

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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Legal Affairs and Safety Committee
Queensland Parliament
George Street BRISBANE QLD 4000

Dear Committee,

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

All references to law and regulation in this below submission mean the laws and regulations as applicable in the State of Queensland, unless otherwise specified.

SCA (Qld)

As of 2023, there were over 500,000 lots in more than 50,000 community title schemes across Queensland.

SCA (Qld) is the peak industry association supporting Queensland's strata sector, with more than 1,200 individual and corporate members who help oversee, advise and manage assets worth tens of billions of dollars. As the peak body for the strata industry, SCA (Qld) is in the unique position to understand the sector from all angles. SCA (Qld) members manage approximately 400,000 of the more than 500,000 lots across the state.

SCA (Qld) understand the strata sector from a broad array of viewpoints owing to our diverse membership. We pride ourselves on our ability to advocate from a "whole of industry" perspective.

The Proposed Bill

SCA (Qld) is largely supportive of the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 ("the Bill") as drafted. For the most part, we believe it strikes an appropriate balance in most areas between ensuring appropriate governance and protecting harmonious community living. We believe, for the most part, except where we have suggested specific changes the Bill should be passed in its entirety.

We were pleased with the opportunity to contribute to the private consultation conducted through the Community Titles Legislation Working Group and thank the Attorney-General for the convening of that group.

SCA (Qld) believes that the process proposed for scheme termination is broadly a fair one, balancing property rights, democratic governance of bodies corporate and overarching public policy concerns in a reasonable and equitable fashion. We commend the consideration and detail which has been put into place. The current scheme termination regime is problematic and does not reflect the needs of modern Queensland.

Significantly, clarity around pets and smoking issues is welcome for body corporate managers, particularly in light of the increasing portion of the population being housed in strata, societal concern about second-hand smoke and the increasing importance of pets to many people.

Outside of scheme termination, the changes proposed by this Bill place in legislation what is generally accepted industry consensus around disputes with respect of these matters. Despite this, we believe this represents positive change as legislation is more accessible to the general public than an understanding of how the rulings of adjudicators within the Office of the Commissioner for Body Corporate and Community Management ("Commissioner's Office") have tended to play out.

SCA (Qld) is also pleased with the administrative amendments proposed which will simplify matters for the increasingly complex layered schemes which are being constructed. The other minor administrative changes are welcome and provide clarity around matters and help to modernise and streamline practice for body corporate managers when dealing with unit owners.

SCA (Qld) would like to place on record in this submission the importance of the continued progress of the Community Titles Legislation Working Group and further bills to reform other important community title related areas.

SCA (Qld) will now deal systematically with the various broad and specific proposals from the Bill.

Scheme Termination

SCA (Qld) considers changes to the status quo with respect of termination of ageing community titles schemes to be a critical reform to ensure the efficient management of the body corporate sector, as well as being a positive for the ongoing housing crisis in Queensland.

Previously in Queensland one dissenting owner has been able to coerce the body corporate into expensive litigation. The former Gold Coast scheme 'Nobbys Outlook' is a prime example. In this instance, one out of 45 owners at a meeting voted no to terminating the scheme, which ultimately meant the scheme went to the District Court to seek a termination order. After some initial proceedings and significant fees being incurred by the body corporate, the dissenting owner who was the respondent in the case relented. Significantly, the body corporate was also forced to pay the legal costs of the dissenting owner as well, which reduces the overall financial viability of such a decision for schemes considering the same process currently.

In this context, we feel it is important to raise the overarching public policy concerns which necessitate this reform.

Queensland Housing Crisis

SCA (Qld) believe that any lever which can be pulled to increase housing supply in Queensland should be considered with regard to the ongoing housing crisis.

The current arrangements around scheme termination are extremely rigid. In context of the ongoing housing crisis and population pressures our State is facing, this sort of handbrake on the supply of property is inappropriate. Homelessness is up 22 percent in Queensland over the past 6 years.

Interstate migration through COVID and since have been enormous. Over 100,000 people moved to Queensland in the 5 years between 2016 and 2021. Queensland is increasing its population by about 2% per annum, and frighteningly, 220,000 (more than twice the previous five years) people plan to move to Queensland from Victoria and New South Wales over the next few years. It is easy to deduce, based on the current problems and this ongoing trend, that any unreasonable barriers to creating new housing need to be examined in a rational fashion with an eye to helping best solve these problems

In the final quarter of 2020, the disparity between the price of detached houses in Brisbane and strata properties (townhouses, units, etc) was approximately \$300,000.000¹. This is unlikely to have shifted drastically in recent times and we note the significant ongoing pressures, particularly with respect of population growth and demand for housing Queensland is facing. This price gap means, by default, that strata properties help allow a broader demographic of Queenslanders to own their own home.

¹ Tilley, E., 2021. Brisbane house price hits new record high in middle of COVID-19. *The Courier Mail*.

There is demonstrated evidence that owning a home delivers emotional and social benefits beyond improving an individual's balance sheet. Home ownership is demonstrated by research to have meaningful positive effects on feelings of inclusion and community².

A big part of increasing the size and scale of schemes will be to allow existing schemes to be re-developed. Strata can play a large role in ensuring equitable and widespread access to the promise of home ownership.

Another important aspect of this is the need to help owners facing financial difficulty being faced by many reasonable owners who wish to terminate what are now very old schemes who are unable to do so. The President, another scheme on the Gold Coast which has recently been in the public eye are a good case in point. In this instance we have a body corporate in turmoil while two owners refuse to sell to developers. They can't afford to fix the schemes' significant problems including asbestos and concrete cancer yet a small minority of owners won't consider alternatives for their future. This holds all other owners to ransom and undermines their safety involuntarily.

Termination Plan - Considerations

SCA(Qld) considers the factors to be considered by a termination scheme as required by the Bill to be reasonable and equitable. SCA (Qld) welcomes the relative flexibility of the process being outlined, and we note that an approach which is too prescriptive may become cumbersome.

The critical matters required provide enough details around the important economic aspects of the plan and ensure that caretaking and other contractors, as well as importantly tenants have their long and short term economic rights considered. The provisions in the bill with respect of the drafting of a termination plan, in the view of SCA (Qld) appropriately capture the critical financial impacts on stakeholders. SCAQ also believes the sections around the termination plan should contain specific reference to protecting caretaking contractors/ facility managers who do not have a letting agreement, acknowledging this growing business model.

SCAQ would also welcome clarity on whether or not the various resolutions that need to be passed to go through this process can be all considered at a single meeting, or if they require separate meetings

Pre-Termination Report

SCA(Qld) supports the framework being proposed around seeking a "pre-termination report". Oftentimes emotional or misconceived reasons for seeking to remain in the scheme can trump evidence based discussions around the viability of the scheme. The option to proceed with unanimous agreement on a "no questions asked" basis being retained is also a positive step as it will not create artificial barriers or hoops to jump through for termination to occur where owners agree unanimously.

Getting appropriate consultants in to help with the creation of a pre-termination report can have the dual benefit of providing the scheme time to consider in a calmer environment the pros and cons of termination and allowing emotional owners access to clear expert information around these matters.

The requirements of a pre-termination report as outlined in the bill are reasonable and balanced. The set of documents is prescriptive enough to give rational people a reasonable idea of the status of the scheme without prescribing too much consultation or frustrating the process unreasonably. 90 days is a reasonable amount of time to consider the pre-termination report and the threshold of a majority resolution for the creation of a termination plan means that there are appropriate guard rails to ensure

² Stillman, S. and Liang, Y., 2010. Does Homeownership Improve Personal Wellbeing?.

this process is procedurally fair without being excessively bureaucratic. This will help create structure in a process which can at present become dysfunctional.

SCA (Qld) suggests some minor amendments to new section 81C to more appropriately capture all relevant factors. Specifically, SCA (Qld) would like to see consideration of the maintenance, repair or replacement of mandatory improvements to the common property also. With combustible cladding being an ongoing issue, mandatory improvements such as replacement of cladding may also be a factor. In addition, there are a plethora of other examples whereby mandatory improvements to common property would also be an important consideration in formulating economic reasons arguments. This we believe is an important factor which should be inserted into any bill. Whilst legislation cannot capture every eventuality, this is an important factor which should be considered and will come up regularly.

SCAQ also believes that given the importance of their contribution to the process that , given it is not a legislated term , a definition of who is a Quantity Surveyor for the purposes of the termination process ought to be inserted into the Act. As a starting point, SCAQ would recommend a definition including members of the Australian Institute of Quantity Surveyors, the Royal Institute of Chartered Surveyors or a list of approved University Degrees to be completed. This would give an appropriate starting point- given the importance of this consultant in the process.

In some instances, the rectification or make good of a specific, non-structural element of the building may warrant consideration of termination of the scheme. An example might be the cost of rectification for combustible cladding or a fire safety system upgrade. For building infrastructure of this type a structural engineer may need the assistance of another suitably qualified person to assess the building element's condition. We would suggest new section 81C e (ii) be amended to capture the report of the structural engineer and the report of any other professional consultant to whom the structural engineer has referred investigation of a non-structural building element. There may need to be an ability to gather any further advice as appropriate from other professionals.

SCA (Qld) appreciates the insertion of conflict of interest provisions around the expert reports so as to ensure they are prepared independently. Generally speaking, conflicts of interest are problematic in body corporate and we believe the efficacy of these provisions will be reliant on how well they are enforced. Currently, the Act faces significant deficiencies when it comes to enforcement generally, particularly with regards to conflicts of interest. We also would welcome some regulatory or explanatory guidance for schemes around these matters.

Economic Reasons for Termination

SCA(Qld) believes that it is important to have the structure in place for owners to make a rational decision with appropriate time with regards to termination for economic reasons. The requirement for 90 days of consideration of the pre-termination report gives appropriate time for people to consider the report before voting. As stated above, the threshold of a majority resolution is equitable in our view. The economic reasons test outlined in new section 81A, is in our view, a reasonably fair and balanced whilst also providing sufficient flexibility for owners to consider their own personal circumstances.

Disputing Economic Reasons

SCA (Qld) is pleased to see that dissenting owners will be able to dispute economic reasons with no personal cost by requesting specialist adjudication. We would also like this process expanded so that owners may be able to go to QCAT for adjudication of this dispute. All of these processes take significant time, and we are concerned that specialist adjudication being the only avenue for pursuit of a dispute may lead to the unreasonable delay of proceedings. It is not fair to deprive owners of certainty for excessive periods of time. SCA (Qld) notes the provisions for costs, and in line with our support for expanding the process to have QCAT as an option, we believe costs orders should be

uncapped “ if the interests of justice require it,” in this instance to provide a strong deterrent for poor behaviour.

SCA (Qld) believes all other provisions with respect of this process as drafted are suitable and supports them in full.

Termination Plan- Voting Procedures

SCA (Qld) agrees with the overarching architecture proposed by the legislation around the termination plan. A 75% threshold is a fair and reasonable one. We believe that the unique nature of this resolution means that its meaning should be specifically codified in Chapter 3 Division 4 of the Act with the other types of resolution currently in existence. SCA (Qld) also notes there will need to be amendment of section 88 of the Body Corporate and Community Management (Standard Module) Regulation 2020 (“Standard Module”) and commensurate sections of the various other Regulation Modules to reflect this new type of resolution.

SCA (Qld) supports the ability of owners where the threshold of 75% cannot be met to be able to apply to the Court to give effect to a termination plan. This may be useful in instances where a large portion of owners are overseas or simply irrational.

In addition to the abovementioned point, SCA (Qld) believe that given the importance of the consideration of a termination plan being implemented, a resolution of this type must require electronic voting to be available to owners to ensure maximum enfranchisement.

SCA (Qld) also understands, given the gravity of such a motion and the potential for mischief is why the bill explicitly excludes proxy voting. However, given this provision, SCA (Qld) would support a legislative provision on whether or not corporate nominees or persons with Power of Attorney may be able to vote on behalf of a lot owner. In the context of an elderly owner who may have diminished capacity for example, this may be a critical matter which should be considered and clarified in legislation.

SCAQ supports very strongly new section 81K (3) to ensure owners are able to consider seriously the important resolution without being confused.

Proceeds of Sale

SCA (Qld) considers the provisions around proceeds of sale and minimum compensation to be fairly drafted. Interest schedule lot entitlements as they currently stand are not updated with sufficient frequency to be appropriately reflective of true value. In the absence of a shift in requirements around those, we do not believe this is a factor which should be considered, and therefore agree with the current approach. We believe it is equitable for the “highest and best use” principle to be imported from the *Acquisition of Land Act 1971*. Given terminations will inevitably involve redevelopment it is important that a degree of the value uplift be required to be returned to owners.

Involvement of the Court

SCA (Qld) is broadly happy with the relatively high bar to reach the District Court for dispute resolution. Avoiding the inevitable expense of attending court at all costs is a principle which should inform legislative efforts where possible. As stated above, the option to bring an application where owners may be behaving irrationally is also important.

Conclusion

Save for the relatively minor amendments we have proposed, SCA (Qld) is broadly happy with the structure provided for scheme termination in the Bill. Inevitably, certain matters which are general

factors for consideration through the process will need to be litigated to establish precedent, however, given the overarching pressure to create new housing stock in the state of Queensland, we believe that this will occur fairly quickly. Once precedent is established, industry will fully adjust and understand their obligations.

Smoking

SCA (Qld) is happy with new section 169A and the amendment of s167 to provide certainty and clarity around issues of smoking related to community titles schemes. The specific guidelines around smoking are pleasing to see after decades of this issue being a prominent cause of rancour in community titles scheme.

SCA (Qld) suggests some minor amendments to the drafting at present to make the provisions more effective. Firstly, acknowledging “regularly” simply means “in a pattern”, we suggest that the drafting be amended in this instance to read “regularly or frequently” to more fully capture disruptive behaviour in this regard.

Animals

SCA (Qld) accepts that the zeitgeist is such that blanket bans on animals will not be accepted in a community titles scheme. SCA (Qld) believes the provision as drafted proposing new section 169B formalises, particularly for the benefit of lot owners what many industry participants have understood for many years. SCA (Qld) suggests only one minor amendment to sub-clause 7, to include the words “and flora” after references to fauna, acknowledging the important role certain plants can play in our native ecosystems.

Towing

SCA (Qld) believes that bodies corporate should be empowered to tow vehicles which are inappropriately parked within an appropriate framework where the community has registered by-laws around parking.

Towing should only be done by an operator licensed under the *Tow Truck Act 1973* and in accordance with the *Tow Truck Regulation 2009*.

We understand unregistered vehicles are often the cause of these parking problems. There are easily accessible web services where a lay person can find a car’s registration status. There is no need for a tow truck operator to obtain a permit to tow an unregistered vehicle. In instances where there is an urgent need to tow due to hazard, obstruction or other danger the authority to engage a tow truck operator should be delegated to the manager.

Lot owners towing cars from exclusive use areas should be governed by the laws of trespass as with any other private property. We believe exclusive use areas, where appropriately defined and delineated should be outside the scope of towing reforms.

Whilst acknowledging that the body corporate is not required to comply with a requirement under chapter 3, part 5, division 4, SCAQ believe these provisions as proposed at new 163A should be strengthened to simply allow bodies corporate with a permissible by-law to immediately allow them to ask an adjudicator for an order to tow. Streamlining this process, such as removing the requirements for self-resolution in their entirety and/or allowing referral under section 243A will enhance compliance and remove administrative burden.

Alternative Insurance Approvals

SCA (Qld) supports adding clarity to the process for alternative insurance proposals and endorses moves to ensure this can occur. Acknowledging the scope of this issue, particularly in the State’s

North, we believe further changes are necessary to more fully address some of the issues arising for lot owners owing to the ongoing insurance crisis in North Queensland.

Firstly, we are pleased to see the option of seeking alternative insurance being open to schemes which are under a standard format plan. Issues facing schemes in North Queensland are not the sole domain of schemes under a building format plan and legislation should reflect this. SCA (Qld) notes there will need to be amendment of section 198 of the Body Corporate and Community Management (Standard Module) Regulation 2020 (“Standard Module”) and commensurate sections of the various other Regulation Modules to reflect the inclusion of standard format plans in this reform.

In addition, we believe given the high volume of alternative insurance applications and the widely recognised market failure in the provision of full replacement value insurance in North Queensland there should be greater legislative protection for committees in these scenarios. It is not the fault of committee members in most instances that full replacement value insurance is unavailable, and these volunteers should not be as exposed to litigation as they are under the current framework.

Administrative and Procedural Matters

SCA (Qld) broadly supports the proposed changes in this regard.

We would like to place on record the fervent support of our members for the removal of the obligation to keep a body corporate seal. Additionally, our members are very pleased to see that owners will now have the right to have disputes with original owners resolved under Chapter 6 of the BCCMA. This is an incredibly important consumer protection.

SCA (Qld) would support expanding further the changes proposed at clause 37 of the Bill to include facility managers also, given there are now a plethora of businesses which have decoupled letting agreements from maintenance contracting.

SCA (Qld) also believes that some protection should be offered to corporate managers in light of this provision. Specifically, body corporate managers often are tasked by the committee with providing informal educational services – in practice, explaining to lot owners the legislative obligations of the body corporate and the implications of choices around voting. We are concerned that potentially this typical service may be captured under this proposed section and would welcome guidance on what constitutes “unfairly influencing.”

SCAQ supports the removal of the audit motion contained within the various regulation modules, believing it is redundant and burdensome red tape.

SCAQ also notes there is no provision made in the Bill to allow electronic voting for BUGT Act schemes and believe this minor procedural change could be easily added to the Bill. BUGT schemes tend to be large, resort style schemes with high volumes of absentee owners. There is an opportunity to make this minor change here.

Conclusion

SCAQ believes there are further critical reforms needed to Body Corporate Law in Queensland to bring the laws into line with modern society. Urgent reforms are needed to management rights, the regulation of strata managers and protections for bullying and harassment in schemes.



Laura Bos
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