



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Economic Policy Scrutiny Committee**

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**Agents and Land Legislation  
Amendment Bill 2018**

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**November, 2018**



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## Chair's Preface

This report details the Committee's findings regarding its examination of the Agents and Land Legislation Amendment Bill 2018.

The Bill makes amendments to a number of related Acts including the *Agents Licensing Act*, the *Unit Titles Act*, *Unit Titles Schemes Act*, *Interpretation Act* and the *Northern Territory Civil and Administrative Tribunal Act*.

The two submissions received by the Committee were supportive however did raise some concerns particular to the provisions. Upon further investigation and with intensive consideration of all the evidence received, the Committee is satisfied that the advice provided by the Attorney-General adequately addresses the issues raised and has recommended that the Assembly pass the Bill.

On behalf of the Committee, I wish to thank those who made submissions to the inquiry and to the Attorney-General for responding to the Committee's questions. I would also like to thank the Department of the Legislative Assembly for the support it provided to the Committee and the Committee Members for their support in the examination of this Bill.

A handwritten signature in black ink that reads "Tony Sievers". The signature is written in a cursive style and is underlined with a single horizontal line.

**Mr Tony Sievers MLA**

**Chair**

## Committee Members

	<b>Tony Sievers MLA</b> Member for Brennan	
	<b>Party:</b>	Territory Labor
	<b>Committee Membership</b>	
	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
	Chair:	Economic Policy Scrutiny
	<b>Jeff Collins MLA</b> Member for Fong Lim	
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	Sessional:	Economic Policy Scrutiny
	Chair:	Northern Territory Harm Reduction Strategy for Addictive Behaviours
	<b>Gary Higgins MLA</b> Member for Daly	
	<b>Party:</b>	Country Liberals
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	Select:	Northern Territory Harm Reduction Strategy for Addictive Behaviours
	<b>Lawrence Costa MLA</b> Member for Arafura	
	<b>Party:</b>	Territory Labor
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	Sessional:	Economic Policy Scrutiny
	<b>Yingiya Mark Guyula MLA</b> Member for Nhulunbuy	
	<b>Party:</b>	Independent
	<b>Committee Membership</b>	
	Sessional:	Economic Policy Scrutiny
On 28 August 2018, Member for Nelson, Mr Gerry Wood MLA was discharged from the Committee and replaced by the Member for Nhulunbuy, Mr Yingiya Mark Guyula MLA.		

## **Committee Secretariat**

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## **Acknowledgments**

The Committee acknowledges the organisations that have made written submissions to this inquiry and the Attorney-General for providing comments on concerns raised in submissions.

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## Terms of Reference

### Sessional Order 13

#### *Establishment of Scrutiny Committees*

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
  - (a) The Social Policy Scrutiny Committee
  - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
  - (a) any matter within its subject area referred to it:
    - (i) by the Assembly;
    - (ii) by a Minister; or
    - (iii) on its own motion.
  - (b) any bill referred to it by the Assembly;
  - (c) in relation to any bill referred by the Assembly:
    - (i) whether the Assembly should pass the bill;
    - (ii) whether the Assembly should amend the bill;
    - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
      - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
      - (B) is consistent with principles of natural justice; and
      - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
      - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
      - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
      - (F) provides appropriate protection against self-incrimination; and
      - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
  - (I) provides for the compulsory acquisition of property only with fair compensation; and
  - (J) has sufficient regard to Aboriginal tradition; and
  - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
  - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
  - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017



## **Recommendations**

### **Recommendation 1**

The Committee recommends that the Legislative Assembly pass the Agents and Land Legislation Development Amendment Bill 2018.

# 1 Introduction

## Introduction of the Bill

1.1 The Agents and Land Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Attorney General and Minister for Justice, the Hon Natasha Fyles MLA, on 15 August 2018. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 27 November 2018.<sup>1</sup>

## Conduct of the Inquiry

1.2 On 24 August 2018 the Committee called for submissions by 19 September 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service.

1.3 The Committee received submissions from the:

- Darwin Community Legal Service
- Law Society of the NT

## Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

- (i) whether the Assembly should pass the bill;
- (ii) whether the Assembly should amend the bill;
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
- (iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with no amendments.

### Recommendation 1

**The Committee recommends that the Legislative Assembly pass the Agents and Land Legislation Amendment Bill 2018.**

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<sup>1</sup> Fyles, Hon Natasha MLA, Attorney-General and Minister for Justice, Agents and Land Legislation Amendment Bill 2018 (Serial 57), *Explanatory Speech*, Northern Territory Legislative Assembly, 15 August 2018, <http://www.territorystories.nt.gov.au/jspui/bitstream/10070/300579/2/Debates%20Day%202%20-%2015%20August%202018.pdf>

## **Report Structure**

- 1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

## 2 Provisions of the Bill

### Purpose and Overview of the Bill

2.1 The Bill amends:

- (a) the *Agents Licensing Act* to provide for:
  - the annual audit of the Agents Licensing Fidelity Guarantee Fund (the Fund)
  - additional and alternative members of the Fund and prohibit participation by members where there is a conflict of interest
- (b) the *Unit Titles Act*, *Unit Titles Schemes Act* and *Interpretation Act* to provide for:
  - new process for making by-laws
  - validation of earlier by-laws
  - expansion of the role of the schemes supervisor and allow funding of the role from the Fund
  - the NT Civil and Administrative Tribunal to appoint an administrator of a dysfunctional body corporate.
- (c) the *Northern Territory Civil and Administrative Tribunal Act* to provide that the internal review provisions under that Act are subject to contrary provisions in other legislation.<sup>2</sup>

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<sup>2</sup> *Explanatory Statement*, Agents and Land Legislation Amendment Bill 2018 (Serial 57), p.1, <https://parliament.nt.gov.au/committees/EPSC/57-2018>

### 3 Examination of the Bill

#### Introduction

- 3.1 The two submissions on the Bill were generally supportive but did raise some concerns or questions regarding particular provisions. In response, the Committee wrote to the Attorney-General and Minister for Justice on 3 October 2018 to ask questions arising from the submissions on the use of the Fidelity Fund, the appointment of administrators and the review of by-laws, to which the Attorney-General responded on 8 October 2018.<sup>3</sup>

#### Use of Agents Licensing Fidelity Guarantee Fund

- 3.2 Clause 26 of the Bill proposes to insert section 102A into the *Unit Title Schemes Act* to enable the Minister to use part of the moneys of the Agents Licensing Fidelity Guarantee Fund to cover the costs of the office of the schemes supervisor.<sup>4</sup>
- 3.3 The Darwin Community Legal Service (DCLS) expressed concern that financing the operating costs of the office of the schemes supervisor may reduce the funds available for tenancy advice and support, and proposed instead that the schemes supervisor be funded from a levy on body corporate management agencies.<sup>5</sup>
- 3.4 The Law Society questioned whether there is sufficient nexus between the *Agents Licensing Act* and the *Unit Title Schemes Act*, particularly in relation to the source of the money accumulated in the Fidelity Fund.<sup>6</sup>
- 3.5 In her advice to the Committee, the Attorney-General advised that using the Fidelity Fund to cover the costs of the schemes supervisor would not impact the funding of DCLS' Tenancy Advice Service. Regarding the nexus between the source and use of the Fund, the Attorney-General further advised:

Given that body corporate managers would benefit from the clarity and certainty that would come from the revised activities of the schemes supervisor (educational material, dispute resolution etc.), it seems appropriate, given the close nexus, that funding for those activities be derived from the Fund which those managers contribute to (i.e. the Agents Licensing Fidelity Guarantee Fund).

Likewise, there is a nexus between the provision of information to unit holders, as that information relates to their rights and obligations in terms of their specific consumption of real estate products. In this regard, unit holders are not 'the general public' at large (similar to tenants). It is also intuitive to note that the REINT, as the peak industry body, has been supportive of such an approach to funding of the expanded activities of the schemes supervisor.<sup>7</sup>

<sup>3</sup> Fyles, Hon Natasha MLA, Attorney-General and Minister for Justice, Agents and Land Legislation Amendment Bill 2018 (Serial 57), *Written responses to questions from the Economic Policy Scrutiny Committee*, <https://parliament.nt.gov.au/committees/EPSC/57-2018>

<sup>4</sup> Agents and Land Legislation Amendment Bill 2018 (Serial 57), Clause 26, pp.13-14, <https://parliament.nt.gov.au/committees/EPSC/57-2018>

<sup>5</sup> Darwin Community Legal Service (DCLS), Submission No. 1, p.2

<sup>6</sup> Law Society NT, Submission No. 2, p.2

<sup>7</sup> Fyles, *Written responses to questions from the Economic Policy Scrutiny Committee*, p.3, <https://parliament.nt.gov.au/committees/EPSC/57-2018>

## Appointment of administrators

- 3.6 Clause 24 proposes to insert a division into the *Unit Titles Schemes Act* to enable the NTCAT to appoint an administrator for a body corporate.<sup>8</sup>
- 3.7 The Law Society expressed the view that, given the significant powers of an Administrator, it would be of assistance to NTCAT if the Bill was amended to provide criteria necessary to satisfy the appointment of an administrator and what qualifications that administrator may need to hold.<sup>9</sup>
- 3.8 In response to this view, the Attorney-General advised:

The proposed NTCAT functions were developed in consultation with the NTCAT, who are best placed to assess the level of guidance required.

The skills and qualifications of an administrator may necessarily be influenced by circumstances unique to the particular application. Prescribing considerations may inadvertently restrict the NTCAT's discretion when considering the suitability of the person put forth by the applicant. The proposed section 98B(3) requires the NTCAT to be satisfied that an order appointing an administrator is justified sufficiently, which compels the NTCAT to take all appropriate matters into consideration, including qualifications.<sup>10</sup>

## Review of by-laws

- 3.9 The DCLS commended the requirement for by-laws to be reviewed by the schemes supervisor, but recommended that proposed s 95B(4) be amended to include as a criteria for review that the by-law is not 'oppressive' to minority unit holders.<sup>11</sup>
- 3.10 The Attorney-General advised:

The term oppressive is somewhat prescriptive and limiting. The bar to establish that a by-law was tyrannical and overpowering would be very high. Unusual or unexpected, as is presently within proposed section 95B(4)(b), sets a lower bar that would necessarily capture oppressive by-laws - if they are oppressive, then it is more likely than not that they would be unexpected, and therefore unusual. Inclusion of the term oppressive in the same subsection would tend to reduce the broadness of 'unusual or unexpected' as they would then be considered in the vein of oppressiveness.<sup>12</sup>

## **Committee's Comments**

- 3.11 The Committee considers that the advice provided by the Attorney-General addresses the issues raised in submissions.

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<sup>8</sup> Agents and Land Legislation Amendment Bill 2018 (Serial 57), Clause 24, pp. 10-13, <https://parliament.nt.gov.au/committees/EPSC/57-2018>

<sup>9</sup> Law Society NT, Submission No. 2, p.2

<sup>10</sup> Fyles, *Written responses to questions from the Economic Policy Scrutiny Committee*, p.5, <https://parliament.nt.gov.au/committees/EPSC/57-2018>

<sup>11</sup> Darwin Community Legal Service (DCLS), Submission No. 1, p. 5.

<sup>12</sup> Fyles, *Written responses to questions from the Economic Policy Scrutiny Committee*, p.5, <https://parliament.nt.gov.au/committees/EPSC/57-2018>

## Appendix A: Submissions Received

### Submissions Received

1. Darwin Community Legal Service
2. Law Society NT

**Note:** Copies of submissions are available at:

<https://parliament.nt.gov.au/committees/EPSC/59-2018>

## Bibliography

*Agents Licensing Act* (NT)

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*Interpretation Act* (NT)

*Northern Territory Civil and Administrative Tribunal Act* (NT)

*Termination of Units Plans and Unit Title Schemes Act* (NT)

*Unit Titles Act* (NT)

*Unit Titles Schemes Act* (NT)