Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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Legal Affairs and Safety Committee
Committee Secretary
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Dear Secretary & Committee

Submission on the Body Corporate and Community Management and Other Legislation Amendment Bill 2023

My submission is drawn from my experience and expertise as follows:

- an owner in strata for 25 years in 12 separate buildings on the Gold Coast
- service on body corporate committees and in executive position in 10 buildings over 25 years
- 20 years as body corporate chairman in my home building
- 25 years in legal practice in property and town planning law

Housing Crisis

In my view, the housing crisis will not be adequately or even meaningfully addressed by implementing a scheme to facilitate the termination of older strata schemes. While it is true that planning laws now allow much greater densities on small sites, the economic realities place new units out of the price range vast majority of people who are unable to find affordable housing.

One only has to look at Main Beach where a number of old buildings have been demolished to make way for massive new buildings. The new units are generally priced out of the reach of the average person. In Main Beach, new properties typically cost over $3 million. They are often bought by wealthy interstate people as a second residence.

The majority of the older strata buildings are at the Gold Cast and Sunshine Coast, mostly close to the beach. These are the ones the developers will target under the proposed bill, not old buildings in outer areas.

The new developments will be too expensive for the average home buyer. They will also be too expensive for renters, as rents (if much of the new stock is bought by investors for rental, which seems unlikely) will be in the thousands of dollars per week.

New apartments at $3 million+ fail to address any aspect of the housing crisis.

Creating new problems by displacing established residents

A scheme to facilitate effectively forced sales in the remaining older buildings will displace a large number of people, many of them long-term and ageing residents.

I don't think that given enough consideration to the plight of the owners who don't wish to sell. As one of the owners at Amira Main beach has said to us *"it's all very well to get $1 million for my crappy old apartment but where do I buy something in Main Beach or anywhere near any beach for that money?"* That's the dilemma for many people.

Being forced to relocate to more remote areas means leaving a community, friends, neighbours and often family, doctors and medical services and other local service providers, to start again in a new community. This loss of lifestyle amenity should not be underestimated.

Ignores community outcomes

A related point is the failure by any level of government to adequately address the excess stress on infrastructure created by the extra density in inner areas. Increasing density by infilling sites in already dense areas puts an enormous strain on existing infrastructure, schools, hospitals, transport, roads and parking etc, which is largely left unaddressed. This diminishes the amenity of the local are for the communities that live there.

Adequacy of Current Law

There is no need for a change of existing law.

Current law allows for termination of unviable schemes by either 100% agreement or via an application to the District Court which has a wide discretion to approve termination if it is "just & equitable" to do so, on such conditions as the Court orders.

Typically, the Court may order the termination of the scheme, the amalgamation of the land into a single lot, and set a process for the sale and the distribution of the proceeds of sale between the relevant lot owners, mortgagees and the like. Applications have not been common. Local cases include Nobbys Outlook and Voyager Resort (a time share). However, Nobby's was settled by a consent order and Voyager relied on statutory trustee provisions accessible by co-owners via the Property Law Act, so there is not a lot of precedent to provide a guide on how ageing schemes might be treated by the Court. Nonetheless, there is a legal avenue to address any situation where a termination might be the most desirable outcome for those concerned.

Potential for Abuse

On its face, the bill attempts to provide protections against abuses including the right to apply to Court to restrain the termination, recognizing that people who don't want to sell may have good reasons for rejecting the sale.

The new proposals require both 75% agreement *and* expert evidence that specific economic reasons necessitate the termination of the scheme.

I don't think those safeguards go far enough.

Undue Pressure on "Holdouts"

Legislation that suggests that people should have a right to terminate if they get the required number will lead to immense pressure on remaining owners. That is happening

already in Gold Coast buildings where developers are approaching owners in smaller buildings.

There will be a frenzy of developer pressure unleashed by the provisions of this bill.

Managers in older buildings who are finding it impossible to sell the management rights will have a huge incentive to pressure people into selling against their wishes.

The practice of the land titles office to hand out personal email addresses and personal phone numbers to developers will lead to an onslaught of intrusive approaches property owners. This is already happening, but it will worsen.

It seems that as a property owner one's right to privacy has completely disappeared. I have had emails to my personal email address and phone calls at night to my private line from developer representatives. That's an abuse.

Cost of and Complexity of Legal Proceeding

Whilst any owner who wishes to challenge a proposal to terminate, the complexity of the process and the legal costs would be an enormous deterrent to the majority of people, especially older people fixed or limited incomes.

Even if there is a guarantee that all legal costs will be met out of body corporate funds, the owners still have to pay those costs through levies or through a portion of their sale proceeds.

The stress of legal proceedings would deter many residents from exercising their right to a judicial review of a termination proposal.

A further deterrent to objecting would be the strain it would put on relationships in the body corporate community. People who have been friends and neighbours could become adversaries and potentially enemies.

A successful application to restrain termination could lead to a lot of resentment and ill feeling from other owners and even the building management towards those who resisted the termination. Some owners would feel that they had lost the chance to "cash in" and resent having to pay legal costs as well as then contribute to being the building maintenance up to standard.

That would not augur well for a happy future in the building. The objective community of title schemes is in the name - being a community. That should not be forgotten.

Expert Evidence can be manipulated or biased

It all comes down to *whose* evidence is accepted about costs to maintain the building, and a body corporate can deliberately let things go to achieve that outcome.

A body of so-called "independent experts" will spring up to provide the building reports, but by the very nature of their professions they will be embedded in the development industry – quantity surveyors, engineers, real estate advisors etc. They will likely be biased towards redevelopment. It is impossible to have confidence that advice will be truly independent or will fairly look at the possibility or maintaining the building.

Owners or Committees who wish to terminate can manipulate the situation

Current legislation requires bodies corporate to budget for and maintain buildings and common property. However, many don't do it. Often this is just an ill-considered way of keeping levies low and affordable to current owners. Sometimes it results form ignorance and poor advice from strata managers.

I've had the experience of a few older buildings where committees don't budget in accordance with proper sinking fund forecasts and don't provision properly for the future, with the result that at some point owners have to face a very large special levy to bring the building up to standard.

I'm dealing with one right now with a special levy of $37,000 per lot to bring maintenance up to standard.

Another building in which I owned until recently required a $15,000 special levy to cover overdue critical maintenance.

Both of these buildings have their insurance suspended because they were critical safety items - failing balcony balustrades on a 16 floor building and windows falling out of a 22 floor building.

The successive under budgeting committees in each of these buildings weren't under budgeting and neglecting maintenance to achieve a situation where the building would become uneconomical to maintain and had to be terminated.

They were doing it to artificially depress levies on the basis that by the time the chickens came home to roost, they would have moved on and thus avoided the contribution should have made to the sinking fund during their tenure.

This practice could easily lead to a situation where the building becomes uneconomical to maintain in many buildings.

So, if some owners wanted to manipulate the situation sale against the wishes of others, they could simply under budget for years without any risk of penalty and eventually arrive at a point where it was deemed uneconomical.

Current legislation is not enforced – why not?

Current legislation works on an honour system. In other words, it assumes that bodies corporate will act rationally and will budget in accordance with the sinking fund forecast as the legislation requires, because it is in the interest of all owners to do so in order to maintain the value of building. It assumes that rational self-interest will collectively prevail.

But if they don't do that, there is no penalty and no oversight, other than by other owners (who mostly take no interest until something goes wrong, or who are incapable of understanding that the budgeting is insufficient, or who simply feel relieved that levies have not increased).

If the Government does wish to bring the changes in the bill into law, it must address the weakness in the existing legislation that allows buildings to go under budgeted for years on end.

If that isn't addressed, there will be an incentive for the unscrupulous to engineer a claim that the building is uneconomical to maintain.

Penalty Provisions needed for existing law and this bill

There should be penalty provisions for failing to budget properly, and the other parts of the legislation that deal with the responsibilities of strata managers should also be addressed to ensure that they properly advise committees on their budgeting obligations.

There should also be penalty provisions for bodies corporate who don't attend maintenance that they know about, allowing it to worsen over time.

Perhaps bodies corporate should be required to have a periodic independent audit to ensure that they are meeting their maintenance obligations and provisioning their sinking funds as require by their 10 year forecast.

Sellers might also be obliged to provide more detailed disclosure of sinking fund obligations. I have seen many people buy into buildings only to find a large number of costly sleeping maintenance obligations that are not evident through the usual pre-purchase inquiries.

Concrete cancer is one of the justifications used for terminating schemes, but if it is treated in a timely manner can often be contained and allow the building many more years or decades of useful life.

There should also be some penalty provisions in the new bill to penalise those body corporates who rort the system by manufacturing a crisis of maintenance through deliberate inactivity or via neglect of existing sinking fund and maintenance obligations.

Summary

There are adequate provisions in the law to deal with aged strata schemes that are truly no longer viable.

The bill does not adequately deal with the potential for abuse and manipulation by self-interested owners, building managers or committees, or the scope for undue pressure and interference from the developers and their colleagues in the development industry who will benefit for these redevelopments.

The bill pays insufficient regard to the needs of all residents and also the inadequacy of the compensation received to fund a new property in the same area to allow residents to continue to enjoy the community that they already live in - as one neighbour put it, "*$1M for my crappy apartment can't buy me the lifestyle I now have*."

The bill does not (and cannot) provide a means to alleviate bitterness, ill will and retaliatory measures against owners who resist moves to terminate a scheme, which could especially fierce if the resistance is successful.

The bill fails to acknowledge that owners who buy into strata do so on the basis that they will be required to maintain the building and that if they wish to exit the building they should do so by a normal sale, rather than buy in on the speculation that there will be a sale to a developer in the future and minority resistance can be quashed.

The bill is effectively retrospective in that applies to all existing buildings, not just buildings constructed after it is enacted, and so it fails to consider that owners bought into their strata properties on the expectation that they would be able to reside in them as their homes for as long as it suited them.

Displacing residents from their homes actually adds to the housing crisis and these people have to join the competitive market for an alternative home, and the compensation they receive may well leave them in the lower end of the market where that competition is the fiercest.

Existing legislation requiring bodies corporate to properly budget and maintain their buildings should be enforced so that sinking funds are properly provisioned over time and older buildings do not fall behind in the maintenance obligations, either by a devious plan to force a scheme termination or just to avoid increasing levies.

If the existing law was followed and enforced, there would be very few buildings deteriorating to the point of being uneconomical to maintain them. Two of the buildings I own in are over 40 years old have good maintenance programs. There is no reason to believe that they will not be serviceable for another 40 years.

The supposed benefits in some site regenerations are well outweighed by the negative effects of this bill.

Thank you for your consideration. I sincerely hope that the bill is shelved or substantially amended to provide greater safeguards against abuse and unintended consequences.

Regards