Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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UNIT OWNERS ASSOCIATION QLD

Helping unit owners since 1978

UOAQ Submission to the LASC regarding the BCCM Amendments

Please find attached the UOAQ Submission to the Community Titles Legislation Working Group as a reference point for the following points for review of the Community Titles Scheme redevelopment element in the legislation.

1. There is no linkage between the City Plan and any proposal for redevelopment.
    a. Has the State Government completely surrendered the planning of our cities to the commercial interests of developers?
    b. Has there been any research to show examples of where this proposal is required? Under the current scheme terminations, there have been few applications (if any!) to the District Court to extinguish strata title. It is already an '***option***.
    c. No evidence of the requirement or possible scenarios was presented to the CTLWG.
    d. Is this proposal simply the requirement of the developer lobby and rushed through approval to suit their interests?
2. Queensland Community Titles Schemes has a record for bullying and harassment of their residents. The 75% approval will only make this situation worse.
    a. Respondents to the UOAQ Owner Survey 2021 of 1850 responses reported a 60% positive response to the question "Have you witnessed or been subject to bullying and Harassment in your strata community?"
    b. 60% is a truly damning result for the community titles sector.
    c. The CTLWG response to the Deloites report commissioned to review this issue shows that employing consultants to review this problem was a box-ticking exercise by the public servants, as their response presented to the CTLWG demonstrates little understanding of the issues raised in the report.
    d. Where is the government research to tell us if this is a problem?
3. Why is the management rights holder rewarded by a market price for their contracts which will result in further harassment and bullying of owners unwilling to sell their homes?
    a. How can you have a market value for managing a building that no longer exists? The market value will be zero.
    b. Which ARAMA lifetime member consultant will be called to provide a "market value"? There is a disgraceful track record in this area.
    c. For an industry where there is no competitive tendering to determine pricing or vendor capability for management services, how can a "market price" be independently determined?
    d. Who is going to pay for this market price if the Body Corporate is bankrupt?

4. Why is the District Court involved when the BCCM dispute process is discredited by the outcomes in BCCM disputes brought to QCAT?
    a. The UOAQ has been requesting that QCAT i.e. a tribunal without the independence of a Judge, should be removed from the dispute process. Is this acknowledgement that there is a problem?
5. The response to the Smoking elements is “deciding not to decide”.

UOAQ Response to BCCM Act Amendments - May 2023

Scheme Termination - Why does this need to be done?

This proposal is an “abomination”. The Oxford dictionary definition of abomination provides some insight:

> a thing that causes disgust or loathing.
> "concrete abominations masquerading as hotels"

The proposal shows a lack of consideration for the interests of ALL participants in the Queensland strata industry. Owner’s interests need to be considered, not just the developers and management rights holders.

There is a lot of unsubstantiated opinion in the requirements, and unimaginative outcomes in the proposal. Why does this need to be done? Who will benefit?

If the government wishes to deal with the housing crisis, then the responsible minister should start by enforcing the planning laws to stop the misuse of residential buildings for short term accommodation, thus returning substantial housing stock to residential use.

Concerns

Bullying and Harassment

- Vulnerable owners who do not wish to be evicted from their homes, such as mature aged widows, single women, and retired couples, will be subject to bullying and harassment by the vested interests attempting to profit from this process. UOAQ Strata Survey shows 60% of respondents were subject to or witnessed bullying and harassment, so this is a very predictable outcome. What measures will be implemented to ensure that this bullying and harassment does not impact owners who are unwilling to be evicted?
- How many buildings are “structurally unsound” and thus require to be demolished? Is this legislation being developed to enable (by bullying and harassment) perfectly good buildings to be demolished to appease developers? Are there any communities or locations where this proposal will be useful, where the buildings are run down, or major redevelopment would enhance or create a residential community?
- Has the government got any imagination regarding providing housing other than this proposal? Has the government considered renovating older buildings that are structurally sound and classified as residential to provide long term housing? Does it not state that the requirement for this proposal came from the Housing Summit? Why knock buildings down that are no longer viable for tourist accommodation without the consideration of renovation of these buildings for rental residential use?
- Are there any plans for development of our cities other than letting the developers drive out residents and demolish buildings?

"Market Value" - but only for some

- What does “market value” mean? Why is only one party in this review considered to benefit from a “market based” price?
- Who will determine a market price for management rights for a situation where there is nothing to sell or operate? How can you fulfil a contract to manage a building that has been demolished? Is the current market value not dependent on unlawful endless extensions and unlawful short-term accommodation?
- Will the “market price” of management rights be impacted by considerations such as “incorrect module”, “compensation to owners for an unlawfully operated letting contract disturbing residential amenity, damaging common property”, “unlawful contract extensions” etc.
- Why are owners not guaranteed a base level price determined by a value determined by past sale price as derived from sources such as RP Data, and their costs for moving and repurchasing another home (stamp duty, moving etc)? Why are owners without any guaranteed market price when they are to be evicted from their homes? Why are resident owners not guaranteed a market price plus their moving/ repurchase expenses, when others take a contrived market price from a limited pot provided by the developer? Why are owners' interests ignored in this legislation? People’s homes must be protected from the avarice of the development industry, yet there is no mention of any protection for owners who do not want to sell out in this proposed legislation. People must live somewhere or are they expected to be joining others who are living in their car?
- Will owners be able to be compensated for the degradation of their building asset by lack of appropriate management practices of repairs and maintenance? Will the review of “economic reasons” consider who is responsible for failure to properly manage the physical building asset, and be a basis for compensation of owners?
- Will the market value compensation to be paid for management rights contracts consider the gift from owners of extensions of contracts or the gift of new contracts? The compensation money is coming out of the owners’ pockets (again). Will the value of this gift be deducted from the so-called "market value"?
- Will owners sue management rights holders to recover losses of their asset value, due to poor maintenance and damage from unlawful short-term accommodation letting?
- Will the market value be determined by ARAMA aligned consultants? Will this valuation involve a similar level of fraud to the time and motion studies currently used to determine contract price?
- Where in the legislation does it say that the management rights are an asset that can be resold and thus the value must be protected?
- Should the government compensate management rights holders? The management rights are a government construct, why must owners be made to continue to pay up? Has the government considered formalising the “forever contract” by extending management rights to cover whatever is rebuilt on the land? Why not?
- What happens when the management rights “market price” is deemed to be more than the value of the building to a developer? Are owners required to pay up for the privilege of being evicted? There are a number of management rights contracts

whose value is increased by a minimum of 5% each year, so in 20 years, these contracts will be worth more than the building.

- Is the extensive wording in the proposed legislation designed to protect management rights holders going too far? The wording proposes that the body corporate must compensate all building service contractors. Will service providers such as electricity, gas, water be compensated for the termination of their service contracts and their loss of ongoing revenue. Will small contractors such as gardeners, pool maintenance who have worked in the building for extended periods require compensation for their loss of their business? The wording of the legislation suggests that these contractors will require such compensation, or is the legislation designed to only compensate management rights holders. Just how far is the legislation prepared to go?

"Economic Reasons" - only for some, a downward spiral for others?

- What does “economic reasons” actually mean? Does it mean that investor owners who cannot afford to renovate their lot to make it suitable for unlawful short term accommodation, due to poor returns from unregulated commissions within the uncompetitive protected environment of management right contract letting that can vote to demolish the building, impacting all owners?
- What does a "majority of lots cannot be used for a financially viable use" actually mean? What majority are we talking about as an ordinary resolution majority is generally about 30% of owner lots, or a majority resolution is over 50% of all owner lots or is it the 75% of owner lots, as announced by the attorney general?
- Can this process be started by an individual? What is to prevent the downward spiral of lot prices from the action of one person's avarice and a poorly defined process? What guide rails are provided to stop this process from collapsing the value of a property, driven by greedy individuals, exploiting the process to drive owners from the scheme?
- Are committees responsible for submitting the resolution to a general meeting, or can this resolution be submitted by any owner or the management rights holder? Owner committees are not required to be trained in the BCCM Act, are not personally liable for any of their actions, and are not required to declare their interests or benefits from the letting pools? Once the idea of eviction, demolition and redevelopment is declared, whether approved or not, will those owners who are financially able to move, sell out and suppress prices, leading to a downward spiral in the value of the building for those who choose to remain, are unable to easily move, or choose to stay for the local community.
- Individual owners need protection from committees and individuals who may act against the general interest of other owners for personal gain, a common problem in strata. Have any of these issues been considered?
- Should the government establish a standardised review process with professional reviewers as a gatekeeper to the start of this process, to avoid the self-interested exploitative industry players, and protect individual owners from exploitation.

How does this process support the city plan?

- Does the government have any target areas for redevelopment as per city plans, or any idea how many buildings would be subject to this process or is this process just random selection by developers?
- The problems with lack of enforcement of the development approval and the building codes creates schemes with mixed uses and thus competing "economic reasons" depending on the use. This proposal does not accommodate the competing interests of unlawful mixed use residential schemes.
- The choice to redevelop by demolishing an old building used only for short term accommodation and owned by investors is probably simply made by this process. But this process is significantly flawed for residential buildings with unlawful mixed use. Have the public sector developers of this proposal developed real life case study examples of the possible outcomes to process outcomes?
- The government "cannot have their cake and eat it". Hard choices must be made by the government or by the courts. Enforcing the planning laws by local government is perhaps the best way to address the housing crisis.

Does the voting process enable informed consent?

- Why is a “majority resolution” required for this type of decision, when an ordinary resolution is only required for an uninformed vote for multi-million-dollar decisions regarding management rights contracts? Is the government admitting that an ordinary resolution is inadequate on many levels, such as a lack of an informed vote and a lack of approval for significant issues by a majority vote?
- Will the vote be informed by alternative options to the termination of the scheme? Are owners given an informed choice when they vote, i.e. a choice of "be evicted" or "repair" or "repurpose" the building at cost $x
- Why only 50%, what happened to 75%?
- What happened to the special resolution provisions where 25% of owners can block major changes impacting rights and privileges of owners, or does that inconvenience the rights and privileges of the industry vested interests?
- If 50% of a building lot owners can vote to create a “termination plan”, what impact to the market value of each lot is expected if the plan is to demolish the building within 5 years?
- Do owners who are unlawfully using their lots for short term accommodation get to vote that they are not achieving sufficient return by their unlawful operation, and get to vote to demolish the lots of owners who are lawfully using their lots?

The District Court - a necessary step

- Why is the District Court involved? Has the Government concluded that QCAT or the BCCM Adjudicators are unreliable or unqualified? Will QCAT take a similar view to that taken when asked to terminate a management rights contract?
- It is not clear what the role of the district court will be, if the “special adjudicators” are required to be appointed by the body corporate?

- What is the difference in the process and matters considered between the review of the “Specialist Adjudicator” and the “District Court”?
- Who are the Specialist Adjudicators? Are they legal professionals who earn their living from the development and management rights industry, and therefore will not jeopardise their income by making decisions that impact the interests of developers and management rights holders?
- How can a complaint about being evicted from your home for minimal payment be considered to be “frivolous, vexatious, misconceived or without substance”. What are the specific criteria that the legislation has considered to arrive at that conclusion? Will such criteria be developed by a District Court Judge, or does it depend on how bad a day the BCCM Adjudicators are having?
- Who are the “appointed facilitators”? Body corporates do not have a good history of enforcing conflicts of interest issues.
- Owners assume that the government is regulating the industry for their benefit, but from experience, this is rarely the case.
- Comments made in the Consultation Guide that raise concern and review:
    - vulnerable to ‘hold outs’ even where termination is clearly appropriate
    - to terminate for reasons other than economic reasons
    - the current process for termination by unanimous agreement.
    - a right to dispute the decision about economic reasons.
    - be dealt with by specialist adjudication.
    - the body corporate will be responsible for the costs of... specialist adjudicator
    - specialist adjudicator will be able to order costs
    - UOAQ has for 10 years recommended to members not to go to QCAT re termination. There must be access for an owner to refer any decision to the District Court.
    - interests of .....compensated
    - the sector will adopt appropriate practices around the development of termination
    - The above arrangements should be made public for the sector to consider these practices, similar to precedence at law.
    - owners receive a fair division of proceeds...relative market value ...reflect ...improvements
    - Why compensate lessees...compulsorily acquired ...disturbance’ factors
    - If the body corporate makes a termination resolution, ...facilitator to assist ...to ensure that appropriate terminations are facilitated (dangerous)..., it is not proposed that District Court will be required to review or oversee all terminations (dangerous)
    - parties affected ...be able to seek orders of the District Court ...caretaking service contractor...compensation payable to them is appropriate.
    - access to justice ..., the body corporate will be responsible for paying reasonable costs of proceedings, which Court?
    - it is demonstrably appropriate to terminate
    - report evidences that economic reasons to terminate exist...value of the common property ...uplift’ value of aggregating
    - of the court to appoint and authorise an administrator

  - To clarify that particular electronic records that may be kept by a body corporate are body corporate records. (Relevant clause: 40(7))
  - The Development Approval (DA) is currently not recorded in the Body Corporate records. This document should be established in the CMS together with the Certificate of Classification.

- A contribution from a UOAQ Committee Member:
  it appears that the Queensland Government and its CTLWG have made a decision to quickly 'jump-ship'…Why, change the AG back to the previous AG and hastily windup the CTLWG Review with the development industry being rewarded, without 'rhyme or reason', a financial windfall 75% vote to make strata-scheme termination of prime land easier to collectively redevelop? Perhaps the largest property state (NSW) and the largest property type (residential homes) news today in the SMH is a glimpse into what is ahead, read on **here....**

Smoking

The UOAQ accepts the amendments to s. 167.

Additionally, we require that the following is included in the legislation:

- Definition of smoking as a hazard, to avoid any doubt. Smoke is harmful to the human body, including exposure to passive smoke. To accept that poisoning someone is a mere nuisance without stating the hazard is unacceptable in the light of decades long evidence of the harms of smoking.
- Definition of “regularly uses” or “regularly exposed” (as currently proposed in the amendments), to avoid any doubt.

These definitions ***must be*** included in the Dictionary section of the BCCM Act so that the correct interpretation can be relied on by owners and adjudicators with respect to the intent of the BCCM Act. The definition of those terms would rectify the current uncertainty that many owners suffer currently due to smoke drifting to their lots and who are unable to peacefully enjoy their lots.

The UOAQ welcomes the ability of a body corporate to pass a by-law prohibiting or restricting smoking in the customary manner, i.e., special resolution.

The law **does not consider the issue of smoke seepage**; that is, when the occupier of a lot smokes inside the lot, however, the open doors or windows are allowing for smoke drift to other lots. Therefore, smoke seepage must be considered in a by-law as well.

Section 169A must include the following:

- Regulate smoking inside of a lot (that is, ‘use of lot’ to create a hazard) where smoking would in practice allow the smoke to leave the lot. For example, in circumstances of: open windows, doors or not permanent walls (in case of enclosures); a person standing at the window leaning out smoking, smoking in an enclosed area that can be sealed but the smoker does not seal it, or smoke getting into ducted systems.

Consultation question: New section 169A (inserted by clause 11) defines *outdoor area of a lot*. How do you think *outdoor area of a lot* should be defined? Should bodies corporate be able to make by-laws restricting smoking on a balcony-type area that can otherwise be sealed off in a way that restricts the smoke or emission from a smoking product leaving the lot? Why or why not?

The UOAQ agrees with the definition of outdoor area as suggested in the amendments. If a balcony-type area can be sealed off to prevent the smoke leaving the lot, then it does not fall within the suggested definition of s. 3(a) or (b). **However, there must be no doubt in the obligation of the owner to keep the area sealed off properly until such time that the smoke cannot anymore leave the lot.**

By-laws are difficult to add or modify as they require a special resolution.

Will there be any campaign to inform owners that the situation has changed regarding smoking?

By-laws about keeping animals

The UOAQ supports the ability of communities to decide if their scheme will be pet friendly or not, and limit keeping of animals at their will. Special resolution is quite a high standard of decision making for body corporate and it should be available for communities to self-determine which communities they want to live in.

An occupier is entitled to the peaceful enjoyment of their lot and common property.

The smoking topic has determined impacts on other occupiers to be considered. ie. causes a nuisance or hazard or unreasonable interference. Similar criteria must be considered for animals.

The amendments consider the keeping of animals and that assumes the animals will be kept on an occupier's lot. Dogs are taken from the lot, generally on a daily basis, to other parts of the common property and transported by way of lifts.

The current legislation does not permit limitations on animals that could make it uncomfortable for other occupiers to share a lift. The lifts are confined spaces and puts occupiers into closer proximity to others, particularly those taking their dogs out of the building.

Strata is a preferred occupancy for the elderly and there is often a greater predominance of this cohort who are entitled to be fully considered. Confronting a large dog in a confined space will make many occupiers unreasonably uncomfortable, particularly if the animal takes an interest in them and starts to sniff their person (unreasonable interference) with perceived inadequate restraint. This is more than a nuisance; it is a perceived risk.

Dogs can be known to be dangerous and attack at will. Smaller animals can be restrained more capably.

The UOAQ supports the ability of body corporate to make a by-law that would impose the limits on keeping animals, whether it is numbers, type, size etc. to suit the needs of owners in the scheme.

For example, from Gold Coast City Council regulations:

> *Local Law No 12 Cl 14*
>
> *(c) require the provision of adequate space for the animals; and*
>
> *(e) provide for the separation of enclosures in which animals are kept from places used for human habitation …. and*
>
> *(f) make provision for the control and management of animals; and*

How can these minimum standards be applied to lifts in strata buildings?

UNIT OWNERS ASSOCIATION QLD

Helping unit owners since 1978

Presentation to Legal Affairs and Safety Committee – 7 September 2023

Since 1978, the more than one million Queenslanders that UOAQ represent have been underwriting this **$500 Billion** dollar sector of our economy. The BCCM Act is OUR Act. Developers and tourism operators have been aggressively and secretly gouging billions from us annually. This Must Stop!

It is simply unconscionable, against the Human Right Act and against section 51(xxxi) of the Australian constitution to threaten any person, that they will be unceremoniously evicted from their home if 3 neighbours consider it appropriate. Indeed, where are the social considerations?

Engrained within all Australians is the sense of justice ultimately afforded to the Kerrigan family endeavouring to defend their 'Castle' from a powerful development corporation. Reliant upon s51 of the Constitution (and a compassionate QC), the High Court recognised the difference between a House and a Home – the latter being of immeasurable value beyond any monetary amount. For the proposed 75% termination to even be considered further, the likes of UDIA and PCA would need to demonstrate how any such proposal could be 'on just terms'.

The only response available for LASC to convey to those advocating for such bullish overreach by developer lobbyists must sure be that of Darryl Kerrigan himself … " ***Tell 'em they're dreamin'.*** "

The Govt is proposing law to allow the law to be broken. This is absurd.

Termination of schemes was addressed by QUT 10 years ago, disclosing that:

Only 5 schemes in NSW and just 1 in Qld were necessary to be taken to court to address termination. There is no need for this change other than providing an opportunity for developers to bully and intimidate the vulnerable, and often elderly.

The currently required 'resolution without dissent' can be readily challenged and overturned by a simple adjudication process if the decision can be shown to be unreasonable. For example, in 2019 a CTS overturned a 14% dissenting vote via s94(2). The onus of proof must remain with the developer. Let the developer prove a termination of someone's home against their will is reasonable and 'on just terms' as in s51(xxxi) of the constitution. Let the developer go to the High Court to shed its crocodile tears if it is so aggrieved by the current system.

If it isn't broken – don't fix it. The termination provisions are little more than a hostile power grab by commercially vested developers to bullishly take over our private property – our homes.

With reference to seller disclosure and unlawful use, the law is being broken and all levels of Government are currently scrambling to find a way to get around it. Governments clearly have greater problems than terminations. Claims of premature dilapidation, ageing, end of economic life and an avalanche of terminations are rubbish.

There are 300-year-old residential buildings in London and Paris and others 150 years old in Sydney. Why the rush to demolish Queensland buildings, the oldest of which are less than 50 years? Are there **more compelling reasons** why this purported dilapidation occurs? **Could failed Management and Maintenance contracts be contributing? YES.**

Management Rights are sold by developers to maximise profit. **The scheme gets whoever can pay the developer the most money**. This does not guarantee any expertise, experience, or qualification. Consequently, schemes are not properly maintained but operate under bland and ineffective contracts established by the developer.

Example: The Broadbeach Phoenician pay in excess $700,000 p.a. for professionals, but instead, the caretaker responsible concentrates on profiteering from unlawful short-term letting. This simply contributes further to the accelerated wear and tear.

How can this serious problem be addressed?

Owners have tried to hold managers to account for decades and are forced to QCAT. Spending upwards of $500,000 in the process, they invariable fail. QCAT is not prepared to terminate a manager's contract – however flawed or neglected.

UOAQ has for years been advising members not to go to QCAT in seeking dispute resolution with managers. It is horrendously expensive, and they will lose. QCAT does not work. Limiting caretaking contracts to 3 years is the only solution.

Schemes cannot access the right people as caretaking contractors, and under existing legislative arrangements, never will.

The strata industry needs a **full and proper inquiry,** to provide guidance to a properly informed law review. The current Act was envisaged for 6 & 8 pack schemes. Today we have small schemes of 20 to 30 lots and average schemes of 50 to 100 lots, some 1000+.

The government is unaware of what is going on in strata and seems to pander to the developer lobbyists in the mistaken belief, that might solve the problems.

Prior to engaging in the law review, at a meeting with Shannon Fentiman in 2021, the UOAQ representatives expressed a lack of confidence in the Office of Regulatory Policy and the proposed review process, following two decades of neglect. The Attorney requested that we participate. We have little confidence that the ORP has listened to owners. That is - a million Queenslanders controlling a $500 billion dollar sector of the economy … all of whom vote.

On March 21 of this year, UOAQ lodged a complaint with the Ethical Standards Unit of the Department of Justice against the ORP and the conduct of the current Strata Law Review process. It beggars' belief that this 'Termination of Schemes' legislation can be considered, processed and rammed through with such haste. In whose interest?

By not adequately addressing **management rights** and the **misuse** of strata premises, it will simply exacerbate the widely reported problems and dysfunction … including the housing crisis.

Extending developer warranty obligations and making Development Company Directors personally responsible would greatly improve quality outcomes.

Providing developers with greater authority over dissenting owners will do nothing to secure the quality, values, and longevity of the developer's product, to avoid the developer's suggested premature deterioration.

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