



COTA NSW

Submission to the Department of Fair Trading

Comment on the Strata Scheme Development Bill 2015 and the Strata Scheme Management Bill 2015 exposure drafts

Strata Scheme Development Bill 2015 - Section 10

Of course the most significant change in this legislation is the reduction from 100% to 75% of owners in a strata scheme required to agree to collectively terminate or renew a strata scheme. The intent of the change is clear – to facilitate the dissolution of ageing strata schemes to make way for new development. COTA NSW broadly supports the move that will help facilitate urban renewal, but has concerns about the downstream consequences for those ‘dissenting’ strata owners and tenants who are displaced from homes as a result of the collective sale of a strata building.

For many current owners in strata schemes, the collective sale of an ageing strata development may provide the opportunity for a move to a newer, more appropriate form of housing. For others however, it will inevitably create worry, inconvenience and possible financial difficulties, although the legislation claims broadly that ‘dissenting’ owners will be adequately compensated. From our consultations we know it is often challenging for older people to find alternative housing that suits their needs in the same area and we know there are always hidden costs and expenses with any relocation, particularly if multiple moves are required. We also know from studies that people become more reluctant to move as they age and their home becomes increasingly important to their sense of security and wellbeing.

While we understand that under the new legislation it is necessary for an owners corporation to communicate any proposed changes to a strata scheme to every owner, some owners may be surprised and distressed to know that under the new legislation, owners in an existing strata scheme can choose to opt into the 75% agreement to dissolve a strata scheme, and that only 51% need to agree to opt in. This is a concern for those who bought into a scheme under one set of conditions and now find they could be subject to another set of conditions. COTA NSW is concerned with the need for only a 51% opt in agreement and believe that there should be a requirement for a 75% agreement to the opt-in arrangement and no less.

There are another group of people who are affected by this prospective legislation – tenants living in ageing strata developments. COTA NSW is concerned that many tenants displaced from their homes will find it difficult to find similar accommodation in the same area at the same price. While we understand this is not directly a Department of Fair Trading concern, it certainly should be a concern of the NSW Government. While we welcome the Department’s commitment to ensuring measures are put in place to help those older owners who may be disadvantaged and inconvenienced by the dissolution of a strata scheme, there are broader housing issues that need to be addressed as well, and immediate concerns about displaced tenants that should be addressed as part of any redevelopment discussions. This proposed legislation cannot and should not be considered in isolation.

Strata Scheme Management Bill 2015

Part 5 Financial management

Capital works fund and administrative fund balance disclosure

COTA NSW supports the new legislation’s requirement for an owner’s corporation to establish both an administrative fund and a capital works fund and we further support the establishment of an a 10 year capital work fund plan for anticipated major expenditure. These measures will help ensure that future strata developments have sufficient future capital to meet ongoing maintenance and repair needs.

For existing, ageing strata schemes, meeting the cost of ongoing maintenance and capital works can be a challenge for older people on fixed incomes. COTA NSW has heard from many older strata scheme owners who are faced with insurmountable bills for maintenance of common areas that they often struggle to pay for, particularly if an item such as a lift replacement is needed. This is not only because the building itself is old and in need of extensive repairs, but also because in many cases sufficient money has been collected from the owners and set aside to cover anticipated repairs. This issue has been addressed somewhat in the new legislation, but will continue to be an issue in many older strata developments.

COTA NSW recommends that the legislation should require the owners corporation make available to prospective buyers information on balances in both the administrative and capital works funds as well the strata development’s 10 year capital works plan. This should be provided as part of a disclosure statement (see below).

Similarly to the new retirement village requirements, COTA NSW recommends a mandatory standardised strata unit purchase contract and accompanying disclosure documents be provided to any prospective buyer of a strata titled development. Prospective buyers should be encouraged to carefully consider the information provided in the disclosure documents and the standard contract before considering a purchase.

1. A mandatory Standardised Contract

The standard contract should clearly describe a prospective buyer’s ownership rights and obligations in a clear, standardised format. It should clearly refer to Section 10 etc. of the legislation about the bulk sale of a strata development and clearly state any ongoing expenses, such as monthly management fees etc. (this may already be in the strata contract – I don’t know)

2. General Inquiry document

A general inquiry document should accompany the contract and provide the prospective buyer with information they should know about buying into a strata title development. This should be given to the prospective buyer with the contract. The document should explain to a prospective buyer what when you buy into a strata community you have an ongoing obligation to pay for the maintenance and repairs of the total building, not just for your own unit. The general inquiry document will also prompt the prospective owner to ask certain questions when considering the disclosure statement, such as whether the sinking fund is adequate and if it covers contingency costs in the future.

3. The Disclosure Statement

The disclosure statement would be specific to the particular development and be provided by the owners corporation at the buyers request. It would give the prospective buyer specific financial information about the balance in both the administrative and capital funds and the 10 year capital works plan.

Planning and affordable housing

Everyone acknowledges that one of the broad objectives of this legislation is to encourage new development. COTA NSW believes that that any new development should meet certain criteria in order to address both long term planning and development issues and broader concerns around housing affordability. COTA NSW disagrees with the Sydney Business Chamber that claim that the new legislation will make it “easier to develop high density affordable housing along the city’s keep corridors.” While it certainly will provide the opportunity for new housing supply, there is no guarantee that new development will be affordable or be built to standards that ensure that the new housing will be adaptable, accessible and affordable. Although these discussions sit outside the scope of the specific legislation, it is clear that the major intent of the Development Bill is to stimulate urban redevelopment. The type of new development that it creates should be debated and discussed, as issues of affordable and liveability as related to the legislation.

- New buildings should be required to meet current liveable housing design guidelines
- Developers should be required to set aside 10% of a strata development for affordable housing (see City of Boulder ...)

As many units in strata buildings are rented and in many cases these building may be providing affordable housing for tenants, if the legislation has the consequence of strata being dissolved for redevelopment, then many of the people who were previously tenanted in these buildings will be displaced and looking for similarly priced accommodation, often in the same area. Support should be made available to those tenants who are displaced from new developments.

An ‘advocacy’ service

We understand the specifics of the ‘advocacy’ service are not in either Bill, but believe that it is critical that there is an information service that provides both advice, information and support to both displaced ‘dissenting’ owners and tenants. We are not certain that the term ‘advocacy’ is the correct one in this instance, as we believe there is a need for a service to support, advice and provide information and referral services to those people who have been clearly displaced by the strata redevelopment. This service should support those who will be inevitably displaced and need help looking at their future housing options because of their displacement.