

**Response to Questions on Notice by Landgate  
Standing Committee on Legislation – Inquiry into the *Strata  
Titles Amendment Bill 2018*  
Hearing on 27 September 2018**

**1. Page 11 of the draft transcript – Compensation for tenant operating a business**

Transcript

**The CHAIR:** This leads to a question that arose from one of the submissions that we received, which is about somebody who is leasing to run a business. Would they be eligible for any compensation in any scenario if there is a sale through termination of the strata scheme? You might want to take that on notice. We have made that submission public this morning.

**Mr MACFARLANE:** I will take that on notice.

**The CHAIR:** We might be able to give you a copy of the submission and ask for your comments on that.

**RESPONSE TO QUESTION ON NOTICE BY LANDGATE**

The copy of the submission by the owner/ operators of Amberjacks Fish and Chips (dated 25 September 2018) appears to state:

The owner/operators of Amberjacks (the tenants) are operating their business on a lot within the Seapines strata scheme. The tenants have a 1 year lease that appears to be renewed each year. The question is what compensation those tenants would be entitled to if the scheme terminated. The tenants in this scenario are on a tenuous arrangement to begin with as they are only operating on an annual lease. If the owner of the lot decided not to renew that lease at any time, the tenants would not be able to operate their business from that lot.

Rather than comment on the specific scenario contained in the submission (as there may be facts and other information that is not known by Landgate), the following should be noted out in respect of a termination proposal that may affect tenants:

1. Tenants must be served by the strata company with a copy of a full proposal within 14 days of a full proposal being submitted to the strata company: section 178(4)(a)(i)
2. The full proposal should specify what the proponent proposes to happen to the contractual rights of occupiers of lots (ie: what is to happen to a lease): section 179(1)(e).
3. Tenants must be given a reasonable opportunity to make submissions to the proponent and the strata company: section 181(3)
4. If the full proposal is supported by a vote with more than 80% of lots in favour of the termination, the proponent can apply to SAT for an order confirming the termination resolution.

5. The strata company must serve notice of the application to SAT upon occupiers (including tenants): section 183(6)(a)(i)
6. Tenants have a right to be heard or make written submissions to SAT: section 183(7)
7. SAT can only confirm a termination resolution if the proponent satisfies SAT that the process has been properly followed, that each owner who objects will receive fair market value (and not be financially worse off if the termination proceeds) and that the termination proposal is otherwise just and equitable, having regard to the interests of various people, including occupiers (this includes tenants) of lots or the common property: section 183(9)
8. In considering the question of just and equitable, SAT must consider several factors including the benefits and detriments of the termination proposal proceeding or not proceeding for all of those whose interests must be taken into account (including tenants): section 183(12)(e)
9. SAT may modify the termination proposal to include a requirement for the proponent to make a payment to a party to a lease or tenancy agreement that will terminate as a consequence of the termination of the scheme: section 183(14).

So, in answer to the question, SAT does have the power under section 183(14) to order compensation be paid by a proponent to a tenant who is operating a business on a lot in a scheme where that lease will terminate as a result of the termination of the scheme. The basis on whether SAT makes such an order will depend on the facts of the case and the specifics of the lease.

## **2. Page 19 of the draft transcript – Statement of objects of principles**

### Transcript

The CHAIR: The question has been raised about whether there is a statement of principles or objects associated with this section of the bill. Is there such a thing? I think you did talk about a set of principles earlier in your evidence.

Mr MACFARLANE: I think Mr Prainito mentioned a statement of principles, and I believe that exists. I believe there may be a statement of principles under another jurisdiction, but it is not always used in majority termination legislation.

The CHAIR: Do you want to take that one on notice?

Mr MACFARLANE: Yes.

## **RESPONSE TO QUESTION ON NOTICE BY LANDGATE**

Section 153(2) of the *Strata Schemes Development Act 2015* (NSW) (SSDA) contains the following statement of the purpose of Part 10 of the Act (Part 10 of the SSDA introduced the majority termination process, referred to as “strata renewal”):

The purpose of this Part is to facilitate the collective sale or redevelopment of freehold strata schemes in accordance with the process set out in this Part.

Section 153(2) of the SSSDA contains a very basic statement of principle for the introduction of the majority termination reforms in Part 10: that majority termination is aimed at facilitating owners to collectively sell their lots and or redevelop their scheme.

One of the recommendations the City Futures Research Centre at the University of New South Wales made in the *Renewing the Compact City Report*<sup>1</sup> was that the NSW *Strata Schemes Development Act 2015* should “Include a statement of principles that reflects the broader policy aims of strata renewal [majority termination process] in the Strata Schemes Development Act”.

END

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<sup>1</sup> Troy, L, Easthope, H, Randolph, B, Crommelin, L and Pinnegar, S 2015, *Renewing the Compact City: Economically viable and socially sustainable approaches to urban redevelopment*, City Futures Research Centre, UNSW Australia