Statutory Review of the NSW Strata Schemes Laws

April, 2021

About the Tenants' Union of NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales.

The TAAS network assists more than 25,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice. The Tenants' Union NSW is a member of the National Association of Tenant Organisations (NATO), an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. We are also a member of the International Union of Tenants.

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About this submission

Almost half of all residents in strata schemes are renters, and yet renters have little to no say on the way in which the building their home is in is managed and governed. People renting in strata should have the opportunity to be engaged in discussion and participate in decisions about their housing and various aspects of community living.

This submission focuses on the experiences of renters in strata schemes. We are pleased to provide this submission identifying key ways in which previous reforms to strata law can be built on, and additional opportunities built in to ensure renters in strata can contribute their perspective and experience to help improve and appropriately influence important aspects of community living that directly impact on their lives. We particularly focus on:

- Compensation and protections for vulnerable lot owners and renters during the strata renewal process collective; and
- Tenant participation in strata governance, including by-laws, pets, and attendance and participation in strata committee meetings and decision-making processes.

The Tenants' Union of NSW' office is located on the unceded land of the Gadigal of the Eora Nation.

Recommendations

Recommendation 1

Provide lot owners who are older than 55 years of age, or whose lots are worth less than ten per cent below the median value for their locality, with the ability to veto a strata renewal plan

Recommendation 2

Require at section 170 that information about the cost and availability of alternative comparable housing be provided in the strata renewal plan, including information about: purchase prices; rents; rental vacancy rates; and numbers of social housing properties and wait times for dwellings in a similar location and of a similar size to the properties proposed for redevelopment.

Recommendation 3

Remove the ability for the strata committee, at any meeting or for the purpose of all meetings, to exclude a tenant representative when a strata renewal proposal under Part 10 of the *Strata Schemes Development Act 2015* or any related matter is being discussed.

Recommendation 4

Compensation for longer-term renters should cover moving costs, but also take into account any hardship experienced, as well as the costs to secure alternative housing over a period that better reflects the length of time the renters lived in the strata scheme.

Recommendation 5

Add as a policy objective informing the current statutory review, that residents should expect a tenure neutral strata experience.

Recommendation 6

Delete or significantly reduce the threshold qualification for a tenant representative at section 33(1).

Recommendation 7

Recognise any person with a residential tenancy agreement (defined in relation to section 13 of the *Residential Tenancies Act 2010*) for a lot as an 'eligible tenant' for the purposes of section 33 of the Act and Part 2, clause 7 of the regulation.

Recommendation 8

Allow a tenant representative to move a motion on any matter for which they are not

excluded by the Act or regulations.

Recommendation 9

Consider how new requirements around 'proxy voting' could help facilitate and preference longer term renters to be given voting proxies where a landlord or lot owner is unable or uninterested in participating in strata management.

Recommendation 10

Amend Part 1, section 11 of Schedule 1 to provide that a copy of the agenda for a meeting must, at least 7 days before the meeting is held be distributed to the letter boxes or under the door of each lot (where letterboxes are unavailable).

Recommendation 11

Provide at section 148 - 150 that a tenant can make an application to Tribunal to revoke, amend or invalidate a by-law in addition to those persons already entitled to make an application

Recommendation 12

Omit the implied covenant by the tenant of a lot or common property to comply with the by-laws for the strata scheme at section 135(2).

Recommendation 13

Restrict by-laws that unreasonably prohibit the keeping of pets.

Recommendation 14

Include restrictions on by-laws that prohibit smoking inside a lot; prohibit the drying of clothes on balconies; and discriminate between owners and tenants as classes of occupier.

Recommendation 15

When strata by-laws are changed provide for written notice of the change in by-laws to be distributed to the letter boxes or under the door of each lot in the strata scheme

Recommendation 16

Where a landlord has failed to provide the owners' corporation with a tenancy notice the tenant should be able to register themselves on the strata roll by providing a completed tenancy notice with evidence of an ongoing or current tenancy agreement.

STRATA SCHEMES DEVELOPMENT ACT 2015	
STRATA RENEWAL: COLLECTIVE SALE AND REDEVELOPMENT	
5	Are the key steps and safeguards imposed by the legislation appropriate, or are these too complex or costly? Should any of these steps be changed?
	The staged strata renewal process set out in the *Strata Schemes Development Act 2015* appropriately builds in steps to ensure all owners are provided with relevant information and time to consider and seek advice about the proposal, as well a number of key safeguards – in particular review by the Land and Environment Court, who must consider whether the final settlement will be just and equitable in all the circumstances. Given the possible serious implications for owners forced to sell, we believe the rigour and safeguards in the process must be maintained. That there has been low take-up of strata renewal applications, is not adequate justification for the removal of steps or safeguards, or a shortening of timeframes within the current process. These are necessary to ensure owners and residents can appropriately participate in the process, seek advice and assess how the proposal will impact them. Indeed, we recommend further information should be provided to ensure owners are able to properly assess a strata renewal process and how it may impact their ability to access appropriate housing (see question 6) and that additional protections be added. In submissions made during the initial development of the Strata Schemes Development Act we raised concerns for two particular groups of vulnerable residents who might be adversely impacted by the introduction of reforms to facilitate strata renewal by enabling redevelopment or collective sale in situations where not all, but at least 75% of owners agree. These are:

	1. Older, lower income owner occupiers 2. Older, lower income private renters Our concern for both groups is that if forced to leave – in the first case forced to sell, in the second as a result of eviction – they would in some cases, be unable to afford to move within the local area. In our submission to the NSW Government's *Ageing Well: Senior's Strategy* we write in some detail about the importance of 'ageing in place' – that is, the ability to grow older in an established and familiar community of local friends, families and support services such as medical assistance. We suggest an additional protection should be built in to strata renewal processes for existing lot owners who are older, or who own lots that are below median market values for their locality. Lot owners who are older than 55 years of age, or whose lots are worth less than ten per cent below the median value for their locality, should be able veto a strata renewal plan. A veto provision would not prevent the development of strata renewal plans, but provides more appropriate bargaining opportunities for vulnerable strata lot owners who otherwise in the current situation are simply required to sell by a majority decision. We note, and take this opportunity to highlight as we have done in previous submissions on strata law, that while building in basic safeguards and protections into the Strata renewal process is absolutely necessary, these will not, alone, address our concerns – especially for older, lower income private renters. These concerns must be considered and addressed through a NSW Housing Strategy that delivers housing that is affordable, including across and within all local areas - we suggest through planning laws that require the mandatory provision of adequate affordable housing, as well as significant investment in public and community housing.
Recommendation 1: Provide lot owners who are older than 55 years of age, or whose lots are worth less than ten per cent below the median value for their locality, with the ability to veto a strata renewal plan.	
	Is the information required to be included in the strata renewal plan enough, or should the legislation require more

6	information? If so, what information should be required for owners to properly assess a strata renewal proposal?
	Section 170 of the *Strata Schemes Development Act 2015* sets out the information that must be included in a strata renewal plan. At present this does not require that any information about the cost and availability of alternative comparable housing. We recommend that section 170 be amended to require this, including information about: purchase prices; rents; rental vacancy rates; and numbers of social housing properties and wait times for dwellings in a similar location and of a similar size to the properties proposed for redevelopment.
Recommendation 2: Require at section 170 that information about the cost and availability of alternative comparable housing be provided in the strata renewal plan, including information about: purchase prices; rents; rental vacancy rates; and numbers of social housing properties and wait times for dwellings in a similar location and of a similar size to the properties proposed for redevelopment	
10	Should tenants have more involvement in the renewal process, other than being notified that a strata renewal plan has been developed, for which court approval is being sought (section 178)?
	The strata renewal process may severely impact renters' security of tenure, so it is entirely appropriate that tenants should be notified that a strata renewal proposal is being considered by the owners' corporation prior to approval being sought. This could be implemented by an amendment to the form of the notice required by Clause 29 and Schedule 6, recommending that lot owners inform any tenants resident in their lot/s of the relevant decision. Clause 31 should be amended to require the owners' corporation to give an additional information sheet, addressing the significance of the relevant decision for affected tenants. Lot owners could then pass this information on to any tenants resident in their lot/s. This would allow lot owners to more effectively inform affected tenants of another major step towards renewal.

	Given the significant impact consideration of a proposal for renewal can have for renters we submit that where there is a tenant representative on the strata committee they should not be excluded from discussions or information about a strata renewal proposal. To ensure tenants can be consulted on and kept informed about proposed plans for strata renewal we recommend removal of the current exclusion at 33(4)(d).
Recommendation 3: Remove the ability for the strata committee, at any meeting or for the purpose of all meetings, to exclude a tenant representative when a strata renewal proposal under Part 10 of the *Strata Schemes Development Act 2015* or any related matter is being discussed.	
11	**Should the Development Act provide more guidance for treatment of leases in strata renewal proceedings?**
	Clauses 184 and 185 of the Act operate to transfer the rights and liabilities of an owners' corporation to purchasers or developers, and cancel the folios for the lots in a strata scheme. Notwithstanding provisions that will ensure the termination of a lease of a lot does not affect a right or remedy a person may have under the lease, nothing in section 184 and 185 prevents a residential tenancy agreement that is for a fixed term to be terminated by its operation, or otherwise requires a residential tenancy agreement to be terminated by giving notice to the tenant in accordance with the *Residential Tenancies Act 2010*. Where residential tenancy agreements in strata schemes are not terminated prior to an order relating to collective sale or redevelopment taking effect, they will terminate according to section 81(4)(a) of the *Residential Tenancies Act 2010* – by a person having superior title to that of the landlord becoming entitled to possession of the residential premises. These provisions may give rise to similar problems to those that lead to the introduction of 'mortgagee in possession' provisions in the residential tenancies legislation – that is, tenants being unexpectedly required to give vacant possession to purchasers or developers upon cancellation of folios for strata lots, lawfully, with minimal or no notice. Such a problem could be very easily avoided by amending section 122 of the *Residential Tenancies Act 2010* to make it apply to purchasers and developers

	in possession of a strata scheme that is subject to an order relating to collective sale or redevelopment, as well as to mortgagees in possession.
12	Is more guidance needed on how compensation applies to lot owners and their tenants? Who should be responsible for paying compensation to the tenant?
	At the present time there have been very few completed strata renewals under the Strata Schemes Development Act, so it is difficult for us to assess how well current arrangements providing for compensation for residential tenants are working. As we understand it the process leading to termination of the strata scheme under the strata renewal regime can take up to two years. We expect that in many cases tenants may have their tenancy agreements terminated via no grounds provisions under the Residential Tenancies Act 2010 before the process progresses far enough to face effective termination by a Land and Environment court order (sections 184 - 185 of the Act). Where a tenant does face termination while within an ongoing tenancy agreement because of strata renewal, they may be eligible for compensation. We submit that for longer term renters in the strata scheme – those who have been renting for over 12 months in any lot in the scheme, it would be appropriate to provide compensation beyond the current claim that can be made for reasonable costs of relocation and securing alternative housing for a limited period. Compensation for these longer-term renters should consider the length of their residence in the strata scheme. On top of moving costs compensation should take into account hardship, as well as the costs of higher rent paid for alternative housing over an extended period that better reflects the length of time the renters had been living in the strata scheme.
Recommendation 4: Compensation for longer-term renters should cover moving costs, but also take into account any hardship experienced, as well as the costs to secure alternative housing over a period that better reflects the length of time the renters lived in the strata scheme.	

STRATA SCHEMES MANAGEMENT ACT 2015	
41	Do the objects of the Act remain appropriate? Should further policy objectives such as those that guided the 2015 reforms be added to section 3 of the Management Act?
	The 10 objectives the strata reforms set out to fulfil are together admirable and suitably ambitious. The first four in particular speak to the importance of building community, and empowering people who live in strata communities to participate in management and decision making in and about their strata community. However, while the number of people who rent their homes in strata schemes continues to grow, as does the proportion of renters (vis a vis owner occupiers) residing in strata schemes, the 2015 strata reforms failed to equally deliver for renters on the promise set out in the 10 objectives. Renters in strata should not expect or accept a 'second class' strata experience. Renters in strata should feel that the strata community is their community too. Opportunities for meaningful participation, and a positive and engaging experience of strata management and decision making encourages renters to stay for the longer term, and invest in the strata building and community. Setting an expectation of a tenure neutral strata experience as an explicit policy objective for the current review of the Act usefully brings into focus renters' experience of the Act and its failure, so far, to deliver on improved opportunities for tenant participation and engagement. The recommendations that follow in the rest of this submission address how the Act could be improved with this lens or expectation in mind.
Recommendation 5: Add as a policy objective that residents should expect a tenure neutral strata experience; that is renters should not have to accept a 'second class' experience of living in a strata scheme.	
54	How well is tenant participation working? How could tenant participation be improved?

	We support providing for tenant representation and meaningful tenant participation on strata committees. Reforms introduced to strata through the *Strata Schemes Management Act 2015* allowed tenants to participate in the management of strata schemes for the first time, facilitating easier access to owners corporations and allowing for attendance at some meetings. *50% threshold requirement for tenant representative* In strata schemes where at least half (50%) or more residents are renters they are able to nominate a tenant representative for appointment on an owners corporation's strata committee. The current 50% threshold or more renters before a representative can be nominated is too high. A tenant representative provides the renters' voice and perspective to a strata committee, and this is of value even – perhaps especially - where renters are in the minority in the scheme. We recommend deleting the threshold qualification at section 33(1). If a threshold is retained, we recommend significantly reducing this. *Nomination of a tenant representative* Section 33 of the Act, and Part 2(7) of the Regulation provide that only tenants that have been notified in a tenancy notice given in Accordance with the Act are eligible to participate in the nomination process or act as tenant representative. While the Act requires lot owners to notify tenants to the Owners' Corporation, we are aware many fail to do so – despite the penalties in place for failure to notify, and perhaps because these are rarely applied (discussed further below). A tenant has no way to compel notification, and where there has been a failure to notify they are excluded. We suggest the Act be amended to provide that any person with a residential tenancy agreement (defined in relation to section 13 of the Residential Tenancies Act 2010) for a lot be recognised as an 'eligible tenant' at section 33 of the Act and in the regulation. To allow adequate notification of a meeting for tenants who are not notified to the Owners' Corporation we suggest the convenor be required to deliver written notice to the letter boxes or under the door of each lot (where letterboxes are unavailable) in a scheme, *and* where there is a noticeboard on common property maintained under the by-laws that a copy of the notice may be prominently displayed. This would amend the current requirements to remove the current options

	at 3(a) with the effect of expanding the requirement for notification to all lots, and provide – where possible – an additional (rather than alternate) opportunity for notification. *Providing opportunity for more meaningful participation* While the introduction of a tenant representative in 2015 was a clear step forward, the tenant representative has no substantive power in the strata committee. They can attend and speak on occasion, but are prevented from voting, holding office or acting as an office-bearer, or being counted towards a quorum. They can also be excluded from strata committee meetings during discussions of a financial concern or regarding strata renewal. The Tenants' Union would like to see the 2015 reforms built on and extended. While the reforms sought to include tenants as representatives on committees, their lack of substantive power, in particular their inability to vote – even as a tenant representative – diminishes their ability to engage and meaningfully represent tenants' interests. This, in part, is likely why the reforms failed to deliver on increased engagement by tenants in strata committees. Where tenants have been involved in committees as representatives, the feedback we have received indicates the inability to meaningfully participate in meetings and key decision-making processes leads to much frustration, and often subsequent disengagement. Schedule 2 of the Act sets out meeting procedures for strata committees. Clause 14 prohibits a committee member moving a motion they cannot themselves vote on, which excludes tenant representatives from moving any motion at all. While a tenant representative may offer perspective in relation to the motions and concerns of others, it limits their ability to convey tenant sentiment or preference to the committee as directly as possible. We recommend an amendment to allow a tenant representative to move a motion on any matter for which they are not excluded. This would allow a more involved and effective role for tenant representatives. *Proxy votes* When the Strata Schemes Management Act was in development we proposed participation of tenants with established, ongoing interests in strata schemes could be facilitated through provisions relating to the appointment of proxies. We

	suggested placing a minimum requirement on a lot owner's participation in the management of a strata scheme, such as attendance at annual general meetings. Owners who fail to two attend two consecutive annual general meetings could be required to attend the following meeting or be directed to appoint a proxy. Where the lot has been continuously occupied for 12 months or more, a preference could be given to asking the tenant to accept that appointment. Tenants' proxies could be limited in such ways as they are already at clause 21(3) of schedule 1, at the discretion of the lot owner. *Notice for general meetings* At present if the lot owners has provided a 'tenancy notice' the owners' corporation are required to provide tenants with a copy of the agenda for all general meetings 7 days before the meeting is held. However, as we discuss in question x, many lot owners fail to provide information about their tenant. To ensure tenants are better able to participate in their strata community the many problems with tenant notification need to be addressed. Another way to encourage tenants' attendance would be to ensure the agenda for all general meetings is provided to all residents by distributing it in the letter boxes or under the door of each lot (where letterboxes are unavailable).

Recommendation 6: Delete or significantly reduce the threshold qualification for a tenant representative at section 33(1).

Recommendation 7: Recognise any person with a residential tenancy agreement (defined in relation to section 13 of the *Residential Tenancies Act 2010*) for a lot as an 'eligible tenant' for the purposes of section 33 of the Act and Part 2, clause 7 of the regulation.

Recommendation 8: Allow a tenant representative to move a motion on any matter for which they are not excluded by the Act or regulations.

Recommendation 9: Consider how new requirements around 'proxy voting' could help facilitate and preference longer term renters to be given voting proxies where a landlord or lot owner is unable or uninterested in participating in strata management.

Recommendation 10: Amend Part 1, section 11 of Schedule 1 to provide that a copy of the agenda for a meeting must, at least 7

days before the meeting is held be distributed to the letter boxes or under the door of each lot (where letterboxes are unavailable).	
BY-LAWS	
82	While owners' corporations can make their own by-laws for their strata scheme, there are restrictions on the types of by-laws that can be made. What do you think about prohibiting 'unreasonable' by-laws?
	We believe current restrictions should be maintained and enhanced. We support introducing a prohibition or restriction on 'unreasonable' by-laws, as this potentially gives more focus to how the by-laws manage or might impact on the lives and experience of all residents living in strata rather than the emphasis being given to how they impact the ability of lot owners to exercise existing rights. This would provide greater scope for by-laws that unfairly or unequally impacted on renters to be challenged. We note, however, that without changes to address the exclusion of tenants from seeking orders in relation to unlawful by-laws, many residents of strata schemes would still not be able to challenge 'unreasonable' by-laws. See further discussion on this point below.
83	If the law was changed to allow tenants to be able to seek orders challenging by-laws on the basis they are harsh, unconscionable or oppressive, how would this work in your strata scheme?
	Tenants, who comprise half the population of strata schemes and who are subject to strata scheme by-laws, have no say in the making of those by-laws or their enforcement. By-laws apply equally to all residents within a strata scheme – whether they own the strata property they live in, or are renting it. In fact, renters are often held to a higher standard and in practice often more likely to be subject to enforcement. Renters should be given greater opportunity to provide input and feedback on by-laws, and the opportunity to change

	(modify) or challenge by-laws. We believe the substance of strata by-laws, and residents' knowledge of, and voluntary compliance with, by-laws will be improved if all residents have the opportunity for participating in establishing and amending by-laws, as well as provided with the ability to challenge them. Currently renters in strata schemes must abide by all strata by-laws, but do not have the same power as owner-occupiers in strata to challenge 'unjust or 'harsh, unconscionable or oppressive' by-laws. They are excluded (under sections 146, 148 and 150 of the Act) 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. A renter must rely on their landlord to raise the problem and challenge an unjust by-law on their behalf. Many landlords are unwilling to do so. Giving tenants the ability to challenge by-laws that are harsh, unconscionable or oppressive or otherwise restricted could be achieved simply by providing at section 148 – 150, that tenants (appropriately defined, see our discussion above at Question 54) can apply for orders in addition to those persons already entitled to make an application.
Recommendation 11: Provide at section 148 - 150 that a tenant can make an application to Tribunal to revoke, amend or invalidate a by-law in addition to those persons already entitled to make an application	
84	What is your experience with the enforcement of by-laws?
	It is very difficult to track enforcement of by-laws, especially where this does not progress to the Tribunal. However, it is our view that tenants are at a distinct disadvantage in relation to the enforcement process, and may be more likely than owner occupiers to have formal enforcement action taken against them. Much of the Strata Schemes Management Act addresses how to ensure lot owners feel a sense of ownership and engagement with their strata community and its processes of governance. Where there are neighbour disputes and or disagreements about aspects of community living, including where one resident feels another is breaching by-laws this sense of ownership and engagement puts residents who are owner occupiers in a better position to hold each other

	accountable, and often facilitates a more informal resolution of disputes. The practical and legal exclusions tenants face puts them at a disadvantage in this regard. Moreoever, where enforcement action is commenced a tenant not only risks a penalty (fine) if found to be in breach of a bylaw, but also is at risk of eviction. For tenants, by-laws form a term of their agreement with the landlord. Breaches of the by-laws can be treated by a landlord as breaches of their agreement. When taking enforcement action against tenants a landlord is often notified – or notification is threatened, because this immediately places significant additional pressure on a tenant to comply with a by-law. We believe one way to address this would be to remove the implied covenant at section 135(2) for a tenant to comply with the by-laws. This would still allow enforcement action to be taken against a tenant, but would remove the immediate threat of eviction unless the tenants' behaviour constituted a breach of their residential tenancy agreement. More broadly providing tenants with greater say and avenues for engagement and participation within their strata community would make the process fairer, and as suggested above, improve the substance of by-laws, and tenant's knowledge of, and voluntary compliance with them.
Recommendation 12: Omit the implied covenant by the tenant of a lot or common property to comply with the by-laws for the strata scheme at section 135(2) of the Act.	
85	Should by-laws made under old strata laws be compliant with the current law? Why, or why not?
	By-laws made under old strata laws should now comply with the current law. The Strata Schemes Management Act usefully committed strata schemes to review older by-laws by 2017. Laws change, as does the make-up of the scheme and/or the circumstances of residents and/or lot owners, and we believe the owners' corporation should regularly review by-laws to consider whether they remain relevant and are working as hoped.

	When the statutory review of the Act is completed there will have been a number of opportunities and forums encouraging lively discussion and debate about matters that might be appropriately included in strata by-laws, and what limits or restrictions are appropriate. Requiring older by-laws to be compliant with current law will make it less complex and easier to consistently apply but would also ensure that matters covered by-laws are kept in line with community standards and expectations.
PETS AND ASSISTANCE ANIMALS BY-LAWS	
88	Should owners corporations be allowed to request proof that an animal is an assistance animal?
89	Should the Management Act outline what kinds of evidence owners corporations can request as part of proving an animal is an assistance animal? If so, what kinds of information should be taken as proof?
	Owners' corporations should only be allowed to request proof that an animal is an assistance animal in circumstances where the keeping of an animal would otherwise be restricted on the basis it is unreasonable. If proof that an animal is an assistance animal is required, we believe the resident should be given an option for providing evidence that is not overly onerous and does not require them to share personal and sensitive information with the committee, e.g. evidence that the resident has registered their animal as an assistance animal with local government (no fee is applied during this process) should be considered sufficient. We encourage Fair Trading to further consult with disability advocates and the sector on the question of the appropriateness of owners' corporations requesting proof, and what evidence or proof might be requested.
90	The NSW Court of Appeal found in 2020, that a by-law imposing a blanket ban on pets was oppressive and therefore invalid under the laws. Should the law allow owners corporations to completely ban pets from a strata scheme? Please tell us why

	We do not believe that the law should allow owners corporations to impose a blanket ban on pets from a strata scheme. Around 63% of Australian households have a pet. Pets have consistently been shown to be of benefit to the mental, physical and social health of owners. Pet ownership can have particular meaning for older people and people with disability, given the role companion animals often play in connecting people with community and place especially where they otherwise may find themselves isolated. While pets are a vital part of our communities, many residents in strata communities, as well as renters in the private rental sector generally, struggle to secure pet friendly rental housing. Particularly upsetting, research clearly indicates significant numbers of people experiencing domestic and family violence (DFV) delay leaving a situation of violence because they aren't able to secure alternative housing that allows them to bring their pets with them. The Tenants' Union welcomed the October 2020 unanimous decision of the NSW Supreme Court of Appeal that found blanket pet bans in strata are in breach because a blanket ban on pets is "harsh, unconscionable or oppressive". Although there remains uncertainty about how the decision might be applied, overall we believe it makes it easier for people living in strata communities to share their home with their animals. In this way it should mean a significant number of additional rental properties become pet-friendly. It is worth noting, however, that renters in strata are at a double disadvantage when it comes to finding housing that accommodates their pets. First, they must follow any restrictions or requirements set out in strata by-laws in relation to pets, but they also must find a landlord who is happy to rent to someone with pets. While there is no term prohibiting renters from keeping a pet or requiring the landlord's consent in the *Residential Tenancies Act 2010*, many landlords include a clause in the tenancy agreement restricting pets as a matter of course. Addressing barriers to pet ownership that exist in current strata laws in only the first step to making it easier for renters in strata to have pets. *Options for consideration* The Discussion Paper sets out four possible options for ways forward regarding pets and strata. We do not support either

	'Option 1: status quo' or 'Option 3: Blanket pet bans are permitted'. The first would rely on the Court of Appeal's decision to guide owners' corporation on the invalid nature of blanket pet bans. This potentially leaves it up to pet owners living in strata communities that significantly restrict the keeping of animals to challenge the validity of their by-laws (something renters currently are unable to do). There is still much uncertainty about how the decision will apply to other restrictive pet by-laws. Option 3 unacceptably provides an exception to an important protection against oppressive by-laws, and is both out of line with the original intention of the Act to make the laws more 'pet friendly', and out of touch with broader community sentiment. We recommend implementation of 'Option 2: By-laws cannot unreasonably prohibit the keeping of pets'. Further development of this option might contemplate how best to provide guidance on what might be considered 'unreasonable'. Council regulations and animal welfare regulations already apply; we suggest these provide an appropriate, relevant reference on the question of reasonableness. While we see understand 'Option 4' would provide greater clarity, and would not oppose an *additional* restriction on by-laws that restrict use of a lot on a basis not related to impact on other owners, we do not believe it adequately allows for the stronger limits on restrictions that are required, and does not address calls from community, including many strata residents, to encourage strata communities to become more pet-friendly communities.
Recommendation 13: Restrict by-laws that unreasonably prohibit the keeping of pets.	
OTHER SPECIFIC BY-LAW MAKING POWERS	
91	Do the existing restrictions on the power to make by-laws require any changes? If so, what changes and why?
	We would like to suggest the following additional explicit restrictions on by-laws:

	Smoking: We understand that tobacco smoke damages the health of smokers and those who inhale it second-hand, and that the odour of smoke and the sight cigarette-butt litter in common areas and public places is unpleasant. However, it is our view that as long as smoking remains a legal activity, by-laws that prohibit smoking inside a lot unreasonably interfere with persons' private engagement in a legal activity. We submit that any question of damage or nuisance from a person's smoking within a lot should be dealt with under a generally stated by-law against nuisance, or under the law of tort. We submit that by-laws should only be allowed to restrict smoking on common property, and in other respects may restrict smoking only to the extent that it causes damage or nuisance. We are comfortable with the model by-laws provided in Schedule 3, at 9. Smoke Penetration. *The drying of clothes:* The Strata Schemes Management Regulation appropriately recognises the financial and environmental benefits of airdrying clothes with a model by-law that explicitly permits the sun drying of clothes for a reasonable time (model by-law 14 Hanging out of washing). However, not all strata schemes are required to adopt this model by-law, and some continue to have by-laws explicitly prohibiting the drying of clothes on balconies. A restriction on by-laws related to the drying of clothes would be in line with the NSW Government's commitment to ensuring basic energy efficiency standards in residential buildings. Where strata schemes are concerned about the sun drying of clothes on balconies such a restriction might encourage them to install a or additional communal drying space on common property as a more appropriate way to address concerns about 'unsightly' laundry. *Discrimination against tenants:* By-laws cannot be unjust – that is, they must not be harsh, unconscionable or oppressive. If challenged at the Tribunal a discriminatory by-law in some situations Tribunal may find they are unjust and therefore invalid. However, tenants are currently unable to challenge by-laws. In addition, it is unclear that Tribunal would determine discrimination against tenants to be 'harsh, unconscionable or oppressive'. With the growing numbers of renters living in strata communities, including a significant number of long-term renters in strata, strata law should give explicit guidance that by-laws must not discriminate between owners and tenants as classes of occupier.
Recommendation 14: Include restrictions on by-laws that prohibit smoking inside a lot; prohibit the drying of clothes on balconies;	

and discriminate between owners and tenants as classes of occupier.	
96	A landlord must provide a tenant with a copy of the by-laws and the strata management statement if there is one. How is this working? Please describe and suggest what changes might be needed.
	In general, we believe this is working quite well. Most tenants are provided with these documents (a copy of the by-laws and the strata management statement) as an attachment to their lease. However, the process falls down when by-laws are changed. While the Act provides that tenants must be notified of any change in by-laws, in practice many are not. This is likely a result of the landlord's failure to complete a tenancy notice and ensure the tenant is registered on the strata roll. As well as addressing issues with tenant notification, we recommend that if strata by-laws are changed written notice of the change in by-laws should be distributed to the letter boxes or under the door of each lot (where letterboxes are unavailable). Consideration might also be given to how the existing NSW Strata Community Hub portal might be further developed, with tenants given access via the hub to appropriate information including current strata by-laws.
Recommendation 15: When strata by-laws are changed provide for written notice of the change in by-laws to be distributed to the letter boxes or under the door of each lot in the strata scheme	
97	If a lot owner leases their apartment to tenants, the lot owner must provide the owners corporation with information about the tenants living in their lot within 14 days. Is this notice working? Could this be improved? If so, how?
Currently a landlord is required to complete a tenancy notice and provide this to the owners' corporation within 14 days of signing a new lease. The tenant is then registered on the strata roll, and can then receive relevant notification of meetings and communication, attend meetings, and have their lot counted towards the threshold to ensure tenant representation on the strata committee.	

This tenant notification process is not working adequately. Despite the penalties that can apply, a significant are not complying with this requirement. Currently a tenant is not able to further compel their landlord to provide tenant notification to the owners' corporation. We suggest the process for registering a tenant on the strata roll could be improved by allowing the tenant to provide a completed tenancy notice with evidence of an ongoing or current tenancy agreement over a lot where landlords have failed to comply with the requirement. Alternatively or in addition, Fair Trading should consider and explore how information about current tenancies held by the Rental Bond Board might be drawn on to update strata rolls. This could simplify the process for registering a new tenant, and remove some of the current barriers to updating rolls.	
Recommendation 16: Where a landlord has failed to provide the owners' corporation with a tenancy notice the tenant should be able to register themselves on the strata roll by providing a completed tenancy notice with evidence of an ongoing or current tenancy agreement.	
UTILITY SUPPLY CONTRACTS	
124 125	The law places time limits on contracts for electricity, gas or other utilities to ensure strata schemes aren't locked into long-term contracts. Are any changes needed? If so, what changes and why? Embedded electricity networks are privately owned and managed networks that often supply all premises within a specific area or building. Embedded networks generally buy electricity in bulk and then on-sell it to customers inside their network and are currently exempt from the limits on the duration of the contract. Should embedded networks still be excluded from time limits on contracts? If not, what transitional arrangements should be included?
	Time limits on utility supply contracts are an appropriate protection for consumers to ensure providers continue to deliver in terms of competitive price and service standards. While we understand why electricity embedded networks were exempted

	when the Strata Schemes Management Act commenced, it would now be appropriate to remove this exemption. Consumers living in premises with embedded electricity networks and/or other utility contracts are often at a disadvantage when compared to other consumers as they are not able to access competitive prices for energy or other utilities. To some extent this is mitigated for owner occupiers who are able to participate in strata decision making, and so can have input into the decision about the provider they contract to and whether or not to renew a contract. However, renters in strata buildings do not have this opportunity and are doubly disadvantaged: locked into a possibly uncompetitive power arrangement, with no opportunity to contribute to the decision-making regarding their provider and renewal of a contract. Renters should be provided greater opportunity to be involved, if not in decision making at least in the conversation and consultation about reviewing and considering entering into a new utility contract. They should not be excluded on the basis these are matters of a financial nature. This also requires improving the various ways in which tenants are encouraged to participate in their strata communities – see discussion above.
RESOLUTION OF DISPUTES	
140	Do you have any feedback on NSW Fair Trading's role and functions with strata schemes, including any suggestions for improvement?
We are aware Fair Trading provides a free mediation service to encourage informal dispute resolution to assist people living in strata. We believe this is a valuable service, and one that facilitates open discussion and potentially more beneficial outcomes and more lasting resolution. We encourage the continued provision and resourcing of the mediation service.	