LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mrs LJ Gerber MP
Ms SL Bolton MP
Ms JM Bush MP
Mr JE Hunt MP
Mr JM Krause MP

Staff present:
Mrs K O'Sullivan—Committee Secretary
Ms K Longworth—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Monday, 11 September 2023

Brisbane

MONDAY, 11 SEPTEMBER 2023

The committee met at 10.37 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Body Corporate and Community Management and Other Legislation Amendment Bill 2023. My name is Peter Russo, member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders, past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share.

With me here today are: Laura Gerber MP, member for Currumbin and the deputy chair; Sandy Bolton MP, member for Noosa; Jonty Bush MP, member for Cooper; Jason Hunt MP, member for Caloundra; and Jon Krause MP, member for Scenic Rim.

On 24 August 2023, the Hon. Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, introduced the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 into the Queensland parliament. The bill was referred to the Legal Affairs and Safety Committee for detailed consideration.

The purpose of today's briefing is to assist the committee with its inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to, or excluded from, the briefing at the discretion of the committee. I also remind committee members that departmental officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the Attorney-General or left to debate on the floor of the House.

These proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone present to turn your mobiles phones off or to silent mode.

GARVEY, Ms Sarah, Manager, Office of Regulatory Policy, Department of Justice and Attorney-General

GUINEA, Ms Belinda, Manager, Office of Regulatory Policy, Department of Justice and Attorney-General

McKARZEL, Mr David, Executive Director, Office of Regulatory Policy, Department of Justice and Attorney-General

REARDON, Mr David, Director, Office of Regulatory Policy, Department of Justice and Attorney-General

STARLING, Ms Nina, Director, Office of Regulatory Policy, Department of Justice and Attorney-General

CHAIR: I welcome departmental officers from the Department of Justice and Attorney-General. I now invite you to brief the committee, after which committee members will have some questions for you.

Mr McKarzel: Thank you for the opportunity to brief the committee about the Body Corporate and Community Management and Other Legislation Amendment Bill. Also joining me from DJAG are my colleagues from the Office of Regulatory Policy in Liquor, Gaming and Fair Trading: Ms Nina Starling, Director, ORP; Mr David Reardon, Director, ORP; Ms Belinda Guinea, Manager, ORP; and Ms Sarah Garvey, Manager, ORP.

As you know, the department has provided a written briefing on the bill. We have also provided a departmental response to the issues raised in written submissions for witnesses who attended the public hearing, as per the list that was available at the time the document was provided to the committee. As agreed with the committee secretary, department responses to the other over 70 remaining submissions we will provide to the committee by 15 September.

I will provide a quick overview of the bill. Many of the reforms to the BCCM Act that are in the bill originate from recommendations of the Property Law Review. This was conducted for the government by the Commercial and Property Law Research Centre at the Queensland University of Technology. Each of the reforms relating to community titles and the related framework was also considered by the Community Titles Legislation Working Group, which was established by the government to provide advice about specific issues impacting the community titles sector.

The working group is comprised of seven core members: the Australian College of Strata Lawyers; the Australian Resident Accommodation Managers Association; the Owners Corporation Network; the Queensland Law Society; the REIQ; the Strata Community Association; and the Unit Owners Association of Queensland. There were a range of other invited stakeholders who were consulted about the issues considered by the working group where those issues were in their area of interest or expertise.

The issues in the bill relating to the off-the-plan sales arose due to concerns in the marketplace about an increase in sellers using sunset clauses to terminate off-the-plan sales contracts, allegedly in some cases to relist the property for a much higher price. The bill also addresses concerns raised by property developers potentially accessing deposits early, putting these deposits potentially at risk.

The off-the-plan amendments were informed by stakeholder feedback, which included two surveys: one for consumers and one for property developers. The relevant peak stakeholders were also provided with the surveys and given the opportunity to provide written feedback, and that included members of the Community Titles Legislation Working Group, although obviously this is not exactly a community titles issue. Written feedback on the off-the-plan matters was also received from the Queensland Law Society, which was a working group member, as well as the Urban Development Institute of Australia—the UDIA—the Property Council and the Housing Industry Association. If it is okay, I will take you through some of the key changes that the bill implements.

CHAIR: Yes, please.

Mr McKarzel: First up, I will address scheme termination. One of the major parts of the bill is a new process for the termination of what are described as uneconomic community titles schemes. Based on the QUT's Property Law Review recommendations, the proposed economic reasons termination process seeks to assist lot owners achieve the collective sale and termination of their community titles schemes that are not, or within five years will not be, economically viable to repair or maintain or, separately, where all the lots are used for commercial purposes and those commercial purposes are no longer viable. This will ensure that, where an appropriate need is demonstrated, lot owners are able to take action to escape, basically, spiralling ownership costs or deteriorating building conditions while also taking advantage of the enhanced value of effectively selling the entire site. This would be possible under the bill even where a minority of owners do not agree to the sale and termination of the scheme. This is, in turn, expected to contribute to the creation of new developments that will assist in addressing Queensland's increasing housing needs, consistent with the outcomes of the Queensland Housing Summit.

The department acknowledges that a non-unanimous process for scheme termination is an extremely contentious issue because it potentially enables the forced sale of owners' lots and the ending of tenancies. We have heard evidence from various stakeholders and understandable concerns of residents who believe that such reform may place them at risk of being forced to sell and move, possibly far from their preferred community, even where the scheme is appropriately maintained and structurally sound. That is a concern that they have. We also heard from stakeholders representing the development sector who are eager to see existing under-utilised sites redeveloped and believe a simplified non-unanimous termination process that can be applied for any reason or for a broader range of reasons than the economic one could be adopted. The new process for economic reasons termination seeks an appropriate balance between preventing the type of outcomes of most concern to the owners while, at the same time, facilitating collective sales that will boost redevelopment activity.

While the process does allow a 75 per cent majority to terminate a scheme as a key measure, the process also puts in place a range of substantial protections for lot owners and tenants. These include a required demonstration of defined economic reasons to terminate based on independently provided comprehensive external reports. Then there is the capacity to dispute an economic reasons decision by a specialist adjudicator, with those adjudication costs to be covered by the body corporate.

There is also a requirement, then, for a detailed termination plan setting out how the scheme will be sold, for what price, estimates of the owners' shares of the proceeds of the sale and compensation arrangements for tenants.

The bill makes it clear that the requirements for compensation must be at least the compensation that would be payable if the state acquired the scheme, noting that that has regard to market value, highest and best use of land and also disturbance factors in determining compensation, so the fact that you have to leave and try to go somewhere else potentially. The requirement is for at least 75 per cent of all lot owners to agree to implement the termination plan. Also, an independent facilitator, subject to the conflict-of-interest provisions that are in the bill, will be appointed to assist with the implementation. Lot owners may apply to the District Court for an order that a termination plan not be implemented and lot owners or tenants may also apply for the plan to be varied. The body corporate will be responsible for the reasonable costs of those proceedings.

In regard to people concerned about the fate of their scheme potentially being left up to the courts in the event there is a dispute about termination, we would note that currently under the act a scheme can be terminated by direct application to the District Court by a body corporate, or by one or more owners, without any vote at all. No particular level of agreement is required. The body corporate is not responsible for the costs of a dissenting owner going off to the District Court asking for the scheme to be terminated under the current act. We understand that the court has only ever ordered two such terminations where a large majority of owners were seeking to terminate.

There have been some concerns raised that the new process—that is, the economic reasons process with 75 per cent required to terminate—is too complex and that a simpler process should be adopted. The view that we have taken and that the government has taken is that it is very difficult to find a more suitable, simpler approach that also provides sufficient protection for those minority lot owners. We have looked at other jurisdictions. It is not apparent that there is a simpler approach in any of the other jurisdictions. While the adoption of the type of approach represented by New South Wales, their strata renewal process, has been recommended by some, we would note that that process is not necessarily restricted to economic reasons in order to terminate and it actually requires mandatory judicial approval so you have to get the court to agree to the termination. It is effectively a process of achieving a 75 per cent majority agreement to terminate and then you must go to the courts. Whether that is the reason only a handful of terminations have been secured in New South Wales since 2016 or some other factor is not clear, despite us having consulted our colleagues down south. We are not proposing in this bill mandatory judicial approval for the economic reasons process, but we do have a pathway for judicial review, particularly if a minority lot owner is not happy with the decision-making process along the way.

There are also other body corporate amendments. The first one I would refer to is where the bill allows an adjudicator power to approve alternative insurance arrangements. To support this change, the bill will also provide for increased guidance around the process for making an application for alternative insurance and for deciding an application for alternative insurance. Currently, it is the commissioner only who makes decisions about alternative insurance. The bill will also extend the ability to make an application for an insurance order to buildings on lots included in a community titles scheme that are currently under what is called a standard format plan of subdivision and have a common wall with a building on an adjoining lot. That has not previously been the case so we have covered that.

The bill will also modernise and improve the operation of the act in relation to by-laws and other governance issues, including administrative and procedural matters. The bill seeks to make it easier for bodies corporate to tow vehicles in schemes. It clarifies that there is nothing in the BCCM Act preventing a body corporate from towing motor vehicles under another act or otherwise according to law. But—and this is a 'but'—where a relevant by-law is in place, the bill removes an impediment to bodies corporate towing a motor vehicle owned or operated by the owner or occupier. That impediment is: you may have the power to tow a vehicle by virtue of the towing act or some common law right, but if you have a by-law that relates to parking and/or towing and you wanted to tow that vehicle because it was blocking an emergency entrance then, although the by-law is there, you will not have to follow the by-law enforcement process before towing the vehicle. Having said that, despite the fact that you do not have to go through the enforcement process, the decision to tow is still subject to going to the commissioner and getting a decision on whether or not that was a reasonable decision. In order to make a timely removal of the vehicle, particularly in an emergency situation, we have lifted the enforcement process requirements where there is a by-law in place. Clarifying that is to avoid bodies corporate being inadvertently restricted from towing, particularly where there is obviously some risk. We have had issues and advice about people blocking emergency services equipment and all sorts of difficult issues.

The bill also seeks to protect residents in community titles schemes from the harmful effects of second-hand smoke from smoking products. This includes tobacco products, herbal cigarettes, loose smoking blends, a thing that is intended to be smoked in a hookah and personal vaporisers. The bill will permit a body corporate to make a by-law to prohibit or restrict smoking on all or part of the common property or on body corporate assets and on all or part of an outdoor area of a lot—that is, somebody's lot and not the body corporate's area, or an area that an occupier of a lot may use under an exclusive by-law. The amendment allows for a tailored response to smoking issues by each body corporate that considers the wishes of owners in each scheme and the physical environment of each scheme. The bill also clarifies the situations in which an occupier of a lot in a scheme will contravene the requirement that they must not cause a nuisance or a hazard or unreasonably interfere with the use or enjoyment of a lot or common property, and that is with regard to smoke drift. If a person chooses to smoke inside a house and that smoke seeps out to others then it is made very clear in the bill that that will trigger the nuisance and hazard or unreasonable interference provisions.

The bill also sets out how bodies corporate may regulate the keeping or bringing of animals onto a lot or a community title scheme. These reforms are broadly based on longstanding interpretations of the requirements in the act regarding by-laws and reasonable decision-making in relation to animals by providing greater clarification of how a body corporate may regulate the keeping of pets, not necessarily compulsorily prohibiting them. The bill seeks to reduce the barriers to lot owners and occupiers keeping animals in community titles schemes and it supports bodies corporate and owners and occupiers to reach agreement about the keeping of animals in accordance with the law and aims for ultimately, we hope, less disputation. The broad approach under the bill is not to allow the body corporate to make arbitrary limitations on the keeping of animals but to require the body corporate to make a decision on the merits of each particular request to keep an animal. The bill provides bodies corporate will not be able to make a by-law prohibiting—as in a blanket prohibition—the keeping or bringing of an animal on a lot or the common property for a scheme or restricting the number, type or size of an animal that an occupier may keep. However, a body corporate by-law may require an occupier to obtain the body corporate's written approval to keep or bring an animal onto the property. The bill sets out comprehensive guidelines for the body corporate's consideration of a request to keep a pet.

In regard to other body corporate matters, the bill amends the act to clarify and streamline a number of body corporate administrative and procedural requirements to improve transparency and accountability in governance and to ensure bodies corporate are provided with the documents necessary to perform their functions.

The bill makes amendments to the Land Sales Act 1984 to strengthen buyer protections by limiting when sunset clauses can be used to terminate off-the-plan contracts for the sale of land. The bill ensures property developers can only use a sunset clause to terminate off-the-plan contracts for land with the consent of the buyer, under an order of the Supreme Court or in another way prescribed by regulation. While there are unique risks that are associated with off-the-plan contracts, which buyers can be made aware of via education and legal advice, the bill seeks to address the power imbalance that exists between buyers and sellers in these contracts and ensures sunset clauses are being used appropriately.

Finally, the bill makes minor amendments to confirm the policy intent in the BCCM Act, the Building Units and Group Titles Act and the South Bank Corporation Act. Those acts are amended in regard to the release of deposits that are paid by buyers under off-the-plan contracts. The purpose is to reinforce and confirm that property developers cannot gain early access to the deposits taken for these contracts. Thank you for the opportunity to brief the committee on the bill. All of us are happy to assist the committee by taking questions on the bill.

Mrs GERBER: I have a number of questions which centre around the 75 per cent rule and termination, but I want to start with the pre-termination report. I posed this question to the Queensland Law Society in the public briefing and they were unable to direct me; it is probably better placed to the DJAG. If a lot owner disagrees with the pre-termination report, is there any provision in the bill for a second or alternative report to be done? Does the body corporate pay for that, or is that on the individual lot owner who disputes the pre-termination report?

Mr McKarzel: It is a very obvious question, and the answer is a little bit complicated. It is not in the bill, but if you are not happy with a pre-termination report as a lot owner and there is a resolution made about that pre-termination report, you can go to special adjudication.

Mrs GERBER: But the specialist adjudicator can only really determine whether or not the economic reasons are valid—that is the only determination that a specialist adjudicator can make. They cannot alter the report by agreement.

Mr McKarzel: With your and the chair's permission, I would like my colleague David Reardon to expand on that specialist adjudication process because that may assist.

Mr Reardon: If I can take a step back with your question, the first point I would make is that there is certainly nothing preventing an individual lot owner from getting their own pre-termination report if they would like that. The body corporate is not required to pay for that if they choose to do that. So the body corporate obtains the pre-termination report and then considers that when they are deciding a motion about whether there are economic reasons to terminate the scheme. If the body corporate decided, having looked at the report and the other considerations, that there are no economic reasons for terminating the scheme, then that is the end of that consideration. If the body corporate decided that yes there are economic reasons for termination and an individual lot owner disagreed with that, then—as you mentioned—they have a right to pursue dispute resolution through a specialist adjudicator. The specialist adjudicator has a range of investigative powers, at that point, in determining how to resolve that matter.

Mrs GERBER: In determining how to resolve that matter, can we be clear about exactly what the specialist adjudicator can determine?

Mr Reardon: They are determining whether or not the economic reasons resolution should have been passed. In making that determination, they would have regard to submissions from the parties about the pre-termination report. So if a party was bringing an application for specialist adjudication, one of the grounds for bringing that application might be their argument that 'I do not think that the pre-termination report should be relied on for reasons A, B or C.' If the adjudicator needed more information to make a judgement, they could consider exercising some of their investigative powers to require one of the parties—the body corporate or the lot owner applicant—to provide further information in the form of alternative professional advice. Does that answer your question?

Mrs GERBER: Yes, it does, thank you. I might turn to a second question, which was posed by George in the public hearing. If the process that is currently in the bill in relation to terminating under the 75 per cent rule is enlivened, goes through its course and fails—it is either voted down at body corporate or a specialist adjudicator determines that there are not economic reasons for it—are there any limitations for when it can be re-enlivened? Can it be brought back up at the next general meeting in accordance with this process having run its course? Could it continue to happen?

Mr Reardon: No, there are no provisions along those lines in the legislation at the moment that would prevent—I think what the gentleman was referring to was a provision that said that the issue could not be revisited for another 12 months, or some other period—a body corporate from reconsidering the matter. You can certainly see where the gentleman was coming from with that idea. It does not seem to make sense that if the matter fails, that the body corporate would consider it immediately after that. The other side to that coin that the committee might want to consider is: if there were a restriction on considering the matter for a certain time frame, would there be any inadvertent consequences? There may be a good reason for the body corporate to revisit the matter, say, six or eight months later. I am not saying that will always be the case, but obviously something like that would put a constraint on the body corporate's ability to reconsider things.

Mrs GERBER: The other question that arose with a number of submitters who were concerned about the 75 per cent rule, was about costs. If they exercise their right under the current bill and they have to stand as an aggrieved party and it goes through District Court proceedings, those costs are covered by the body corporate, but if the aggrieved person loses, a court determines—I think it is section 79(2)—that the termination can go ahead, can the court make an adverse costs order against the aggrieved party?

Mr Reardon: To clarify: is the question concerning when a body corporate has passed a termination resolution?

Mrs GERBER: Yes.

Mr Reardon: So they have decided to implement the termination plan, an aggrieved lot owner has objected to that and gone to the court. The provisions include a section that says that the body corporate is responsible for the costs that are reasonably incurred in that proceeding. The bill is designed that the body corporate would pay those costs. I am not aware of why the District Court would make an order contrary.

Mrs GERBER: The body corporate would apply for adverse costs orders. They would apply for a cost order against the aggrieved lot owner; does the bill prevent that from happening, or is that a possibility?

Mr Reardon: That is certainly the intention, and there is a provision there that says that the body corporate is responsible for the reasonable costs that are incurred in the proceeding.

Mrs GERBER: So the bill prevents—

Mr McKarzel: The bill says that the body corporate has to pay for the proceeding, regardless of the outcome. I understood George Galea's concerns but one of the issues about saying, 'you cannot go again for a year', given the costs involved if the body corporate has been comprehensively defeated and given that economic reasons have not been found, it is not likely that a body corporate would try again immediately because they would have to go through the whole process. There is a sort of built-in commercial imperative that you would not be going again straight away because if you were trying to shop around for a better engineer, for instance, and then you got another appeal then obviously a court is going to say, 'Well hang on a second, you had this one and we said no and now you have this other one.'

Mrs GERBER: That is all hypothetical.

Mr McKarzel: Yes, it is. A lot of this is speculative, but that is some of the thinking behind why the bill landed where it did.

Mrs GERBER: One final question: when we are looking at the bill's current definition of the economic reasons for termination, the terms 'commercial purpose' and 'economically viable' are used but those terms are not defined in the bill; is that correct?

Mr McKarzel: Yes, that is correct. Those terms do not have a specific definition.

Mrs GERBER: In the first instance, when lot owners are being offered compensation—I understand the District Court has a certain test that they apply when they are determining the compensation to be paid if they were to determine that it is not economically viable—does that take into account the social effects or the value of the property? I understand that in the District Court there is a test that potentially could, but they would have to take it to the District Court to get that in the first instance. When I say 'social value', I am talking about close to amenities, close to the beach, that the lot owner would not be able to acquire property in the same area or vicinity of where they are currently located, or even potentially rent. Is there any requirement that it must take that into account before it falls over?

Mr Reardon: The termination plan requires the information about how the proceeds of the sale will be distributed, based on the market value of the property, be included. Now there is also a protection in there that the amount that a lot owner receives cannot be less than what they would receive if the state acquired the property under the Acquisition of Land Act. To be clear: we would hope that unit owners would do better than that, but that is a minimum floor of compensation. Our understanding under the Acquisition of Land Act is that the compensation would include a consideration of the market value of the property at its best use. It also includes 'disturbance costs'—I believe the term is under that act—for various costs and disruptions that the owner will experience due to having the property acquired. I do not recall whether there is a specific provision in that act about social disruptions, but certainly my understanding is that the intention is that the disturbance that the person will experience should be compensated in some way.

Mrs GERBER: Would lot owners with better units receive a bigger proportion?

Mr Reardon: That is correct; the market value principle is intended to accommodate those differences between the lots. That is important, because they can have different values and different characteristics.

Mrs GERBER: One final question: does the bill take into account lot owners like George Galea who would be made homeless as a result of the 75 per cent rule?

Mr Reardon: The bill aims to protect unit owners principally through the compensation arrangements by trying to make sure that unit owners who do not want to sell their units but are subject to these new arrangements receive fair and adequate compensation for their properties. It is very difficult for us to generalise too much on impacts in individual cases. Clearly, the department is very conscious that this is a really difficult area of public policy.

At a macro level there are potential public benefits in allowing for non-unanimous terminations of uneconomic community titles schemes. There is the opportunity for increased housing supply in those considerations. That is all true, but this bill recognises that the impacts on individual owners who do not want to sell are very real for those people. That is one of the reasons that this process that has been included in the bill is quite complex and is designed to have a number of protections for unit owners that kick in at particular parts of the process. Coming back to your original question, we would certainly hope—and it is the aim of the provisions—that minority owners like Mr Galea are adequately protected and compensated if they do experience this process.

Could I clarify an answer I gave earlier about costs of the District Court proceedings? The only other point I was going to mention is that, in terms of limitations on costs, the body corporate will need to pay for the dissenting lot owner. It is reasonable costs, so it has that qualifier. The only situation where a unit owner would need to pay their own costs would be the inverse situation—so if a termination resolution failed and the lot owner wanted to pursue termination through the courts. In that case the unit owner's costs would not be covered, but if they are a dissenting owner it is certainly intended that their costs be covered.

Ms BOLTON: David, you used the word 'speculative'. There are 50,000 community titles schemes. Within the work DJAG did on this bill in terms of analysis of the impacts, what is the potential number of schemes that would be impacted, what is the potential number of unit owners who would be impacted and what housing would potentially be unlocked through redevelopment?

Mr Reardon: I think it is fair to say that we have not done any formal modelling on how many schemes this could potentially impact. There are a number of ways you could attack that sort of question. One of the starting points might be the age of the community titles scheme. If we go down that road though, I think there would have to be a lot of caution. Simply because a building is a certain age, we would not know whether the building is experiencing the type of repair, maintenance and rectification issues that would bring it into the scope of what we are describing as non-economic community titles schemes. I think one of the witnesses last week made the point very well that you can have an older scheme that does not have any maintenance issues and it is perfectly fine. It could be serviceable for many years or decades to come.

We have not done any formal modelling or predictions about the number of schemes potentially impacted. What I would say though is that we have heard from stakeholders that the status quo position is not going to assist the sector going forward and that there needs to be a process for dealing with these situations. As I mentioned earlier, we are very conscious of the real-world impacts on minority owners who may be subjected to this. The other consideration is the property rights of those majority owners who wish to sell and are really concerned about potentially facing tens of thousands or hundreds of thousands of dollars in maintenance and repair costs in the foreseeable future.

Ms BOLTON: Just on the definition of commercial purposes in section 81A, given that short-term accommodation issues are very large within the housing crisis, does that definition include short-term accommodation, tourist accommodation and student accommodation?

Mr Reardon: Are we talking about one of the limbs of the economic reasons test—the one about a scheme where all the lots are for commercial purposes?

Ms BOLTON: Yes, within that definition of commercial purposes in section 81A.

Mr Reardon: The thinking behind that provision is probably best explained by example. A good example might be a string of retail shops that is an ongoing business but then something changes—for example, maybe there is a road bypass or maybe a local attraction closes down—and all of a sudden those businesses do not have any customers anymore. That is the type of situation that it is designed for.

Coming back to your question though about short-term accommodation, I think we have to be a little bit careful about generalising too much about at what point short-term accommodation will become commercial. I think there are some situations where it would be quite easy to tell. If the whole scheme was operating as a hotel then I think it is fairly clear that that would be considered a commercial purpose. Where I think it gets a little more difficult is where there is a mix of uses in the scheme. In that respect I note that the provision only applies if all the lots are being used for commercial purposes.

If we are talking about owners using online platforms like Airbnb and that sort of thing, we just need to be a bit cautious. The scheme will have a mix of uses. Even the lots might have a mix of uses. Some parts of the year it would be used for the owner to live in which is clearly not a commercial purpose. Other times of the year when it is being used for short-term letting for reward, I think there is a fair argument that that is a commercial purpose. I do not think we are in a position to say that it will always be a commercial purpose, if that makes sense. It would really depend on what was happening in the building at that time.

Mr McKarzel: The reason for the separation in terms of having a separate limb for commercial is that, if it is near an attraction or the road is bypassed, the buildings may be in pretty good nick but if you can no longer run a business they are not able to be repurposed. That is why it talks about a viability test. We looked to carve out, as David said, a strip of shops because they would not necessarily fit the broader, more traditional definition further up that talks about the building has had it, as it were. You can have quite a decent row of shops and suddenly you cannot make any money because the highway has gone somewhere else. That was the thinking behind it.

Ms BOLTON: The Urban Development Institute of Australia said during the hearing—this is regarding the sunset clause—that the reforms would literally make contracts more uncertain and also threaten the ability for developers to attract financing. Is there any validity to that particular statement given similar reforms were implemented in New South Wales in 2015?

Mr McKarzel: You answered part of what I was going to say. We were conscious of that argument. We consulted with New South Wales and the ACT. It is sometimes difficult to measure these things. You look at when something is being introduced and if there are variations it may be because for the period you are looking at there are changes in the market that are independent of the statutory intervention. We spoke to particularly our New South Wales colleagues who advised us that they detected no significant change in the development process based on these interventions. In fact, they were considering in a review process whether or not they should tighten them. We spoke to the ACT and it was a similar outcome.

The other issue is that the government is conscious that currently it is a very odd period in terms of the market. There are supply constraint costs, so the government adopted a two-stage approach. The sunset clause provisions only relate to off-the-plan land sales. They do not relate to apartments. The commitment from the government is that within two years we will commence a review looking at the state of the market at that point and whether it is appropriate to extend those reforms to apartments. It is now only just land, so there is an element of caution built into the process. Generally, when we looked at the other jurisdictions, there did not appear to be significant changes in the development market.

Ms BUSH: Thank you for your work on this and thank you for coming along this morning. A lot of my questions have probably been picked up which is sometimes a good sign, but I have a couple for you. I tend to think of policy sometimes at the extremes which can be helpful and sometimes is not. At the extreme of this policy is a scenario which has been put that a long-term owner-occupier could be in a community titles scheme under pressure from a bunch of investors who are wanting to sell who intentionally let the building fall into a state of disrepair to enable it to be sold. David, you have already articulated some of those protective mechanisms in place in the bill to stop that from happening, including independent reports, an independent adjudicator, compensation arrangements and independent facilitators. Is there anything else that you wanted to get on the record around what protections are in place to stop that extreme scenario from occurring?

Mr Reardon: The other key thing that I would pick up—and it is not particularly related to the termination process—is the situation where, say, the majority of owners in the scheme decide to let the building become rundown or something like that in an effort to let the economic reasons process happen. If a unit owner was concerned about that, the first thing they should be doing is putting a motion to a general meeting to have the repairs and maintenance done. If that fails—and it might if the majority of owners are trying to let the building fall into disrepair—the owner who wants the building maintained is certainly entitled to apply for dispute resolution through the Office of the Commissioner for Body Corporate and Community Management.

Bodies corporate have a general obligation to maintain common property in a good condition. Depending on the type of body corporate scheme, they will also be required to maintain the building in a structurally sound condition for schemes in a building format plan and there are other parts of the scheme they will probably be required to maintain in a good condition. That is a requirement under the act.

If the unit owner applies for dispute resolution, normally the first thing that would happen would be a department conciliation process where the parties are brought together and a conciliator would explain the requirements of the act and try to help them come to an agreement. If that failed, then the matter can proceed to adjudication where an adjudicator would be able to make a binding order that the body corporate carry out required repairs and maintenance. Even before we get to the termination scheme, if that sort of thing is happening and if any unit owners are concerned about that, we would really encourage them to get in contact with the commissioner's office and get some information about what their rights are and what their dispute resolution options are.

Ms BUSH: Thank you for going there because that was something that was raised by Dakota from Solutions IE. I think you said in New South Wales there is a reporting scheme where bodies corporate need to report their maintenance schedules. Are you aware of any such scheme or do you see an opportunity for Queensland to go that way or do you feel that the current arrangements are satisfactory, as you have just said, to capture that kind of behaviour?

Mr Reardon: We are certainly aware of that scheme in New South Wales. I am not aware of any government plans to introduce something similar in Queensland at the moment. I think the dispute resolution process through the commissioner's office is critical to resolving those types of things. We would really encourage unit owners to use that process if they have those sorts of worries.

Mr McKarzel: The difficulty in all of this is that the underpinning objective and philosophy of the act is self-management. It is about people living and working together in the same interests. It becomes an issue of how much compulsion you put in versus where there are legitimate disputes because of arguments over whether this should be fixed or that should be fixed and whether the commissioner's framework is the most appropriate. What I can say is that my recollection is that it has not come up as a major issue amongst the working group, but there may come a time where we would have to turn our mind to it, but at this stage most of the stakeholders are very positive about the framework that exists for dispute resolution via the commissioner's office and that underpins the whole self-management philosophy in the first place that underpins the act.

Ms BUSH: To that point, some of the stakeholders talked about the need for maybe some clarifying materials and guidance to support what may be the introduction of this bill. Can you talk us through some of the work that is anticipated in that space?

Mr McKarzel: Yes. We will work closely, as the policy and legislation people, with the commissioner's office. The commissioner's office has a large information and education service so we will use all of those channels and professional communications experts to make sure that all of the right messaging and the websites are updated and that everybody becomes aware. There will be a process, a time lag, so that that happens and it will be comprehensive, because it has to be because, as the member for Noosa said, of the sheer numbers who are affected by any changes to the act.

Ms BUSH: The Strata Community Association Queensland raised whether powers of attorney or corporate nominees could vote in situ in terms of that 75 per cent vote. Are you aware under the bill if that is provided for or not considered?

Mr Reardon: My recollection is that in terms of voting on particular motions there are some restrictions on proxies. There have been concerns in the past about the concept of proxy farming. The bill does not restrict though people with proper powers of attorney from having a power of attorney vote on their behalf and that can be important in terms of someone who may not have capacity to make those sorts of decisions. Someone can act on their behalf and vote in that situation. There are provisions restricting proxies to avoid the situation where someone gathers up a large number of proxies from people to influence the vote.

Ms BUSH: Turning my mind now to pets and smoking, what work has been done to look at the interaction between this bill and the residential tenancies act and some of the reforms coming through with regard to processes around refusal of pets and other matters in that act? Has that work happened or will that work occur?

Ms Starling: I will speak to pets in particular. As you know, there have been some changes to the residential tenancies legislation that came into effect on 1 October 2022. Those changes are around providing tenants and property owners with the framework to negotiate those pet approvals. Those particular changes do specifically state that authorisation for a pet is subject to body corporate by-laws. Even if the owner does approve the pet there still has to be the process of approval by the body corporate as per the by-laws if that is what those by-laws say. The Department of Housing in doing education on their amendments has previously published advice to tenants about those body corporate approval processes and that they may take longer than the 14-day time frame to respond to a tenant's pet request. The advice they have been giving is that the lot owner could still provide their advice to the tenant within the 14 days, but then also advising that there still needs to be a body corporate approval process that is gone through. Some of the reason behind not having a consistent time frame of 14 days is because we are dealing with collective decision-making and it just does take longer. Because of that it is not proposed to align those particular time frames.

I am not sure you quite addressed it in your question, but I will just mention it, there are some overlaps around the reasons for the decisions to approve or refuse pets between the rental reforms and these ones. However, there are some differences as well and that really comes down to the fact that we are dealing with different roles. There is a difference with regard to the decision between a landlord and a tenant and the body corporate and an owner or occupier and that is just because the body corporate has to consider it in terms of that broader impact on the other occupiers in the scheme whereas the landlord is considering it in terms of their very specific unit or property that they are renting out. Broadly speaking, both are aimed at trying to make sure there is a greater ability to have a pet in Queensland.

Ms BUSH: There is certainly nothing contradictory in the act and the bill.

Ms Starling: No. The intention is that they can work together. They may not necessarily directly align, but they can work together.

CHAIR: Jon, I understand you have a question. This will be the last question.

Mr KRAUSE: I have two. Do I get one or two?

CHAIR: Ask the two.

Mr KRAUSE: Thank you for your submissions this morning. In evidence from other stakeholders we heard that one of the issues with the 18-month sunset clause which was put in place in the Land Sales Act some years ago was that now developments were taking—I am summarising—longer to get out of the ground than they did in the past which meant that costs were rising and as a result viability issues were being faced in some cases. Has your department considered undertaking any work to consider those cost and delay factors which may go some way towards solving issues around viability by getting things done quicker?

Mr McKarzel: Are you saying to make it longer or shorter depending on—

Mr KRAUSE: No, to try to take away delays and cost escalations so that viability issues do not arise with land sales creating a need for a seller to go to the Supreme Court to seek—

Mr McKarzel: Agreement.

Mr KRAUSE: Yes. Or have you just looked at the contractual issues rather than the costs?

Mr McKarzel: The main focus was consumer protection. You are right about the 18-month rule being there for a very long time. It is open obviously to government to have a look at that. I note that it did come up with two stakeholders and what I noticed was I think the QLS said it should be much shorter and they could not see why it was as long as it was. I also note, and I have forgotten whether it was the UDIA or the Property Council, one of them said it should be a longer period. My memory is that they were saying getting all of the approvals you need for council and getting all of that through becomes quite difficult and costly particularly when you are trying to do it in a confined period. I think it is potentially an issue that government could look at. It would need to be something though that our colleagues in the state development planning space would look at. I am happy to—and if it is in your report as well—trigger that and refer it and say this needs to be looked at, it came through in the responses by witnesses in the context of what this is, which is really a consumer protection provision.

Mr KRAUSE: My second question is it seems to me changes to the Land Sales Act that are in this bill may result in one of two outcomes: if a seller achieves a termination or goes through the process of agreement or Supreme Court order, that will be that a development does not proceed on viability issues perhaps or a lot may be resold—recontracted for sale at a higher price to address those issues. On the flip side I wanted to ask about the consumer protection provisions and whether there was any consideration given to implementing viability considerations for buyers—we have had 12 interest rate rises now since May 2022—so that they could recontract at a lower price or, alternatively, not proceed with the purchase.

Mr McKarzel: The mischief that we were asked to deal with arose because of the particular events that have occurred in the last few months—or in the last couple of years really—which was where sellers were terminating when the sunset clause hit and then offering the relevant property for resale. There are protections for buyers already in the act but they tend to relate to periods of time that had passed where the seller has not managed to get what is meant to be done and then the buyer can then go out as a result. The difficulty in all of this is that some of this is more appropriately left to contract and then other times you get a public interest argument that comes up, for instance in this case, that there ought to be intervention in a consumer protection clause, which is where the government has landed on this one. We have not done any further work other than what the Attorney has asked us to do on this particular problem.

CHAIR: That brings to a conclusion our briefing. Thank you to everyone who has participated today. Thank you to our Hansard reporters. A transcript of the proceedings will be available on the committee's webpage in due course. Thank you for the written submissions that you provided to the committee. They have been very helpful. Thank you to the secretariat and our hardworking staff. I declare the public briefing closed.

The committee adjourned at 11.42 am.