

# Submission on the draft *Strata Schemes Development Bill 2014* (NSW) – Part 10 Strata Renewal Process for Freehold Strata Schemes

**April 2014**

## Introduction

The Tenants' Union of NSW is the State's peak non-government organisation for tenants. We are a specialist community legal centre with our own legal practice in residential tenancies law, and the primary resource agency for the State-wide network of Tenants Advice and Advocacy Services.

We appreciate the opportunity to comment on the draft *Strata Schemes Development Bill 2014* (NSW) (the draft Bill). We note, however, the limits of the opportunity: we have had four working days to consider the draft Bill. This submission is, therefore, brief and confined to Part 10 of the draft Bill only.

We have serious concerns about the 'strata renewal process' provided for by Part 10 of the draft Bill. We are concerned particularly for owner-occupiers who have no or few assets other than their strata dwelling, and for whom our housing system presents few other options.

The strata renewal process would take away an important measure for protecting their housing interests – that is, the requirement of unanimous consent to termination of a scheme – and does not provide other safeguards to prevent hardship. Especially deficient are the provisions relating to applications for court orders giving effect to strata renewal plans. Nor does the process ensure that consent, where it is given, is properly informed by all the relevant information.

As a result, vulnerable owner-occupiers could lose their current housing and be unable to find equivalent alternative housing. They may face the distressing choice of

moving away from their local area and community in order buy affordably, or buying unaffordably in their area, or leaving owner-occupation and going into the rental market.

We believe that law reform for strata renewal should be accompanied by a State affordable housing policy that delivers more and better housing options – and we cannot support the removal of the requirement of unanimous consent for renewal in the absence of a stronger policy.

We also believe that certain safeguards should be built into the strata renewal process provided for by Part 10 of the draft Bill. We discuss these safeguards below.

## Application to existing strata schemes

Schedule 8, Part 2, clause 8 of the draft Bill provides that Part 10 applies to existing strata schemes where the owners corporation so resolves. A simple majority is required and, once made, the resolution cannot be revoked: Part 10 henceforth applies.

We submit that the requirement of an ordinary resolution is an insufficient safeguard for owners who have made their homes in strata schemes on the expectation of greater security of tenure than is provided for by Part 10. We recommend that the provision be amended to require a special resolution.

## The strata renewal plan

Clause 170 of the draft Bill sets out the information that must be contained in a strata renewal plan. For most strata residents, this document will be the primary source of information on the strata renewal proposal, and the primary basis for their decision to support, or not support, the proposal. For some residents, the strata renewal plan will be the only information they consider. It may also be the only information about their place in the housing system that they will have considered for many years.

A strata renewal plan under clause 170, as it is currently drafted, would include information as to the prices owners may receive on sale or redevelopment of their scheme, but would not be required to give any information as to the cost and availability of alternative housing.

We recommend that clause 170 be amended to require the inclusion in any strata renewal plan information as to:

- purchase prices;
- rents;
- rental vacancy rates; and

- numbers of social housing properties and wait times

for dwellings of similar location and size as those subject to the proposed sale or redevelopment.

We also recommend that clause 170 be amended to require the inclusion of a statement advising owners to seek independent advice about the strata renewal plan and their housing options. We further recommend that consideration be given to funding appropriate community organisations to provide free, independent advice to vulnerable owners about strata renewal plans and housing options.

Finally, we recommend that the disclosure provisions at section 26 of the *Residential Tenancies Act 2010* (NSW) be amended to provide that a landlord or agent must disclose to a prospective tenant any strata renewal proposal, where a strata renewal committee has been established to consider it.

## Notice of owner's decision to support plan

We are concerned that the requirements, at clause 174(2), for witnessing an owner's signature on a support notice are an insufficient safeguard against the procurement of support by fraud or abuse. As the clause is currently drafted, the support notice would record only a name and representations as to the witness's age, disinterest in the proposal and knowledge of the owner. We submit that such a record does not allow an objective reader any means of ascertaining the bona fides of the witness. We recommend that the clause be amended to require that the witness be a Justice of the Peace, a legal practitioner or the holder of another office, and to identify their qualification on the support notice.

## Review of application and court decision if no objection

Clause 181 sets out a list of matters that the court of which the court must be satisfied when it reviews an application to give effect to a strata renewal plan and where no objection to the application has been made to the court. The list does not direct the court to consider whether an objection may not have been made because of an owner's disability or other factor of vulnerability. We recommend that the clause be amended to require that the court be satisfied that the absence of objections is not due to the disability or vulnerability of an owner.

## Hearing of application and court decision if objection received

In contrast to clause 181, clause 182 sets out the procedure of the court where there *is* an objection to an application for an order to give effect to a strata plan. As the clause

is currently drafted, an objection has the effect of requiring the application to be heard by the court, subject to mediation or conciliation at which the strata renewal plan may be amended. The objection does not, however, expand the list of matters of which the court must be satisfied beyond the list of matters at clause 181.

We submit that this means that dissenting owners could object to a strata renewal plan on the ground that losing their homes would cause them undue hardship (for example, the price they receive would not permit them to buy another dwelling), but the court would not be able to decline to make the order giving effect to the strata renewal plan on the basis of the objection. Rather, the court would be required to make the order if satisfied of the matters at clause 181, even if it was also satisfied that undue hardship would result to dissenting owners. It may be that in light of this restriction, the court would not hear evidence as to the substance of the objection at all.

We recommend that clause be amended to provide that the court must consider the substance of the objection and may decline to make an order giving effect to a strata renewal plan if it is satisfied that it is appropriate to do so, considering the hardship that would otherwise be suffered by dissenting owners (the court's satisfaction as to the matters at clause 181 notwithstanding).

## Summary of recommendations

We recommend that:

- The strata renewal reforms be accompanied by a strong affordable housing policy;
- Schedule 8, Part 2, clause 8 be amended to provide for the application of Part 10 to existing strata schemes by special resolution of the owners corporation;
- Clause 170 be amended to require the inclusion of information about alternative housing, and a statement recommending each owner get independent advice;
- Consideration be given to funding appropriate community organisations to provide free, independent advice to vulnerable owners;
- Section 26 of the *Residential Tenancies Act 2010* (NSW) be amended to require disclosure of strata renewal proposals to prospective tenants;
- Clause 174 be amended to include an occupational qualification for witnesses to support notices;
- Clause 181 be amended to require that the court be satisfied that the absence of an objection is not due to disability or vulnerability of an owner;
- Clause 184 be amended to require the court to consider the substance of an objection and to provide that the court may decline to make an order giving effect to a strata renewal plan if it is satisfied that it is appropriate to do so,

considering the hardship that would otherwise be suffered by dissenting owners.