STRATA TITLES AMENDMENT BILL 2018

Council's Amendments — Consideration in Detail

The following amendments made by the Council now considered —

No 1

Clause 83, page 134, lines 6 and 7 — To delete the lines and substitute —

(7) When a strata title for a lot in a freehold scheme comes into existence it confers on the owner of the lot —

No 2

Clause 83, page 134, lines 21 and 22 — To delete the lines and substitute —

(8) When a strata title for a lot in a leasehold scheme comes into existence it confers on the owner of the lot, subject to Part 4 Division 5 —

No 3

Clause 83, page 166, lines 13 and 14 — To delete "its function of managing and controlling" and substitute —

section 91(1)(c) in relation to

No 4

Clause 83, page 217, line 21 — To delete "monitoring" and substitute —

enforcing

No 5

Clause 83, page 225, line 17 — To insert before "14 days' notice" —

for a resolution passed other than at a general meeting,

No 6

Clause 83, page 263, lines 23 to 28 — To delete the lines and substitute —

(i) provide, in accordance with the regulations, details of proposed arrangements for obtaining independent advice or representation referred to in section 190; and

No 7

Clause 83, page 264, line 5 — To delete "section 175" and substitute —

section 174

No 8

Clause 83, page 265, lines 1 to 7 — To delete the lines and substitute —

(2) The *Planning and Development Act 2005* applies to the application subject to —

(a) the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme; and

(b) any other appropriate modifications.

No 9

Clause 83, page 266, after line 22 — To insert —

178A. Reference of full proposal to independent advocate

(1) In this section —

independent advocate means a person to whom a full proposal is referred under subsection (2).

(2) A strata company to which a full proposal is submitted under section 178 must refer the proposal for review and assessment to a person who —

(a) is independent of the strata company and the proponent of the termination proposal; and

(b) satisfies any requirements of the regulations regarding experience or qualifications.

(3) The independent advocate must, in accordance with the regulations —

(a) review the full proposal; and

(b) provide the strata company with an independent assessment of the full proposal; and

(c) at a time and place arranged with the strata company, make a presentation of its assessment open to the persons mentioned in section 178(4)(a), conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.

(4) The independent advocate must, in accordance with the regulations —

(a) endeavour to identify any owners of lots for whom arrangements for fuller or more extensive advice or representation are to be made under regulations made under section 190(1)(b); and

(b) advise those owners of their entitlements under regulations made under section 190; and

(c) if requested by those owners, refer them to independent providers of the advice or representation which they are to obtain; and

(d) if requested by those owners, assist them in obtaining benefits under the trust referred to in section 190(2).

(5) In any proceedings before the Tribunal under Part 13 in which there is a dispute about whether an owner of a lot in the strata titles scheme is entitled to fuller or more extensive advice or representation under regulations made under section 190(1)(b) or is entitled to benefit under a trust referred to in section 190(2), the independent advocate may, in accordance with the regulations, represent the owner in the proceedings.

(6) The regulations may prescribe how a person's independence is to be determined for the purposes of subsection (2)(a).

(7) The strata company —

(a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and

(b) may charge fees under section 189 to cover the cost of paying those fees and reimbursing those expenses.

No 10

Clause 83, page 270, lines 10 to 12 — To delete the lines and substitute —

(4) The regulations must prescribe matters relating to the determination of the market value of a lot for a termination valuation report, including a valuation methodology that takes account of —

(a) relevant recent sales history; and

(b) the highest and best use of the lot; and

(c) the value attributable to the owner's interest in the common property of the strata titles scheme.

No 11

Clause 83, page 273, line 26 — To delete the words "the independent person must".

No 12

Clause 83, page 275, lines 23 to 27 — To delete the lines and substitute —

(b) if all or part of the parcel of the strata titles scheme is or is included in a retirement village within the meaning of the *Retirement Villages Act 1992* — serve notice of the application on the Commissioner within the meaning of that Act; and

No 13

Clause 83, page 281, after line 29 — To insert —

(17A) If the Tribunal orders a person under subsection (17)(c) to take steps for the discharge, withdrawal or removal of an estate, interest or right the Tribunal may order the proponent or the owner of a lot in the strata titles scheme to make a payment to that person in respect of the discharge, withdrawal or removal of the estate, interest or right.

(17B) If the whole or part of the parcel of a strata titles scheme is subject to a residential tenancy agreement within the meaning given in the *Residential Tenancies Act 1987* section 3, the Tribunal may order that on the termination of the strata titles scheme —

(a) the tenant and the lessor must terminate the residential tenancy agreement under that Act; and

(b) the premises subject to the residential tenancy agreement are taken for the purposes of section 69 of that Act to cease to be lawfully usable as a residence; and

(c) if the tenant is given notice of termination under section 69 of that Act, then despite section 69(2) of that Act the period of notice must be not less than a period specified by the Tribunal; and

(d) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the residential tenancy agreement in respect of the termination of the residential tenancy agreement.

(17C) If the whole or part of the parcel of a strata titles scheme is subject to a retail shop lease within the meaning given in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1), then despite anything in that Act the Tribunal may order that —

(a) the retail shop lease is terminated on the termination of the strata titles scheme; and

(b) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the retail shop lease in respect of the termination of the retail shop lease.

(17D) If the whole or part of the parcel of a strata titles scheme is subject to a lease or licence not referred to in subsection (17B) or (17C), the Tribunal may, subject to any other written law, order that —

(a) the lease or licence is terminated on the termination of the strata titles scheme; and

(b) the proponent or the owner of a lot in the scheme is to make a payment to the lessee or licensee in respect of the termination of the lease or licence.

No 14

Clause 83, page 282, line 26 — To delete the line and substitute —

appropriate modifications.

No 15

Clause 83, page 286, lines 5 to 17 — To delete the lines and substitute —

(1) The regulations —

(a) must require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the strata titles scheme proposed to be terminated to obtain independent advice or representation in connection with the proposal; and

(b) must specify arrangements for obtaining fuller or more extensive advice or representation for a class or classes of owner identified in or under the regulations as vulnerable, having regard to —

(i) age, illness, trauma, disability or other factors that may impair the ability of an owner to consider and make an informed decision in relation to a termination proposal; or

(ii) financial disadvantage which would significantly impair the ability of the owner to bear the cost of obtaining appropriate professional advice in relation to a termination proposal.

(2) Without limitation, the arrangements may include a requirement for the proponent of a termination proposal to pay an amount to a trustee to be held in trust for owners to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal.

(3) The regulations may specify terms of a trust referred to in subsection (2).

No 16

Clause 83, page 287, lines 1 to 8 — To delete the lines and substitute —

(2) The *Planning and Development Act 2005* applies to the required approval subject to —

(a) the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme; and

(b) any other appropriate modifications.

No 17

Clause 166, page 385, lines 20 to 23 — To delete the lines.

Ms R. SAFFIOTI — by leave: I move —

That amendments 1 to 8 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Ms R. SAFFIOTI: I move —

That amendment 9 made by the Council be agreed to.

Mrs L.M. HARVEY: I understand that most of these amendments have arisen out of the inquiry of the Legislative Council's Standing Committee on Legislation into the section of the legislation that deals with a termination proposal. That committee took into consideration some of the concerns raised in this house during debate about looking after individuals who might be less empowered to represent themselves should they be faced with the termination of a strata scheme. The strengthening of these provisions is a significant improvement to the legislation. I understand that the Legislative Council committee was also hot to trot on some of the Henry VIII clauses that have also been removed through this process. I believe that similar clauses in the Community Titles Bill also needed to be amended. This draws me back to when the legislation came through this house initially and I raised the issue that we were being rushed to move it through this place to meet an arbitrary deadline that was not apparent to us. Industry had certainly been riled up and said that we were deliberately delaying the legislation for some reason when, in actual fact, we wanted to ensure that this not inconsiderably sized amending legislation was considered appropriately by both houses of Parliament so that we did not end up with amendments being made to it by an upper house committee that could have been considered in this chamber had we been given more time to go through in detail all of the individual clauses. I appreciate that the minister has accepted the recommendation of that upper house committee, because the opposition, and the member for Cottesloe in particular, argued quite strongly to ensure that people who might have less of an ability to defend themselves were better protected by the legislation. To that end, could the minister please explain how these amendments will strengthen the rights of those individuals consistent with what the opposition and particularly the member for Cottesloe argued for during debate in this chamber?

Ms R. SAFFIOTI: I will read out the speaking points that I have on this amendment. Landgate advised during the committee hearing that regulations could provide for an independent advocate to provide the strata company with independent advice and a full proposal. The Standing Committee on Legislation stated that this was a welcome initiative. The committee recommended the insertion of proposed section 178A to require that a strata company must, after receiving a full proposal, refer that full proposal to an independent advocate to perform certain services for the strata company and owners, as provided in amendment 3/83. The government supported that recommendation and proposed an improved draft of proposed section 178A, which was passed by the Legislative Council. The government amendment was proposed first of all to correct an error in the committee draft to enable the regulations to provide how the independent advocate must identify vulnerable owners for whom arrangements for fuller or more extensive advice or representation is to be made under proposed section 191(1)(b). The amendment also enables the regulations to provide how the independent advocate is to advise owners of their entitlements under regulations made under proposed section 190, to refer those owners to independent providers of the advice or representation, which they are to obtain, and to assist them in obtaining benefits under the trust referred to in proposed section 192. It will also enable the regulations to provide how and when an independent advocate may represent an owner in proceedings in the State Administrative Tribunal about whether an owner of a lot is entitled to fuller or more extensive advice or representation under regulations made under proposed section 191(1)(b) or is entitled to a benefit under a trust referred to in proposed section 192; and to enable the regulations to detail how an advocate is to be regarded as independent of the strata company proponent.

In response to recommendation 2 of the committee's report and in moving this amendment to insert section 178A, the Minister for Environment—who represents me in the other place—confirmed that proposed section 178A(7)(b) provides that a strata company may charge the proponent fees under proposed section 189 to cover the cost of remunerating the independent advocate and reimbursing expenses incurred by the independent advocate.

I take the points the member made, but we have always tried to work cooperatively on this bill. This amendment will strengthen the role of the independent advocate in the process and we are happy to agree with it.

Mrs L.M. HARVEY: To confirm what these amendments will allow: in that scenario that was raised of vexatious and repetitive attempts to terminate a scheme, if an independent advocate is appointed, the costs of the individual

strata owner and the independent advocate, in going to the State Administrative Tribunal around the termination of a scheme, can be reimbursed to them by the proponent who wishes to terminate the scheme.

Ms R. SAFFIOTI: Vexatious issues are dealt with in another part of the bill. The role of the independent advocate is to provide advice and an independent assessment of the proposals. That is what that role specialises in in relation to vexatious attempts to terminate a scheme. The vexatious issue was not dealt with in the amendments in the other place.

Mrs L.M. HARVEY: To be clear: obviously we have all the rules around when a scheme terminates and there is a process—the strata company makes a decision to go forward with the termination of the scheme and some owners who may not agree with that would be appointed an independent advocate. Are the costs recovered from the strata company or, for example, from a developer acting on behalf of the strata company, if that is the circumstance?

Ms R. SAFFIOTI: When a full proposal is submitted, the role of the independent advocate is to provide advice on that full proposal. The independent advocate also identifies the vulnerable owners. Basically, we have an independent advocate who defines who the vulnerable owners are.

Dr D.J. HONEY: First and foremost, I thank the minister for making the effort to consider all the input from both this place and the other place. I really appreciate the effort that the minister and her advisers have made to incorporate some of these additional changes. I notice that there is a definition in amendment 9 in proposed section 178A(3)(c), which states —

> … conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.

A concern around ontological security was raised in debate in relation to younger and older people. It is well recognised that younger and older people suffer greater distress when their environment changes. I wonder whether that was a consideration. I did notice, and I do not wish to confuse the discussion of this amendment, that amendment 15, I think, refers to the regulations and a broader range of issues that I took to perhaps cover people who are younger or older. I want to be sure that in this consideration we are also looking at changes that affect the very young as well as older people.

Ms R. SAFFIOTI: I have been advised that the regulations can provide coverage for those with sensory or mobility disabilities, younger and older people, and people with a language other than English as their first language. This is all about the presentation that the independent advocate will give. The independent advocate must take into consideration all those aspects in giving a presentation—whether they understand English, have mobility or sensory disabilities—to make sure that everyone can fully understand the proposal that has been put.

Dr D.J. HONEY: Further to that, and I may be jumping ahead to the other amendments, how do we ensure that those vulnerable people, not just older and younger people, have that hand on their shoulder at the SAT proceedings? Is that referred to in amendment 15?

Ms R. SAFFIOTI: Yes.

Mrs L.M. HARVEY: Who is an independent advocate likely to be? Will people be prescribed by regulation or community law centres as being appropriate to act as independent advocates? I would like to know how individuals might find a list of people who are independent advocates. Will it be incumbent on the strata company that is seeking to terminate a scheme to provide a list like that to a vulnerable person so that they have the ability to easily find appropriate people who might act on their behalf in these circumstances?

Ms R. SAFFIOTI: An independent advocate has to be independent of the strata company and proponent. The regulations will specify that independence. There will also be guidelines, which may put forward classes of people—not specific people but people it suggests would be independent advocates.

Mrs L.M. HARVEY: Further to that, obviously a vulnerable person, by virtue of that definition, might be less resourceful, for example, when trying to find an independent advocate. Although the regulations might prescribe who appropriate people might be, will the strata company have a requirement to provide an independent list of advocates that an individual could access? I am thinking, for example, of my mother, who recently learnt to use a mobile phone and occasionally can send a text message. Her ability to do an internet search, for example, to find somebody who might represent her in these circumstances is significantly limited. Obviously, she would have some strong advocates, being her children, acting on her behalf. Other people in that situation would not be able to do an internet search. The *Yellow Pages* are not readily available to people these days. Vulnerable people need to be able to access this information easily. In a perfect world, there would be some kind of list or registration. The department may keep a list of appropriate individuals with the experience to act as independent advocates to appropriately represent the needs of these vulnerable people in these situations.

Ms R. SAFFIOTI: I want to clarify that the independent advocate is appointed by the strata company to identify vulnerable owners and also assist them in accessing vulnerable owner funding. The advocate is appointed by the strata company. The key role of that advocate is to identify vulnerable people.

My mother does not have a mobile phone or an ATM card.

Dr D.J. Honey: My parents used to use bankbooks.

Ms R. SAFFIOTI: My dad used to use a chequebook all the time.

I will go through the requirements. A strata company must refer the full proposal to an independent advocate. The independent advocate will review the full proposal and provide the strata company with an independent assessment of it; arrange a briefing session for owners and occupiers—the key point is ensuring that the briefing is done and ensuring that everyone understands that briefing; assess which owners in the scheme are vulnerable and who should receive additional funding to respond to the proposal; advise vulnerable owners of their entitlement to additional funding; refer the vulnerable owners to a panel of specialist advisers, whom vulnerable owners can see to obtain advice and/or representation; assist vulnerable owners in obtaining the funding provided by the proponent to pay for the advice and/or representation; and represent vulnerable owners in the State Administrative Tribunal if the proponent disagrees about who is or is not a vulnerable owner entitled to the additional funding to ensure that vulnerable owners have access to funding to pay for expert advice and legal representation. The strata company will be required to pay the independent advocate for the services I just listed. The strata company can require the proponent to reimburse the strata company the cost of the independent advocate's services.

Mrs L.M. HARVEY: It sounds like these amendments from the committee have significantly strengthened the requirements of a strata company looking after vulnerable owners. I am pretty happy with this. I thank the minister for accepting the recommendation of the committee.

Question put and passed; the Council's amendment agreed to.

Ms R. SAFFIOTI: I move —

> That amendment 10 made by the Council be agreed to.

Mrs L.M. HARVEY: Amendment 10 is another amendment that members of the opposition argued for quite strongly. It relates to determining the compensation that would be paid to owners upon termination of a scheme. One of the concerns that we raised in particular is that when owners unwillingly have their scheme terminated and they face the loss of their home, we did not think the legislation was sufficiently robust to ensure that proper compensation was paid to somebody who was unwillingly being evicted from their home. From what I can see, this clause significantly strengthens that particular section of the act with respect to the compensation that should be paid, ensuring that a market valuation includes recent sales history and highest and best use of the lot, which is something that the member for Cottesloe and I argued for quite strenuously, and ensuring that rather than just a compensation payout that would be a consideration if there was a government acquisition of a property for public purposes, a proper market valuation is made. In the case of Fulvio Prainito's scenario in Cottesloe, prior to this amendment coming about, he would have been paid not necessarily the uplift value of his lot but a valuation determined by what he might otherwise be entitled to should it be compulsorily acquired for public purposes. I think this amendment significantly strengthens the rights of owners and ensures that appropriate compensation will be paid in circumstances in which their scheme is terminated unwillingly.

Have I summarised the intent of this clause accurately or is there something else that the minister would like to explain about what it does?

Ms R. SAFFIOTI: The member's description really relates to the full termination proposal. To outline it, there is the initial proposal, the full proposal and the State Administrative Tribunal process. The SAT process has not changed in relation to the assessment of fair market value and the 10 per cent. At the SAT end, regarding the discussions we had previously, fair market value as assessed by the tribunal still stands. This relates to the full termination proposal. The Standing Committee on Legislation recommended that in clause 83, proposed section 179(4) be amended to require that —

> The regulations must prescribe matters relating to the determination of the market value of a lot for a termination valuation report, including a valuation methodology that takes account of —
>
> (a) relevant recent sales history; and
>
> (b) the highest and best use of the lot; and
>
> (c) the value attributable to the owner's interest in the common property of the strata titles scheme.

That is in relation to the full proposal and the fair market value process is still assessed by the tribunal at the end.

Dr D.J. HONEY: Minister, subparagraph (b) of the amendment refers to the "the highest and best use of the lot". I would really like to flesh out what that means. Specifically, does that include the uplift value of the land? I will give the minister the specific example of a person with a single-storey strata unit on the beachfront at Cottesloe, which by itself may be worth $1.5 million. However, the piece of land that it sits on may be, and probably is, worth substantially more when the demolition of that unit is going to enable a six-storey or possibly a 10-storey block of units to be built. On that basis, the land will be worth many millions of dollars because the best use of that land is

to have 10 storeys above it, not one storey above it. In the normal course of events, if someone was selling a single house, for example, and they could have a multistorey dwelling on that land, they would be able to realise that value when they sold it. In this case of forced sale, is the owner in a strata unit able to have the uplift value recognised, which will be enabled through the dissolution of the strata scheme?

Ms R. SAFFIOTI: My understanding is that it will be the highest and best use of the current planning or zoning guidelines or approvals. It would be what exists at that time in relation to defining the highest and best use.

Dr D.J. HONEY: To clarify that, as the minister would know, I am obviously being specific to my electorate because these are the matters that have been brought to my attention. The beachfront at Cottesloe now has a scheme over it that includes various allowances, but generally allows for probably six storeys where there are currently single storeys or two or three storeys. Am I to understand that in that case, that valuation would recognise that this now allows for six storeys when now there are one or two storeys?

Ms R. SAFFIOTI: Potentially, yes, if the new local planning scheme has up-zoned that area. In all this analysis, it is not only the potential uplift, but what people find in valuations anyway, particularly on land that is able to be developed, which is not usually single residences. For example, if a block needs to be demolished for a development, normally the professional valuers would go through it, identify the potential increase in habitable space in the development footprint, and also take into account demolition costs and all those development costs. That is what normally happens.

Question put and passed; the Council's amendment agreed to.

Ms R. SAFFIOTI: I move **—**

That amendment 11 made by the Council be agreed to.

Dr D.J. HONEY: In the quick time I had to read it, I could not work out what this change was achieving. I would like a description of why this change was made, please.

Ms R. SAFFIOTI: In clause 83, proposed section 182(10) stated "the independent person … must" at the start of the subsection and again in paragraph (c), so the amendment basically deletes this repetition. It was referred to twice.

Question put and passed; the Council's amendment agreed to.

Ms R. SAFFIOTI: I move **—**

That amendment 12 made by the Council be agreed to.

Mrs L.M. HARVEY: Can the minister explain what this amendment is about? I know that it refers to the intersection of this legislation with the Retirement Villages Act, but I am not sure why it was recommended by the committee.

Ms R. SAFFIOTI: This matter was raised by the Commissioner for Consumer Protection through the submission phase of the legislation committee's review. They had been accessible before, but upon further reading of the legislation, this amendment was proposed. The amendment to clause 83, proposed section 183(6)(b), clarifies that the strata company must, within 14 days after being given notice of the application to the tribunal to confirm a termination resolution, serve notice of the application on the commissioner within the meaning of the Retirement Villages Act 1992 if all or part of the land within a strata title scheme is included in a retirement village within the meaning of the Retirement Villages Act 1992. The Minister for Environment, who represents me in the other place, advised the house that the Department of Mines, Industry Regulation and Safety confirmed that this draft resolved the Commissioner for Consumer Protection's concerns with proposed section 183(6)(b), as detailed in the commissioner's submission to the legislation committee.

Dr D.J. HONEY: I had not picked this up before, but does this mean that this is a mechanism to dissolve a strata title for a retirement village or allow for the redevelopment of a retirement village?

Ms R. SAFFIOTI: This amendment is a bit technical because it is trying to pick up whether a retirement village is partially under a strata title scheme. Originally, it was very clear whether a retirement village was fully within a scheme. This amendment will clarify whether the retirement village is only partly in a scheme and will allow the commissioner to appear at the tribunal.

Mrs L.M. HARVEY: I am curious to know how many retirement villages are partially part of a strata title scheme rather than covered under the Retirement Villages Act, which is quite specific about the rights of owners in a retirement village. It sounds as though this amendment relates to some schemes in which there is a crossover. Certainly, during my consultation with the community on this legislation, a lot of problems in "strata-land" arise from strata developments that have been turned into quasi-retirement villages, in which the rights of the owners in those schemes are being eroded; they are certainly not being looked after appropriately. Can the minister give me a specific example of when this particular clause might apply? It seems to be a curious arrangement for them to intersect in one strata lot.

Ms R. SAFFIOTI: Many retirement villages are also strata schemes, but only a handful of retirement village are partly under a strata scheme. The Standing Committee on Legislation found that if a retirement village is also a strata scheme or part of it is a strata scheme, it has to go through the processes under the Retirement Villages Act and this process. The Retirement Villages Act requires it to go through the Supreme Court.

Question put and passed; the Council's amendment agreed to.

Ms R. SAFFIOTI: I move —

That amendment 13 made by the Council be agreed to.

Mrs L.M. HARVEY: These proposed subclauses will protect the rights of tenants whose tenancy arrangement in a strata scheme is terminated. I would like more information on how this will operate. Obviously, there are two different types of tenancies—residential and commercial. I am interested to know whether the insertion of proposed subclause (17B) in the Residential Tenancies Act will protect the tenant when a residential tenancy agreement is drafted basically saying that in the event of a scheme terminating and if the tenancy is taken on towards the end of the strata scheme, for example, there is a get-out-of-jail-free clause, if you like, for the landlord, who can anticipate that the scheme might be winding up?

The ACTING SPEAKER: Members to my right, will you keep the noise down please?

Mrs L.M. HARVEY: Could that tenancy be wound up ahead of the end of a lease to try to circumvent this compensatory mechanism that will be included in the act?

Ms R. SAFFIOTI: I will go through the prepared answer because this is a technical issue. The Standing Committee on Legislation recommended that the minister representing the Minister for Lands advise the Council whether an owner of a strata titles lot can grant a long-term residential tenancy to potentially defeat the termination of a strata titles scheme under proposed part 12. Minister Dawson confirmed in the Council that he had been advised that under the draft of the bill at the time, the tribunal did not have the power to order the termination of a fixed-term residential tenancy agreement as defined in section 3 of the Residential Tenancies Act. As a result of the identification of this loophole by the committee, an amendment was proposed which expressly provided the tribunal with a power under proposed section 183 to terminate leases. The amendment provides that the tribunal may order a tenant and lessor to terminate a residential tenancy agreement under the Residential Tenancies Act 1987 upon termination of a scheme. The tribunal may order that the premises the subject of the residential tenancy agreement are taken for the purposes of section 69 of the Residential Tenancies Act 1987 on termination of the scheme to cease to be lawfully useable as a residence. The tribunal may order the lessor to give the tenant reasonable notice to vacate the premises. The tribunal may order the proponent or the owner of a lot when the owner is the lessee to pay money to the tenant as compensation for termination of the residential tenancy agreement. The tribunal may order the termination of a retail shop lease as defined in the Commercial Tenancy (Retail Shops) Agreements Act 1985 on termination of the scheme. The tribunal may order the proponent of the owner of the lot to pay money for the tenant as compensation for the termination of the retail shop lease and for leases not covered by the Residential Tenancies Act or Commercial Tenancy Act. The tribunal may, subject to any other written law, order the termination of a lease or licence on termination of the scheme; it may also order the proponent or owner of the lot who is a lessor pay the lessee or licensee compensation for termination of that lease or licence. The tribunal may order the proponent or an owner of a lot to pay money as compensation to a person who is ordered by the tribunal as part of the termination to discharge, withdraw or remove an estate, interest or right registered or recorded against that title.

Mrs L.M. HARVEY: This has been put forward by the Department of Lands as a way to circumvent a potential loophole when an owner who does not want a scheme to be wound up might, for example, enter into a 20-year tenancy arrangement with their son, daughter or another relative; and, should a strata scheme be terminated, this would allow the tribunal to order that the residential tenancy agreement be terminated. Obviously, some compensation would be paid to the tenant in those circumstances. Will that compensation be only for the tenant or is compensation also to be paid to the owner of the lot for the termination of the tenancy? Obviously, the tenant would need to then incur the cost of moving premises, of removalists and of finding a new place to live. Also the owner of the lot would lose the income from the tenant. How will the compensation be calculated? Will that be prescribed by regulation or will the State Administrative Tribunal be given the authority to make some kind of determination in those circumstances?

Ms R. SAFFIOTI: Proposed section 183(14) will allow the State Administrative Tribunal to order the proponent to pay compensation to the tenant or the lessor. That is provided for. I understand that the committee found this loophole in relation to residential tenancies in particular and that there was no requirement or ability to potentially pay compensation to those tenants.

Mrs L.M. HARVEY: To further explore how this might work, it is interesting that the intention is to close a loophole when, obviously, as the government will find in some circumstances, people who are determined to

protect their patch of dirt and their castle–type scenario, will draw up leases and things. For example, this could be a way of rorting the scheme to get more money at the termination of a strata lot because there is a compensatory arrangement here for the termination of a residential tenancy. If as an owner, I were determined to make it as difficult as possible to terminate a scheme, I would put in place a tenancy arrangement where I was potentially being paid $5 000 a week by my son for a strata development. It might not even be a real leasing arrangement. It could be a leasing arrangement whereby I draw up the lease that says my son needs to pay me $5 000 a week to live in the unit that I am actually living in, knowing the scheme will be terminated, and I will get compensation upon the termination of the scheme for six weeks or six months, or whatever is the rent, at a highly inflated rate that is not necessarily a market rate for that kind of tenancy. Does this amendment contemplate that kind of scenario? I guess I have my retail business hat on whereby I am looking at opportunities here, as people do, to try to circumvent the law and perhaps make sure they can line their pockets at the same time. We do not want legislation to pass through this place that will allow for that scenario.

Ms R. SAFFIOTI: This has been brought in because, without it, someone could use the Residential Tenancies Act to block any termination proposal. That is the claim made by the upper house Standing Committee on Legislation. The following issue was raised by Hon Simon O'Brien in one of the key points —

> While the Committee has not had the time to investigate this matter in any detail, the Committee notes the potential for an owner to bypass one of the purposes behind Part 12 by installing a long term residential tenant to effectively block redevelopment and makes the following recommendation.

The standing committee recommends that the Legislative Council Committee of the Whole House look at —

> … whether an owner of a strata titles lot can grant a long term residential tenancy to potentially defeat terminations of strata titles …

That is the background to it. In relation to the member's specific question about fake leases, and why SAT will have a discretion about what compensation could be paid, if the member were to lease her unit to one of her children at an overly inflated price, that would be taken into consideration in determining any compensation.

Mrs L.M. HARVEY: Will there be prescribed regulations, for example, for consideration to be given to what might be a fair market rent in determining compensation or will it be left entirely up to SAT to determine whether it is a fair market rent in the scenario I described earlier?

Ms R. SAFFIOTI: That will be left to SAT.

Dr D.J. HONEY: Minister, in reading this amendment, I take it that it covers a mortgage, a residence, a commercial scheme or, as we talked about in the last part, another commercial tenancy. Is the corollary of this that a tenant in a strata scheme will have fewer rights than a tenant of a freehold property? Typically, especially for commercial enterprises, people pay a premium for a long-term lease. On a freehold title, under existing legislation, they are protected in that. But a person with a long-term lease—a genuine lease; I am not talking about an obstructing one—will have fewer rights than someone with a freehold property, even though they may have paid a premium for a long-term lease. This amendment will really remove a certainty.

Ms R. SAFFIOTI: I am advised that under section 76 of the Residential Tenancies Act, a landlord can already get a court order to terminate a long-term lease.

Dr D.J. HONEY: If that was straightforward, there would not be any requirement for this. I take it that these amendments have been inserted not because they are redundant but because they are required. It would seem to me that this amendment is simplifying the termination of those leases in the three cases of proposed subclauses (17B), (17C) and (17D). We have heard before that strata titles can be dissolved, but guess what? It has only happened once since 1966 so, in effect, they cannot be. But surely this will make it significantly easier to dissolve those leases, to the disadvantage of someone who has paid a premium for a long-term lease compared with someone who has the equivalent lease on a freehold property.

Ms R. SAFFIOTI: To correct what I said, it was section 74 of the Residential Tenancies Act. Conversely to what the member said, if this amendment was not put in, a tenant would potentially have a greater right than an owner because there would be no termination provision to allow for a tenant, just an owner. This is trying to ensure that everyone within a particular strata scheme can be dealt with equally, in a sense, or that there are processes that can be dealt with. For example, we would not give a tenant a potentially greater right than the adjacent owner.

Dr D.J. HONEY: To labour the point, it seems clear that a long-term leasehold tenant in a strata lot will have less certainty than someone who has a long-term lease on a freehold lot, in effect, making that less valuable.

Ms R. SAFFIOTI: As I said, I would not agree. There are already mechanisms for other tenancies; this is part of the termination process. I know that the member is particularly interested in this, but there has to be a system to allow for the full function of the termination process.

Mrs L.M. HARVEY: There may be genuine tenancy arrangements in which a long-term tenant in an apartment may fall under the category of being a vulnerable person. Is there anything in the act that will require the independent advocate to act on behalf of a tenant who is a vulnerable person and has a long-term tenancy arrangement that is being terminated? I know that this legislation covers owners who are vulnerable, but obviously a vulnerable tenant may also need some advice about their rights around the termination of the lease and their tenancy arrangements.

Ms R. SAFFIOTI: When the independent advocate delivers their report, they must deliver it to tenants as well as owners so that they are fully aware of the proposal and the implications of that proposal.

Mrs L.M. HARVEY: It has been a while since we debated this legislation. Is there a mechanism whereby a vulnerable tenant would be notified of the scheme termination and have the ability to access an independent advocate to look after their residential tenancy rights?

Ms R. SAFFIOTI: The independent advocate would provide a report to the tenants, but the tenants will not have the access to financial assistance that an owner would have.

Mrs L.M. HARVEY: Further to this, when a long-term tenancy in a strata scheme is being terminated, the tenant will be notified through the process, as will the owner, that the scheme is about to terminate. If they want to protect their tenancy rights under the Residential Tenancies Act, given that this legislation will now allow that lease to be terminated, will the tenant need to seek advice and assistance elsewhere, regardless of whether they are vulnerable?

Ms R. SAFFIOTI: That is correct, but this provision will now allow for compensation to be determined by the State Administrative Tribunal. In finalising the full proposal, SAT can determine compensation for any tenant.

Mrs L.M. HARVEY: Does this clause cover, for example, a vulnerable tenant who sought legal advice to defend their right to retain the tenancy, or whatever it might be, and for whom SAT determined compensation and realistically reimbursed the vulnerable tenant for their legal expenses and expenses from having to move and find a new premises?

Ms R. SAFFIOTI: Yes. This clause brings in the concept of compensation for the tenant; therefore, potentially that could be the case.

Mrs L.M. HARVEY: I see that the retail tenancy component of this proposed clause has a similar compensatory mechanism. Obviously, if a retail tenancy lease is terminated, a tenant loses the ability to not only continue the business as a going concern and derive an income from it, but also sell the business and potentially recover some of the capital input from developing it over time. Similar to the residential tenancy that we just highlighted, under this legislation, will SAT look at all the components of a business having to move when a commercial tenancy arrangement under a strata scheme is terminated and the commercial tenancy agreement becomes void? For example, if it was my business and I thought I had a five-year lease, I might have put some investment into the shopfront and fittings and into sprucing up the building for the next five years. If I found out the tenancy was being terminated earlier than anticipated, is there an ability to claw back the costs that I have put into the business and the cost in finding a new tenancy? If this happens at the height of a boom, a tenant may be moving from a quite reasonable tenancy arrangement into an arrangement for which they are paying 25 per cent, 30 per cent or 50 per cent more for the lease. Does this amendment contemplate that business owner being able to claw back the balance of their existing lease compared with the new lease, plus the cost of re-establishing their business in a new location?

Ms R. SAFFIOTI: There are two things. The State Administrative Tribunal must consider tenants when asking whether the termination is just and equitable; and, secondly, there is the discretion for SAT to order compensation to claw such expenses back.

Mrs L.M. HARVEY: With regard to the intersection of this legislation with the Commercial Tenancy (Retail Shops) Agreements Act—I do not know whether the minister will be able to answer this now—I can see commercial tenancy agreements now having a clause in them to say that in the event of a strata scheme termination, a tenant will no longer be entitled to any compensation and their lease will be terminated at their cost. Would there be the ability for a landlord to incorporate that into the Commercial Tenancy (Retail Shops) Agreements Act, or would other components of that act make clauses such as that ultra vires and therefore void?

Ms R. SAFFIOTI: I cannot provide a definitive answer to that because we do not have that information available, but if that clause is used, the tribunal could still order compensation; so despite there potentially being that clause, the tribunal could still order that compensation be paid by the proponent.

Mrs L.M. HARVEY: Just to be clear, even if someone has a commercial tenancy arrangement that contemplates the scenario of a scheme termination, notwithstanding that the lease may contemplate it, a commercial retail tenant could, using this clause, still seek compensation from SAT should the strata scheme be terminated?

Ms R. SAFFIOTI: From the proponent, yes.

Question put and passed; the Council's amendment agreed to.

Ms R. SAFFIOTI: I move —

That amendment 14 made by the Council be agreed to.

Mrs L.M. HARVEY: Can the minister explain why this is being included?

Ms R. SAFFIOTI: The committee identified proposed section 184(2) as a possible Henry VIII clause on the basis that it provided for the application of primary legislation to be modified by subsidiary legislation. The government agreed in principle with the recommendation to not support the committee's draft amendment and, instead, proposed the amendment passed by the Legislative Council. The amendment removed the Henry VIII clause and also provided that the Planning and Development Act 2005 applies, with appropriate modifications. When the Planning and Development Act was drafted, termination subdivision approval was not considered. The provision, with appropriate modifications, ensures that the Planning and Development Act applies to termination subdivision approval so that termination provisions can operate rationally and effectively in that context.

Question put and passed; the Council's amendment agreed to.

Ms R. SAFFIOTI: I move —

That amendment 15 made by the Council be agreed to.

Mrs L.M. HARVEY: I believe this comes out of the Standing Committee on Legislation report. Once again, it looks to be protecting the rights of vulnerable individuals. Could the minister please explain a bit more about how this strengthens the rights of vulnerable persons with respect to determination of a strata scheme?

Ms R. SAFFIOTI: The Legislation Committee recommended that in clause 83, proposed section 190 be amended to ensure that regulations must require the proponent to enter into arrangements for all owners to obtain independent advice or representation in connection with a termination proposal; provide for fuller or more extensive advice or representation for a class of owner identified in the regulations as vulnerable; and outline some factors the regulations will have regard to when identifying a class or classes of owner as vulnerable. The recommendation was that all owners be able to obtain independent advice and that vulnerable owners get additional advice.

The government supported the recommendation, but we moved an alternative amendment: we replaced the word "shall" with "must"—a more modern term, used throughout the bill; replaced the reference to "advanced age" with "age", because vulnerable owners can be very old or very young; enabled the regulations to specify the terms of the trust under which the money paid by the proponent to the trustee is to be held and paid out; and deleted the note below current section 190, because that note will be unnecessary if this amendment is passed.

Mrs L.M. HARVEY: The minister just said that this would also remove the note, but the lines that have been deleted are lines 5 to 17, and the note goes to line 21. Does this need to be amended again?

Ms R. SAFFIOTI: Sorry; that was an error in my speaking points. That has already been done; sorry about that.

Mrs L.M. HARVEY: Just to clarify, this has come out of the will of the committee to try to more appropriately protect vulnerable owners and cover off far more specifically on what may identify vulnerable owners to ensure that a range of considerations are taken into account when a scheme is being terminated, so that anybody who might be unusually disadvantaged by the termination of a scheme is appropriately considered and arrangements for independent advice and representation are made appropriately.

Ms R. SAFFIOTI: This basically allows that all owners can get funding for independent legal advice, not just vulnerable owners, but vulnerable owners will get additional funding.

Mrs L.M. HARVEY: Reference is also made in proposed subsection (2) to a trustee being appointed and for funds to be held in a trust, and proposed subsection (3) refers to regulations specifying the terms of the trust in subsection (2). Can the minister give me some indication of what might be prescribed with regard to the rules of the trust; who might manage that trust; and who an appropriate trustee might be? Is it likely that the trust will be owned, for example, by the council of owners, or could it be held in the name of a collection of owners that are unwilling participants in the termination of the scheme? How is that going to be constructed, how should it be registered, and who will be appropriate trustees?

Ms R. SAFFIOTI: I am advised that the creation of this provision is very new. The regulations will be developed and consulted on. It is likely that the trustee will be independent of the strata company, but this is hot off the press and the group will need to do some consultation to determine what form the trustee will take.

Mrs L.M. HARVEY: This is quite important because the proponent of a scheme will be transferring money into a trust so that people can access that money to obtain independent advice to represent their interests. There will need to be some pretty tight rules around how those funds are managed to make sure that they are not exploited in any way. In addition, if funds are left over, there will need to be requirements in the trust agreement to contemplate what would happen to any surplus funds at the end of the process and how they are to be acquitted appropriately, and who

might be an appropriate trustee, be they a real estate agent or a strata manager not connected with the scheme or whoever. By the sounds of it, the minister has not contemplated those matters at this point. Could I get an outline of some kind of framework or what the minister's bright minds in the department think we might see in the regulations?

Ms R. SAFFIOTI: The member has asked why the government advisers have inserted proposed subsection (3), which states —

> The regulations may specify terms of a trust referred to …

The form of that trust is going to be very important, as the member has outlined. Basically, we have the powers to develop those regulations and the department will liaise closely with industry on that.

Dr D.J. HONEY: I am pleased to see this insertion because it seems to take account of some of the issues that were raised. I just want to be clear about proposed subsection (1)(b), minister. Does the support that people are going to get also include representation at the State Administrative Tribunal? Will the people identified in those various categories under proposed subparagraph (i)—age, illness, trauma and the like—also have the capacity to have representation at SAT?

Ms R. SAFFIOTI: Yes.

Dr D.J. HONEY: When would we expect to see those regulations? I assume that this would not come into effect until the regulations have been developed and authorised.

Ms R. SAFFIOTI: Some work has already been done to prepare the regulations, but we believe it will take at least six months to get the regulations in place after the passage of the bill.

Dr D.J. HONEY: I want to reinforce the point that the member for Scarborough raised about the trust. I am particularly interested to see detail on how that trust is formed and when it is required, and that reasonable circumstances specify when a proponent must form a trust. I appreciate that the minister cannot answer that in the abstract, not having the regulations, but I just wanted to reinforce the good points made by the member for Scarborough on that point.

Mrs L.M. HARVEY: I seek some advice on when the minister thinks the regulations will be finalised. Obviously, it will be tricky getting this regulation right, and some of the regulations around the termination provisions in this legislation might be a bit more problematic. From my perspective as somebody who has lived in a strata development, and for the industry, it is desirable to get the body of this legislation passed with the regulations for the operation of strata titles schemes generally so that they are out there and operational to allow this industry to move in the right direction as quickly as possible. Other aspects around the termination provisions, appointing independent advocates and the trusts might take a little longer to set up. Does the minister envisage getting the working content of the legislation and the regulations for that component passed and gazetted earlier so that they can operate earlier, and perhaps holding back on the termination provisions and the regulations related to that? I do not want to see, for example, 18 months' of trying to draft tricky regulations holding back the body of legislation that is kind of operational and really needed by the industry as soon as possible.

Ms R. SAFFIOTI: Thank you for the question. It is envisaged to have a single start date. I appreciate the member's comments. There are potentially a lot of interrelationships throughout the bill, but it is envisaged that there will be one start date. We are very keen to get the regulations drafted as soon as possible and some preparatory work has been done in that regard, but the member is right, there are some very contentious or tricky issues. However, I am confident that again, with some good communication with industry and consumer advocates, we can get these regulations drafted as quickly as possible.

Mrs L.M. HARVEY: On behalf of the opposition, I can give the minister an undertaking that if she does want to gazette this legislation in tranches, I would be quite amenable to that. I would like to see the regulations and the consultation around particularly the contentious aspects of this legislation done properly using a really thorough consultation process, but I would also like to see the operational aspects of this legislation up and running. If we can be briefed appropriately on the regulations before they are tabled in the other place, I can give the minister an undertaking to expedite their passage. I would appreciate that cooperation.

Ms R. SAFFIOTI: I will take that on board. That may be part of the consultation process.

Question put and passed; the Council's amendment agreed to.

Ms R. SAFFIOTI: I move —

> That amendment 16 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Ms R. SAFFIOTI: I move —

> That amendment 17 made by the Council be agreed to.

Mrs L.M. HARVEY: Can the minister explain why these lines are being deleted?

Ms R. SAFFIOTI: This amendment relates to the letter from the Strata Community Association WA dated 18 September 2018 tabled in the other place by Hon Donna Faragher. The amendment deletes proposed new subsection 164A(3) of the Planning and Development Act 2005. Clause 166 inserts proposed new section 164A into the Planning and Development Act. Proposed new section 164A would replace section 148 of the Planning and Development Act to give the Western Australian Planning Commission and planning decision-makers discretionary power to require a subdivision and development application to be dealt with in an integrated way to facilitate a cohesive approach to planning and development. This is required in Western Australia; subdivision and development applications are dealt with separately, sometimes by different planning decision-makers. Because of the inability to properly integrate the subdivision and development process in certain situations, the development and subdivision of some strata schemes has resulted in less than ideal planning outcomes. It is not intended that subdivision and development is integrated in every case—see proposed new subsection 164A(1), which gives a planning decision-maker the discretion, if they form the requisite opinion, that integration is necessary. The Strata Community Association WA was concerned that proposed new subsection 164A(3) implied a default requirement for all strata schemes that subdivision and development applications be submitted concurrently. Deleting proposed new subsection 164A(3) puts beyond doubt that proposed new section 164A provides a discretionary power and does not require subdivision and development applications to be lodged concurrently for every strata scheme.

Mrs L.M. HARVEY: So this is effectively trying to ensure that we can facilitate subdivision and development applications and strata scheme lodgement by removing a requirement to have them considered concurrently?

Ms R. SAFFIOTI: There was a concern that the interpretation of proposed new subsection 164A(3) implied that there was a default requirement for all strata schemes that subdivision and development applications needed to be submitted concurrently. That is not something that was specifically required through this legislation, but to remove all doubt from the interpretation of that scheme it has been removed so it cannot be interpreted that subdivision and development applications have to be lodged at the same time.

Dr D.J. HONEY: One of the justifications for this legislation is the concern that people were frustrating the appropriate development and redevelopment of land. I take it that if that clause had stood, people could not land bank. One of the concerns at the moment is that the strata market, or the property market, is quite depressed, so people would use the changes in this legislation to compulsorily acquire strata blocks but there is no requirement on them whatsoever to redevelop the land. People could acquire the land and force everyone out, but then sit on that block for 10 years or whatever period until the land is redeveloped.

Ms R. SAFFIOTI: My advice is that this clause was not linked to land banking as described.

Question put and passed; the Council's amendment agreed to.

The Council acquainted accordingly.