



Western Australia

ADVISING FAMILIES ACROSS GENERATIONS

3 May 2021

The Hon Dr Antonio Buti MLA
Minister for Finance; Lands; Sport and Recreation; and Citizenship and Multicultural Interests
By email only: Minister.Buti@dpc.wa.gov.au

Dear Minister

Law Reform Commission of Western Australia - Project #78 Unilateral Severance of Joint Tenancy; Extension to Legislative Perpetuity Period

My name is Jonathan Haeusler. I am a solicitor practising in the area of Wills and Estates and a committee member of the Western Australian branch of the Society of Trust and Estate Planners. I write to you in the latter capacity.

Preliminary Matters

First, I would like to congratulate you and the State Labor Government for your resounding victory in the election held in March.

About STEP

Second, I would like say a little (by way of introduction, given you may not have encountered us before) about the Society of Trust and Estate Planners (**STEP**):

- STEP was set up in 1993. It has over 21,000 members worldwide in 110 branches and chapters across 96 countries. The WA Branch (**STEP WA**) has been operating since 2009 and has over 80 members.
- Our branch represents professionals from across WA who are specialists in trusts, estate planning and in supporting the needs of families generally. Our membership includes lawyers, accountants, financial wealth advisers and trustee company professionals. Our members bring a multi-disciplinary approach for the benefit of their clients.
- The objective of STEP professionals is to advance the interests of families across generations. This often involves us identifying issues of relative importance to families and bringing those issues to the attention of those who can make a positive difference.

Unilateral Severance of Joint Tenancy

Third, and the substantive reason for which I write, I would like to pick up on the following correspondence exchanged between STEP WA and the State Government in late 2020:

- A letter dated 30 October 2020 from STEP WA's Chair (Jim O'Donnell) to the State Attorney General (the Hon John Quigley MLA) concerning the Western Australian Law Reform Commission's 1994 Report titled "Project Number 78: Joint Tenancy & Tenancy in Common" (**the Report**). In summary Mr O'Donnell:
 - highlighted the Report's findings in respect of the Western Australian approach to unilateral severance of joint tenancy (namely, that existing Western Australian procedures are onerous and unclear and should be appropriately reformed);
 - noted that the Law Reform Commission had since (in its 2002 report) reaffirmed the 1994 recommendations;

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- confirmed that STEP WA supports the Law Reform Commission's proposed severance of joint tenancy reforms and believes there is now a pressing need to give them priority; and
 - queried whether the WA Government will support the proposed reforms.
 - A letter dated 2 December 2020 from the then Minister for Lands (the Hon Ben Wyatt MLA) to Mr O'Donnell by way of response. In summary the Minister:
 - advised that Landgate is broadly supportive of the Report's recommendations and would consider those that relate to unilateral severance of joint tenancy as part of its future legislative reform program;
 - noted that with the 2021 election looming, he was unable to provide a timeframe for when this might occur; and
 - invited us to contact Mr Bruce Roberts, General Manager Registration Services at Landgate for further assistance in respect of the matter.

Copies of both letters are **attached** for your reference.

We have simultaneously with this letter, as per your predecessor's suggestion, written to Mr Roberts (at Landgate) in terms similar to those contained in the 30 October 2020 letter referred to above.

With the 2021 election now behind us, and the Government in a strong position from which to pursue its legislative agenda, can you please confirm whether the Government is still supportive of the proposed reforms for unilateral severance of joint tenancy?

Perpetuity Period

As the Minister for Lands, your responsibility extends to a range of relevant legislation, including the Property Law Act, which contains, among other things, provisions governing the determination of the perpetuity period affecting trusts in this State.

You may be aware of a recent trend across common law jurisdictions towards extending the legislative perpetuity period. Both the UK and New Zealand for example have, in recent years, extended the perpetuity period from 80 to 125 years, and there are moves afoot in both Queensland and the Northern Territory to do the same.

STEP WA is of the view that the Western Australian perpetuity period (presently 80 years under s.101 of the Property Law Act) is too short, having regard to life expectancies, and should be similarly extended.

Would the Government support an amendment to our perpetuity period (i.e. under s.101) so that it too defaults to 125 years?

Please contact me if you have any queries in relation to the above matters.

Yours sincerely



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