



Minister for Transport; Planning; Lands

Our ref: 72-14590

Hon Dr Sally Talbot MLC
Chair
Standing Committee on Legislation
Legislative Council Committee Office
18-32 Parliament Place
WEST PERTH WA 6005

Dear Dr Talbot,

RE: Inquiry into the Strata Titles Amendment Bill 2018

Strata Title Reform has been considered and progressed by successive state governments for a number of years, in recognition of the need for a modern legislative framework which provides for the effective management, operation and development of strata title property in Western Australia.

Following investigation of potential reforms by various committees, and the release of consultation papers on early reform proposals, work began on the drafting of legislative reforms in early 2016.

Acknowledging the work progressed under former Minister's for Lands and in recognition of the importance placed on these reforms by both the community and industry, I sought to prioritise the progress of the reform Bills after taking office.

In review of the work undertaken, careful consideration was given to the Termination provisions, and it was decided that on balance that the termination of schemes was an important element of the Bills, delivering a net benefit to the community.

In seeking to ensure the benefits of these provisions were able to be realised, while protecting strata owners, a number of additional safeguards were introduced to the Bills, many of which relate specifically to terminations.

It was a key priority, that the terminations process was sufficiently robust and rigorous, to ensure the best outcome for all.

While I acknowledge terminations has created some concern, I believe the termination provisions as put forward, protect and maintain the property rights of individual owners, while enabling the will of the majority, and the best interests of the community to be realised.

Through Parliamentary debate we provided that only schemes with 5 or more lots are subject to the majority termination process. At least 80% of the lots in a scheme must

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vote in favour of a majority termination proposal before the proponent has to apply to the State Administrative Tribunal (SAT) for a fairness and procedure review. SAT cannot order a majority termination proceed unless SAT is satisfied of three key things:

1. the termination process was properly followed and
2. every owner will receive fair market value for their lot and
3. the proposal to terminate is otherwise just and equitable.

Schemes with less than 5 lots are not subject to the majority termination process and can only terminate through unanimous resolution. This means that 82 percent of all strata and survey-strata schemes in WA will not be subject to majority termination.

Purpose of the reforms

The current Strata Titles legislation in Western Australia does not provide for majority terminations, requiring unanimous resolution of owners within a scheme before a termination can proceed.

The current Act also provides that a single owner or a single mortgagee can apply to the District Court to obtain an order to terminate a strata scheme.

In such circumstances, the current Act does not provide adequate safeguards for owners in relation to the termination of a scheme as:

- a. there is no requirement for a detailed termination proposal to be prepared or even given to other owners before launching the District Court action
- b. there is no requirement for a vote before applying to the District Court
- c. there is no additional assistance and no safeguards for vulnerable owners to help them in responding to the District Court action and
- d. the Act provides no guidance to the District Court on whether it should terminate a scheme.

The proposed amendments of the Bill provide greater balance, removing the ability for single owner terminations and providing a clear, transparent and reasonable process for the termination of schemes where a unanimous decision is unable to be reached among members of the strata company.

Without the ability for the majority of owners to seek a termination, schemes may be left to fall into disrepair, adversely impacting both the owners within the scheme, and the broader community.

The first strata schemes in Western Australia were constructed over 50 years ago, with many scheme buildings ageing and many are costing owners large amounts in maintenance.

Owners are now getting to the point in some schemes where they cannot afford to maintain these old buildings. The majority termination process will enable owners in such a situation to terminate the scheme and receive fair market value for their lot before the building falls into further disrepair and potentially becomes unsafe.

While a more streamlined process for termination will be maintained in instances where a resolution is unanimous, a secondary process providing for majority terminations will

remove the ability for a single owner to ‘hold-out’, using their interest in the property to block the will of the majority for that hold-out’s own personal gain. Anecdotally, such instances have been heard to exist where an owner has purchased a strata property with the sole intent of stopping any future redevelopment which may impact views from a neighbouring property.

Similarly, under the current Act a single owner may block termination proposals with the intent of maximising their own profit through unreasonable demands; or allowing the other lots in a scheme to diminish in value, enabling them to purchase these properties at a discounted price where other owners may be under significant financial stress, due to the cost of upkeep.

Majority termination also supports the redevelopment of ageing areas, activating local communities and helping support urban infill.

Protecting strata owners

To protect the assets held by all strata owners, safeguards for the termination of a strata scheme will be introduced.

The Bill provides safeguards for the termination of schemes, including a transparent process, safeguards for owners and a full procedural and fairness review by the State Administrative Tribunal (SAT).

The majority termination process is more than just a vote; a comprehensive, transparent process must be followed. If the vote produces the required majority but is not unanimous, the termination proposal must undergo a fairness and procedure review by the SAT.

A majority termination proposal cannot proceed without an order from the SAT. The SAT can order a scheme terminate under a majority vote only if it is satisfied that the termination process has been properly followed, that every owner who objects to the termination will receive fair market value for their lot and the proposal to terminate is just and equitable.

Vulnerable owners will be further protected and will have access to funds which must be paid by the proponent, assisting them to navigate the termination proposal and associated process.

Additional safeguards introduced under the current government

This Government took the strata reforms that the previous government began working on and completed those reforms whilst adding additional protections for owners.

These protections were developed in response to feedback from a broad base of stakeholders, including the public and community groups.

Since coming to office, this Government has added even more safeguards to the termination of schemes.

Firstly, when determining that an objecting owner will receive fair market value, we specified that no objecting strata owner was to be worse off financially in the event their

scheme is terminated. SAT will not allow a termination to proceed, unless this condition is satisfied.

A further set of protections around how SAT determines fair market value for an objecting owner were also added. The Bill makes it clear that in calculating fair market value:

- a. SAT has the power to modify the proposal to ensure the objecting owner receives fair market value: section 183(13)
- b. SAT can also order that the objecting owner should receive additional compensation (10% or more) above the market value to compensate that owner for the fact that they are not agreeing to the sale their lot: section 183(10)(b)(iii)
- c. SAT has the power to order the objecting owner be compensated by the proponent for:
 - I. The costs of moving from one apartment to another
 - II. The costs of business disruption and relocation if the lot is used to run a business
 - III. The capital gains tax the objecting owner may have to pay for selling the lot, the GST on the purchase of a replacement lot, the stamp duty the objecting owner has to pay for the purchase of a replacement lot and any other taxes and duties that the objecting owner has to pay when they relocate if the termination were to go ahead
 - IV. The conveyancing and legal costs and other costs associated with the creation or discharge of mortgages for the old and replacement lot and such costs associated with buying a replacement lot.

Protections regarding the determination of 'fair market value' recognise the need to ensure owners are fairly compensated and not taken advantage of while ensuring equity exists between owners within the scheme and that other owners aren't unnecessarily disadvantaged where an owner seeks to 'hold out' in an attempt to receive an exorbitant windfall gain through the process.

SAT cannot order the termination proceed if an objecting owner will be worse off as a result of a termination. For instance, If the proponent has not offered to pay all of the costs of moving to a replacement lot (including taxes and duties), the termination will not go ahead. SAT can order the proponent pay all of those costs.

Additionally, the ability for an owner to request a 'like-for-like' replacement lot was included. If an objecting owner is being offered a like-for-like replacement lot, SAT must consider:

- a) whether its value is equivalent to the fair market value of the current lot; and
- b) how its location, facilities and amenity compares with the current lot.

Like-for-like means owners can still remain in the same area and the same suburb – they won't be losing the roof over their head – they might just be moving down the street (with all costs covered by the developer).

Another additional protection is that the SAT fairness and procedure review of a termination proposal may only be conducted by a judicial member.

We also provided that strata companies can actually prevent developers from serving proposals on the strata company.

A termination proposal cannot be submitted to a strata company during a period where the:

- a) strata company has passed an ordinary resolution in favour of an outline proposal and that proposal has not come to an end;
- b) where strata company has, by ordinary resolution, prohibited termination proposals from being submitted; or
- c) The SAT has (on the application of the strata company) ordered that proposals are not to be submitted to the strata company.

This Government has also introduced a requirement for a termination proponent to get approval from the strata company before they can prepare a full proposal. This means strata companies can pick and choose which developer they want to work up a more detailed proposal.

We have also introduced a requirement that the termination proponent needs to get subdivision approval from the WA Planning Commission (WAPC) before they can prepare a full termination proposal and serve that proposal on the strata company.

In addition, we specified that the proponent / developer has to pay the strata company's costs arising from dealing with the termination proposal.

A rigorous process for terminations

The process for termination is far more than just a vote. It is a rigorous process which includes a full procedural and fairness review by the SAT.

A summary of the steps involved in the termination process is as follows.

1. An outline termination proposal must be prepared by the proponent.
2. The proponent must give the outline proposal to the strata company.
3. The strata company votes by ordinary resolution on whether the proposal should go any further.
4. The proponent then needs to obtain subdivision approval from the Western Australian Planning Commission (WAPC).
5. The proponent then needs to prepare a detailed termination proposal called a full proposal.
6. The proponent gives the strata company the full proposal and the strata company then serves the full proposal on all owners, registered mortgagees, people with an interest in the lots and occupiers of those lots and the common property.
7. All owners must be given 2 months before voting (which must be by secret ballot conducted by an independent person). 3 votes can be held. If the full proposal is ratified by the required vote, the proponent can apply to SAT for a procedure and fairness review.
8. If SAT finds that the process to terminate has been properly followed, that each objecting owner will receive fair market value and will be no worse off financially if the termination proceeds and that the proposal is just and equitable, SAT can order that the proposal may proceed.

9. The proponent then needs to obtain subdivision endorsement from the Planning Commission.
10. The proponent can then apply to the Registrar of Titles to register the termination.

Summary – Balancing these considerations

Engagement with the public, government, community and industry sectors throughout the reform journey has been extensive.

Based on consultation and engagement, as well expert advice and analysis of the termination provisions in other jurisdictions, the proposed approach to terminations of the *Strata Titles Amendment Bill 2018*, is considered to effectively balance the challenges and considerations of termination, with the many benefits of providing for the development of ageing strata schemes in WA.

Since 2013, Landgate has conducted briefings and meetings with government, industry and community group stakeholders to obtain their feedback as well as releasing various discussion papers and draft extracts of the Bills for both public and more targeted consultation.

Since January 2016, position papers have been available publicly on Landgate's website, with the public invited to provide comments and feedback on an ongoing basis.

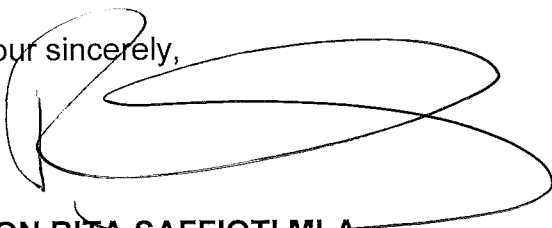
Improvements were made to the termination provisions of the Bill based on consideration of that feedback from stakeholders (to the Consultation draft of the Bill) and feedback from the public on the Termination of Schemes Position paper.

Landgate investigated how majority terminations were operating in other jurisdictions, most notably, Northern Territory, NSW and Singapore.

Landgate sought advice from experts in majority terminations in other jurisdictions.

Based on the extensive consultation, engagement, research and analysis conducted in review of the laws relating to the termination of schemes, I am confident the current terminations proposals contain the necessary degree of protection and rigor, to deliver intended benefits for our State.

Your sincerely,



**HON RITA SAFFIOTI MLA
MINISTER FOR LANDS**

25 SEP 2018