

# SHELTER NSW SUBMISSION

## Draft *Strata Schemes Development Bill* 2014 (NSW) – Part 10 Strata Renewal Process for Freehold Strata Schemes

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*Comments to Land and Property Information*

### **Introduction**

Shelter NSW is the peak non-government organisation for representing the interests of lower-income households in the NSW housing system. Our objectives include: to strive for ...a just and equitable distribution of, and access to, housing resources in NSW.

We appreciate the opportunity to comment on the Part 10 of the draft *Strata Schemes Development Bill* 2014 (NSW) (the draft Bill). We should note, however, that we received the draft of Part 10 the day before responses were due; and while we welcome the additional time provided, this will still only allow us four working days.

Part 10 deals with the proposed 'strata renewal process'. This was the focus of our earlier submission<sup>1</sup> in response to the 'Strata and Community Title Law Reform Discussion Paper' (Office of Fair Trading, September 2012). We are therefore disappointed to find that the draft Bill contains no measures to respond to the very serious concerns expressed in that submission.

We therefore continue to have very serious concerns about the 'strata renewal process' in the current draft of Part 10.

The heart of our concern is that the draft makes no provision to protect the significant proportion of strata owners who have few assets other than the strata dwelling they occupy, who may be compelled to sell with little chance of purchasing a new dwelling for the price they received and who, in addition, will be required to pay stamp duty to replace their home.

A significant proportion of such owner-occupiers<sup>2</sup> will be older people, for whom relocation to a new area that may be affordable will mean the loss of the essential supports (both formal and informal) on which their ability to age in place depends.

A number will be forced to rent because of the inability to purchase, and with the declining value of their capital and rising house prices, will be renters for the rest of their housing career. For older people, with low incomes, renting in retirement is a strong predictor of poverty, and in some cases will lead to homelessness.

We showed in our earlier submission, that where the hurdle for strata dissolution has been lowered in other parts of the world, this leads to a serious loss of affordable housing<sup>3</sup>.

These are serious individual and structural problems which will arise if the strata renewal process outlined in Part 10 are implemented without additional safeguards. We find it almost incredible that such safeguards have not been included in the draft Bill, and recommend in the strongest possible terms that it is revised to include them.

Apart from a general failure to address these fundamental risks, the Bill is deficient in a number of other ways:

- It does not provide safeguards to prevent hardship
- There are no provisions for adequate compensation, such that displaced owners could buy into alternative accommodation *in the same locality*.
- The provisions relating to applications for court orders giving effect to strata renewal plans are seriously deficient
- The process does not ensure that consent, where it is given, is properly informed by all the relevant information.
- Law reform for strata renewal should be accompanied by a State affordable housing policy that delivers more and better housing

However, because of the seriousness of the potential impact of the provisions in Part 10, and the lack of public consultation on the best way to mitigate these, we recommend that the threshold of unanimous consent be maintained until such consultations have been undertaken, the likely impact and the best protections identified. It is essential that a social impact study be undertaken to identify the likely adverse consequences for minority owners, and the results used to inform consultation on necessary protections.

In the absence of this, we discuss a number of initial safeguards that could be put in place to help mitigate the risks to low income and vulnerable strata owners:

### **Exempting existing schemes**

In effect, the Bill retrospectively changes the basis on which all existing owners in strata schemes entered the arrangement. Many would not have bought into a strata scheme had they known that the protection against being forced to sell at considerable disadvantage would be removed. Others may have chosen other forms of title. In the future, many more people may avoid strata schemes for long term housing because of the high level of risk associated with the tenure under this Bill – thus undermining the Government objective of increased urban consolidation. Finally, for small schemes, the 75% hurdle will be far easier for a proponent to achieve, thus removing even then modest levels of protection afforded by this hurdle in larger schemes.

For this reason, we recommend that the Bill not be applied to existing schemes; but that if it does, schemes of under 8 owners be exempt.

### **Information for residents on the cost of alternate housing**

While owners will receive information on the price they may receive on the sale or redevelopment of their scheme, as provided for by Clause 170 of the draft Bill, there is no requirement for them to receive information on the cost of alternative accommodation. And yet, for many such owners, this may be the first time for many years that they have been engaged in the housing market, about which their knowledge may be very limited.

We recommend that an important protection to ensure that residents can make informed decisions be that, under an amended clause 170, a strata renewal plan be required to include information on:

- purchase prices in the local area for similar size dwellings; and
- local rents and vacancy rates.

### **Adequate compensation**

There is also no requirement that the price offered to owners for the sale or redevelopment of their scheme is related to the cost of similar alternative accommodation in the local area. Clause 184 (c) simply requires the court to be satisfied that the price offered is not less than the market value. While we recognise that the market value of the dwelling currently occupied may be less than the cost of any alternative accommodation in the area, we submit that any such price above the market valuation will be covered by the value uplift received by the developer.

### **Opportunity for independent advice**

The risks for many low-income or vulnerable owners of making a decision about whether or not to agree to a proposed strata renewal plan are very high.

However, most such owners will not have access to legal advice or other independent advice.

We therefore recommend that clause 170 be amended to require that advice to owners to seek independent advice about the strata renewal plan and housing options be made as part of a strata renewal plan; and to make this possible, funding be made available to relevant community organisations to provide such advice, free of charge, to vulnerable owners.

### **Objections or lack of objections to the court on an application**

The ability to make an objection to the court is the last opportunity for minority owners to avoid unreasonable hardship resulting from a majority decision to proceed with a strata renewal plan.

However, there is a very real risk that vulnerable owners may fail to make objections to the court on an application to give effect to a strata renewal plan, because of their vulnerability or other matters such as disability.

Clause 184 sets out the matters that the court must consider in making an order to give effect to a strata renewal plan. But these do not include the adequacy of processes to ensure that vulnerable owners have received sufficient support to enable them to object if they wish to do so. We recommend that Clause 184 be amended to include such consideration.

But perhaps more important, if there have been objections, Clause 185 provides for a process of mediation that may result in a change to the strata renewal plan. But if it does not do so, the court's consideration does not go beyond the matters specified in clause 184. None of these go to the hardship that may be experienced by the dissenting owners – even if this is the substance of the objection to the court.

We recommend that clause be amended to enable the court to consider the substance of an objection; and in particular, to enable it to decline to give an order if it is satisfied that the hardship to the dissenting owners makes this appropriate.

### **Further comments**

As noted above, the above comments have been constrained by the available timeframe for comments. As a result, they are preliminary and we reserve our right to make further comments.

## Notes

<sup>1</sup> Shelter NSW, *Strata title law reform: Submission to the Strata and Community Scheme Review*, Sydney, November 2012

<sup>2</sup> 29,000 older, low income strata owner-occupiers in the inner and middle rings, and 14,000 older, low income renters.

<sup>3</sup> Such as Singapore. This was discussed in C Sherry, 'Law must lock out the condo-raiders', *Sydney Morning Herald*, 29 September 2012.