STRATA TITLES AMENDMENT BILL 2018

Committee

Resumed from 10 October. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

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

Proposed section 23: Requirement for local government approval —

Progress was reported after the proposed section had been partly considered.

Hon STEPHEN DAWSON: I seek your indulgence for a moment, Mr Deputy Chair. In the debate yesterday, Hon Donna Faragher and Hon Robin Chapple asked questions on earlier clauses. We agreed to move on, but I agreed to give them the answers to their questions today, so I will begin by doing that, if I can. The question asked by Hon Donna Faragher was: what does section 136 of the Planning and Development Act 2005 provide for?

Hon Donna Faragher: Is this the one that is being removed?

Hon STEPHEN DAWSON: Yes. The purpose of section 136 of the Planning and Development Act 2005 is to deal with the potential de facto subdivision of land. For example, a landowner who provides a 99-year lease over half their land is in effect dividing the land in two, even though technically one lot is still recorded on one certificate of title. To allow this to occur would subvert the very purpose of the subdivision process and, importantly, the role of the Western Australian Planning Commission to ensure that the subdivision of land accords with planning principles that protect the amenity of neighbours and the surrounding locality.

Section 136 of the Planning and Development Act requires WAPC approval when someone is seeking to undertake such a de facto subdivision. Section 25 of the Strata Titles Act 1985, which relates to the subdivision approval by the WAPC for strata schemes, provides that section 136 of the Planning and Development Act 2005 does not apply to subdivision of a strata scheme. Proposed section 16, which is in clause 83 of the bill, does not exclude the operation of section 136 of the Planning and Development Act 2005, because a consequential amendment to section 136 of the Planning and Development Act 2005 will be made in clause 162 of the bill to clarify how section 136 of the Planning and Development Act relates to strata title schemes.

Clause 162 deals with the application of section 136(1) of the Planning and Development Act 2005 to strata title schemes under the Strata Titles Act and provides that section 136 applies to common property or a lot in a strata title scheme. A reference to a lot in that section incudes reference to a lot in a strata title scheme, and section 136 does not apply to the sale of, agreement to sell or grant of an option of purchase of, common property or part of a lot, if the transaction is associated with a subdivision by registration of an amendment to a strata title scheme.

I am happy to provide a copy of this answer to the member, if that would help.

Hon DONNA FARAGHER: If I could get a copy of that, and if the minister is happy to table it and provide it to me, that would be great. Not having had the benefit of reading all of that, I am presuming that the Department of Planning, Lands and Heritage, and the Western Australia Planning Commission are happy with the approach that is being taken in dealing with this matter.

Hon STEPHEN DAWSON: Yes, they are. I will table this document, but I will ask the staff to provide a copy to me and to Hon Donna Faragher, and possibly Hon Rick Mazza as well.

[See paper 2043.]

Hon STEPHEN DAWSON: I take the opportunity to provide an answer to the question that Hon Robin Chapple raised last evening. He asked about joint development assessment panels in relation to proposed section 23 in clause 83. He asked what role a JDAP may have in a local government decision on matters provided for in proposed section 23—namely, what role a JDAP has when local government subdivision approval is sought for two or more lots in a strata title scheme to be consolidated, one or more lots in a strata title scheme to be converted into common property, or the removal of common property land from the parcel. I am advised that a JDAP deals only with development applications and would not be involved in local government decisions to approve this form of subdivision. Hopefully, that answers the question of Hon Robin Chapple.

Hon DONNA FARAGHER: Have we already confirmed that the requirement for local government approval is the current practice that already occurs? Are we reinserting it with perhaps some variation or anything like that? Can I just get some clarification?

Hon STEPHEN DAWSON: Would the member mind asking that question again?

Hon DONNA FARAGHER: Sorry; I am also getting all my notes together, minister. Proposed section 23 relates to the requirement for local government approval. I am essentially seeing whether what is outlined within this proposed section accords with current practice.

Hon STEPHEN DAWSON: Yes, this accords with current practice.

Proposed section put and passed.

Proposed section 25: Long term lease of temporary common property —

Hon DONNA FARAGHER: I would like an example of what might be deemed temporary common property.

Hon STEPHEN DAWSON: I am told that an example is if a strata wants to take a lease on land, say, across the road for car parking, that is then treated as a temporary lease.

Proposed section put and passed.

Proposed section 26: Long term lease or licence over common property —

Hon DONNA FARAGHER: I suppose this is in the context of the answer that the minister has just given about temporary common property. This section refers to common property. Can the minister give me an example for this part?

Hon STEPHEN DAWSON: An example is when a strata scheme has a common property lobby and it decides to lease part of that property out; for example, a cafe could be put there.

Hon RICK MAZZA: The proposed section provides that the term be for no longer than the period specified in the regulations. What time is anticipated to be regulated for the licence or lease over that common property?

Hon STEPHEN DAWSON: The intention is that we will consult on this matter after the passage of the bill, but the suggestion is that it be 20 years.

Hon DONNA FARAGHER: With whom would the minister be consulting on this matter?

Hon STEPHEN DAWSON: We will consult with the sector, essentially. Those people who have been involved in the consultations to date have been wide and varied. We anticipate that there will be further consultation on the regulations and this will be one of those things that will be consulted on.

Hon DONNA FARAGHER: Is this a new concept that will be included in the act?

Hon STEPHEN DAWSON: Let me read out the clause note for the member. This clause clarifies the requirement for local government approval to the grant of a long-term lease or licence over common property, which is a requirement of section 19 of the current act.

Proposed section put and passed.

Proposed section 27: Review of Planning Commission decision —

Hon ROBIN CHAPPLE: Proposed section 27(1) states —

> The Planning Commission must give written notice of its decision on an application made to it under this Part to the applicant.

Is that decision made available to any other party or is it in the public domain?

Hon STEPHEN DAWSON: We do not have that information available, so I will be happy to get an answer for the honourable member and provide it later in the day.

Hon ROBIN CHAPPLE: Quite a lot is associated with that information, so it will affect many parts of proposed section 27. I hope that we have a fulsome explanation.

Hon STEPHEN DAWSON: This clause replaces section 27 of the current act for clarity. There is very little difference to the current act as it stands. Literally, it is to clarify. Notwithstanding that, I am happy, as I said earlier, to see whether we can get an answer to that question. However, essentially, this does not propose a wholesale change; this is what exists.

Proposed section put and passed.

Proposed section 29 put and passed.

Proposed section 30: Scheme name and address for service of strata company —

Hon DONNA FARAGHER: Proposed subsection (1) states —

> A scheme notice, or an amendment of a scheme notice to alter the name of the scheme, must not be registered if the Registrar of Titles is satisfied that the name of the scheme is undesirable.

What would be an undesirable name? We are in the chamber, of course.

Hon STEPHEN DAWSON: If we think about where we are at the moment and the words that would offend us in this place, I suggest that it is probably something similar—for example, swearwords. If for some reason someone sought to register the name of a scheme that included a swearword, the registrar would not register it.

Hon DONNA FARAGHER: I am not trying to be cute here. I am trying to get an understanding, because I do not have a lot of knowledge about this. What would normally be the name of a scheme? I would have thought it would refer to lots or whatever. I suppose that is why I am asking the question; I am interested in how a swearword or something else might potentially fall within the name of a scheme. I thought it would have been a general sort of term that was used to reflect lots. Is that right?

Hon STEPHEN DAWSON: I am advised that the scheme name includes the number of the scheme, but it can include the name of something as well.

Hon DONNA FARAGHER: Thank you. That was just a point of clarification. I presumed it related to a number, hence the question. I was not trying to be cute; it just seemed a little odd. The minister answered the question very well, and I am happy with that.

The DEPUTY CHAIR: It might include biodiversity, conservation and attractions!

Hon Stephen Dawson: Those are not a swearwords!

The DEPUTY CHAIR: I might put that to a division!

Proposed section put and passed.

Proposed section 31 put and passed.

Proposed section 32: Scheme plan —

Hon DONNA FARAGHER: This proposed section sets out what the scheme plan for a strata title scheme must specify. My interest is in a paragraph at page 146 under proposed subsection (2). It states —

> A scheme plan, or an amendment of a scheme plan, for a strata titles scheme may also —
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> (a) restrict the purposes for which the whole or a part of the parcel may be used (a ***restricted use condition***); …

I am interested in understanding the term "restricted use condition". Does that relate to, say, a retirement village or something like that? What is a restricted use condition in this context?

Hon STEPHEN DAWSON: I am advised that a restricted use condition is currently provided for under section 6 of the act, and it can relate to aged accommodation. The member used the words "retirement village", so it can relate to that.

Proposed section put and passed.

Proposed section 33: Short form easements or restrictive covenants —

Hon DONNA FARAGHER: I have an understanding of what restrictive covenants are, but perhaps the minister could explain what a short form easement is?

Hon STEPHEN DAWSON: This proposed section retains the concept of creating specific easements on the scheme plan as provided in sections 5D to 5H of the current act, with the addition of the following: short form restrictive covenants, the ability to create short form easements, and restrictive covenants on a plan of amendment of a strata title scheme. Short form easements are easements shown on the survey-strata plan that provide for vehicle access, party wall easements, intrusion easements and so on.

Hon ROBIN CHAPPLE: Further on that point, what is the anticipated time frame for a short-term easement? Does it have a time limitation, or is it expected to be just a very temporary issue?

Hon STEPHEN DAWSON: It is actually nothing to do with term—it is a short form easement.

Hon ROBIN CHAPPLE: Yes, a short form. But, again, I am looking at the term; sorry. I am looking at how long that short form would be available. Does it stay for forever and a day, or is it just for access purposes?

Hon STEPHEN DAWSON: I am advised that it would be there for the duration of the scheme, unless it is amended in the future.

Proposed section put and passed.

Proposed section 34: Requirements for registration of scheme plan —

Hon DONNA FARAGHER: Proposed section 34 relates to the requirements for registration of a scheme plan. Does this reflect current procedure?

Hon STEPHEN DAWSON: This proposed section sets out the requirements for registration of a scheme plan, including that the scheme plan is approved by the Western Australian Planning Commission, and for a strata scheme, that the scheme plan is accompanied by an occupancy permit or building approval certificate under the Building Act 2011. The proposed section further provides for the consents required from the owner and designated interest holders over the whole or part of the parcel of land to be subdivided. I am further advised that it is not current procedure.

Hon DONNA FARAGHER: I presume that if it is not current procedure, it has been identified as a deficiency in the current legislation?

Hon STEPHEN DAWSON: Yes, it has.

Proposed section put and passed.

Proposed section 35: Requirements for registration of amendment of scheme plan —

Hon DONNA FARAGHER: The minister is enjoying these questions, I can see!

Hon Stephen Dawson: They are very good questions, member.

Hon DONNA FARAGHER: They are, are they not?

Hon Stephen Dawson: Of course!

Hon DONNA FARAGHER: The minister can see I have read the Strata Titles Amendment Bill 2018. I have had a quick read through the requirements for registration of amendment of a scheme plan. I just want confirmation that this is substantially consistent with current procedure. I have noticed a couple of new additions relating to the 60-day rule, which we have previously talked about, and the use of the tribunal. It also incorporates the new concept of leasehold schemes. Are there any other changes?

Hon STEPHEN DAWSON: This proposed section clarifies the existing requirements that must be met before a scheme plan can be amended, retaining the intent and scope of sections 6, 8A, B and C, 9, 10, 18 and 19 of the current act. In addition, it sets requirements that for a leasehold scheme plan to be amended, the owner of the leasehold scheme must be either the applicant for registration or have given written consent to the amendment. This proposed section also modifies existing processes, so that certain types of subdivisions are easier to obtain. The new process establishes that under some circumstances, certain subdivisions can go ahead if the holder of a designated interest has not made a written objection within 60 days of being given notice. This replaces the old process, which required all designated interest holders to provide written consent. The new section will also empowers the tribunal to disregard an unreasonable objection by a person with a designated interest to an amendment of a scheme plan.

Proposed section put and passed.

Proposed sections 36 to 39 put and passed.

Proposed section 40: Leasehold by-laws —

Hon DONNA FARAGHER: I am specifically interested in proposed section 40(4), which I would say we in part addressed last night through questions from me and Hon Rick Mazza. It deals with the postponement of the expiry day, and the amount that may be paid for any postponement. I am happy with what was provided last night. I am interested in paragraph (b), which states —

> may provide for compensation to be payable to the owner of a lot on the expiry of the scheme for improvements to the lot effected by the owner or a former owner of the lot; and

I want some clarity. Is this is an instance when someone renovates the kitchen or bathroom or something like that, whereby they have made improvements? At what point would they be eligible for compensation?

Hon STEPHEN DAWSON: I am told that whoever the owner of the lot is at the expiry day of the scheme might be eligible for compensation.

Hon DONNA FARAGHER: Sorry; I do not quite follow the minister. We are getting close to lunchtime. If the minister could provide a hypothetical example of how the process would work if someone were to effect some improvements, and then at what point compensation would be payable and to whom, having regard to who made the improvements, that would be great.

The DEPUTY CHAIR: I am going to interrupt you there. Perhaps the minister can come back to that one after the lunchbreak.

Sitting suspended from 1.00 to 2.00 pm

Hon STEPHEN DAWSON: Before lunchtime, Hon Robin Chapple asked a question about the Western Australian Planning Commission and local government. The copy of the WAPC decision is also given to the local government and the referral agencies. This is done as a matter of practice and is not a legislated requirement.

Hon DONNA FARAGHER: Before we adjourned for lunch, I was asking questions about compensation to be payable to the owner of a lot on the expiry of a scheme for improvements to the lot effected by a former owner of the lot. I sought some advice from the minister on this notion of compensation. If I recall correctly, and the minister might remind me, the minister indicated that the compensation would be payable to the final owner of the lot. If I put it another way, it is the owner of the lot at the time of the expiry. Why would they be able to receive the compensation for making improvements to the lot when they may not have made the improvements in the first place?

Hon STEPHEN DAWSON: On the question of compensation for improvements made by the owner of a lot in a leasehold scheme, firstly, this is an option the owner of a leasehold scheme or lessor can use if they want. The details will be put into the leasehold by-laws so that all owners and all potential buyers can see the details. I will give an example of that: John, who is the owner of a lot, renovates his kitchen. Knowing that this provision is in the by-laws and that compensation will be paid on the expiry day of the scheme, if John sells the lot before the expiry day to Jenny, John can ask for a higher price for the lot on the basis that Jenny will be compensated for the improvements to the kitchen if she holds on to the lot until the expiry day. The compensation is payable at the expiry day. I am told that this is a useful way to encourage owners of lots to improve the lot and comply with the strata lease until the expiry day. As I said, it is only an option.

Hon DONNA FARAGHER: I appreciate the minister indicating that it is an option and I understand what he has put forward as the argument for this provision, but I find it a little bit odd to see a mechanism such as this. If someone owns a property that is not part of a leasehold scheme, makes improvements to it and sells it at a higher price, which, perhaps, reflects that they have made improvements to the kitchen or the laundry or whatever it might be, it is the decision of the person who purchases the lot to pay more for it in the first place. To be compensated for paying more is quite a new concept, I would have thought. I hear what the minister has said about keeping the lot in good condition and all those sorts of things, but the person who might not be the lot owner at the expiry day is the one who expended the money, not the final owner on the expiry day. It seems like a very interesting concept that is being put forward in this legislation.

Hon STEPHEN DAWSON: I agree! The member has made the point that it is an interesting concept, and it is. I am told that there are similar provisions in New South Wales, for example. Although they are not quite the same, the provisions are similar. It is an interesting concept that is included in this legislation. It is an option and not a requirement that this happen in every case. It is an option that could be brought to bear if it were included in the by-laws. I make the point that on expiry day the owner of the lot will receive nothing except this compensation.

Hon RICK MAZZA: I refer to proposed section 40(2), which states —

> If a leasehold scheme does not have leasehold by-laws, the expiry day for the scheme cannot be postponed.

Is that to say that if a leasehold scheme does not provide in the by-laws for a postponement and it gets to the expiry day, let us say 25 years hence, that the lessees and lessor could not agree to a postponement unless it were in the by-laws? Is there any mechanism for the parties to agree to postpone?

Hon STEPHEN DAWSON: No, it must be in the by-laws. We have spoken previously about how the by-laws could be changed, but it needs to be in the by-laws before the expiry for that postponement to be able to happen.

Hon RICK MAZZA: Is there a provision that prior to the expiry of the leasehold term the lessor or lessees could apply for by-laws to provide for a postponement to some later date?

Hon STEPHEN DAWSON: Yes, there is. With the consent of the owner of the leasehold scheme and the Western Australian Planning Commission, a strata company can also make a by-law that includes the option to postpone the expiry day. That is proposed sections 20 and 40(5).

Hon DONNA FARAGHER: I note that as I glanced across the chamber, I saw our former colleague Hon Liz Behjat in the President's galley. It is lovely to see you here today.

I want to raise one other point, albeit that I am still a bit perplexed by this issue. Will the quantum of compensation payable be determined through the regulations? Will there be some form of calculation? How will it be determined?'

Hon STEPHEN DAWSON: No. It will be set out in the by-law itself.

Hon DONNA FARAGHER: I am not trying to be difficult. We are talking about compensation for improvements to the lot. An improvement to a lot might be fairly minimal. It might be to the laundry. However, it might also be to the laundry, kitchen and bathroom. We would expect that a different level of compensation would be provided for the improvement of the lot, depending on the work that has been undertaken. How will the level of

compensation be determined? Something might be put into the by-laws. However, exactly what will be improved upon might not be known at the time the by-laws are made.

Hon STEPHEN DAWSON: The details would need to be set out in the by-law at the very beginning. It could be a formula, for example, or an independent market valuation. That process would be set out in the by-law at the very beginning.

Hon DONNA FARAGHER: I thank the minister for that. We need to be clear that the by-law will contain a mechanism to determine the level of compensation payable. It obviously will not be known what improvements will be made in the future, and there will obviously be variations. Therefore, so long as the by-law contains details with regard to valuations or whatever else might be relevant, we can proceed to the next proposed section.

Proposed section put and passed.

Proposed sections 41 and 42 put and passed.

Proposed section 43: Exclusive use by-laws —

Hon DONNA FARAGHER: I thank the minister for his response during the second reading debate. This is probably the best place in which to deal briefly with the concerns that have been raised by People with Disabilities Western Australia about disability access. I want to put on the record at the committee stage that from my understanding, this is one of the new options that would be available to a person who was seeking to obtain approval to install a lift, for example, on the common property for their exclusive use. I would like to have that clarified. I understand also that under proposed subsection (5), which I suppose is the caveat on the exclusive use by-law, the person would need to get agreement from every owner of the lot in order to utilise this proposed new section of the act.

Hon STEPHEN DAWSON: Exclusive use by-laws are part of the current act. A person can obtain an exclusive use by-law under proposed section 42(8). An exclusive use by-law gives 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 ramp. The by-law cannot be repealed without that owner's consent. To obtain such a by-law, firstly, the owner will require a resolution without dissent, meaning that no owners object to the resolution; and, secondly, the strata company must lodge the by-law with Landgate, essentially to register the by-law. Under the Strata Titles Amendment Bill before us, the multiple pathways by which to enable the installation of disability access on common property will still exist. The key improvements under the bill are as follows. If 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, which will enable installation without the need for a boundary change or subdivision approval. Under the amendment bill, the strata company will have imposed upon it an obligation to make decisions that are not unreasonable, oppressive or discriminatory. By-laws of a strata company are invalid if they are unfairly discriminatory against one or more owners. Further, the State Administrative Tribunal will have the power to make by-laws. This power can be used by SAT to make a by-law if 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, and owners and occupiers will be able to apply to SAT for such a review. Therefore, if an owner needs an exclusive use 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, the first owner can apply to SAT for an order making the exclusive use by-law. SAT will ask the question whether the strata company has acted consistently with the objectives of the strata company as set out in proposed section 119 of the bill. If SAT finds that the failure to make an exclusive use by-law is discriminatory against the first owner, it will give an order making the exclusive use by-law. Hopefully that answers the member's question.

I appreciate Hon Donna Faragher raising this issue. I have also had representations from Madam President in her capacity as a member for South Metropolitan Region, and I have had conversations with Hon Simon O'Brien on this issue. We have also had a number of conversations with Samantha Jenkinson from People with Disabilities Western Australia. I am pleased to say that people are supportive of this. It is certainly a positive change.

Hon DONNA FARAGHER: I thank the minister. I appreciate the minister running through that again. I do not want to speak on behalf of PWDWA, but certainly the advice that I was given via email was that after further discussions with Landgate, it is supportive of these amendments. However, it is important for us to have this on the record, not just for PWDWA but for anyone who —

Hon Stephen Dawson: People who are aged, for example.

Hon DONNA FARAGHER: Exactly right. It is important to ensure that people are aware of their access rights, particularly people with disability and the elderly, or whoever it might be. We need to make sure it is clear. I am

happy with the response that has been provided by the minister, and I think others who have an interest in this bill will be happy as well.

Hon Stephen Dawson: Thank you.

Hon RICK MAZZA: If a special lot is created through a by-law over the common property—not necessarily for disability purposes; it might be for a car park or some other use—will that affect the unit entitlements? Will that result in increased costs for that unit holder as far the unit entitlement is concerned?

Hon STEPHEN DAWSON: I am advised that the special lot is the lot that has access to the exclusive use entitlement. There is no requirement to change the unit entitlement. I move —

> Page 166, lines 13 and 14 — To delete "its function of managing and controlling" and substitute —
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> section 91(1)(c) in relation to

This amendment again relates to suggested amendment 3 in the letter tabled by Hon Donna Faragher from the Strata Community Association Western Australia dated 18 September 2018, and amends clause 83, proposed section 43(3), to clarify that the obligation on the strata company to repair, maintain, renew and replace the common property will rest on the owner of the lot if that lot has the benefit of an exclusive use by-law over that part of the common property. The current draft amendment in the bill refers to an obligation only to manage and control the common property.

The amendment to proposed section 43(3) contained in the supplementary notice paper clarifies that for those parts of the common property subject to an exclusive use by-law, the owner having the benefit of that by-law has the obligation, as provided in section 91(1)(c), to keep in good and serviceable repair, properly maintain and, if necessary, renew and replace the part of the common property that is subject to the exclusive use by-law. I note that this obligation on an owner is a default obligation and the obligation may be varied by the terms of the exclusive use by-law.

Hon DONNA FARAGHER: The opposition will support the amendment put by the minister.

Hon ROBIN CHAPPLE: The existing default obligation under section 42(11) on owners for the benefit of exclusive use by-laws, in summary, is to repair and maintain, and, when necessary, renew and replace, the exclusive use common property. That is a succinct and real world appropriate statement on the obligation that ought to lie on owners with the benefit of exclusive use by-laws.

The DEPUTY CHAIR (Hon Adele Farina): Excuse me; I apologise for interrupting, but we are having difficulty hearing you. Would you mind speaking up a little, please.

Hon ROBIN CHAPPLE: Sorry; I thought I was usually quite bombastic! I do apologise for that.

Obviously, we will be supporting this amendment. It is one of the many amendments put to us by industry and I thank the minister for including it.

Amendment put and passed.

Proposed section, as amended, put and passed.

Proposed sections 44 to 50 put and passed.

Proposed section 51: Limitations on powers of owner of leasehold scheme —

Hon DONNA FARAGHER: Proposed section 51 relates to the limitations on powers of the owner of a leasehold scheme. I am specifically interested in proposed subsection (3). It relates to proposed subsection (2), which states —

> Subject to subsection (3), the consent of the owner of the leasehold scheme is not required by the owner of a lot in the scheme to deal with or dispose of the strata title for the lot.

Proposed subsection (3) states —

> The regulations may specify circumstances in which the consent of the owner of the leasehold scheme may be required despite subsection (2).

I am keen to understand this particular proposed section. If I am correct, I presume that the owner of the leasehold scheme cannot stop the owner of the lot selling, or whatever it might be, but that proposed subsection 3 is there to ensure, for example, that if it is a lot that has been designated for affordable housing, the owner of the leasehold scheme may have this consenting power to ensure that it is onsold for the purposes of affordable housing. I hope that makes sense. That is what I understand this clause might relate to, but perhaps the minister can confirm that.

Hon STEPHEN DAWSON: Yes, the member is correct. The regulations may permit the owner of the leasehold scheme, for example the Housing Authority, to impose restrictions on the right of the owner of the lot to deal with transfer, mortgage, lease et cetera of the lot, ensuring the lot remains used for affordable housing.

Hon DONNA FARAGHER: Are there any other circumstances that could be specified in the regulations in which the consent of the owner of the leasehold scheme may be required other than, for example, the purpose of affordable housing? The legislation says "circumstances". Have any other circumstances been contemplated that could be used in this instance?

Hon STEPHEN DAWSON: No other circumstances have been identified in this particular proposed subsection.

Proposed section put and passed.

Proposed sections 52 and 53 put and passed.

Proposed section 54: Enforcement of strata lease —

Hon DONNA FARAGHER: This proposed section relates to the enforcement of strata leases. Notwithstanding that this proposed section also deals with a new concept, leasehold schemes, and with the tribunal, which is perhaps new, I seek some advice on the enforcement of strata leases generally. Will a similar sort of procedure be followed with whatever strata scheme it might be? As I read it, this proposed section particularly references leasehold schemes, but it would be useful if the minister could point me to other parts of the legislation that deal with the enforcement of other forms of lease.

Hon STEPHEN DAWSON: This proposed section provides that the owner of a leasehold scheme or the owner of a lot may apply to the tribunal for enforcement of a covenant or a condition in the strata lease, or an obligation under this division. Leasehold schemes have been developed to ensure the owner of the lot—the lessee under the strata lease—has very clear statutory rights and protections that are much higher than those for a lessee under an ordinary lease. The power of the lessor—the landlord—has also been limited to protect lot owners' rights. There are no equivalent positions related to this in the act. Essentially, because it is a new concept, it does not exist anywhere else.

Proposed section put and passed.

Proposed sections 55 to 63 put and passed.

Proposed section 64: Common property (utility and sustainability infrastructure) easement —

Hon DONNA FARAGHER: This relates to common property—utility and sustainability infrastructure—easement. Similar to a question I asked about an earlier proposed section, I want to again clarify whether this deals with the matter of solar panels.

Hon STEPHEN DAWSON: Yes, it does. Can I give you further information on that?

Hon Donna Faragher: No, that is fine.

Proposed section put and passed.

Proposed sections 65 to 78 put and passed.

Proposed section 79: Disclosure of remuneration and other benefits —

Hon DONNA FARAGHER: This deals with disclosure of remuneration and other benefits. Is this a new section to deal with developers who might not otherwise disclose information and therefore is it a provision to provide greater transparency?

Hon STEPHEN DAWSON: It is partly that. The objective of this proposed section is to ensure that the scheme developer discloses all remuneration or benefits from contracts, leases or licences that may bind the strata company. This is to discourage scheme developers from entering into agreements that benefit the scheme developer but may not benefit the owners or the strata company. Developers must disclose commission that they earn from contracts that will bind the strata company. The State Administrative Tribunal can order developers to pay the commission that a developer receives to the strata company if they do not disclose the commission as required by proposed section 79.

Proposed section put and passed.

Proposed section 80: Defects in scheme buildings or infrastructure —

Hon DONNA FARAGHER: Is this a new section?

Hon STEPHEN DAWSON: It is, indeed.

Hon Donna Faragher: Excellent, thank you.

Proposed section put and passed.

Proposed section 81 put and passed.

Proposed section 82: Offence to contravene restricted use condition —

Hon DONNA FARAGHER: If I am correct, I think this section is already within the act, but perhaps there has been an increase in the penalties. Can the minister confirm whether that is the case?

Hon STEPHEN DAWSON: The member is correct. This is based on section 6 of the act. Yes, it has been amended for clarity, but the penalty has also been increased from $2 000 to $10 000 for consistency with equivalent penalties in other legislation. The daily penalty limit has also been increased from $200 to $1 000 for similar consistency.

Hon ROBIN SCOTT: If it is a commercial property, how much time does the offender get to remove whatever is in the common area? Who decides? Do they get a week? For example, if it is a commercial strata company and someone puts a container at the back of their unit to unload some equipment, is it the strata title company that sends him a letter or an email, or knocks on the door and says, "You've got 24 hours to remove the container" or does he have a week to remove it?

Hon STEPHEN DAWSON: The period is at the discretion of the strata company, so it can specify that. The prosecution is made by Landgate.

Hon ROBIN SCOTT: Does the $10 000 penalty go to Landgate or the strata title company?

Hon STEPHEN DAWSON: I am told that it goes to consolidated revenue.

Proposed section put and passed.

Proposed sections 83 to 85 put and passed.

Proposed section 86: Terms used in this Division —

Hon DONNA FARAGHER: This proposed section is titled "Terms used in this Division". The minister has been referring to the letter that I tabled in the house from the Strata Community Association WA. As I understand it, a concern is raised at point 5 of the letter, which I will read in for the benefit of *Hansard*. It is there that the association proposes another amendment. As I understand it, of all the proposed technical amendments that it has put forward, this is one that the government does not intend to accept. For the benefit of *Hansard*, point 5 of the letter states —

> The current sections 7 and 7A do not allow owners to apply for permission to remove a structure within their lot. The implications of this became evident in the *Tipene* case. We respectfully suggest this issue could be resolved by amending proposed new section 86 as follows:
>
> Section 123(7)(a)—structural alteration of a lot means —
>
> (a) the erection of a structure within the lot; or
>
> (b) an alteration of a structural kind to, or extension of, a structure within the lot; or
>
> (c) the removal of a structure within the lot;

I note, minister, that part (c) is the only addition to what has already been put in the act. I am interested to hear the government's position on why it would not agree to this part of the amendment when it has agreed to all the others.

Hon STEPHEN DAWSON: Essentially, the reason the government has not proposed this amendment is as follows. Lot owners can remove a structure within a lot, subject to planning approvals. There is nothing stopping them from doing that. Adding the proposed amendment to include that owners must obtain approval from the strata company before removing a structure within their lot would actually increase red tape and take away the owner's current right to remove such a structure without seeking the approval of the strata company. In reference to resolving issues highlighted in the Tipene case, that case turned on the removal of a structure that formed part of the lot boundary. When structures are within a lot boundary, they do not form part of the lot boundary. The Tipene case is resolved in proposed section 9(7) in clause 83 to provide that when a wall, floor or ceiling or another structural element that is used to define the boundaries of a lot in the strata scheme is removed, the boundaries of the lot remain as defined on the scheme plan. Proposed section 9(7) has been inserted to overcome the problem

where a boundary structure—that is, a wall, floor, celling or other structural element that is used to define the boundaries of a lot—has been removed, as highlighted in Tipene v Owner of Strata Plan 9485 (2015).

Hon DONNA FARAGHER: Thank you for that. Can I just re-clarify things? Is the minister saying to me that there is already an option, I presume, within the Planning and Development Act with respect to the removal of a structure on a lot? I heard the minister refer to planning approvals, so I want to be clear on what we are referring to in terms of the options that are currently available.

Hon STEPHEN DAWSON: This decision deals with the approvals of the strata company, not the approvals of a planning decision under the act.

Hon DONNA FARAGHER: I appreciate that the minister might have been reading from some notes at the very beginning, but I think he referred to the fact that lot owners can currently remove a structure on a lot through the relevant planning approvals. I am sorry if I misheard the minister, but I would appreciate it if he could just restate that.

Hon STEPHEN DAWSON: Lot owners can remove a structure within a lot, but that is subject to planning approvals.

Hon Donna Faragher: But what planning approvals?

Hon STEPHEN DAWSON: They are found under the Planning and Development Act.

Hon DONNA FARAGHER: Thank you. Those mechanisms are already within the act and I presume they have previously been utilised. Is the minister telling us that there are already mechanisms within another act, as well as improvements at an earlier stage of this bill, that cover off on the concerns raised by the association?

Hon STEPHEN DAWSON: Yes, that is correct.

Proposed section put and passed.

Proposed sections 88 to 101 put and passed.

Proposed section 102: Budget —

Hon DONNA FARAGHER: This section relates to budgets to be prepared by the strata company. Can the minister confirm whether there are any material changes in this bill to the requirements to prepare a budget as opposed to what is already in the current act?

Hon STEPHEN DAWSON: Yes. This provision clarifies that the strata company is to prepare a budget for each financial year. It provides that a strata company may spend a specified amount per lot without the budget, but limited by regulations or by an amount as set by a special resolution. It clarifies other expenditure controls and it provides that expenditure on the improvement or alteration of common property if a prescribed amount must be approved by a special resolution. The current act is silent on the power to improve common property and, as a result, the prevailing view in the tribunal is that the strata company needs a resolution without dissent to improve common property. This bill gives the strata company the express power to improve or vary common property, subject to the expenditure controls of the strata company, and in situations in which the expenditure exceeds an amount provided in the regulations, a special resolution of the strata company is required to approve the alteration or improvement of the common property—it is an extra bit.

Hon DONNA FARAGHER: As the minister said, I think the tribunal requires a unanimous resolution to give power to improve the lot. I presume that part is in another proposed section of the bill, because this one deals with only the budget.

Hon STEPHEN DAWSON: The power to improve common property is set out in another proposed section of the bill.

Proposed section put and passed.

Proposed section 104: Records and correspondence —

Hon DONNA FARAGHER: Can I just ask a question out of interest? I have noticed as we have been going through the legislation that there have been a couple of examples where we seemed to have jumped or missed a proposed section. We have just moved from proposed section 102 to 104—there is no 103. It does not happen often. Can you clarify that for me, Madam Deputy Chair? It would be good to know why.

Hon STEPHEN DAWSON: I am told that to find the missing provisions the member would look in the blue bill.

Hon DONNA FARAGHER: Of course you would! We will move back to proposed section 104 then.

My next question is probably similar to the one that I asked about proposed section 102. This proposed section relates to records and correspondence. Can the minister detail whether this provision sets out any new requirements as opposed to what is currently in the act?

Hon STEPHEN DAWSON: Again, this provision has been amended for clarity, but absolutely I can. In addition, there are new requirements for the strata company to keep the new types of documents that have been introduced by the amending legislation, such as strata management contracts and infrastructure contracts. Records that also must be kept include disclosures about any conflicts of interest, any resolutions made about how the common seal is to be used, the current budget and the most recent resolutions about contributions.

Proposed section put and passed.

Proposed section 106 put and passed.

Proposed section 107: Application by person with proper interest in information —

Hon DONNA FARAGHER: This provision deals with the application by a person with proper interest in information. I am interested to delve into a little more detail on this. Proposed subsection (1) states —

> A person with a proper interest in information about a strata titles scheme, or a person authorised in writing by such a person, may apply in writing to the strata company for the scheme for —
>
> (a) information under section 108; or
>
> (b) inspection of material under section 109; or
>
> (c) a certificate under section 110.

In respect of the person who can make that application, who does that provision encompass? I presume it would be the owner of a lot. I want an understanding of who it might be.

Hon STEPHEN DAWSON: I am happy to help. I refer the member to proposed subsection (2) that states —

> A person has a ***proper interest in information about a strata titles scheme*** if the person is —
>
> (a) a member of the strata company for the scheme; or
>
> (b) a buyer who has entered into a contract for the sale and purchase of a lot in the strata titles scheme; or
>
> (c) a mortgagee of a lot in the strata titles scheme; or
>
> (d) a person of a class specified in the regulations.

Hopefully that answers the member's question.

Hon DONNA FARAGHER: Yes, but in respect of a person of a class specified in the regulations, does the department contemplate anyone else being eligible to apply or make an application? I would have thought that is a fairly exhaustive list from (a) to (c), and I am not suggesting we would not include it, but I am interested to know if any others are being contemplated.

Hon STEPHEN DAWSON: This is essentially for futureproofing. It is to ensure that appropriate people have access to information about the strata company.

Hon Donna Faragher: You do not have anyone at the moment?

Hon STEPHEN DAWSON: We do not have anyone at this stage, but it would allow for somebody else in the future to access it.

Hon RICK MAZZA: I refer to proposed section 107(4) and the fee that is fixed by regulation for a charge in relation to receiving that information. What is the current fee that is regulated and is there any intention to increase it?

Hon STEPHEN DAWSON: It is our intention to consult about the fee. No decision has been made yet about increasing it. We are just looking for information about the existing fee. The fee payable to the strata company for an application made under section 43(1)(a) is $10. For inspection of records under section 43(1)(b) by any proprietor or mortgagee who has notified an interest in the strata company it is nil, and for any other person it is $40. For a certificate under sections 43(1)(c) and (d) the fee is $100. For copies provided under section 43(1)(a) the fee is $40 for the first five pages and $1 for each subsequent page. They are the fees, but moving forward there will be consultation on future fees.

Proposed section put and passed.

Proposed sections 108 to 111 put and passed.

Proposed section 112: Compliance with scheme by-laws —

Hon STEPHEN DAWSON: I move —

Page 217, line 21 — To delete "monitoring" and substitute —

enforcing

This amends clause 83, proposed section 112, to replace the word "monitoring" with "enforcing". The amendment relates to suggested amendment 1 in the letter tabled by Hon Donna Faragher. Proposed section 112 relates to the strata company's role in complying with by-laws and enforcing compliance with them. The proposed amendments make it clear that the strata company has the obligation of enforcing compliance with by-laws. The previous draft referred to monitoring compliance, which is not as strong as enforcing compliance, so for that reason the change has been made.

Hon DONNA FARAGHER: I indicate that the opposition will support the amendment put by the minister.

Amendment put and passed.

Proposed section, as amended, put and passed.

Proposed sections 113 to 118 put and passed.

Proposed section 119: Objectives —

Hon DONNA FARAGHER: Again, this question relates to the concerns raised by People With Disabilities Western Australia. The minister might reconfirm for me that in addition to the option of exclusive-use by-laws, if they do not get unanimous consent of the lot owners, this is another avenue through which the affected person may apply to the State Administrative Tribunal to obtain the necessary approvals to install a lift, railings or whatever they require. Does that occur under this proposed section—there may be others that the minister can alert me to—in so much as it refers to something being unfairly prejudicial to or discriminatory against a person, or oppressive or unreasonable? Perhaps the minister might just confirm that for me, please.

Hon STEPHEN DAWSON: The member is correct. This clause makes it easier to provide disability access to lots and common property. Under the bill, improvements to common property will only require a single majority vote. The strata company will have the express power to improve common property to provide for disability access, for example, and can do so provided the strata company approves the spending on that improvement through the annual budgetary process, and that needs a simple majority resolution of owners. Altering a lot to provide disability access will be easier, so when owners want to alter the lot to improve disability access and another owner objects, the first owner can obtain an order of SAT to do the alteration, and that is in clause 83, proposed section 90. Obtaining exclusive by-laws for disability access over common property will be easier, so when an owner wants to obtain an exclusive-use by-law over the common property—for example, to install disability access through the common property to their lot—and other owners are blocking the request, the first owner can obtain an order of SAT to make the exclusive by-law in their favour and will have a good chance of success if they can show that failure to meet the exclusive by-law is unreasonable, oppressive or unfairly discriminatory against that owner. The other proposed sections in clause 83 that are of interest to this issue are proposed sections 200(2)(a) and (n).

Proposed section put and passed.

Proposed sections 120 to 122 put and passed.

Proposed section 123: Resolutions —

Hon STEPHEN DAWSON: I move —

Page 225, line 17 — To insert before "14 days' notice" —

for a resolution passed other than at a general meeting,

Again, this amendment relates to suggested amendment 4 in the letter tabled from the Strata Communities Association of Western Australia. This amends clause 83, proposed section 123(7) to clarify that the requirement to provide 14 days' notice of a motion that requires an ordinary resolution only applies when the resolution is sought outside of a general meeting. The current draft of proposed section 123(7) imposes a requirement that 14 days' notice of a motion must be given for any ordinary resolution. The Strata Community Association WA points out that this may prevent the strata company from amending a motion for an ordinary resolution at a general meeting. The amendment to proposed section 123(7) makes it clear that a motion for an ordinary resolution that needs to be made at a general meeting does not require 14 days' notice. Therefore, the strata company has the discretion to amend a motion for an ordinary resolution at a general meeting and then pass that amended motion by ordinary resolution at that same general meeting.

Hon DONNA FARAGHER: I indicate that the opposition is supportive of the proposal being put by the government.

Hon ROBIN CHAPPLE: The Greens will also support the amendment. It is consistent with the advice we have had.

Amendment put and passed.

Proposed section, as amended, put and passed.

Proposed sections 124 to 143 put and passed.

Proposed section 144: Requirements to be met by strata manager —

Hon RICK MAZZA: Just before I move the amendment I have on the supplementary notice paper, I would like to ask a question about proposed section 144(1)(b)(ii)—educational or other qualifications. What educational and other qualifications are anticipated to be required?

Hon STEPHEN DAWSON: A strata manager must meet the education requirements set out in the regulations. The regulations are currently being developed and will likely provide that strata managers must have attained specific relevant educational qualifications, including a certificate IV in strata community management.

Hon DONNA FARAGHER: I want to clarify the role of a volunteer strata manager. Will they be required to undertake training or meet the same requirements as those who are effectively being paid to do the work of a strata manager? I want to understand the difference, because, obviously, we do have volunteer strata managers at the moment.

Hon STEPHEN DAWSON: Volunteer strata managers owe a fiduciary duty to the strata company currently. The statutory duties imposed on volunteer strata managers are essentially a codification of that existing fiduciary duty. Volunteer strata managers should owe the strata the same duties as a professional strata manager. A volunteer strata manager, if operating in an unregulated way, can cause the same damage to a strata company as a professional strata manager who is not regulated. Saying that, though, a volunteer strata manager does not need to have educational requirements, as in clause 83, proposed section 144(3). They do not need to have minimum professional indemnity insurance, as in clause 83, proposed section 144(2). They also do not need to provide Landgate with information. They will not need to go through that training or have the minimum professional indemnity insurance.

Hon DONNA FARAGHER: I also agree that whether a person is a volunteer or non-volunteer strata manager, they should come under the same ambit of professionalism and requirements. Notwithstanding that, it would be unreasonable to think that all volunteer strata managers are necessarily going to have some of the professional qualifications that will be required. So long as there is a bit of flexibility in relation to that, I accept this, but they obviously need to meet those general requirements on how they conduct themselves. I am supportive of the provision on the basis of what the minister has just informed me.

Hon RICK MAZZA: I move —

> Page 238, line 28 — To delete the line and substitute —
>
> regulations; and
>
> (d) if the regulations provide for a scheme for the licensing of strata managers, the strata manager —
>
> (i) holds a licence under the scheme; or
>
> (ii) is exempt under the scheme from a requirement to hold a licence.

During the second reading debate, I expressed my concerns surrounding the regulation of strata managers. It is a specialist area. Strata managers deal with significant amounts of money and valuable property. I am greatly concerned that there is no oversight surrounding strata managers or a licensing regime. I know that under the regulations, a strata manager is supposed to carry professional indemnity insurance, but there is nothing to say that they have not got it. There is no oversight to say, "Well, if you haven't got professional indemnity insurance, you've got to cease to operate." If, for argument's sake, a strata manager had failed to pay an insurance premium and there happened to be a fire, storm or some event that caused damage to the property or even a public liability issue whereby someone may have tripped over something and injured themselves, the strata manager may not have the personal capacity to cover anywhere near the cost of what has happened and the insurance policy will not cover it because the premium remained unpaid. I am greatly concerned about not having a licensing system. New South Wales has had a licensing system for many years. In that state, people must pay a fee of $530 to apply for a strata management licence. They also need to complete 20 units of the certificate IV in strata community management. I would like to see provided within this bill a structure whereby strata managers have to undertake educational requirements, and an enforcement process whereby strata managers do have some oversight to ensure that a major consumer affairs issue does not arise. I would like the government to support my amendment.

Hon STEPHEN DAWSON: As I outlined in my second reading reply, 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 regulation model. There have been some conversations behind the Chair in the past 24 hours amongst various people. We have sympathy for the issues the honourable member has raised, but I will not be supporting his amendment this afternoon. Having spoken to the minister, she is open to a having a working group to look into this issue. That would obviously require an amendment in the future. It has been considered, but we are not in a position to support the amendment.

Hon DONNA FARAGHER: I will probably echo the comments made by the minister. I certainly have some sympathy for what has been put forward by Hon Rick Mazza. In my contribution to the second reading debate, I read an excerpt from a letter from the Strata Community Association, which called for two things, including that a working group be established after the passage of the legislation. It reflected on some of the concerns that Hon Rick Mazza has also raised about what strata managers actually deal with. Some deal with quite significant amounts of money in their funds and a range of other matters. Essentially, the recourse for them doing the wrong thing is primarily a matter for the strata company. There are some caveats to that. However, I think the SCA made some valid points. Indeed, the minister said in his response that the State Administrative Tribunal cannot stop the strata manager from acting as a strata manager or take any action to protect other current or future clients of that strata manager if they have been found to have done the wrong thing. I think some legitimate concerns have been raised by Hon Rick Mazza and others; however, it is something that needs to be carefully looked at. I appreciate that this is effectively providing a head of power in the act for regulations to be established to deal with this. I think there would be perhaps some concerns in terms of the scope of what might be included in regulations, which may actually be more appropriate to be placed in primary legislation. Certainly, there have been some concerns about the power to collect information or whatever it might be about whether those sorts of things—such as power to enter premises if that is something that is to be contemplated—should be in an act or in regulations. The notion of a working group being established, obviously a decision by the government, might be a useful step forward, would reflect some of the concerns that are being raised and would show that the government is taking those on board.

Hon ROBIN CHAPPLE: We will oppose the amendment. Whilst supporting licensing in principle, we support the establishment of a working group or other mechanism to investigate licensing as an option separate from the bill. I note that the Strata Community Association WA letter that was tabled asks for a working group. The first reason for opposing the amendment is the lack of data about the impact or costs associated with the licensing scheme. We do not know how much; therefore, we do not know how it will impact on smaller strata companies, management companies, the strata levies paid by owners, development costs of strata properties and therefore prices of lots. The benefits of setting up a working group instead of passing the proposed amendment are the time to collect the data, say a year, and then make an informed decision after the impacts on the stakeholders can be accurately forecast. Clause 83, proposed section 153, on page 247 facilitates such data collection and allows regulations to be made that require strata managers to lodge returns containing aggregated information about the schemes they manage to assist with the development of policy. In the meantime, the bill delivers improved protection of owners. Clause 83, proposed section 144, on page 238 allows regulations to be made that require strata managers to undergo criminal record checks, reducing the risk of theft of owners; have obtained a certain level of educational and other qualifications; and have professional indemnity insurance, reducing the risk of poor asset management. Having said that, the key issue for us again is that we believe, as did the Strata Community Association, that this needs a working group to develop the policies around this, rather than this amendment.

Hon COLIN TINCKNELL: One Nation will support the amendment moved by Hon Rick Mazza.

Division

Amendment put and a division taken, the Deputy Chair (Hon Adele Farina) casting her vote with the noes, with the following result —

Ayes (4)

Hon Robin Scott	Hon Charles Smith	Hon Colin Tincknell	Hon Rick Mazza *(Teller)*

Noes (24)

Hon Martin Aldridge	Hon Peter Collier	Hon Adele Farina	Hon Tjorn Sibma
Hon Ken Baston	Hon Stephen Dawson	Hon Nick Goiran	Hon Matthew Swinbourn
Hon Jacqui Boydell	Hon Colin de Grussa	Hon Laurie Graham	Hon Dr Sally Talbot
Hon Robin Chapple	Hon Sue Ellery	Hon Michael Mischin	Hon Dr Steve Thomas
Hon Tim Clifford	Hon Diane Evers	Hon Martin Pritchard	Hon Alison Xamon
Hon Alanna Clohesy	Hon Donna Faragher	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*

Amendment thus negatived.

Hon RICK MAZZA: I move —

Page 239, after line 3 — To insert —

144A. Licensing and registration scheme for strata managers and agents, employees and contractors of strata managers

(1) The regulations may provide for a scheme for —

(a) the licensing, regulation and supervision of strata managers; and

(b) the registration, regulation and supervision of agents, employees and contractors of strata managers.

(2) Without limitation, regulations made for the purposes of this section may provide for or regulate the following —

(a) the administration of the scheme;

(b) the procedure to be followed in respect of applications;

(c) the criteria for the grant of a licence or registration;

(d) the grant, variation, renewal, transfer, surrender, suspension and cancellation of licences and registration;

(e) exemptions under the scheme;

(f) the creation of offences and the imposition of penalties not exceeding a fine of $3 000.

I note that this is probably a moot point considering that my previous amendment was just defeated, but I really want to press the point on the licensing of strata managers. We have a gaping hole in our consumer protection. I do not want to read the newspaper in a few months and find out that someone has skipped out with $3 000, $4 000 or $5 000 worth of trust account money because there was no oversight of strata managers.

New South Wales has had a very stringent licensing system for strata managers for years. I hear what members have said about the strata community having a working group over 12 months, but we know how those working groups go. That 12 months could easily bleed out to two years and before we know it, it will be the end of this term of government and we will still have no regime, so in the next term of government the issue will have to be remembered and picked up again. There is every likelihood that we could be standing here in two years and there will still be no licensing regime for strata managers. I think we need to make sure that if there is going to be a working group, it happens very promptly to ensure consumer protection on this issue, which is a major gap in consumer protection in this state. I am pressing this on the government to make sure that it does not get forgotten about and that we do not just drift on without a licensing regime. I get the regulation aspect and that Landgate will put regulations in place, but nothing says that strata managers will be overseen by this—nothing! I think it is a very lax system and that sooner or later the wheels will fall off. I commend this amendment to the chamber.

Hon DONNA FARAGHER: I get what Hon Rick Mazza is saying. I am not sure whether I heard the reference to a 12-month working group. I agree that this is something fairly discrete and it could be looked at fairly quickly. I would like to think that the minister will take on board the comments made in the chamber today and report back to the Minister for Lands so that she can hear the issues that have been raised. If a working group is to be established, I would like to see consideration of whether, if there were to be a licensing regime, matters should be in the primary legislation as opposed to the regulations. If we are putting forward an entirely new licensing scheme, I think there is a legitimate concern about whether leaving it to the regulations is the appropriate way to go, albeit they are disallowable and we can give some advice through the primary legislation, or whether the key elements should be stipulated in the primary act, whether it is through an amendment to this legislation or new legislation. I ask for that to be looked at as part of any working group that is established.

Hon ROBIN CHAPPLE: The Greens will be opposing this amendment. Having said that, as everyone has stated, there is a need to get the working party moving very quickly to review matters and to report back. The key issue in our opposition to this amendment is that the licensing authority appears to fall within the responsibility of the Minister for Lands rather than the Minister for Commerce and Industrial Relations. I note that the amendments about the ministers, which we will now not be dealing with, would have resolved that issue. I apologise to Hon Rick Mazza. We will not be supporting his amendment. However, we understand the rationale for his amendment and we would hope that the working party reports expeditiously.

Hon ROBIN SCOTT: Would the licensing, regulation and supervision of strata managers and the registration, regulation and supervision of agents, employees, contractors and strata managers incur a cost to the owners of the lots?

The DEPUTY CHAIR: Member, this is an amendment.

Hon Stephen Dawson: This is an amendment by Hon Rick Mazza.

Hon Rick Mazza: Not for strata. I wouldn't have thought so.

Hon ROBIN SCOTT: Surely there will be some cost to the strata managers to register their people and have them licensed. Are they going to absorb that cost? Are they going to pass that on to the owners of the properties to cover that?

Hon Rick Mazza: Are you talking about strata managers paying a licence fee?

Hon ROBIN SCOTT: Yes.

Hon Rick Mazza: They would do.

Hon ROBIN SCOTT: So it would be more cost to the owners.

Hon STEPHEN DAWSON: It will be no surprise to Hon Rick Mazza that the government will not be supporting his amendment this afternoon. I have listened to and taken on board the comments that have been made in this debate by not only Hon Rick Mazza, Hon Donna Faragher and Hon Robin Chapple, but also everybody else in this chamber, and I will certainly bring them to the attention of the minister, as will the advisers who are here today. As I said in my earlier contribution, the minister is open to establishing a working party on this issue. However, we are not in a position to support the amendment.

Amendment put and negatived.

The DEPUTY CHAIR (Hon Martin Aldridge): Members, I might resolve proposed section 144, noting that the minister has a new proposed section 144A standing in his name on the notice paper, and we will then move on to that.

Hon Stephen Dawson: I will not be proceeding with that, Mr Deputy Chair.

Proposed section put and passed.

Proposed section 145 put and passed.

Proposed section 146: General duties and conflict of interest —

Hon DONNA FARAGHER: I am referencing proposed subsection (1), which states in part —

> A strata manager of a strata company —
>
> …
>
> (b) must at all times exercise a reasonable degree of skill, care and diligence in the performance of the strata manager's functions; and
>
> (c) must have a good working knowledge of this Act; and

The terms "reasonable" and "good working knowledge" appear to be subjective. Are those terms used in other legislation? I would have thought strata managers should at all times exercise a high degree of skill, care and diligence in the performance of the strata manager's functions. Also, although we would not use the term "excellent" in legislation, I think we should expect more than they have a "good working knowledge" of the act. What is the minister's response to that?

Hon STEPHEN DAWSON: I am told that the term "good working knowledge" was developed in consultation with the sector. I am also told that this issue is commonly addressed by the State Administrative Tribunal, and that this definition can be developed over time when cases go to SAT.

Hon DONNA FARAGHER: It is good that the definition will be determined by SAT. However, that means that a case will need to be brought to SAT. I accept that this may have already occurred in other circumstances, and perhaps this comes back to the licensing of strata managers, which we have just dealt with. I understand that parliamentary counsel often look at these sorts of things and give their views on what might be the best terminology to use. It states that strata managers must at all times exercise a "reasonable" degree of skill, care and diligence. That is their job. They should not have just a reasonable degree of skill, care and diligence. What would be considered as not having a reasonable level? What would be considered as not having a good working knowledge? I appreciate that some of these things might be further defined after particular cases are presented before SAT and we get determinations through that process. However, I am not sure whether we are setting a high enough bar in this legislation, if I might put it that way.

Hon STEPHEN DAWSON: I take the honourable member's point. However, the fact is that what is "reasonable" is considered by courts and tribunals all the time. That term is commonplace in society. This issue has been consulted on with industry. The member asked what would be considered "reasonable". A court or tribunal can, and does, decide that often.

Hon DONNA FARAGHER: I have a concern about proposed subsection (1)(b) and (c), and it is always helpful to have these discussions at the committee stage so that at least it is in *Hansard*. I appreciate that these matters will be determined through the courts and SAT. However, we are responsible for the legislation that is before us now. I do not want to quickly propose an amendment that may have an unforeseen consequence. However, "reasonable" is a fairly subjective term. The degree of skill, care and diligence in the performance of the strata manager's functions should be high, at the very least. With respect to the term "good working knowledge" of the act, strata managers should absolutely know every section of the act that is relevant to their job to ensure that they are acting in the best interests of the owners of the scheme or lots for which they have responsibility. I would argue that, at the very least, the term "reasonable degree" in proposed section 146(1)(b) should be changed to "high degree". What is the minister's response?

Hon STEPHEN DAWSON: I have no response. I have already indicated my view and that of the government on this issue. I take the member's point. However, I do not propose to change it.

Proposed section put and passed.

Proposed sections 147 to 155 put and passed.

Proposed section 156: Information to be given before contract —

Hon DONNA FARAGHER: Can the minister confirm that this proposed new section lists some new requirements?

Hon STEPHEN DAWSON: Yes, I can. In addition to the current basic information that buyers are required to be given, buyers must also be given information about the estimated contributions they will be required to pay in the 12 months after settlement; the minutes from the most recent annual general meeting; the statement of accounts of the strata company and any debts owing against the lot to the strata company; whether the lot has the benefit of exclusive use by-laws; and any termination proposal received by the strata company. This clause resulted from significant consultation with the sector.

Proposed section put and passed.

Proposed section 157 put and passed.

Proposed section 158: Delay in settlement for failure to give information —

Hon DONNA FARAGHER: Is this a new provision, minister?

Hon STEPHEN DAWSON: I am advised that it is essentially the same as the current act, but we are just checking that. The primary change is that we are extending the period to 15 days after the latest date on which the seller complies with the relevant requirements, so the settlement may be postponed by no more than 15 working days after the latest date on which the seller complies with the relevant requirements. That is the primary change that will result from this proposed section.

Hon DONNA FARAGHER: Was it another number of days previously? Has the 15 working days been added? Was it a shorter time period previously?

Hon STEPHEN DAWSON: We believe that it was previously seven days, but we have to check to clarify that.

Hon Donna Faragher: That's fine.

Proposed section put and passed.

Proposed sections 159 to 165 put and passed.

The DEPUTY CHAIR (Hon Martin Aldridge): Members, I understand that we have arrived at Part 12, which is the part of the bill that has been discharged and referred to the Standing Committee on Legislation.

Hon STEPHEN DAWSON: Yes, it is. I move —

> That further consideration of clause 83 be postponed until after consideration of clause 211.

Hon DONNA FARAGHER: Did the minister say "after clause 211"?

The DEPUTY CHAIR: That is the last clause in the bill, Hon Donna Faragher.

Hon DONNA FARAGHER: Do we start from part 13 on page 292?

Hon Stephen Dawson: Yes, my motion allows for that—no, it does not. We were advised that we should not deal with clause 83 from this point onwards.

Hon DONNA FARAGHER: I just need to clarify this: the advice is to hold off on all the issues surrounding the tribunal proceedings until such time as we return with a report in front of us?

Hon Stephen Dawson: That's the advice from the Clerks.

Hon DONNA FARAGHER: So that I am clear: from the good advice provided by Mr Deputy Chair, where are we starting again?

The DEPUTY CHAIR: The minister's motion is that we postpone consideration of clause 83 until after we have dealt with clause 211. That takes us to clause 84 on page 315.

Hon DONNA FARAGHER: Is that proposed section 215, "Address for service", in part 14, "Miscellaneous", on page 310?

Hon Stephen Dawson: That's still within clause 83.

Hon DONNA FARAGHER: Okay.

The DEPUTY CHAIR: Unless further clarification is required, the minister has moved that clause 83 be postponed and not considered until we have dealt with clause 211.

Further consideration of the clause postponed, on motion by Hon Stephen Dawson (Minister for Environment).

Hon DONNA FARAGHER: To assist, because we have moved to a different part of the bill—obviously, we have moved from clause 83, which has different proposed sections—my next question refers to page 356 and clause 6 under proposed schedule 5, "Transitional provisions for Strata Titles Amendment Act 2018".

The DEPUTY CHAIR: Hon Donna Faragher has indicated that she has no questions before clause 119. Do any other members have an interest in any clause before clause 119? That being said I will put the question that clauses 84 to 118 stand as printed.

Clauses 84 to 118 put and passed.

Clause 119: Schedule 5 inserted —

Hon DONNA FARAGHER: My question specifically refers to page 356 and clause 6, "Council members and officers", under proposed schedule 5. I seek some clarification on whether this clause effectively relates to the new accountability measures that were put in place by the act on issues surrounding conflict of interest.

Hon STEPHEN DAWSON: Yes, that is correct.

Hon DONNA FARAGHER: I would like to go to clause 13 of the proposed schedule. It relates to strata managers and the insertion of transitional provisions. Clause 13(3) of the proposed schedule refers to —

> A contract or volunteer agreement referred to in subclause (1) ceases to have effect 6 months after commencement day unless the strata manager then meets the requirements set out in section 144 and the contract or volunteer agreement then meets the requirements set out in section 145.

Should this bill pass—we expect that it will at some stage—the act will come into effect. So I am clear, what is the process for the current contracts that are in place? Obviously, new requirements will now be placed on strata managers and strata companies. Do they have to re-sign contracts? It refers to "cease to have effect 6 months after commencement day" and I want to get an understanding of the general process. In this instance, it relates to strata managers but generally, what requirements are there to reaffirm contracts or re-sign them should this bill pass and when we get to the commencement day?

Hon STEPHEN DAWSON: From the commencement date of this bill, they will have six months to get their contracts to comply with the provisions in this bill. They can already start that process now, so that work can be happening now. The deadline for the contracts to be in place is six months after the commencement of the bill.

Hon DONNA FARAGHER: The minister is saying that with the benefit of the bill, they can now be working through what they expect will be required of them. Does that mean that every scheme that is now in place where there is a strata manager—in this instance, relating to clause 13—they will need to sign a new contract? We are dealing with a lot of strata schemes. I want to get an understanding of the process.

Hon STEPHEN DAWSON: Not necessarily, because their contracts may already comply with the provisions in this bill. Also, the member used the word "scheme"; it is contracts.

Hon DONNA FARAGHER: I appreciate that the minister might not be able to answer this question, but how many contracts are we talking about? I would expect that we are talking about a lot, to put it mildly. How will people be informed by Landgate of the new requirements and how will they determine whether they already meet those requirements, or that they do not, and they therefore need to deal with a new contract?

Hon STEPHEN DAWSON: We have been advising industry players for the last couple of years about the likely changes. Over the next couple of weeks, the agency will be speaking at forums to let people know what is going

on. There is also an intention to write to people and a significant education campaign will be rolled out to make sure that people know about these changes.

Hon DONNA FARAGHER: I accept that, and I expect that I would also accept that although the minister might have broad communication methods or letters being sent out, some people may not be aware of the changes or the six-month deadline. I presume a grace period might be imposed. How will this be followed up by Landgate, if at all, to ensure that people comply with the act?

Hon STEPHEN DAWSON: It is built in that people have six months. It is not Landgate that follows this up; the strata companies will ensure that the strata managers are compliant with the act.

Hon DONNA FARAGHER: If it is the strata company, I presume that Landgate will write to the strata companies to advise them of their new obligations. It is then a matter for the strata company to ensure that the new provisions are being met. Have I understood that correctly?

Hon STEPHEN DAWSON: I am told that we will not be writing to each of the 70 000 strata companies—70 000!—but we are ensuring that, through an extensive education campaign, they will all be educated and will know of the changes. As I said, the agency will be talking at forums and will continue to discuss this with the sector and representative groups to make sure that they know what the changes are. The education campaign will hopefully ensure that people know of the changes and that they can comply with those changes.

Hon DONNA FARAGHER: I presume that if they do not comply with the changes and issues are raised, the penalties that are prescribed within the act may well be utilised. What is the process? If they do not comply after this six-month period, what is the follow-up?

Hon STEPHEN DAWSON: The follow-up is that the strata company can terminate a strata manager's contract.

Hon DONNA FARAGHER: Thank you for that clarification, minister. I think we got there. I indicate that I do not have anything more to say about the bill as it currently stands, until we return to part 12 and the other sections that we have postponed.

Hon STEPHEN DAWSON: I undertook to provide some extra information for the member a few minutes ago. Regarding proposed section 158 of clause 83 under which a buyer may postpone settlement by 15 working days, under section 69D(4)(a), settlement could previously be postponed by seven days. So it was as we thought and it is an extension.

Clause put and passed.

Clauses 120 to 165 put and passed.

Clause 166: Part 10 Division 5A inserted —

Hon STEPHEN DAWSON: I move —

> Page 385, lines 20 to 23 — To delete the lines.

This amendment relates to point 6 of the suggested amendments in the correspondence from the Strata Community Association WA. The amendment will delete proposed section 164A(3) of the Planning and Development Act 2005. Clause 166 inserts proposed section 164A into the Planning and Development Act 2005. Section 164A will replace section 148 in the Planning and Development Act to give the Western Australian Planning Commission and planning decision-makers the discretionary power to require a subdivision and development application to be dealt with in an integrated way to facilitate a cohesive approach to planning and development. This is required because in Western Australia, subdivision and development applications are dealt with separately, sometimes by different planning decision-makers. Because of this inability to properly integrate the subdivision and development process in certain situations, the development and subdivision of some strata schemes has resulted in less than ideal planning outcomes. It is not intended that subdivision and development be integrated in every case. For example, proposed section 164A(1) gives the planning decision-maker discretion on whether they form the requisite opinion that integration is necessary. The Strata Community Australia WA was concerned that section 164A(3) implied that there was a default requirement for all strata schemes that subdivision and development applications needed to be submitted concurrently. Deleting section 164A(3) puts beyond doubt that section 164A provides a discretionary power and does not require subdivision and development applications to be lodged concurrently for every strata scheme.

Hon DONNA FARAGHER: I indicate that the opposition is agreeable to the proposal to delete the lines.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 167 to 211 put and passed.

Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson (Minister for Environment).