



26 September 2018

Hon Dr Sally Talbot MLC
Chair
Standing Committee on Legislation
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Dr Talbot

Inquiry into Strata Titles Amendment Bill 2018 – Termination of Strata Titles Schemes

We are enclosing our submission to your Committee on Part 12 of the Strata Titles Amendment Bill 2018.

As the owners and occupiers of a strata title residence we have taken a close interest in Part 12. With no doubt many other owners of strata titles we are deeply concerned by some of the provisions of Part 12 as set out in the attached submission.

While superficially the 50 pages to be added to the Strata Titles Act appear to have some benefits to some of the owners there are major concerns for owners particularly those who own and reside in strata titles as their principal and intended long term residence.

We are available to appear before the Committee to discuss our submission if it assists the Committee.

Yours sincerely

Kevin Edwards and Elizabeth Edwards

The *Strata Titles Amendment Bill 2018 (WA)* (the Bill)

1. The proposal in the Bill is that the existing three pages in the *Strata Titles Act 1985* relating to the termination of a strata title scheme are to be replaced by a new Part 12 of the Act relating to termination of strata titles schemes, being Part 12 of the Bill. I will refer to the proposed new Part 12 as the '*Termination Provisions*'.
2. The Termination Provisions have been referred to a Parliamentary Committee for further consideration.
3. Amongst a number of other matters requiring further consideration, the Termination Provisions contain an extraordinary reversal of the basic universal concept that only governments can compulsorily resume land from a private owner and in democratic societies only for stated public purpose with provisions for fair compensation.
4. The Termination Provisions provide for a process whereby a private entity (whether an existing owner of a strata title or not) wishing to terminate an existing strata title scheme for the purpose of buying, selling or re-developing the land the subject of the strata title scheme can:
 - (a) put a preliminary proposal for the sale, acquisition or development of the property to the Body Corporate for the strata title scheme which the body corporate must circulate to all title owners and call a meeting to consider the proposal;
 - (b) if the proposal is supported by a vote of 50% of the owners voting on the basis of one vote for each strata title irrespective of unit entitlement, then the proposed developer is entitled to submit a full proposal to the Body Corporate which the Body Corporate is then obliged to put to a meeting of strata title owners;
 - (c) if 80% of the owners on the basis of a vote of one vote for each title irrespective of unit entitlement vote in favour then the proposed developer is entitled to proceed to have the existing strata scheme terminated and the new scheme put forward by the proposed developer implemented; and

- (d) the developer's proposal can comprise any of the following:
 - (i) the acquisition of the land;
 - (ii) the subdivision and sale of the land; and
 - (iii) the re-development of the land.
- 5. The developer has power to acquire the interests of any strata title owner who has voted against the termination *at the developer's option* by:
 - (a) paying the owner the full market value of his or her existing title plus an amount of not more than 10%; OR
 - (b) offering the existing owner a substituted property on another site on a '*like for like*' basis.
- 6. Quite apart from the undesirable compulsory acquisition aspect, there are obvious significant difficulties with both paragraph 5(a) and 5(b).
- 7. Determination of the fair market value of the unit being resumed in these circumstances can be particularly difficult and potentially very unfair to the owner of the unit who could well be facing the prospect of receiving an insufficient amount to acquire anything like the property being resumed in location, nature of the building and numerous other factors.
- 8. Another factor likely to create an depressed market value is the potential for public knowledge of the proposed new scheme to depress the market value.
- 9. An unscrupulous developer with a long-term plan could adversely affect the market value by actions such as creating concern amongst the residents, gradually acquiring units and letting them to tenants unwelcome in the property and thereby lowering the standard of day-to-day life in the property and creating an adverse public perception of the property. This can cause existing owners to leave at reduced prices enabling the developer to increase the number of votes held by the developer, as well as lowering the market value of the property.

10. This process can be exacerbated by the prevalence of short-term letting, particularly with the use of *Airbnb* which has become a curse for long-term residents of apartment buildings. This process led to the introduction into the English language of the term '*rachmanisation*' as a result of the notorious activities of Peter Rachman in London in the 1960's and 1970's when he obtained vacant possession of rent preserved flats after World War II and acquisition of titles at diminished value. This, in my view, is a very real risk with this proposal.
11. The concept of giving a person whose property has been resumed another property on a '*like for like*' basis creates enormous difficulties in achieving an equitable result and in resolving disputes.
12. Even Solomon, let alone the State Administrative Tribunal (**SAT**), would be able to satisfactorily resolve the wide ranging issues that could arise. Some of these are as follows:
 - (a) the location of the substitute property;
 - (b) the value of the existing property and the substitute property, particularly in view of the potential for values being affected by potential uses of the kind referred to above;
 - (c) the view, light and direction of sunlight;
 - (d) the type and standard of building;
 - (e) the floor of the building the substitute property is on;
 - (f) the lift services;
 - (g) whether there is a resident manager or concierge;
 - (h) general upkeep standards and costs;
 - (i) strata title outgoings;
 - (j) the type of residents in the property in which the substitute is situated;
 - (k) proximity to equivalent shopping and other facilities;
 - (l) proximity to family and friends;

- (m) proximity to public transport;
- (n) traffic issues;
- (o) foreseeable significant contributions for upkeep and repairs;
- (p) rates and taxes;
- (q) management of the strata company and
- (r) noise

13. The suggested remedy in the Bill of taking the matter to the SAT and possibly the Supreme Court is, in itself, a considerable concern, quite apart from the potential substantial cost involved. This would generally be an inappropriate remedy for a person facing resumption of his or her property facing inadequate compensation to replace their existing property in the same location. The variation of factors would be enormous.
14. My comments above are of a general nature only and confined to the Termination Provisions which, in my view, in their current form, lead to worrying and unfair treatment of existing unit owners, particularly elderly people and people who are not accustomed to business transactions.



Kevin Edwards

25 September 2018