

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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1 September 2023

Committee Secretary
Legal Affairs and Safety Committee
VIA EMAIL: lasc@parliament.qld.gov.au

Dear Committee

RE: CONSIDERATION OF THE BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2023

Thank you for the opportunity to provide a submission in the Committee's consideration of the *Body Corporate and Community Management And Other Legislation Amendment Bill 2023* (the Bill), which was introduced into Parliament on 24 August 2023.

Strata Solve is an independent strata dispute resolution and prevention consultancy, providing problem-solving services, mediation and alternative dispute resolution to lot owners, committees, tenants (aka, occupiers), management rights holders, strata managers, service providers and others. Our interest in the Bill stems from the background of Strata Solve's Director, Chris Irons. Chris's strata expertise is unrivalled:

- Queensland's Commissioner for Body Corporate and Community Management from 2014 to 2020;
- Over two decades experience in the Queensland Public Sector, including policy development in the property sector, drafting legislation and stakeholder engagement;
- Member of the Community Titles Legislation Working Group;
- Immediate past-President of Strata Community Association (Qld); and
- On a personal level, a tenant (occupier) of one strata scheme, and an owner in another.

Observations on the Bill

The Government is to be commended for seeing this lengthy reform process through to this point. It has not been simple and the issues are complex, sensitive and traverse elements of social, housing, justice and real estate policy. There are no other public policy areas in which we find this diverse mix of interests and positions. Accordingly, the fact the government has drawn lines in the sand on some of the more hot-button issues is a welcome development. Put another way: even if one does not personally concur with the positions taken, one should – in our respectful view – accept that a position has been taken.

Also in our respectful view, there were opportunities for the government to go further in some areas. We understand a second Bill may be forthcoming in this term of government, and we look forward to that Bill perhaps addressing some of the additional issues the sector needs addressed.

Our focus in this submission is not to address every Chapter or indeed, every issue. Rather, we have focussed on a select group of provisions in the Bill and in which we think there are matters needing clarity. We also make a general observation in relation to implementation of the Bill:

Scheme Termination

Amendments relating to scheme termination are almost solely in relation to owner concerns. While that is understandable, the interests of long-term tenants (or 'occupiers' as they are known under the *Body Corporate and Community Management Act 1997* (the Act)) should not be completely overlooked. It is conceivable there may be a scenario in which an occupier who has lived in a scheme for many years would find themselves with no say in the scheme's termination. In our experience, long-term occupiers play a constructive and positive role in the effective operation of a scheme, in some cases far more so than some owners who rarely if ever vote or participate.

In the context of the ongoing rental crisis in Queensland, the Government is to be commended for its increased focus on the rights and needs of tenants. Consideration of the interests of long-term occupiers in strata, as they relate to scheme termination, would be a further step in that direction.

Recommendation: That the Bill provides for the interests of long-term occupiers in a scheme which will be subject to the new termination provisions of the Bill. A benchmark for 'long-term' based upon years of occupancy or duration of lease, could be considered to provide an objective framework for these interests

Keeping Animals

While clarity around this sensitive issue in the Bill is appreciated, it is also apparent there is considerable confusion in the community about keeping animals in strata. On 29 August 2023, Strata Solve [cohosted a webinar](#) about the implications of the Bill. That webinar attracted nearly 300 attendees live (more have watched the recording afterwards), and questions about keeping animals comprised a significant part of the webinar. A verbatim selection of the questions asked are reproduced below:

Can you stipulate size of pet?

Can a lot owner be prevented from having TWO dogs?

Would this legislation override local Council by-laws?

Residency laws can limit the number of PEOPLE living in a property - but now, ANY number of pets can live in a property??

What about my pet 4m saltie in the BC pool at Port Douglas?

There are Gold Coast schemes that can not have pets as per the Council DA as it is near to nature areas, superseding any BC bylaws.

How much should By-law review cost?

What about the pet having to be carried in common areas? That isn't always practical.

That sounds like the dog probably gets approved' however, if it becomes a nuisance and

barks always causing noise etc - then it can be removed easier than saying know in the first place!

Considerable time and resources will need to be devoted to education and information on this issue. A checklist or flowchart, similar to [this one already published](#) by the Office of the Commissioner for Body Corporate and Community Management (the Commissioner's Office), and in which the common issues around size, weight, breed, local government regulations, and carrying animals across common property are addressed, would be ideal.

Consideration could also be given to greater synchronising the provisions regarding keeping animals in both the Act and under the *Residential Tenancies and Rooming Accommodation Act 2008*: as it currently stands, there are different processes under each of these statutes, with differing timeframes and considerations for both body corporate committees and landlords. The confusion this creates for tenants (occupiers), landlords, real estate agents, body corporate committees and body corporate managers can be considerable.

Recommendations:

- **That there be greater consistency between residential tenancies and body corporate approval processes for keeping animals, to be addressed either in the Bill or as a priority in another legislative vehicle; and**
- **That the Commissioner's Office produce a flowchart, checklist or similar, detailed educational product to deal with the community confusion on this topic**

Smoking

Provisions in the Bill in relation to smoking are welcome. That said, there appears to be an anomaly in relation to the concept of 'smoke' as a hazard. The Bill links its references to 'smoke' to the relevant definitions from the *Tobacco and Other Smoking Products Regulation 2021*. In practice, this means that 'smoke' from sources including wood fires, barbecues, and meat smokers, would not be captured by the provisions of the Bill. That means that any nuisance or hazard created by these types of 'smoke' would be required to be pursued through usual by-law enforcement or other dispute resolution processes. Our experience is that concerns about smoke from wood fires, barbecues and meat smokers, as well as similar products, are becoming more commonplace.

If it is the Government's intent to address health and wellbeing impacts as a result of 'smoke', then the definition of 'smoke' should be amended to incorporate the additional sources noted above.

Recommendation: That the Bill be amended such that 'smoke' in general be captured, rather than the current position of the Bill in which only 'smoke' in relation to tobacco products is captured

Towing

We raise two matters in relation to the towing provisions of the Bill, which we think are a constructive step in addressing a challenging issue.

Firstly, the Bill only addresses towing in relation to owners and occupiers. There is no provision to consider 'guests', 'invitees' or other parties that may be parking in contravention of a by-law, or

causing considerable disruption by virtue of the way they are parked. A common example would be parties that park on body corporate common property in order to access a retail facility nearby, which is unconnected to the strata scheme.

If it is the Government's intent to give greater clarity to bodies corporate regarding towing, it would stand to reason that the provisions of the Bill make clear the body corporate could tow other parties that are in contravention of parking and towing obligations at the scheme.

Secondly, we draw the Committee's attention to [Franklin Residence \[2023\] QBCCMCmr 272](#), an adjudicator's order of 19 July 2023. It is a noteworthy order. The adjudicator, in our view, indirectly authorises the body corporate to tow (remove) a vehicle abandoned on common property and where the body corporate has been unable to identify the owner of the vehicle.

From experience, this is a scenario that many bodies corporate face in Queensland. For example, in places like Cairns, it is not unheard of for visiting backpackers to simply abandon a vehicle on common property of a scheme before leaving the country. Legislation is silent on what the body corporate could or should do in these situations and that in turn creates challenges, given that the abandoned vehicle continues to occupy common property, use up a car space and also potentially create a hazard.

We think the Bill should 'codify' the adjudicator's order, and clarify that a body corporate, having gone through a robust process to identify a vehicle's owner, should then be able to remove an abandoned vehicle.

Recommendations:

- **That the Bill be amended to provide that other parties, apart from owners and occupiers, can be subject to a body corporate's ability to tow a vehicle, particularly where those other parties are causing a nuisance or hazard or are in contravention of by-laws (if they were an owner or occupier); and**
- **That the Bill be amended to provide that a body corporate may, subject to a robust process, remove an abandoned vehicle from common property**

Alternative Insurance

While we think the move towards adjudicators determining alternative insurance is the right move, clarity is required around 'self-insurance'. Our reading of the Bill is that self-insurance remains an ambiguous possibility for bodies corporate. Given affordability and availability issues for strata insurance in Queensland, especially in North Queensland, self-insurance is, or should be, an option.

There are several ways in which self-insurance manifests and it is not our intention that they be itemised in the Bill. Rather, our view is that if a body corporate has gone through a methodical process of considering its risks and puts into place a financial and property management plan which addresses how it might meet financial obligations arising out of an insurable event – and after they have exhausted reasonable attempts at sourcing insurance – then an adjudicator should be able to consider this and where appropriate, approve it as suitable for the circumstances of that scheme. It is important to bear in mind that an adjudicator has wide-ranging investigative powers, which would enable them to obtain further information and material about the proposed self-insurance.

Recommendation: That the Bill be amended to provide that an adjudicator may approve self-insurance

Implementation of the Bill

The Bill covers a wide range of challenging issues which directly impact many Queenslanders on a day-to-day basis. Much, if not all, of the implementation responsibility of the Bill will fall to the Commissioner's Office to undertake. From experience, we know that Office is comprised of dedicated, skilled and exceptionally knowledgeable officers. That said, the Commissioner's Office is chronically under-funded: for the more-than-50,000 strata schemes in Queensland, there are fewer than 50 staff to provide both information and dispute resolution services in the Commissioner's Office. Providing additional ad hoc amounts of funding will not address this problem in the long run.

The ability of parties to be able to source relatively quick and accurate information and education is essential in preventing and addressing disputes. The Strata Solve experience is that in the absence of that information and education, parties will turn to ill-informed sources for assistance or make assumptions, which in turn exacerbate challenging situations and disputes.

There is a need for government to address the long-term future of strata information, education and dispute resolution in Queensland, given that strata is going to be the only viable housing option for many Queenslanders into the future. Making the Commissioner's Office a self-sustaining entity, akin to the Residential Tenancies Authority, is where that long-term future should lie, in our view. One option would be a percentage of all Community Titles transactions in the Titles Office being devoted to funding the activities of the Commissioner's Office into the future. Prevention is better than cure when it comes to strata, and a well-resourced information and education service is essential not only for the effective implementation of the Bill but into the future as well.

Recommendation: That the Bill's implementation be supported by a clear commitment by government to ensure the long-term viability of the Commissioner's Office and the services it provides

Considering the points raised above, we think the Bill ought to be supported and passed. We would welcome an opportunity to expand upon these points with the Committee.

Yours sincerely,



Chris Irons
Director