

**COMMUNITY TITLES BILL 2018**

*Committee*

Resumed from 30 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 148: Vote —**

Progress was reported after the clause had been partly considered.

**Hon STEPHEN DAWSON:** I move —

Page 177, line 12 — To delete “the independent person must”.

Clause 83, proposed section 182(10), of the Strata Titles Amendment Bill was amended to remove a repetition of the phrase “an independent person must” at the start of the subsection and again in subparagraph (c). The amendment to clause 148(9) of the Community Titles Bill deletes the same repetition from the equivalent provision of this bill. It is a matter of consistency. We changed the other bill and we seek to change it in this one.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 149: Confirmation of termination resolution by Tribunal —**

**Hon STEPHEN DAWSON:** I move —

Page 178, lines 25 to 28 — To delete the lines and substitute —

- (b) if all or part of the tier parcel of the community titles scheme is or is included in a retirement village within the meaning of the *Retirement Villages Act 1992* — serve notice of the application on the Commissioner within the meaning of that Act; and

This proposed draft amendment to clause 149(6)(b) of the Community Titles Bill mirrors the amendment made to clause 83, proposed section 183(6) of the Strata Titles Amendment Bill that was made in response to the Standing Committee on Legislation’s recommendation 10. This amendment clarifies that the community corporation must, within 14 days after being given notice of the application to the tribunal to confirm a termination resolution, serve notice of the application on the commissioner within the meaning of the Retirement Villages Act 1992 if all or part of the land within a community titles scheme is included in a retirement village within the meaning of the Retirement Villages Act 1992. Again, this is a matter of consistency. These changes were made when we debated the Strata Titles Amendment Bill and, for reasons of consistency, we seek to have the same amendments in this bill.

**Hon DONNA FARAGHER:** I indicate that the opposition will support this amendment. I am interested, though, obviously when we talk about community titles schemes we very much talk about the concept of apartments, retail complexes and all those sorts of things. I do not think the notion of a retirement village necessarily comes to mind in the traditional form that we think about community titles. Albeit that the amendment is to be consistent, I presume this is more of a fail-safe in the event that a retirement village does fall within one of those tiers?

**Hon STEPHEN DAWSON:** The member is correct. Community titles schemes can have a retirement village included in them. If it was to include one then this amendment seeks to deal with that issue.

**Amendment put and passed.**

**Hon STEPHEN DAWSON:** I move —

Page 184, after line 13 — To insert —

- (18A) If the Tribunal orders a person under subsection (18)(b) to take steps for the discharge, withdrawal or removal of an estate, interest or right the Tribunal may order the proponent or the owner of a lot in the community titles scheme to make a payment to that person in respect of the discharge, withdrawal or removal of the estate, interest or right.
- (18B) If the whole or part of the tier parcel of a community titles scheme is subject to a residential tenancy agreement within the meaning given in the *Residential Tenancies Act 1987* section 3, the Tribunal may order that on the termination of the community titles scheme —
  - (a) the tenant and the lessor must terminate the residential tenancy agreement under that Act; and
  - (b) the premises subject to the residential tenancy agreement are taken for the purposes of section 69 of that Act to cease to be lawfully usable as a residence; and
  - (c) if the tenant is given notice of termination under section 69 of that Act, then despite section 69(2) of that Act the period of notice must be not less than a period specified by the Tribunal; and

- (d) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the residential tenancy agreement in respect of the termination of the residential tenancy agreement.
- (18C) If the whole or part of the tier parcel of a community titles scheme is subject to a retail shop lease within the meaning given in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1), then despite anything in that Act the Tribunal may order that —
  - (a) the retail shop lease is terminated on the termination of the community titles scheme; and
  - (b) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the retail shop lease in respect of the termination of the retail shop lease.
- (18D) If the whole or part of the tier parcel of a community titles scheme is subject to a lease or licence not referred to in subsection (18B) or (18C), the Tribunal may, subject to any other written law, order that —
  - (a) the lease or licence is terminated on the termination of the community titles scheme; and
  - (b) the proponent or the owner of a lot in the scheme is to make a payment to the lessee or licensee in respect of the termination of the lease or licence.

These proposed amendments to the bill again mirror an amendment made to the Strata Titles Amendment Bill in response to the Standing Committee on Legislation's recommendation 10. In that case, it inserted subsections (17A) to (17D) into proposed section 183 of clause 83. This amendment inserts clauses 149(18A) to 149(18D) into the bill to clarify a range of things. I want to place them on the record.

It clarifies that the State Administrative Tribunal may order a tenant and lessor to terminate a residential tenancy agreement under the Residential Tenancies Act 1987 on termination of the scheme. SAT may order the premises being leased through a residential tenancy agreement are taken for the purposes of section 69 of the Residential Tenancies Act 1987 to cease to be lawfully usable as a residence on termination of the scheme. SAT may order the minimum notice the lessor must give to the tenant of when the lease will terminate. This allows SAT the ability to order that the notice period should be more than seven days, which is the period provided under section 69 of the Residential Tenancies Act. SAT may order the proponent or the owner, when the owner is the lessor, to pay money to the tenant as compensation for the termination of the residential tenancy agreement. Further, SAT may order the termination of a retail shop lease as defined in the Commercial Tenancy (Retail Shops) Agreements Act 1985 on termination of the scheme. SAT may order the proponent or the owner of the lot, when the owner is the lessor, to pay money to the tenant as compensation for the termination of the retail shop lease. For leases not covered by the Residential Tenancies Act or the Commercial Tenancy (Retail Shops) Agreements Act, SAT may, subject to any other written law, order the termination of the lease or licence on the termination of the scheme. SAT may also order the proponent or owner of the lot, who is the lessor, to pay the lessee or licensee compensation for the termination of that lease or licence. Proposed clauses 149(18B) to 149(18D) provide SAT with the power to order compensation be paid to the tenant when a lease is terminated as a result of the termination of the scheme. The compensation may be paid by the proponent or the owner of the lot where that owner is the lessor. SAT can choose who pays compensation to the tenant. SAT will make that decision based on the facts of the case. If the owner of the lot is ordered to pay compensation to the tenant, we have to remember that under clause 149(11)(a)(ii) the owner is not to be worse off financially as a result of a termination of the scheme. If the owner has to pay a large amount of compensation to the tenant, the owner can say to SAT, "I will be worse off now as a result of the termination of the scheme." SAT can then modify the termination proposal to ensure that the owner is paid by the proponent the equivalent of the compensation the owner paid to the tenant. That is clause 149(14).

**Hon RICK MAZZA:** I am not sure whether this is exactly the right place to ask this question. We are talking about the termination of a corporation and paying out the leases if leases and that sort of thing are involved for owners. With the tiered structure, can one standalone tier be terminated and redeveloped while the rest of the community corporations remain intact?

**Hon STEPHEN DAWSON:** The answer to that question is yes. One or more tier 3 schemes can terminate, one or more tier 2 schemes and any tier 3 schemes that belong to the tier 2 scheme can terminate, and the whole community scheme can terminate. That means that the tiers 1, 2 and 3 schemes in the community scheme will all terminate. All those options are available.

**Hon RICK MAZZA:** That is good; it provides a lot of flexibility. I am sure I heard earlier that a caravan park cannot be part of a community organisation. Can a caravan park be a tier of a community title scheme?

**Hon STEPHEN DAWSON:** We will have to take some time to find that answer. It is not necessarily linked to this clause. I am happy to provide it later if the member is happy with that. It will take some time. We have some notes, but we will find it and come back to the member on that.

**Hon ROBIN CHAPPLE:** I would like to thank the minister for clarifying those points. Certainly these amendments mirror the amendments to the Strata Titles Amendment Bill 2018 and the conditions that were established under that bill, so it will get the Greens' full support.

**Hon DONNA FARAGHER:** I also indicate that the opposition will support the amendment. It is lucky we had those discussions behind the Chair so we have the supplementary notice paper and we can make the bill consistent with the Strata Titles Amendment Bill 2018.

**Hon Stephen Dawson:** Hear, hear!

**Hon DONNA FARAGHER:** Thank you very much, minister. I am happy to indicate that we will support this amendment, which, as Hon Robin Chapple and the minister mentioned, reflects the amendments moved in the strata titles legislation, but also that arose as a result of an issue that was raised through the Standing Committee on Legislation inquiry.

**Hon STEPHEN DAWSON:** If I can take this opportunity to answer Hon Rick Mazza's question, the answer to his question is no.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 150: Endorsement of subdivision approval on plan —**

**Hon STEPHEN DAWSON:** I move —

Page 185, lines 17 and 18 — To delete “modifications set out in the regulations.” and substitute —  
appropriate modifications.

Again I advise the chamber that this amendment mirrors an amendment made by the house to the Strata Titles Amendment Bill 2018 in response to recommendation 7 of the Standing Committee on Legislation. Again, it is a Henry VIII clause and for the purposes of consistency this amendment is moved.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 151 to 158 put and passed.**

**Clause 159: Arrangements for independent advice or representation for owners —**

**Hon STEPHEN DAWSON:** I move —

Page 193, lines 3 to 13 — To delete the lines and substitute —

- (1) The regulations —
  - (a) must require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the community titles scheme proposed to be terminated to obtain independent advice or representation in connection with the proposal; and
  - (b) must specify arrangements for obtaining fuller or more extensive advice or representation for a class or classes of owner identified in or under the regulations as vulnerable, having regard to —
    - (i) age, illness, trauma, disability or other factors that may impair the ability of an owner to consider and make an informed decision in relation to a termination proposal; or
    - (ii) financial disadvantage which would significantly impair the ability of the owner to bear the cost of obtaining appropriate professional advice in relation to a termination proposal.
- (2) Without limitation, the arrangements may include a requirement for the proponent of a termination proposal to pay an amount to a trustee to be held in trust for owners to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal.
- (3) The regulations may specify terms of a trust referred to in subsection (2).

This amendment to clause 159 mirrors the amendment made to clause 83, proposed section 190, of the Strata Titles Amendment Bill 2018. Again, that was made in response to recommendation 4 of the Standing Committee on Legislation. This amendment provides that regulations must require the proponent to enter into arrangements for all owners to obtain independent advice or representation in connection with a termination proposal. It provides for fuller or more extensive advice or representation for a class of owner identified in the regulations as vulnerable. It outlines some factors the regulations will have regard to when identifying a class or classes of owner as vulnerable. It enables the regulations to specify the terms of the trust under which the money paid by the proponent

to the trustee is to be held and paid out. Further, it deletes the note below current clause 159 because that note will be unnecessary if this amendment is passed.

**Hon DONNA FARAGHER:** I indicate that the opposition will support this amendment. It is an important safeguard, particularly for all owners to have this ability to enter into specified arrangements in the obtaining of independent advice or representation in connection with a proposal. But, in particular, it obviously is designed to provide greater assistance to those owners who would be classified as vulnerable.

I have one query, though, in the context of the title scheme and the tiers. If there is a proposal to terminate the scheme in total—that is, from tier 1 to tier 3—I presume based on this that every owner in each of those tiers would be eligible to enter into the arrangements that are outlined within this section?

**Hon STEPHEN DAWSON:** Yes, that is correct. They would be.

**Hon Donna Faragher:** You're dealing with quite a few.

**Hon STEPHEN DAWSON:** It could be.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 160: Termination by single owner —**

**Hon STEPHEN DAWSON:** I move —

Page 194, lines 1 to 5 — To delete the lines and substitute —

(3) *The Planning and Development Act 2005* applies to the required approval subject to —

- (a) the modification that a reference to subdivision is to be read as including a reference to termination of a community scheme; and
- (b) any other appropriate modifications.

Again, this amendment removes a Henry VIII clause. It mirrors the amendment made by the chamber to the equivalent section of the Strata Titles Amendment Bill—proposed section 191(2)(b)—in response to recommendation 8 of the Standing Committee on Legislation.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 161: Scheme disputes —**

**Hon DONNA FARAGHER:** Part 12 deals with tribunal proceedings, and clause 161 deals in particular with scheme disputes. I seek some clarity from the minister. Similar to the strata titles legislation, there are two opportunities for objecting owners to seek an order through the State Administrative Tribunal. I want to clarify that this is the same process for an “objecting owner”—I am going to use that term. I want to make sure I am dealing with the right clause. This one relates to a situation in which the corporation is agreeing, by ordinary resolution or the resolution outlined through this process, that termination proposals can be considered. I want to be clear on this. That is that case. The objecting owner can go to SAT to seek an order that in fact the resolution has not been passed. I want to clarify that this is a similar provision to the one in the Strata Titles Amendment Bill, in the way I have just outlined.

**Hon STEPHEN DAWSON:** Yes, the member is correct. First, one owner can obtain an order from SAT to bring an application on behalf of the community corporation—that is clause 162(1)—and, second, they can apply to SAT for an order to prevent termination proposals being submitted to the community corporation for any period, including, for example, five years, to enable those owners to live in peace if they are being pursued by a developer.

**Clause put and passed.**

**Clause 162: Procedure —**

**Hon DONNA FARAGHER:** In similar terms to what I just asked with respect to clause 161, I again seek clarification from the minister that this is another safeguard with respect to an ability for an objecting owner to go to SAT with a request that an order be made that no further proposals be put to the corporation for X number of years. I obviously recognise that SAT would have to agree to that and that there are mechanisms through that, but this is one mechanism for them to do that.

**Hon STEPHEN DAWSON:** That is correct.

**Clause put and passed.**

**Clauses 163 to 224 put and passed.**

**Clause 225: Part 10 Division 5A inserted —**

**Hon STEPHEN DAWSON:** I move —

Page 231, lines 15 to 17 — To delete the lines and substitute —

the meaning of the *Community Titles Act 2018*.

This amendment amends clause 225 of the bill and relates to suggested amendment 6 in the letter from the Strata Community Association WA, which Hon Donna Faragher raised in debate on the Strata Titles Amendment Bill on 18 September this year. This amendment will delete the following words from proposed section 164A(3) of the Planning and Development Act 2005 —

or a strata scheme within the meaning of the *Strata Titles Act 1985*.

This means that under proposed section 164A of the Planning and Development Act, the integration of subdivision and development approvals will be generally necessary for community schemes. SCAWA's concern was with the application of proposed section 164A(3) to strata schemes and not to community schemes. SCAWA was concerned that proposed section 164A(3) implied that there was a default requirement for all strata schemes that subdivision and development applications needed to be submitted concurrently. This amendment 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 for the reasons the minister has outlined, the opposition is happy to support the amendment.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 226 to 273 put and passed.**

**Title put and passed.**

**Bill reported, with amendments.**