



Local Court Amendment (Company Title Home Unit Disputes) Bill 2013 (Proof)

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Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [6.04 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Local Court Amendment (Company Title Home Unit Disputes) Bill 2013. This bill will make it clear that disputes relating to company title home units can be heard in the Local Court and will enable faster, simpler and a more cost effective resolution of such disputes. Company title is a system of communal land ownership where a person becomes entitled to live in a unit in a residential home unit building by acquiring shares in a company that owns the building.

Before the introduction of strata titles legislation in New South Wales in 1961, company title was the most common way of accommodating the subdivision of multi-storey residential buildings. The Law Reform Commission estimated that there are approximately 840 company titled buildings in New South Wales. Company titled home unit disputes can exist between shareholder-owners and the company itself and residents. There could be a dispute between a shareholder owner and the board of directors of the company over the legality of a levy. There could be a dispute between a shareholder and resident over noise. The right to commence court action may arise from the company's constitution, or the Corporations Act 2001, or from the general law.

The Hon. Adam Searle: You can incorporate it.

The Hon. DAVID CLARKE: I acknowledge the interjection. Currently the forum for the resolution of such disputes is usually a court of general jurisdiction, which means the Supreme Court and, in particular, the Equity Division of that court. In April 2007 the New South Wales Law Reform Commission released Report 115 entitled, "Disputes in Company Title Home Units". The commission found that the cost of taking company title home unit disputes to the Supreme Court is prohibitive and effectively disempowers residents in company title home units from holding the board of directors accountable. This bill will address this concern, giving both the General Division and the Small Claims Division of the Local Court the ability to make a range of orders in determining company title home unit disputes.

Company title home unit disputes are disputes between shareholder-owners, the corporation or residents. There can be disputes about common property, such as disputes about parking and vehicle access, or the repair and maintenance of common property. These can be disputes about the units in a company title building, the residential premises, such as disputes about the keeping of pets, or the external appearance of premises. They can be disputes about administrative matters, such as levies. The bill does not create new substantive legal rights. Whether a person can institute proceedings and the merits of the dispute will still be identified by reference to the constitution of the company and by the relevant principles of company law. The bill does not alter the legal rights between parties, but it does ensure that where there are existing legal rights people will be able to enforce them quickly and cheaply in the Local Court, rather than being forced to go to the expense of commencing Supreme Court proceedings.

The bill gives both the Small Claims Division and the General Division of the Local Court the ability to determine a range of company title home unit disputes regardless of how the right to commence court action arises. The Small Claims Division, in particular, deals with matters in a just, quick and cheap manner and with as little formality as possible. Hearings are held before a magistrate or assessor. Parties may appear with a legal representative. However, the informal procedures of the Small Claims Division make it easier for self-represented litigants to conduct their case. This is a good thing. Parties are encouraged to resolve disputes between direct negotiations and mediation. Parties are also encouraged to contact community justice centres to assist with mediation. Community justice centres provide a free mediation service, using impartial and trained

mediators throughout New South Wales.

The Law Reform Commission recommended giving the Consumer, Trader and Tenancy Tribunal [CTTT] jurisdiction to hear company title home unit disputes. However, a tribunal may not be invested with the power to determine disputes in relation to company title home units where those disputes arise under a law of the Commonwealth Corporations Act 2001. While the Local Court is not a tribunal, it will be able to determine disputes quickly and cheaply. The bill gives both divisions of the Local Court the ability to make appropriate orders about company title home unit disputes, such as an order requiring a person to do something, or to refrain from doing something, or a declaration.

The Small Claims Division will be able to determine company title home unit disputes for monetary claims up to \$10,000. This is the same limit as it has for other disputes. The General Division of the Local Court will be able to determine company title home unit disputes for monetary claims up to \$100,000. The Local Court Act permits proceedings in the Small Claims Division of the Local Court to be transferred to the court's general division if the court is of the opinion that the matters in dispute are so complex or difficult or are of such importance that the proceedings ought more properly to be heard in the court's general division.

The Law Reform Commission stated that the rationale for vesting the new jurisdiction does not necessarily extend to all company title home unit disputes. It found that the new jurisdiction should not extend to disputes where it is more appropriate that they be dealt with in another forum or where this would defeat the reasonable expectations of shareholder-owners or residents. It recommended that jurisdiction not extend to disputes which relate to the sale or transfer of shares in the company, in which relief is claimed against oppression under part 2F.1 of the Commonwealth Corporations Act 2001, which relate to the forfeiture of shares in the company, or which relate to the winding up of the company. The bill excludes these types of disputes. It also excludes other matters that the Commonwealth Corporations Act 2001 reserves for superior courts such as the Supreme Court.

The bill does not, however, adopt the recommendation of the Law Reform Commission to exclude disputes relating to the lease of a shareholder's unit. The commission noted that this was a major area of dispute, but that restrictions on leasing go to the heart of company title. It stated it was unpersuaded that it was justified to give the review of leasing decisions to the Consumer, Trader and Tenancy Tribunal. This is on the basis that professional persons buying into company title home units can be assumed to know about or to be advised on restrictions relating to leasing and that the Consumer, Trader and Tenancy Tribunal has no experience in dealing with such disputes because restrictions cannot be placed on the ability of strata unit holders to lease their lots. However, the fact that people buying into company title home units should be aware of leasing restrictions does not mean that a cheap, quick and accessible means of resolving such disputes should not be available to them. Further, the Small Claims Division of the Local Court deals with a broad range of disputes and is well placed to determine disputes in relation to the leasing of company title home units.

The bill also adopts recommendations of the Law Reform Commission that the constitution of a company title home unit building should not be able to exclude the new jurisdiction and that the legislation should state that, to the extent necessary, its provisions are corporations legislation displacement provisions. The commission also recommended that company title home unit disputes be referred to mediation unless the registrar is of the view that mediation is unnecessary or inappropriate. The Local Court Act 2007 already requires the Local Court to use its best endeavours to have the parties settle and permits the court to refer a matter to mediation.

This bill allows disputes over the use and occupancy of company title home unit buildings to be resolved in an accessible forum. It adopts recommendations of the Law Reform Commission that were designed to ensure that legislative reforms did not destroy the unique character of company title home units, and hence what may be their appeal to residents and potential residents. The reforms do not equate company title with other forms of home unit title such as strata title. However, they do provide a suitable forum for resolving company title home unit disputes and effectively empower shareholder owners and residents to enforce their legal rights and to ensure that the legislation and the rules are complied with.

This is a good bill; it is great bill. In fact, it is an outstanding bill. To those whom it affects, it makes the law more accessible and more easily understood. It also makes the law less expensive and less complicated. We cannot get much better than that. It will be welcomed by the thousands of people in our State who own or live in company title property. It is another great bill introduced by the O'Farrell Government of New South Wales—a Liberal-Nationals Coalition Government and a government which promised to serve and which is serving the people of New South Wales and which will be serving the people of New South Wales for a long time. I congratulate one of the greatest Attorneys General that New South Wales has ever had—the Hon. Greg Smith—on his reform in this area. I commend the bill to the House.