

Submission on the draft Strata Schemes Management Bill 2014

April 2014

Introduction

The Tenants' Union of NSW (the TU) 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 make submissions on the draft *Strata Schemes Management Bill 2014* (NSW) (the draft Bill). We note that the timeframe for making submissions (19 days) was relatively short. Because of the shortness of the timeframe and the demands of the TU's other work commitments, we have not conducted a complete analysis of the draft Bill. This is reflected in the present submission, which identifies several specific issues of concern. It does not purport to identify all problematic issues in the draft Bill, nor put a view as to the overall balance of rights and obligations represented by the legislation.

Part 3 – Strata committee

We support providing for tenant representation on strata committees. We submit that tenant representation is appropriate even where fewer than half the lots in a strata scheme are occupied by tenants (indeed, it may be that strata committees for such schemes most need to be reminded of tenants' perspectives). Accordingly we recommend deleting the qualification at clause 33(1).

Part 6 – Property management

Maintenance and repair of common property

We note that the obligation of the owners corporation to maintain and repair the common property is subject to the qualification that the owners corporation need not comply where it 'intends' to take action against another person liable for the damage (clause 106(4)(b)). We are concerned that this intention is not subject to a time limit, and that as a result a necessary repair may be left undone for an unreasonable period. We recommend that the clause be amended so that the qualification applies only where the owners corporation is actually taking action.

Abandoned goods

We note clause 124 provides for the making, by regulation, of a scheme for dealing with goods abandoned on common property. We are concerned about how such a scheme would interrelate with the provisions of the Residential Tenancies Act 2010 (NSW) regarding goods left behind after termination of a tenancy. In particular, we are concerned that a scheme for the very swift disposal of goods may lead to landlords unlawfully leaving former tenants' goods on common property, to the detriment of former tenants and other residents.

Access to lots

The draft Bill does not address an emerging problem in strata management practice: the cancellation by agents of the owners corporation of occupiers' keycards for entry to the strata scheme. The effect is to prevent occupiers from accessing their lots. We understand that in some cases the agents of the owners corporation offer will offer to issue a new keycard and restore access, but only upon payment of a substantial fee. Redfern Legal Centre has received numerous complaints about this practice: please contact Redfern Legal Centre for further details about the cases.

It is our view that an occupier prevent from having access may have an action against the owners corporation in trespass, but they do not an appropriately swift and practical remedy under current strata legislation or the draft Bill.

We recommend that Part 6 include a provision to the following effect:

- The owners corporation (or its agent) must not change locks or security codes or otherwise prevent occupiers from having access to their lots, except in the event of emergency.
- Where the owners corporation (or its agent) changes locks or security codes or otherwise prevent an occupier from having access to their lot, the owners

corporation must, upon request of the occupier, immediately and without charge provide a key or code or otherwise restore access to the occupier.

Part 7 – By-laws

Restrictions on by-laws

We support the requirement that by-laws must not be harsh, unconscionable or oppressive (clause 137(1)), but are concerned that as the clause is presently drafted, a harsh, unconscionable or oppressive by-law may nonetheless be enforceable (contrast the other restrictions on by-laws at clause 137(2)-(6), according to which the relevant by-laws are not 'capable' of so operating, or are of no 'force or effect'). We recommend that clause 137(1) be amended to ensure that harsh, unconscionable or oppressive by-laws have no force or effect.

Applications for orders about by-laws

We note that applications may be made for orders relating to by-laws (particularly under clauses 146 and 148) only by persons 'entitled to vote on a motion to make a by-law or the lessor of a leasehold strata scheme'. This excludes tenants from seeking orders in relation to unlawful by-laws, even though by-laws apply to them both by direct operation of the legislation and through their tenancy agreements. We recommend that these provisions be amended to provide that tenants may also make applications for orders.