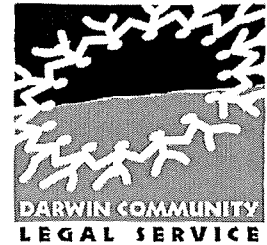


Level 2 Winlow House 75 Woods Street
GPO Box 3180 Darwin NT 0801
phone: 8982 1111
freecall: 1800 812 953
fax: 8982 1112
email: info@dcls.org.au
website: www.dcls.org.au
abn: 42 840 626 724



19 September 2018

Secretary
Economic Policy Scrutiny Committee
GPO Box 3721
Darwin NT 0801

By Email: RAB@nt.gov.au

Dear Secretary,

Re: Submissions – Agents and Land Legislation Amendment Bill 2018

Background

Darwin Community Legal Service (DCLS) is a multi-disciplinary service providing general legal advice and assistance, a tenancy service, and a specialised Seniors and Disability Rights Service supporting advocacy in the areas of ageing and disability. We work to promote understanding, create awareness and empower our community, to support access to services and rights, and to advocate for change that promotes fairness and justice..

DCLS operates the only service providing tenants with advice and support. We cover the whole of the Northern Territory with a small team of 2.5 FTE and are accessible to the more than 50% of the Northern Territory population who rent their homes.

Our service assists with providing information and assistance to tenants in securing and maintaining stable housing, community legal education, and in addressing the power imbalance and disadvantage often faced by tenants.

The Tenancy Advice Service has also been active in the area of law reform and has provided support and proposals in relation to the recent amendments to regulate the practice of blacklisting tenants and will continue to do so as part of the broader review of the Residential Tenancy Act intended to be commenced by the end of the year. We believe the reforms are fundamental in addressing housing affordability and security of housing and attracting people to and retaining them in the NT. We have commenced consultations with stakeholders in advance of the formal announcement of the review and have commenced analysis of relevant legislation and best practice developments in other jurisdictions.

The DCLS General Legal Service also deals with issues for owners and renters of properties within body corporates.

Submission Summary

DCLS is concerned at the lack of clarity around funding required for the Scheme Supervisor, the impact the diversion of funds might have on support for tenancy advice in the NT, and also the risk the depletion of available funds might entail.



free legal advice and information • human rights and public interest law
residential aged care rights • disability rights • welfare rights • tenants' rights
Darwin Community Legal Service Inc.

DCLS supports a responsive resolution process for body corporate concerns and suggests some amendments to better support this role and ensure all relevant interests are involved.

1. Sustainable funding and current interests

The Tenants' Advice Service is funded from the Agents Licensing Fidelity Fund. This is the only funding currently available for tenancy advice and support in the NT. In other jurisdictions funding is provided from the interest accumulated on bonds deposited under an independent bond agency.

The proposed changes to the *Unit Titles Schemes Act* are seeking to finance the operating costs of the new office of the 'Schemes Supervisor' from this fund. It is unclear the extent of establishment and ongoing funds that may be required to support the role and the impact on the fund. The extent of risk exposure of the fund is not outlined against its current reserves and projected income.

DCLS and our Tenants Advice Service have a vested interest in ensuring the reserves continue to support and sustain an ongoing advice service around housing for the majority of people in the NT and so have concerns about further draw downs on the fund without clear information as to the extent of the impact. We propose instead that a levy be imposed on body corporate management agencies who stand to benefit from the role.

2. Changes to *Unit Titles Schemes Act*

The name of the Bill is rather misleading as it does not give any indication that the primary intent is to make changes to the body corporate regime. Given the significant number of NT householders that are part of a body corporate scheme the changes are likely to attract interest and so should be open to consultation.

DCLS generally support two of the changes to the *Unit Titles Schemes Act* within the *Agents and Land Legislation Amendment Bill 2018*.

Our general legal service commonly provides advice to unit owners from low social economic and income backgrounds. In some cases, this leads to further legal assistance. Most of this small case-based work comes from homeowners with low income (often Age Pensioners) who are having trouble with their scheme operator (or lack thereof).

The formation of a scheme supervisor role to conciliate some of these issues and the delegation to NTCAT of the ability to appoint an administrator of a body corporate have the potential to alleviate significant stress on our often older clients.

We express a strong concern that the term 'administrator' is undefined. It is unclear as to whether this refers to a specific position or whether this refers to an independent and (once again undefined) established body corporate manager. We argue that the definition should also be clearer than that of the definition in section 4 of the *Unit Titles Act*.

We include a disclaimer that all of our following comments in this submission make the assumption that the 'administrator' refers to a general administrator with no connection to a currently established body corporate management service.

The inability of an established body corporate or where there are no body corporate managers, to deal with difficult situations causes strain on unit owners which sometimes leads to neighbour disputes and angst between parties. There is often an inability for parties to mediate these matters and the ability to appoint an administrator to these schemes.

Further, we suggest amendments in relation to the following to strengthen the provisions:

1. We submit that that NTCAT should have the ability to not just appoint an administrator, but replace a currently engaged body corporate, where it is proven that the body corporate is ineffective or misrepresenting the rights of individual corporate members. The Explanatory Statement (at point (i) states that this is the purpose, but once again without a definition of 'administrator' this has the potential to make the legislation too ambiguous. For example, section 98C refers to 'the administrator' and not 'an administrator'.
2. We submit that (as detailed in the proposed section 98B, that the Tribunal have the ability to appoint another body corporate manager, not just a 'person', to be the administrator of a unit scheme.
3. We urge further amendment to the proposed legislation to allow a tenant to be recognised as an interested party in these matters or proceedings. We commonly see the situation where tenants raise a maintenance or safety issue with an area of common property. The landlord or owner of the property then has the responsibility of raising the issue with the body corporate. If the body corporate does not respond the landlord is then in a difficult position as they have a legislative obligation under sections 47 to 49 of the *Residential Tenancies Act* to make sure that their premises is habitable, safe, clean, suitable and secure, however they lack control over common areas.
4. We commend the change to compulsorily submit by-law changes to an independent arbitrator in the form of the scheme supervisor and highlight that section 95B(4)(b) should include the word 'oppressive'. In context it is important to ensure that the needs of all parties within a scheme are balanced and often a strata owner with a higher entitlement may flex their voting power to impose burdensome outcome on an owner with a lower value, therefore less voting power.
5. Exclusive use by-law changes are similarly affected above. We recommend the insertion of the words 'also apply' after '95D' to 97(6). This is to remove ambiguity for an interpretation that section 95A to 95D 'only' apply to exclusive use by-laws.
6. The landlord owner may be able to commence proceedings under section 84 and 85 of the *Unit Titles Schemes Act*, however in the absence of action a tenant cannot commence proceedings as they are not seen to have an 'estate or interest' under these sections or the proposed section 98B of the *Agents and Land Legislation Amendment Bill 2018*.
7. Finally, DCLS also recommends that attendance at conciliatory processes within the boundaries of the legislation (whether under the dispute resolution or schemes supervisor intervention) is compulsory for all parties and includes tenants, as appropriate, as interested parties.

DCLS appreciates the opportunity to have input into this Bill.

Yours sincerely,



Tamara Spence
TAS Team Leader/Managing Solicitor

