

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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Submission to the Committee

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To the Committee responsible for considering submissions on the *Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (Qld)*, we thank you for your time in considering these notes and we hope this information assists in your inquiries before the final legislation is drafted. As the author, I am available for discussion or consultation as needed.

Solutions IE is the largest compliance and maintenance planning provider to the strata title industry in the southern hemisphere. We have worked with over 150,000 buildings and have spent decades forecasting maintenance requirements for bodies corporate (since sinking funds were introduced in 1997). We have also assisted various state governments and regulatory bodies with the formulation of strata title legislation.

We have immense firsthand knowledge of the maintenance implications upon community titles schemes and how delayed maintenance can ignite a spiralling decline in the viability of a body corporate. What begins as routine maintenance being delayed, quickly spirals into defective building elements, questioning the structural integrity and safety of residents. A struggle to acquire funding further delays remediation projects to the point that local councils have to condemn part or all of a building through fear of life-threatening structural damage.

Whilst we strongly support the concepts of scheme termination proposed in this Bill, we are concerned that the threshold and determinant factors to actually achieve a termination or dissolution are too high a standard to meet with prolonged periods between votes. We are particularly concerned for schemes that have imminent and near catastrophic defects that cannot afford to delay a dissolution through a cumbersome bureaucratic process.

We suggest that the term “economically viable” (**section 81A** of the Bill) be clearly defined along with the methodology to assess this term, within the amendment.

We are also concerned that the proposed legislative wording in this Bill offers the ability for one, or several owners to halt and challenge the process of dissolution, after the body corporate has achieved a number of threshold votes (specifically, the 75% vote to terminate on economic grounds). The intention of this legislation is to remove the possibility of one owner, on sentimental grounds, preventing the collective sale of a dilapidating complex. With the predicted influx of migration to Queensland and the dire need for more sustainable and affordable housing, the amendments to the BCCMA should be intended to support redevelopment.

We have made the following notes against relevant proposed sections utilising our extensive knowledge of the strata title industry and our experience of practical application of legislation in community titled developments.

Section 81A of the Bill does not give consideration to the maintenance requirements of individual owners within their lot e.g., flooring, bathrooms, kitchens, ceiling etc. It simply focuses on the body corporate related maintenance expenditure. In a standard format plan of subdivision where the



building maintenance expenses are the owner's own expense, it would be near impossible to achieve an economic reasons resolution under the current definitions proposed in **Section 81A**.

It is also worth noting that by restricting the timeframe to 5 years, consideration of maintenance obligations upon the body corporate, large expenditure items such as painting, lift replacements, re-roofing etc may not be considered, yet these expenses are the largest faced by bodies corporate. It is therefore suggested that the 5-year timeline consider the following:

- Remediation costs to any know defects or building issues that under the BCCMA the body corporate is responsible to maintain or remedy.
- Other planned capital expenditure the body corporate had planned or is likely to plan over the next 5 years.
- The total contributions towards sinking fund maintenance over the next 5 years (See appendix 1.0)

A body corporate that does not have an active sinking fund forecast must acquire one from an independent professional prior to completing the pre-termination report. This will allow the maintenance contributions levied to owners for the sinking fund over the next 5 years, to be considered in the picture of economic viability, not just the value of any remediation projects (see appendix 1.0).

Section 81B does not suggest how a body corporate comes to undertake a pre-termination plan. The level of vote required to commence this process is also not stated. This Bill assumes that the body corporate has approval by owners to engage a consultant to prepare the pre-termination report. **Section 81C** states that this report must be prepared before they can consider an economic reasons resolution.

Section 81B(1) assumes that a sales price has already been agreed and a buyer has formalised an offer to purchase the scheme. This subsection would inhibit a termination plan being created if arrangements necessary to ensure the sale of the scheme have not been initiated, which is likely for most schemes. Our suggestion would be for these items to only be necessary 'if known' as per item (a).

Section 81B(3) could clearly stipulate that this compensation either needs to be paid by the body corporate upon dissolution of the scheme (therefore, to be factored into the sale price of the scheme) or directly by the acquiring entity as a caveat/clause to the sales contract for the entire scheme.

Section 81B(5) could offer a clearer definition of '*respective market value of a lot principle*' because the current definition has an ambiguous interpretation. It suggests that the value of one lot will be a percentage of the sum of all the lots. This doesn't suggest that relevant market value of the underlying land parcel is included in calculations, which is the ultimate reason that most of these community title schemes would sell to a developer entity.



We also suggest that this section define the *'respective market value of a lot'* as the value of the entire site divided by the individual lot's respective interest schedule of lot entitlement as is the existing method of calculating an owner's relevant stake in the entire property (including assets).

Section 81C We believe a pre-termination report is the best way to present owners with their options and reasoning for terminating the scheme. However, we would suggest that this report should depict an equity position of the owners over a 5-year timeframe.

We suggest this look somewhat as follows.

The pre-termination report must include the predicted maintenance outgoings of the community title scheme over the next 5 years including a provision for each owner's individual maintenance, not just body corporate expenditure (particularly if the body corporate is a standard format plan of subdivision).

This can then be a juxtaposition against the proposed sale price to a developer (or single entity) if a successful dissolution and sale takes place.

The ultimate aim of this is to provide owners as part of the pre-termination report an understanding of their equity position within a 5-year timeframe.

Example:

If a unit is currently worth at market \$500,000 and has a liability towards maintenance of \$100,000 over the next 5 years, the owners' equity position after 5 years if the body corporate is not dissolved is \$400,000.

Within the same period if the body corporate is dissolved and the sale price is in accordance with *section 20 of the Acquisition of Land Act 1967* (or likely greater), the owner is entitled to \$600,000. The equity position of the owner when dissolved is approximately 33% improved as opposed to retaining the unit (assuming no capital gains payable).

This concept should be considered by the owners and where relevant the district court under the notion of "what is economically viable" under **Section 81A (b)** of *Body Corporate and Community Management and Other Legislation Amendment Bill 2023*.

Section 81C(1)(e) suggests through the use of the word 'and' between subsections (i), (ii) and (iii) that the body corporate must engage a minimum of three professionals to complete a pre-termination report in accordance with this draft legislation. With multiple professionals involved, costs increase significantly.

Subsection (i) requires a structural engineer to assess the condition of the entire property that the body corporate is responsible for. In a building format plan of subdivision, this process was recently tested by the industry upon the last amendment to the BCCMA when defect report motions became mandatory. Industry feedback on obtaining pricing for a structural engineer to inspect and prepare a report for a scheme found high fee estimates of approximately \$700-\$1,000 per the number of units in a complex. The same scenario will arise under this proposal whereby just to complete **Section 81C(e)(i)**, a 40-unit body corporate would be looking at an engineer's fee of more than \$25,000.



Notably, in Section 81C(e)(iii) the proposal requires a body corporate, after a suitably qualified professional has already completed a useable report (per (ii)), to itemise and estimate the cost of future body corporate works and maintenance. This another prohibitive exercise for a body corporate to engage a Quantity Surveyor as the final step. There is no need to have three professionals involved as a mandatory requirement under this section because expenses will place further burden on the body corporate.

Our suggestion for **Section 81C(2)(e)** is as follows:

*(e) if the body corporate decides the pre-termination report must include information about whether the economic reasons for termination mentioned in **section 81A(b)** exist—*

(i) A report must be prepared by a person the body corporate deems to be suitably qualified, considering current and future maintenance obligations to maintain the body corporate in sound and insurable condition as necessitated by a body corporate's duties under the Act.

(ii) Where necessary, the suitably qualified professional must recommend a structural engineer report if one or more structural components of the scheme is determined to warrant an expert opinion on a particular issue.

(iii) Where a structural engineer report is required, the findings in this report and the recommended remediation costs are then to be factored into the pre-termination report.

Confusion about two necessary votes under “Economic reasons”

Section 81D(4) suggests that if the body corporate has a pre-termination report and there is reasonable evidence that the scheme is economically inviable, the body corporate may pass an ‘*economic reasons resolution*’ by majority vote.

This threshold is then increased to 75% special resolution under **section 81K(4)** of the proposed bill rendering the prior majority vote in **section 81D(4)** pointless. By having two different voting thresholds one vote may carry with 51% of votes but then have little chance of succeeding in the second vote for termination ultimately costing owners more money in administration and reporting professionals

We also recommend that if separate votes are to be maintained for each of these stages of the termination assessment, that the notice periods required prior to holding each general meeting, should be reduced to 21 days. This is in line with the current notice period required to hold a general meeting under the *Body Corporate and Community Management Act 1997*.

Our suggestion would be to combine these two votes stating that if the pre-termination report supports the necessary criteria for termination through economic reasons, the vote is passed if 75% of owners are in favour of the resolution to accept the evidence and terminate.

Section 81G(3) offers the protection to an individual owner to have the matter heard by a specialist adjudicator on the nature and validity of the economic reasoning. It is important to note that this section provides one owner against a majority vote to stall and halt the entire process by forcing a dispute resolution pathway.



We agree that individual owners should be able to challenge the validity of the findings in the pre-termination report, however, consideration must also be given to how this ability could be weaponised by a vindictive owner wishing to halt the dissolution of the scheme or simply hold out for a higher sale price from a purchasing entity (i.e., a developer).

Section 81J requires the body corporate to provide all lot owners a copy of the termination plan a minimum of 120 days prior to the general meeting. While this gives all owners an extensive period of time to consider their personal situation and options, it would render every unit in the scheme near unsaleable as the proposed termination would be discoverable amongst body corporate records and disclosure documentation. This would undoubtedly be a concern for any prospective buyer or financier. The lengthy period to reach dissolution of the scheme may also be problematic for the numerous owners who are facing urgent financial circumstances in a financially unviable scheme. Please consider the extended timeline in Appendix 2.0 depicting the process of successfully arriving at a termination decision.

Section 81N(2)(b) suggests that an owner of a lot could challenge the already passed 75% majority vote to terminate the scheme through a court application. This contradicts the nature of body corporate decision making and the purpose of setting a higher than majority threshold. The purpose of these amendments is to ensure that one owner cannot hold up the process of dissolution as was the case under the existing rules of resolution without dissent (section 78(1)(a)). Any body corporate that has already established economic reasons and voted past this point, and then achieved a 75% vote to terminate should not be held up because one owner wants the body corporate to remain.

Please consider adding a clause to this section that buildings over a certain age which are already deemed no longer economically viable, cannot have an owner halt the process through a court application. There is confounding research that suggests many of the buildings built in Queensland prior to the year 2000 (when standards for concrete slabs changed) are approaching their useful life expectancy with failing super and substructures that short of rebuild are impossible to remediate. Professor Gordon Holden, Head of Architecture at Griffith University has made numerous comments on advising that most buildings throughout South-East Queensland built in the 70s and 80s only have a 40 year lifespan. One or two owners should not be able to halt the remaining 75% or more owners from dissolving the scheme and relieving themselves of the financial burden, on sentimental grounds. As is the intention of this legislation.

Effects of the proposed timeline for achieving scheme dissolution as proposed by this Bill

See Appendix 2.0

Based on the timeframes set out by the proposed Bill of legislation and the reality of timing on the necessary elements, a body corporate could not move through this process faster than **9 months** from the original motion at an AGM to obtain a pre-termination report. This is assuming that industry professionals are readily available and that no owner lodges a dispute on the grounds of economic reasons. If a dispute is lodged, this timeline would likely extend **beyond 12 months**.



Throughout this 9-month minimum period, every unit owned in the body corporate will essentially be in stasis and be unsaleable as any potential buyer will discover the body corporate's intention to explore dissolution and be turned away from the idea of purchase. This has a huge effect on the liquidity of each owner's asset and financial situation.

The other likely effect of a body corporate considering termination due to high upcoming maintenance costs and remediation projects, is that all maintenance and project work will be halted pending an outcome. Any urgent remediation needed to ensure structural integrity and safety within the building is delayed awaiting the outcome of a termination vote. Based on the timeline given in the Bill, where the dissolution process is 9 months or more, this could critically impact the structural safety of the body corporate and its occupants. It will also create exponential maintenance costs as the building and its defects deteriorate significantly through this bureaucratic process over more than 9 months. Failing to achieve all necessary thresholds to terminate, the owners will be left with a structurally unsound, unmaintained building and heightened financial burden that by the body corporate has a duty to address under the *Body Corporate and Community Management Act 1997*.



Appendices

1.0 The effects of sinking fund contributions on economic viability when considering termination for “economic reasons”.

At any given point in a 15-year sinking fund forecast, the total owner’s contributions towards the sinking fund can vary considerably depending on the lifecycle of building elements and maintenance needs of certain finishes and services. Any assessment of economic viability should consider the total contributions owners are liable for over the proposed 5-year period.

15 Year Cash Flow Tracking Sheet

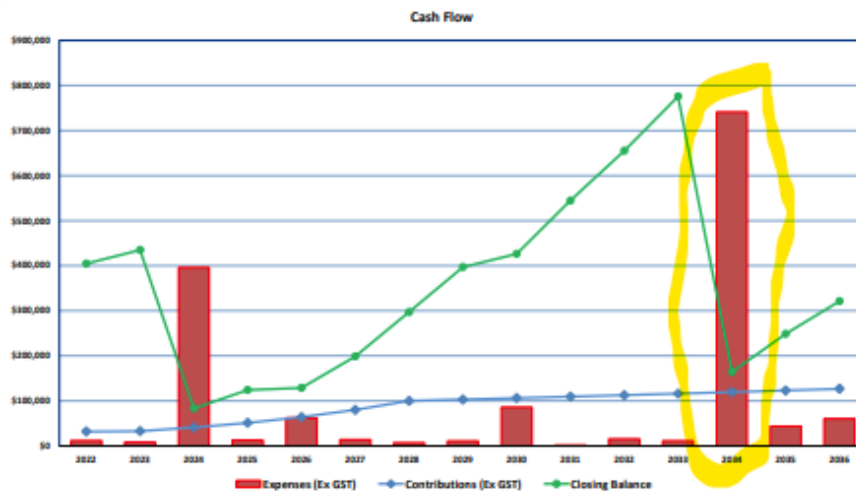
The table below shows the cash flow starting with the anticipated ‘Opening Balance’ at the start of the first financial year which you provided to us. We then add the ‘Total Levy Contributions’ for the year and any ‘Interest’ on balances greater than \$10,000. Any ‘Anticipated Expenses’ (including contingency allowance) are then allowed for leaving a ‘Closing Balance’ for the year which in turn becomes the ‘Opening Balance’ for the following year. In summary:

$$\text{Opening Balance} + \text{Total Levy Contributions} + \text{Interest} - \text{Anticipated Expenses} = \text{Closing Balance}$$

Year	Year To	Opening Balance	Total Levy Contributions (Exc. GST)	Interest (After Tax)	Anticipated Expenses (Exc. GST)	Closing Balance
1	31/10/2022	379,394.00	31,817.27	4,986.09	11,529.09	404,668.27
2	31/10/2023	404,668.27	32,771.79	5,339.14	7,868.18	434,911.02
3	31/10/2024	434,911.02	40,964.74	3,295.12	395,923.64	83,247.24
4	31/10/2025	83,247.24	51,205.93	2,306.94	12,639.09	124,121.02
5	31/10/2026	124,121.02	64,007.41	2,814.08	62,109.09	128,833.42
6	31/10/2027	128,833.42	80,009.26	3,643.08	13,846.36	198,639.40
7	31/10/2028	198,639.40	100,011.58	5,515.63	7,011.82	297,154.79
8	31/10/2029	297,154.79	103,011.93	7,722.24	10,900.00	396,988.96
9	31/10/2030	396,988.96	106,102.29	9,158.81	85,963.64	426,286.42
10	31/10/2031	426,286.42	109,285.36	10,801.70	1,707.27	544,666.21
11	31/10/2032	544,666.21	112,563.92	13,347.01	15,495.45	655,081.69
12	31/10/2033	655,081.69	115,940.84	15,918.02	11,169.09	775,771.46
13	31/10/2034	775,771.46	119,419.07	10,460.07	741,178.18	164,472.42
14	31/10/2035	164,472.42	123,001.64	4,595.58	43,450.91	248,618.73
15	31/10/2036	248,618.73	126,691.69	6,340.11	60,363.64	321,286.89

15 Year Cash Flow Graph

The graph below tracks the ‘Contributions’ (the amount collected in levies), the projected ‘Closing balance’ of the sinking fund and the likely ‘Expenses’ for each year of this forecast. The three lines in the graph are:
Contributions line - Total sinking fund contributions per year.
Expenses line - Total anticipated expenses in each year.
Closing balance line - Shows the amount left in the fund bank account at the end of the year after all anticipated expenses have been allowed for.





2.0 The reality of the proposed timeline in the *Body Corporate and Community Management and Other Legislation Amendment Bill 2023*

It is important to understand the proposed termination timeline of events depicted by these proposed amendments. Noting that all the while these conversations, minutes, motions, reports are discoverable upon body corporate searches and pre-disclosure of any individual sales.

The timeline below uses example dates to demonstrate the process for dissolution of a scheme.

July 1st 2024 – Motion passes to engage a professional to prepare a pre-termination report

This process is likely to take a professional a minimum of 2 months to complete with a high level of quality and accuracy taking into account the current market value of units, preparing future maintenance costings and investigating any current defective elements to the body corporate.

September 1st 2024 – the body corporate committee receive the pre-termination report

This would likely have follow up questions and potentially a meeting with the professional who prepared the report.

September 15th 2024 – the body corporate committee disseminate the pre-termination report to the owners

90 days minimum must pass before a general meeting can be held to determine if economic reasons for termination exist.

December 14th 2024 – Earliest possible date of general meeting to decide on economic reasons.

Meeting held and passed by ordinary resolution that economic reasons to terminate the scheme exist.

Assuming that Section 81E (2) allows a body corporate to have simultaneously prepared a termination plan on the assumption that Section 81E (1) is successful, a further 120 days will follow as a minimum to give all owners notice of the termination plan prior to a termination resolution vote.

April 12th 2024 – earliest date to hold a general meeting to decide on a termination resolution

If a special resolution (75% in favour) passes to terminate, the body corporate must appoint a facilitator to implement the termination plan