STRATA TITLES AMENDMENT BILL 2018

Second Reading

Resumed from an earlier stage of the sitting.

HON DONNA FARAGHER (East Metropolitan) [5.12 pm]: Before we went into question time, I outlined some issues that had been raised by People With Disabilities WA about disability access to strata properties. I indicated that following the initial correspondence that was sent to me, further discussions were had between Landgate and PWDWA and that some of PWDWA's concerns had been allayed by advice provided by Landgate. I think it is important to place those concerns and the response to them on record so that PWDWA, any other group or organisation, or individual will be aware of what options will be made available through the Strata Titles Amendment Bill 2018.

I reflected on this before we went into question time. As I understand, options are already available under the act that enable disability access to be installed on or through common property. I think it may be three options, but the minister might correct me on that. The options that are already there will be further enhanced by clauses in this bill. I think I had got to exclusive use by-laws. One of the new options will be that an owner will be able to seek to obtain an exclusive use by-law from the strata company if they were seeking to install access infrastructure—an example would be a lift—across common property. Proposed section 43, "Exclusive use by-laws", is in clause 83, which is in part 2, division 3, of the bill. That proposed section goes through how exclusive use by-laws can be made. Proposed section 43(5) states —

> Exclusive use by-laws can only be made, amended or repealed if the owner of each lot that is or is proposed to be a special lot has given written consent to the by-laws.

I think that would be the preferable option for someone with a disability or a senior Western Australian who needs infrastructure for improved access. This would be a good option for them to start off with, but, if I read that proposed subsection correctly, they would have to get the agreement of everybody who has a lot. If they could not get that agreement, there would be another option; the State Administrative Tribunal, perhaps, would come in at this point. Proposed section 119(1) under division 2, "Objectives", in part 2, division 3, clause 83 of the bill, states —

> In performing its functions, a strata company is to have the objective of implementing processes and achieving outcomes that are not, having regard to the use and enjoyment of lots and common property in the strata titles scheme —
>
> (a) unfairly prejudicial to or discriminatory against a person; or
>
> (b) oppressive or unreasonable.

Proposed section 119 goes on with further elements of that. I have identified a couple of options there. The first would be to get the universal agreement of the other lot owners, which would obviously be the preferred outcome. If for whatever reason that is not achieved, proposed section 119 would give the person who is seeking to have the access infrastructure installed an avenue to go to SAT to say that they had been discriminated against. Perhaps the minister might elaborate a little bit on that in his response. We can go through that in the committee stage as well to clarify that for anyone who has an interest in this aspect of the legislation.

I have had a brief chat with minister behind the Chair so he would be aware that the Strata Community Association Western Australia has, in addition to the matters I have already raised about strata managers, identified six technical amendments to the bill. The advice that I have received from the minister's office is that the government will agree to five of the six amendments that have been raised. One has not been agreed to, but I think we might leave that discussion for the committee stage. I thank the Minister for Environment for providing the letter back to me. I also think that as I have been on my feet, a draft of a supplementary notice paper has been provided so that we can start having a look at the proposed amendments. We will obviously deal with that.

Obviously, I have not canvassed other parts to this bill extensively. I indicate that I have a number of questions that I will go through. I also appreciate, and as the house is aware, that depending on when we get through the legislation, we will have to deal with part 12 after the Standing Committee on Legislation has reported on that particular part. I will leave specific clauses to the committee stage. I am interested, though—the officers would be aware that I have raised this matter with them—in an education campaign about the reforms. As I understand from Landgate, a series of quite comprehensive fact sheets have been placed on its website. It has obviously over time had public consultation and all those sorts of things. However, it is quite clear that should this bill pass, it will be a substantive act with substantive changes to the 1985 act, if I can put it that way. It is a serious reform package. It brings in new elements and new strata-type schemes and deals with issues surrounding the termination of strata schemes and a whole range of matters. The concepts expressed in this legislation and, indeed, the regulations that

are referred to quite often in the primary bill—there is the primary act and the regulations, whenever they come in—need to be understood by strata managers, strata companies, individual owners and, in fact, anyone who has a particular interest in strata. In particular, individual owners need to know and understand their rights. That is critical, particularly given some of the more contentious elements of this legislation.

With that in mind, I am keen to hear from the minister. I am aware that work is underway on an education campaign, but I think it would be helpful for the house to be made aware of what education campaigns are planned should this bill pass. Overall, the bill is a significant reform that has been years in the making. There are a number of very strong and positive elements to the legislation and I think it will carry us forward in the future when it comes to strata in this state. With those comments, I indicate again that the opposition will be supporting the legislation.

HON RICK MAZZA (Agricultural) [5.22 pm]: I rise to make some comments on the Strata Titles Amendment Bill 2018. I start by thanking the advisers for the very thorough briefings on this very substantial bill. The crossbench had two briefings, with many slides to try to digest what has been mentioned is a hefty bill. I confess that I have not read every word in the bill, but the main points are there, so I will go over those.

This bill seeks to amend the Strata Titles Act 1985 and make consequential and related amendments to other acts, aiming to improve existing strata legislation and address problems experienced in strata title while modernising the language and structure of the act. In saying that, over the many years that the act has been in operation, it has served us very well. There have been some issues with our 300 000-odd strata companies, but overall the act has served us quite well.

Reforms will give Western Australian strata owners, residents, developers and managers a clear, modern, transparent and accountable legislation framework for creating and managing stratas. Strata owners will have more say in the ongoing management and operation of the scheme and they will be empowered to improve schemes and retrofit their properties to include items such as solar panels and access for disability improvements. There will be better ongoing maintenance of the schemes, they will be easier to enforce, and disputes will be resolved quicker, cheaper and more effectively through a single specialist forum, being the State Administrative Tribunal. Buyers will receive better information about the strata lot that they are buying. If my memory serves me right—I am stretching it a little bit—currently, a form 28 has to be given to a potential buyer of a strata lot, and it must be given prior to any signing of an offer and acceptance, along with an information sheet, being form 29. Over the years, some real estate agents have come a little unstuck in making that a condition of the offer and acceptance rather than providing it as a disclosure prior to it. It is a very important document that gives information about strata titles. In most cases, strata titles are a fairly simple affair. If it is a duplex, a triplex or even a quadruplex, a lot of information is not required. But that document becomes more important with larger strata title developments of 10 or 100-plus lots, particularly because of registered by-laws. There will be more flexibility for staged subdivision of strata and survey strata schemes. In the current real estate environment, a lot of developers would want to be able to stage the building of strata lots on their englobo land so they do not have to build a large number of strata lots, only to find that the market is not going to take up those stratas. The bill provides for developers to stage and provide surveyed strata lots, which they can currently do, but it is a bit of a complex issue to get around. The fact that they will have that flexibility is very important in being able to stage their developments.

Safeguards will be introduced for the termination of schemes and, as Hon Donna Faragher pointed out, statutory duties will be imposed on strata managers to make them more accountable. It is planned that the regulations will provide that the strata manager will act in the best interests of the strata company, disclose any conflicts of interest, hold strata company funds in a trust account and hold a minimum standard of professional qualification, which I will talk about a little more. A lot more work needs to be done around the qualifications and standards as far as strata company managers are concerned. Duties will be enforced by the strata company, which will have a statutory right to terminate the strata management contract by giving notice if the strata manager breaches a statutory duty or the contract. If a breach of duty of a contract causes a strata company to suffer a loss, the statutory manager might be ordered to pay compensation. Strata companies will be able to keep records in electronic format to allow all owners to inspect the records. Some owners may wish to inspect the records, but my experience over the years, having managed a number of strata companies, some quite large ones, is that it is a specialist area. Out of 50 strata owners, we would be lucky to get 10 to come along to an annual general meeting, and most of those wanted to gossip about what was going on within the complex. Those meetings are sometimes a bit of a challenge, but having an electronic format means that some people might take more interest in their strata development. A lot of strata owners usually turn up to a meeting only if a major issue has to be dealt with. Owners will be able to participate more in the management of their scheme, with voting being able to occur outside a meeting with electronic voting being permitted.

The bill establishes the requirement that the content of by-laws are not oppressive, unreasonable or unfairly prejudicial against owners. Standards will exclude council members from voting on matters when they have a conflict of interest, which is very important. There will be restrictions on proxies, but if people are able to vote

electronically, I suppose that will assist with that. Owners will have a forum to review by-laws or resolutions. Owners will be empowered to improve common property. Larger schemes will need to have a reserve fund and prepare a 10-year maintenance plan. That is a very important feature of the Strata Titles Amendment Bill 2018. Having owned a strata lot when, on a couple of occasions, sufficient reserve funds have not been paid on a regular basis over the years to provide for maintenance, there is nothing more alarming than getting a bill on your strata levies for $10 000, $15 000 or even $20 000 to deal with a major maintenance issue. A water membrane may have started to leak or a big building may need repainting, which can be very costly. It is very important that reserve funds are paid on an incremental basis so that people do not get nasty surprises in the coming years.

The bill introduces safeguards for the termination of schemes. It is a transparent process including a full procedure and fairness review by the State Administrative Tribunal. If a vote has a majority but it is not unanimous, termination proposals need to go through a fairness and procedure review at SAT. That section of the bill has now been sent to a committee. Majority terminations will apply to schemes of five or more lots, so duplexes, triplexes and quadruplexes will need a unanimous resolution. A majority termination can proceed only with an order from the tribunal if satisfied that the termination process will be followed properly; that every owner receives fair market value; and the proposal to terminate is just and equitable. The clauses related to termination of the scheme have been sent to the Standing Committee on Legislation.

As I mentioned earlier, Western Australia has over 300 000 strata lots worth some $170 billion. That includes residential, retail and industrial business premises. It is estimated that 40 to 50 per cent of new lots created are strata lots and annual sales of strata lots exceed $10.9 billion. With an ever-increasing population in Western Australia, tipped to be five million people by 2056, it is important that we have legislation to support strata markets. People are moving to dwellings in higher density areas. As our population grows, a lot of city living will require strata lots. People no longer want the quarter-acre block where they have to mow the lawn and do the gardens, so strata lots will become more and more popular as time goes on. These amendments are quite timely so that strata owners will be better protected and there is more scope.

Some strata owners will self-manage their property and others will employ the services of strata managers. I am very pleased that the topic of strata managers has come up. However, there needs to be more than just regulations about the requirements placed on a strata manager. In the real estate industry, a real estate agent, a settlement agent and a valuer all need to be licensed. They need to comply with a number of standards and be experienced in order to be licensed through the Consumer Protection division. The reason for that, of course, is that they handle large assets and a lot of money, often in trust accounts. Settlement agents and real estate agents are required to maintain a trust account that is independently audited every year to make sure that the moneys are not being misappropriated.

Strata management is a complex and specialised area. At the moment, even though these regulations, which we have not yet seen, require certain things like a trust account and minimum educational standards, there is not any oversight other than that by the strata company itself. As I said earlier, most strata owners do not take a lot of interest in annual general meetings, so there is the potential for a major consumer protection issue to arise. If a large strata company has $100 000, $200 000 or $300 000 in a trust account and the strata manager decides to go on holiday to Rio and takes the trust account with them, there could be a major problem. Even though I have been advised that the regulations will require professional indemnity insurance, those who have ever paid premiums on professional indemnity insurance will know that it costs tens of thousands of dollars. If there is no scrutiny of strata managers, they may be cutting corners and not taking it out. Even though a strata manager may be responsible or they might disappear with the trust account, that does not necessarily mean they will hold professional indemnity insurance to be able to provide security for the owners of strata lots. Real estate agents and settlement agents contribute to a fidelity guarantee fund in the case of fraud, so if someone goes on holiday with the trust account, the consumer can be reimbursed. I am not aware at this stage of any strata manager who has misappropriated funds but the potential is there and I think the government needs to seriously look at it. I do not think that Landgate is the appropriate body to enforce and oversee that. The Consumer Protection division could set up a licensing regime and enforce requirements on strata managers to make sure they are accountable to an independent government body.

I am a little surprised that we do not have a licensing process for strata managers in Western Australia. We have a licensing regime for car salesmen, car dealers and pest controllers. Many occupations require licences to make sure that consumers are protected. We need to do more work on strata managers. Going back even as far as 2003, the Economics and Industry Standing Committee's "Inquiry into the Western Australian Strata Management Industry" recommended that strata companies in category 2, which is schemes of six to 20 lots and all multistorey schemes from two lots up, and category 3 schemes, being schemes of more than 20 lots, be required to appoint a licensed strata manager. In 2011, the Standing Committee on Public Administration produced the "Report in Relation to the Inquiry into Western Australian Strata Managers." It states —

Recommendation 1: The Committee recommends that strata managers should be regulated by a system of positive licensing. Eligibility requirements for the granting of a license should include at a minimum:

- **Educational qualifications.**
- **Demonstration that the applicant is a fit and proper person to hold a licence.**
- **An indication the applicant has sufficient financial and material resources available to enable them to meet financial and operational requirements.**
- **Current professional indemnity insurance.**

Recommendation 2: The Committee recommends that a transition period should apply to the implementation of the recommended licensing scheme.

For quite some time, there has been concern around the licensing of this industry.

Hon Donna Faragher mentioned a letter sent to her by the Strata Community Association WA. I also received a letter. In part, it states, "simply to provide only regulation is unlikely to see an effective level of consumer protection." I think there is concern. Obviously inquiries have been made into this area. The plan at the moment to have regulations that require simply a general set of standards for a strata manager certainly needs to be looked at. I do not think that is sufficient.

I would like to touch on leasehold schemes. Leasehold schemes are a good idea and a very positive step for some flexibility within the Strata Titles Act. The application of leasehold strata titles of between 20 and 99 years would probably be used mainly by government. I do not think that the private sector would be that enthusiastic about it. I think around train stations and areas of high-density living where we are trying to create affordable living, a leasehold arrangement might be the way to go. I do not think there will be a big rush for leasehold, but the application may have some merit and there may be circumstances in which it is used.

The next area I want to touch on is the State Administrative Tribunal. The Strata Titles Amendment Bill 2018 will allow the SAT to be a one-stop shop for strata issues. That will cut some red tape. For example, good provisions within the bill include removing the $1 000 limit on SAT making monetary orders, enabling SAT to enforce non-monetary orders and having the power to order a strata company to terminate or vary a contract, and allowing SAT to make a summary decision at a directions hearing.

I would also like to touch on the safeguards surrounding strata schemes. Currently, a strata scheme can be terminated only by all the owners voting for the termination of that particular scheme. That is problematic when someone might be holding out. I know that there has been a lot of discussion around this issue, and that this provision is currently with the Standing Committee on Legislation, but I would like to make some comments on it. My understanding is that initially a 75 per cent majority was required, with some protections for those who did not agree with the termination. I think an amendment in the other place took that to 80 per cent.

There are arguments for and against that. Obviously, those who do not want to sell may have their reasons, and they can apply to the State Administrative Tribunal to flesh out those reasons, but we also have to consider the other side of the argument. If 75 or 80 per cent of the owners wish to sell because they know that the offer they have is a good deal, I do not know that they should be penalised by some who do not want to sell. In cases in which there is an old strata scheme, the units might individually be worth a certain amount; however, the highest and best use for that land may be to knock down all those units and build brand-new ones, which would increase the price per unit. The land in its current form has diminished value, because it is not the highest and best use of that particular piece of land, and the owners would get more, because the highest and best use would be as vacant land or for a developer to redevelop. It would be very frustrating for the majority of owners to be denied a higher price for that land if a few people did not want to sell, maybe because they were just being obstinate about it. I can understand that there may be other issues, which SAT may determine, which may be more important than that, but other than for reasons of obstinacy, I think people should be able to have a majority vote.

A lot of people, when buying a strata unit, think they are buying a freehold title, like a green title, and that it is theirs. That is somewhat true, but people have to understand that if they are in a complex of units, it is a community, and they own a piece of that overall community title, so the democratic process is usually that the majority rules. I think we need to be very careful where we tread with this legislation, but I think it will give some relief to people who may have an opportunity to sell to a developer. The SAT can force the developer only to offer up to 10 per cent more than what is being offered, plus costs, to the affected owner who does not wish to move. When it was asked in the other house what might constitute an exceptional circumstance, no answer was forthcoming, so I think there needs to be a bit of work around that, too.

As we know, proposed part 12 of the bill, "Termination of strata titles scheme", has been referred to the standing committee, so we look forward to seeing that when it comes back. But overall, Mr Acting President, I think it is

a very timely bill. It is important that we modernise the Strata Titles Act to provide for the growing area of predominantly residential real estate, along with commercial and industrial real estate, as our population grows and we find that there are more strata complexes. We need that flexibility, and I know that many strata title developments have very awkward arrangements between one strata tower and another strata tower, and the sharing of car parks. It can be very complex, and when one searches the by-laws, there can be pages and pages of by-laws that have been developed over the years to try to cover all these areas. It is very timely that this legislation has come before us, and I support the bill.

HON ROBIN CHAPPLE (Mining and Pastoral) [5.43 pm]: The Greens will be supporting the Strata Titles Amendment Bill 2018.

The ACTING PRESIDENT (Hon Dr Steve Thomas): Hon Robin Chapple, are you lead speaker for the Greens?

Hon ROBIN CHAPPLE: Yes, I am.

In doing so, I really want to spend some time thanking the ministerial briefers Tom Wilson, Kelly Whitfield and Sean Macfarlane. They put hours into answering our many question on this bill and on the Community Titles Bill 2018, which is yet to be debated in this place. The work of the briefers in assisting us is to be appreciated.

I mirror Hon Donna Faragher's comments, and when it comes to legislation like this I am reminded that a former Clerk of this place, Laurie Marquet, once said that when there is a bill of this magnitude, with that many amendments in it, it might be worthwhile going back and making a new, shorter bill, rather than one with amendments on amendments on amendments.

Hon Donna Faragher: Hear, hear!

Hon ROBIN CHAPPLE: I mirror what Hon Donna Faragher said in relation to that. I apologise if that has upset her.

Hon Donna Faragher: No. I think it is good. I said "Hear, hear!"

Hon ROBIN CHAPPLE: The bill relates to two forms of strata title scheme. The freehold title, as we know, is a strata scheme with a building divided into lots, and a survey strata scheme has lots but no buildings. A new leasehold type that will be introduced by this bill is similar to the freehold type we already know, except that it lasts for only a fixed period, after which it reverts to the owner of land. The revision is as freehold fee simple, not as a scheme. The duration of this sort of scheme is for a minimum of 20 years, or as prescribed, and a maximum of 99 years plus any postponement of the expiry date pursuant to by-laws.

The bill binds the Crown. Much of the bill is not controversial, and I will not speak to those parts, except to say that the Greens support them. The non-controversial parts of the legislation include stricter standards for strata managers and companies, and easier processes for making improvements, enforcing by-laws and resolving disputes, with the State Administrative Tribunal to be the forum for dispute resolution.

Two parts of the bill are controversial. These are the new leasehold form of strata, and the process for the termination of strata titles schemes, which is the most controversial part by far, and the Greens strongly support the referral in the last sitting week of that part to be scrutinised by the Standing Committee on Legislation. The bill provides for review after five years.

I commend the briefers who took pains to differentiate between the new leasehold type of strata and the United Kingdom's version. I ask the minister to confirm that the version of leasehold in the bill is a form of private property ownership—the UK version is ordinary leasehold—and whether ground rent will be paid to the owner of the land on which the lot is built. Again, if the minister could respond to those two points, that would be great.

I also consulted separately with a law firm with expertise in strata matters. It, too, said that in its view the new leasehold type does not herald the death of home ownership in Western Australia. A new leasehold type is expected to be a niche form of tenure. I understand that it is about 0.1 per cent of the market in New South Wales, but is more common in Singapore. In Western Australia it will be used to provide housing on government land that decades hence, in the long term, will be destined for a different use.

Majority termination processes—currently there are three ways to terminate a scheme. One way to terminate a scheme requires a unanimous resolution; however, the other two ways need only an application to the District Court by a single owner under section 31 or 51 of the act. Clearly, termination by a single owner is not acceptable and needs to change. We need a termination process that suits the huge variety of properties. Early strata schemes were only two or three lots—duplexes and triplexes—but nowadays there is much greater variation in the number of lots, in their age and condition, and, indeed, in their type of use, from commercial to residential. Three main concerns have been raised with the Greens about the termination process, which I will now raise. I will seek the minister's confirmation of several matters relating to that process. I also urge the Standing Committee on

Legislation to consider these matters as it scrutinises this part of the bill, because they reflect the concerns that have been raised by constituents about the majority termination process.

The first concern about the majority termination process that has been raised with the Greens by constituents is about selling someone else's home against their will. Strata homes at the modest end of the scale offer entry-level home ownership. Owner–occupiers in those homes teeter on the very bottom rung of home ownership. The thirteenth annual statistical report of the Household, Income and Labour Dynamics in Australia Survey, published in 2018, indicates that around 10 per cent of renters transition from renting to home ownership each year. Between 2001 and 2016, the proportion of non-rental residences that were separate houses decreased slightly, whereas those that were flats increased slightly, as did those that were semidetached houses. As I understand it, the government's policy reason for having a majority termination process is that some of the old schemes are now at the end of their life and are unable to be maintained or repaired at reasonable cost to the owners. Those owners cannot sell their properties independently because they are run-down. Although termination of strata schemes has not happened much to date, it is expected that this process will increase due to increased demand from developers. The current process does not protect owners adequately. A unanimous consent model traps owners who want to sell but cannot entertain costly maintenance, rewards owners who hold out longest, and traps owners if there is one person who holds out not because the lot they own is their home but because they are protecting the view from another scheme behind it.

The second concern about majority termination raised with the Greens is what owners will get in exchange for their loss. The State Administrative Tribunal will determine this. It does not have to approve the termination proposal. I ask the minister to confirm that SAT also has two other options available to protect owners—it can modify the termination proposal and, if the proponent rejects the modification, the process ends; or it can refuse to confirm the termination proposal. In making its decision, SAT must consider whether an owner is getting fair market value or like for like. It must also consider whether termination is otherwise just and equitable. The fair market value considerations are, first, that the owner must receive at least the amount that would be paid if the property was being compulsorily acquired by the government for public purposes. To this may be added a further amount of not more than 10 per cent of the amount unless SAT is satisfied that exceptional circumstances justify a higher amount. I ask the minister to confirm that one example of exceptional circumstances justifying a higher amount is where a lot is a person's home and there is no other similar home in the same area available to be purchased for the proposed price.

The second fair market value consideration is that the owner must not be disadvantaged in their financial position. I again ask the minister to confirm that if an owner would lose their pension or healthcare entitlements, the proponent must provide like for like, pay all costs of the move and ensure that the owner would not lose their pension if SAT is to approve the termination. If the owner's overall wealth would not change but the proportion of the wealth allocated to their home would increase, thereby decreasing the proportion of their wealth able to be allocated to other things, the proponent must offer like for like and pay all costs of the move if SAT is to approve termination. Lastly on that point, if the owner's home business cannot be reinstated elsewhere for some reason, the proposal would not be considered fair value and SAT could not approve the termination. In addition to those considerations, SAT must have regard for any loss or damage the owner will sustain via removal expenses, disruption and reinstatement of businesses, and liability for tax or duty or conveyancing and other costs related to the sale of the property and purchase of a replacement property.

In SAT's consideration of whether like for like instead of fair market value is to be offered in exchange for the lot, it must consider the value of the like-for-like lot compared with the existing lot's fair market value. That is worked out as I have already described—the location, facilities and amenity of the like-for-like lot are compared with those of the existing lot. In addition to the fair market value or like-for-like considerations, SAT must also consider whether termination is just and equitable. Those considerations include the interests of each person who has an interest in a lot or common property; any impropriety in the termination process—for example, invalid proxies, undue influence, or false or misleading information—the proportion of those voting for and those against; the termination infrastructure report and options reasonably available to address those problems, including how much the contribution would need to increase to pay for those options; any buyback arrangement in the land following redevelopment; and the benefits and detriments to all those whose interests must be taken into account. Again at this point I ask the minister to confirm that the just and equitable considerations include nonfinancial considerations such as health impacts. I am thinking, for example, of a situation in which a dementia patient or an anxiety patient cannot be dislocated from their family surroundings without their health worsening, or consideration of the special situation of an owner–occupier for whom the lot is their only home.

The bill allows regulations to be made requiring the proponent to facilitate vulnerable owners getting independent legal advice or representation. From the briefings we have had, I understand that the reason for doing this by regulation is so that they can be more easily updated to reflect changing community expectations over time about

who is vulnerable. The intention is to put all owners on an equal footing. Any or all owners in a particular scheme must be classed as vulnerable. One option being considered is to require the strata company to engage a third party to do a preliminary assessment of each owner and refer those considered vulnerable to independent legal advice or representation. Proposed section 181(5) allows regulations to impose extra requirements like this on the process. Proposed section 189 enables a strata company to recover the costs of complying with those requirements from the proponent. I ask the minister to confirm that proposed section 190 permits all owners for whom the lot is their only home to be taken to be vulnerable owners. They are the people who stand to lose the most from the process, including, at worst, risking homelessness.

The third concern that has been raised with the Greens is about the frequency with which owners must deal with termination proposals. We must not allow the termination process to interfere with a person's quiet enjoyment of their home or to allow owners to be bullied by a proponent who owns enough lots in the scheme to prevent the strata company from prohibiting further termination proposals. I understand that there are safeguards in the bill against owners being harassed by a proponent. Proposed section 182(2) requires the vote to be held two to six months after the service of the full proposal. Proposed section 182(3) limits the number of votes per proposal to three. Proposed section 174 prohibits the submission of an outline of a termination proposal if the strata company has resolved to support a different termination proposal. Until then, owners are free to consider any number of competing termination proposals from different developers. The strata company can also resolve to prohibit submissions of proposals for up to 12 months.

Sitting suspended from 6.00 to 7.30 pm

Hon ROBIN CHAPPLE: Before the break, I was talking about proposed section 174, which prohibits submissions of an outline of a termination proposal if the strata company has resolved to support a different termination proposal—until then, owners are free to consider any number of competing termination proposals from different developers—the strata company has resolved to prohibit submissions of a proposal for up to 12 months; or the State Administrative Tribunal has prohibited submissions on proposals, in which case there is no time limit. Importantly, I ask the minister to confirm that if the proponent controls a strata company, an individual owner can either apply directly to the State Administrative Tribunal or apply to SAT on behalf of the strata company for an order prohibiting submissions for a specified period of any duration. I would like that confirmed if that is possible.

The last issue I would like to raise is about the State Administrative Tribunal itself. Under the provisions of the Strata Titles Amendment Bill, SAT will become the one-stop shop for strata disputes. It will be able to make interim orders, final orders or declarations—for example, a declaration as to the validity of a by-law, resolution or process; or whether a contravention has been committed. There are some orders it cannot make. The most important one is that SAT cannot make an order that a termination resolution is to be taken as passed. There will be a review process for SAT decisions. With leave from SAT, there can be an internal review of an order or declaration if the decision is of a kind specified in the regulations or is not made by a judicial member. I ask the minister to confirm that the regulations are intended to exclude only vexatious and unreasonable applications from the internal review process. Otherwise, review is as per part 5 of the State Administrative Tribunal Act 2004, which provides for appeal to the Court of Appeal of the Supreme Court, with the leave of that court, on a question of law.

Basically, we agree with the legislation but we seek some commentary about the points I have raised with the minister. We have obviously seen the technical amendments before us. We consulted on 3 September 2018 with Atkinson Legal, a law firm with expertise in strata matters. Atkinson Legal proposed six technical amendments to the bill. These relate to drafting, not policy matters. We ensured that those proposed amendments were brought to the government's attention. We were advised on 12 September 2018 that the minister will move five of the six amendments. I thank the minister for that. I will deal more with those amendments when we are in Committee of the Whole House.

One thing I need to get on the record right now is that amendments 1 and 2 to clause 83, on page 134 of the bill, refer to "the owner". I know there were some concerns that that should have been "the registered proprietor". That issue was raised with us by Atkinson Legal. I would like some clarification of why we are going with "the owner" and not "the registered proprietor".

That is my contribution to the second reading debate. The Greens will support the legislation.

HON COLIN TINCKNELL (South West) [7.36 pm]: I rise on behalf of One Nation to indicate our support for the Strata Titles Amendment Bill 2018. I would like to thank the other members for their contributions. I have listened very intently to what they have had to say and I generally agree on most areas. This legislation is obviously very overdue. I think Hon Donna Faragher mentioned that it is 21 years since there was last a review. The Strata Titles Act

was last reviewed in 1985, but there were some small amendments made in 1990. I also listened to Hon Robin Chapple, who suggested that a brand-new policy or document would be good. Maybe that will be in the next 20 years!

Hon Robin Chapple: Hon Donna Faragher talked about it as well.

Hon COLIN TINCKNELL: Yes. Maybe it will happen in the next 20 years. It would obviously make it easier for everyone.

Hon Donna Faragher: Absolutely.

Hon COLIN TINCKNELL: Hon Rick Mazza is part of the crossbench and we have had discussions on this. He said most of what I want to say, so I will keep it brief. Being an ex–real estate agent, I think he has a bit of a head start with his knowledge of this industry. He made some very important points that I want to talk about.

This bill is much needed; it has been a long time coming. It may be a long time before we revisit this legislation, so we want to make the best of it that we can. I recognise that not everyone is happy about all the changes. No document is perfect but, as it stands, I believe these changes will make the process more effective and efficient. It is a start, but there is still work to be done. Some of those things have been mentioned; for example, establishing a strict regulation for strata managers and providing more comprehensive rules governing the management of strata properties is very important. Hon Rick Mazza mentioned that. The bill will help reduce the number of disputes needing mediation and referral to the State Administrative Tribunal. Many cases currently referred to SAT are a result of lack of governance built into the current act. We are hoping that some of the changes in this bill will help alleviate that. I also support the Standing Committee on Legislation inquiry on the part of the Strata Title Act reform that is seen as contentious; that is, proposed part 12 in clause 83 of the bill, dealing with the termination of a strata titles scheme. I look forward to the committee's report in due course. The committee's call for submissions closes on 25 October, I believe, so we still have a little bit of time.

Hon Stephen Dawson: That is not right, member. The committee is due to report next week.

Hon COLIN TINCKNELL: Thank you. Has that been moved forward or changed?

Hon Donna Faragher: I think public comments closed on 25 September.

Hon Stephen Dawson: Yes, 25 September. I think it was open for comment for a week.

Hon COLIN TINCKNELL: I thank the minister for correcting me there.

We support this bill. We know that it is not perfect in every way, but it is a step in the right direction. In conclusion, One Nation supports the Strata Titles Amendment Bill 2018, and notes the current review of part of the bill by the Standing Committee on Legislation. Those are the things that are important to us, and I commend the bill to the house.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [7.41 pm] — in reply: I thank every member who made a contribution to the debate on the Strata Titles Amendment Bill 2018. I thank in particular Hon Donna Faragher and Hon Alison Xamon, who have been involved in many conversations behind the Chair over the past few weeks. I also acknowledge the advisers on this bill and the Minister for Lands and her office, who have offered briefings when they were needed and answered all questions as quickly as they could. The minister is very keen to work with all parties to make sure that this long overdue piece of legislation passes the Parliament. Essentially, everybody out there is calling for it. It has been a long time in the making, and I think it will be supported once we land. The Strata Titles Amendment Bill 2018 will significantly improve the existing strata legislation by fixing current problems experienced by owners and strata companies, by modernising the language and by streamlining the structure of the act. The bill also introduces a new form of land ownership: leasehold strata title schemes. I thank the opposition for its work in the previous government in beginning these reforms. As Hon Donna Faragher pointed out, this has been in the pipeline for a very long time, and a great deal of the work commenced under the previous government. I ask opposition members to continue their good work by supporting this bill to ensure that we make strata better for the people of Western Australia.

I will now respond in particular to the comments of Hon Donna Faragher. On the suggestion of drafting a whole new act, although the amending bill is complicated, the blue bill that we have provided to the house shows how much clearer the Strata Titles Act will be when amended. The government will consider the suggestion that a working group be formed to consider licensing after the passage of this bill. On the question of whether the State Administrative Tribunal has the power to ban a strata manager from operating if the strata manager commits a breach of statutory duties against a strata company, I confirm that the State Administrative Tribunal does not have the power to ban a strata manager from operating. If a strata manager breaches the statutory duties they owe to a strata company, that strata company can terminate the contract of the strata manager and/or apply to SAT for an order for damages against the strata manager if the strata manager suffered a loss as a result of the breach by the strata manager. For leasehold schemes, I can confirm that the strata company, which is made up of the owners of the lots, is responsible for maintaining the common property buildings within the strata scheme. The owner of the leasehold scheme, who

is the lessor under the strata lease, does not have the power to prevent the owners of the lots from maintaining the common property buildings.

In relation to disability access, I have had similar conversations to those of Hon Donna Faragher and Hon Alison Xamon with individuals and the disability sector. There are multiple options for installing disability access on or through common property under the current Strata Titles Act 1985. These options include an exclusive use by-law. An exclusive use by-law can be obtained under section 42(8) to give one owner exclusive access to a specified part of the common property, and can be used to enable that owner to install things on that part of the common property, including a lift or a ramp. The by-law cannot be repealed without that owner's consent. Obtaining such a by-law requires a resolution without dissent—meaning that no owners object to the resolution—and lodgement of the by-law with Landgate by the strata company, essentially to register the by-law.

The second option is a lease over common property, which will allow an owner to occupy part of the common property and install things such as a lift for the duration of the lease. The relevant provision is section 19 of the act. Creation of such a lease requires a resolution without dissent, and consent of people who effectively have an interest in the common property. If the lease is for a prescribed period, the approval of the Western Australian Planning Commission and the local government will be required, and the lease will also need to be registered.

The third option is a licence over common property. An owner can obtain a licence from the strata company to install a lift or ramp over common property. This is provided in section 19(10) of the act. If the licence is for a prescribed period, the approval of the WAPC and the local government, along with a resolution without dissent, will be required. It is worth noting that section 94 of the act gives the State Administrative Tribunal power to order the creation of such a licence, where a lot cannot be reasonably used by an owner or occupier without such a licence being granted.

The fourth option is an easement over the common property. The strata company can grant an easement over the common property, allowing a person to install something like a lift or ramp. This is provided for under section 20 of the act. It requires a resolution without dissent of the strata company and the consent of people with a registered interest in the common property, and then the easement needs to be registered.

The fifth option is re-subdivision, which is a very complicated approach to installing lifts for the purpose of disability access on common property by altering the boundaries of lots and the common property. An owner could essentially try to buy part of the common property from the strata company. The common property is actually owned by all lot owners as tenants in common, and the strata company has certain powers to deal with the common property on behalf of all the owners. The re-subdivision process involves redrawing the boundaries of the lots to include the location of the common property that the owner wishes to acquire, for the lift to be installed. Re-subdivision is provided for in sections 8 to 8C, 14 and 25 of the act. Re-subdivision requires many steps, approvals and consents, including a unanimous resolution; subdivision approval from the WAPC; consents from persons with a registered interest and caveators; a licensed valuer revaluing lots within the scheme to prepare and lodge a revised schedule of unit entitlements; a licensed surveyor drawing up an amended scheme plan of re-subdivision, showing the new boundaries of the lots and the common property; a transfer of the common property to the owner and payment of duty by the owner; and the registration of the amended scheme plan and schedule of unit entitlements.

The Strata Titles Amendment Bill 2018 will make it easier to install disability access on or through common property, and this is a good thing for people with disability, as well as older people or people with mobility issues, as referred to by Hon Donna Faragher early on. Under the bill, the multiple pathways to install disability access on common property listed before will still exist. The key improvements under the bill are as follows. Where an owner is seeking to install disability access infrastructure across common property within a strata scheme, often the simplest solution is to obtain an exclusive use by-law from the strata company, enabling installation without the need for the boundary change for subdivision approval. Under the amending bill, the strata company will have imposed upon it an obligation to make decisions that are not unreasonable, not oppressive and not discriminatory. That is proposed section 119 in clause 83.

By-laws of the strata company are invalid if they are unfairly discriminatory against one or more owners. That is proposed section 46(j). Further, the State Administrative Tribunal will have the power to make by-laws under proposed section 200(2)(a) and (n). This power can be used by SAT to make a by-law when the strata company has failed to make a by-law and the result of that failure would be discriminatory against an owner or occupier.

SAT will be given the power to review all strata company resolutions. Owners and occupiers will be able to apply to SAT to review strata company resolutions. If an owner needs an exclusive by-law to install a lift on the common property and the strata company fails to pass a resolution without dissent to make that by-law—because, for example, another owner does not want the lift installed on the common property—the first owner can apply to SAT for an order making the exclusive by-law. SAT will ask whether the strata company has acted consistently

with the objectives of the strata company, set out in proposed section 119 of the bill, which includes making decisions that do not discriminate against an owner. If SAT finds that a failure to make the exclusive use by-law is discriminatory against the first owner, it will give an order making the exclusive use by-law.

The current act and the bill require owners to obtain approval of the strata company, by resolution without dissent, if they wish to undertake a structural alteration to their lot. If an owner needs to alter their lot to provide for disability access and the alteration is of a structural nature, the owner will need the approval of the strata company. The bill makes this approval easier to obtain because it will enable an owner to go to the tribunal to seek an order that a resolution is taken to be passed as a resolution without dissent on the basis that the refusal to pass the resolution was discriminatory.

There may be situations in which an owner needs to alter common property in some way to install disability access infrastructure, such as a lift. This is an issue under the current act because the strata company does not have an express power to alter or improve common property. As a result, SAT has stated in decisions that to alter common property, a resolution without dissent is needed. The bill resolves this issue because it gives the strata company the express power to improve or alter common property. That is proposed section 90(1). The power to improve or alter common property can be exercised within the expenditure limits of the company, meaning that if the owner offers to pay to cut a hole in the common property slab, no vote is required. It would need approval by a simple majority of the council of the strata company. If the strata company has to pay to cut a hole in the slab, the vote required is an ordinary resolution—a simple majority of the owners who attend the general meeting—to approve the general budget if the amount of money required to alter the common property is below a prescribed amount. Alternatively, a special resolution—more than 50 per cent in favour and no more than 25 per cent against—of the strata company is needed if the money required to alter the common property is above a prescribed amount. Please note that the regulations could specify that alterations to common property for disability access if lower than, for example, $100 000 require only the lower level ordinary resolution.

We should note that lifts can be installed through common property without the need to alter lot boundaries, obtain Western Australian Planning Commission approval or do a reallocation of unit entitlement or a revaluation of all lots. In addition, the bill specifies that removing a lot boundary structure does not result in the lot being destroyed or the boundaries being altered. That is proposed section 9(7) of the bill. This means that an owner can put a hole in their floor to allow a lift into their lot. Proposed section 9(7) overcomes an issue under the current act highlighted by the Tipene case, which held that if an owner removes the walls, floors and ceilings of their lot in the strata scheme, their lot ceases to exist.

An example of how these amendments in the bill would work for a situation such as the one described in the South Perth strata scheme, which was raised in the debate in the other place, is that if the owner in that strata scheme wishes to install a lift through the common property and into their apartment to provide for disability access, the owner needs the approval of the strata company to occupy a part of the common property. They also need the approval of the strata company to alter the common property—that is, to cut a hole through the concrete slab of the common property. Further, they need the approval of the strata company to undertake a structural alteration to their lot that will result in part of the lift being seen from outside their lot. Currently, the owner cannot obtain the resolution without dissent required to obtain the various approvals of the strata company because another owner keeps blocking those resolutions that are required under the current act. Under the provisions of the bill, the owner could do the following. They could seek to obtain an exclusive use by-law for the owner to occupy the part of the common property that the lift will need to be installed within. This would require a resolution without dissent of the strata company in a general meeting. Alternatively, they could seek to obtain approval for structural alteration of the owner's lot. That is also a resolution without dissent of the strata company. Alternatively, they could seek to obtain approval of the strata company to alter the common property where the lift will be installed. If the owner pays for the alteration, the strata company can, through the council of the strata company, provide approval to do the alteration of the common property. If the owner cannot obtain the resolution without dissent for the exclusive use by-law or the resolution without dissent to structurally alter their lot or indeed the approval of the council of the strata company to alter the common property, the owner can lodge a simple application with SAT seeking the following orders: that the strata company is taken to have made the exclusive by-laws on the grounds that the failure to make the by-law was unreasonable and discriminatory; the strata company is taken to have passed a resolution without dissent approving the structural alteration of the lot on the grounds that the failure to pass the resolution was unreasonable and discriminatory; or the council of the strata company is taken to have approved the alteration of the common property on the grounds that the failure to approve the alteration of the common property by the council was unreasonable and discriminatory. Once the owner obtains these orders from SAT, the owner can install the lift on the common property and into their lot.

In answer to Hon Donna Faragher's question about an education campaign, I confirm that the government will provide extensive education materials and will work closely with industry bodies and community organisations with an interest in this area to ensure that they have access to consistent and accurate educational information.

In response to Hon Rick Mazza's comments about strata managers, I am told that regulating strata managers will deliver the same protections for owners and strata companies as a full-blown and expensive licensing regime, with the one exception that a fidelity fund is not provided under the registration model. The protections in the regulation model matching the protections from an expensive licensing regime include, firstly, that the strata manager owes statutory duties to the strata company. That is proposed sections 146 to 150 and 152. Secondly, the strata manager must have indemnity insurance. That is proposed section 144. Thirdly, the strata manager must disclose a conflict of interest and commissions. That is proposed sections 146 and 147. The strata manager must have specified educational qualifications. That is proposed section 144. The strata manager must keep money in a trust account. That is proposed section 148. Further, the trust account can be audited. That is proposed section 150. The strata manager must report key information to government. That is proposed section 153. Further, the strata manager will be subject to the equivalent of penalties and fines because SAT can give damages orders against a strata manager. That is proposed sections 197 and 200(2)(k) and (o). Further, the strata manager needs a police clearance. That is proposed section 144. The strata manager is subject to a fit and proper person test, and convictions and insolvency are grounds for contract termination. That is under proposed section 151. The strata manager will lose their strata management contract if they breach their statutory duties or even the contract. When the strata manager breaches duties owed to all their strata company clients, the effect is the equivalent of losing their licence. That is proposed section 151.

The model in the bill for regulating strata managers is based on the models used successfully in Victoria and the Australian Capital Territory. Under a licensing model, a strata manager may face a relatively small fine for the breach of a statutory duty. Under the regulation model, if a strata manager breaches a statutory duty, the strata manager may be ordered to pay millions of dollars in damages as compensation for losses suffered by the strata company, and the risk of such a large financial penalty will encourage better conduct by strata managers. The regulation of strata managers is the first step in making strata managers, who are not even mentioned in the Strata Titles Act 1985, more accountable. Even though there have been two parliamentary inquiries into strata managers, these inquiries did not result in a detailed understanding of the size or, indeed, the scope of the strata management industry in this state. Proposed section 153 of the blue bill specifies that the regulations can require strata managers to lodge information with Landgate setting out how many schemes they manage, how many lots they manage, and how much money they have under management. This will mean that after a few years of gathering this important information, the government will be in a better position to decide whether we need to move down the track of licensing strata managers, how that licensing can be funded, and what the licensing can target. I am advised that, as a rough estimate, about 300 strata managers are operating in Western Australia. A full-blown licensing regime for strata managers would cost at least several million dollars a year to run. Therefore, with only about 300 strata managers in the industry, licensing fees would likely be in the order of $10 000 a year for each strata manager, and that cost would be transferred on to consumers. In addition, a $10 000 a year licence fee would act as a large barrier to entry for strata managers, so essentially it would close the system. Some of the larger strata manager businesses now in operation would welcome such a high licensing fee because it would drive the smaller strata manager businesses out of the market and allow the larger players to establish more of an oligopoly.

I make the point also that licensing will not fix every problem. In New South Wales, strata managers are licensed. However, the New South Wales government admits on its website that it cannot act quickly enough to cancel a licence even when it is aware that an agent is causing harm to the strata company. The New South Wales government admits, and I quote —

> The time needed to investigate before taking action could mean that the agent's misconduct continues and more consumers suffer losses.

The regulation model we have proposed means that if a strata manager is breaching their contract or, indeed, their statutory duties, the strata company has a statutory right to terminate the contract. This means that the strata manager cannot keep causing damage to the strata company while a government licensing body slowly investigates the complaints and grinds through the process of trying to suspend or cancel the strata manager's licence. Hopefully, that answers the points raised by Hon Rick Mazza.

I am giving an extensive reply to the various questions that have been asked. I understand that we will be going into Committee of the Whole; therefore, if I do not touch on all the issues members have raised, or if members think I have misunderstood what they have asked, by all means ask it again.

Hon Robin Chapple asked whether leasehold will destroy private land ownership. The answer is no. Leasehold gives people who are renting the chance to buy a lot that they can sell, mortgage or even bequeath in their will. The owner of the lot can hold and deal with that lot until the expiry day of the scheme, which, as Hon Donna Faragher pointed out, may be up to 99 years. This does not destroy private land ownership. It is a form of land ownership that has provided millions of people in other countries with the ability to buy their own home and live in that home without being subject to the whims of a landlord. Leasehold provisions provide the owner of the lot with substantial protections and are a viable, robust and well-used form of land ownership. Not everyone in Western Australia can afford to buy a house in Cottesloe; and, if they are renting, they should have the further option of getting off the rental treadmill. This bill will allow for that.

Another question that was raised is how will leasehold deal with the threat of ground rent. Ground rent is an insidious practice that has emerged in the United Kingdom, of which Landgate has been aware. As a result, the STA bill imposes strict limits on what a lessor, or landlord, can do and can charge for lots in leasehold schemes. When a person in the United Kingdom "buys" a long-term lease of a house by paying a large up-front sum, the lease they sign may contain a ground rent clause stating that the lessee, or the person who bought the long-term lease, will pay to the lessor, or the landlord or "freeholder", an annual ground rent. The ground rent may start out low but may increase to a substantial fee over time, as set out in the lease. In response to the issue of ground rent, the bill and regulations provide that no ground rent may be charged. Proposed section 52, in clause 83 of the bill, provides that a strata lease can contain only covenants or conditions allowed by the regulations. The regulations will provide that no rent can be charged under a strata lease. Therefore, the ground rent problem in the United Kingdom will not be permitted for leasehold strata and survey strata schemes in Western Australia.

In relation to termination, the first strata schemes in Western Australia were constructed over 50 years ago. Scheme buildings are ageing, and many are costing owners large amounts in maintenance. Owners in some schemes are now getting to the point at which they simply cannot afford to maintain these old buildings. Therefore, based on experience in other jurisdictions, termination and redevelopment of strata or survey strata schemes will become increasingly common. In order to protect the assets held by all strata owners, safeguards for the termination of a strata scheme will be introduced.

Before we look at the safeguards, it is important that we understand the current law for terminations and dispel some of the myths that are being circulated about this part of the reforms. Under the act, there are three ways in which a strata scheme can be terminated. Most people know that all owners can vote to terminate a scheme through a unanimous resolution. However, what most people do not know or understand is that two other pathways may also be used to terminate the scheme. Under section 31 of the act, one owner or one mortgagee can apply to the District Court for an order to terminate a scheme. Under section 51 of the act, one owner can apply to the District Court for an order deeming that a special resolution to terminate is a unanimous resolution.

The act does not provide inadequate safeguards for owners in relation to the termination of a scheme. There is no requirement that a detailed proposal be prepared or even given to other owners before launching a District Court action. There is no requirement for a vote to be taken before applying to the District Court.

Hon Peter Collier: Is this the part that has been referred to the committee?

Hon STEPHEN DAWSON: Yes, the part about termination is, but there are some answers that I am happy to put on the record. There will be a debate about this later, but because it was raised tonight, I am just providing —

Hon Donna Faragher: It is unusual.

Hon STEPHEN DAWSON: I am providing an answer to it. Just be fair.

Hon Donna Faragher: I do not have an issue with that. I am just making sure —

Hon STEPHEN DAWSON: That we are not having the debate twice.

Hon Donna Faragher: Yes. I want to make sure that we are all on the same page. It is difficult. I accept that.

Hon STEPHEN DAWSON: I am trying to answer now all the comments and questions that were asked tonight, and obviously we will have another bite at the cherry in relation to the termination provisions when the committee reports next week. Hopefully, that will mean we have a swifter debate in Committee of the Whole, but we never know.

I have given some examples of how the safeguards in the act are inadequate. There is no additional assistance or safeguards for vulnerable owners to help them respond to a District Court action. The act also provides no guidance for the District Court on whether it should terminate a scheme.

The majority termination process will introduce safeguards for owners. It will establish a termination process that is transparent and reasonable, and requires a vote. It will require a full procedural and fairness review by the State Administrative Tribunal to consider the views of all owners. Owners who object must be properly compensated and must not be any worse off financially if the termination goes ahead. Vulnerable owners will be

resourced so that they can receive independent advice, paid for by the developer. The majority termination process will be more than just a vote. There is a complete and transparent process that must be followed. I will leave that there for the moment.

I turn now to the question of exceptional circumstances—for example, termination for pensioners. The like-for-like replacement lot protection, when combined with the requirement that an objecting owner is to be no worse off financially, and SAT's power to modify a termination proposal are a useful set of provisions that can ensure that objecting owners will still have a home in the same suburb and are not financially out of pocket as a result of moving. A like-for-like replacement lot is something a proponent can choose to offer to an objecting owner. However, if the objecting owner can give evidence to SAT that they need a like-for-like lot so that they are no worse off financially, SAT can modify the proposal under proposed section 183(13) of the bill to require the proponent to give the objecting owner a like-for-like lot and cover all taxes, moving costs and other transaction costs, including discharging and re-registering a mortgage over the replacement lot. An example of being financially worse off as a result of being paid a lump sum instead of being provided with a like-for-like replacement lot is when the objecting owner is a pensioner. If the pensioner were paid a lump sum by the proponent in exchange for their lot, they may lose their pension. In such a case SAT could not order that the termination proceed because the objecting owner who is a pensioner would be worse off financially as a result of the termination. SAT could order the modification of the termination proposal to require the proponent to provide the objecting owner with a like-for-like replacement lot that would be in a nearby location, have equivalent facilities, have equivalent amenity and be equivalent to the fair market value of their current lot. SAT could also require the proponent to pay all of the owner's duties, taxes and moving costs, and ensure that the owner would not lose their pension if the termination resolution was confirmed by SAT. If the owner's overall wealth would not change, but the proportion of their wealth allocated to their housing increased and their discretionary wealth decreased, the proponent either would need to make good that loss or avoid the loss by offering like for like instead of cash. If an objecting owner was being offered fair market value in the form of a cash payment and the objecting owner wanted to remain within the same neighbourhood, they may find that all the remaining apartments in the neighbourhood are much newer and thus more expensive than their current lot. To buy back into the neighbourhood, the objecting owner may need to spend some of their own savings, and this is an example of being worse off financially, even though the total value of assets remains the same when the value of the newer apartment is added up with the reduced level of savings. In such a case, that objecting owner could demonstrate to SAT that they would be worse off in terms of having to commit a portion of their savings to stay in the neighbourhood, and as a result have a reduction in their discretionary wealth. If the owner demonstrated this, SAT would find that the objecting owner would be worse off financially as a result of having fewer savings. SAT could then order the modification of the proposal so that this objecting owner must be given a like-for-like replacement lot in the same neighbourhood, with all taxes, duties and other expenses paid for by the proponent.

On the question of awarding compensation above fair market value in an exceptional circumstance, a further example of when SAT may modify the proposal to require the proponent to provide a like-for-like replacement lot would be when the objecting owner owned a lot in a scheme within a suburb where there were no more old schemes. In such a case, if the objecting owner was paid a lump sum for the replacement lot, they would be unable to buy a lot within the same suburb with a lump sum. That objecting owner could show SAT that they would be worse off financially if the termination proceeded and they wanted to buy back into their current suburb. In such a case, SAT has the power to order that the termination proposal be modified so that the objecting owner is provided with a like-for-like replacement lot in the same suburb, even though the replacement lot is worth more than the current lot and all of the objecting owner's duties, taxes and moving costs are paid by the proponent.

In relation to the question about business, if the owner's home business could not be reinstated elsewhere for some reason, the proposal would not be considered fair value. If someone is operating a business from the lot they own and they object to the termination proposal, the proponent will need to pay for the owner's removal expenses and for the disruption and reinstatement of their business on the basis that they are to be no worse off financially. That is referred to in proposed sections 183(10)(a)(ii) and 183(10)(c)(i) and (ii). The proponent will also have to pay for any taxes and duties incurred by the objecting owner as a result of the termination and the acquisition of a new lot for them to conduct their business. Some businesses do operate in unique locations and the objecting owner could establish that the proponent must provide them a like-for-like replacement lot in such a unique location and that the proponent must pay all of the other costs, including removal, relocation and reinstatement of the business, and duties and taxes et cetera. If the business could not be reinstated elsewhere—for example, because of the uniqueness of the location and the lack of any replacement lots that would enable the business to continue at the same profit level as before—SAT would likely find that the objecting business lot owner would be worse off financially and in such a case SAT could not order that the termination proceed.

On the question of whether the non-financial circumstances of the owner are considered by SAT, I confirm that the individual circumstances for each owner, whether those circumstances are financial or non-financial, are

considered, including whether the owner has specific mental health issues, other health issues or other physical requirements. They are to be considered by SAT when it asks whether the termination proposal is just and equitable, and in particular when it considers the benefits and the detriments of the termination proposal proceeding or not for all those, including owners, whose interests must be taken into account. Proposed section 183(12)(e) deals with that issue. I am getting close to it!

I turn to the question of an independent advocate. Proposed section 181(5) provides that the regulations may impose additional requirements about the process required for consideration of a termination proposal by a strata company. Those regulations could include a requirement that the strata company refer the proposal to an independent advocate, for example. Subject to further consultation, the regulations referred to in proposed section 181(5) will specify that a strata company must refer the full proposal to an independent advocate, and the regulations will specify who can be an independent advocate. The independent advocate will review the full proposal and provide the strata company with an independent assessment of the full proposal, and arrange a briefing session conducted on a multisensory basis to cater for people with disabilities. It will provide for owners to deliver the independent assessment of the full proposal. The independent advocate will assess which owners in the scheme are vulnerable for the purposes of proposed section 190, will provide initial advice to vulnerable owners, will refer the vulnerable owners to a panel of specialist advisers of lawyers et cetera whom vulnerable owners can see to obtain advice and/or representation as provided in proposed section 190, and will assist vulnerable owners in obtaining funding provided by the proponent under proposed section 190 to pay for the advice and/or representation. The independent advocate will represent vulnerable owners in SAT if the proponent disagrees about who is or is not a vulnerable owner entitled to the funding.

Point of Order

Hon DONNA FARAGHER: I did do this by way of interjection. I appreciate why the minister is referring to these proposed sections of the bill, because they were referred to in contributions to the secondary debate, but I have to say that we seem to be going into a lot of detail about the provisions that have been referred to the Standing Committee on Legislation, so I ask your advice, Madam Acting President. I am not trying to be difficult here. There is a process that we need to follow in this place. I want to make sure that we are not straying beyond what we should be doing in looking at these provisions. I appreciate that we find ourselves in a unique circumstance of having a proposed part of the bill referred and we are still debating the bill, so I appreciate that some latitude may need to be given, but I seek your advice about how much latitude can be given.

The ACTING PRESIDENT (Hon Adele Farina): Members, in relation to the point of order, the motion that was agreed by the house actually stated that the house may proceed with consideration of the bill other than the matters referred under paragraph (a)—that is, the part that was referred to the Standing Committee on Legislation. But the Committee of the Whole shall not agree to a resolution to report the bill to the house until after the legislation committee reports on the referral of proposed part 12 and any related matter. So the part that has been referred to the legislation committee still forms part of the bill that is being considered as part of the second reading debate. A member in the house has raised questions in relation to that particular provision, and I do not think it is unreasonable for the minister to respond to the questions that have been asked. I think the point that Hon Donna Faragher makes is valid in that we may have to repeat all this once we get the committee report. But I do not think it is unreasonable for the minister to respond to questions that have been asked by a member during this debate. This is very unusual, and I think we will have a fair degree of repetition as a result of how we have chosen to handle this matter.

Debate Resumed

Hon STEPHEN DAWSON: I appreciate Hon Donna Faragher's point of order. I guess the motion relating to the Strata Titles Amendment Bill 2018 states that the committee can look at other clauses if it deems them linked. The committee could be looking at other parts of the bill that I am not sure of; I do not know the other work that the committee is doing, and it is not appropriate that I should. In light of that, I am just trying to answer all the honourable member's questions now and place the answers on the record.

Hon Donna Faragher: I'm not trying to be difficult —

Hon STEPHEN DAWSON: No, I know you were trying to be helpful.

Hon Donna Faragher: — I just want to make sure that we are not straying where we shouldn't; that's all.

Hon STEPHEN DAWSON: I appreciate that you were trying to be helpful, so thank you.

I was talking about the independent advocate, and I hope Hon Robin Chapple was up to where I was at. The independent advocate will represent vulnerable owners in the State Administrative Tribunal if the proponent disagrees about who is or is not a vulnerable owner entitled to the funding under proposed section 190, to ensure vulnerable owners have access to funding to pay for expert advice and legal representation. The independent advocate will ensure the strata company will be required to pay the independent advocate for the services I have

previously listed. The strata company can require the proponent to pay to the strata company the full cost of the independent advocate services, under proposed section 189.

Vulnerable owners will be provided with funding for advice and representation so that they can respond to the termination proposal, and that is under proposed section 190. The proponent will be required, under the regulations provided for in proposed section 190 of the bill, to pay for owners who meet specified criteria that will be set out in the regulations to obtain independent legal advice, legal representation, valuation advice and financial and taxation advice in connection with termination proposals. The regulations will likely specify that vulnerable owners are owners who meet the specified criteria, and are therefore entitled to the funding to be paid by the proponent to obtain the independent advice.

In relation to the question on a strata company's ability to block multiple proposals, the outline proposal to terminate the scheme cannot be submitted to a strata company during a period when the strata company has passed an ordinary resolution in favour of an outline proposal and that proposal has not come to an end. That is under proposed section 174(2)(a). Also, during a period not exceeding 12 months when the strata company has an ordinary resolution, that prohibits termination proposals from being submitted to it. That is under proposed section 174(2)(b). I note that there is no limit on how many times a strata company can hold a general meeting and pass an ordinary resolution to prohibit outline proposals from being submitted. In other words, a strata company could hold a general meeting every year to extend the prohibition on the submission of outline proposals for a further 12 months during a period for which SAT has, on the application of the strata company, ordered that termination proposals are not to be submitted to the strata company. That is under proposed section 174(2)(c).

There may be situations when a person controls the majority of votes in the strata company and uses that voting power to prevent other owners from making an ordinary resolution to prohibit termination proposals being submitted to the strata company. If that happens and the strata company is forced to consider new termination proposals on a regular basis, the owners who hold minority voting power have two options. One owner can seek to obtain an order from SAT to bring an application on behalf of the strata—that is, under proposed section 198(1)—and then apply to SAT on behalf of the strata company for an order to prevent termination proposals; or outline full proposals to terminate the scheme being submitted to the strata company for any period, including, for example, five years to enable the owners to live in peace if they are being pursued by a developer. Members might want to go into that a bit later on, but I will leave it there.

In relation to Hon Colin Tincknell's comments, I thank him for his contribution and support of the bill, and his recognition that this bill is long overdue and will make for positive change in Western Australia. With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Hon DONNA FARAGHER: I have one question, and I reckon I know part of the answer the minister will give me. I have a general question on the regulations that will ultimately accompany the amended act. Throughout the entire bill there is reference to regulations. I know that the normal answer is that we do not deal with regulations until we have dealt with the bill; however, I seem to recall that in perhaps one of my briefings there has already been some discussion with relevant parties with an interest in strata. I am keen to get an understanding of how long the government thinks it will be before regulations will be drafted.

Hon STEPHEN DAWSON: I am advised that it will probably take at least a year for the regulations to be finalised. Earlier this year conversations commenced with affected parties or interested parties, but I am confident—I am expressing confidence in my contribution this evening—that upon passing this place, it will take up to about a year for the regulations to be finalised.

Clause put and passed.

Clauses 2 to 7 put and passed.

Clause 8: Section 3A amended —

Hon DONNA FARAGHER: I would like some clarification because it is at this point that my notes on the bill refer to blue bills and various other things. I will not go into my views on the bill again, but I understand that clauses 8, 9 and others that come after this are being moved to schedule 2A and they relate to matters surrounding

single-tier strata schemes. If I am correct, everything that relates to single-tier strata schemes will now be referenced by and moved to schedule 2A; is that correct?

Hon STEPHEN DAWSON: The member is correct. Everything relating to single-tier strata schemes will be moved to a separate schedule, and that is schedule 2A. This will ensure that there is a unique set of rules for single-tier strata schemes.

Hon DONNA FARAGHER: Can the minister explain what a single-tier strata scheme is?

Hon STEPHEN DAWSON: I am advised that single-tier strata schemes are lots that cannot be above or below another lot except for permitted boundary deviations.

Hon DONNA FARAGHER: Can they be joined together?

Hon STEPHEN DAWSON: Yes, they can.

Hon DONNA FARAGHER: Can they be a townhouse; is that an example as well?

Hon STEPHEN DAWSON: That is an example.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Section 7 amended —

Hon DONNA FARAGHER: I recall from my notes that this section relates to structural alterations to lots. I glanced at the debate in the other place in relation to parts of the bill. Whilst I do not reflect on the debate in the other place, I note that the Minister for Lands stated —

> The current provisions have been reworded, because there has been a substantial change to policy.

What is the change to the policy?

Hon STEPHEN DAWSON: I will do this in a couple of parts. This clause amends section 7 of the act for greater clarity. Section 7 provides that an owner of a lot must obtain approval from the strata company or, indeed, other owners before structurally altering a lot. Section 7 is a set of provisions that provide for structural alterations of lots. As part of the change, we are allowing owners who have structurally altered lots without approval to seek approval from the State Administrative Tribunal after the fact.

Hon DONNA FARAGHER: Would that be similar to local government approval? For example, is that the same as someone putting on a structure without seeking approval from the local government authority but who seeks approval retrospectively? I am trying to get some understanding. Is that what the government is effectively seeking to achieve in this instance? If so, would the local government authority not also have a role, potentially?

Hon STEPHEN DAWSON: These provisions relate to the approval of the strata company, not to local government approvals. Approvals from local government would still be required; this is essentially about the strata company and approvals by that strata company.

Hon DONNA FARAGHER: Perhaps an example might be helpful. Correct me if I am wrong, but if someone in a strata scheme with individual lots decides to put on a garage door that has not been part of the general agreement, are they required to get retrospective approval by SAT only if the strata company objects afterwards? It would be useful for the minister to give a hypothetical example of retrospective approval from SAT. If he did that, we could move forward.

Hon STEPHEN DAWSON: I am not quite giving the member what she wanted but let us see whether this explains it. Owners will still need to obtain approval of the strata company to alter their lots. That is resolution without dissent. That is the blue bill clause 87. Other owners can oppose the application to alter a lot in a strata scheme only on limited grounds. The grounds to oppose are: carrying out a proposal will breach plot ratio restrictions or open-space requirements; alteration results in a structure visible outside the lot; alteration may affect the structural soundness of the building; or alteration may interfere with the statutory easement. The statutory easement provides for support and shelter of other lots in the scheme. SAT has the power to exempt an owner from obtaining approval for a structural alteration of a lot both before the structural alteration has been made and after the structural alteration has been undertaken. Altering a lot does not include altering a boundary. The bill clarifies that if a person alters their lot in such a way that they alter the boundary of their lot, they will need subdivision approval from the WA Planning Commission.

Hon DONNA FARAGHER: Can the minister tell me what the current retrospective approval provisions are if someone were to make a structural alteration with or without consent?

Hon STEPHEN DAWSON: SAT cannot currently give retrospective approval if someone alters their lot.

Hon DONNA FARAGHER: What is the recourse here? Why would someone get retrospective approval? I am probably not making sense because I am thinking about this as we are talking about it. Why would they need to have retrospective approval? We would think they would want approval in the first place. I take that as the first point. However, if they require retrospective approval, for what purpose, if currently there is no retrospective approval? Is the minister saying that people can do what they want now without any form of approval?

Hon STEPHEN DAWSON: Currently, approval is required. We are seeking to give retrospective approval if SAT thinks it is appropriate within the lot. People cannot make structural alterations outside their boundaries; they can do so only within their boundaries, but at the moment they require approval. However, essentially, with the retrospective approval, we are giving SAT the power to allow it if it deems it is necessary, but again, inside the lot, not external to the lot.

Hon DONNA FARAGHER: I understand that. We are talking about inside the lot, not outside. What happens if SAT does not give the retrospective approval?

Hon STEPHEN DAWSON: I am advised that SAT can order the person to make restitution—to change the alteration and put it back to where it was in the beginning.

Hon DONNA FARAGHER: The minister is telling me that under the act—I will be guided by him if I have this wrong—if a change is made within the lot, whether it is the installation of a garage door or whatever it might be, and there is no approval, there is no recourse. Is there any actual recourse to have it removed if for whatever reason the other owners do not agree after it has occurred?

Hon STEPHEN DAWSON: Currently, if owners who make structural alterations to the lot do not have approval, the strata company can go to SAT seeking restitution—for the change to be put back to where it was previously. There is no financial penalty per se, but I guess the penalty is the restitution.

Hon Donna Faragher: There is a mechanism for the structure or whatever it might be to be removed if SAT agrees, but it can be done only through the strata company?

Hon STEPHEN DAWSON: Yes; the company has to make that approach to SAT and then SAT can make the decision to order restitution. I am not sure whether restitution is the right word in this case, but the member knows what I mean.

Hon DONNA FARAGHER: Really, the additional change to policy is that we are giving the owner an added opportunity that currently does not exist to get retrospective approval?

Hon Stephen Dawson: Yes.

Hon DONNA FARAGHER: If SAT says, "No, the structure has to be removed", it may well have to be removed depending on what the order is and that will be no different from the strata company objecting and referring the matter to SAT and they get the same outcome.

Hon STEPHEN DAWSON: Under the act, if they are in a two-lot scheme, the other owner can go to SAT seeking restitution. It does not have to be through a strata company. What was the second point?

Hon Donna Faragher: I think I have answered my own question.

Hon STEPHEN DAWSON: The member is more helpful than I am; is that what she is saying?

Hon Donna Faragher: I would never say that!

Hon SIMON O'BRIEN: I have a point for clarification. We are looking at Strata Titles Amendment Bill 80–2 I believe, and clause 10 of that bill.

The DEPUTY CHAIR: That is correct.

Hon SIMON O'BRIEN: Mr Chair, your patience in this matter is greatly appreciated. I just want to confirm that the content of this clause is intended to basically create what will be the future section 87 of the Strata Titles Act. Is that the case?

Hon Stephen Dawson: That is correct.

Hon SIMON O'BRIEN: Why have we renumbered the current section 7, amended it and then put it in section 87 of the Strata Titles Act? Why are we not dealing with just amending existing section 7, for those of us who have difficulty with these matters?

Hon STEPHEN DAWSON: That is a very good question, member. I am told that the bill will substantially reorder sections of the act to provide greater clarity, essentially. It might not seem that way this evening, but I am told that once the bill passes and the act is reordered, we will have greater clarity. The act was amended over time so that

related topics were scattered throughout the act and unrelated topics were grouped together. This has had the effect of making the act confusing to navigate. The amending bill has substantially reordered the act so that large general principles are dealt with early, and similar concepts are addressed together. The relocation of provisions is intended to restructure the heavily amended act so that it is easier to find material. The restructured amended act is also intended to align more closely with the structure of the companion community titles legislation, introduced at the same time as this bill, which we will be debating in this place over the coming weeks. Where changes of this type have been made, the reason given for the change in the explanatory memorandum will be amended for greater clarity. If changes have amended the substance of the bill, further explanation will be given. Essentially, in this case it is about providing greater clarity at the end of the day, and in the long run.

Hon SIMON O'BRIEN: I look forward to reaching the promised land of clarity in due course, and I thank the minister for that. I do not want to be tiresome, but at the committee stage of a bill we need to clarify these things. If I am having a bit of difficulty with it, chances are that one or two other old fossils around the place might be as well.

Hon Stephen Dawson: Not even fossils, member!

Hon SIMON O'BRIEN: I am not sure whether I should thank the minister for adopting my vernacular so readily. Where, in clause 10 or somewhere else, do we as a legislature adopt the decision that this shall in future be section 87? All I can see there is a note.

Hon STEPHEN DAWSON: I take this opportunity to explain to the committee how the amending bill operates and give some context and hopefully the clarity that we all seek. The amendments to the act in the bill are extensive and complex, as we know. The bill involves a two-stage process to amend the act. The first stage of amendments, in division 2 of part 2, make specific amendments to provisions of the act. The second stage of amendments is as follows. In division 3 of part 2, clause 82 deletes almost all headings and divisions from the act. Clause 83 then inserts sections 4 and 5 and parts 2 to 14 into the act. The new parts have gaps, and these are to be filled by the relocations of provisions in division 4. Sections amended in division 2 of part 2, and other sections of the act that are not amended there, are redesignated or renumbered and relocated by divisions 4 and 6 of part 2. There we see clauses 84 and 116. Division 5 amends the schedules to the act. Schedules 1 and 2 are amended and schedule 2A is replaced.

Hon SIMON O'BRIEN: Where do I look in the bill, and on what page does it state that henceforth this amended section 7 will be known as section 87?

Hon STEPHEN DAWSON: I am advised that it is clauses 84 and 116.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Minister, do you have the page number? Does it help if I suggest page 315?

Hon SIMON O'BRIEN: Through you, Mr Deputy Chair, if I happen to like this new material but prefer it to be called section 7, I should agree to clause 10, and then kick back hard against clause 84 in due course. Is that right?

Hon Stephen Dawson: If that is what you choose to do, member.

Hon SIMON O'BRIEN: If I am still here by then, that is what I will do. I thank the minister for clarifying that.

Clause put and passed.

Clause 11: Section 7B amended —

Hon DONNA FARAGHER: That exchange alone highlights to me, once again, the challenges in this bill and why, although we dealt with this in the second reading debate, a replacement act would have been more useful. The bill goes right across a range of things, and it is very difficult for people to work through this piece of legislation. We are changing sections, they are moving into different areas and all of that sort of thing. I said what I had to say in the second reading debate, but it is difficult. I worry for anyone who does not have to deal with it like we do. We are finding it difficult. Others who would have to work through this legislation would be finding it incredibly difficult. Notwithstanding that, clause 11 deals essentially with approvals and objections. Again, can I just get some clarification? The way I read it against the act, the procedures remain substantially the same. I want some clarity. If there are any differences, could the minister explain them? I have not picked up on any, but I would just like some clarification.

Hon STEPHEN DAWSON: To respond to the member's opening comments, it is a complex piece of legislation. I think it was many years in the making, but I think people outside this building are demanding action. Work commenced under the previous government and continued under this government. A decision was made some time ago not to create a new act, but rather to amend the one that we have.

Hon Donna Faragher: I'm not necessarily reflecting on your government. I think it is irrespective of who was in power.

Hon STEPHEN DAWSON: Of course, and indeed I am not trying to sheet home the blame. I am not going to say what might have happened in an ideal world, but the work had commenced. Years of work was put into this, and this is the bill that we have before us now.

This clause amends section 7B of the act for greater clarity. Section 7B provides a process for obtaining approval to structurally alter a lot. There has been no change to the approval periods set out under section 7B of the act. Essentially, there is no change.

Clause put and passed.

Clause 12: Section 12A amended —

Hon DONNA FARAGHER: I am going back to my notes here. As we have discussed before, we are clumping those sections relating to single-tier schemes in schedule 2A. Amended section 12A relates to single-tier schemes; is that correct? I want to make sure that we are on the same page.

Hon Stephen Dawson: That is correct.

Hon DONNA FARAGHER: The way I read it, though, it appears to be a fairly general provision relating to access. I am wondering whether similar clauses within the bill or sections within the act relate to access—what we are talking about here—with respect to other schemes.

Hon STEPHEN DAWSON: Yes, other provisions in the bill relate to access.

Hon DONNA FARAGHER: Are they in a similar form to the words proposed here with respect to other strata schemes? If the minister could point me to the right section, I can quietly look at those.

Hon Stephen Dawson: I am told it is a tough question. We can certainly —

Hon DONNA FARAGHER: I am happy to move on. If it helps, can we take that on notice? If the minister can come back to me at a later time, that will be fine.

Hon STEPHEN DAWSON: Sure. On that question, my adviser tells me to refer the member to division 3 of part 5 of the blue bill, and there may well be some stuff there.

Hon Donna Faragher: Can the minister give me a page number?

Hon STEPHEN DAWSON: Absolutely. I am on the case.

Hon DONNA FARAGHER: He is a very good minister.

Hon STEPHEN DAWSON: I am not getting into that, but I am certainly trying this evening. It is at page 78 of the blue bill, and it provides for statutory easements.

Hon Donna Faragher: Yes. They are obviously not identical, but relevant to, in that instance, statutory easements. I am happy with that.

Clause put and passed.

Clauses 13 to 15 put and passed.

Clause 16: Section 21F amended —

Hon DONNA FARAGHER: Could the minister explain to me why it is proposed to delete "in the prescribed form" and insert "by resolution in the approved form"?

Hon STEPHEN DAWSON: I will first talk to what an approved form is. A reference in the bill to the approved form includes the ability to set requirements for the completion of that form within the regulations, including what documents need to be appended to the form and how those documents are to be certified. A document will be in the approved form only if it is in the form approved under the regulations or Transfer of Land Act requirements and it complies with any requirements of the regulations or the Transfer of Land Act. A prescribed form is a form contained within the regulations at the moment. This is what an approved form is.

Hon DONNA FARAGHER: Within this part, it appears that there is a change to resolutions. The act distinguishes two-lot schemes from others, but from what is in the bill now, it seems more general in nature; is that correct? Have I read that correctly?

Hon Stephen Dawson: I might ask the member to ask that question one more time if she does not mind.

Hon DONNA FARAGHER: I have to go back to the blue bill again. My note is that it appeared that there will be a change to the resolution part in the act. The act currently distinguishes two-lot schemes from others, but the amended legislation will not. It will become more general.

Hon STEPHEN DAWSON: I am told that that question was not anticipated, so we might take that on notice and we will get some further information to answer that to be provided at a later stage of the debate.

Hon Donna Faragher: That would be appreciated.

Hon Nick Goiran: Will it be provided during the committee stage?

Hon STEPHEN DAWSON: Yes.

Hon Nick Goiran: This is unprecedented. The other ministers do not do this. You have to give them some lessons.

Hon DONNA FARAGHER: There is just a bit too much love in the room at the moment! I am happy to move from that clause and to await the information that the minister will provide very soon. I am happy to move to clause 17.

Clause put and passed.

Clause 17: Section 21G amended —

Hon DONNA FARAGHER: It is the difficulty of going back to the blue bill, but, again, it seems that "60 days" has been added to the bill, which perhaps was not there previously. I am keen to understand why 60 days was chosen. I do not believe that the period of 60 days is in the act. I am trying to find it again. The act does not refer to 60 days.

Hon STEPHEN DAWSON: I am told that this is simply to require the strata company to lodge the resolution within a reasonable time frame, and 60 days was deemed a reasonable time frame. The member is correct. It is not in the act.

Hon Donna Faragher: See—I have read the bill!

Hon STEPHEN DAWSON: Absolutely!

Hon DONNA FARAGHER: I am happy with that.

Clause put and passed.

Clauses 18 to 29 put and passed.

Clause 30: Section 26 amended —

Hon DONNA FARAGHER: This amendment to section 26 seems to provide greater clarity around applications for the review of decisions by the State Administrative Tribunal. Can I clarify that that is the case?

Hon STEPHEN DAWSON: The member is correct. This clause seeks to amend section 26 of the act to provide greater clarity and to provide that a decision of a local government for planning approval relating to a strata title scheme is subject to review by the State Administrative Tribunal under part 14 of the Planning and Development Act 2005.

Hon DONNA FARAGHER: What is the current lack of clarity in the act, if I might put it that way? Why do we need to improve this section? What were the concerns previously expressed?

Hon STEPHEN DAWSON: I am advised that it simply was not phrased in a modern way. The changes reflect more modern language and also reflect the proposed community titles bill. We are modernising the system to provide consistency across those two bills.

Clause put and passed.

Clause 31: Section 28 amended —

Hon DONNA FARAGHER: Again, this question is for clarification. It seems that the proposed amendment to section 28 deals in part with the transfer of responsibility from the District Court to SAT. Is that correct?

Hon STEPHEN DAWSON: Yes.

Hon DONNA FARAGHER: I thank the minister for that answer.

Clause put and passed.

Clause 32 put and passed.

Clause 33: Section 29A amended —

Hon DONNA FARAGHER: This amendment to section 29A deals with an application for an order and by whom an application for an order can be made. It refers to the strata company; the owner of a lot in the scheme; a registered mortgagee of a lot in the scheme; and, for a leasehold scheme, the owner of the leasehold scheme. Again, it is not clear to me from my reading of the act who can make an application for an order. I am interested

in knowing what the current process is and why it needs to be changed. In asking that latter question, I assume it is to provide greater clarity about who can and who cannot make an application for an order.

Hon STEPHEN DAWSON: The act states that it is the strata company, the owner and the registered mortgagee. This clause seeks to amend section 29A of the act, again for clarity, and again to transfer the jurisdiction from the District Court to the State Administrative Tribunal. Again, it is a shift, as was the case with the previous clause.

Hon DONNA FARAGHER: The act makes clear who can make an application for an order.

Hon STEPHEN DAWSON: Yes. Section 29A(1) of the act states —

> Where part of the land in a parcel in a survey-strata scheme is taken, the District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within the scheme, make an order for or with respect to the variation of the existing scheme or the substitution for the existing scheme of a new scheme.

That is at page 77 of the act.

Hon DONNA FARAGHER: From what I am reading, the only thing that has been added is the owner of the leasehold scheme, because that is obviously a new concept.

Hon STEPHEN DAWSON: That is correct.

Clause put and passed.

Clauses 34 to 45 put and passed.

Clause 46: Section 34 amended —

Hon DONNA FARAGHER: This clause proposes to amend section 34(1) of the act by deleting "varying or discharging" and inserting "varying, extending, discharging or terminating". I am keen to understand the reason we need these extra definitions. I can understand the need to insert the words "varying" and "extending", but "discharging" and "terminating" —

Hon Stephen Dawson: Do not forget that "discharging" is already in the act.

Hon DONNA FARAGHER: Yes. Therefore, it is the word "terminating" that I am most interested in. Discharging may mean the end of a contract, but effectively that is the same as terminating. I want to get an understanding of why both terms have been included.

Hon STEPHEN DAWSON: We are essentially covering the whole field by say "discharging" and "terminating". Some people see that they mean different things, so by covering the whole field we are trying to cover all circumstances. We are trying to broaden by capturing everything.

Hon Donna Faragher: You are capturing everything.

Hon STEPHEN DAWSON: We are capturing everything so there can be no question over what is in and what is out, essentially. It is literally just trying to ensure that we have captured everything.

Clause put and passed.

Clause 47 put and passed.

Clause 48: Section 35A amended —

Hon DONNA FARAGHER: Again, this is just a point of clarification. I understand the penalty identified here, a fine of $3 000, is quite a substantial increase to the current penalty. Is that to make this more consistent with other legislation?

Hon STEPHEN DAWSON: The member is correct. The current penalty is $400 and this clause increases it to $3 000. This is consistent with penalties for equivalent offences in other legislation. It is consistent with the Associations Corporations Act 2015, which in section 35 establishes that an incorporated association must keep and maintain a copy of the rules of the association. In that case the penalty is $2 750, but we have increased the penalty in this bill to $3 000 to make it comparable.

Clause put and passed.

Clause 49: Section 36 amended —

Hon DONNA FARAGHER: This clause deals with the establishment of a reserve fund as well as the requirement that a 10-year plan is established. I am going on memory here, but my understanding is that there is a requirement for a 10-year plan for schemes with 10 or more lots. How did we arrive at 10?

Hon STEPHEN DAWSON: Essentially, under the bill schemes of 10 or more lots or schemes with a high building replacement value must have a 10-year maintenance plan. The 10-year maintenance plan is aimed at assisting the strata company in deciding how much money it should set aside in its reserve fund, and clause 49 amends current section 36. Under the bill schemes of 10 or more lots or schemes with a high building replacement value must have a 10-year maintenance plan. The 10-year plan may include things such as a list of building defects and the estimated costs and time period within which the work might need to be done. The number of 10 lots was essentially chosen in response to stakeholder consultation. We were consulting and we were advised that that was a figure we should include in the bill. Earlier drafts of the bill used a different figure.

Hon DONNA FARAGHER: This is interesting, because I agree with it. I think it is important, having once owned a property that was in a strata. I appreciate for a two or three-lot strata it is probably unnecessary, but I would have thought that it would be a good rule of thumb for a strata company or the strata to be required to have some form of plan. I think Hon Rick Mazza mentioned this and I mentioned it as well. There might be six or seven lots in a strata, and that might seem small in a complex, but if they were six separated townhouses and there are sink well problems or whatever it might be, a person may find themselves having to pay a series of, I think, special levies to cover costs, if it has not been managed well, for the additional works. I am not unhappy with the number of 10 as such and I certainly support the maintenance plan, but I think there is merit for a requirement that strata companies of fairly small size should still be required to have a management plan. I think that is good practice, and I am keen to get the government's response to that.

Hon STEPHEN DAWSON: I just make the point that strata companies can choose to have such a plan at this stage, but this clause stipulates that those of a certain size must. The term "designated strata companies" for the purposes of administrative reserve funds and contributions means a strata company included in the definitions by regulation 100. The intent here is to require a strata scheme of fewer than 10 lots but a high building replacement value to also be subject to the requirement to have a 10-year plan. The 10-year plan is especially useful for schemes that may be subject to very large maintenance costs. Preliminary consultation with stakeholders on the building replacement value for schemes that would need to prepare this 10-year plan has been undertaken, but further consultation will be undertaken as part of the regulations. I take the member's point, but this is the figure we landed on after consultation with the sector. Obviously, smaller strata sizes can have such a plan, but we are just not requiring them to.

Hon DONNA FARAGHER: I accept the fact that it is ultimately up to strata of less than 10 lots to do that if they so choose, and they are not prohibited from doing that, if I can put it that way. Just out of interest, with respect to the initial consultation, was there a figure; and, if so, what was it?

Hon STEPHEN DAWSON: Yes, a $5 million replacement value was suggested previously. It was a $5 million amount. I will just check with my advisers whether we talked about the number of lots previously. I am informed that we did go out with a different figure. We do not know it was, but what was consulted on with industry was 10 lots or a $5 million replacement value. That is what was suggested.

Hon DONNA FARAGHER: I am not going to get into an argument about whether it should be 10 lots, eight or whatever, but as a general concept, and I hope Landgate takes this on board in any of its education campaigns or whatever else, although there is a requirement for strata with 10 lots or more or high replacement costs—that is the terminology that minister used; it is getting late in the night!—it would be seen as desirable that a smaller scheme still put forward these maintenance plans. I think it is important as a general rule, and it is good practice, particularly as they age, and they all do. There are costs that are not anticipated. I understand that, but there are also issues with painting and all those sorts of things. I think it would be good practice for strata as a general rule to have some form of plan that looks at issues of maintenance and all those sorts of things. That also helps in determining strata fees and all those sorts of things, so, again, people are not left with special levies for this and that. That can happen. I have experienced it, and that was in a small scheme. So I think it is good practice, and I would certainly hope, as I say, that Landgate takes that on board and makes sure that as part of the consultation and all those sorts of things it is reflected.

Hon STEPHEN DAWSON: I cannot promise that we will make it desirable—I think the member used the word "desirable"—but I agree with the member that it is probably good practice, and that it would be helpful to strata schemes across the state. I give an undertaking that I will raise this issue with the minister. The member heard during my second reading reply earlier on that there is an intention to provide educational materials. I will certainly raise it with the minister and her office to see whether it is able to be suggested, as part of that education campaign, to stratas of fewer than 10 that they may look at having a maintenance plan and that fund.

Hon Donna Faragher: That would be excellent, minister.

Clause put and passed.

Clause 50: Section 37 amended —

Hon DONNA FARAGHER: My question relates to clause 50(1)(o)(i), regarding the granting of —

> … a lease, licence or other rights over common property for the purpose of utility infrastructure or sustainability infrastructure; …

Would this relate to when there has been a request to grant a lease, or whatever it may be, for the installation of solar panels? Would that be the main reason?

Hon STEPHEN DAWSON: Member, I am advised that that is not the case. This arose out of stakeholder consultation; in fact, it has been raised over the years by a number of stakeholders. I will read the whole of the information on proposed amended section 37 to put it into context. The clause amends section 37 of the current act to provide greater clarity and confirm that a strata company has the powers to grant a lease, licence or other rights over common property for the purpose of utility infrastructure or sustainability infrastructure, but also for the purpose of performing any of its functions, develop and turn to account any technology, software or intellectual property that relates to the function. For that purpose it can apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights. Notwithstanding what I have just told the member, I have now been advised further that, yes, the member is correct—paragraph (o) is in relation to solar panels.

Hon DONNA FARAGHER: I thank the minister for that. So solar panels and sustainability infrastructure; are there any other examples of what that could be, or is this essentially dealing with just solar panels? What other infrastructure would fall within this remit?

Hon STEPHEN DAWSON: I am advised that it could also include, say, a power generator in a remote location if someone needed to access a power generator periodically. That would be captured by this clause as well.

Hon DONNA FARAGHER: As the minister was so eloquently dealing with matters surrounding software and intellectual property, I think he might have been referring to paragraph (j)—I think I might be right there. I would like a little more detail about what this actually relates to. I would just like some clarity.

Hon STEPHEN DAWSON: If a strata company sets up a website or other processes that create intellectual property, that can done and revenue can be raised and distributed as a result. During the debate in the other place the minister is on the record as having said it will enable owners to install software. If it was software around the management of strata developments, they could onsell that intellectual property and that money would then come into the strata company. If that is to be redistributed or used for management of the company that owns the intellectual property, that would allow for that.

Clause put and passed.

Clauses 51 to 78 put and passed.

Clause 79: Section 130 amended —

Hon DONNA FARAGHER: I specifically refer to subclause (2)(f), which inserts paragraphs (g) and (h). It is on page 122, if that helps. It refers to —

> (g) the review by the Tribunal of a decision made under the regulations; and
>
> (h) additional requirements relating to the first annual general meeting of the strata company.

I am keen to understand why these parts cannot be dealt with in the primary act. I would have thought that the additional requirements relating to the first annual general meeting of a strata company would have been pretty standard—what we would expect to deal with at a first annual general meeting. I appreciate there is always good reason for putting some things in regulations, such as things that might change over time and all that sort of thing, but in relation to both of those why could these parts not be detailed in the primary legislation?

Hon STEPHEN DAWSON: As my advisers get that information for me, I will place on the record what clause 79 does. Clause 79 amends section 130 of the current act for greater clarity; to provide that the regulations may require a review by the tribunal of a decision made under the regulations; to provide that the regulations may impose additional requirements relating to the first annual general meeting of the strata company; to provide that the fees fixed by the regulations for an application lodged with the Registrar of Titles may include a separate fee for lodgement of a scheme document or an amendment to the scheme document, and that the separate fee is payable when the document or amendment of the document is lodged, including in anticipation of the application; and to increase the maximum penalty for contravention of the regulations from $400 to $3 000 for consistency with equivalent provisions in other legislation. I made that point earlier on; I gave the example of the Associations Incorporation Act 2015, whereby that penalty of $2 750 is imposed. In fact, other Australian land registries set a maximum penalty for breach of the regulations as follows: the Northern Territory has a penalty of $3 080 and

Queensland has a penalty of $2 523. Another reason for the amendment is to provide that the regulations address transitional matters that may arise after changes have been made to the current act by the amending bill.

I have been told that over time new requirements may arise from general meetings. If general meeting requirements are locked into the act, we may have to wait another 20 years to change the requirements. For that reason we are looking to the future and, hopefully, this bill will stand the test of time.

Hon DONNA FARAGHER: This is where it gets tricky. Maybe to assist, clause 83 contains a series of proposed sections that take up about 200 pages of the bill. Maybe we can get to clause 83 and then work out how best to work through each clause.

Clause put and passed.

Clauses 80 to 82 put and passed.

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

The DEPUTY CHAIR (Hon Matthew Swinbourn): We are now dealing with clause 83, but, noting the time, I will report progress.

Progress reported and leave granted to sit again, pursuant to standing orders.