

6 March 2020

Kingsford Legal Centre

Submission to the Statutory Review of NSW Strata Schemes Laws

We welcome the opportunity to make a submission to the Statutory Review of the NSW Strata Schemes Laws. Our submission addresses questions 87, 88, 89 and 90 (pets and assistance animal by-laws) and question 122 (sustainability infrastructure in strata schemes).

We consent to this submission being published. For all case studies in this submission, names and

Our recommendations are as follows:

1. Recommendation 1: The NSW Government should amend section 139 of the Strata Schemes Management Act 2015

should be as straightforward to access as possible, not require any information about the person's specific medical condition and be in accordance with section

alleviate its owner's mental disabilities may not be as readily apparent to other people as a person who is blind with a guide dog. There is often a general misconception that an assistance animal must be a dog, and that the disability must be a physical one.¹

Whilst section 139(5) of the Management Act expressly restricts by-laws that would prevent the keeping of an assistance animal in line with the DDA, section 139(6) allows for by-laws requiring a person to provide evidence that an animal is an assistance animal. Under section 54A(5) of the DDA, it is not unlawful for a person to request that the person

There is a lack of legislative guidance on the criteria for what training is required for an animal to be considered an assistance animal under the DDA. The phrase “animal training organisation” in section 9(b) of the DDA is not defined, and there is no explanation for what specific training is needed or what standards of hygiene and behaviour are required for a public place in terms of section 9(c) of the DDA. We note that in NSW there is also no centralised government accreditation scheme for assistance animals that would meet

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should be as straightforward to access as possible, not require any information about the person's specific medical condition and be in accordance with section 54A(5) of the DDA.

Question 9 0

that “less than 0.5 per cent of residential strata schemes across Australia have installed solar”.¹³ Given the large and growing number of NSW residents living in strata,¹⁴ the uptake of sustainability measures in strata has significant potential to reduce NSW’s contribution to climate change. Sustainability measures that improve energy efficiency will also reduce energy bills, easing cost-of-living pressures for people on lower incomes who live in strata.

The Discussion Paper contains a number of options for encouraging the uptake of sustainability measures in strata. While we do not wish to comment on every option, we support the proposal to prevent by-laws that prohibit or restrict the installation of sustainability infrastructure in certain circumstances, such as by-laws that prohibit or restrict solar panel installations merely to enhance or preserve the external appearance of a building. It does not appropriately balance rights to prioritise opinions about the appearance of a building over the need for a safe and healthy environment.

Queensland law provides examples of where sustainability infrastructure could be reasonably prohibited or restricted. This includes where a roof storage tank would be too heavy for the roof¹⁵ or where noise from the infrastructure would unreasonably interfere with a person’s use or enjoyment of the building.¹⁶ This illustrates a more appropriate balancing of rights.

The recently passed Sustainability Infrastructure Act is intended to encourage greater uptake of sustainability measures in strata.¹⁷ While this is a positive intention, the Sustainability Infrastructure Act does not implement our recommendation to prevent by-laws that inappropriately prohibit or restrict the installation of sustainability infrastructure. We hope that the NSW Government will promptly pass further laws to encourage the uptake of sustainability infrastructure in strata.

Recommendation 6: The NSW Government should p r 1 rb2 225 390.9 (l)-8.9 0.001

circumstances, such as by-laws that prohibit or restrict solar panel installations merely to enhance or preserve the external appearance of a building.

Conclusion

For many people in our community, a strata property is their home. This includes both renters and owner-occupiers in strata. We are particularly concerned by the impact on people living in strata of inappropriate by-laws and owners corporation decisions regarding assistance animals and pets. It is hard already for marginalised people to find and keep suitable housing, without the additional barriers that inappropriate by-laws and owners corporation decisions place in their way.

We are pleased by the amendment in section 137B of the Sustainability Infrastructure Act. This will reduce barriers to the right to housing for people with pets and people with a disability who require an assistance animal. We call for stronger, specific laws for people who require an assistance animal to provide clear pathways for accessing protection, guard against inappropriate requests for proof and provide for situations where a pet might reasonably not be allowed, but an assistance animal should be allowed.