

STRATA TITLES AMENDMENT BILL 2018

Committee

Resumed from 11 October. The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

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

The clause, as amended, was postponed on 11 October.

Proposed section 171: Forms of termination —

The DEPUTY CHAIR (Hon Martin Aldridge): I draw members' attention to the thirty-seventh report of the Standing Committee on Legislation "Proposed Part 12 of the Strata Titles Amendment Bill 2018—Termination of Strata Titles Scheme", which has been tabled since we last considered this bill. I also draw members' attention to supplementary notice paper 80, issue 5, which was issued today, Thursday, 18 October 2018. To refresh members' memories, we are dealing with clause 83 of the bill. We are working proposed section by proposed section through this clause. We are dealing with proposed section 171, which is the commencement of part 12, on page 259 of the bill. The question is that that proposed section stand as printed.

Hon STEPHEN DAWSON: At the outset, I place my thanks on the record to the Standing Committee on Legislation and its members for this inquiry—that is, Hon Dr Sally Talbot, Hon Pierre Yang, Hon Simon O'Brien, Hon Colin de Grussa and Hon Donna Faragher who was substituted into the inquiry, replacing Hon Nick Goiran. I really appreciate not only the work of the Standing Committee on Legislation, but also the timely way it considered the reference it was sent. Obviously, this is an unusual practice in this chamber, but I think it has served us well. Having had a number of conversations with members behind the Chair and in this place over the past few weeks—indeed, probably months now—it was good process to send a discrete part of the bill to the committee for it to report on. I thank the committee for its work.

Proposed section put and passed.

Proposed section 172 put and passed.

Proposed section 173: Proponent —

Hon DONNA FARAGHER: I appreciate the minister's comments about the committee. I was a substitute member of the committee, and I think that its report identified a number of issues that we will obviously work through now. I give an indication that I will not go through every single part of this section, but there are a couple of things that we need to have on record in the chamber, particularly given that we were not able to raise them during the second reading debate. Although there is some information in the report, it is important that a couple of things are recorded in the chamber.

Section 173 relates to the proponent. The termination of a strata title scheme may be proposed by a person who is a proponent, and the section lists those persons. I seek clarification because a concern has been raised by some in the community that this is effectively an entirely new scheme. There are obviously avenues in the act when a termination proposal is sought or proceeded with. Can the minister advise the chamber who currently has the right to propose a termination under the act?

Hon STEPHEN DAWSON: I am told that under section 31 of the act, a strata company, an owner or a registered mortgagee may apply to terminate.

Hon DONNA FARAGHER: I have a copy of the supplementary notice paper that was issued today but a couple of other members have not got it. We are now sorted! Can the minister repeat the answer?

Hon STEPHEN DAWSON: One owner or one mortgagee can apply to the District Court for an order to terminate a scheme under section 31 of the act. One owner can apply to the District Court for an order under section 51 of the act deeming that a special resolution to terminate is a unanimous resolution.

Hon DONNA FARAGHER: Can the minister advise the government's position as to why this new arrangement will provide more safeguards? Obviously, when the bill was referred to the committee, advice was provided about certain safeguards that are not in the act. It is important for the record of the chamber to have some of those reasons from the government's perspective as to why this will provide more appropriate safeguards than is currently the case.

Hon STEPHEN DAWSON: When I spoke the first time, I referred to a strata company. When I answered the question a second time, I omitted strata company.

The current act does not provide adequate safeguards for owners in the termination of a scheme. First, there is no requirement that a detailed proposal be prepared or given to other owners before launching District Court action. Second, there is no requirement for a vote before applying to the District Court. Third, there is no additional

assistance nor additional safeguards for vulnerable owners to help them to respond to the District Court action. Fourth, the act provides no guidance to the District Court about whether it should terminate a scheme.

Hon DONNA FARAGHER: This is a general question; after we deal with it, we can move forward.

The minister and certainly Landgate would be aware of concerns raised that some people will seek to use this legislation to make sure that those who do not want to leave their home are forced out—they will use this as a tool to do that. Certainly, the committee received evidence from a concerned citizen about this matter and he raised a number of very valid concerns. I am keen to get an understanding from the government that its view is that the requirements spelt out here and what has been put forward in the supplementary notice paper mean that the passage of the bill will not allow a potential developer to simply write a letter and say, “We’re going to do this” and use the new scheme so that owners do not get fair market value and a range of other things. These are significant concerns that have been raised. I am keen that the minister inform the chamber on the government’s position about the various steps that will be required, and that it is not the case that simply because of passing this bill a developer will have powers that they do not already have.

Hon STEPHEN DAWSON: I thank the member for the question. The majority termination process under this bill will introduce safeguards for owners, establish a termination process that is transparent, reasonable and requires a vote and require a full procedural and fairness review by the State Administrative Tribunal to consider the views of all owners. The majority termination process will mean that owners who object must be properly compensated. Owners who object must not be any worse off financially if the termination goes ahead and vulnerable owners will be resourced to receive independent advice paid for by the developer. The majority termination process is more than just a vote; it is a complete transparent process that must be followed. If the vote produces the required majority but is not unanimous, the termination proposal must undergo a fairness and procedural review by SAT. A majority termination proposal cannot proceed without an order from SAT. SAT can only order that a scheme be terminated under a majority vote if it is satisfied of three things: that the termination process was properly followed, that every owner who objects to the termination receives fair market value for their lot and that the proposal to terminate is just and equitable. The amending bill provides extensive guidance to assist SAT in deciding whether the proposal is just and equitable. Vulnerable owners will also have access to funding for assistance to respond to the termination proposal. We believe that there is great strength in what is proposed.

Proposed section put and passed.

Proposed section 174 put and passed.

Proposed section 175: Content of outline of termination proposal —

Hon DONNA FARAGHER: I move —

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

By way of background, proposed section 175 deals with elements that must be included in an outline of a termination proposal. Proposed subsection (1)(i) currently reads —

if, under the regulations, the proponent of the proposal will be required to make arrangements for the obtaining of independent advice or representation for owners of lots affected by the proposal, provide details of the proposed arrangements; and

As it reads, it is not good grammar, but we will get to that at another time. The committee has made a recommendation and identified a proposed amendment, which I have now moved. In part, this relates to another amendment that we will deal with a bit later on, so I suppose it is an enabling amendment in many ways. The committee was of the view, and committee members will correct me if they hold a different view on this, that essentially the regulations and the legislation should require independent advice to be provided to all owners. At the end of the day, all owners will be impacted in some way by a termination proposal if it moves forward. However, in saying that, and as outlined throughout the report, the committee concluded that it was essential that vulnerable persons be given the advice and support they require to respond to a termination proposal and that this be facilitated by an independent advocate, and that they should receive—I think we used a phrase that had been used during evidence from Landgate—a higher level of funding and support so that all owners are on an even playing field. This amendment effectively requires that the regulations provide for the details of the proposed arrangements for obtaining independent advice or representation, as is referred to in proposed section 190, which we will get to in a moment. It is not effectively an “if”; it is a “will”. Hence, the reason for this amendment.

Hon STEPHEN DAWSON: The government supports this amendment, as the government also agrees with recommendation 4 of the Standing Committee on Legislation—namely, that proposed section 190 in clause 83 be amended to ensure that, firstly, all owners benefit from arrangements by the proponent for them to obtain

independent advice or representation and, secondly, vulnerable owners identified in the regulations benefit from arrangements by the proponent to provide them with fuller or more extensive advice or representation.

Amendment put and passed.

Proposed section, as amended, put and passed.

Proposed section 176: Ordinary resolution and support of owner of leasehold scheme required to proceed further —

Hon DONNA FARAGHER: I note that there is a proposed amendment on the supplementary notice paper, but I have a general question. This proposed section relates to the ordinary resolution and support of an owner of a leasehold scheme being required to proceed further. Why is only an ordinary resolution required?

Hon STEPHEN DAWSON: An ordinary resolution was proposed because this is the way the strata company tells the proponent to, firstly, apply for subdivision approval and, secondly, develop a full proposal.

I move —

Page 264, line 5 — To delete “section 175” and substitute —

section 174

Proposed section 176(1) refers to proposed section 175 when it should refer to proposed section 174, so it is a correction.

Amendment put and passed.

Proposed section, as amended, put and passed.

Proposed section 177: Approval of plan of subdivision —

Hon SIMON O'BRIEN: I move —

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 the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme.

Committee recommendation 6 can be found, of course, in the thirty-seventh report of the Standing Committee on Legislation. Discussion of the issue commences at the bottom of page 24 and goes on to page 25. In short, the proposal is that the current proposed section 177(2)(a) and (b) be effected by the removal of paragraph (b) so that it becomes one consolidated subsection (2). The offending couple of lines that are proposed to be deleted make this proposed section in effect a Henry VIII clause. As discussed in the committee's report, we have reminded the chamber through this report that the committee's view already established on Henry VIII clauses is that they are “generally felt to be repugnant in that they remove from the Parliament to the Executive the power to make or repeal statute law”. The committee also stated in its report on the Animal Welfare Amendment Bill 2017 that it was “firmly of the view that the use of Henry VIII clauses, and clauses akin to them, should be avoided in the absence of compelling reasons for them being required”. General convenience is not a compelling reason. This is one of three proposed sections that the committee has identified as Henry VIII clauses on the basis that they provide for primary legislation to be modified by subsidiary legislation, and, therefore, we are calling on the chamber to make this amendment by deleting the words “any other modifications set out in the regulations”. I think members have now had an opportunity to acquaint themselves with this part of the committee's report and the reasons for it. I can elucidate further, but the point is clearly made and there is adequate precedent for the chamber to take this attitude. I recommend that those words be deleted.

Hon STEPHEN DAWSON: The government agrees in principle with the recommendations but it does not support the committee's draft amendment. The government has, instead, proposed its own. The government's proposed amendment removes the Henry VIII clause and it also provides that the Planning and Development Act 2005 applies with appropriate modification. That means that if, when assessing an application for a subdivision approval that relates to the termination, the Planning Commission finds that the language in the Planning and Development Act does not adequately address a subdivision application relating to a termination, it can apply a modified version of that language to allow itself to consider the subdivision approval for the termination. Anyone aggrieved at the way in which the Planning Commission has modified the language can apply under administrative law to review the commission's decision. It is worth noting that the statute book contains many examples of the concept of applying an act with appropriate modifications, including section 10(3) of the Constitution Acts Amendment Act 1899, which was last amended in 2000, and section 150 of the Duties Act 2008.

Hon SIMON O'BRIEN: I am just digesting what the minister had to say because I am viewing the government's proposed amendment for the first time, having been otherwise engaged this sitting day. I think within the scope of what I have already moved, I can ask this question: can the minister give us a little more detail as to the

implications of this proposed section 177(2)(b) that he has foreshadowed referring to “any other appropriate modifications”? Firstly, who decides what is appropriate and, secondly, modifications to what?

Hon STEPHEN DAWSON: Our proposal is that the Planning and Development Act applies with appropriate modification. This means that if, when assessing an application for a subdivision approval that relates to the termination, the Planning Commission finds the language in the Planning and Development Act does not adequately address a subdivision application relating to a termination, it can apply a modified version of that language to allow itself to consider the subdivision approval for the termination. Anyone aggrieved at the way the Planning Commission has modified the language can apply under administrative law to review the commission’s decision. I hope that answers the member’s question.

Hon DONNA FARAGHER: Is the minister saying in part that if we were to leave it as it presents itself in the bill now, in that it says “any other modifications set out in the regulations”—which would suggest that that is a Henry VIII clause, so it could be amended via the regulations through this act—under the foreshadowed amendment that we are talking about, in fact he is not extending the remit of the Planning and Development Act; he is allowing the commission to consider proposals under its act? If, however, it makes a decision that is not agreed to, there is the opportunity as per what would normally be the case for that to be tested through the courts or another tribunal, but that would be on the merits of that act and the use of that act by the Department of Planning, Lands and Heritage or the Planning Commission. If we kept it to the regulations in another act, that would remove the ability of the person who is not happy to take it to the relevant court or tribunal—is that what the minister is saying?

Hon STEPHEN DAWSON: Yes, the member is correct; that is what I am saying.

Hon SIMON O’BRIEN: I am sorry if I did not comprehend the minister’s earlier response as well as I might have, but I am still struggling to identify how the phrase “any other appropriate modifications” might be required. I think it is fair enough, and the committee agrees, that we could have a provision here that the Planning and Development Act 2005 applies subject to a modification that a reference to subdivision is to be read as including a reference to termination of a strata title scheme. That is what we want to make explicit. I am trying to work out a scenario in which another appropriate modification or accommodation may be required. Surely, that would be sufficiently broad to extend the Planning and Development Act to reference to a termination of a strata title scheme. That is what we are trying to achieve.

Hon STEPHEN DAWSON: I am not sure I quite understand the member’s question. We believe, and certainly my advisers believe, that the government’s amendment provides greater opportunity should there be an issue into the future.

Hon DONNA FARAGHER: We are not trying to be difficult, but obviously we have only just received the supplementary notice paper.

Hon Stephen Dawson: As have I.

Hon DONNA FARAGHER: I appreciate that, but we are foreshadowing a government amendment here. We need to be clear on what the government is putting forward. Did the minister say earlier that the former provision and the same words have been used in other acts?

Hon Stephen Dawson: I did.

Hon DONNA FARAGHER: What acts were they, so we can be clear?

Hon STEPHEN DAWSON: I gave members some examples already, but I am happy to do it again in the interest of keeping the debate going. As I said previously, the statute book contains many examples of the concept of applying an act with appropriate modifications. They include section 10(3) of the Constitution Acts Amendment Act 1899, which was last amended in 2000, and section 150 of the Duties Act 2008.

Hon SIMON O’BRIEN: If I may be so bold, I have had a few moments to reflect on the matters we have reported at page 25 of the committee’s report. It quotes Landgate’s feedback on this issue. In part, Landgate states that it would not have considered this to be a Henry VIII clause but nonetheless, the report goes on to say what sort of flexibility may well be required in considering the termination of strata plans and how the Planning and Development Act might work in that termination. I think the committee would be satisfied in recognising that the government has not sought to insist on the clause that is printed and that therefore the committee, and I as a private member, if I may be so bold, would think that the committee’s concern has been addressed by removing what we would consider to be a Henry VIII clause, even though that is arguable. The government has gone along with that recommendation but also now seeks in its current proposed amendment to address the intention the minister has just outlined. I think that probably brings us to the appropriate juncture in that the matter of the Henry VIII clause has been dealt with and we do not need to argue about it anymore. What is proposed by the minister in the government’s draft achieved what it wants to achieve without reinserting a Henry VIII clause. Honour is preserved

all round. The letter and the precedent of the requirements of the Legislative Council are also preserved. With that in mind, I think the simplest way is either if I seek leave to withdraw my amendment, or we can simply vote it down.

The DEPUTY CHAIR (Hon Martin Aldridge): Hon Simon O'Brien, you cannot seek leave to withdraw a committee recommendation. The amendment has to be defeated.

Hon SIMON O'BRIEN: Then that shall be its fate, Mr Chair.

Amendment put and negatived.

Hon STEPHEN DAWSON: I move —

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.

I think I have indicated previously the reasons the government has proposed this amendment. I appreciate the work of the committee but we think this is a better amendment. I commend the amendment to the chamber.

Amendment put and passed.

Proposed section, as amended, put and passed.

Proposed section 178 put and passed.

Proposed new section 178A —

Hon DONNA FARAGHER: I note that the government has foreshadowed a slightly alternative amendment with only a couple of minor variations and with your concurrence, Mr Deputy Chair, I think it would be useful for us to get on the record the government's position on the recommendation and the proposed section. For the benefit of *Hansard*, new proposed section 178A relates to the reference of a full proposal to an independent advocate. It is fair to say that the committee looked at this particular issue in great detail. The committee acknowledged that much of the debate and contention surrounding this bill has centred on the protection of vulnerable owners as well as other matters that we will come to. Landgate provided evidence to the effect that it was exploring the idea of a strata company referring a full-termination proposal to an independent advocate for assessment, but said at the time that it would be subject to further consultation. However, Landgate provided some advice that it could be dealt with via regulations. I refer the chamber to page 18 of the committee's report. It indicates that we thought it was a welcome initiative. However, we also felt it was important that it should not be left to the regulations and that part 12 should make express reference to the referral of a full-termination proposal to an independent advocate, including the advocate's role. That includes the identification of owners who require more extensive advice or representation. As such, the committee recommended that there be a requirement that after the receipt of a full-termination proposal, the strata company must refer it to an independent advocate whose role is set out in the primary legislation. Hence we had committee recommendation 1 and the amendment that now appears on the supplementary notice paper. However, the minister has also foreshadowed another amendment. I think it would be helpful to the house to get an understanding of the government's position. That may assist us to decide whether we need to move the committee's recommended amendment.

Hon STEPHEN DAWSON: Thank you, Hon Donna Faragher. Again, the government thanks the committee for its work in this area. As Hon Donna Faragher pointed out, the committee recommended the insertion of new proposed section 178A to require that a strata company must, after receiving a full-termination proposal, refer that full proposal to an independent advocate to perform certain services for the strata company and owners. The government does support the recommendation but proposes an improved draft of new section 178A. It is to correct an error in the committee draft at proposed subsection (5) 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 are to be made under section 190(1)(b), as proposed in the committee's amendment at 6/83. It will also enable the regulations to provide how the independent advocate must advise owners of their entitlements under regulations made under section 190; refer those owners to independent providers of the advice or the representation, which they are to obtain; and assist them in obtaining benefits under the trust referred to in section 192, as proposed to be amended by the committee amendment. Further, it will enable the regulations to provide how and when an independent advocate may represent an owner in proceedings in the State Administrative Tribunal about whether the owner of a lot 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) to enable the regulations to detail how an advocate is to be regarded as independent of the strata company and proponent. In response to recommendation 2 within the committee's report, and in moving this amendment to

insert section 178A, I confirm that section 178A(7)(b) provides that the strata company may charge the proponent fees under section 189 to cover the cost of remunerating the independent advocate and reimbursing the expenses incurred by the independent advocate.

Hon DONNA FARAGHER: One of the amendments put forward by the minister is about the regulations that prescribe how a person's independence is to be determined for the purposes of subsection (2)(a). That is obviously a new addition to what had been proposed by the committee. I understand the reasons for that, but could we get a little more detail on whether, at this point in time, we have an idea of who would be deemed an appropriate, independent advocate? I appreciate that this would have to be finalised through the regulations, but has the government given thought to that?

Hon STEPHEN DAWSON: We have not got an answer to that one at this stage.

Hon DONNA FARAGHER: I presume, though, that the government will be consulting about that?

Hon STEPHEN DAWSON: Most definitely so. As I have pointed out previously in this debate, we intend to consult on a range of things moving forward. Certainly this area is one of those that we will consult on.

Hon DONNA FARAGHER: I suppose I am being bold right now, like Hon Simon O'Brien. Based on the advice provided by the minister and the addition that has been included here, I do not think that there are material changes to what had been proposed by the committee, but obviously some additions which I think are helpful. Do I need to move the committee recommendation?

The DEPUTY CHAIR (Hon Martin Aldridge): I will clarify things, Hon Donna Faragher. Standing order 136(3) requires the Chair to put all the committee's recommendations to the Committee of the Whole House. Again, if it is your intent to suggest to the chamber that the committee's recommendation ought to be opposed, then that will need to be the course of action.

Hon DONNA FARAGHER: Based on that excellent advice, Mr Deputy Chair, that would certainly be the approach that I will be taking on this matter because I will await the amendment foreshadowed by the government.

The DEPUTY CHAIR: Members, in accordance with standing order 136, I am required to put to the Committee of the Whole the amendment standing in the name of the committee at 3/83. Unless there is objection from the chamber, I will not read the amendment because it is a lengthy amendment. I move —

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 —

- (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 a 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 represent the owner in the proceedings.
- (6) 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 those costs.

Proposed new section put and negatived.

Hon STEPHEN DAWSON: I move —

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.

I have already spoken on the last amendment and indicated why the government is supporting this amendment. I do not propose to speak again and I commend the amendment to the house.

Proposed new section put and passed.

Proposed section 179: Content of full proposal —

The DEPUTY CHAIR: We are now dealing with proposed section 179. I draw the attention of members to the supplementary notice paper and a recommendation by the committee. To expedite this, I will put the committee's recommendation and the question that the words to be deleted, be deleted. We are dealing with amendment 4/83 on the supplementary notice paper. I move —

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.

Hon DONNA FARAGHER: Thank you, Mr Deputy Chair, for that earlier clarification. With respect to this particular committee recommendation, some people have raised legitimate concerns as to how market value is determined, and whether it takes into account the highest and best use of land and other matters. That is addressed at page 24 of the committee report. The committee felt that it would be appropriate to provide more detail in this proposed section with respect to market value and that it would be an additional safeguard and additional information that would be required to be looked at. The proposed amendment was then put forward and from the opposition's perspective, we will be supporting the amendment.

Hon STEPHEN DAWSON: The government supports recommendation 5 and also the committee amendment that gives effect to the recommendation.

Amendment put and passed.

Proposed section, as amended, put and passed.

Proposed sections 180 and 181 put and passed.

Proposed section 182: Vote —

Hon DONNA FARAGHER: This section relates to voting and how it is taken. I refer to proposed subsection (4), which states —

A person who is independent of the strata company and the proponent of the termination proposal must be appointed to tally and count the votes on the proposal.

The bill itself does not identify who an independent person is and who is eligible to be an independent person. I would like to have this clarified because this is a concern that has been raised with me separate to the committee hearings. Proposed subsection (13) states —

The regulations may impose additional requirements about the process required for voting on a termination proposal.

Is it the government's intention within those regulations to specify who is independent? If the minister could confirm that for me, that would be useful.

Hon STEPHEN DAWSON: Yes, the member is correct. I am happy to confirm that that is the case.

I am happy to move the amendment standing in my name. I move —

Page 273, line 26 — To delete the words "the independent person must".

I am advised that proposed section 182(10) uses the words, “The independent person ... must” at the start of the proposed subsection and again in paragraph (c), so the amendment will delete this repetition.

Amendment put and passed.

Proposed section, as amended, put and passed.

Proposed section 183: Confirmation of termination resolution by Tribunal —

Hon STEPHEN DAWSON: The committee recommended that the government respond to the Commissioner for Consumer Protection’s proposed draft amendment to section 183(6)(b). I will move an alternative amendment to proposed section 183(6)(b), which 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. I advise the house that the Department of Mines, Industry Regulation and Safety has confirmed that the amendment resolves the Commissioner for Consumer Protection’s concerns with proposed section 183(6)(b), as detailed in the commissioner’s submission to the Standing Committee on Legislation. I move —

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

Hon DONNA FARAGHER: I appreciate the minister’s response to recommendation 10 of the committee’s report, which asked that, during the Committee of the Whole House, the minister provide some advice in response to the concerns raised by the Commissioner for Consumer Protection. The government has obviously considered that and, as I understand from the minister—he is nodding in agreement here—he indicated that the relevant department and therefore, I presume, the Commissioner for Consumer Protection, are happy with the proposed amendment, albeit that it is slightly different from what they had proposed. Given the minister’s indication through a nod of the head —

Hon Stephen Dawson: I am happy to confirm that that is the case.

Hon DONNA FARAGHER: I think that that deals with the concerns raised, and on that basis, the opposition will support the amendment.

Amendment put and passed.

Hon DONNA FARAGHER: I want to refer to proposed subsection (9) to get some answers from the minister, particularly for the record. This area has caused some concern, and relates to the issue that in the event of a termination, an objecting owner will receive fair market value or a like-for-like exchange. Can the minister advise who determines whether an objecting owner will be offered fair market value or a like-for-like exchange?

Hon STEPHEN DAWSON: The State Administrative Tribunal determines that question.

Hon DONNA FARAGHER: It is my understanding, though, that the proponent making the termination proposal offers fair market value in the first instance. Is that correct?

Hon STEPHEN DAWSON: Yes, that is correct.

Hon DONNA FARAGHER: Then, if an objecting owner does not want fair market value, if I can put it that way—I say that on the basis of, for example, a pensioner who may have their pension affected by this avenue wanting to seek a like-for-like exchange and wanting the same amenities and all those sorts of things that we will come to—it is my understanding that the objecting owner has the ability to go to the tribunal and seek a like-for-like decision. Can the minister confirm that, please?

Hon STEPHEN DAWSON: Yes, that is correct.

Hon DONNA FARAGHER: It is my understanding that, through that, the independent advocate—as we have now made the decision—would be able to assist and represent the objecting owner in the tribunal if they were seeking not fair market value but rather like-for-like.

Hon STEPHEN DAWSON: The short answer to that question is no. However, I will obtain some further advice to place on the record.

Hon DONNA FARAGHER: While the minister is seeking that advice, I would be interested to know who would be able to represent or assist the objecting owner to put forward an application for a like-for-like exchange.

Hon STEPHEN DAWSON: I am told that an objecting owner would have a lawyer representing them. If they are a vulnerable person, they will have access to funding under proposed section 190.

Hon DONNA FARAGHER: Again, for the record, can the minister confirm that issues surrounding amenity would and can be considered by the tribunal? I think it is proposed section 183(11). This is obviously an important issue for some people concerned who may well have an oceanfront villa, for example, in a particular suburb, but, under this legislation, will be required to move to another suburb that might still have an oceanfront villa, but does not have the same amenity and lifestyle that they currently have. It is important that we understand what like-for-like actually means.

Hon STEPHEN DAWSON: If the objecting owner is being offered a like-for-like replacement lot, SAT must consider whether the value of the replacement lot is equivalent to the fair market value of the current lot and how the location, facilities and amenity of the replacement lot compares with the current lot. I move —

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.

The Standing Committee on Legislation recommended that, during the Committee of the Whole House, as the minister representing the Minister for Lands, I advise the Legislative Council whether an owner of a strata title lot can grant a long-term residential tenancy to potentially defeat the termination of a strata title scheme under proposed section 183(12). I confirm that I have been advised that, under the current draft of the bill, the tribunal does 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 1987.

As a result of the committee identifying this loophole, I have moved the amendment standing in my name to provide expressly that the tribunal will have the power under clause 83—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 on termination of the scheme and provides that the tribunal may order that the premises that are the subject of the residential tenancy agreement are taken for the purposes of section 69 of the Residential Tenancies Act on termination of the scheme to cease to be lawfully useable as a residence. The amendment provides that 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, where the owner is the lessor, to pay money to the tenant as compensation for the 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 amendment provides that the tribunal may order the proponent or the owner of the lot, where the owner is the lessor, to pay money to the tenant as compensation for the termination of the retail shop lease. The amendment provides that for leases not covered by the Residential Tenancies Act or the Commercial Tenancy (Retail Shops) Agreements Act, the tribunal may, subject to any other written law, order the termination of a lease or licence on termination of the scheme and may also order the proponent or owner of the lot to pay the lessee or licensee compensation for the termination of that lease or licence. Finally, it may provide that 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 the title.

Hon ROBIN CHAPPLE: I have stood up a couple of times but you have not called me so far.

The DEPUTY CHAIR (Hon Martin Aldridge): Member, you do need to seek the call, which requires more than standing.

Hon ROBIN CHAPPLE: No problem. In relation to these particular proposed sections, we have some problems, not with the principle—we think it is fine—but with the form of drafting. Proposed subsection (17B)(c) refers to “not less than a period”, and later on, in proposed subsection (17B)(d), the proponent or the owner of the lot in the scheme may make a payment. Proposed subsection 17C(b) states that the proponent or the owner of a lot in the scheme may make a payment. That is not specific enough and it raises concerns that at the end of the day a tenant could be an innocent third party in this. I am noting the time and wondering whether we could possibly have some discussions about potentially trying to address our concerns in that area.

Hon STEPHEN DAWSON: I encourage the member to place his concerns on the record now. These amendments have been drafted by parliamentary counsel, so unless we know what his concerns are, it is our intention to proceed with the amendment that stands in my name. Perhaps Hon Robin Chapple will use the minutes that we have left to place his concerns on the record, please.

Hon ROBIN CHAPPLE: At the end of the day, our concern is that because it is not specific about the nature of the payment and the order does not specify the amounts that the proponent or the owner of a lot has to pay, depending on the situation, it could end up with the owner, in our view, by default having to pay in this regard. That is my concern. It would mean that the owner has to pay and not the proponent. I am seeking some clarification of that.

Hon STEPHEN DAWSON: I am advised that if the owner has to pay, the owner will be worse off financially, and there is the requirement that the owner not be worse off financially under the act. Proposed section 183(10)(a) requires that the owner not be worse off financially.

Hon DONNA FARAGHER: Is the minister indicating that the owner of the lot could be reimbursed for the cost? Is that what he is saying?

Committee interrupted, pursuant to standing orders.

[Continued on page 7273.]

Sitting suspended from 4.15 to 4.30 pm