Body Corporate and Community Management and Other Legislation Amendment Bill 2023

Submission No:	34
Submitted by:	Sandra St Ledger
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

Re: Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (the Bill).

Comments from:

Sandra St Ledger

Background: Unit owner for 20 years. During that time, I was an involved lot owner, Committee Member for several years and included being Secretary of the Committee and I was also a proactive member of recognized owner groups e.g., UOAQ. I attended seminars presented by both Government and non-Government bodies on a regular basis. These views are based on personal, practical experience and do not reflect the view of any current organization.

My first concern is that Section 128 part (2) of the Act remains ambiguous.

This needs to be addressed and rectified if changes to the Act are to be considered:

Despite several direct communications with the "Commissioner" re this matter and with the previous Attorney General, Section 128 part (2) of the Act remains ambiguous. This is the source of concern moving forward as it is frequently interpreted in legal presentations and information provided to caretakers and owners in 2 very different ways.

BCCM ACT: Section 128 Change of regulation module is recorded below:

"(1) This section applies to the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, for a community titles scheme if:

(a) a new community management statement is recorded in place of the existing statement for the scheme; and

(b) the new statement identifies, as the regulation module applying to the scheme, a regulation module different from the regulation module (the existing regulation module) identified in the existing statement.

(2) The provisions of the existing regulation module applying to the engagement or authorisation continue to apply to the engagement or authorisation until the engagement or authorisation, including any renewal or extension of the engagement or authorisation, comes to an end. "

Comment: The Act fails to identify if "renewals or extensions" are ONLY renewals and extensions that have been approved PRIOR to the module change and registration e.g., from Accommodation to Standard Module or if they provide that FUTURE requests for LONGER EXTENSIONS e.g., up to 25 years will still remain possible despite a return to the conditions of the Standard Module.

*Certainly, when changes from the Standard to the Accommodation Module occurred, Caretakers immediately asked for and received **extensions** up to the 25 years pertaining to the Accommodation Module.

Lawyers representing Caretaker Managers may (actually do) interpret this in the second way to the advantage their clients.

Since returning to the standard module is predominately to avoid future extensions to lengthy management rights agreements, (often extending beyond the life of the building) the interpretation of this section of the Act is very significant.

ANY CHANGES TO THE ACT WOULD BE INCOMPLETE WITHOUT ADDRESSING THIS AMBIGUITY.

Re your proposed changes to legislation:

ISSUE 1:

1. “Termination of community titles schemes. The community titles sector is a significant, and increasingly important, provider of housing, accommodation, and investment options for Queenslanders.”

    - The legal detail can only be determined by lawyers.
    - From a practical Body Corporate viewpoint, Legislators need to be aware that in multipurpose buildings, the resident owners who will lose their homes will be those persons most negatively impacted if legislation proposes that a vote 0f 75% of the owners is required to demolish a building and disband a Body Corporate.
    - These people need fair and reasonable consideration as it is their “homes” and associated emotional issues are involved.
    - Obviously, this legislation is, in contrast, an advantage to developers who are recognized as a politically influential group.
    - Developers benefit from obtaining development sites more readily through purchase of lots and common property and State and Local governments benefit from the financial costs relevant to new developments.
    - **Termination of a Body Corporate due to “demolition” of a building due to age etc introduces another practical consideration that the Commissioner and Politicians have repeatedly failed to address adequately.**

ASSOCIATED ISSUE: As a building ages, why are 25-year Management Rights Agreements allowed (by Legislation) to extend well beyond the “life expectancy” of the building**. If Legislation recognizes that building “age” and allow buildings to be demolished by a 75% vote of the Body Corporate, then it must identify that such extensions are “unreasonable” in older buildings.** (Actually, if one is honest, they are commercially unreasonable in strata buildings generally.)

However, given the new proposals as per the legislation, the implications of Management Rights Agreements extending beyond the “life of the building” must now receive further consideration. Who pays out the caretaker for years and years of “non-service?” This is a problem caused directly by existing Legislation and must be fully addressed.

RELATED ISSUES: Is it significant that this proposal is being put forward when governments are being challenged re their inadequate provisions for general housing?

- It is the responsibility of State and Federal Governments to provide accommodation for both Australians and the large numbers of proposed migrants, it is not the job of the private sector.

- There may be a hidden agenda that Governments see this as a way to gain "political advantage" by saying, "We are providing legislation to procure more permanent accommodation for the public" to the disadvantage of current residents and perhaps some "short term rental" providers.

I also refer to recent information from Dr S. Miles as presented on "Smart Strata." He commented on a plan to introduce "registration" of short-term accommodation facilities. (Some councils already do this.) Governments interference generally has a "flow on effect."
If over regulation/registration interferes with the providers of "short term holiday accommodation" in contrast to more permanent tenancies, the next industry to be negatively impacted will be the "tourist industry". No industry exists in isolation. This needs consideration before Governments try to further register or regulate the short-term accommodation sector.

Registration can also be seen as just another form of raising additional "government income."
Significantly the article could not be responded to in the usual way, denying those with an opinion "a voice".

Further if social housing (as has been discussed) is included as part of strata situations, future "social housing" tenants of the State Government need to fully realize that legislation and by-laws apply equally to ALL OCCUPIERS. The owners of the lot (including the State Government) will be responsible for the adherence of their tenants to by-laws. The State Government needs to accept this responsibility.
Perhaps, the Government will then see the flaws in the legislation more clearly.

Re your proposals:

ISSUE 3:

3. **Modernising and improving the operation of the BCCM Act in relation to by-laws and other governance issues.**

"Keeping or bringing of animals on a lot or on common property The Bill amends the BCCM Act to provide that body corporate by-laws cannot prohibit the keeping of animals in a scheme, or restrict the number, type or size of animals that may be kept."

The initial concern is the definition of "**animal**" in the legislation. This word raises massive concerns on a practical level.

The number of, type of or size of "THE ANIMAL" is also massively significantly with regards to limited space per lot, use of lifts, access to foyers, safety of other occupiers, increases in building footprints, removal of animal waste hygienically etc. Clearly the proposed legislation FAILS the general industry standard of being "reasonable." it is clearly an impractical, totally unrealistic amendment as it is written.

Many Councils, for instance, regulate the number of "pets" allowed on a normal house block.

The Bill also prescribes requirements in the BCCM Act that the body corporate committees must comply with when the body corporate by-laws are reviewed re “pet” access to the property.

Most bylaws now require an owner or occupier to obtain the body corporate’s permission for “keeping of an animal”. These requirements include that the body corporate must not unreasonably withhold approval to keep an animal, the circumstances in which a body corporate may refuse to grant approval for keeping of an animal, and that the body corporate must provide its approval and conditions of approval in writing.

The legislation clearly requires full detailed consideration on a practical level not on a theoretical level.

The “pet lobby” is undeniably a strong one and is probably not a fair representative of the opinions of the majority of lot owners, particularly resident lot owners who often have “the quiet enjoyment of their lot” negatively affected by pets owned by irresponsible pet owners.

The right to “quiet enjoy of the lot” is often the first and the most common by-law in every building.

Unfortunately, while there are responsible pet owners, there are also many irresponsible, inconsiderate pet owners.

Firstly, the phrase **“or bringing of animals**” on a lot or on common property is very concerning to any person familiar with Bodies Corporate.

Legislation re “keeping of pets” should apply only to permanent residents, i.e. owners and permanent tenants.

Casual guests on common property should not have the same rights to bring pets onto a property if the owners who have invested in the building want to vote to totally prohibit “casual visitors” having pets/animals onsite.

By-laws must be able to prohibit all short-term holiday tenants in a strata situation and “guests” to the building from being able to bring “casual pets” onsite including onto any part of the common property or individual lots accessible via common property unless they are fully and correctly registered as “care/companion pets” and covered by that legislation.

The need for committee approval “in a reasonable time frame” should prevent this but the ability of owners to prevent pets on a casual basis from entering the property should be made crystal clear.

On a practical level, “pets in short term rental units,” and “visiting” pets are not able to be controlled in strata situations in an effective practical manner and the proposed legislation, as written, will certainly not assist bodies corporate to firmly establish this position.

The acceptance of pets in “short term rental units” is a health risk to future tenants without a full cleaning far in exceeding the basic acceptable cleaning standards. The worst-case situation could be where a pet is in a short-term rental unit and the next tenants have babies or young children or persons with allergies who are at serious health risk if all traces of animal waste/fur etc are not removed from carpets and furniture by acceptable deep cleaning etc at far more significant cost that most tenants are required to pay or will agree to pay. Regulations under the “Health Act” must surely be relevant in this situation.

The Body Corporate has no way to ensure that the owners of “Casual pets” entering a property have access to by-laws, will adhere to bylaws, will “make good” damage incurred, will comply with conditions imposed. It is not practical to suggest otherwise. The pets come, the owners and pets depart, and the Body Corporate retains any problems created and any costs incurred.

The legislation places massive responsibility on the committee to prepare by-laws that are both relevant in a practical situation, acceptable to the majority of owners and comply with the poorly defined requirements of the legislation.

Issues to consider with by-laws.

- By-laws must be presented to all owners and approved by special resolution of the Body Corporate.
- All owners need to use their vote wisely in their own best interests.
- The legislation should provide that by-laws relevant to pets should be considered at a General Meeting in a separate motion to other by-laws. To pass such by-laws, they would require the usual vote by special resolution to approve the conditions as proposed. This allows these by-laws to be given fair and reasonable consideration separate from other by-laws which may be being considered at the same time.

By-laws should be permitted to reflect:

- That pets must not interfere with the rights of all owners/occupants to "quiet enjoyment of their lots and common property."
- that "Pet Ownership" should not result in additional "shared expenses."
- That pet owners will be requested to "make good" damage caused by pets, additional cleaning needed, removal of pet waste, rectification of problems caused by fleas etc on common property, including lifts and lift foyers.
- That pool registration with councils can be compromised by the presence of domestic animals in pools and their surrounds.
- Pets can be required to be removed if by-laws are ignored.
- **Pets visiting on a casual basis are prohibited.**

My input is based on both personal experience of pets in a Body Corporate situation and in being personally involved in writing relevant by-laws in conjunction with the Body Corporate Lawyer.

Legislators generally have little practical experience in the Body Corporate industry and the suggestions that are being put forward are obviously influenced by the most vocal lobby group.

It is my experience that owners or tenants living onsite who follow the reasonable guidelines will accommodate pets in a far more responsible way than "visiting pet owners."

I will provide examples of personal experiences that can be substantiated: -

- Casual short-term tenants frequently "sneak" pets into strata buildings (usually via the basement) often without the knowledge of caretaker, lot owner or committee. They obviously have no knowledge of by-law requirements. Such pets may eventually be seen on common property including in pool areas which is a significant issue.
- Cleaning on the departure of them and their owners is most inadequate if they are not identified.
- Visitors and casual tenants do not refer to by-laws re pet control even if it is available.
- Post Covid, compendiums with by-laws are very rare in most buildings.
- An elderly lady (with multiple health problems) was "bowled over" in our building as she entered the lift by an unrestrained dog, owned by a person "visiting" the building.
- Another owner was "threatened" by 2 massive dogs who entered the building with a short-term tenant without any approval at all. The dogs ran at him in a lift foyer in a most aggressive manner. When reported and investigated, the pet owners had been entering and exiting the building by placing "chocks" in the fire door exits in non-compliance with both fire regulations and by-laws.

- Entry and exit by leaving open fire doors are a common practice with short term tenants taking pets in and out of the building and this creates a potential fire hazard.
- Animal waste was left on the carpet in the lift for someone else to remove.

The issue of pets in a strata building is complex and legislators should be very wary of legislation that is one sided and increases the problems that the body corporate is left with and expected to solve. So easy for the legislators to be influenced by the "pet lobby" but most difficult on a practical level for Bodies Corporate to control pet "presence" in a reasonable way for all occupiers.

TIME FRAMES for committee decisions on pets entering a building?

What is a reasonable time frame for decisions on an individual pet?

Committee meetings are held roughly 2.5 to 3 monthly.

Is the committee obliged to use a "vote outside a committee meeting"?

To do that **correctly as per legislation**, may cost $2000 plus depending on the size of the building.

Who pays? Obviously, the applicant must accept all costs.

Why should others contribute?

Legislators are creating yet another impractical situation for Bodies Corporate! They need to think past the theoretical legislation to how the legislation will be applied and enforced in the "strata world".

In conclusion the test for most Body Corporate issues is, **"Is this reasonable?"**

it is clearly impractical and unreasonable to allocate 5 days for stakeholders and interested parties to comment on complex changes to legislation. This is simply a way of being able to say, "We allowed stakeholder written comment," where, in fact, the truth is, "We set unreasonable time frame to minimize written public comment." Several items that involve complex legal processes are being suggested.

I have confined my comments to the basic issues and have aimed to present the differences between theoretical legislation and practical applications that affect the homes and everyday lives of those who "live" under strata legislation.

Sandra St Ledger