Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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1. Executive Summary

(a) Insufficient time has been allocated for public scrutiny and this is likely to result in unintended consequences.

(b) In view of the time constraints, this submission only deals with the termination of schemes referred to in clause 7 of the *Body Corporate and Community Management and Other Legislation Amendment Bill 2023* (the Bill) and, in particular, terminations under division 4 of chapter 2, part 9.

(c) Given likely development timeframes, the proposed legislation will only exacerbate the housing crisis during the next 12 to 24 months. There appears to be no consideration given to this.

(d) In many apartment blocks, not all lots are equal. Some apartments may be in a rear position with a view of another building or a road whilst other lots in the same complex may have a city or ocean view. The legislation needs to make this clear when referring to the *respective market value of a lot principle*.

(e) The management rights should not be treated any differently to a lot. There will only be one pot of money and the lot owners and the owner of the management rights will all need to share in the proceeds.

(f) In view of the circumstances in which the *pre-termination report* will be prepared, the body corporate should not be permitted to authorise those reports to be prepared by persons with conflicts.

(g) The required market valuations referred to in s81C should be market valuations prepared by independent registered valuers.

(h) The body corporate should be required to include in a *pre-termination report* information about whether the economic reasons for termination mentioned in section 81A(b) exist and not just be given an option to provide that information.

(i) The legislation should provide that the body corporate must pay any cost of a Special Adjudicator.

(j) The drafting in s81Q(2)(a) should make it clear that the body corporate must pay the reasonable costs of the lot owner incurred in the proceeding regardless of the outcome of the proceedings.

2. Timing for Submissions and Report

The Bill was only introduced on 24 August 2023, yet written submissions closed on Saturday 2 September 2023.

This timeframe is manifestly inadequate and not consistent with democratic principles.

We note the Committee advised:

"*The committee is working within time frames set by Parliament and must report to Parliament by 6 October 2023. Although the closing date for submissions was 2 September 2023, the committee is happy to consider submissions received after this date. If you would like to email the committee your information, they would be happy to consider it in their deliberations in the lead up to the report*".

The concern is that other interested parties may simply not make submissions after seeing on the website the "*Submissions Close*" date has passed.

Further, a truncated submission period will also mean that reputable organisations that have the expertise to comment on the actual legislative provisions will be time restricted to just providing general comments. This lack of public scrutiny will also be harmful.

Regardless of whether or not the various provisions in the Bill have merit, any legislation that results can only be better with an effective committee process with submissions from all interested parties.

I respectfully submit that the Committee should, as a matter of principle, cause the timeframes to be extended and make public the extended timeframes.

I remind the Committee of the issues caused by the passage of the land tax legislation in 2015. Bad legislation was passed which resulted in an interpretation by the Supreme Court and the Court of Appeal that was not consistent with the objectives of the then Government. The Government was forced to amend the legislation but not before much time and expense was incurred in the Courts.

With the current Bill and in particular, the termination of schemes, many "ordinary" non-corporate citizens will be exposed to processes that will be completely foreign to them and could not have been imagined at the time they purchased their properties. It is critical that the legislation gets it right.

3. Housing Crisis

It is noted in the Explanatory Notes that a key action arising from the Queensland Housing Summit (held in October 2022) was to "*reform body corporate legislation to allow for terminating uneconomical community titles schemes to facilitate renewal and redevelopment…*".

It appears that no consideration has been given to the fact that the State is in the midst of its worst housing crisis and given likely development timeframes for new apartment blocks, the proposed legislation will only exacerbate this housing crisis during the next 12 to 24 months.

Regardless of the merits of the Bill, it is submitted that the Committee should take into account the lives of the many (including both renters and owners) who will be forced to find accommodation during the State's worst housing crisis.

4. The need for change

The key to good government is certainty.

Any legislative change may have unintended consequences and lead to uncertainty. It is therefore important that a consideration of any legislative change include an analysis of the reasons for the change.

It is submitted that the published material does not make the case for change and, in particular, why the existing legislation (for termination of schemes) will not work effectively in the future.

There has been some commentary that similar changes have been introduced interstate and so the changes should be introduced here. This is not a reason as there is little evidence as to how the changes have worked interstate.

The saying "*if it's not broken don't fix it*" should also apply to governments particularly given the unintended consequences that can arise from any legislation.

5. Protection Measures

The Bill contains certain protection measures that should not only remain but be improved and these improvements are referred to below.

The protective measures have been sensibly put in place because of the justified concern that the legislative changes may not work as they should.

It is submitted that an appropriate safeguard would be to increase the threshold for a termination resolution to 90%.

6. Proposed legislative Provisions

(a) Share of Sale Proceeds

It is noted that the amendment to section 47(3)(b) of the *Body Corporate and Community Management Act 1997* (the Act) will mean that the interest schedule lot entitlement for a lot will not be the basis for calculating the lot owner's interest on termination of a scheme under division 4 of chapter 2, part 9.

Section 81B(1) provides that the *termination plan* will set out, inter alia, how the proceeds of the sale of the scheme will be distributed for each lot in accordance with the *respective market value of a lot principle*.

For the purposes of s81B(1), *respective market value of a lot principle* is the principle that the market value of a lot in a community titles scheme is the value expressed as a percentage of the sum of the market value of all of the lots in the scheme(s81B(5)).

There are a number of questions that arise from s81B(5), namely:

(i) What is the "*value expressed as a percentage*" referred to in s81B(5)?

A. In many apartment blocks, not all lots are equal. Some apartments may be in a rear position with a view of another building or a road whilst other lots in the same complex may have a city or ocean view.

B. The percentage cannot be the same for all units even if the lots have the same contribution entitlements.

C. The *termination plan* should include a report by an independent registered valuer that values the scheme as a whole (including any management rights) and gives a breakdown of the values attributable to each lot and the management rights (referred to below) and this breakdown will form the basis for the percentages referred to in s81B(5) and ultimately dictate how the sale proceeds would be shared.

(b) Management Rights

Section 81B(3) provides that if the contractual arrangement is for management rights for the scheme, the amount of compensation to be paid to the caretaking service contractor must not be less than the market value of the management rights valued at the day the *pre-termination report* is given to lot owners.

The management rights should not be treated differently to a lot. There will only be one pot of money and the lot owners and the owner of the management rights will all need to share in the proceeds. To allow the owner of the management rights to be allocated a fixed share with the balance shared by the lot owners is not commercial and is nonsensical.

As noted above, the *termination plan* should include a report by an independent registered valuer that values the scheme as a whole (including any management rights) and gives a breakdown of the values attributable to each lot and the management rights.

(c) Pre-termination Report – Market Valuations

Section 81C(2) provides that *pre-termination report* must include, inter alia, a market valuation of each lot in the scheme and a market valuation of the scheme land. These should be market valuations prepared by independent registered valuers.

(d) Economic Reasons for Termination

Section 81C sets out what the *pre-termination report* must include. Section 81C(2(e) provides that if the body corporate decides the pre-termination report must include information about whether the economic reasons for termination mentioned in section 81A(b) exist.

There are a number of questions that arise from s81C(2)(e), namely:

(i) Why would the section give the body corporate an option not to include information about whether there are economic reasons for termination. This is the basis for termination under Division 4. It is submitted that the body corporate should be required to include information about whether the economic reasons for termination mentioned in section 81A(b) exist.

(ii) S81G(1)(a) allows a lot owner who considers an economic reasons resolution should not have been passed to apply under chapter 6 for an order of a specialist adjudicator to resolve the dispute. It is submitted that the *pre-termination report* must include information about

whether the economic reasons for termination mentioned in section 81A(b) exist in order for this dispute process to be effective.

(e) Conflict of Interest

The Bill correctly provides that the body corporate must not appoint a person to prepare a report if the body corporate knows, or reasonably suspects, the person has a conflict of interest in preparation of the report.

However, the Bill then allows the body corporate to authorise the conflict. In view of the circumstances in which the report is being prepared, this is not commercial and is nonsensical.

In view of the fact a termination under division 4 will most likely arise following an approach by a developer to the body corporate, the relevant sections should make it clear that the persons preparing the reports must not have previously been engaged by the developer or related entities.

(f) Specialist adjudicator

The legislation should provide that the body corporate must pay any cost of a Special Adjudicator.

(g) Court proceedings and costs

Section 81Q provides that if an application is made by a lot owner under section 81N(4)(b) (where a termination resolution was passed), the body corporate must pay the reasonable costs incurred in the proceeding; and has the onus of proving that it is just and equitable to implement the *termination plan*.

It is submitted that s81Q(2)(a) should make it clear that the body corporate must pay the reasonable costs of the lot owner incurred in the proceeding regardless of the outcome of the proceedings. It is essential that affected lot owners have this protection.

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