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Conceptualizing condominium law and children: Comparing the state of strata titles law in New South Wales and Singapore

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1. Introduction

With most of the world's population living in cities, high density apartments form a key component of urban housing needs, especially in major cities around the world. These apartments are often organised as multi-owned housing where the apartment units are individually owned while the common property is owned collectively. Sometimes multi-owned housing is known as condominiums in certain jurisdictions. In these apartments, the presence of families with children is ubiquitous. Yet, despite the pervasiveness of such families, children's needs and interests remain a woefully under investigated area in housing studies. Hence, prominent academics have called for more attention to be placed on the issue of children and multi-owned housing (Carroll et al, 2011, Easthope and Tice, 2011; Karsten, 2022).

This paper responds to the call that more attention ought to be paid to children's needs and interest in apartment living by comparing the law of multi-owned housing concerning children from the perspectives of two jurisdictions – New South Wales and Singapore. Specifically, the scope of the present study focusses on how the law in both jurisdictions governs private apartment living when children's safety is at stake. As some scholars have shown, fears about children's safety are one of the primary concerns among parents in apartment living (Carroll et al, 2011). This paper contributes to the literature by examining how two jurisdictions regulate safety issues regarding children living in private apartments. Beyond looking at the positive law in both jurisdictions, this paper draws out the values animating these laws; therefore, this study might be useful to other countries with different legal systems since these values may be used as principles in reforming the law. Due to space constraints, this paper does not consider another important subject pertaining to children living in apartments, namely the laws and regulations concerning children's right to

play in common spaces. Play is a crucial activity for children's development and wellbeing, and this issue is considered by other scholars (Sherry, 2017, 198 – 214).

In terms of selection of the jurisdictions, there are several reasons why New South Wales and Singapore were chosen. First, New South Wales is the state where Sydney is situated, which like Singapore, is a major city with approximately five to six million inhabitants. Both Sydney and Singapore have a substantial number of families living in apartments. In Sydney, since 2015, the number of apartments constructed has surpassed detached houses (Kerr, Klocker and Gibson, 2021, p422). While traditionally the 'Australian Dream' of families with children is to stay in a detached house with a backyard, there is a growing trend for families with children in Sydney to move into multi-owned housing (Easthope and Tice, 2011). Families with children under the age of 15 living in Sydney had grown to 25 per cent of the apartment population by 2016 (Kerr, Klocker and Gibson, 2021). In contrast, most of the Singaporean population do not have the luxury of living in stand-alone or landed residential detached housing due to land scarcity. Singapore's experience conflicts with the Western dominant discourses which view children's presence as somehow incompatible with cities (Karsten, 2022). In fact, apartment living is the norm for families with children in Singapore. Public housing provides 77.9 per cent, while private apartments form 17 per cent of the type of dwellings for resident households in Singapore (Singapore Statistics, 2023). These statistics demonstrate that most families with children in Singapore stay in apartments. This paper will not be studying the laws and policies associated with public housing in Singapore but will instead concentrate on the law governing private apartments. The reason why this paper will not be considering the laws and policies in relation to public housing is because these matters are generally dictated solely by Singapore's Housing and Development Board which is the ultimate landlord of public housing. Hence, a close examination of the laws and policies of public housing is less interesting because this experience is unique to Singapore. Second, New South Wales and Singapore were chosen because these jurisdictions have similar laws governing private apartments. Like New South Wales, Singapore is a Torrens jurisdiction (Tang, 2008; See, 2022). In fact, Singapore's strata title law was originally derived from New South Wales's strata regime. Therefore, it is interesting to see how laws which have a common origin have developed over time.

This paper is structured as follows. First, the legal relationships entrenched in multi-owned housing are conceptualised and analysed. Drawing from Alexander's (Alexander, 2012; Alexander, 2018) idea of governance property and Harris's (Harris, 2021) concept of embedded property, it is suggested that multi-owned housing goes beyond the notion of individual ownership where the primary concern is exclusive dominion. Dagan's (Dagan, 2021) and Alexander's (Alexander, 2012; Alexander, 2018) pluralist property theories are adopted as theories which can mediate the internal governance of property with multiple owners. These property theories advance the argument that there is not a single moral value animating the concept property ownership and a context specific approach is apposite in analysing property conflicts. The challenge is to identify the appropriate moral value to govern the problem at hand. In the second part, the appropriate values which ought to form the guiding principles in making decisions where children's safety is at stake are canvassed. This paper rejects the idea that majoritarian rule should be the overarching value in resolving conflicts over children's safety in multi-owned housing. Instead, the argument

advanced here is that issues regarding children's safety should either be viewed through the lens of a rights-based approach or the concept of property and human flourishing. The third part of the paper considers the issue of children falling from windows and balconies and how the law in New South Wales and Singapore governs the fixing of safety nets and grilles to prevent this tragic phenomenon. In the fourth part of this paper, the issue of killer litter in Singapore is explored and the statutory provisions, as well as case law which illustrate a strong protective policy towards children are unpacked. Finally, the fifth part of the paper draws lessons from the New South Wales and Singapore experience which might prove useful to other jurisdictions.

2. Ownership in Multi-owned Housing: Pluralist Property Theories and a Context-Specific Approach

Multi-owned housing is increasingly widespread all over the world (Easthope, 2021). In the United States, this ownership regime is termed as common interest communities (Heller, 1999), in Australia (Sherry, 2017) and elsewhere,[1] they are known as strata titles, in England they are called commonhold (Clarke, 1995; Brown, 2013), in South Africa, they are identified as sectional title (van der Merwe, 1992; Ti, 2022a) and in China, condominium ownership (Chen and Kielsgard, 2013). Before tackling the issue of children's place in multi-owned housing, it is crucial to conceptualise ownership in multi-owned housing. The term 'multi-owned housing' is used in this article to describe an ownership structure in residential developments which is divided into individual dwellings consisting of apartments or flats and common property consisting of facilities enjoyed by the apartment owners (Blandy, Dupuis and Dixon 2010; Easthope, 2021). The individual dwellings are sold to different owners who will own these individual dwellings while acquiring certain rights over the common property. Such ownership structures are sometimes known as 'dualistic' forms of apartment ownership in that there is a dual ownership structure where each apartment is individually owned while the common property is collectively owned (van der Merwe, 1981).

At first glance, it is tempting to analyse multi-owned housing purely from the perspective of individual ownership since the apartments are separately owned. However, on closer scrutiny multi-owned housing creates legal relationships beyond individual ownership. Van der Merwe has perceptively pointed out that there is a threefold legal relationship in multi-owned housing (van der Merwe, 1992; Leslie, 2017, p. 515). When a person purchases an apartment: first, he or she becomes an individual owner of the apartment; second, he or she becomes the co-owner of the land and parts of the building which do not form part of the apartment; and finally, he or she becomes a member of the body corporate or owners' association which is tasked to maintain the common property and manage the community. The fact that there are three legal relationships within multi-owned housing is an important insight which is often overlooked. Essentially, what is created is a form of hybrid property institution where "individual ownership is inseparably tied to co-ownership of common property" (Harris and Gilewicz, 2015, p292). Quite apart from the idea of the inextricable linkage between individual ownership and co-ownership, apartment owners are members of a community which they have entered by implied consent. The existence of this tripartite legal connection embedded in multi-owned housing means that in analysing the relationship between owners, we must move beyond the idea of individual ownership; while an

apartment owner is the individual owner of his or her apartment, he or she is also a co-owner of the common property and a member of the body corporate or owners' association in relation to the common property and management of the community. Therefore, owners of multi-owned housing are essentially 'a democratic community of owners with mutual rights and responsibilities and sharing in the running and maintenance of a complex' (Leslie, 2017, p512).

Having established that the legal framework must go beyond individual ownership, how then should the law analyse multi-owned housing? Gregory Alexander characterises community interest communities, which are essentially a system of multi-owned housing in the United States, as illustrations of what he terms governance property (Alexander, 2012). Within governance property, there are multiple owners who may have concurrent, sequential, or combined ownership of which multi-owned housing is an example. In other words, these owners may jointly own certain portions of the property while individually also owning other parts of the property. Alexander argues that property theories which focus on excluding third parties i.e. where an owner owns the entire asset and the emphasis is on the owner's right to exclude third parties from using, possessing, or interfering with the asset, are not able to deal with the 'internal life' of property ownership with multiple owners (Alexander, 2012, pp1855-1856). Instead, a theory based on governance which concentrates on regulating the relationship between multiple owners is required to tackle the issues between these owners. Indeed, the primary tension in multi-owned housing is the 'tension that the legal form creates between individual and community, or between autonomous and collective decision making' (Harris and Gilewicz, 2015, p292).

Douglas Harris offers a similar vision of property rights of multi-owned housing emphasising the physical entwining of the owner's individual units and common property perceptively observing:

> Condominium constructs separate titles to individual units…However, notwithstanding their legal separateness, the private interests are inseparable from the common property interest…Moreover this packaging of private with common property reflects a physical entwining…Indeed, the private property within condominium cannot exist without the common property, which exists in service of the private. (Harris, 2021, p30)

Harris suggests that the architecture of ownership inherent in multi-owned housing constructs a form of embedded property where private interests are inextricably embedded within the immediate community of owners. He offers the idea of embedded property as a way of analysing multi-owned housing where the property is spatially embedded, politically embedded and temporally embedded (Harris, 2021)

While the concepts of governance property and embedded property are valuable frameworks, there remains the lingering issue of the norms which should be guiding considerations in the context of multi-owned housing disputes. In this paper, I adopt pluralist moral theories of property along the lines advanced by Gregory Alexander (Alexander, 2012; Alexander, 2018) and Hanoch Dagan (Dagan, 2021). These two property theories are chosen because their work is capable of dealing with the 'internal' life of multi-owned housing where there are many interests at stake. Alexander's vision of property law is that it exists to facilitate human flourishing. Alexander's central thesis about property and human flourishing proceeds on the following premise:

> In order for me to be a certain kind of person—a free person with the basic capabilities necessary for human flourishing – I must be in, belong to, and support a certain kind of society – a society that supports a certain kind of political, social, and moral culture and that maintains a decent background material structure (Alexander, 2018, p72).

Hence, a person has an obligation to support a certain kind of social life which 'entails an obligation to members of my communities…*insofar as I am able and in ways that are appropriate to me*, so that they develop the capabilities necessary for flourishing as well' ((Alexander, 2018, 74).

Dagan's core claim is that an analysis of property law needs to start with the liberal tradition with 'a concern for individual autonomy, self-determination, and self-authorship, ensuring to all of us as free and equal individuals the possibility of writing and rewriting our own life stories" (Dagan, 2021, p1). Thus, Dagan posits that there are three pillars within a liberal theory of property law – carefully delineated private authority, structural pluralism, and relational justice.

The tricky task is to relate these moral theories to multi-owned housing. Leslie characterises Alexander's and Dagan's vision as pluralist moral theories where there is no fixed, single value or set of values animating property law. Pluralist theories accept that 'moral questions are irreducibly complex and involve an open-ended set of revisable and context-sensitive human values' (Leslie, 2017, p519). Leslie helpfully identifies several key elements common in these pluralist theories which include human flourishing, interest of the community, interest of the individuals and a context-oriented approach to moral questions with a high sensitivity to the particular circumstances (Leslie, 2017, pp520 -521). This analysis is helpful because these pluralist theories demonstrate that in dealing with problems within multi-owned housing, there is no single overarching value to resolve all conundrums. Instead, the inquiry is fact-specific and highly contextual. Rather than proceeding to a high level of abstraction using a fixed set of values, the problem at hand should be mapped out and the relevant human values to guide us in solving this question ought to be identified. Adopting this practical approach, I turn next to identifying the appropriate human values at play when determining safety issues concerning children in multi-owned housing.

3. Relevant Values in relation to Children's Safety in Multi-owned Housing

Multi-owned housing has often been theorised as sites of democracy since the parallels between the democratic process and multi-owned housing are immediately apparent. Owners of multi-owned housing exercise voting powers at general meetings (Lehavi, 2014); they elect an executive body which functions on their behalf. Owners of multi-owned housing make rules which govern the community. Sherry observes 'strata and community schemes have a democratic structure and *ideally* operate as mini democracies' (Sherry, 2017, p48). Therefore, should children's issues in multi-owned housing be dealt with through the democratic norm of majority rule? If so, this would represent an easy solution. All contentious matters involving children could be put to a vote at a general meeting and the results of the vote would be determinative. But is the majoritarian rule suitable in this context? It is suggested that majoritarian rule is not suitable in dealing with children's issues especially when their safety is at stake. Cathy Sherry highlights that the 'majority may act in ways that are harmful to others, including children, even to the point of making

decisions that are inimical to their physical safety' (Sherry, 2017, p218). This is consistent with the argument that an important incident of ownership is the prevention of harmful use of property (Ti, 2022b).

A further difficulty with viewing children's issues as a matter to be resolved using majoritarian rule is that children are not able to represent their interests in the political life of multi-owned housing due to their minority status in law. While parents might vote in favour of their children's safety, the point is this: their parents would most likely be given a sole voice in the voting process even though there may be multiple children living in one apartment. Jenny Wood points out that the dominant discourse is to view children 'as human becomings: emphasizing (sic) their future values as adults' (Wood, 2015, p143). But such a view locks children into a 'vulnerability complex' cycle in need of protection by adults and adult institutions (Lee, 1995, p468). If the majority cannot be counted to act in ways that are not detrimental to the safety of children, I suggest that a more appropriate approach is to view children's place in multi-owned housing through the lens of a rights-based discourse of rights of the child. Such an approach escapes the 'vulnerability complex' cycle; instead of conceptualizing children as needing protection by adults and institutions, children are seen as having rights in their own capacity. In other words, this approach stems 'from a belief in 'rights talk' – the search for solutions to social problems in terms of the individual rights of children' (Roose and Bouverne-De Bie, 2007, p434). The source of these rights may be derived from the United Nation Convention on the of Rights of the Child ("UNCRC") which has been signed by many countries including Singapore and Australia. Article 3(3) of the UNCRC provides:

> States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

It could be argued that multi-owned housing communities are institutions responsible for the care or protection of children since the presence of children are ubiquitous in multi-owned housing. If so, then the State has a positive duty pursuant to the Convention to ensure that the law governing multi-owned housing communities complies with certain standards especially in areas of safety and health. As will be demonstrated below, the statutory laws of Singapore and New South Wales in relation to strata law do prescribe certain standards when children's safety is at stake although it is the present author's thesis that more could be done to protect children. Nevertheless, this argument hangs on whether multi-owned communities are indeed institutions responsible for the care or protection of children. It may be that some might dispute that multi-owned housing communities should be interpreted as institutions responsible for the care or protection of children; while children live in these communities, those that are responsible for the care or protection of children are their parents.

Given that a rights-based discourse may be contentious in relation to children and multi-owned housing, another possible approach is to argue that the value of prioritising the safety of children ought to be the overarching principle. How may one reach this conclusion within the theoretical framework of proprietary ownership in multi-owned housing? One view is to conceptualise multi-

owned housing as manifesting what Hanoch Dagan terms as structural pluralism. According to Dagan, structural pluralism inherent within property is the dilemma of mediating 'the rights and obligations of members of local communities, neighbors, co-owners, partners, and family members' (Dagan, 2021, p6). Multi-owned housing represents structural pluralism where the primary concern within the internal life of property is 'structured through sophisticated governance mechanisms that facilitate various forms of interpersonal relationships, which would not be possible without an enabling legal infrastructure' (Dagan, 2021, p6). Thus, the task at hand is creating 'governance institutions that manage potential conflicts of interest among individuals who are all stakeholders in one resource or in a given set of resources' (Dagan, 2021, p6). The challenge is articulating what are the values that should be prioritised when there are conflicts between individual owners in multi-owned housing. Dagan does not explicitly deal with how to analyse the issue of children and property. In the present context, it is suggested that as a matter of pragmatic reasoning, the law should recognise that children are an integral part of the community in multi-owned housing. When there are conflicts between individual owners in multi-owned housing on children's issues, the argument advanced in this paper is that any decisions should be premised on the value of prioritising the safety of children in the community rather than leaving this up to the vagaries of majoritarian rule.

The conclusion that the safety of children is paramount could also be reached using Gregory Alexander's theory on property and human flourishing. Cathy Sherry, drawing on *inter alia* Alexander's work, expresses this eloquently as follows:

> In a modern, pluralist democracy, in addition to the traditional liberal values of the free market, privacy and autonomy, we care about human relationships, 'health, friendship, [and] human dignity', we care about our communities, both large and small; we care about environment and future generations; and we care about opportunities for citizens, particularly children, to live in an optimal existence. In short, we care about 'human flourishing' (Sherry, 2017, p198).

Sherry forcefully asserts that the 'exercise of property rights should never seriously compromise the well-being of others' (Sherry, 2017, 198). In this context, "[l]egal intervention can also clarify social obligations and coordinate collective actions necessary for human flourishing where private owners would otherwise struggle to do on their own" (Alexander and Peñalver, 2012, p93). I now turn to examining the legal intervention in New South Wales and Singapore in relation to children's safety in multi-owned housing.

4. Children Falling from Windows and Balconies: The Fixing of Safety Nets and Grilles in New South Wales and Singapore

Children falling from windows and balconies of buildings is a silent epidemic happening all over the world (Mayer *et al*., 2006). Unfortunately, this tragic phenomenon is also present in New South Wales (Sherry, 2012) and Singapore (Ong, Ooi and Manning, 2003; Thein, Lee and Bun, 2005). Following a sharp rise in the number of children suffering serious injuries because of falls from windows and balconies in 2007 in Sydney, the Children's Hospital at Westmead began an ongoing

education campaign, *Kids Can't Fly*, to help reduce the risks of falling from buildings. In Singapore, the Tanjong Pagar Community Development Council started a scheme in 2000 called "*Prevent the Fall*" which paid and installed window grilles in the homes of low-income families (Au Yong, 2000). Despite these campaigns, children falling from windows and balconies remain a problem in both Sydney (Houlton *et al*., 2020) and Singapore. To prevent falls, the Building Code of Australia for new buildings was amended in June 2013 to restrict the opening of windows to a maximum of 12.5 cm where the floor below the window is more than 2 metres above the surface beneath (Houlton *et al.*, 2020). There are also requirements in relation to the height and openings in balustrades at balconies (Yusuf *et al.*, 2015).

Putting aside building codes, the most effective way to stop children falling from windows and balconies is to fix safety nets or grilles. One of the impediments to installing safety nets or grilles is that this may require consent from the rest of the owners. This is because installing safety nets or grilles may arguably constitute an alteration to the common property even though these safety nets or grilles are installed at the strata owners' own lot and at their own costs; safety nets or grilles are anchored on the external walls of the buildings and the external walls are regarded as common property. The other owners may object to these safety nets or grilles on the basis that they affect the aesthetics of the building i.e. the uniform façade is compromised. Hence, when matters such as the fixing of safety nets or grilles are put to a general vote, a special resolution which is the requisite resolution required to works on common property may not be obtained from most of the owners. The other owners may not agree with the work, believing that the safety of children should be placed under individual parental control and the solution does not lie with an alteration to the building.

It is interesting to note that in New South Wales and Singapore, the position has evolved to a situation where this issue does not usually have to put to the vagaries of majority vote at a general meeting. In New South Wales, multi-owned housing is governed by the Strata Schemes Management Act 2015 ("SSMA 2015"). The SSMA 2015 by way of the Strata Schemes Management Regulation 2016 provides for model by-laws which stipulate that an owner, without consent of owners' corporation, may install "any structure or device to prevent harm to children". In the Second Reading Speech for the Strata Schemes Management Bill 1996 (NSW), the Minister for Fair Trading, Mrs Lo Po explained that:

> The bill takes special account of circumstances where children live in strata schemes ... security measures taken to ensure the safety of children, for instance falling from balconies, will be automatically permitted. The body corporate will not be able to prevent an owner or someone authorised by the owner from taking these measures [if] an appropriate standard and in keeping with the appearance of the building.

Therefore, for strata schemes that have adopted the model by-laws, the Owners Corporation may not prevent owners from fixing safety nets or grilles on his or her lot since this would be regarded as a structure or device to prevent harm to children.

However, Sherry suggests that there is an argument that the model by-laws do not necessarily take the matter out of the hands of the majority (Sherry, 2017, p219). Section 108 of the SSMA 2015

requires a special resolution of the body corporate for additions to common property. Since by-laws cannot be inconsistent with the provisions of the SSMA 2015, Sherry points out 'it is possible that the model by-law cannot be read to circumscribe the Act' (Sherry, 2017, p219). Further, the problem of fixing safety nets and grilles becomes acute in buildings that have either not adopted the model by-law or changed the model by-law by excluding the relevant provisions. For such buildings, a special resolution for alteration to common property is required. Even though there is uncertainty in relation to this issue, there is surprisingly no reported case law in New South Wales.

The Singapore statute which governs strata developments, the Building Maintenance and Strata Management Act 2004 ("BMSMA 2004"), follows a similar structure to the SSMA 2015. However, instead of model by-laws to be adopted by schemes, there are prescribed statutory by-laws. This is a subtle but crucial difference between Singapore and New South Wales law. Section 32(2) of BMSMA 2004 provides:

> The by-laws prescribed by regulations are the by-laws for every parcel comprised in a strata title plan in respect of which a management corporation is constituted on or after 1 April 2005, and any by-law made under this section or section 33 must not be inconsistent with any such prescribed by-law.

In other words, these by-laws are statutorily prescribed to apply to every development, and all subsequent by-laws made at a meeting of the owners must not be inconsistent with these prescribed by-laws. The statutory by-laws are contained in the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005. Within these by-laws is a similar provision akin to that found in the SSMA 2015 which provides that an owner is not to be prevented from installing 'any structure or device to prevent harm to children'. The resultant position is that the argument identified by Sherry that the statutory provision for special resolution may take precedence over the model by-law in New South Wales does not apply in Singapore since the prescribed by-laws have force of law by virtue of section 32(2) of the BMSMA 2004; the prescribed by-laws are explicitly provided by 32(2) of the BMSMA 2004 to take precedence over all other statutory provisions. This position was endorsed by the majority of Singapore's Strata Titles Board ("STB") in Lee Soh Geok v The Management Corporation Strata Title Plan No. 4417, 2019.

Despite these statutory provisions, management corporations have consistently misunderstood their obligations in relation to grilles over balconies which have necessitated multiple actions before Singapore's STB. There are two reported decisions that went to arbitration proceedings. In the first case, the management corporation rejected an owner's application to install safety grilles on the balcony of his own apartment on the basis that this would affect the uniformity, integrity, and appearance of the building (Sujit Singh Gill v MCST Plan No 3466, 2015). It should be noted that the proposed grilles to be installed were termed as 'invisible' grilles made from closely spaced steel wires stretched taut vertically by tension and anchored at the top and bottom of the balcony. The STB allowed the application stating that 'children's safety must be paramount, even if the grilles may affect the appearance of the Building'. The second case involving a dispute on installation of 'invisible' grilles was the management corporation objecting on various grounds including an insistence that this matter required the consent from the general body of owners; alternatively, the management corporation proposed a series of unverified substitute methods of

installation of the grilles (Zou Xiong v MCST Plan No. 2360, 2017). The STB gave short shrift to these objections and ordered the management corporation to allow the owner to install the 'invisible grilles' on the owner's balcony. Shortly thereafter, BMSMA 2004 was amended in 2017 which effectively codified the effect of these two decisions. Section 37A of BMSMA 2004 provides that an owner may install safety equipment on his or her own lot despite any other provision in the BMSMA 2004, regulation or any by-law which otherwise prohibits the installation of the safety equipment. This made it crystal clear that installation of safety equipment which includes anything with the features of preventing people from falling from a balcony or window is not subject to consent from the other owners and is not inconsistent with any statute or by-law.

A recurrent theme which emerges from this comparison between New South Wales and Singapore is the emphasis by legislators and adjudicators on the importance of the safety of children in multi-owned housing in resolving these disputes. Although not expressly articulated, the value of placing the safety of children within the internal governance of multi-owned housing may be argued to be consistent with both Dagan's liberal theory of property and Alexander's view of property and human flourishing. Using Dagan's approach of balancing the values at stake in situations of conflict and ultimately prioritizing the safety of children in the community in this context rather than leaving this issue to majoritarian rule is a sensible way of resolving conflicts within property ownership. Similarly, it may be said to protect children in multi-owned housing is to promote human flourishing. Alexander's and Peñalver's observation that "[l]egal intervention can also clarify social obligations and coordinate collective actions necessary for human flourishing where private owners would otherwise struggle to do on their own" (Alexander and Peñalver, 2012, 93) is particularly apposite in the present context. Without statutory intervention, communities in multi-owned housing have not acted decisively to protect children; instead, some Owners Corporations have actively prevented owners from installing safety nets and grilles to protect their children on the basis that these structures affect the aesthetics of the building.

5. Killer Litter in Singapore: Awnings as Protective Structures for Children

Killer litter is a unique Singaporean term for objects thrown from high rise apartments that can injure or kill passers-by on the ground floor. The term is a hybrid of the words 'killer' and 'litter' implying that 'not only that litter can be killing, but the person who does the act is a killer' (Ooi, 2000). In 1997, the *Wall Street Journal* reported that the main danger facing pedestrians in Singapore is not pickpockets or potholes but 'junk tossed out windows by residents of high-rise apartments' (McDermott, 1997). Reported items which have been thrown out of windows include an incense burner, tricycle, and someone's curry dinner (McDermott, 1997). Killer litter is one of the concerns of respondents surveyed about living arrangements in high rise housing in Singapore (Yuen, 2009). The cause for killer litter could be due to a myriad of factors including people suffering from mental health issues, unsupervised children, anti-social behaviour and objects placed on balconies like flowerpots and laundry poles falling down due to a gust of wind. Regardless of the causes, killer litter poses a danger to people living below especially ground floor owners. Like children falling out of windows and balconies, killer litter appears to be commonplace in Singapore. In contrast, the only New South Wales case which the present author can locate is a decision where there were complaints of cigarette butts falling into the ground floor

unit (Fong v The Owners Strata Plan No 82783, 2022). In that case, the New South Wales Civil and Administrative Tribunal ("NSWCAT") allowed the installation of a replacement awning on the grounds that the owners corporation had unreasonably refused to make the necessary common property rights by-law pursuant to section 149 of SSMA 2015. There is no equivalent provision under Singapore law.

In the past five years, the subject of killer litter has been before Singapore's STB numerous times. Most of the reported cases involved situations where the owners of ground floor units would report to the management corporation that they are facing killer litter problem. Usually, this involves evidence of dangerous items falling into the ground floor units. In some cases, police reports are lodged. As a response to the killer litter problem, the owners of the ground floor units would seek the management corporation's permission to install awnings as protective coverings against killer litter. Thus, the legal issue is whether an individual owner has a right to fix awnings on his or her own unit as protective coverings from killer litter without obtaining the requisite consent from the rest of the owners.

To understand the difficulty with obtaining consent, some context is necessary. Singapore's strata law differs from New South Wales's law in that to make a by-law granting exclusive use of common property for more than 3 years to an owner of a lot, a 90 per cent resolution is required from all owners present (in person or by proxy) at a meeting when the vote is taken. In 2018, there was a High Court decision which decided that external walls of building were common property even if these external walls were comprised in an individual owner's apartment; hence, the court held that a structure which was attached to an external wall constituted exclusive use and required a 90 per cent resolution (Wu Chiu Lin v Management Corporation Strata Title Plan No 2874, 2018). The correctness of this decision has not been seriously challenged and it has been assumed that since awnings are attached to external walls, such structures must be authorised with a 90 per cent resolution. A competing characterisation is to take a purposive approach to the statute and regard the fixing of an awning to the external wall does not constitute exclusive use of the external wall but should instead be construed as a form of alteration to common property. In fact, the NSWCAT has even suggested that anchoring an awning to an external wall is not a form of alteration to the common property other than incidentally (Fong v The Owners Strata Plan No 82783, 2022, p104). Alterations to common property would require only a special resolution i.e. 75 per cent of all owners present at (in person or by proxy) at a meeting when the vote is taken. The ramification of the decision that all structures which are attached to external walls amounted to exclusive use would mean that technically owners who wish to attach air-conditioning units on their individual lots where parts of the air-conditioner is fixed to external walls of the building would require a 90 per cent resolution. This is an impractical conclusion and would mean that many owners are in breach of the exclusive use law. A 90 per cent resolution is almost impossible to obtain even if it is for a resolution to fix an awning as a protective structure from killer litter. Most of the reported cases demonstrate that when this issue is put to a vote, the 90 per cent resolution is, in fact, not obtained. Owners who live on the second floor often resist the installation of such awnings based on concerns about reflected heat from the awnings, noise when it rains, loss of views, dirt from the awnings and security considerations.

For such an uncomplicated matter, it is surprising that the issue of killer litter and awnings has been arbitrated in multiple decisions before the STB. Relying on the prescribed by-law by statute which stipulates that an owner shall not be prevented from installing safety devices or "any structure or device to prevent harm to children", the STB has consistently held in several cases that an owner of a lot may install awnings as protective coverings even if the requisite 90 per cent resolution is not obtained (Ahmad bin Ibrahim and others v The MCST Plan No. 4131 ("Belysa"), 2018); Rosalina Soh Pei Xi v Hui Mun Wai and Another ("Suites @ Newton"), 2019; Pang Loon Ong and others v The MCST Plan No. 4288, 2019; Lee Soh Geok v The MCST Plan No. 4417 ("Citylife@Tampines"), 2020). Specifically, the STB in a split decision held that the prescribed by-law applied to all developments by reason of section 32(2) of BMSMA 2004, and that no by-law made may be inconsistent with the prescribed by-law (Lee Soh Geok v The MCST Plan No. 4417 ("Citylife@Tampines"), 2020). Section 32(2) of BMSMA 2004 states that no by-law made under section 33 of the BMSMA 2004, which is the exclusive use provision, may be inconsistent with the prescribed by-law. Therefore, the conclusion is that the prescribed by-law allows for the installation of safety devices or 'any structure or device to prevent harm to children' without the requirement of a 90 per cent resolution. This reasoning has been implicitly approved by a High Court decision where the judge said that an awning may be fixed if there was evidence of killer litter even though a 90 per cent resolution was not obtained (Mu Qi and another v Management Corporation Strata Plan No 1849, 2021, [82]).

In reaching these decisions, the STB appears to be guided by a protective attitude towards children and said, "in the management of any strata development, the management corporation should be guided by the principle that children's safety must be considered to be of paramount importance" (see Ahmad bin Ibrahim and others v The MCST Plan No. 4131 ("Belysa"), 2018, [16]). In the same context, the Strata Titles Board stressed the 'concept of majority rule in a strata development in this context cannot be taken to the extreme when the safety of children is at stake' (Pang Loon Ong and others v The MCST Plan No. 4288). In fact, the Strata Titles Board chided the management corporation for taking the position that it did not have the power to approve the installation of awnings even though there was evidence of a killer litter problem in the estate saying '[i]t cannot be Parliament's intention for a management corporation to be impotent in the fact of such a pressing problem faced by its residents' (Pang Loon Ong and others v The MCST Plan No. 4288, 2019).

Another major area of contention is whether fixed or retractable awnings should be installed. Owners on the second floor often insist that retractable awnings instead of fixed awnings be installed because retractable awnings reflect less heat, produce less noise when it rains and are less prone to collecting dirt. The STB has held that this matter is to be decided by the management corporation. In one case, the management corporation's decision to prescribe the installation of retractable awnings in the face of killer litter was upheld because retractable awning was viewed as a necessary, reasonable and proportionate response to the problem (Ahmad bin Ibrahim and others v The MCST Plan No. 4131 ("Belysa"), 2018). Several reasons were given for this holding. First, the management corporation is entitled to juggle the competing demands from owners who may have conflicting interests. Quoting Easthope and Randolph (Easthope and Bill Randolph, 2018, 177, 178) the STB said owners in strata schemes "must make daily negotiations between

their individual desires and their responsibilities to neighbours, civic interests and broader society" (Ahmad bin Ibrahim and others v The MCST Plan No. 4131 ("Belysa"), 2018). Second, the STB accepted evidence that retractable awnings were a necessary, reasonable and proportionate response to the killer litter noting that evidence was tendered showing retractable awning capable of supporting nine grown men sitting on it (Ahmad bin Ibrahim and others v The MCST Plan No. 4131 ("Belysa"), 2018). According to the STB, the issue is not finding a perfect solution to meet the ground floor owner's every need. But the proper inquiry is to find a reasonable, necessary, and proportionate response to killer litter (Ahmad bin Ibrahim and others v The MCST Plan No. 4131 ("Belysa"), 2018). However, where the management corporation has allowed fixed awnings to be installed in the face of a killer litter problem, the STB has held that it would not order the awnings to be removed (Rosalina Soh Pei Xi v Hui Mun Wai and Another ("Suites @ Newton"), 2019). This was justified on the basis that there must be some finality to the management corporation's decision and the management corporation is estopped from asking the ground floor owner from removing the awning which it had approved.

6. Lessons from the New South Wales and Singapore Experience

Several lessons may be gleaned from the New South Wales and Singapore experience. First, other jurisdictions which are studying the experience of New South Wales and Singapore may choose to enact a statutory provision in their laws which unequivocally states that an owner may install safety equipment which includes grilles and safety nets on his or her own lot notwithstanding any regulation or any by-law which otherwise prohibits the installation of the safety equipment. Such a provision would go a long way in removing doubt that the installation of the safety equipment requires consent from the general body of owners. To prevent confusion, the law should be stated in a positive form i.e. an owner may install grilles and safety nets, instead of the current formulation which is essentially in a negative form in New South Wales's model by-laws and Singapore's prescribed by-laws; the current by-laws in New South Wales and Singapore state that an owner shall not be prevented from installing safety devices. In this regard, policy makers in New South Wales and Singapore ought to be refining their laws to remove any lingering uncertainty and confusion that the right to install grilles and safety nets is subject to majority rule.

Second, this positive law allowing for owners to install grilles and safety nets should be enshrined in the statute instead of drafting it into model by-laws or prescribed by-laws to prevent the misunderstanding that this law may be derogated by the rest of the owners. Third, similar laws in relation to awnings as protective coverings in response to killer litter ought to be enacted. Anecdotally, killer litter is not a problem unique to Singapore but also afflicts jurisdictions like Malaysia and Hong Kong (McDermott, 1997). In drafting such laws, policy makers should make it clear that the right to install awnings in the face of a killer litter problem is not subject to majority rule and that this should apply regardless of whether the ground floor unit has children living in the apartment. The current Singapore legislation appears to only allow for installation of awnings for the protection of children; but this position is illogical given that killer litter is a hazard to everyone and not just children. Finally, the law should be drafted to make it clear that body corporates have a positive duty to work with owners to expeditiously install grilles, safety nets and

awnings where safety considerations are at stake. This would prevent body corporates from making various objections and complaints about the aesthetics of the building.

7. Conclusion

This article has conceptualised the legal relations embedded within multi-owned housing and the various theories of property ownership to ascertain how children's interest fit within this framework. Drawing on pluralist moral theories of property law, the thesis advanced is that children's issue within multi-owned housing should not be subject to majoritarian rule especially when their safety is at stake. The paramount guiding value should be ensuring their safety within multi-owned housing communities. Using the law of two jurisdictions, New South Wales and Singapore, the central argument of this paper is that the law in these jurisdictions have rightfully adopted a protective approach towards children in multi-owned properties where their safety is at stake. Lessons from the New South Wales and Singapore experience were also drawn which might prove useful to other jurisdictions.

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[1] Some countries like New Zealand, Singapore and Malaysia have adopted the Australian strata title system.