STRATA TITLES AMENDMENT BILL 2018

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 83: Insertion of sections 4 and 5 and Parts 2 to 14 —

Debate was interrupted after the clause had been partly considered.

Mrs L.M. HARVEY: I will be as quick as I can. I have a few more queries, and I have spoken to the minister about some amendments that we will get to once I have finished with some, I hope, very quick Q&A. I refer to proposed section 124, "Voting by proxy". If a proxy is representing another owner in a meeting, does the proxy have a right to participate in discussion at the meeting if they are not a member of or an owner in the strata scheme?

Ms R. SAFFIOTI: The advice I have is: yes, unless the by-laws restrict or limit that participation.

Mrs L.M. HARVEY: To be clear, if someone allocated a proxy to their vote, hopefully with written instructions, which is always the best way for people who have a proxy representing them on a resolution, by default, would the by-laws need to prohibit a proxy from actively participating in the meeting or is the proxy prohibited unless a by-law permits them to participate?

Ms R. SAFFIOTI: The by-laws would have to prohibit them.

Mrs L.M. HARVEY: I refer to proposed section 125, "Disqualification from voting as proxy". Subsection (2) states —

> A person must not vote as a proxy of another person on a resolution relating to the provision of goods, amenity or service to the strata company if the person so voting (the ***proxy***) has a direct or indirect pecuniary or other interest in the provision of the goods, amenity or service.

What are the consequences of this circumstance occurring? If a meeting has been convened, a proxy has been appointed and they inappropriately vote on something in which they have a pecuniary interest of some sort, is that vote then rendered invalid? Is there a penalty? If a contract is entered into as a result of that vote, does this then give the council of owners the authority to exit a contract, which has been inappropriately authorised by a council, by way of proxy vote that should have been a disqualification?

Ms R. SAFFIOTI: In response to the three-part question, the vote is invalid, there is no penalty and the State Administrative Tribunal can order the termination of the contract.

Mrs L.M. HARVEY: Fantastic. Moving on to proposed section 129, "Notice requirements for all general meetings", it says that 14 days' notice needs to be given for any general meeting of a strata company. For the purposes of an annual general meeting, all business is special business. Further, proposed section 129(4) says that the owner of a lot can give written notice if they have an item that they wish to have considered at the general meeting and that item would need to be considered as an item of special business. Is there a time frame in which notification needs to be given to the committee for the council of owners for the inclusion of a special business item to be included in the AGM agenda, or would that need to be governed by a by-law of that particular council of owners? If they have to give 14 days' notice of any business for an AGM and an owner comes up at minus 15 days, is there a requirement for an owner to give a notification to the council that is formulating the agenda and sending the notices out so that it has a reasonable chance of being able to distribute the information about the item of special business that is to be included in the agenda?

Ms R. SAFFIOTI: If the motion requires any sort of resolution, it still requires 14 days' notice.

Mrs L.M. HARVEY: Just to be clear, if the item requires any sort of resolution, the owner needs to give 28 days' notice, effectively, or 14 days' notice to the council of owners to include it in the agenda minutes? To backtrack how it works, normally a council is formed and it vets the agenda. Generally, if people want items submitted to that agenda for consideration by the council, they need to be received within a particular time frame. The council of owners with the strata manager puts the agenda together and it gets distributed 14 days before the meeting, or earlier if possible. Is there any requirement on a participant in a strata scheme to ensure that they are giving the council of owners adequate opportunity to have that item included for distribution on the agenda?

Ms R. SAFFIOTI: Again, by-laws can specify how the early notice is provided, but overall it is the 14 days that is prescribed and that is the key. As long as the owners have 14 days' notice of the resolution, that is the key requirement. The by-laws might be able to specify how that happens preceding that, but overall it is 14 days before the resolution is made.

Mrs L.M. HARVEY: I have one last question on this point. I believe that all the owners in a strata plan can get access to a distribution list of the other owners. If an owner wants something to be considered at an annual general

meeting, is there anything to stop them distributing their own item of special business independently of the council of owners that is formulating an agenda?

Ms R. SAFFIOTI: Not unless the by-laws preclude that from happening.

Mrs L.M. HARVEY: I will move on to proposed section 130, "Quorum at general meetings" on page 231. I would like some clarification on proposed subsection (4). This clause details what a quorum is for a general meeting but seems to say that a quorum is not relevant if a collection of owners who have convened for a meeting wait for 30 minutes. I might be reading this incorrectly, but it seems to me that a quorum is a quorum. I would have thought that a meeting could ordinarily not convene without the required quorum of people who are entitled to vote.

Ms R. SAFFIOTI: I will read some notes and then explain it. In addition to being amended for clarity, this clause includes a new provision that, other than for two-lot schemes, will enable a quorum to be declared of those people who are present 30 minutes after the appointed time for the general meeting. In feedback, stakeholders raised that many meetings were postponed simply because a quorum was not reached. This is a new provision for ordinary resolutions that will allow those meetings to proceed. This is based on feedback from stakeholders to make sure that ordinary decisions can be made. As a safeguard, the State Administrative Tribunal will have extra power to review these resolutions to ensure that this clause is not abused.

Mrs L.M. HARVEY: I have just a little more on this one. If a collection of owners in a scheme have convened for a meeting, do not meet a quorum, but have been there for 30 minutes and a couple of motions on the agenda require resolution without dissent or some other form of resolution, will the decisions of that meeting, based on the number of people at the meeting, be binding, or will those decisions need to be revisited by all the other owners?

Ms R. SAFFIOTI: I will go through it. Again, it depends on the resolution. With a unanimous resolution, everyone is required to vote; that one basically requires a vote from everyone. With an ordinary resolution, just a simple majority is needed. With a special resolution, at least 50 per cent have to be in favour with not more than 25 per cent against. Then it is double-checked and double counted and unit entitlement is looked at. With a resolution without dissent, there cannot be a dissenting voice. Basically, the strongest resolution is the unanimous resolution whereby everyone is required to vote.

Mrs L.M. HARVEY: The minister said earlier that there is an appeal mechanism to the State Administrative Tribunal about those decisions if someone was unable to make it to the meeting.

Ms R. SAFFIOTI: Yes, that is right. SAT can review that resolution. The new provisions, particularly the electronic voting, will help to address some of those issues. People cannot always physically make it, so the new provisions will help.

Mrs L.M. HARVEY: I agree. Indeed, it is difficult to get people to go to meetings.

Ms R. Saffioti: Especially on a Wednesday night!

Mrs L.M. HARVEY: Proposed section 137 deals with the general duties and conflicts of interests of members. At the bottom of page 233 of the bill, it provides that members of the council must inform the council in writing of any direct or indirect pecuniary interest and conflicts of interests and all those sorts of things, which is really good. Proposed subsection (3)(c) states —

> in the case of a member of the council, must not vote on a matter in which the member has an interest required to be disclosed under paragraph (a).

Proposed subsection (4) basically says that a pecuniary interest does not apply to a benefit solely because the member is an owner of a lot in the scheme. That is a bit obvious if they are on the council. In certain strata developments when a council looks at common property, repairs and maintenance and those sorts of things, should a councillor in those circumstances exempt themselves from a decision to spend money that would specifically be to repair their own unit? Would that be considered a pecuniary interest, given that they are performing their role on the council of owners to repair and maintain certain property? Sometimes common property that abuts a member's unit lot entitlement might need repair. I would like some direction. Ethically, I would excuse myself from that decision, but I am interested to know whether that is required under this provision.

Ms R. SAFFIOTI: The proposed section applies to members of the council and persons performing the functions of a strata company or body corporate who is a member of the council or an officer of the strata company. The proposed section sets out that such persons have duties to act honestly, with loyalty and good faith and to exercise the degree of care and diligence that a reasonable person in the person's position would be reasonably expected to exercise. This proposed section provides that such persons must not make improper use of their position to gain directly or indirectly an advantage for themselves or any other person or cause detriment to the strata company. The proposed section imposes a duty to inform the council in writing of conflicts of interest and provides that a member on the council must not vote on anything in which the member has a conflict of interest. This provision

does not apply to a conflict of interest that arises solely from the fact that the person is a member of the strata company. We do not believe that someone would necessarily have to excuse themselves from a vote on improvements to their property. Can the member give us the example so we can try to address the exact example?

Mrs L.M. HARVEY: Sure. One of the issues raised with me as a problem by a constituent in that scheme is that the sliding doors and windows of the apartments were at some point deemed to be common property because of the way the strata plan was drawn. One of the owners in the development managed to get themselves on to the council of owners, became chair and was part of the decision-making during the renovation to have all the sliding doors and windows at the front of the apartment replaced. My view is that under the old scheme it was not clear. It was a decision of the whole council, but in those circumstances I would hope that the new legislation, with its stronger parameters, would be a bit clearer about that type of decision-making.

Ms R. SAFFIOTI: In that example, if that improvement was only to her apartment and not others, there probably would be a conflict of interest. The State Administrative Tribunal can overturn that decision and remove the council member from her position. I think the test is whether someone is upgrading their own unit, not voting on upgrades across the area. When someone is directly benefiting, not voting on common upgrades, I think that is where the test —

Mr J.E. McGrath: Surely other members of the council wouldn't put up with that.

Mrs L.M. Harvey: As it happened, they were bullied into it. Anyway, it was a long time in the past but it's just one of those ones that stayed with me.

The SPEAKER: The member for Scarborough has the call.

Mrs L.M. HARVEY: I move to proposed new section 143 under part 9, "Strata managers". These are quick ones. Proposed new section 143(5)(d) states —

> terminating a contract for services or amenities under section 115;

I thought section 115 had been deleted. I am trying to work out whether it has been renumbered or if I have just lost myself in the marked-up copy of the bill. It is on page 237.

Ms R. SAFFIOTI: Proposed section 115 is the old section 39A. That refers to the power to terminate certain contracts for amenities or services for five years. This is implied in every contract to which the proposed section applies. There is a provision that the strata company may terminate the contract by written notice to every other party to the contract after five years have passed since the contract was made. This proposed section precludes the strata manager from making that decision. It is the decision of the strata company.

Mrs L.M. HARVEY: This next question applies to proposed sections 145, 146 and 147. There is a proposed section about the minimum requirements of strata management contracts, one about general duties and one about conflict of interest, disclosure of remuneration and other benefits. I am curious to know why and in three proposed sections there are pretty much the same requirements for the strata manager to declare in writing prior to entering a contract any conflicts of interest, either direct, indirect or pecuniary, and any benefit they might receive by way of commission. This requirement appears again in the reference to the general duties and conflicts of interest and that again is under its own separate proposed section referring to the disclosure of remuneration and other benefits. I do not mind being doubly sure that we cover strata managers being up-front about any conflicts of interest they might have, but I am curious about why this requirement repeats itself in three consecutive clauses.

Ms R. SAFFIOTI: Yes, I think we are being very thorough here about conflicts of interest, but proposed section 145 is about pre-contractual obligations, proposed section 146 relates to the general conduct and duties and conflicts of interest, and proposed section 147 relates more to the commissions.

Mrs L.M. HARVEY: Under "Termination of strata management contract", proposed section 151(1)(d) states —

> There are proper grounds for termination of a strata management contract by a strata company if —
>
> …
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> > the strata manager is a Chapter 5 body corporate within the meaning given in the Corporations Act 2001 (Commonwealth) section 9; …

I did not have time to look that up. Would the minister mind telling me what the chapter is about?

Ms R. SAFFIOTI: This refers to a strata company becoming insolvent. When it is insolvent, it is grounds for terminating the contract. The member asked specifically about the commonwealth Corporations Act. I think we have covered that.

Mrs L.M. HARVEY: I figured it was something like that; I just did not know what particular level of mismanagement, as a company director, that was referring to. I move on to proposed section 157, "Information to be given after contract". It states that if a notifiable variation occurs after a buyer signs a contract for the sale and purchase of a lot, the seller needs to give notice in writing. I know there are two types of notifiable variations, but can the minister give me some examples of type 1 and type 2 notifiable variations? I do not need a comprehensive list, just some examples of what those would be.

Ms R. SAFFIOTI: A type 1 notifiable variation means any of the following that occur after a contract for the sale and purchase of a lot in a strata title scheme is entered into but before the settlement date of the contract: the area or size of the lot or proposed lot is reduced by five per cent or more from the area or size notified to the buyer before the buyer entered into the contract; the proportion that the unit entitlement or reasonable estimate of the unit entitlement of the lot bears to the sum of the unit entitlements of all the lots is increased by five per cent or more or decreased by five per cent or more from the proportion of unit entitlement or the estimate of the unit entitlement of the lot notified to the buyer before the buyer entered into the contract; anything relating to a proposal for the termination of a strata title scheme is served on the seller by the strata company; or any event classified by the regulations as a type 1 notifiable variation.

A type 2 notifiable variation means any of the following that occur after a contract for sale and purchase of a lot in a strata title scheme has been entered into: the scheme plan or proposed scheme plan or an amendment of the scheme plan for the strata title scheme is modified in a way that affects the lot or the common property—there are quite a few examples; the schedule of unit entitlements or proposed schedule of unit entitlements or an amendment of the schedule of unit entitlements for the strata title scheme is modified in a way that affects the lot; the scheme's by-laws or proposed scheme by-laws are modified; the strata company or a scheme developer enters into a contract for the provision of services or amenities to the strata company or to members of the strata company, or a contract that is otherwise likely to affect the rights of the buyer varies an existing contract of that kind in a way that is likely to affect the rights of the buyer; a lease, licence, right or privilege over the common property in the strata title scheme is granted or varied; and any other event classified by regulation.

Just to give a justification for that, the changes that occur between contract signing and settlement about which the seller has to give the buyer notice are called notifiable variations. Not all changes are notifiable variations. The reform provides that type 1 notifiable variations are critical, so failing to notify those will give a buyer an automatic avoidance right. Type 2 notifiable variations may or may not be critical, so failure to give a type 2 notification will give rise to an avoidance right if the information would have caused the buyer to pull out of the contract. This change was introduced because, under the current act, when a person buys a lot under an off-the-plan contract knowing that the scheme will not be built for two years and the property market drops, that buyer can then avoid the contract as a result of a change in the size of the lot, including if the lot increases in size. In other words, a current flaw in the act is exploited by buyers in a downward market.

Mrs L.M. HARVEY: Moving on to proposed section 179, we are looking at the termination of schemes. I think I am in the right proposed section; it is headed "Content of full proposal". I wanted to get this on the record. When a scheme is being terminated, and it is getting to the point at which a full proposal has been put to all owners of a strata scheme, there may be some reserve funds held in an account and there may be some assets that might have some value, such as common property that is collectively owned. How is that treated in the context of a termination of a scheme?

Ms R. SAFFIOTI: The proposal must include a statement of the current assets and liabilities of the scheme and any current or pending legal proceedings to which the strata company is or is proposed to be a party. The proposal to wind up the company includes the realisation of the assets and liabilities. The proposal needs to give a clear statement of all the assets and liabilities and any pending proceedings.

Mrs L.M. HARVEY: Presumably, as part of the function of determining the value of each of those individual unit lot entitlements, there can be a value apportioned per lot for those assets?

Ms R. SAFFIOTI: That value is apportioned according to the unit entitlement.

Mrs L.M. HARVEY: Thank you for the answers to those questions, minister. That is all I have to deal with for clause 83. I know the minister has an amendment and my colleague the member for Cottesloe has an amendment. We will just go through a sequence of those.

Ms R. SAFFIOTI: As was distributed yesterday, we have a technical amendment. I move —

Page 213, line 30 — To delete the line and substitute —

Penalty: a fine of $3 000.

This basically clears up an administrative error in the bill.

Amendment put and passed.

Dr D.J. HONEY: Before I outline and move my amendment, the minister has indicated an amendment to it that we accept, but I will go through this. As I understand the procedure, Mr Speaker, you can guide me in this. I will talk to it?

The SPEAKER: Yes.

Dr D.J. HONEY: My amendment is for a strata title scheme with five lots or less. It can be dissolved only if the number of votes cast in favour of the termination proposal is 100 per cent of the total number of lots in the scheme. That means that a scheme of five lots or less can only be dissolved if everyone agrees. It is then for a strata title scheme with six lots or more, where the strata title scheme is under 10 years old, and can only be dissolved if the number of votes cast in favour of the termination proposal is at least 80 per cent of the total number of lots in the scheme. It also applies where the strata title scheme is over 10 years old, if the number of votes cast in favour of the termination proposal is at least 90 per cent of the total number of lots in the scheme. This just reflects the Singapore model.

I understand that I talk to this and do not put it. The reason for this amendment is really quite straightforward. For the smaller lots, the original proposal proposed that for a strata title of two, one could initiate a dissolution proposal, or two out of three. That seemed to be manifestly unfair for the smaller units. A smaller majority requirement is easy to understand in the much bigger units, which are typically multistorey and have a large number of members; one hold-out can really hold up a whole group of people. We discussed the balance of rights, if you like, of the individual who is compelled to move versus the people who wish to redevelop, in situations in which it is a redevelopment. I have discussed at length the fact that it is often speculators who have the majority vote, but let us assume the simpler case where it is just the residents who want to do that. With those blocks that have a large number of units, 75 per cent seems manifestly unfair. When some of us discussed this matter, we felt that for five lots or fewer, it would be reasonable to expect that we should get some consensus. With a smaller number of units, if you like, in a strata title, we should not be able to compel one person to leave their accommodation. That is a judgement call. We thought that for more than five, with the other safeguards that the minister has clearly articulated, it may be appropriate to have the vote of 80 per cent. The 90 per cent threshold is really to reflect the fact that for newer units that have just been built, it would be unfair to choof people out just because someone realises they can achieve a greater profit. Surely, the strata scheme has to be a certain age before people can have their property compulsorily acquired through this legislation. I am not sure whether I need to say anymore. That was the logic of the amendment.

Ms R. SAFFIOTI: I thank the member for those comments. I thank opposition members for their comments on this issue. This is not an easy policy challenge for us. This is about trying to get the balance right. This is about the older building stock with a large number of units that are unsafe for those who live there, and it will get worse over time. I reflected on comments made by members on my side—in particular, the member for Balcatta raised this issue with me—and also by the opposition. The member for South Perth is the voice of reason.

Mr J.E. McGrath: Always.

Ms R. SAFFIOTI: He is always reasonable. No wonder they named a pavilion after the member for South Perth! The members for Scarborough and Cottesloe also commented on this matter. We have been reflecting on this issue. We fundamentally brought it back to asking: what is the problem that we are trying to address? It is about the larger, older building stock. We want a percentage that is consistent, so it is not 50, 66 or 75 per cent. Upon reflection, I was worried about the creation of vexatious termination procedures when we have one versus one, as that could involve significant utilisation of resources through the State Administrative Tribunal. This is very complex legislation and we really want to see reform happen. As a Parliament, we have to face the challenges together because this was started under the previous government and it has continued under this government, but I am very keen to make sure that we are pragmatic about this matter. In reflecting on the discussion, we need to ensure that we have a pragmatic, unified approach. I do not think this issue should be played out there. This is a policy challenge to create a better community and better housing stock, which need to be in this legislation together. Therefore, I will move a compromise amendment. I move —

> Page 273, lines 1 to 12 — To delete the lines and substitute —
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> (7) A termination resolution is passed subject to the confirmation of the Tribunal if —
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> (a) the strata titles scheme has 5 or more lots; and
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> (b) the number of votes cast in favour of the termination proposal is at least 80% of the total number of lots in the scheme.

Mrs L.M. HARVEY: I would like to thank the member for Cottesloe for the extensive research he did, particularly into this termination of scheme and indeed the input that all members in the chamber have had into that. I thank the minister for her cooperation in what I think achieves a better outcome with respect to perhaps some of those

vulnerable people in our community who might be in those smaller lots and probably more prone to being bullied into taking a position that they may not choose to take on the termination of scheme. The opposition is really pleased to accept this amendment. I know the minister would like me to give an ironclad guarantee that I can prevent this legislation from going to a committee in the Council. I can give a guarantee that I will do my very best. However, the crossbenchers in the other place are a fickle beast, so we will see where we land. I appreciate the minister's cooperation with this. I think that we have managed to achieve a better outcome.

Ms R. SAFFIOTI: While we are here trying to set the guarantee, I understand that the Liberal Party supports the legislation and will support it in the upper house.

Mrs L.M. HARVEY: We made an agreement in the party room to support amendments. We will need to revisit that decision, but we are very pleased with the outcome of this amendment.

Mr D.A. Templeman: Peace in our time!

Mrs L.M. HARVEY: We are very pleased. An opposition of 14 members appreciates every small win. Yes, we will take it back to our Council colleagues with our tails up and ask them to support us in the spirit of bipartisan support for what is very complex legislation.

Mr J.E. McGRATH: Will we now have five or more units, all the way up to 100 units, and be 80 per cent across the board?

Ms R. Saffioti: Yes.

Mr J.E. McGRATH: Okay. That is a good outcome.

The SPEAKER: Thank you, member for South Perth.

Mr J.E. McGRATH: There are a lot of apartments in my electorate.

Ms R. Saffioti: They call that comments from the special comments man!

The SPEAKER: The boundary rider from South Perth!

Amendment put and passed.

Mrs L.M. HARVEY: The opposition has a further amendment to move. I circulated our amendment to the minister, but we do not have the government's support. I move —

> Page 278, line 31, to page 279, line 2 — To delete "(but it may not be more than 10% of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount)" and substitute —
>
> if the Tribunal is satisfied that circumstances justify a higher amount

Once this scheme has been terminated and compensation has been put to an individual who is being adversely impacted—that is, they do not want to leave their apartment and compensation has been determined by the State Administrative Tribunal—there is a clause here that refers to the amount of compensation payable, which is a combination of considerations of the tribunal around what would be payable under the Land Administration Act and taking into consideration other expenses such as settlement agent fees, moving fees, expenses and a range of other issues that confront somebody when they have to move house, which is particularly problematic if they have to move house when they do not want to. Under proposed section 183(10)(b), our take on it is that the tribunal, in considering the amount of compensation that can be paid, can award —

> (iii) an amount appropriate to compensate for the taking without agreement may be added to the award or offer (but it may not be more than 10% of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount);

The reason the opposition is moving this amendment is that it believes that 10 per cent is a low threshold. It believes that the tribunal should be given latitude to not be constrained by exceptional circumstances, whatever they may be, and to award something above what has been offered to an individual who is not happy with the compensation a developer has given. The tribunal should be able to award something higher if it thinks it is justifiable, not necessarily because exceptional circumstances warrant it, but because it believes it is justifiable in the circumstances of the individual who has been forced to move from the house, apartment or strata dwelling in which they are living. That is the basis for our amendment. Our members canvassed this matter a lot last night during consideration in detail. We all agree that the tribunal should be given more latitude to consider the individual circumstances of people who might have particular needs such as medical, mental health and a range of other needs that will warrant the tribunal awarding a 10 per cent increment above what has been offered to other individuals. I do not have anything further to add. That is the reason the opposition is putting forward this

amendment. I understand that the government is not willing to accept this amendment, but we felt, with good conscience, that we needed to try to achieve this outcome.

Ms R. SAFFIOTI: I thank the member for putting forward the idea. Again, it is something that I reflected on during the discussion last night, and when I got home and could not get to sleep for an hour and a half, I reflected on it a bit more. At two o'clock I came to a resolution; that is, I understand the intention and the safeguard that the member is trying to create. What I suspect, though, is that this could and would create a situation in which one owner will wait to seek a windfall gain. I give the example—maybe I will not talk about the mushroom farmer in my electorate—of an owner of property who holds out and then gains a windfall to the detriment of everyone else. We want to create a fair framework that everyone understands and works within. Not having a framework will create an incentive for potentially one or two people to hold out to the detriment of everybody else.

It is hard to strike a balance. I thought about the proposal, as I said last night and this morning, but I believe if we do not have the right framework, there will be an incentive for one person to potentially try to push for a significant windfall gain to the detriment of others. We really want to get some fairness. I understand what the opposition's amendment is trying to achieve, but I do not think that it will achieve it. I think the proposal we currently have before the chamber will provide a framework for people to sell without the termination process. I think that will produce a fairer outcome for more owners.

Dr D.J. HONEY: I thank the minister for considering the other amendment. My contribution has focused on one common scenario in my electorate; that is, speculators have bought up different properties, or at least a controlling interest in those strata properties, and we do not know what the people who sold out were paid. It could be assumed that speculators probably paid a premium to get that majority control.

This proposed amendment is about people who do not wish to sell and wish to remain in their strata unit but will be compelled to leave. As I stated yesterday, my concern is that once speculators have obtained majority control, they will be able to control the whole process. They are the only ones who can initiate or approve anything. They can initiate this every six months and make people vote three times. They can stop anyone else from putting in an offer. My concern is that if we end up with compulsory acquisition, there may be special conditions that warrant a higher value. However, once a speculator or group of people has obtained a controlling interest in the strata units, their interest will be in offering the smallest amount possible. That may be a significantly lower amount than they offered the original unit holders in order to gain that majority interest. That means the people who elect to stay could be significantly disadvantaged. This bill relies upon and places great faith in the State Administrative Tribunal. It trusts SAT to make the right decision and the right call. I am saying we should trust that SAT will not be extravagant with someone else's money and will not do something that is unreasonable. SAT will take all matters into consideration and offer a fair amount. However, it seems that this 10 per cent limit could unfairly disadvantage unit holders. Rather than the final unit holders getting more, it could be the case that because the speculators paid a premium in order to get a controlling interest, subsequent unit holders could get less, and SAT might be cognisant of that and decide to offer them more. That is the basis of the amendment.

Ms R. SAFFIOTI: I thank the member for his contribution. I understand the point he is making and where he is trying to go. However, I do not think this proposed amendment will achieve that outcome. In relation to the termination procedure, as I have said, it is not an easy procedure. There are a number of hurdles. With respect to speculators and the concept of holding costs and the options they have, I think they would probably try to avoid the termination procedure, because, as the member can see, it is a very detailed procedure, with a number of steps and safeguards. I do not believe this proposed amendment will achieve what the member wants it to achieve. I think it will create an unfair outcome, because one or two unit holders may hold out, to the detriment of the others, and I do not think that would work well. I have seen that occur in greenfields developments, in particular with people who have some power with respect to potential land that requires buffers around it. They often create a demand for that block so that the payment they receive exceeds very much the value of that block and is also to the detriment of others around them. I understand the point that the member is trying to make. However, I do not think this will achieve the outcome the member wants, and it may have detrimental impacts.

Mr A. KRSTICEVIC: Minister, on that point, I do not think it is about people holding out, and that is not where we are coming from with this proposed amendment. It is more about the percentage. The minister referred to exceptional circumstances. What are the exceptional circumstances for which SAT can provide extra payments? The circumstances may not be exceptional, but they may warrant a higher payment. That would depend on how high the threshold is for exceptional circumstances. One example that I can think of—it might not be the best example—is a person who has grown up in a particular area and has aged in that area. The person has a lot of support from their neighbours and the community, and a lot of mental health assistance, so that is the right environment to enable that person to cope. If that person is shifted from that environment to somewhere else, they may have to incur additional expenses, costs and charges to get the same support network that they have currently.

They may say, "I have got my support network here. It works great. If you want to shift me over there, I am getting my money, plus 10 per cent, and that is great, but the additional support I will need to cope with this new environment will cost me a lot more than 10 per cent, and who is going to pay for that, or how am I going to cover that expense?" To me, 10 per cent is potentially a low figure. It is not about people holding out and exploiting the system. It is really about asking whether 10 per cent is enough for vulnerable people to cover the costs of being able to survive in that new environment. That is what it is about.

Ms R. SAFFIOTI: The point the member made is fair enough, and we discussed it last night. There are a couple of different aspects including the no-worse-off provision; the definition of vulnerable persons, who again, get more care in this process; significant hurdles and safeguards; and the State Administrative Tribunal's definition and expectation of their being exceptional circumstances. In the scenario the member outlined, which was outlined last night a number of times, a number of different mechanisms will make sure that the issues such as moving costs and other costs are covered as part of the whole process.

Division

Amendment put and a division taken with the following result —

Ayes (14)

Mr I.C. Blayney	Mr P. Katsambanis	Mr R.S. Love	Mr P.J. Rundle
Mrs L.M. Harvey	Mr Z.R.F. Kirkup	Mr W.R. Marmion	Ms L. Mettam *(Teller)*
Mrs A.K. Hayden	Mr A. Krsticevic	Mr D.C. Nalder	
Dr D.J. Honey	Mr S.K. L'Estrange	Mr K. O'Donnell	

Noes (27)

Dr A.D. Buti	Mr M. Hughes	Mr Y. Mubarakai	Ms R. Saffioti
Mr J.N. Carey	Mr W.J. Johnston	Mr M.P. Murray	Ms J.J. Shaw
Mr R.H. Cook	Mr D.J. Kelly	Mrs L.M. O'Malley	Mr D.A. Templeman
Mr M.J. Folkard	Mr F.M. Logan	Mr P. Papalia	Mr R.R. Whitby
Ms J.M. Freeman	Ms S.F. McGurk	Mr S.J. Price	Ms S.E. Winton
Ms E. Hamilton	Mr K.J.J. Michel	Mr J.R. Quigley	Mr D.R. Michael *(Teller)*
Mr T.J. Healy	Mr S.A. Millman	Mrs M.H. Roberts	

Pairs

Dr M.D. Nahan	Mr M. McGowan
Ms M.J. Davies	Mr B.S. Wyatt
Mr V.A. Catania	Mr P.C. Tinley
Mr D.T. Redman	Mr C.J. Tallentire

Amendment thus negatived.

Clause, as amended, put and passed.

Clauses 84 to 89 put and passed.

Clause 90: Schedule 1 by-law 4 amended —

Mrs L.M. HARVEY: This clause relates to schedule 1, "Governance by-laws", and the constitution of a council. There are some changes in the bill and I am trying to work out whether anything is substantially changed from the previous scheme or whether it has just been a reformatting of the wording. I am specifically looking at amendment to subsection 3 of the number of members of a council of owners.

Ms R. SAFFIOTI: Can the member clarify exactly where she is looking?

Mrs L.M. HARVEY: I am looking specifically at clause 90, "Schedule 1 by-law 4 amended", and on page 324, subclause (3) states —

> Delete Schedule 1 by-law 4(3) and insert:

We then see proposed by-law 4(3). I do not think this is a change from the existing legislation, but I just want the minister's reassurance that that is the case.

Ms R. SAFFIOTI: It is basically rephrasing and improving the clarity of by-law 4(3).

Mrs L.M. HARVEY: Regarding the compilation of a council, hopefully the minister can seek the advice of her adviser, because it is difficult to work out what is going on with the amendments to the schedules. If a husband and wife are co-proprietors of two strata titled units in a scheme, currently, as I understand it, the legislation prohibits a husband and wife from being on the council of owners at the same time. I want to know whether that is being modified, because there have been some modifications to co-proprietors of a plot being eligible to go on a council.

Ms R. SAFFIOTI: There will be no change. Proposed subsection (6) states that if there are co-owners of a lot, only one of the co-owners is eligible to be elected to the council. The existing provision will stay.

Mrs L.M. HARVEY: In a development that I am aware of, a husband and wife are co-proprietors of two separate lots. As husband and wife, are they still prohibited from being part of the council together?

Ms R. SAFFIOTI: If they own only one lot, they are prohibited from both being on the council. If they own two separate lots, they are not prohibited.

Clause put and passed.

Clause 91: Schedule 1 by-law 5 amended —

Mrs L.M. HARVEY: This clause is to do with nominations to council. Subclause 91(3) states —

> In Schedule 1 by-law 5(2) delete "chairman shall call upon those persons present" and insert:
>
> chairperson must call on those persons who are present at the meeting in person or by proxy

Several members interjected.

The SPEAKER: Members, your own member is on her feet!

Mrs L.M. HARVEY: I think this section is looking at individuals who are nominated to be on the council of owners. Nominations for council are normally received in writing prior to an annual general meeting to elect a new council. Under the by-laws, can a council allow a nomination in writing only, or is the chair required to take nominations from the floor at a meeting, regardless of the nominations that may have been received for positions?

Ms R. SAFFIOTI: Schedule 1 by-law 5(3) deals with this. When amended, it will state —

> A nomination is ineffective unless supported by the consent of the nominee to the nomination, given —
>
> (a) in writing, and furnished to the chairperson at the meeting; or
>
> (b) orally by a nominee who is present at the meeting in person or by proxy.

Mrs L.M. HARVEY: As the minister has explained it, is the chair obligated under the legislation to accept a nomination from a valid person at a meeting if they want to be on the council?

Ms R. SAFFIOTI: These are the default by-laws, but schemes can prescribe different conditions in their own by-laws.

Mrs L.M. HARVEY: Could a scheme have a by-law that required nominations for the council of owners to be placed in writing and not be ultra vires the act?

Ms R. SAFFIOTI: Yes.

Clause put and passed.

Clauses 92 to 98 put and passed.

Clause 99: Schedule 2 by-law 1 replaced —

Mrs L.M. HARVEY: My question about clause 99 comes more from an internal spat about parking vehicles on common property that occurred at one stage in the apartments that I was living in—that is, owners or tenants of units parking in visitor bays. Occasionally, people in these complexes get very bent out of shape about these sorts of things. Under proposed by-law 1, "Vehicles and parking", owners are required to take all reasonable steps to ensure that the owner's or occupier's visitors comply with the scheme by-laws relating to the parking of motor vehicles and they must not park or stand any motor vehicle on common property except with the written approval of the strata company. Is the owner ultimately responsible for the actions of their tenant if they contravene this by-law?

Ms R. SAFFIOTI: Every lease of a strata lot has a provision that states that it is deemed to comply with the by-laws. In the member's example, we believe that, in the first instance, the tenant would be responsible because it is part of their lease. However, we believe that, ultimately, action could be brought against the owner as well.

I move —

Page 337, line 17 — To delete “Schedule 1” and substitute —

Schedule 2

Amendment put and passed.

Clause, as amended, put and passed.

Clause 100: Schedule 2 by-law 2 replaced —

Ms R. SAFFIOTI: I move —

Page 338, line 2 — To delete “Schedule 1” and substitute —

Schedule 2

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 101 to 106 put and passed.

Clause 107: Schedule 2 by-law 9 amended —

Mrs L.M. HARVEY: Once again, this goes back to some of the issues that arise in developments, particularly when shared common property such as a lobby and lift are used when people move in and out of a property. Some amendments in clause 107 will change the language in the schedule of the conduct laws, particularly conduct by-law 9, “Moving furniture etc. on or through common property”. The amendment will effectively change the wording from “A proprietor, occupier, or other resident of a lot shall not transport any furniture or large object” to “An owner or occupier of a lot must not transport any furniture or large object”. I wonder whether the change of that wording changes the strength of this by-law or whether it is just a modernisation of the language.

Ms R. SAFFIOTI: It is a modernisation of the language. We use “must” much more than we use “shall” now.

Mrs L.M. HARVEY: I am very pleased to hear that, because I see no increase in conflict on those matters from that change. Those are all my queries. Thank you.

Clause put and passed.

Clauses 108 to 211 put and passed.

Title put and passed.

Debate adjourned, on motion by **Ms R. Saffioti (Minister for Planning)**.