LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Ms SL Bolton MP (virtual)
Ms JM Bush MP
Mr JE Hunt MP (virtual)
Mr JM Krause MP
Mr JP Lister MP (virtual)

Staff present:
Ms R Easten—Committee Secretary
Ms M Telford—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE BUILDING UNITS AND GROUP TITLES AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 11 JULY 2022

Brisbane

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The committee met at 9.21 am.

CHAIR: Good morning. I declare open the public briefing for the committee's inquiry into the Building Units and Group Titles and Other Legislation Amendment Bill 2022. My name is Peter Russo, member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share. With us here today are James Lister MP, member for Southern Downs, substituting for the deputy chair, Laura Gerber, member for Currumbin; Sandy Bolton, member for Noosa, via videoconference; Jonty Bush, member for Cooper; Jason Hunt, member for Caloundra, via videoconference; and Jon Krause, member for Scenic Rim.

The purpose of today's briefing is to assist the committee with its examination of the bill, which was introduced into the Queensland parliament on 21 June 2022 and referred to the committee for consideration. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the briefing at the discretion of the committee. I also remind committee members that departmental officers are here to provide factual and technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my directions at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone present to turn your mobile phones off or to silent mode.

BROWN, Mr Shane, Principal Policy and Legislation Officer, Office of Regulatory Policy, Department of Justice and Attorney General

REARDON, Mr David, Director, Office of Regulatory Policy, Department of Justice and Attorney General

THOMSON, Ms Victoria, Deputy Director-General, Liquor, Gaming and Fair Trading, Department of Justice and Attorney General

CHAIR: Welcome. I invite you to brief the committee, after which the committee members will have some questions for you.

Ms Thomson: Thank you for the opportunity to brief the committee this morning about the Building Units and Group Titles and Other Legislation Amendment Bill 2022. I am Victoria Thomson, the Deputy Director-General of Liquor, Gaming and Fair Trading, and with me at the table today are my colleagues David Reardon and Shane Brown from the Office of Regulatory Policy. The bill amends the Building Units and Group Titles Act 1980 and the Mixed Unit Development Act 1993. In the interests of time, I will refer to these pieces of legislation as BUGTA and the MUD Act. The bill also makes some minor unrelated amendments to the Fair Trading Act 1989.

The main objective of the bill is to improve the operation of BUGTA and MUD Act with a focus of making body corporate governance fairer for proprietors, for example unit owners, in relevant developments. The bill also, as I said, makes minor unrelated amendments to the Fair Trading Act intending to assist the Office of Fair Trading with the enforcement of gift card requirements under the Australian Consumer Law.

Most of the community titles scheme developments in Queensland are governed by the Body Corporate and Community Management Act 1997, which I will refer to as the body corporate act. That is not to say that this type of development did not exist prior to 1997. Indeed, since the 1960s

Queensland has had legislation allowing for the subdivision of land into individually owned freehold lots and common property. The predecessor to the body corporate act was BUGTA. While BUGTA allowed for the subdivision of land using building units and group titles plans of subdivision, unlike the body corporate act it did not effectively facilitate complex, multilayered developments. As a result, several complex, multilayered developments were established prior to the body corporate act using a combination of specialist planning legislation and BUGTA. The specialist planning laws that I refer to are also known as specified acts and include the MUD Act, the Integrated Resort Development Act 1987 and the Sanctuary Cove Resort Act 1985.

Governance of basic bodies corporate established under BUGTA transitioned to the body corporate act upon its commencement of 1997. However, those complex developments established under a combination of the specified acts and BUGTA did not transition to the body corporate act. Retention of the specified acts and BUGTA for those complex developments was, at least in part, due to concerns that integrating and transitioning these specialised planning, titling and structural elements of the existing specified act developments into the body corporate act carried a lot of complexity and risk, particularly given that many of the relevant developments were being undertaken in stages that were not yet complete. This essentially means that there are a number of complex, multilayered community title developments in Queensland, including some mixed-use schemes—that is, a mix of commercial and residential use—that continue to operate under the relevant specified act creating the development and BUGTA.

An example of a development which is under the MUD Act and BUGTA is Couran Cove Island Resort on South Stradbroke Island. Couran Cove has a layered arrangement of bodies corporate which includes an overarching community body corporate along with four subsidiary bodies corporate that have been established for parts of that site that have been further subdivided. The members of the community body corporate are the four subsidiary bodies corporate along with owners of two other lots within the site that have not been further subdivided. The members of the subsidiary bodies corporate are the proprietors or the unit owners of the lots within the subsidiary subdivisions. These include residents as well as small investors.

There are several important drivers for this bill. Stakeholders are concerned that BUGTA has not kept pace with the modern body corporate act and, as a result, proprietors and BUGTA developments do not enjoy the same protections as unit owners in the body corporate schemes. The government has received representations from some proprietors at Couran Cove about a range of issues impacting on that development. These issues and concerns have further highlighted the substantial discrepancies between BUGTA and the body corporate act in terms of body corporate governance arrangements and the protections for proprietors.

This bill is not designed to be a direct intervention in the various disputes at Couran Cove; however, it is the case that regard has been had to the concerns and issues arising at Couran Cove in terms of identifying deficiencies in the MUD Act and BUGTA, particularly when you compare it to the body corporate legislation. These issues and concerns have also been considered in identifying and developing the potential improvements to the legislation contained in the bill.

Many of the amendments contained in the bill are based on existing provisions of the body corporate act and will go some way to ensuring that unit owners benefit from similar governance arrangements and protections, regardless of whether their body corporate is subject to the body corporate act or BUGTA. I do note that in some cases the amendments contained in the bill go further than the body corporate act, and this is to reflect the nature of those complex schemes operating under the MUD Act and BUGTA. The committee should know that the bill has been developed by the Department of Justice and Attorney-General in collaboration with the Department of State Development, Infrastructure, Local Government and Planning, which has administrative responsibility for the MUD Act.

I would like to briefly summarise the key policy initiatives under the bill. The bill amends BUGTA to facilitate government information and education services for proprietors in BUGTA related developments, consistent with those services already provided for lot owners under the body corporate legislation through the Office of the Commissioner for Body Corporate and Community Management. The bill also contains amendments to make it procedurally easier for bodies corporate to access dispute resolution services and to provide referees appointed under BUGTA with more flexibility and clarity in relation to how they go about resolving disputes. In terms of government services, I note that as part of the 2022-23 budget the government committed additional funding of $2.5 million over three years for the Office of the Commissioner for Body Corporate and Community Management to implement the reforms in the bill.

The bill also includes amendments for improving body corporate committee governance, including: a requirement to act reasonably; provisions to prevent conflicts of interest by tightening up committee membership and committee voting eligibility; and provisions to ensure important information about body corporate governance activities is given to proprietors. The amendments support the financial viability of bodies corporate by placing restrictions around the use of inappropriate offset arrangements to satisfy levy contributions in place of monetary payments and by putting in place appropriate debt recovery time frames.

The amendments will also prevent proprietors in subsidiary schemes, especially resident lot owners, from being excluded from participation in community body corporate governance solely due to debts owed by owners of undeveloped lots in their subsidiary. The amendments will also ensure that where the community body corporate has arranged for the provision of essential utility services to proprietors they must take all reasonable steps to ensure the continuity of supply of those services; for example, by undertaking necessary repairs and maintenance as quickly as practicable. In combination, these measures are expected to significantly improve the governance of developments under the MUD Act and BUGTA, providing more appropriate protections for residential and small investor proprietors.

Stakeholder consultation has been undertaken in terms of the amendments that have been outlined in your briefing package. Targeted stakeholder consultation was undertaken during the development of the bill through the Community Titles Legislation Working Group, which includes key stakeholders such as the Strata Community Association of Queensland, the Queensland Law Society and the Australian College of Strata Lawyers. DJAG also had discussions with some proprietors at Couran Cove to better understand their key concerns. Initial concerns about the potential for some measures to have unintended consequences were addressed through a refinement of the proposals in the bill.

On 29 April 2022 an exposure draft of the bill was released for three weeks of public consultation and 31 submissions were received. Whilst stakeholders clearly believe that the MUD Act and BUGTA need reform, consultation did reveal some concerns about particular measures and how they would be implemented. Where possible, the proposals and amendments contained in the bill have been adjusted or refined in response to those issues raised. There were also calls for broader and additional reforms to the MUD Act, BUGTA and other specified acts that were not practical to incorporate given the relevant urgent need for targeted reforms provided by the bill. However, in that regard I note that the Community Titles Legislation Working Group is expected to look at the broader harmonisation of BUGTA and specified acts with the body corporate act as part of its future work program.

A further purpose of the bill is to provide for effective and consistent enforcement options for gift card requirements under the Australian Consumer Law. This is administered in Queensland through the Fair Trading Act. There are minor amendments to that act contained in the bill that will enable the Office of Fair Trading to issue infringement notices for breaches of gift card requirements in the Australian Consumer Law consistent with those penalties that are able to be issued by the Australian Competition and Consumer Commission. The ACL gift card provisions prohibit post-purchase fees on gift cards, require a minimum three-year expiry date for gift cards and require the expiry date of the gift card to be prominently displayed. Infringement notice penalty amounts will be 55 penalty units for a corporation, which is equivalent to $12,210, or 11 penalty units for an individual, which is equivalent to $2,442. Thank you again for the opportunity to brief the committee this morning. We are now happy to take questions.

Mr KRAUSE: Good morning. Thank you for your opening statement. I want to take you firstly to the issue around bodies corporate having a requirement introduced to act reasonably in their actions. Is there currently no requirement under these acts for bodies corporate to act reasonably?

Ms Thomson: Under the BUGTA Act, that is correct. The body corporate act has a 'reasonable' requirement within it, and part of this is to align the BUGT Act to that which already exists within the body corporate legislation.

Mr KRAUSE: One of the concerns I have heard about in relation to these provisions relates to the potential for disputes to arise in relation to decisions being reasonable. 'Reasonable' can be a fairly flexible term. Something that I think is quite reasonable might be considered by other members of the committee not to be reasonable. Is there evidence from the BCCM Act about how that particular provision to act reasonably may lead to more disputes and costs associated with those disputes?

Ms Thomson: The bill, as you say, does introduce this reasonable action paradigm. Like the body corporate legislation, the office of the body corporate commissioner has referees and adjudicators. If matters get to the point where they need dispute resolution, there is a whole process

to go through in terms of determining reasonableness. To prevent that, I think one of the important things this legislation does is improve those governance arrangements at the body corporate committee level to enable residents and their representatives to be at the table to head off disputes in the first place. So they are there having their say, representing their interests, and being able to talk directly with other people in the scheme about what can be done, what should be done and what it is reasonable to do.

Mr Reardon: Part of the spirit of this amendment is really to create an overarching expectation that bodies corporate will undertake reasonable processes when they are making decisions. In terms of the concern about whether it would lead to an increase in disputes, certainly part of the intention is to provide unit owners who are aggrieved with an additional avenue to seek relief or remedy to a dispute they are having with their body corporate. The concern with an increase in disputes did come out in consultation, and we think it is absolutely a fair enough concern. One of the things that has been included in the final version of the bill to somewhat mitigate that is a new explicit provision for how they deal with applications that are frivolous, misconceived, vexatious or without substance. The bill provides a limited power for referees to make a costs order against an applicant who makes that sort of application.

Mr KRAUSE: It is not a general power, though.

Mr Reardon: It is not a general power for costs, no. It is a very specific one. It is very similar to a power that exists under the BCCM Act currently for adjudicators. The experience is that it is used quite rarely. The reason is that there is an acknowledgment that this is meant to be a relatively informal, low-cost jurisdiction. The intention is for people to come to an adjudicator or referee fairly freely and not be overly concerned about having costs orders against them. The idea is that the limited cost order power of $2,000 for vexatious applications will mitigate, to some degree, the risk of really frivolous applications being made for referees' orders.

Mr KRAUSE: Just to allay concerns about that, would it be possible to provide the committee—I think you are the right people—with information about the level of disputes that arise under the BCCM provisions, which I think are equivalent to what is being asserted in this act, so we can gain an understanding of how it works and what might occur when these provisions are introduced into BUGTA, assuming they pass?

Ms Thomson: We will take that on notice and talk to the office of the body corporate commissioner, which manages the dispute resolution process there. Our understanding, as David says, is that it is seldom used, but we will seek to get that information for the committee to inform your thinking.

Ms BOLTON: With regard to dispute resolution, what mechanism is there within the amendments for those who have to chase unpaid levies et cetera to recover legal costs? I know that you have been speaking about dispute resolution, but I am still not quite sure what mechanism ensures the broader body corporate does not have to absorb the legal costs of chasing levies.

Mr Reardon: With dispute resolution, probably what is important for us to make clear is that debt recovery is not a matter that is typically dealt with by the referees as such. Outstanding levies are dealt with through normal debt recovery processes through the tribunal and the courts. At the moment, there is no explicit provision in the Building Units and Group Titles Act that allows a body corporate to recover debt recovery costs as a debt in relation to unpaid levies. This is another issue that did come up during consultation on the amendments, and it is certainly a valid issue.

As Victoria mentioned, there is a Community Titles Legislation Working Group that is looking at a whole range of issues primarily under the Body Corporate and Community Management Act. One of those issues is the effectiveness of debt recovery provisions and some of the issues in the BCCM Act, including the provision that allows for the recovery of costs. The thinking is that the issue of debt recovery costs should be considered as part of that work and hopefully again be considered in the context of aligning the BCCM Act and the Building Units and Group Titles Act.

Ms Thomson: Just to add further detail to that, the issue of debt recovery with the Community Titles Legislation Working Group forms part of tranche 3, which we are currently examining. We have dealt with tranches 1 and 2; we are now on tranche 3. We have started that discussion around debt recovery. That is something we will continue in the next couple of months. We had a meeting of the committee recently. We will have another one in a few weeks or months time, as David said, with a view to how that would translate not only to the body corporate side but also into BUGTA. Harmonisation of those pieces of legislation will be continuing, as David says, under the Community Titles Legislation Working Group towards the end of the year.

Ms BOLTON: Over these last five years we have seen the workload of the Commissioner for Body Corporate and Community Management increase substantially, but there has been no increase in resources to deal with complaints et cetera. Will what is occurring within this bill increase the workload and have there been any recommendations for the resources that are going to be needed not only for the overload at the moment but everything that is forthcoming?

Ms Thomson: As I mentioned in my opening remarks, in anticipation of this bill the government did approve, as part of the 2022-23 budget, additional funding of $2.5 million for three years for the Office of the Commissioner for Body Corporate and Community Management to implement the reforms in the bill. I guess it would be fair to say that there would be some degree of efficiency. There are already information provision services through the office. Many of the matters would be, I guess, similar to what already happens in body corporate world.

As I mentioned before, what we are seeking to do through the Community Titles Legislation Working Group is not only come up with ways that might lead to legislative reform for some of the issues that are dealt with in schemes—for example pets, parking and smoking—and those issues which people end up in dispute about, but also look at how we might deal with that in non-legislative ways. The question that we have, for example, for the stakeholders around the table is, 'What can you contribute? What can the Strata Community Association of Queensland bring to the table? How can you better educate your members?' We have unit owners there as well. There are legislative solutions for some of these matters.

Education that broadly happens out there in, let's face it, an area that is of growing importance to Queenslanders as a housing resource—more and more people are living in schemes—is something that we are trying to work on more collaboratively with the entire strata community, and BUGTA by extension, to get everybody to contribute to, as I said before, better information and how we might deal with things. Just as an example, bullying and harassment within schemes is a real concern for not only people who sit on schemes but also people who are part of it. One of the things we will be doing in the next few weeks is bringing people together to say, 'What does this look like within a scheme and what is the way we might be able to deal with this in-house?' Of course, the guiding principle, as David said, is to try to prevent and de-escalate matters before they get to that dispute stage.

Ms BUSH: Good morning and thank you, Victoria, for your opening statement. I want to understand the scale and the number of properties impacted. It seems to me that these were established under BUGTA, not then pulled up into the BCCM Act. Will there be a phase-out of BUGTA at some point? Will there always be a need for that piece of legislation? I am trying to understand. I hear Couran Cove being kicked around as the idea, but can I get an idea of how many developments we are talking about?

Ms Thomson: According to our data, we think there are around 150 BUGTA developments and schemes. As I said, of those complex, multilayered developments in terms of the MUD Act there are eight, one of which is Couran Cove. The others are Bretts Wharf, Cathedral Place, Central Brunswick, Cyprus Gardens, Noosa Springs, Osprey Apartments and Royal Harbour. Then of course you have the specified acts that I talked about before, which are Sanctuary Cove and, I think from memory, about half a dozen that are in the integrated resorts development.

The way we are approaching it at the moment, as we said before, is that the BUGTA schemes will continue under that legislation but with a view, towards the end of the year, to have further conversations about how we can harmonise with the existing body corporate legislation. To answer your question, our anticipation and policy position would be that they will continue but, again, to greater harmonise so that people have the same governance and protections as those who are living within these body corporate precincts.

Mr Reardon: In terms of context, it is probably helpful to understand that when the BCCM started the vast bulk of bodies corporate under BUGTA came across to the BCCM Act. That is because they were relatively simple developments and just one layer of a body corporate. It might have been a block of six units, for example, and some common property. It was these complex ones that did not come across. My understanding is that that was because there were some concerns about the risks around translating these developments with very particular structures—and some of them were still being developed—to the BCCM Act.

In terms of numbers, as Victoria said, we think there are about 150 subsidiary bodies corporate still operating under BUGTA. We think there are about 15 or so that those 150 sit under—15 or so sort of large developments. In terms of whether they can come across, this was considered by QUT as part of the property law review, because you can see that there is a lot of appeal in the idea of just

bringing them all across to BCCM. QUT's view was that there was still a lot of complexity around that, and our impression was that what they were really saying was that, as a practical first step, increasing the harmony between the regimes would be beneficial. This bill will hopefully go some way to doing that.

Ms BUSH: That makes sense, thank you. Victoria, you mentioned that there are aspects of the proposed bill that in some ways will exceed the provisions in the BCCM Act. Are you able to speak to those at all?

Ms Thomson: I am, but my colleague David would probably do a better job because it really gets to that complexity about the layering of the scheme itself that you do not typically have within those body corporate arrangements.

Ms BUSH: Even just to get a sense of the flavour.

Ms Thomson: It is about eligibility and governance, really.

Mr Reardon: Probably a good example of where this bill goes further than the BCCM Act would be around committee eligibility. Under the BCCM Act there are already provisions that restrict a person's eligibility to be on a body corporate committee if they, for example, owe a body corporate debt to the body corporate or are in particular roles—if they are a service contractor for the body corporate or a body corporate manager. This bill goes a bit further than that by extending those restrictions to associates and including people associated with other elements of the one development. For example, if someone was associated with an entity or person that owed a body corporate debt to another body corporate in the wider development, their ability to be on the committee would be restricted. That goes further than BCCM at the moment.

Ms BUSH: Did that come up through submissions—that kind of idea?

Mr Reardon: Yes.

Ms Thomson: And through representations from Couran Cove.

Mr Reardon: It does also reflect the more complex nature of some of these schemes. That is not to say that you cannot have complex schemes under BCCM, because you certainly can, but these types of concerns we are hearing more in the BUGTA space than BCCM at the moment.

Ms BUSH: It is certainly a fascinating area. Thank you.

Mr KRAUSE: In relation to membership of committees, the bill before us is introducing this concept of reasonable decision-making into the bill but also extending restrictions on people who can be on a committee. Does that not raise the possibility that people who are engaged in disputes about reasonable decisions, especially in relation to fees charged by body corporates, are effectively shut out of any decision-making around those because they are not eligible to be a part of the committee if they are in dispute, making an argument that a fee resolution is unreasonable, and yet because they are deemed to owe a debt to the body corporate are not eligible even to be on the committee, even if they could muster the support to be elected to the committee?

Mr Reardon: There are a couple of themes of this bill that we see. One of them is dealing with conflicts of interest in body corporate governance. When a person is a member of the committee, what they are meant to be doing and basing their decisions on is what is in the best interests of the body corporate as a whole. The committee eligibility provisions, as well as some new provisions that specifically deal with conflicts of interest on a case-by-case basis—

Mr KRAUSE: I will come to that.

Mr Reardon: Those arrangements are largely based on the BCCM Act. What is important to keep in mind with this issue is that the committee is one level of decision making within a body corporate. At the committee level, members should be focused on what is in the best interests of the body corporate as a whole. Anything the committee does is also subject to what owners might decide at a general meeting of the body corporate, and all owners who are financial are able to vote on most motions that will be considered by a general meeting of the body corporate. If someone had a dispute or a grievance—for example, they thought a levy had been struck that was unlawful or problematic or—

Mr KRAUSE: Unreasonable?

Mr Reardon: Potentially. They have probably a couple of options. They would raise their issues with the committee for consideration initially; they could put a motion to a general meeting for the body corporate as a whole to consider the matter and make a decision on it; or they will have access to the dispute resolution provisions of BUGTA to try to resolve the concern they have.

Mr KRAUSE: In relation to the conflicts provisions, I think one of the submissions to the working group highlighted some concerns from the perspective of the Strata Community Association about the conflicts provisions, in that particular members who have a conflict, particularly over a debt perhaps, are able to be a part of committee meetings, and I assume general meetings as well, and contribute to that process and participate in the discussion, but are not able to vote on measures in relation to which they have a conflict. There was a proposition put that those provisions should be tightened to not allow people to be a part of that process. How do you respond to that submission?

Mr Reardon: Yes, you are quite right: that issue came up in consultation. I think from memory the proposal was: if a committee member had a conflict of interest, should they actually leave the room while the committee is deliberating?

Mr KRAUSE: Yes, which happens in a lot of scenarios.

Mr Reardon: Yes. There could well be some merit in that idea. The reason the bill did not go further than it does in that respect is that it was designed to mirror what is in the BCCM Act at the moment, and the BCCM Act does not require people to leave the room if they have a conflict of interest. I do not want to overstate it, but the goal largely is to create consistency between the two regimes. If the idea that the person should really leave the room was to be considered, I think we would see that as a future matter to be considered in the context of both acts.

Mr KRAUSE: Across the board?

Mr Reardon: Yes. With some of these things we are a little bit concerned about whether an idea like that should be incorporated in the Building Units and Group Titles Act, but it is not in BCCM so we are creating a potential further area of discrepancy. As I said, there are differences between the two and this bill certainly does not harmonise everything, but on that issue the thinking fell on the side that at this stage it should be consistent and down the track if it needs to be tightened up that could be considered further.

Mr KRAUSE: I think in your opening statement, Ms Thomson, you mentioned something about particular owners in subschemes being excluded from decision-making if other people in that particular part of the scheme were owing money.

Ms Thomson: Yes, correct.

Mr KRAUSE: Could you elaborate on that a bit further? It is a rather complex issue.

Ms Thomson: Yes, it is.

Mr KRAUSE: Maybe it goes to conflicts as well.

Ms Thomson: It does, and we will cover that, but can I follow on from what David was saying on the matter of how to manage conflicts of interest? One of the things that really comes through from the Community Titles Legislation Working Group, which obviously has an interest in body corporate as well as BUGTA, is this issue of self-determination within schemes and the ability within their own governance to have their own rules about how they might go about doing things. I think that is another thing outside of the legislative framework we can bear in mind.

In terms of what I said before about the debts and the undeveloped lots, basically what we have at the moment is people who cannot contribute or participate within the governance mechanisms because of the debts that are owed by others and it is effectively excluding them from the process. Basically, the bill allows those subsidiary bodies corporate to retain their entitlement to vote were they are unable to pay all of their required contributions to a higher level body corporate basically because other people within the scheme owe that debt. That has been effectively excluding people from those processes and that was certainly something that came out in representations around the Couran Cove scheme itself.

Mr Reardon: What Victoria was saying is absolutely right. In terms of conceptualising this, with that top-level body corporate, quite often there are a fairly small number of lots as such. There might be, for example, six lots in the scheme and below that there might be a number of subsidiary bodies corporate. The subsidiary body corporate—I am probably oversimplifying it a bit—is one member of those six at the community body corporate level. If the subsidiary is unfinancial—if, for example, it is unable to pay its contributions to the community body corporate—it loses a lot of its rights to vote at that top level. You end up with a situation where individual proprietors within the subsidiary may well have paid all of their contributions to the subsidiary but the whole subsidiary is cut out of that decision-making at the top level. This bill tries to address that in the context of: if the problem has been caused because there are unpaid levies for undeveloped land within the subsidiary, this bill retains the right

of that subsidiary to vote. There are some criteria around that to try and make sure it is not misused, but the intention is to try to empower and give a voice to the subsidiary at that top level where most of the subsidiary proprietors are paying their contributions.

Mr KRAUSE: They retain their rights entirely, or are they proportionalised?

Mr Reardon: That is a good question. The exposure draft version of the bill had a proportional reservation of rights. We had some feedback that the way that ended up was too complicated and that actually doing the calculations would be really difficult in a practical sense for bodies corporate. Taking that feedback on board, the final bill preserves the whole voting right for the subsidiary. That is going to be a lot simpler for bodies corporate to administer.

CHAIR: In terms of the need for this piece of legislation, are you able to explain to the committee some of the deficiencies? I know that Victoria covered some of this in her opening. The theme of where I am trying to get to is: how will this make things fairer for owners?

Ms Thomson: As I said in the opening, a key thing that will be available to the owners is access to information and education services from the office of the commissioner for body corporate. As I said, now that has been resourced by the additional resources, people who will become more knowledgeable in the BUGTA type arrangements—we are working towards harmonisation but there are some slight differences between them. In terms of access to those information and education services, people will get the right advice that is needed by them in their circumstances. Dispute resolution I think is an important part. As I said, the philosophy of the bill is really about preventing and putting those foundations in place through better governance, good information and education to try and minimise the risk of things escalating into dispute. For me, those are pretty key and fundamental.

As we said before in answer to questions by the member for Scenic Rim, allowing people to participate in decision-making processes not only at the subsidiary level but also at the higher committee level—even when there are, as David says, debts owing from those undeveloped lots—takes away that barrier to participate as wholly as they can within the area they live in and care about. They are some of the key aspects of it.

The bill recognises that BUGTA is different, as we said to the member for Cooper about those multilayered schemes. They operate differently and have different considerations. This takes some of those protections that we know have been embedded in the body corporate legislation for many years and worked quite well and puts those into the BUGTA schemes, allowing for a degree of harmonisation. The work of the Community Titles Legislation Working Group is ongoing. As I said before, the next part after tranche 3 is also about continuing harmonisation between body corporate and the BUGTA schemes to bring them closer together, recognising that there are important differences.

CHAIR: When you talk about undeveloped lots, can you describe to the committee what that definition means for an owner? Obviously we are talking about two pieces of legislation. Do they impact differently on the description of an undeveloped lot?

Mr Reardon: With the undeveloped lot concept, a definition has been included in the bill. In coming up with that definition, our colleagues at the Department of State Development, Infrastructure, Local Government and Planning helped develop that approach to the issue. Certainly the intention is that it is a fairly plain English concept. What the bill is really talking about is land within the scheme that does not have a building, for example, that you would expect or is intended to be included on that lot or that part of the development. Can you repeat your second question?

CHAIR: Because there are two pieces of legislation, does it impact differently?

Mr Reardon: With the amendments primarily in the Mixed Use Development Act on this concept—it is about preserving rights to vote at the community body corporate which are created by the MUD Act—certainly the intention is that it operates as a seamless arrangement between the two acts. Certainly, there is no intention that the concept would have a different meaning under BUGTA for the purpose of that preservation of voting rights idea across the two acts.

Ms BOLTON: In terms of information and education services, is the increase in resources for the commissioner's office coming from the $2.5 million that you mentioned as part of implementation?

Ms Thomson: That is correct. The budget increased by $2.5 million specifically to deal with the reforms that are on the table.

Ms BUSH: Shane, I feel like we should ask you a question. I assume you are here for gift cards?

Mr Brown: No, I am not.

Ms BUSH: What is your area?

Mr Brown: BUGTOLA. I am just here for the obscure points, in case I am needed.

Ms BUSH: Okay, then. I was going to share it around! I feel like we should ask about the gift cards. What is the likely cost on the sector of allowing people to use them? Obviously a lot of gift cards expire and it is cash that goes to the retailers for a service that is not provided, essentially. Do we know the likely figure?

Ms Thomson: The three-year requirements have been in place for some time now. This is coming to that period where we would need to have an infringement notice to enable us to act on those very few occasions we need to go down that enforcement pathway. I had a look at some of the data. We have had about 120 complaints, at the upper end, over the past few years in terms of gift card management. For most of those, because we do not have the infringement provisions in place, we try to reconcile between the traders and gift card recipients through conciliation. The Office of Fair Trading is typically very successful in that regard. About 50 per cent of the matters we are able to reconcile. Somebody may buy you a gift card, but you might not know all of the prescription around that gift card. For example, if you buy one from a shopping centre it might not be redeemable in certain shops, and sometimes that is exactly where I want to go and spend my gift card. We have matters like that. They will continue to come up but, by and large, we find that people are very open to conciliation and allowing people to redeem gift cards where we can. I think we have fined one trader over the past three years in relation to gift card management.

Mr KRAUSE: Earlier we were talking about the ability for bodies corporate to recover costs for recovering body corporate debts. I think Ms Thomson mentioned there had been some feedback in the BCCM space about that regime. Because it is relevant to the discussion we are having here and the fact that the referee situation is being introduced, what are some of the issues that have been raised around that in the BCCM space?

Ms Thomson: We have had very early discussions, because debt recovery is part of the tranche 3 for the Community Titles Legislation Working Group. It is probably a little premature to canvass those particular issues. We have had representations around local governments and for outstanding debts that are owed to local governments, for example, and how that money may be recouped by the local government. Again, it is very early, because the working group is still considering some of these matters. We will be building on that over the next couple of months.

Mr Reardon: QUT did some work in relation to debt recovery under the BCCM Act as part of the property law review. The working group will be considering QUT's recommendations on that. Just to give you a flavour of it, one of the issues that QUT looked at was whether there should be a scale of costs for debt recovery. What that would be trying to do is provide a bit more certainty about what a reasonable amount of costs might be to recover a debt. At the moment, the BCCM legislation is very broad. From memory, I think under the provisions bodies corporate can recover 'reasonable costs', or something like that. I know that over the years there has been some concern in the sector about what that really means in the context of a debt for 'this amount' compared to a much larger amount.

Mr KRAUSE: Is that QUT paper a public document?

Mr Reardon: Yes. For the property law review, in terms of the body corporate issues I think there were four issues papers. There are four issues papers and four reports that are all posted on the Department of Justice and Attorney-General website.

CHAIR: Thank you. That concludes this briefing. Thank you, everyone, for your attendance and participation today. Thank you to the Hansard reporters and thank you to the secretariat staff. A transcript of this proceeding will be available on the committee's webpage in due course. In relation to the one question taken on notice, could we please have your response to the secretariat by 4 pm on Wednesday, 20 July so that that can be included in our deliberations? If there are any issues with that timeline, could you please communicate with the secretariat? I declare this public briefing closed.

The committee adjourned at 10.15 am.