

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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Legal Affairs and Safety Committee
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Body Corporate and Community Management and Other Legislation Amendment Bill 2023

Thank you for the opportunity to provide feedback on the Draft *Body Corporate and Community Management and Other Legislation Amendment Bill 2023*.

The Property Council is the leading advocate for Australia's property industry. Here in Queensland, over 400 companies are members of the Property Council of Australia. Our members represent a cross-section of the property sector and are spread across all asset classes, including residential, retirement living, purpose-built student accommodation, build-to-rent and more.

Our members invest in, design, build and manage places that matter to Australians. They have a long-term interest in the future of our places and spaces, and are committed to creating great cities, strong economies, and sustainable communities.

The Property Council supports smarter planning, better infrastructure, sustainability and globally competitive investment and tax settings, which underpin the contribution our members make to the economic prosperity and well-being of Australians.

For many years, the Property Council has advocated for action to address the undersupply of housing in Queensland. This advocacy was amplified in 2022, with the launch of *A Home for Every Queenslanders*, which, amongst other welcome initiatives from government, led to the convening of the Queensland Housing Summit in October. This was also the catalyst for acknowledging that housing in Queensland is in a state of crisis.

Underpinning our advocacy efforts is a consistent message that the private sector needs certainty for business continuity and delivery. Given the property sector's role in delivering the homes Queenslanders so desperately need, we urge caution against making legislatively changes overly complex, duplicative, or ambiguous. This will only hinder the sector's capacity to deliver critical stock to market.

Scheme Terminations

A welcome initiative from the Housing Summit and one that the Property Council has long championed was reducing Queensland's strata termination threshold. We have long seen this as a key measure in removing barriers to the redevelopment of older apartment buildings and delivering increased housing supply in locations well-served by infrastructure.

The reduction in the threshold to 75 per cent majority vote will prevent owners seeking to terminate a scheme being held captive by a single owner, while locking other residents into an older, potentially unsafe building.

As outlined in our earlier submission in June to the state, as the legislation is currently drafted it appears overly complex and contrary to the initial policy intent. The proposed process as outlined within the draft bill to terminate utilising this threshold reduction is complex and is limited to those schemes that prove to be economically unfeasible.

Economic reasons for termination

Linking the reduction of unanimous thresholds from 100 per cent to 75 per cent to those schemes not 'economically viable for the body corporate... to carry out repairs and maintenance to any property or assets the body corporate must maintain in good or structurally sound condition', is likely to pose various challenges. It is our preference that the recommendations from the Queensland University of Technology report be adopted, that is, to expand the scheme termination proposal to those schemes where redevelopment would be the most beneficial outcome for the lot owners.

Our members indicate that when NSW adopted such a legislative reform, there was no economic reasons for termination linked to the reduction in thresholds, and this adoption has been readily accepted by community, and has seen no detrimental consequences to those owners who have proceeded to terminate schemes.

The steps outlined in the draft Bill to secure a pre-termination report are extensive and likely to take in excess of twelve months. Realistically this is likely to be far longer, when accommodating General Meeting requirements, notice periods, engaging with third party professionals, all of which come at great cost, which is likely to be further prohibitive to schemes seeking to terminate.

There is a heavy reliance within the draft that the schemes are managed by motivated and sophisticated operations, in many cases - particularly regarding those properties likely to benefit most from these reforms - that is the smaller schemes 20 lots and under located in high-growth areas. The management of these schemes is often coordinated and led by one lot owner to administer the body corporate, it is therefore realistic to expect that the timeframes outlined above would be further delayed resulting in increased costs.

There is real concern that the good intentions of this policy will not be realised due to the time, complexity and prohibitive nature of the costs associated with terminating a scheme.

The drafting of the bill presents sequencing issues, and we reiterate the need for simplicity so as to avoid confusion, please consider reviewing as follows:

- Amended Section 80, this Division sets out pre-termination processes but references decisions / resolutions about termination plans, which are not relevant at the pre-termination process stage.
- Section 81C – suggest amending “decides” to “believes”, to reflect the nature of a pre-termination report where the body corporate has not yet made a decision to terminate.

Further we seek clarity on the following components of the bill;

- Amended Section 81A references ‘commercial purposes’ – clarification is sought on whether or why this should exclude properties used for residential purposes from this Section? Has due consideration been given to uses such as hotels, short term accommodation, purpose-built student accommodation or an investor who is renting the lot out for an income, even though the lot is still be used by the tenant for residential purposes. All the scenarios listed have a commercial aspect and further reinforce the need to broadening the scope of terminations provisions.

Resolution Without Dissent and Court Order

The Property Council supports Resolution Without Dissent and Court Order options being included in the bill and that these are not complicated by necessitating a termination plan or other arrangement.

Please find commentary below regarding the drafting of the bill:

- Under the new section 77, ‘termination issues’ (to be considered in the context of a termination resolution) include sharing of liabilities that immediately before termination are liabilities of the body corporate.
Further guidance is sought as to what those liabilities might be or how they are determined. Any uncertainty or ambiguity is likely to cause confusion in application.
- Under new section 78, in the context of consensual termination by resolution without dissent, there is to be an agreement about termination between the owners of the scheme land and lessees under registrable or short-term leases. That provision excludes by omission people who have rights as licensees or under other agreements with the body corporate in relation to common property. We suggest keeping the now deleted part of section 81F and still included in 81R ought to be included in words to the effect:

‘Each person who has a licence, contractual or other arrangement with the body corporate in respect of use for any purpose of any part of common property, which is not terminable at will by the body corporate and if not earlier terminated would end after termination of the

scheme.'

- The new sections 79(2)(c) and (d) require the Court to consider the economic and social effects of the termination on each lot owner and persons having various other interests. It will be hard enough for anyone (Court or anyone else) to determine those economic effects let alone social effects, and the consideration ought to be restricted to economic effects.

Retirement villages

Given that Retirement Villages are conceptually different in nature to a typical community titles scheme and already have a statutory overlay of consumer protection, we recommend that the proposed new community titles scheme termination arrangement should not apply to retirement villages.

Retirement villages are unique in their nature and cater for a specific group of people in a community setting. The policy considerations behind the proposed new community titles scheme termination arrangements do not necessarily apply to this setting and may otherwise lead to unfair consequences for retirement village residents who consider their unit to be their last place of residence, are vulnerable and may have little other suitable housing options.

The Retirement Villages Act 1999 already has a mechanism for the 'closure' of an RV scheme – this process underwent public and industry consultation and was relatively recently implemented a few years ago.

The proposed new termination arrangements do not necessarily recognise that RVs are 'administered' by the scheme operator and that there is an underlying RV business (with resident fee structures in play), operating as part of the CTS. It would be uncommercial to allow the proposed CTS termination arrangements to take effect in this setting. It is specifically noted that the RV Act will prevail to the extent there is any inconsistency with BCCM (under section 24 of the RV Act).

Amendments to Land Sales Act

As per our previous correspondence with the state there has been a handful of cases highlighted in the media over recent years, where contracts have been terminated with Sunset clauses being referenced as the trigger for cancellation. As acknowledged by both private and public sector there has been and continues to be unprecedented culmination of macro factors, causing delays to developments resulting in Developers not being able to achieve the milestones required to proceed with the development.

Drastically changing legislation for "off the plan" sales relating to land, off the back of a small number of instances seems counterintuitive and will add unnecessary regulatory changes to a system that already provides appropriate consumer protection and where there appears to be no widespread systemic issue.

The Property Council recognises the importance of property buyers being fully informed of the often-complex nature of buying "off the plan" and the specificity of the clauses outlining the various factors

within such developments. It is critical that buyers seek independent and professional legal advice before entering a contract of sale, to fully understand the nature of the contract entered into.

Applying the legislative changes retrospectively is fundamentally unfair and will create confusion and uncertainty for both buyer and seller and in some cases impact financing arrangements.

Reducing the Sellers rights to terminate a contract except with Supreme Court approval is likely to result in a significant cost impost, both financially and time wise. Rather than encouraging litigious behaviour, it would be far more cost effective to promote positive and constructive conflict resolution - leaving court proceedings as the last resort for consumers seeking remedy.

The draft legislation shifts obligations to the seller, without adequately requiring the buyer to appropriately respond to sunset date notices. The seller can appropriately and adequately serve a notice, yet the buyer does not respond, this silence cannot be taken as consent. This contrasts with other legal service requirements, and is grossly unfair to the seller, and leaves them with no alternative but Supreme Court orders.

The practical application of applying the new amendments retrospectively appears to have been overlooked in drafting and is very likely going to cause significant confusion in the market. Off the plan contracts are complex in nature, and due consideration must be given to education and awareness of purchasers, who should be required and encouraged to engage legal professionals when signing legal contracts, so as to fully understand the obligations.

The Property Council urges **against** any extension of these reforms to buildings due to the complexities around funding models, delivery to market and time to handover. Apartment developments cannot be viewed in the same light as land contracts, and at a time where more stock to market is required, we urge against any interventions that will put further strain on a market already at capacity.

General Commentary

Advice suggests that there are likely unintended consequences of the amendment to section 59 of the BCCM Act as follows:

- It is proposed to omit existing section 59(3)(b), which presently provides that a CMS is binding on the body corporate and each member of the body corporate, as if "each person had signed the community management statement under seal".

We support the premise of modernising language to remove the reference to a 'seal'. However, the purpose of section 59(3)(b) originally was to ensure the CMS by being taken to be signed 'under seal', it was as if each party had signed it as a deed meaning there was no need for consideration. Changing this drafting might mean that the CMS is unenforceable as between each of the parties mentioned in section 59(2) of the BCCM Act.

Conclusion

The Property Council has long championed reducing Queensland's strata termination threshold as a key measure in unlocking critical new supply to respond to the housing crisis. Implemented correctly

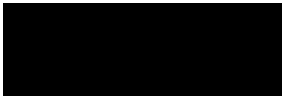
these reforms have the capacity to allow unit owners to unlock capital from their unit and access safe, fit-for-purpose housing and at the same time see these sites redeveloped and utilized to the full potential and boosting supply to market.

We applaud the intent behind these proposed amendments and in order to ensure the policy intent is achieved we ask that our feedback is duly considered.

In order to address constrained housing supply whilst balancing consumer considerations, we urge prompt and measured action through effective consultation to better understand the practical application of measures introduced.

Please don't hesitate to contact me on [REDACTED] or [REDACTED] to discuss.

Yours sincerely,

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Jess Caire

Queensland Deputy Executive Director