



Western Australia

ADVISING FAMILIES ACROSS GENERATIONS

30 October 2020

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

Dear Attorney General

**Law Reform Commission of Western Australia - Project #78
Unilateral Severance of Joint Tenancy**

In November 1994, the Law Reform Commission of WA delivered its Final Report titled "Project Number 78: Joint Tenancy & Tenancy in Common".

That Report contained a series of recommendations for changes to be made in relation to joint tenancy, including the introduction in Western Australia of a scheme to allow for unilateral severance of joint tenancy.

The Report noted that the existing procedures to sever joint tenancy were too onerous and unclear, unlike the simple provisions that had already been adopted in the other States (including New South Wales, Queensland, and Tasmania, which have had legislation in place for several decades).

The Report's recommendations are straightforward and are reproduced below:

Recommendation 5: Unilateral severance of joint tenancy should not be effective without written notice to the other joint tenants.

Recommendation 6: The law of unilateral severance should be reformed by inserting in the Transfer of Land Act 1893 a provision along the lines of section 59 of the Queensland Land Title Act 1994. However, the section should expressly empower the Registrar at his discretion to dispense with the requirement to produce the certificate of title to enable a transfer to be registered.

In 2002, the Law Reform Commission of WA published a Report to review developments with respect to the implementation of a number of previous Reports, including the recommendations contained in the 1994 Report.

The 2002 review noted that no legislative action had been taken to implement the 1994 recommendations.

Significantly, the 2002 review also noted that the 1994 recommendations remain current and worthwhile implementing.

STEP WA shares this view and considers there is now a more pressing need to give these reforms priority.

The Report pointed to cases where severance intentions have failed because of the failure to adhere to trust requirements. In our view these demonstrate the need for reform in this area.

We are aware of recent cases that highlight the importance of having a clear enabling provision to allow unilateral severance of a joint tenancy.

Our members have brought our attention to cases where families have had no option but to resort to litigation in order to achieve the desired outcome, including in circumstances where the relevant joint tenant whose interests would be served by severing the joint tenancy is elderly and incapacitated.¹

In some matters, court proceedings have ultimately been to no avail, as the relevant family member has died before the application went to trial. The average waiting time for trial and a decision in the Family Court of Western Australia is 2 to 3 years.

These simple reforms would reduce the need to undertake costly and time consuming litigation. If enacted, these measures would give families another option and may help take pressure off our already overworked and backlogged court system.

Our question for you is whether the WA Government would be willing to support the proposed reforms.

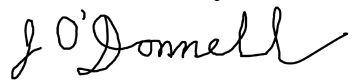
Please let us know if you would like a more substantive submission from STEP WA in support of these reforms, or assistance to formulate suitably worded enabling legislation.

Your primary point of contact for this submission is the chair of STEP WA's Policy Sub-Committee, Jim O'Donnell on 08 9426 6751 or jodonnell@jacmac.com.au.

It should be apparent to you by now that STEP WA is willing to work with the WA Government on any issues, points of law and possible reforms touching upon or concerning trust and estate matters, including incapacity, in this State. We are very willing to respond to questions.

¹ See e.g. *Layton and Layton* [2019] FCWA 145

Yours sincerely



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