



Standing Committee on Uniform Legislation and Statutes Review
Parliament House
Perth Western Australia

PO Box 968
Victoria Park WA 6979
T: (08) 9361 0411
F: (08) 9361 0433
E: admin.wa@stratacommunity.org.au
W: wa.stratacommunity.org.au
ABN: 88 839 360 415

By email to rjewell@parliament.wa.gov.au

Friday, 7 October 2011

RE: Inquiry into Residential Tenancies Amendment Bill 2011 (RTAB)

Thank you for the opportunity to make a submission on the above Bill.

Generally we are in favour of the proposed amendments contained within the Bill with the exception of the following.

Section 43 of the Residential Tenancies Amendment Bill 2011

We submit that the proposed amendment to Section 48 by inserting Section 48(2) are indiscriminate in their exclusion of all contributions levied under Section 36 of the Strata Titles Act 1985 (STA) on the grounds that amounts may be raised under section 36 of the STA, particularly Section 36 1(c)(ii), which may relate to charges for supply of a public utility services (as defined in the Land Administration Act 1997 section 3(1)).

Section 36 of the STA remains the primary source of authority for a strata company to levy amounts against proprietors within a scheme. The basis of the calculation of amounts levied under this section may be varied to a method other than unit entitlement by the introduction of a bylaw adopted under Section 42B of the STA. A strata company may rely on these provisions to explicitly determine the charges based on metered consumption for supply of a public utility services (as defined in the Land Administration Act 1997 section 3(1)). The proposed introduction of Section 48(2) will act to prevent a lessor from recovering costs from a tenant which would normally be recoverable if the premises were not in a strata titled scheme and therefore place a lessor in a strata titled scheme in a position of material disadvantage.

The proposed Section 48(2) insertion may then create a conflict with proposed Section 49A (referred to in Section 44 of the RTAB) and act to prevent a lessor from exercising any rights granted under Section 49A.

Additionally, there is increasing sophistication of features within strata schemes which can include provision of services and facilities to occupiers for which the strata company may be empowered and entitled to provide and apply a charge for upon the execution of an agreement between a proprietor of a lot and the strata company. Examples of such services can include the provision of access to gymnasiums, swimming pools, tennis courts, car parking bays, and the provision of services such as concierge, in-house movies, etc, etc. The charges from a strata company in these circumstances may not be regular in nature as they could be provided on a fee for service basis which would make it impracticable for a lessor to include such costs in base rental rates.

The operation of the proposed Section 48(2) may act as a disincentive to lessors to enter into agreements for the provision of services by a strata company where the Residential Tenancies Act may prevent the lessor from recovering the cost of those services to the occupier of the lot. This could create an unnecessary point of conflict between the lessor and tenant should the tenant be keen to take advantage of any facilities offered by the strata company.

We propose that specific exclusions be incorporated into Section 48(2) for –

- 1) Any public utility services (as defined in the Land Administration Act 1997 section 3(1)) recoverable under Section 49A
- 2) Any cost incurred by a lessor resulting from an agreement entered into between the lessor and a strata company following a written request from the tenant to the lessor to do so.

We do not feel it necessary to appear before the committee in this case.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Mark Atkinson', with a long horizontal line extending to the right.

Mark Atkinson
President
Strata Community Australia (WA)

Phone: 9221 7033

Email: MarkA@atkinsonlegal.com.au