STRATA TITLES AMENDMENT BILL 2018

Consideration in Detail

Resumed from 21 August.

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

Debate was adjourned after the clause had been partly considered.

Dr D.J. HONEY: It is impressive seeing members here today after our late night. I return to where we finished last night, which was proposed section 183(12)(b). Given the late hour last night—being a farm boy, nine o'clock is about my bedtime, so 12.30 am is definitely late—I now understand the provision more clearly. But the point remains that the tribunal, in determining the amount of compensation it will pay to a strata title holder who has had their unit compulsorily acquired, must take into account unit entitlement of lots. My understanding is that in older schemes, there are no unit entitlements to the lots, so in older schemes, all the units have exactly the same entitlement; that is, a beachfront unit has exactly the same entitlement as a decrepit laundromat on a lower storey in a back alley with no views other than the road. Therefore, if the unit entitlement is considered in the compensation, nominally, a person would get the same compensation for that broken down laundromat at the back as they would for a beachfront unit with magnificent ocean views.

Ms R. SAFFIOTI: Is the member particularly concerned about the voting entitlement or the compensation?

Dr D.J. HONEY: No, minister, and I was confusing that last night. The minister clarified it and when I read through it, it was clear to me. I am talking about the unit entitlements as the basis for compensation.

Ms R. SAFFIOTI: The compensation is not based on unit entitlement. It is based on the value of the lot. So the apartment with beach views wins again!

Dr D.J. HONEY: Then, minister, what is the point of proposed section 183(12)(b)? It seems to me that the proposed section indicates that unit entitlement of a lot would affect the compensation.

Ms R. SAFFIOTI: I understand that the proposed section is not about compensation but the question of being just and equitable to determine whether there is a high enough percentage by unit entitlement for a termination.

Dr D.J. HONEY: I understand that. Perhaps I will just comment that it does seem, in that case, to affect the vote. Is that what the minister just said? It sounded as though she did.

Ms R. SAFFIOTI: To address the member's concern, my understanding is that this is where the just and equitable analysis comes into the State Administrative Tribunal's determination by making sure that there is a majority of unit entitlements.

Dr D.J. HONEY: I am not sure we are getting much further on this. I take it that there is some test to determine whether, overall, it is equitable, but I am not sure I am going to get much further.

Moving to proposed section 183(12)(e), it states —

> the benefits and detriments of the termination proposal proceeding or not proceeding for all those whose interests must be taken into account.

I will repeat the same example just because it is so common; that is, in many of the pending proposals that I am aware of, an individual or a very small group of individuals own a large number of lots. A small number of individuals who are going to be affected are living there permanently on freehold strata title. Perhaps I will put it as an assertion: I take it from this provision that the legislation does not differentiate between people who own and live in their strata title unit and the vote accorded to someone who owns a strata title unit but does not live there and does not care—in fact, they want the strata title to end and they have many units, not just a single one. Would that be true? Is it a pure number based on the number of units rather than whether the people live there or are speculators who do not live there?

Ms R. SAFFIOTI: This proposed section aims to capture all the issues that were raised yesterday evening about the potential detriment of the decision and the owners. Each of the owners' individual circumstances will be looked at. In a sense, this is a catch-all provision. It gives SAT the ability to look at all the individual scenarios that were painted last night. This provision is really designed to give SAT the power and flexibility to look at the individual circumstances of individual owners. That is why the provision is here. I called it a catch-all provision, but it is more to give SAT the flexibility to look at some of the scenarios that were painted yesterday evening. In addition, benefit and detriment are subjective by their nature, so whether it is someone's principal place of residence would come into consideration.

Ms L. METTAM: I would also like to refer to a question I asked last night about proposed section 46, "Invalidity of scheme by-laws". I refer to the minister's response to the question I raised about the ability of this proposed

section to overturn a voter's rights if they have supported the prohibition of short-stay regulated accommodation. In the minister's response last night, she said that she understood my question, but that the case in Western Australia is different from the case in New South Wales. That was the case I had pointed to as an example of when the vote of the majority had been overturned. Can the minister advise on what basis the government says those two cases may be different?

Ms R. SAFFIOTI: My advisers have prepared some notes for me on this issue, given the concerns raised by the member yesterday and her comments about whether there is potential to uphold the majority's decision to block short-stay accommodation in strata. The question of whether a by-law is invalid on the grounds of its being unreasonable or oppressive will be considered by the State Administrative Tribunal. SAT will make the decision based on the particular facts of the case. SAT routinely makes decisions about what is reasonable. The New South Wales case to which the member referred turned on the question of whether under the New South Wales legislation, by-laws could restrict an owner's right to lease their lot. The tribunal in New South Wales decided that the New South Wales provisions do stop a strata company from having by-laws that restrict short-stay accommodation, because the tribunal considered short stay as a form of lease. The tribunal, Supreme Court and Court of Appeal in Western Australia all held that the same provision in our current act that by-laws are not able to restrict the leasing of a lot does not invalidate a by-law preventing short-stay accommodation. Our tribunal and courts all agree that strata companies can make by-laws to ban short-stay accommodation, or even restrict it to, for example, less than three days.

Mrs A.K. HAYDEN: Just to follow on from the question from the member for Vasse, I want to find out how we can help people who manage strata companies. They are generally mums and dads who are trying to pull together and understand how the by-laws work. I have had feedback that they would appreciate assistance from the government with some examples of how they can protect themselves, if they choose to, from having short-stay accommodation within their apartment block. Can the minister advise whether the government is proposing to update the strata guidelines to help individuals understand how they can best protect themselves from needing to have an awkward moment if they do not want to have short-stay accommodation in their apartment block?

Ms R. SAFFIOTI: I thank the member for Darling Range for the question. The government is able to put on our website examples of model by-laws so that we can assist strata companies, and that is what we intend to do.

Dr D.J. HONEY: I refer to proposed section 183(17)(d). We are now getting to the sharp end of the new act. It states —

> The occupier of a lot or the common property in the strata titles scheme must vacate the lot or common property.

That means the person is required to leave the property once the proposal to terminate has been approved. My concern is the matter that I talked about yesterday evening. I believe there is a reasonable prospect, especially given the depressed property market in some areas, that speculators will use that as an excuse to offer a low valuation for the property, and they will then land-bank that, with the fair certainty that in the more sought after areas, it is likely that valuations will come back up over the next couple of years. If that were to happen, people would be forced out of their property and have to find somewhere else to live, whether that is like for like or something else, and go through that huge disruption, only for that lot or those units to sit vacant. Does the minister think there is potential to provide some mechanism that if a lot is not developed within a certain period, people can continue to live there, or to force speculators to carry out the redevelopment that they have used as justification for compulsorily acquiring another person's property?

Ms R. SAFFIOTI: There is no mechanism to force anyone to redevelop within a certain time frame. However, SAT has discretion to determine the period within which the property must be vacated following the termination. As an example, if a person is going through the process of getting a development approval and is not able to develop for one or two years, I confirm that SAT has the ability to set the date to vacate or provide extra time within which to vacate.

Dr D.J. HONEY: I thank the minister. I take it from the minister's response that, as much as it is possible to determine, SAT could say that it is clear that the development will not go ahead for some time; therefore, the person is able to remain living on that lot for 12 months, or whatever it is.

I turn now to proposed section 185(2). It states —

> The application must be made within 12 months after the termination resolution has been passed …

That is a very long period. I know it sounds as though I am labouring the point, but it is an important point to labour. I am certain the minister would be well aware that for the vulnerable people whom we have discussed and have concerns about, that sort of uncertainty could be quite difficult. They will have to wait all that time and they will not know their fate. They fear they might be forced out. I imagine that would be quite excruciating for a large number of people. Why has that been set at such a long period? I would have thought that we would try to limit

that period to three months. It will put vulnerable people through an enormous amount of bother and cause unnecessary stress.

Ms R. SAFFIOTI: The reason for the 12-month period is to ensure that developers have a deadline within which to finalise the termination order. We believe 12 months is a realistic assessment of the time it would take a developer to finalise plans for their development. I understand that the member thinks that that creates uncertainty for longer; however, it also gives people more time to develop their plans for the future. It is probably a bit of both ways in a sense. A lot of other aspects are involved as well, including the wind-up of the strata company assets and sorting out the transfers to new lots.

Dr D.J. HONEY: I understand that in part, but to me it seems to be an excessive time. Here we are talking about people who do not want to move; they want to stay there as long as they can. That is their home and that is where they feel safe. They do not know whether in the end it will go through the tribunal so it causes them to endure enormous stress. I thought that time could have been reduced. I appreciate that Landgate staff, in particular, are experts at this. Perhaps it is something that we should look at as compelling them because I think that to do that for a 12-month period is too long, but I accept that the minister has given me an answer.

Ms L. METTAM: I have another question on section 46. I appreciate the response the minister provided. Has she sought legal advice on the New South Wales case and how it may be treated differently in Western Australia? Is she able to table anything to provide that further clarification?

Ms R. SAFFIOTI: My adviser is a lawyer; as such, there is some legal advice. I have also spoken to strata experts in New South Wales who provided that advice on the difference between the New South Wales interpretation and the WA interpretation.

Ms L. METTAM: I ask this because concern has been raised with me that this clause would mean that the voter's rights would not be upheld and there is significant concern. Any way that the minister could expand on that further would be appreciated.

Ms R. SAFFIOTI: In developing by-laws and this legislation there is always the challenge to get the balance right—the ability not to have by-laws that do not allow children to play in the garden compared with making sure that units that are sold primarily as residential units are not used as party homes throughout the week and on weekends. The test for the State Administrative Tribunal will be "unreasonableness" and "oppressive". That will always depend on the facts of the case. A wide range of matters would go before SAT. The aim is not to stop by-laws creating a sensible framework under which the strata is operating, but making sure that we do not create situations in which people cannot play in the garden or that discriminate against potential entrants to the strata units, for example. It is all about making sure that it is not discriminatory, oppressive and unfair.

Dr D.J. HONEY: I turn to proposed section 189(1). One of the issues that potentially confounds a number of provisions in this bill is the situation in which speculators control the majority of the votes in a strata company. Proposed section 189(1) states —

> A strata company may charge the proponent of a termination proposal reasonable fees to cover costs associated with undertaking an activity under this Division.

I can imagine that a speculator who is not keen to part with their money may think that it is just fine that the strata company and, hence, all the members of that company should pay for their proposal or at least pay a part of the proposal when in fact that proposal is specifically for the benefit of the speculator. Would it be better to make that "must" rather than "may"? In a general sense, if it was genuinely someone coming from outside without any majority, it would seem unfair if the unit holders had to pay for that, but in particular it would seem manifestly unfair if people who were going to potentially be compulsorily evicted from their accommodation were compelled to pay for the proponents' costs or at least pay for the costs that the strata company had incurred as part of this process.

Ms R. SAFFIOTI: We were just talking about that; it is quite interesting. Proposed section 189(3) states —

> A strata company need not undertake the relevant activity until the fees have been paid.

The member's point is that it is still the decision of a company with the majority of the speculators, and there seems to be a lot of them around. Another option is that one owner can go to SAT and ask for those charges to be made.

Mrs L.M. HARVEY: I return to clause 83 and pages 126 and 127 of the bill on freehold schemes and leasehold schemes. Proposed section 8(3)(l) states —

> the owner of the leasehold scheme may be the owner of a lot in the scheme despite any law relating to the merger of leasehold and reversionary estates in land; …

What does "reversionary estates" mean in the context of this legislation? Are they deceased estates?

Ms R. SAFFIOTI: It is a very complicated point. My understanding is that at the end of a lease, the ownership goes back to the lessor and that is the reversionary state with the transfer of control of the land back to the lessor from the lessee. But in leasehold schemes, all strata leases have to keep running until the end of the scheme. There might be a reversion of the ownership to the lessor, but the scheme is still running—no, sorry. Under proposed paragraph (k), the reversionary principle does not apply until the end of the scheme. Although there might have been a transfer of the lot from the lessee to the lessor, the leasehold strata continues until the end of the scheme—now I have got it.

Mrs L.M. HARVEY: When a leasehold strata scheme is coming to the end of its time, owners within the scheme will exit at different times. If the owner in a leasehold strata decides to revert their title back to the lessor towards the expiry date, it sounds as though the lessor cannot dispose of or transfer those titles.

Ms R. SAFFIOTI: My understanding of proposed paragraph (k) is that the owner of the leasehold scheme will always be the owner of a lot in the scheme, and there will always be owners of lots in a leasehold scheme until the scheme comes to an end. I think that that is the purpose of the provision.

Mrs L.M. HARVEY: Why do we need to have the proposed paragraph? It seems kind of obvious.

Ms R. SAFFIOTI: It overturns commonwealth principle that when a lessor occupies a lease, that lease finishes, in a sense, because it is the owner who is actually renting out the same property. They are basically the two roles. This provision allows for the separation of the roles to continue because it is a leasehold strata. Just to clarify, if I am a lessor who then occupies the property that I have leased, then that lessor/lessee arrangement finishes. Under this provision, that arrangement continues because a person can still have a leasehold lot even though the owner of the leasehold scheme is also the owner of a lot.

Mrs L.M. HARVEY: I think I have got that. I will move onto page 130 and proposed section 11 titled, "Subdivision of land by strata titles scheme". Proposed subsection (2) states —

> Registration of an amendment of a strata titles scheme gives effect to a ***subdivision*** if it —
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> (a) effects a change to the definition of a lot in the scheme; or
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> (b) effects a change to the boundary of the parcel of land subdivided by the scheme.

In the past, quite a few of the strata complexes in my area have been sold off the plan while the buildings are under construction. A sales and marketing office has formed part of the developments and it would often be attached to the developer of the scheme, who might also have an apartment and three or four parking bays. In many circumstances, the office, while forming part of the unit lot entitlement for the owner, was not surveyed in as part of the calculation of the unit lot entitlement for a management fee purpose because the office was deemed to be serving the entire block while the sales were underway. As a consequence, a few anomalies now exist. Now that the sales office is no longer operating, the new owner who purchased the former developer's unit, sales office and the extra parking bay, is not actually paying strata fees for them. The only way to arrange for fees to become applicable to these residual offices is to resurvey the entire scheme and to redo the titles. On reading this provision, it seems to me that this legislation may provide an alternative or easier way to bring some of those anomalous additions such as an extra parking bay, a residual office, a storeroom or something like that into a strata scheme rather than carrying out a resurvey of the whole scheme. I am not sure whether that is the case, but on reading this, it looks as though there might have been some variation on what has happened previously under the legislation.

Ms R. SAFFIOTI: What happened in Scarborough is an interesting example. My advice is that this proposed section clarifies current processes to amend the scheme. It is creating a new title, in a sense, by forming a type 4 subdivision, which was previously known as a re-subdivision. A person will still be able to undertake re-subdivision, but I think the member was highlighting the complexities in doing that under the current laws. We will take that question on notice and see whether there are any other processes within this bill that will help the situation outlined by the member.

Mrs L.M. HARVEY: Okay. Just to be clear on this proposed new section 11, is this a new section or does it clarify an existing process in the current legislation?

Ms R. SAFFIOTI: I have some further notes that may help explain this section. There are four types of amendment of a strata title scheme that give effect to a subdivision from varying requirements for resolution and consent. A type 1 subdivision covers adding land from outside the parcel to the common property, other than as temporary common property, that was formerly referred to as conversion of lots into common property. A type 2 subdivision covers the removal from common property from the parcel of a strata title scheme. A type 3 subdivision covers what was formerly referred to as a consolidation of lots. A type 4 subdivision covers what was formerly referred to as a re-subdivision. This section attempts to clarify the existing processes and create a specific part in the legislation to cover the specific types of subdivision.

Mrs L.M. HARVEY: Further to that, what would be temporary common property?

Ms R. SAFFIOTI: Temporary common property is when the company undertakes a lease over property that is not within the scheme; it could be in the scheme, but it could also be outside the scheme. The examples are normally in relation to car parks and other services of a temporary nature. My understanding, too, was—again, correct me if I am wrong—that sometimes when there are redevelopments, offsite parking might be needed for a time; that sometimes happens in stage strata 2.

Mrs L.M. HARVEY: Going back to proposed new section 9, "Lots—strata schemes and survey-strata schemes", I think proposed new section 9(7) might refer to a court case surrounding damage to or destruction of a removal of a wall, floor, ceiling or other structural element by reference to which a lot in a strata scheme is defined as not of itself affecting the definition of the boundaries of the lot, which remain as defined on the scheme plan. I think this refers to a High Court challenge after the removal of a wall between adjoining lots, which extinguished the title for the owners of the two lots. Is this a response to that High Court challenge that basically ensures an entitlement, and that the boundaries of the unit lots remain intact despite whether a structure aligns with them?

Ms R. SAFFIOTI: Yes, it is in relation to a Supreme Court case about the proposal to knock over walls. I will give the member the formal clause notes I have here. I will describe the clause more generally. This clause provides clarity on the difference between strata schemes and survey-strata schemes as a result of the different ways lot boundaries are defined in those types of schemes. Be that when a wall, floor, ceiling or other structural element that is used to define the boundaries of a lot in a strata scheme is removed, the boundaries of the lot remain as defined on the scheme plan. This clause was inserted to overcome a problem after a structural element has been removed, as highlighted in Tipene v The Owners of Strata Plan 9485.

Mrs L.M. HARVEY: I think that is quite an important inclusion in this legislation, because in some of these older schemes, as people renovate and change the way they double the size, if you like, of the older apartments, it is important they have their entitlement to their title recognised.

My question relates to proposed new section 12, "Registration of strata title scheme". The proposed new section reads —

> A strata titles scheme is registered when the following documents (the ***scheme documents***) are registered and incorporated in the Register —

There are similar requirements for a freehold scheme and a leasehold scheme. Is this just a redefinition of the existing legislation, or is it part of the new administrative requirements to try to clarify what is required before a strata title scheme is registered and recognised?

Ms R. SAFFIOTI: It is a clarification, but I will provide the information. This proposed new section clarifies that a freehold strata title scheme is registered when the scheme notice, scheme plan, schedule of unit entitlements and scheme by-laws are registered. A leasehold scheme is registered when the scheme notice, scheme plan, schedule of unit entitlements, scheme by-laws and strata lease for each lot are registered. Further, (c), a registered strata title scheme is amended when amendments to the relevant scheme documents are registered or recorded in the register.

Mrs L.M. HARVEY: The minister mentioned "(c)"; I do not have that on my paper.

The ACTING SPEAKER (Mr R.S. Love): Sorry; could you repeat that?

Mrs L.M. HARVEY: I have proposed new section 12(1)(a) and (b) on page 131, and then it goes to proposed new subsection (2).

Ms R. SAFFIOTI: Sorry, member. When I referred to (a), (b) and (c) and Roman numerals, I was not referring to the legislation; I was talking about my clause notes that just break things up for my explanation.

Mrs L.M. HARVEY: Further to that, before a strata title scheme can be lodged, does it need all these components present? Obviously, there is quite a lot of effort in lodging a scheme. Does every component need to be in place or can it be completed in parts?

Ms R. SAFFIOTI: Every element has to be lodged before the scheme is registered, but parts can be pre-lodged.

Mrs L.M. HARVEY: With respect to the scheme by-laws, is there a requirement for a specific suite of by-laws to cover off on particular areas of management of the strata schemes or will this be covered by regulation as to certain by-laws that need to be in place, or are there standard statutory by-laws that can be adopted to get a scheme off the ground before it becomes operational?

Ms R. SAFFIOTI: Yes, there can be standard by-laws and they can be adopted. The standard by-laws apply when a scheme is registered, unless the by-laws are amended for registration.

Mrs L.M. HARVEY: I assume that they need to be registered with the Registrar of Titles: is that correct?

Ms R. SAFFIOTI: That is correct.

Mrs L.M. HARVEY: I have some more questions, but I am mindful of the time. I will continue talking while the advisers exit stage left.

Debate interrupted, pursuant to standing orders.

[Continued on page 5100.]