

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

Submission No: 36
Submitted by: Local Government Association of Queensland
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:



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to be a liveable one

2 September 2023

Mr Peter Russo MP
Chair
Legal Affairs and Safety Committee

Via email: lasc@parliament.qld.gov.au

Dear Chair

RE: Body Corporate and Community Management and Other Legislation Amendment Bill 2023

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. We are a not-for-profit association set up solely to serve the state's 77 councils and their individual needs. We have been advising, supporting, and representing local councils since 1896, aiding them to improve their operations and strengthen relationships with their communities.

The LGAQ acknowledges the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (the Bill) that was recently introduced into the Queensland Parliament. The policy objectives of the Bill are to:

1. deliver a key action of the 2022 Queensland Housing Summit by reforming the BCCM Act to allow for termination of uneconomic community titles schemes to facilitate renewal and redevelopment;
2. deliver a 2020 election commitment to implement amendments to the BCCM Act to allow an adjudicator the power to approve alternative insurance arrangements, and make supporting amendments to complement this change;
3. modernise and improve the operation of the BCCM Act in relation to by-laws and other governance issues, including administrative and procedural matters;
4. strengthen buyer protections under the Land Sales Act by limiting when sunset clauses can be used to terminate 'off the plan' contracts for the sale of land; and
5. make minor amendments to confirm the policy intent of existing provisions of the BCCM Act, BUGT Act, Land Sales Act, and South Bank Act (collectively referred to as the relevant Acts) about the release of deposits paid by buyers under 'off the plan' contracts for the sale of land (Land Sales Act) or lots in community titles-style developments (BCCM Act, BUGT Act, and South Bank Act).

At the 2022 LGAQ Annual Conference, members endorsed a resolution that the LGAQ calls on the State Government to commit to directly resolving the long-standing body corporate debt and sale of land issue as a stand-alone issue, and that, at a minimum, require the current working group to give urgent and high priority to addressing the issue of debt recovery recommendations.

Since that time, we have engaged with the Department of Justice and Attorney-General and the Community Titles Legislation Working Group to advocate on this issue. While this issue is not directly addressed in the Bill, it is broadly relevant and our advocacy is ongoing.

For further background, the issue arises from a conflict between Body Corporate legislation and Local Government legislation in that the *Local Government Act 2009*, requires council to transfer a property sold under the arrears of rates provisions free of encumbrance, yet the incoming owner in fact risks incurring a continuing encumbrance via the unpaid body corporate fees under Body Corporate legislation.



The LGAQ and affected councils have been making representations seeking a solution to this issue since at least 2014.

In some instances, unpaid council rates and unpaid body corporate debt can exceed the total property value. In these cases, prudent potential purchasers are not prepared to take on the onerous financial liabilities of outstanding and substantial Body Corporate fee debt.

Equally, councils should not incur the costs and consumption of resources involved in repeated sale of land for arrears of rates action where there is no prospect of a sale. With continued inaction debts continue to increase. One instance where a council has negotiated with the Body Corporate of the building, in which a lot has been placed to auction under the sale of land for arrears of rates provisions of the Local Government Regulation meant this council was required to write-off rates and charges exceeding \$150,000. This sale was only possible due to the ability of the council to successfully negotiate with the Body Corporate. The same council has two other instances where it would be highly unlikely that a sale would result of action under the current Local Government Regulation provisions due to the outstanding value of the body corporate levies when compared to the 'market' value of the land. The Body Corporates in these instances have shown no motivation to enter into meaningful dialogue with the council and in the meantime these properties remain unsold, vacant and with mounting debts. It shouldn't have to be resolved on a case-by-case basis.

This contrasts with the treatment of registered mortgages on title. When the mortgage is dissolved by the legislated local government sale of land process, the loan agreement with the defaulting ratepayer remains but is unsecured by the mortgage. The financier is able to continue to pursue the borrower for any unpaid monies as an unsecured debt, and the purchaser does not inherit the debt.

As outlined above, advocacy on this issue is ongoing.

The LGAQ is happy for this submission to be made public. If the Committee would like any further information, please contact Ms Georgia Stafford, Lead – Intergovernmental Relations on [REDACTED] or [REDACTED]

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Alison Smith
CHIEF EXECUTIVE OFFICER