

COMMUNITY TITLES BILL 2018

Returned

Bill returned from the Council with amendments.

As to Consideration in Detail

On motion by **Ms R. Saffioti (Minister for Transport)**, resolved —

That the Council's amendments be considered in detail forthwith.

Council's Amendments — Consideration in Detail

The amendments made by the Council were as follows —

No 1

Clause 16, page 28, line 23 — To delete the line and substitute —

(6) When a community title for a lot comes into existence it confers on the owner of the lot —

No 2

Clause 22, page 37, lines 10 to 11 — To delete “may, and must, if the Planning Commission so requires,” and substitute —

must

No 3

Clause 22, page 37, line 20 — To delete “may” and substitute —

must

No 4

Clause 99, page 125, line 26 — To delete “monitoring” and substitute —

enforcing

No 5

Clause 142, page 167, lines 4 to 8 — 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 159; and

No 6

Clause 144, page 168, lines 18 to 22 — To delete the lines and substitute —

(4) 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 community titles scheme; and

(b) any other appropriate modifications.

No 7

New Clause 145A, page 169, after line 30 — To insert —

145A. 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 community corporation to which a full proposal is submitted under section 145 must refer the proposal for review and assessment to a person who —

(a) is independent of the community corporation 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 community corporation with an independent assessment of the full proposal; and

(c) at a time and place arranged with the community corporation, make a presentation of its assessment open to the persons mentioned in section 145(3)(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 in the community corporation's community titles scheme for whom arrangements for fuller or more extensive advice or representation are to be made under regulations made under section 159(1)(b); and
 - (b) advise those owners of their entitlements under regulations made under section 159; 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 159(2).
- (5) In any proceedings before the Tribunal under Part 12 in which there is a dispute about whether an owner of a lot in the community corporation's community titles scheme is entitled to fuller or more extensive advice or representation under regulations made under section 159(1)(b) or is entitled to benefit under a trust referred to in section 159(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 community corporation —
- (a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and
 - (b) may charge fees under section 158 to cover the cost of paying those fees and reimbursing those expenses.

No 8

Clause 146, page 173, lines 14 to 16 — 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 common property.

No 9

Clause 148, page 177, line 12 — To delete the words “the independent person must”.

No 10

Clause 149, page 178, lines 25 to 28 — To delete the lines and substitute —

- (b) if all or part of the tier parcel of the community 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 11

Clause 149, page 184, after line 13 — To insert —

- (18A) If the Tribunal orders a person under subsection (18)(b) 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 community titles scheme to make a payment to that person in respect of the discharge, withdrawal or removal of the estate, interest or right.
- (18B) If the whole or part of the tier parcel of a community 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 community 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.
- (18C) If the whole or part of the tier parcel of a community 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 community 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.
- (18D) If the whole or part of the tier parcel of a community titles scheme is subject to a lease or licence not referred to in subsection (18B) or (18C), the Tribunal may, subject to any other written law, order that —
- (a) the lease or licence is terminated on the termination of the community 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 12

Clause 150, page 185, lines 17 and 18 — To delete “modifications set out in the regulations.” and substitute —

appropriate modifications.

No 13

Clause 159, page 193, lines 3 to 13 — 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 community 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 14

Clause 160, page 194, lines 1 to 5 — To delete the lines and substitute —

- (3) 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 community scheme; and

(b) any other appropriate modifications.

No 15

Clause 225, page 231, lines 15 to 17 — To delete the lines and substitute —
the meaning of the *Community Titles Act 2018*.

Ms R. SAFFIOTI — by leave: I move —

That the amendments made by the Council be agreed to.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [10.04 pm]: I will not keep the chamber too much longer. The opposition is in agreement with the government moving these proposed amendments en bloc. Aside from two proposed amendments, they are all consistent with the Standing Committee on Legislation's recommendations in the other place for the amendments to the termination clauses of the Strata Titles Amendment Bill 2018. The Community Titles Bill 2018 obviously needed similar requirements around the termination of community titles so that there was some consistency with leasehold and strata titles. The opposition is in agreement with these proposed amendments. I would like to put on the record that proposed amendments 2 and 3 came from Hon Donna Faragher in the other place, who put forward that there needed to be more clarity around one particular clause—clause 22—in seeking comment from local government and others with respect to changes and amendments to a community development statement and community development schemes. These proposed amendments will make it very clear that, should this bill pass, it will now be a requirement that a local government, to which an application to the Western Australian Planning Commission for a change to a community development statement is referred, must advertise the application for public comment and that the regulations must specify a minimum period that must be allowed for comments to be made. It makes it very clear to anybody who might be involved in these community titles that the regulations will dictate the time frame for a consultation process and that the local governments that might be affected must place an advertisement for application for public comment. We think these proposed amendments are good and sound. They strengthen the legislation. The process in this house and the other place has been very robust, in conjunction with the committee's examination of the legislation.

I commend this legislation to the house and put on the record my thanks to all the public servants who are waiting at the back of the chamber for the passage of what has been a very long-term project. My congratulations to them and my thanks for their cooperation with the opposition in trying to explain two very complex pieces of legislation.

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

The Council acquainted accordingly.

House adjourned at 10.06 pm
