

WESTERN AUSTRALIA
LEGISLATIVE COUNCIL
AMENDMENTS AND SCHEDULES
Supplementary Notice Paper No. 80
Issue No. 5
THURSDAY, 18 OCTOBER 2018

STRATA TITLES AMENDMENT BILL 2018 [80-2]

When in committee on the *Strata Titles Amendment Bill 2018*:

Clause 83

Committee recommendation 3: To move —

1/83 Page 263, lines 23 to 28 — To delete the lines and insert:

- (i) provide, in accordance with the regulations, details of proposed arrangements for obtaining independent advice or representation referred to in section 190; and

Minister for Environment representing the Minister for Lands: To move —

8/83 Page 264, line 5 — To delete “section 175” and insert:

section 174

Committee recommendation 6: To move —

2/83 Page 265, lines 1 to 7 — To delete the lines and insert:

- (2) The *Planning and Development Act 2005* applies to the application subject to the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme.

Minister for Environment representing the Minister for Lands: To move —

9/83 Page 265, lines 1 to 7 — To delete the lines and insert:

- (2) The *Planning and Development Act 2005* applies to the application subject to —
 - (a) the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme; and
 - (b) any other appropriate modifications.

Committee recommendation 1: To move —

3/83 Page 266, after line 22 — To insert:

178A. Reference of full proposal to independent advocate

- (1) In this section —
independent advocate means a person to whom a full proposal is referred under subsection (2).
- (2) A strata company to which a full proposal is submitted under section 178 must refer the proposal for review and assessment to a person who —
 - (a) is independent of the strata company and the proponent of the termination proposal; and
 - (b) satisfies any requirements of the regulations regarding experience or qualifications.
- (3) The independent advocate must, in accordance with the regulations —
 - (a) review the full proposal; and
 - (b) provide the strata company with an independent assessment of the full proposal; and
 - (c) at a time and place arranged with the strata company, make a presentation of its assessment open to the persons mentioned in section 178(4)(a), conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.
- (4) The independent advocate must —
 - (a) endeavour to identify any owners of lots for whom arrangements for fuller or more extensive advice or representation are to be made under regulations made under section 190(1)(b); and
 - (b) advise those owners of their entitlements under regulations made under section 190; and
 - (c) if requested by those owners, refer them to independent providers of the advice or representation which they are to obtain; and
 - (d) if requested by those owners, assist them in obtaining benefits under the trust referred to in section 190(2).
- (5) In any proceedings before the Tribunal under Part 13 in which there is a dispute about whether an owner of a lot in the strata titles scheme is entitled to a fuller or more extensive advice or representation under regulations made under

section 190(1)(b) or is entitled to benefit under a trust referred to in section 190(2), the independent advocate may represent the owner in the proceedings.

- (6) The strata company —
- (a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and
 - (b) may charge fees under section 189 to cover those costs.

Minister for Environment representing the Minister for Lands: To move —

10/83 Page 266, after line 22 — To insert:

178A. Reference of full proposal to independent advocate

- (1) In this section —
independent advocate means a person to whom a full proposal is referred under subsection (2).
- (2) A strata company to which a full proposal is submitted under section 178 must refer the proposal for review and assessment to a person who —
- (a) is independent of the strata company and the proponent of the termination proposal; and
 - (b) satisfies any requirements of the regulations regarding experience or qualifications.
- (3) The independent advocate must, in accordance with the regulations —
- (a) review the full proposal; and
 - (b) provide the strata company with an independent assessment of the full proposal; and
 - (c) at a time and place arranged with the strata company, make a presentation of its assessment open to the persons mentioned in section 178(4)(a), conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.
- (4) The independent advocate must, in accordance with the regulations —
- (a) endeavour to identify any owners of lots for whom arrangements for fuller or more extensive advice or representation are to be made under regulations made under section 190(1)(b); and
 - (b) advise those owners of their entitlements under regulations made under section 190; and
 - (c) if requested by those owners, refer them to independent providers of the advice or representation which they are to obtain; and
 - (d) if requested by those owners, assist them in obtaining benefits under the trust referred to in section 190(2).
- (5) In any proceedings before the Tribunal under Part 13 in which there is a dispute about whether an owner of a lot in the strata titles scheme is entitled to fuller or more extensive advice or representation under regulations made under section 190(1)(b) or is entitled to benefit under a trust referred to in section 190(2), the independent advocate may, in accordance with the regulations, represent the owner in the proceedings.

- (6) The regulations may prescribe how a person's independence is to be determined for the purposes of subsection (2)(a).
- (7) The strata company —
 - (a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and
 - (b) may charge fees under section 189 to cover the cost of paying those fees and reimbursing those expenses.

Committee recommendation 5: To move —

4/83 Page 270, lines 10 to 12 — To delete the lines and insert:

- (4) The regulations must prescribe matters relating to the determination of the market value of a lot for a termination valuation report, including a valuation methodology that takes account of —
 - (a) relevant recent sales history; and
 - (b) the highest and best use of the lot; and
 - (c) the value attributable to the owner's interest in the common property of the strata titles scheme.

Minister for Environment representing the Minister for Lands: To move —

11/83 Page 273, line 26 — To delete the words “the independent person must”.

Minister for Environment representing the Minister for Lands: To move —

12/83 Page 275, lines 23 to 27 — To delete the lines and insert:

- (b) if all or part of the parcel of the strata 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

Minister for Environment representing the Minister for Lands: To move —

13/83 Page 281, after line 29 — To insert:

- (17A) If the Tribunal orders a person under subsection (17)(c) 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 strata titles scheme to make a payment to that person in respect of the discharge, withdrawal or removal of the estate, interest or right.
- (17B) If the whole or part of the parcel of a strata 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 strata 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.
- (17C) If the whole or part of the parcel of a strata 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 strata 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.
- (17D) If the whole or part of the parcel of a strata titles scheme is subject to a lease or licence not referred to in subsection (17B) or (17C), the Tribunal may, subject to any other written law, order that —
- (a) the lease or licence is terminated on the termination of the strata 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.

Committee recommendation 7: To move —

5/83 Page 282, lines 25 and 26 — To delete the lines and insert:

request under subsection (1).

Minister for Environment representing the Minister for Lands: To move —

14/83 Page 282, line 26 — To delete the line and insert:

appropriate modifications.

Committee recommendation 4: To move —

6/83 Page 286, lines 5 to 17 — To delete the lines and insert:

- (1) The regulations —
 - (a) shall require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the strata titles scheme proposed to be terminated to obtain independent advice or representation in connection with the proposal; and

- (b) shall 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) advanced 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.

Minister for Environment representing the Minister for Lands: To move –

15/83 Page 286, lines 5 to 17 — To delete the lines and insert:

- (1) The regulations —
 - (a) must require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the strata 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).

Committee recommendation 8: To move —

7/83 Page 287, lines 1 to 8 — To delete the lines and insert:

- (2) The *Planning and Development Act 2005* applies to the required approval subject to the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme.

Minister for Environment representing the Minister for Lands: To move —

16/83 Page 287, lines 1 to 8 — To delete the lines and insert:

- (2) 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 strata titles scheme; and
 - (b) any other appropriate modifications.

