III outlines the issues and outcomes identified. All participants agreed that difficulties in appointing committees and limited committee turnover can lead to a concentration of power by specific stakeholders. A number of participants commented that owners' corporations can be dominated by stakeholders with commercial interests such as developers, managers and letting agents in environments where there is difficulties appointing a committee or the requisite number of committee members. Similarly, participants commented that a concentration of power can result in situations where committee turnover is limited, and the committee is dominated by one individual or a small group of committee members. Although, as suggested by one participant, turnover can lead to knowledge loss, the prevailing view is that limited turnover and individual domination on committees often perpetuate bad practices.

Participants agreed that unskilled and inexperienced committee members can lead to increases in disputes or conflicts, common property hazards and disrepair and increases in liability. Similarly, the lack of training or education of committee members can lead to regulatory non-compliance. Committee members' lack of knowledge, skill, experience and training can, therefore, impact upon the effective governance.

The lack of strategic planning and goal setting can lead to an increase in disputes and conflicts. It is important that all members of the owners' corporation have collectively agreed on the future direction of the scheme.

The findings support earlier conclusions by Bugden (2009) who suggested that the tenants of good governance for an owners' corporation would include the following:

- committee elections based on clear policy statements from nominees;
- regular, open and well-structured meetings;
- education and assessment programmes for committee members; and
- annual reporting which aligns with the strategic direction of the owners' corporation.

Further, good governance practices would see an annual turnover of committee members and limitation or even exclusions on stakeholders' involvement in committees to thwart any concentration of power.

Table III. Governance issues and outcomes identified as relevant to the category of committee

Issues	Outcomes identified
Difficulties appointing committee or requisite number	Concentration of power by specific stakeholders
Unskilled and inexperienced committee members	Increase in disputes or conflict Common property hazards/disrepair/defects Increase in liability
Limited committee turnover	Concentration of power by specific stakeholders
Lack of training or education of committee members	Regulatory non-compliance
Lack of OC (or BC) goals and/or operational procedures	Increase in disputes or conflict

Notes: OC = Owners corporation; BC = body corporate

Governance category: meetings

It is imperative that committee and general meetings are called and held in accordance with the procedures prescribed in the legislation [5], for the members to be informed about the affairs of the owners' corporation and participate in the decision-making process. To ensure that decisions are made by the members, the legislation requires that a quorum is present before a meeting can be held [6]. Owners' corporations must ensure compliance to safeguard the integrity of the votes and, more importantly, the decisions that are being made.

Four governance issues were agreed with identified outcomes. Procedural irregularities in calling and holding all meeting types, granting of proxies to stakeholders and inaccuracies with the distribution and content of meeting minutes were issues with agreed outcomes. All participants agreed that the granting of proxies to stakeholders could lead to a concentration of power. Conflicts of interest could also be an outcome of this practice. Interestingly, participants agreed that procedural irregularities in calling and holding the annual general meeting could lead to regulatory non-compliance, increases in disputes and issues with transparency and accountability but only agreed that increase in disputes could be an outcome for procedural irregularities in other meeting types. This finding may demonstrate a believe that the annual general meeting is the most critical meeting in terms of governing the scheme, and therefore, procedures must be followed in accordance with the regulations.

Participants commented that not calling or holding any meetings leads to similar outcomes for schemes. Additionally, a number of participants commented on the problems associated with using proxies. One participant commented that proxy farming has destructive effects; others commented that time limitations need to be specific and managers should be ineligible.

Participants agreed that inaccuracies with minutes could lead to increases in disputes and issues with transparency and accountability (Table IV).

Governance category: business activities

The business activities category relates generally to an owners' corporation's ability to enter into agreements for the provision of services within the scheme or transactions relating to the use of common property or assets. In large schemes in particular, owners' corporations can provide essential utility-based services to lot owners and for the benefit of the common property. Owners' corporations can also buy, sell, lease and licence property including the common property [7].

Table IV. Governance issues and outcomes identified as relevant to the category of meetings

Issues	Outcomes identified as relevant
Procedural irregularities in calling and holding annual general meetings	Regulatory non-compliance Increase in disputes or conflict Issues with transparency and accountability
Procedural irregularities in calling and holding extraordinary general meetings and committee meetingsGranting of proxies to stakeholders (other than sole lot owners)	Increase in disputes or conflict Concentration of power by specific stakeholders Conflict of interest
Inaccuracies with distribution and content of minutes	Increase in disputes or conflict Issues with transparency and accountability

Two governance issues were identified by the participants as leading to specific outcomes. Conflicts of interest can result where there are related entity leases and licences entered into as well as agreements made with associated service providers. These conflicts usually relate to associations with the scheme developer or manager. Participants agreed that increases in disputes and issues with transparency and accountability can also result from related party transactions relating to leases and licences. Participants commented that this is an area of concern and legislative protections need to be strengthened (Table V).

Governance category: engagement of managers

Owners' corporations have the power to engage an owners' corporation manager to assist in the administration of the scheme or a resident manager to assist with caretaking duties [8]. According to Easthope (2009), the owners' corporation manager is an influential stakeholder in the owners' corporation and beneficial for schemes over ten lots. Typically, an owners' corporation manager assists the owners' corporation in managing its financial affairs and becomes both the custodian (i.e. keeping of records and some property) and agent (i.e. paying invoices, engaging providers) for and on behalf of the owners' corporation.

Six governance issues were identified by the participants as leading to specific outcomes. Table VI outlines these issues and outcomes. Participants agreed that the engagement of an inexperienced or unskilled manager could lead to increases in disputes, mismanagement, increases in liability, common property hazards or disrepair, dissatisfaction with community living, regulatory non-compliance and issues with transparency and accountability. It is apparent that manager skill and experience can impact upon the functionality of a scheme. Participants agreed that the engagement of managers associated with other stakeholders can lead to conflicts of interest, issues with transparency and accountability and increases in disputes. This issue typically relates to managers engaged by developers' pre-registration to assist in the establishment of the scheme. Concerns have been raised that this pre-existing relationship can affect the relationship between the manager and the owners' corporation post-registration.

The absence of clearly defined roles and responsibilities for the manager can lead to increases in disputes and mismanagement. It is essential that the roles and responsibilities are determined and defined by the parties. Lacking of legal representation and non-competitive agreements can also lead to increases in dispute and issues with transparency.

Table V. Governance issues and outcomes identified as relevant to the category of business activities

Issues	Outcomes identified
Related entity leases and licences (developer, other stakeholders)	Increase in disputes or conflict Conflicts of interest Issues with transparency and accountability
Associated (with other stakeholders) service providers	Conflicts of interest

Table I. Governance issues and outcomes identified as relevant to the category of engagement of manager

Issues	Outcomes identified
Engagement of inexperienced and/or unskilled manager	Increase in disputes or conflict Mismanagement Increase in liability Common property hazards/disrepair/defects Dissatisfaction with community living Regulatory non-compliance Issues with transparency and accountability
Engagement of manager who also is associated with other stakeholder	Conflicts of interest Issues with transparency and accountability Increase in disputes or conflict
No clear roles, duties and responsibilities between OC and manager	Increase in disputes or conflict Mismanagement
Conflicting decision making process between OC and manager	Increase in disputes or conflict
Lack of legal representation for appointment, assignment or extension of agreements	Issues with transparency and accountability
Non-competitive agreements or engagements (including extensions of agreements)	Issues with transparency and accountability Increase in disputes or conflict

It is good practice for owners' corporations to interview and assess managers prior to engagement to ensure that the manager is suitable and has the requisite skills to undertake the administrative tasks required by the owners' corporation. The owners' corporation should also audit the manager annually to ensure that the agreed duties are being undertaken to a specific standard as previously agreed. This task should be part of the surveillance and assurance processes for undertaking good governance.

Governance category: financial management

Although not all jurisdictions require the establishment of specific funds to meet owners' corporation expenses [9], an administration fund is usually adopted annually at the annual general meeting, and based on the financial output of the previous year plus, any additional expenditure the owners' corporation foresees for the future year. The sinking (or maintenance) fund should be adopted and be based on a plan which estimates the annual contribution required to ensure that capital expenditure is met when required. If the administration and sinking fund budgets are forecast correctly, there would be limited need to implement a special or extraordinary levy. Good governance would ensure that there is limited use of extraordinary fees over the life of the scheme, which gives financial certainty to lot owners.

Ten governance issues were identified with agreed outcomes. Table VII outlines the agreed issues and relevant outcomes. Participants agreed that there are a number of negative outcomes for owners' corporations, underestimating administrative (recurrent expenditure such as electricity, management fees and garden services) and sinking (maintenance) funds (non-recurrent expenditure such as painting and re-carpeting), including common property hazards and disrepairs, mismanagement, financial instability or hardship, increase in disputes and dissatisfaction with community living.

Table VII. Governance issues and outcomes identified as relevant to the category of financial management

Issues	Outcomes identified
Underestimated administrative funds by an amount more than 20% but less than 50%	Common property hazards/disrepair/defects Mismanagement Financial instability or hardship
Underestimated administrative funds by an amount more than 50%	Common property hazards/disrepair/defects Increase in disputes or conflict Dissatisfaction with community living Mismanagement Financial instability or hardship
Underestimated sinking (maintenance) funds by an amount more than 20% but less than 50%	Common property hazards/disrepair/defects Mismanagement Financial instability or hardship
Underestimated sinking (maintenance) funds by an amount more than 50%	Common property hazards/disrepair/defects Mismanagement
No provision of sinking (maintenance) funds	Common property hazards/disrepair/defects Mismanagement Financial instability or hardship Increase in liability Harm to residents and invitees Decrease in property values
Overdue levy payments by 10% but less than 20% of lot owners	Financial instability or hardship
Overdue levy payments by 20% but less than 50% of lot owners	Financial instability or hardship Common property hazards/disrepair/defects
Overdue levy payments by more than 50% of lot owners	Common property hazards/disrepair/defects Increase in liability Financial instability or hardship Dissatisfaction with community living Decrease in property values
Financial statements and accounts not audited	Issues with transparency and accountability
Over spending (limits) by committees	Issues with transparency and accountability

Six outcomes were identified for owners' corporations not providing funding for non-recurrent expenditure.

To maintain good financial health, it is imperative that owners pay their financial contributions without delay for the owners' corporation to pay its bills. Unlike a business, it is rare that surplus funds are available to cover outstanding lot owner liabilities. Participants agreed that there are multiple impacts for schemes where there are overdue levies by more than 50 per cent of lot owners. According to the participants, instability or hardship results

when a small group of owners do not pay levies on time where common property hazards, increases in liability, dissatisfaction with community living and decreases in property values can result if more than half of owners do not pay on time. One participant commented that a clear arrears policy needs to be in place.
Issues with transparency and accountability can be the result for schemes not requesting financial records be audited and over spending by committees. Good financial health requires the financial statements and records to be audited on an annual basis by an independent auditor.

Governance category: administration
The records of the owners' corporation include, inter alia, the owners roll, all meeting agendas and minutes, all agreements with service providers, all financial statements, audits, reports, insurance policies, valuations, legal advices and correspondence to and from the owners' corporation or its committee. The records are the property of the owners' corporation, and as such, each owner (and interested party) has a right to inspect the records and receive copies [10] The keeping of records should accord with industry standards and be complete, well-referenced and organised and available for inspection. Owners or potential purchasers of an MOP should undertake a search of the owners' corporation records to inform themselves about the functionality of the scheme and to ensure that all aspects of the records are legally compliant.
Five governance issues were identified with agreed outcomes for the administration category. Table VIII outlines the most relevant issues being records not kept at industry standard, incomplete or outdated registers, managers who impede rights to search and take copies and incorrect or inaccurate information detailed on certificates or disclosures. Participants agreed that issues with transparency and accountability, regulatory non-compliance, increases in disputes and mismanagement can result due to these types of practices. Some participants further commented that managers often refuse to hand over documents when the management agreements end. Others commented that there should be no time restrictions placed on interested parties searching records. It would be prudent of owners' corporations to implement a clear procedure (which accords with the relevant legislation) for managers to follow in relation to inspection of records. In practice, it is the owners' corporation manager who is the custodian and administrator of the records. Unfortunately, it appears that managers are frustrating inspections one way or another. Anecdotally, concerns have been raised that managers refuse access, charge for access, charge excessively for copies, restrict access to certain records or limit the time in which owners can inspect.

Governance category: assets and common property maintenance
According to Easthope (2009), the most important governance issue relates to repairs and maintenance. The owners' corporation is required by law to ensure that the common property is repaired and maintained [11]. Regular audits should be undertaken to alert the owners' corporation of any current or potential areas which require maintenance and repair. A maintenance plan can assist the owners' corporation in fulfilling this obligation by alerting it to defects and forecasting replacement time frames.

Ensuring that the appropriate level of insurance is in place is vital in limiting risk exposure to the owners' corporation. The regulations require the owners' corporation be covered by insurance for the reinstatement and replacement value of a building on common property and public liability insurance to a minimum amount of $10 million (AU)[12]. Additional insurance should be taken out to indemnify the committee members. Uninsured or underinsured properties expose the owners’ corporation and, therefore, the owners to financial risk.

Table VIII. Governance issues and outcomes identified as relevant to the category of administration

Issues	Outcomes identified
Records not kept at industry standards	Issues with transparency and accountability Mismanagement
Incomplete or outdated registers	Regulatory non-compliance
Managers who impede interested parties rights to search records	Increase in disputes or conflict Issues with transparency and accountability
Incorrect or inaccurate information outlined on certificates/disclosures	Regulatory non-compliance Increase in disputes or conflict Issues with transparency and accountability
Refusing to allow interested parties inspecting records to scan or take photographic images of documents or refusing to send scanned copies of records to interested parties	Issues with transparency and accountability

Ensuring that the appropriate level of insurance is in place is vital in limiting risk exposure to the owners’ corporation. The regulations require the owners’ corporation be covered by insurance for the reinstatement and replacement value of a building on common property and public liability insurance to a minimum amount of $10 million (AU)[12]. Additional insurance should be taken out to indemnify the committee members. Uninsured or underinsured properties expose the owners’ corporation and, therefore, the owners to financial risk.

There are a number of regulations relating to safety that owners’ corporations need to be aware of and comply with. These regulations take the form of fire safety measures and occupational, health and safety measures [13].

In relation to asset and common property maintenance, participants agreed with nine governance issues. Table IX outlines the issues and outcomes. Uninsured or underinsured schemes can lead to regulatory non-compliance, increases in liability, mismanagement and decreases in property values. One participant suggested that insurance policies should be reviewed every two years or sooner if alterations or additions are made to the scheme. Seven outcomes can result from schemes, delaying repairs and maintenance. Schemes without sinking plans, or outdated plans or plans not utilised to fund maintenance, can lead to increases in disputes, harm to residents common property hazards, increases in liability and mismanagement.

It is imperative for a new owners’ corporation to engage an engineer to report on any building defects that the developer is required to rectify. If the owners’ corporation does not regularly inspect, assess and correct repairs or areas needing to be maintained, the damage may result in an unwarranted and substantial repair, leading to considerable cost. Schemes not engaging fire safety inspectors and schemes not undertaking rectification works as advised by inspectors can, according to the participants, lead to harm to residents and invitees, increases in liability, mismanagement and common property hazards. Good governance practices require the owners' corporation to engage specialists to ensure compliance and minimise hazards; such audits should be undertaken regularly with reports and registers kept. A clear alert system should be in place to advise owners' corporations of insurance expire dates.

Governance category: rules and bylaws

Rules (or bylaws) are registered at the time the owners' corporation is created and provide an additional governance framework for the scheme (Sherry, 2009). Scheme rules are private in nature and regulate noise, pets, parking, balcony displays, architectural guidelines, behaviour of residents and invitees and the like (Sherry, 2009). Most jurisdictions provide model rules which can be used or modified by individual schemes. There are, however, restrictions placed on the types of rules which can be implemented. The legislation regulating these schemes provide express boundaries as to the types of rules which cannot be implemented [14]. Regardless of these restrictions, concerns have been raised about the types of rules owners' corporations have and want to implement.

Table IX. Governance issues and outcomes identified as relevant to the category of assets and common property

Issues	Outcomes identified
Uninsured properties	Regulatory non-compliance Increase in liability Mismanagement Decrease in property values
Properties (schemes) underinsured	Regulatory non-compliance Increase in liability
Schemes delaying repairs and maintenance to common property and assets	Regulatory non-compliance Increase in liability Increase in disputes or conflict Common property hazards disrepair defects Mismanagement Dissatisfaction with community living Harm to residents and invitees
Schemes that do not undertake works on lots impacting the scheme	Increase in disputes or conflict Harm to residents and invitees
Schemes without maintenance sinking plans	Common property hazards disrepair defects Increase in liability Mismanagement Harm to residents and invitees
Schemes with outdated sinking or maintenance plans	Common property hazards disrepair defects Increase in liability
Schemes that do not implement sinking or maintenance plans	Common property hazards disrepair defects Increase in liability
Schemes that do not regularly engage a fire safety inspector	Harm to residents and invitees Increase in liability Common property hazards disrepair defects Mismanagement
Schemes that do not undertake rectifications works in relation to fire safety	Increase in liability Harm to residents and invitees Common property hazards disrepair defects Mismanagement

According to participants, discriminatory or inappropriate bylaws can lead to increases in disputes and dissatisfaction with community living. Bylaws prohibiting domestic pets appear to be a bylaw often disputed at the tribunal level. More often, these types of prohibitions are viewed as unreasonable. One participant commented that ignoring professional legal advice in relation to bylaws in a constant concern. A good governance practice would be to ensure that bylaws are reviewed every few years by specialist lawyers to ensure that they are reasonable, appropriate for the scheme and legally compliant (Table X).

Table X. Governance issues and outcomes identified as relevant to the category of rules and bylaws

Issues	Outcomes identified
Discriminatory or inappropriate bylaws	Increase in disputes or conflict Dissatisfaction with community living

Conclusion

This study started with the position that good governance quality can create and maintain sustainable value for MOP schemes. However, merely operating within a governance system cannot automatically guarantee effective outcomes. In this regard, this study makes three important contributions. First, it supports the notion that a good MOP governance system requires the effective support of the MOP management system. In other words, the required governance practices enacted by regulation can only serve as an internal governance framework. These common governance practices are to be implemented by the management system set up by the owners' corporation. These practices if not executed properly (by management) can result in outcomes identified from this study such as mismanagement, issues with transparency and accountability, conflicts of interest, regulatory non-compliance, concentration of power by specific stakeholders, common property hazards/disrepair/defects and increase in disputes or conflicts. These are all outcomes that can have a negative impact on the quality of governance.

Second, it develops a governance typology that identifies the most relevant issues and potential outcomes for MOP schemes. More specifically, the most common outcomes for committee and management issues are concentration of power and increase in disputes. For meetings, the most common outcomes are increases in disputes and issues with transparency and accountability. Conflict of interest is the most prevalent outcome for business activity issues. Common property hazards and disrepairs, financial instability or hardship and mismanagement are the main outcomes for financial management issues. Administration issues often lead to issues with transparency and accountability. Assets and common property issues lead to regulatory non-compliance, increases in liability and harm to residents and invitees. Increases in disputes are the most common outcome for bylaws issues. It is interesting to note that many of these outcomes are the result of poor execution by the management system and can negatively impact upon governance quality. Hence, these identified issues can serve as a guide for the assessment of the viability of any MOP scheme. The presence of any of these issues should sound the alarm for potential risks.

Third, the issues and outcomes identified in the governance typology will form the basis for the development of a more comprehensive audit tool for the assessment of governance quality. A comprehensive audit tool will be useful for owners' corporations to assess its own governance quality and, hence, the risks of the scheme. It is anticipated that any MOP scheme that is assessed to be having a good governance quality can also be a good marketing tool and, hence, drive up property values. Insurance companies can also use the audit tool to assess the governance quality of a particular MOP scheme to assess the risk and, hence, the premium chargeable.

Notes

1. See, for example, the objectives of the relevant legislation: Section 3 of the Strata Schemes Management Act 1996 (New South Wales), Section 1 of the Subdivision Act 1988 (Victoria), Section 1(a) of the Owners Corporation Act 2006 (Victoria), Section 4(a), (e) of the Body Corporate and Community Management Act 1997 (Queensland).
2. Only the states of Queensland, New South Wales and Victoria have been reviewed. These three states represent that largest portion of MOP in Australia. Owing to time constraints and the consistency in the other jurisdictions legislation, it was not imperative to undertake a review of the legislation in the other jurisdictions.
3. Body Corporate and Community Management Act 1997 (Queensland); Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Queensland); Owners Corporation Act 2006 (Victoria); Strata Schemes Management Act 1996 (New South Wales).
4. See, for example, Owners Corporation Act 2006 (Victoria) s 100 and 103(1); Strata Schemes Management Act 1996 (New South Wales) s 16(1) and schedule 3, 2(2); Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Queensland) s 8(1).
5. See, for example, Owners Corporation Act 2006 (Victoria) s 34, 39, 69, 71, 72, 109,115, 159; Strata Schemes Management Act 1996 (New South Wales) Schedule 2 and 3; Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Queensland) s 44, 45, 47, 63, 65, 68, 72, 74, 137.
6. See, for example, Owners Corporation Act 2006 (Victoria) s 77 and 112; Strata Schemes Management Act 1996 (New South Wales) schedule 3 (9); Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Queensland) s 49(1), 80.
7. See, for example, Strata Schemes Management Act 1996 (New South Wales) 65A and B, 110(2), 111, 112; Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Queensland) s 159(2), 164, 165, 167.
8. See, for example, Owners Corporation Act 2006 (Victoria) s 102; 119; Strata Schemes Management Act 1996 (New South Wales) 26, 28, 40B; Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Queensland) s 56, 112.
9. For example, it is a discretionary provision under the Owners Corporation Act, 2006 (Victoria) (s 23) to set annual fees.
10. See, for example, Owners Corporation Act 2006 (Victoria) s 146, 150, 151; Strata Schemes Management Act 1996 (New South Wales) s 108; Body Corporate and Community

Management Act 1997 (Queensland), s 205; Body Corporate and Community Management
(Accommodation Module) Regulation 2008 (Queensland) s 202.
11. See, for example, Owners Corporation Act 2006 (Victoria) s 46, 47; Strata Schemes
Management Act 1996 (New South Wales) s 62, 64; Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Queensland) s 157.
12. See, for example, Owners Corporation Act 2006 (Victoria) s 59, 61; Strata Schemes
Management Act 1996 (New South Wales) s 83, 87; Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Queensland) s 176, 177, 185.
13. See, for example, Building Fire Safety Regulation 2008 (Queensland); Occupational Health and Safety Regulations 2007 (Victoria); Environmental Planning and Assessment Regulation 2000 (New South Wales).
14. See, for example, Owners Corporation Act 2006 (Victoria) s 138; Strata Schemes Management Act 1996 (New South Wales) s 47.

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