

29 March 2023

The Hon. John Quigley MLA
Attorney General of Western Australia
By email only: John.quigley@mp.wa.gov.au

Dear Attorney General,

RE: Endorsement of the STEP Western Australia Submission on Proposal to Extend Legislative Perpetuity Period

We the Society of Trust & Estate Practitioners Australia Pty Limited (STEP Australia) represent professionals from across Australia who are specialists in trusts, estate planning and in supporting the needs of families (young and old, wealthy and modest). The objective of a STEP Professional is to advance the interests of families across generations. This often involves us in identifying issues of relative importance to families and bringing these to the attention of those who can make a positive difference. This is the purpose of this submission.

STEP Australia's membership includes lawyers, accountants, financial wealth advisors and trustee company professionals from across Australia; our members bring a multi-disciplinary approach to the benefit of their clients. It is this unique multi-disciplinary approach that supports this submission.

STEP Australia endorses the submission prepared by STEP Western Australia dated 3 August 2022 concerning the "Proposal to Extend Legislative Perpetuity Period".

More detailed information is contained in the STEP Western Australia Submission attached.

If you would like to discuss any of the above, please contact myself, Ian Raspin TEP, STEP Australia Board Chair, on email iraspin@bnrpartner.com.au.

Yours sincerely

Ian Raspin TEP

Chair of STEP Australia

CC: Sarah Walton TEP, STEP Western Australia Committee Member
E: Sarah.Walton@anz.com

3 August 2022

The Hon. John Quigley MLA
Attorney General of Western Australia

By email only: John.quigley@mp.wa.gov.au

Dear Attorney General

Proposal to Extend Legislative Perpetuity Period - section 101 of the Property Law Act

I write to you as a committee member of the Society of Trust and Estate Practitioners of Western Australia (STEP WA).

I refer to STEP WA's previous correspondence on the above, specifically:

- Our letter to the Attorney General dated 7 September 2021; and
- Our letter to Dr Buti dated 3 May 2021.

I **enclose** a copy of the above correspondence for ease of reference.

STEP WA considers that the approach taken to the rule against perpetuities by section 101 of the *Property Law Act 1969* in WA is antiquated. It puts WA at a significant disadvantage to other trust jurisdictions. Priority should be given to simplify and update WA's statutory approach to the rule against perpetuities.

STEP WA recommends that:

1. The maximum period of years that may be specified for the perpetuity period in WA under section 101 of the Act should be reviewed and amended to:
 - (a) take into account increased life expectancies; and
 - (b) bring Western Australia closer into line with the statutory perpetuity periods adopted in other comparable trust jurisdictions
2. Section 101 of the Act should be amended to achieve greater consistency with the other States and Territories by adopting a fixed period of years as the default perpetuity period for trusts in WA.

You may be interested to note that:

- The *Perpetuities and Accumulations Act 2009* (UK) and the *Trust Act 2019* (NZ) both adopted a single statutory perpetuity period of **125 years**, replacing 1964 legislation which our section 101 (and many other States and common law countries) replicated.
- The perpetuity period in Singapore was increased to **100 years** in 2004.
- 31 States of the USA have adopted a period of **90 years** in accordance with the *US Uniform Statutory Rule Against Perpetuities* of 1986 in place of the common law rule of a life in being plus 21 years.
- A growing number of trust jurisdictions have **abolished** the rule against perpetuities, e.g. South Australia, Ireland, Hong Kong, Guernsey and Jersey.

The common law default position leaves too much uncertainty for trusts in WA because in many cases no life in being is specified in the instrument creating the trust.

Deed providers across our country seem now to be so accustomed to the default statutory periods in other States that no thought is given to how our now peculiar provisions in WA operate. Often a vesting date is specified as 80 years after the date of establishing the trust, however no period of years is specified for the perpetuity period, upon the assumption that the default perpetuity period is also 80 years. Applying the common law default of a life in being plus 21 years, it then becomes unclear if the perpetuity period will expire and require the trust to vest prior to the nominated vesting date.

This may appear to be a discrete and esoteric issue that some trust practitioners might have to grapple with. However, when you keep in mind ATO statistics that there are now close to one million trusts operating in Australia, this is actually a very important and widespread issue affecting many trusts and individuals in our State.

Is the McGowan Government willing to show leadership on this issue by:

- (1) initiating a review of the rule against perpetuities under section 101 of the *Property Law Act 1969*;
- (2) preparing a consultation paper on amending section 101 following that review; and
- (3) announcing a timeframe for the review and for consultation and submissions; or
- (4) referring the issue to the Law Reform Commission of Western Australia (**LRCWA**)?

Please let me know if you would like to meet with STEP WA to discuss any of the above points, or if you would like STEP WA to provide a substantive preliminary paper on the topic for you to consider prior to initiating a review or referring the issue to the LRCWA.

Thank you in anticipation.

Yours sincerely

Ms Sarah Walton
Committee Member, STEP WA

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Western Australia

ADVISING FAMILIES ACROSS GENERATIONS

7 September 2021

The Hon. John Quigley MLA
Attorney General of Western Australia
By email: john.quigley@mp.wa.gov.au

Dear Attorney General

Proposal to Extend Legislative Perpetuity Period

My name is Jonathan Haeusler. I write to you on behalf of The Society of Trust and Estate Practitioners of Western Australia (**STEP**). You will doubtless recall us from past submissions we have put before you, including for example in respect of the *Administration Amendment Bill* and the *Legislation Bill*. (We are delighted by the progress both Bills have recently made through the Houses).

We write on this occasion regarding the Western Australian perpetuity period, which is presently limited to 80 years where a period of years is specified in the instrument creating the trust (see s.101 of the Property Law Act).

You may be aware of a recent trend across common law jurisdictions towards extending the statutory perpetuity period. Both the UK and more recently New Zealand have extended their statutory perpetuity periods from 80 to 125 years, and we are aware that there are also moves afoot in both Queensland and the Northern Territory to do the same. South Australia has gone one step further and done away with the perpetuity period altogether.

STEP is of the view that the WA perpetuity period is too short and needs to be similarly increased in WA having regard to the fact that the life expectancy of our population, like other jurisdictions, has significantly increased since s.101 of the Property Law Act was enacted.

STEP is also concerned that the WA perpetuity period is inconsistent with and leaves WA trusts and trustees at a distinct disadvantage from other States because the statutory default of failing to specify a period of years for the perpetuity period in WA is that the period under the general law applies (a life in being plus 21 years).

In all other States, there is either an automatic statutory perpetuity period of years or a default period of years equal to the vesting date specified in the instrument creating the trust.

On 3 May 2021, we wrote to the Hon Dr Antonio Buti MLA (Minister for Finance; Lands; Sport and Recreation; and Citizenship and Multicultural Interests). We asked the Minister whether the Government would support amending the perpetuity period (i.e. – under section 101) to 125 years.

On 24 May 2021, Dr Buti responded stating that this was a portfolio responsibility of your office and that he had forwarded our letter to you.

We **enclose** a copy of our 3 May letter to Dr Buti for your reference. You will note that we made only very brief comments in respect of the Western Australian perpetuity period on page 2.

STEP is willing to provide the WA Government with a substantive submission with respect to extending the Western Australian perpetuity period to 125 years and amending s.101 of the Property Law Act to achieve greater consistency with comparable jurisdictions.

Please let us know if you would like a substantive submission from STEP.

Thank you in anticipation.

Yours sincerely

Jonathan Haeusler
Committee Member - STEP WA
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Telephone: +61 8 9481 2040

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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

Jonathan Haeusler
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