

Hon. Dr Sally Elizabeth Talbot MLC  
Chairperson  
Standing Committee on Legislation  
Parliament House, 4 Harvest Terrace  
WEST PERTH WA 6005

19 September 2018

Dear Dr Talbot

## **Strata Titles Amendment Bill 2018: Termination of Strata Title Schemes**

REIWA welcomes the opportunity to provide the real estate industry's perspective on Section 12 (Termination of Scheme) of the *Strata Titles Amendment Bill 2018*.

REIWA acknowledges that buildings do not last forever and that there are strata schemes where the buildings are ageing and many are probably costing owners large amounts in maintenance. It is important that the legislation provides a fair procedure as to how these buildings can be replaced and prevent unwanted proposals especially where the buildings are in a good state of repair.

REIWA's view is that this legislation is effective to ensure that development is not stifled, while also protecting the rights of owners and residents.

While REIWA understands that terminations of strata schemes can be a contentious issue, REIWA firmly believes that the extensive consultation undertaken by Landgate has resulted in fair legislation that industry and the community will support.

### **Approval thresholds**

REIWA was supportive of the original thresholds outlined in section 70 J (a-d). REIWA did raise concerns that as the majority of strata schemes consist of two and three lots, the original thresholds (one in two, for two lots, and two in three, for three lots and so on) may deter people from buying into these strata schemes due to concerns that these small schemes could be terminated.

REIWA supports the proposed termination thresholds of 80 per cent for five or more strata lots, with less than five lots in a scheme, requiring a unanimous vote.

It is our belief that the State Administrative Tribunal (SAT) process is the best way to ensure the property rights of all parties are respected and taken into account during the decision making process. Just as we do not want to see owners unnecessarily forced to sell, we also acknowledge that a minority of owners currently have the power to block termination, affecting the property rights of those owners who want to terminate the scheme for legitimate reasons.

Therefore the SAT process is the suitable mechanism to provide a fair and unbiased outcome for all parties where the parties who oppose the termination have an opportunity to relay their concerns to an independent tribunal.

### **Grace periods**

During REIWA's engagement with its members, there was a concern by strata managers that properties in prime locations could be inundated with termination proposals from third parties who are not owners of strata lots within the strata scheme. REIWA is of the view that the proposed s174(2)(b) grace period of six months, following an unsuccessful proposal is reasonable and will safeguard strata companies from being inundated with unwanted proposals.

However, REIWA members would like to see the ability for a strata company to increase that grace period by an ordinary resolution vote.

REIWA is of the view that during the termination process, the strata lots within the scheme are likely to be unlettable and unsellable due to the uncertainty over the future of the scheme.

In the interest of ensuring competition is maintained, some strata companies may wish to consider more than one application at a time, the current Bill remains silent on this but an inclusion to state that multiple proposals can be considered simultaneously would be preferable.

Also, the strata company should have the ability to waive or terminate the six-month grace period should the owners vote to say they still wish to receive proposals.

### **Role of the SAT**

REIWA supports that a majority termination is not possible without an order from the SAT. REIWA members agree that the SAT is the preferred mechanism for majority termination approvals.

REIWA supports the inclusion that the SAT is able to confirm a proposal subject to modifications. This will streamline the process, instead of rejecting the proposal and beginning the process again following the proposal being modified.

It is also pleasing that termination proposals will be dealt with under the general SAT guidelines, meaning owners will have an opportunity for legal representation, adequate consultation and disclosure to all parties and provisions for non-English speakers etc.

### **Residential Tenancies Act 1987**

REIWA supports that the draft Bill does not override the *Residential Tenancies Act 1987*. A termination proposal underway could have a significant negative effect on an owner's ability to secure tenants.

It is therefore reassuring that, if there is a termination, those that have already signed leases, will be able to remain for the tenure of the lease. This is particularly critical for commercial tenants and owners who would have made significant long-term financial commitments.

REIWA does recognise that these existing leases could act as a handbrake to development and it is imperative that measures are in place to ensure dummy tenancies are not used as a ploy to override the application process. The SAT would have to determine the legitimacy of existing leases during the decision-making process.



### **Management of Schemes during Termination Period**

REIWA is concerned that the handling of the termination process falls outside what would have been stipulated in existing management contracts.

REIWA would suggest the inclusion of additional costs to be incurred by the proponent for both additional actions required by the property manager as well as a fee for the additional responsibilities imposed on the property manager, outside of the management contract.

### **Fair Value and Like-for-Like**

REIWA supports the method of calculation of land values to be based on the values that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for the acquisition of each lot.

It is also pleasing to see the draft Bill accounts for additional costs including property taxes, moving costs and expenses incurred by the owner due to the termination process.

It is essential, however, that the legislation does not inhibit negotiations between parties to ensure the owners can get the best value for their properties, whether that be monetary or an exchange.

Like-for-like clauses are also supported by REIWA. This protection will ensure owners who object to termination are given a minimum of like-for-like, if opting for a trade.

### **Requirements of the Full Proposal (Section 178)**

REIWA members have concerns over sections 178 and 179, in terms of who is responsible for determining if the full proposal meets the requirements outlined in the Bill.

Should a full proposal be unanimously voted in favour for, then it would come down to the strata company and owners to determine if the full proposal meets the criteria, something neither party would be qualified to do.

Should a proposal pass by a majority, then the SAT would be responsible for determining if the proponent has met all criteria.

### **Tenants**

REIWA supports that the rights of tenants have been protected in that no termination of a scheme can be take effect during a lease period.

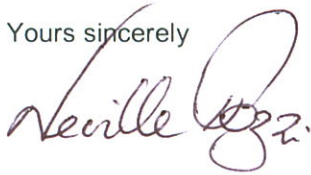
However, there are concerns that the stipulation for tenants to be notified when the full proposal is delivered to the strata company is too early and will unnecessarily spook tenants. This could lead to tenants deciding not to renew leases, causing financial harm to owners.

It is therefore recommended that tenants be notified once approval has either been granted by a unanimous vote of owners or determined by the SAT. This would, of course, have to take into account standard notice periods currently outlined in the *Residential Tenancies Act 1987*, and dealt with in the same manner as an owner selling the property.

REIWA does support the disclosure of the ongoing termination proposal process to prospective tenants once the full proposal has been lodged onto the property's Landgate registration.

REIWA would like to thank you for the opportunity to provide feedback on the Draft Bill for the Termination of Strata Schemes. Should you wish to meet to discuss any of the ideas aforementioned please do not hesitate to contact REIWA Advocacy and Policy Manager Sadie Davidson on 08 9380 8241 or [sadie.davidson@reiwa.com.au](mailto:sadie.davidson@reiwa.com.au).

Yours sincerely



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