LEGAL AFFAIRS AND SAFETY COMMITTEE

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

Staff present:
Ms R Easten—Committee Secretary
Mr Z Dadic—Assistant Committee Secretary

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

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 22 JULY 2022

Brisbane

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The committee met at 11.00 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Building Units and Group Titles and Other Legislation Amendment Bill 2022. My name is Peter Russo. I am the 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 people whose lands, winds and waters we all share. With me here today are: Laura Gerber MP, the member for Currumbin and deputy chair, via videoconference; Sandy Bolton MP, the member for Noosa, via videoconference; Jonty Bush MP, the member for Cooper, via videoconference; Jason Hunt MP, the member for Caloundra, via videoconference; and Jon Krause, MP, the member for Scenic Rim.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction 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. Could mobile phones be turned off or put on to silent mode.

PURSER, Mr Daniel, Private capacity

CHAIR: Welcome, Daniel. Would you like to make an opening statement after which committee members will have some questions for you?

Mr Purser: Good morning distinguished members of the committee. I am a long-term owner and also a committee member of a body corporate in an extremely troubled BUGTA MUD development. Here today I represent hundreds of owners of our community. I warmly welcome the amendments put forward in bill to BUGTA. I am no lawyer, but in the way that I read the changes I believe that the benefits are numerous. Here is a list of changes that will immediately benefit our community: this will tighten but not completely remove the issues of conflict of interest of members of the committee; make the appeals process easier and more accessible through the BCCM office; give us easier access to education and information services where presently our body corporate's only options are to seek expensive legal advice; the electable person clause will tighten ineligibility for committee positions on individuals who owe money or on corporations that are service providers; it will provide some level of comfort around continuity of essential services provided by the service provider for water, electricity and sewerage treatment; reduce the chances of dubious offset arrangements by making offsets only able to be approved at a general meeting under stricter guidelines; change the ability for a lot owner who is also the caretaker for a complex from being able to hold a voting position at committee meetings; enforcing collection on debts over two years and 30 days in age; and include unfinancial body corporates into community body corporate decision-making where they are currently excluded where more than 50 per cent of their debt is attributed to a debt from an undeveloped lot.

I also strongly agree with the tone of some of the other submissions you have read that suggest that the BCCM is also not perfect and that there are some shortfalls in these BUGTA changes. However, these changes are a huge step in the right direction and will make a real difference for all owners in our building group where a lot of owners and residents are elderly, disabled or just straight-out vulnerable. These changes will give us all a voice. It has been hell. I would like to thank the Attorney-General and her team for taking the initiative of introducing these changes as it has been a long time coming since the 2018 property law review regarding the inconsistency between BUGTA and BCCM was released. I again thank the committee for your time and I welcome any questions that you have for me.

Mrs GERBER: Thank you for your oral submission. My question is around the conflict of interest provisions. Do you have any concerns around those with this bill? Is there anything you would like the committee to be aware of? Is there any submission you would like to make around the conflict of interests provisions in the bill?

Mr Purser: I believe there are still some shortfalls in it, but this is a huge step forward because currently there are a lot of conflicted people within our body corporate. I believe that this will preclude them from some of their activities that we have seen, which has turned into our nightmare. I think this is a good step forward. There are some shortfalls and we can tackle those later on.

Mrs GERBER: Did you want to talk through some of those? We have time, so I am happy to hear about some of those shortfalls. It would help the committee.

Mr Purser: I think there is a disparity with the MUD Act around electable persons to the CBC who have debts with other body corporates. Being able to vote on the CBC, if you become unfinancial after you have been elected, is another shortfall. The service provider who is a conflicted person is still able to vote at a CBC EGM and AGM but is not able to vote at a committee meeting. That seems a little bit arse about to me. Right now, two per cent of our lot entitlements are making all decisions for 98 per cent of the owners because of the unfinancial situation. This is a huge step forward. It will give us a voice.

CHAIR: Just to pick up on that, Mr Purser, you just said, 'Two per cent'. Could you repeat what you said for me please?

Mr Purser: We are in a very large body corporate. There are 3,238 lot entitlements in our body corporate. Two of those lots are owned by commercial interests and, by default, they have made themselves financial and they have made all the rest of us unfinancial by not paying their bills. Those two lots represent 70 entitlements, which is two per cent of our total entitlement. The rest of us have been voiceless in the whole process within our community of hundreds of owners.

CHAIR: Can you expand on what has happened?

Mr Purser: There are 3,238 total entitlements. One of those lots has 50 entitlements, and that is a commercial interest. A second lot has 20 entitlements. Between those two companies, it is 70 entitlements out of 3,238. The simple maths of that is two per cent. These guys have been ruling the roost. By default, we have become unfinancial and we have not had a say.

CHAIR: Can you explain what you mean by by default you have become unfinancial?

Mr Purser: The company that has made us unfinancial owes our body corporate more than $10 million. That has made our body corporate unfinancial with the community body corporate. We have not been able to vote at that community body corporate for many years, even though we are the largest body corporate within our community.

Mr KRAUSE: Because they are not paying their dues?

Mr Purser: Because they are not paying their dues.

CHAIR: It is a stepped process. Without them paying their dues you cannot pay your dues and therefore you are eliminated from that.

Mr Purser: We have no say in the community body corporate. Those dues are a combination of developed lots. Some of those conflicted people have developed lots and also undeveloped lots. I watched the committee's last meeting where you were focusing a lot on the undeveloped lots. They are also not paying on the developed lots as well. That would probably be another shortfall that I would see—a big focus on undeveloped lots—but we are also being affected by developed lots where owners purposely do not pay their dues.

CHAIR: To deal with the legislation that is currently before the committee, are some of those issues alleviated by the current legislation?

Mr Purser: No, there is no coverage in the current legislation and they have been ducking and weaving around that legislation forever. There is also an issue with the body corporate manager that we pay to manage these affairs. They duck for cover whenever something like this comes up too. They refer us to our lawyers and then we have to seek independent legal advice because there is nowhere for us to go to get legal advice on this. They are very complex matters. You have read through the BUGTA bill and the MUD Act. It is just a nightmare for us. Anything that makes it better for us is a huge step forward and you have to strongly support this amendment bill because it will change a lot of people's lives.

CHAIR: That is what I was trying to get to. The current bill that we are doing our report into, you just said that it does not assist this situation?

Mr Purser: It hugely assists the situation, but it still has some shortfalls. This is a massive step forward.

CHAIR: Alright.

Mr KRAUSE: Did you tell us at the start which body corporate you have an interest in?

Mr Purser: No, I did not.

Mr KRAUSE: I am sorry.

Mr Purser: That is alright.

Mr KRAUSE: For some reason I thought you did. That does not matter. In relation to what you were just talking about, it is really a matter of trying to give some equity to people who have paid their dues, stuck in a scheme where others have not, which is limiting your ability to have a say further up the chain. I am hearing you say that the bill goes some way towards addressing those issues. You also said that a lot of it comes from unpaid bills. Part of the bill deals with cost recovery matters. I wanted to ask for your opinion about whether there should be provisions in the bill to allow for costs to be recovered by a body corporate when it comes to legal action taken for the recovery of the body corporate debts. Obviously it needs costs against the people who have not paid not only to allow the body corporate to recover those costs but to put some sort of deterrent in place. What do you think of that?

Mr Purser: Absolutely. At the moment, there is a shortfall in that but I believe that there is also a shortfall in the current BCCM Act covering the same matter. It is completely unfair. The guys who pay their bills end up having to pay for the cost recovery of somebody who does not. It gets split up between all of the good guys to fight the bad guy. That is a very small part of our issues.

Mr KRAUSE: Understood.

Mr Purser: You cannot get blood out of a stone. If you are not going to recover that debt, sometimes you might have to make a decision that it is not recoverable. We would rather see these changes exclude those guys from being able to rule our roost.

Mr KRAUSE: Even though it is a small part, would you agree that it would be a preferable position?

Mr Purser: It would be a preferable position, but I would not like to see a hold-up with this amendment bill to go back and start all over again.

Mr KRAUSE: I get that.

Mr Purser: For a later conversation, I am happy to have that with you.

Mr KRAUSE: Sure. You have already touched on some of the other changes you would like to see. Are there any reforms or changes in the bill, other than the ones you have already mentioned, that you would like to point out that you really object to?

Mr Purser: I have brought some of these up with the Attorney-General's office. Again, I am no lawyer and I have lived this for many years now. I deal with it on almost a daily basis. There are so many different parts of the act that refer to general meetings, committee meetings, financial people, unfinancial people. We find at a lot of these AGMs that these parties will make themselves financial so they can vote themselves into a position and then, five minutes after that, they become unfinancial because they stop paying their bills for the next 12 months.

Mr KRAUSE: So it is eligibility issues?

Mr Purser: Again, it is an eligibility issue ongoing. They are creating positions for themselves to make decisions against all the people who are legitimately going to pay their bills after a budget has been raised for the next 12 months and so then start fighting with them again immediately.

Mr KRAUSE: I have a question about the conflict of interest rules. You have highlighted essentially non-payment of dues as a major issue, but there are other conflicts of interest as well which could be covered by the rules as they are proposed. If you live in or operate in a large body corporate but then you also have a contract with another person in that body corporate, it could exclude you through the proposed conflict of interest rules from being part of the management of that body corporate?

Mr Purser: The way that I read that was that if you were a service provider—so you might be a caretaker, you might have a management agreement or you might provide the water or power or sewer—you can actually be a member of the community body corporate. You cannot vote at a committee meeting but you can vote at a general meeting.

Mr KRAUSE: Why should you not be able to vote at a committee meeting? Just explain that for us if you could?

Mr Purser: That is why I think this is the wrong way around. At a committee meeting it is an informal process between committee members where you are talking about things that you want to do, but at a general meeting—either an extraordinary general meeting or an annual general meeting—you are seeking approval from your entire membership so all of the owners are able to vote. They are being included in that process where a lot of serious decisions are being made.

Ms BOLTON: Good morning, Daniel. You mentioned in your statement that through this experience that you have all had that there was nowhere to go. To get that assistance, you would have to go and get independent legal advice and obviously find the funds for that. In everything that this bill does, is there any improvement with regard to being able to address when body corporates go through this? For example, with the commissioner, were they able to be of assistance? What improvements could be made there?

Mr Purser: The commissioner and referee, with all due respect, has been our nemesis. We paid our money to go and seek decisions to be made that have been made against us with frivolous claims, and the referee takes a very long time to respond. A lot of the time he will defer decisions and stop processes by deferring decisions. Some of those have even timed out. Our body corporates have been No. 2 on the list of problems in Queensland. When you have that many referee decisions pending, I would hate to think how many are on his desk right at the moment. He is just a guy who has the same problems that we all have trying to go through these regulations. There are not many of us left. He cannot be a BUGTA expert or a MUDA expert. I appreciate how much stress we have been putting on his office, but we need some decisions to be made.

CHAIR: You said that some of the—I missed the next word—will be timed out. Can you explain?

Mr Purser: I think there is a time frame in which he has to reply. A lot of those have just timed out.

Ms BUSH: Daniel, just on the interactions that you have had with BCCM—and obviously they have a volume of complaints that have been made and that is what some of that delay can be—do you see a role inside that education piece that is recommended through the bill and removing barriers to conflict resolution being potentially helpful in terms of getting an earlier outcome?

Mr Purser: Absolutely. Anything has to be better than what we have now. Again, even though I am being a little bit negative in listing some shortfalls, I have a much bigger list of pros than I do cons. It is a great step forward.

Ms BUSH: Thank you. I certainly do not think you are being negative. It is helpful evidence that you are giving us. Can I clarify your statement earlier where you felt we had focused a little bit on undeveloped lots? Was that in the bill itself or was that through watching our earlier public hearing? I know in our earlier public hearing with the department we had asked them about that.

CHAIR: I think it was during the public briefing with the department.

Ms BUSH: Is that what you meant, Daniel?

Mr Purser: Yes, a bit of both. There is a little bit of that in the proposed changes but, yes, there was a big focus on that in your last meeting. The problem is not just undeveloped lots; it also goes to developed lots owned by corporations that just stop paying their bills as well.

Ms BUSH: Great. Understood.

Mrs GERBER: I wanted to let you know, too, that part of the committee's role is to scrutinise. We understand that this bill is a great step forward and that you are pleased with some of the outcomes this bill might achieve, but, as part of the process of scrutiny, it is important that we hear from you in relation to those aspects where it could be improved so that we can then make those recommendations for improvement—no matter how small they might be and no matter how great the outcomes of this bill overall might be for you. This is why we are asking you those scrutineering questions and those questions around aspects that you think could be improved. Do not feel like you are being negative. We are happy to hear that evidence from you. Is there anything else that you would like to add for the committee around how we might be able to improve this bill?

Mr Purser: I will stop talking because the more I talk the more you are going to scrutinise and maybe potentially hold this up. That is definitely what I do not want to do!

Mrs GERBER: That will not hold it up, Daniel. It is literally a recommendation.

Mr Purser: I am here to say how wonderful this is and let us move on.

Mr KRAUSE: You can understand how government dominated committees work!

CHAIR: I think you have made it clear to the committee that you support the changes that the legislation, if the bill is passed, would bring about. As the deputy chair pointed out, you have been helpful in the sense that as a consumer in this space you have also pointed out where there could be some improvements. As the deputy chair pointed out, that is the committee process.

Mr Purser: One thing that I can say is at some of those committee meetings at a community body corporate level it has always been a show-of-hands vote. We have not be able to request it but another member of the committee has requested a poll vote and it has been declined. A poll vote would take into consideration the proportion of people you are representing. That would have fixed a lot of those issues as well. There should be some mechanism to make sure that the people are properly represented and not being represented by a show of hands. I think there are six lots at the community body corporate level. If you have two with a show of hands that represent two, that is two out of six straightaway. If you have precluded everybody else and kicked them out of meetings, there are not many people left to sit around a table. Those same people are also running facilities and are service providers and making the same decisions—that is two in the show of hands.

CHAIR: There is one minute left in this session. If anyone has a burning question, now is your opportunity. If not, we will move on to the next witness.

Mr KRAUSE: I will ask Mr Purser something. Your conflict of interest matters have mainly been about unpaid debts. Do you think that if we had a provision that dealt with unpaid debts separately from other conflicts it would be cleaner?

Mr Purser: They both need to be addressed equally because being a service provider and somebody who owes money are two separate issues, but if it is the same person it needs to be handled.

Mr KRAUSE: No worries.

Mr Purser: Thank you very much for your time, everybody.

CHAIR: Thank you, Mr Purser, for your written submission and for also attending, providing oral evidence and answering the committee's questions. It has been very helpful.

Mr Purser: Thank you.

KLEINSCHMIDT, Mr Michael, Council Member, Australian College of Strata Lawyers (via videoconference)

CHAIR: Good morning. The committee invites you to make an opening statement after which we will have some questions for you.

Mr Kleinschmidt: Thank you very much; it is only brief. Thank you for the opportunity to provide evidence to the committee this morning. One of the objects of the Australian College of Strata Lawyers is to improve the laws relating to strata and community titles. Both the BUGTA and the MUD Act are out of date and inconsistent with modern strata laws. The aim of this bill is to improve the operation of those acts. There has been a lot of good work done on this bill which is deserving of commendation, especially with respect to the drafting and redrafting which has already occurred as a result of consultation with ACSL and other peak stakeholder bodies. One of the policy objectives of the bill is to make body corporate governance arrangements fairer for proprietors. One of the measures adopted in the bill to try to achieve that is the imposition of an obligation on bodies corporate to act reasonably in the discharge of their functions and the exercise of their powers. That is an obligation which the BCCM Act bodies corporate already have, but they also have one other key obligation—they may not adopt unreasonable by-laws.

Under all strata legislation, bodies corporate are regulated by two sets of laws—the legislation on the one hand and the by-laws which bodies corporate make on the other. Under the BCCM Act the obligation to make reasonable decisions works hand in hand with the prohibition on making unreasonable by-laws. Bodies corporate of all stripes are statutorily obligated to enforce their by-laws. They have no choice in the matter. Imposing the obligation on BUGTA and MUD Act bodies corporate to make reasonable decisions is like building a plane with one wing. The missing wing is the restriction on making unreasonable by-laws as embodied in section 180 of the Body Corporate and Community Management Act. Without the adoption in this bill of those restrictions, the bill will fail in that primary policy objective. Reasonable decisions made in the enforcement of a, for example, discriminatory by-law will still lead to a discriminatory result. That is why ACSL says that adopting the restrictions in section 180 is a matter for this bill and not a matter for harmonisation with other legislation later. Thank you.

Mrs GERBER: Thank you, Michael, for your oral submission and your written submission—they are very helpful. Can you step the committee through in a bit more detail what you mean by the objectives of this bill fail if that further element that you just talked about is not adopted? I just need some detail around it please?

Mr Kleinschmidt: Absolutely. Unfortunately body corporate lawyers such as myself tend to see things when they are broken. People come to us when there are problems. The Body Corporate and Community Management Act and I are old friends. We have been working together for 25 years. That said, I am very familiar with BUGTA and MUD, having advised many bodies corporate in relation to them. The scheme under the old legislation was that basically bodies corporate could give themselves powers by virtue of their by-laws and so if you did not have the power to do something what you would do is you would empower yourself by virtue of a by-law.

There is a raft of cases that have developed over many years about the limits of by-law making power under BUGTA and the MUD Act, but the threshold for what is an invalid by-law under those pieces of legislation is pretty low. It has to be pretty extreme before it is knocked down. Under the BCCM Act, of course, we have these two restrictions that I spoke to you about before, which is you have to act reasonably when you make the decision and you cannot pass an unreasonable by-law. When I say unreasonable, there are other restrictions: you cannot be discriminatory between different types of occupiers, you cannot impose a financial obligation under a by-law, those sorts of things. When I say unreasonable that is what I mean. In ACSL's view, these two restrictions work hand in hand. If you put one forward and say well you have to act reasonably when you make decisions that does not deal with unreasonable by-laws that are already on the books or adopting an unreasonable by-law. Unfortunately, as I said before, we deal with things when they are broken, when people have problems.

I know that there are massive problems over at Couran Cove. I am probably one of the only lawyers that has not been directly involved as yet. What happens is that when you change one thing like putting a reasonableness obligation on board, clever lawyers such as myself work out ways that you can then try and circumvent that and one of the ways will be the by-laws. If you have a majority of people or a sufficient majority to change the by-laws to give yourself powers that you want to have to involve yourself in these sorts of disputes, without putting in place the restriction on that by-law making power, you are asking for problems. That is one example.

Mrs GERBER: Thank you. That is helpful.

CHAIR: Michael, could we deal with that aspect of it. You said it is one example and I take that on board, but what is the remedy to what you have just explained?

Mr Kleinschmidt: It is simple. The existing section of the BCCM Act is section 180 and in the ACSL's submission what we have done is basically say just incorporate the same restrictions in section 180 in the same language. I say this with my tongue firmly implanted in my cheek, but I have been paid tens of thousands of dollars over the years to argue about words, and if you use the same words as are used in the BCCM Act what you will have is a body of existing case law which will provide an immediate remedy to these things. In researching the paper that has been given to the committee, I have a stack here of case law dealing with these other tests under BUGTA and the MUD Act but there is 10 times more for the Body Corporate and Community Management Act so the law is very well settled. We have a very good and firm idea of what reasonable by-laws look like. So the solution is simple: grab section 180, grab the existing parts of BUGTA and MUD which have echoes of those sections, and we have identified them in our submission, and bring section 180 into BUGTA and MUD. I want to emphasise, however, that the work that has been done on this bill, as I said in my introduction, is very good. ACSL is not critical of the bill. In fact, it is a very good bill, particularly after the other stakeholder feedback has been taken into account. That is excellent. However, we foresee that there will be significant problems if you do not bring in both of those restrictions at the same time.

Ms BOLTON: So I can get some clarity around this, we have heard from the previous witness that complaints going to the commissioner would often time out. Obviously the workload of the commissioner is quite enormous. With by-laws being one of the top five causes for disputes that are brought to the commissioner, with this section 180 that you are talking about being brought into BUGTA and MUD, would that alleviate the volume of issues, especially in the transitional phase, with this bill transitioning over? Would it alleviate the workload or would we expect the workload would increase?

Mr Kleinschmidt: The transitional provisions which ACSL has suggested in relation to this proposed change is obviously that the restrictions would only apply to new by-laws as they are adopted. That is for practical purposes. What that then means is that a body corporate that is preparing to make a change to their by-laws is able to access a much wider range of practitioners such as myself who can provide better guidance. The number of practitioners who deal with BUGTA and MUD is very limited and to get good advice about by-laws under those pieces of legislation is quite hard these days. As I said, this act and I are old friends. I started practising around about the same time as it came into effect, and I have a fair bit of grey hair. To find people who know what they are doing with these pieces of legislation is quite difficult. In answer to your question, what it does, or what it will do, is there will be more certainty around the adoption of new by-laws because the BCCM Act jurisprudence will be available and lawyers can advise on that and my expectation is that, yes, there will be less litigation rather than more.

Ms BOLTON: Again to clarify, even this section 180 would make the job of the commissioner easier as in there is greater clarity? We did hear from a previous witness that it is virtually impossible to expect the commissioner to be on top of the two sets of laws.

Mr Kleinschmidt: The short answer is yes. Another reason is that at the moment the commissioner and the poor old adjudicators/referees have to be familiar with two completely different sets of legislation. Body corporate legislation, barring the MUD Act and BUGTA, is like 1,500 pages long. As far as the BCCM Act is concerned, and its regulation modules, that is a really good system. If you take away ultimately the requirement for the commissioner to maintain a legacy system, the more of that you do, the less work the commissioner's office has to do. I am a firm believer that if you bring the restriction in in relation to by-laws as well, all of a sudden referees/adjudicators do not have to have recourse to great big lumps of case law to do with legislation that is now 40-odd years old, they can look at case law that is 25 years old, that is well settled, that they deal with every day, and they will be able to do things quicker and more efficiently.

Mr HUNT: As much as you are full of praise for section 180 of the BCCMA, there is a section and submission that talks about difficulties transitioning for a small number—and it is a small number—of other agencies. What would those difficulties be?

Mr Kleinschmidt: I am just recollecting back to our submission to get a bit of context. As far as transition is concerned, the suggestion has been made that the restrictions only apply when bodies corporate go to change their by-laws. The worst thing you can do is to introduce a requirement across the board where people have to change things immediately. The difficulty that I am talking about if the transitional arrangements that have been proposed are adopted is that there just needs to be an information campaign for those bodies corporate, and there are not many of them, to make sure that they are aware that as soon as they go to change their by-laws they now are subject to these restrictions and they need to give consideration to that in respect of their changes. That is all. Given the number of schemes that are in that position, that is a very modest exercise to conduct.

Mr HUNT: Your submission makes that point quite clearly. Thank you.

Mr KRAUSE: Some of the submissions we have received seem to indicate that unpaid dues in body corporate schemes is a significant issue in some schemes but there is presently no allowance to provide for the cost recovery for bodies corporate when they have to take legal action to recover unpaid dues, something that you may have encountered as a lawyer. What do you think of the idea that there should be provision for the recovery of costs from parties when legal action is taken to uncover their unpaid debts?

Mr Kleinschmidt: If the debts that we are talking about are body corporate contributions, commonly known as levies, one of the most powerful features of the BCCM Act is basically the statutory right to recover all reasonable costs expended in debt recovery of levies. It is a double-edged sword, in my experience. It is exceedingly powerful in that a body corporate then can reasonably expect to recover for all practical purposes 95 per cent plus of its outlays when recovering those levies, which is great because compliant owners who are doing the right thing do not have to reach into their back pocket to pay for the deadbeat owners who are not paying on time. However, with that sort of power there is the opportunity for abuse. That is something which the courts are working through now actively. There has been a bit of a snapback in terms of some of the decisions that have been made about what reasonable costs are. There have been some notable instances where the costs of recovery have been out of all proportion to the debt that was originally raised. That, of course, then speaks to how efficiently the debt recovery process is conducted.

Mr KRAUSE: At the high level though do you think it is a good idea?

Mr Kleinschmidt: Absolutely. I have no hesitation in saying that. Yes.

Mr KRAUSE: Thank you for the detail about the reasonableness aspect and other things. We appreciate that.

CHAIR: We have three minutes before we call the next witness. Does anyone on the committee have a burning question?

Ms BUSH: On all of the points that you have been making, are you aware of the Community Titles Legislation Working Group and any work that they might be doing in this space, in particular around the by-laws and abilities to recover debts, which the member for Scenic Rim raised?

Mr Kleinschmidt: I am ACSL's representative on that working group so I am very familiar with what they are doing. I note that the department's response in relation to the ACSL submission was, in effect, we can deal with this as part of harmonisation later on. ACSL has some submissions to make about harmonisation which is probably beyond the scope of today. The number of schemes that there are speaks to a solution in terms of not maintaining legacy systems and bringing all of these schemes over into the BCCM Act. I have restructured schemes before. There are ways to achieve this.

If I have some free shots here I would also make a suggestion in relation to Queensland joining the 21st century and making community title arrangements available in relation to land under the Land Act, so leasehold land as well as freehold land under the Land Title Act. But if I might say in relation to the work of that working group, it is doing very well. The turnaround times are very tight, but as far as this particular issue goes would I leave it? No, I would not and the reason being that I can see that the solicitors that deal with these issues in these schemes would see one change and then they would say, well, now what do I do as a result of that change. That is why I have emphasised that these two changes should be occurring together. ACSL does not want to make the perfect the enemy of the good, do not get me wrong.

Ms BUSH: Thank you. That is exactly where I was going.

CHAIR: Thank you, Michael, for the written submission and also for taking the time to attend and give evidence to the committee.

HARVEY, Mr Ray, Private capacity

CHAIR: Ray, would you like to make an opening statement to the committee before we ask you some questions?

Mr Harvey: Sure. I am just a unit owner. The current legislation is a joke that allows the current 50-year contracts to grow to more than 100 years, unchanged from the original wording. Why should owners be forced to live with what is, in effect, a permanent contract?

I suggest the following: contracts are limited to three years with only one option for three years; all contracts must include a clause limiting the caretaker/letting agent and related parties to one vote irrespective of units owned; before an option can be exercised, any changes to the laws that reduce the obligation of the caretaker/letting agent must be recognised and salary adjusted; the committee or owners have the right to refuse a purchaser of the management rights without recourse; existing contracts run their course but extensions are limited to three years when the contract has three years to run; in granting an extension via an option, owners should have the responsibility and right to renegotiate the terms and to seek remuneration for giving something of value rather than giving it for free.

In Queensland, 500,000 unit owners are essentially powerless. We compete with ARAMA, the banking sector, developers, lobbyists and powerful lawyers with deep pockets; hence, I notice that there are only nine submissions. We are just volunteers. We are David versus Goliath and I am not sure that my slingshot can repeat David's success. There is no help from the police, the Office of Fair Trading, the Ombudsman or the courts. It is well known in the industry that going to court might cost a body corporate $1 million, with about a one per cent chance of winning.

I have been in four complexes with a brief sojourn in each as a committee member, basically just to inform myself. Committee members do not work; only chairmen and secretaries. Chairmen fall into roughly four categories: passive with little skills in dealing with complex issues; give the caretaker/letting agent whatever they want in return for occupancy; occasionally there is someone who likes having power; and a very small percentage fight for unit owners. It is an unpleasant, time-consuming, unpaid task that might have to be performed for 25 years.

I have done the management rights course and spent four days last week with friends who own several management rights. There are good and bad, honest and dishonest managers. I have an open order to buy into management rights. It is the world's biggest legalised racket. The law needs to protect unit owners. They have more skin in the game.

CHAIR: Thanks, Ray.

Mrs GERBER: Thank you, Ray, for your oral and written submissions. I can see in your written submission you have outlined a number of suggested ways that the bill could be improved. I understand that a lot of the submitters are very keen to make the committee aware that they are pleased that this bill is being introduced and they are pleased that there is at least some reform happening in this space. I want to make you aware that the role of the committee is to scrutinise the legislation. If there are improvements that could be made it is important that you give us that evidence and that you tell us about the improvements that, from your experience, could be made in order to make this bill the best it can be. I am keen to hear from you in relation to any elements that you would like to see improved in this bill or any aspects that you think have been forgotten about or need to be included.

Mr Harvey: I think I outlined to start with what I thought needed to be in there. I am not a lawyer. It is a waste of my time reading through pages and pages of acts, which goes in one ear and out the other. However, I have broad experience in the fact that I have done the management rights course, I spent a year researching them and I know the shortfalls that are there. The biggest shortfall is the fact that these are passed on based on profits. When you run out of getting more people into your building or higher rents or whatever, the next recourse for you to is to take the money from owners. When I looked at buying management rights, most of the ones I came up with had that problem: they had ripped into owners to increase the value of their management rights. Each one that buys in has to do that.

There is one complex that I am involved with up on the Sunshine Coast—good day, Jason—where the managers take in excess of $10,000 a year extra on top of what the local real estate agent would take for his letting fees. The major reason that they can do this is these indefinite contracts. Owners are scared to oppose the manager because the manager determines your letting. Unless there are things within the legislation to stop this, it will go on forever. I have been to all these other places and it is a waste of time.

Mrs GERBER: One legislative aspect that you talked about is contracts being limited to three years with only one option for another three years.

Mr Harvey: Yes.

Mrs GERBER: Is that one element that you think should be included in the bill to alleviate the problem that you have just spoken about?

Mr Harvey: That is the main change to this legislation that I believe needs to happen. I did say in there that this does not affect people who have already bought management rights. They still have their 25 years or whatever is left on their contract, which is what they have paid for. Unfortunately, with most people what they pay for is a bunch of rorts—as I just mentioned, over $10,000 in this particular complex. The owner who puts up the capital gets no more out of his unit than the onsite letting agent because they can lump in any fee they like. Some of them are incredible. In this one they charge for the internet five times. How about that!

As I said, I would be very happy to be in that industry under this current legislation, because it is just a licence to print money and I would never go into one that compromised my morals. In other words, it has to be clean, but there are not very many of them. I have done my homework.

Ms BOLTON: Ray, what you are saying is that these three years would only be applied to new and not existing so not to those that already have their 25-year contracts. For you, what is the one thing that would improve the current existing situation with those who will have 25-year contracts? What would be the one thing that would be an improvement? Obviously you have had difficulty getting assistance through all of this. Is it improvements with the commissioner? Is it improvements in something else besides what we have in the bill? I am trying to get down to that tangible improvement that you believe in, besides constricting to three years, because obviously there are a lot who have those longer contracts.

Mr Harvey: People have paid for these, whether it includes a bunch of rorts, whether it includes things that are dishonest even. It sort of comes to the price that people pay for their management rights. This is not taking anything away from people who have existing management rights for the term of their contract. What this does do is take away what they might be hoping for, which is that this contract will then get extended for another five years and another five years and another five years et cetera, ad infinitum. That is where you are at the moment. You have 50-year contracts out there now. This thing was introduced 25 years ago and people now have 50-year contracts. If you do not change it, one day we will wake up and there will be 100-year contracts. That is where it is going. There is no limit on how long the contract is based on the original terms, even though a lot of the things within that contract have been changed in the law.

Ms BOLTON: At the moment, there is nothing that you believe, besides that, that could make a great deal of difference to what you and others have experienced?

Mr Harvey: I do not believe that there is, no. This is what needs to happen. Why should unit owners be locked into this? They are put together by the developers. The unit owners inherit them. Unit owners are probably not like me; they would not get off their backside to make a submission or come in here today, or take on the banks and the developers and so forth, which is who these unit owners effectively are competing with. It is these powerful bodies and powerful lobby interests that we simply do not have. There is an expression: divide and conqueror. There are half a million of us and we are totally divided. You have nine submissions here today. Probably very few of them are addressing the real issue, which is the real issue for unit owners. That is why managers are able to put these things in it. If they had shorter term contracts, the unit owners would at least have some power to say, 'Look, you cannot have five lots of internet charges on my unit.'

Ms BOLTON: Thank you, Ray. I appreciate it.

CHAIR: Mr Harvey, with your issues in relation to the management rights of unit complexes, as a unit owner have you had issues with charges that have been made to you from management?

Mr Harvey: Yes, of course. The unit owners have one recourse on managing a unit.

CHAIR: I want to understand. Your evidence is that you have had issues with management which has issued you with accounts that you say were exorbitant or they were charging over the top?

Mr Harvey: A manager can impose basically whatever they want. Have I had issues? Yes.

CHAIR: Have you ever gone to the Office of Fair Trading?

Mr Harvey: Have I what!

CHAIR: So you have made complaints to the Office of Fair Trading?

Mr Harvey: Yes, I have.

CHAIR: What has been the outcome of those complaints?

Mr Harvey: Basically they just threw it in the bin. I appealed it and I finished up with the—

CHAIR: Can we just deal with your dealings with the Office of Fair Trading before we move on.

Mr KRAUSE: Mr Chair, I am not sure that is relevant.

CHAIR: Do not—

Mr KRAUSE: No, Chair, I am raising a point of order on relevance.

CHAIR: It is relevant.

Mr KRAUSE: These are personal matters. It is his submission in a general sense.

CHAIR: It is relevant. I am relying on the departmental response. Have a look at that.

Mr Harvey: The Office of Fair Trading had a court case about seven or eight years ago that went on for long time, which they lost—

CHAIR: I am trying to understand: you have gone to the Office of Fair Trading?

Mr Harvey: Yes.

CHAIR: Did they give you a response in relation to your complaint?

Mr Harvey: Yes, go away—essentially.

CHAIR: So you were not satisfied with the outcome?

Mr Harvey: I had about 10 areas—fully supported by documents—and they did not want to know about it. All the Office of Fair Trading is interested in is the trust account. That is all they do. If you think they support unit owners for anything then that is simply not the case.

CHAIR: Does anyone else have questions of Mr Harvey?

Ms BUSH: Before I ask my question I wanted to acknowledge and thank you for making a submission. I know it is not easy to participate in these processes either in writing or verbally so we do appreciate you coming along. I read your submission, and thank you for that. I was trying to place in my mind the experience and history—Chair, if this is out of order let me know. How long have you been a unit owner and have you been across multiple sites? Can I get a flavour of your background, if that is okay?

Mr Harvey: Absolutely. I had a unit from 1987 to 2001. That was before we had these 25-year contracts. I was probably fairly naive, but I never had an issue anywhere about anything. Given interest rates have been falling for some time, I have been forced to go into property to survive. This has involved buying some units. As an example, there are two complexes side by side. One has a positive committee and one has a committee that just rolls over and does whatever the manager wants. The differences in levies are $6,000 versus $9,000. The chances of getting that sort of committee is extremely rare.

If I own a unit in a complex I might have a one per cent share. Why should I be making this sort of effort and driving down from the Sunshine Coast to go to a meeting in this sort of weather when I have a one per cent share in a complex or when I am one unit owner out of half a million unit owners? We rely on you guys because you are the only level where we can get protection. If we do not get this in legislation we do not get it at all.

There are honest managers. I just spent four days away with a couple who are in that business. I am not saying that they are bad people, but there are bad people and dishonest people in this business and they are protected by these ultra long-term contracts because you cannot do anything about it. If you have short-term contracts it is fine. The way the system used to run was that when your option came up if you were not performing you did not get another option—you were told to go and sell. That is the way the system worked, but now that does not happen. If someone is not performing you have to live with it.

Ms BUSH: Thank you for that. You mentioned earlier that unit owners often inherit longer contracts. I presume that when you purchase the unit it is locked in as part of the sale of the unit; is that correct? Is the length of the contract disclosed to you at sale or how does that happen?

Mr Harvey: Most people probably would not understand that they have a long-term contract or understand a lot of the things that go on. Most people who buy units are fairly naive. I think I am probably high on that list as well. You find out eventually. I have dealt with the issue as far as my units are concerned. I am here effectively speaking for the other 499,999 unit owners who are not here because of what I see as something disgraceful.

Ms BUSH: Do you see a role for strong, proactive education for people upon purchase in terms of what these contracts can involve and what their rights are? Do you see a positive around broader education campaigns for would-be owners?

Mr Harvey: Nice try, Jonty, but the reality is that 99.9 per cent of those of us who go out and buy units are naive. We do not know.

Ms BUSH: But I think that is to my point though, Ray. If we can impose that—

Mr Harvey: Why should you have to have an education program to skate over something that should not be there in the first place, if that makes any sense.

Ms BUSH: I understand your point.

CHAIR: Thank you, Ray. Thank you for your written submission and thank you for your attendance today.

BOS, Ms Laura, General Manager, Strata Community Association

CARLSON, Mr Jason, Advocacy Director, Strata Community Association

MARLOW, Mr Kristian, Policy Officer, Strata Community Association

CHAIR: I welcome representatives from the Strata Community Association. I invite you to make an opening statement before the committee has some questions for you.

Mr Marlow: Good afternoon. We thank you for the opportunity to appear before you today. SCA (Qld) is the peak body supporting Queensland's strata sector, including managers and suppliers to the strata industry. As the peak body for the strata industry we are in a unique position to understand the sector from all angles.

This bill is proposing to make significant changes to the Building Units and Group Titles Act, which I will henceforth refer to as BUGTA, which regulates several complex mixed-use developments across the Australia. SCA (Qld) notes that in some instances the provisions of this bill go beyond commensurate provisions in the Body Corporate and Community Management Act, which I will henceforth refer to as the BCCMA. We are concerned about the potential practical unintended consequences of these. In this regard, we would encourage the committee to note in its report the need for amendments to certain sections of the bill to prevent the potential for widespread issues to emerge.

Specifically, SCA (Qld) would like to see provisions to allow bodies corporate constituted under the BUGTA to recover costs reasonably incurred in levy recovery. It is a simple and easy to understand principle, but if the parliament is to oblige these bodies corporate to litigate to recover their levies so the parliament should make it as simple and cost effective as possible to do so. In addition, we would like to see some changes made to prohibit debtor members from voting on all committee motions not just those before a committee meeting. We also feel that conflict of interest provisions could potentially be strengthened to ensure people with a conflict of interest are required to leave the decision-making space.

Finally, the provisions around committee eligibility go well beyond the scope of the BCCMA and are in practice potentially unworkable. Proposed new section 41B makes associates of a person who owes a body corporate debt a service provider or a body corporate manager of an associated body corporate ineligible for the committee of a body corporate of which they are a proprietor. In practical terms, this would mean that a person who owns a lot in one subsidiary scheme who owns a business is prevented from contracting with all the other schemes in the integrated resource development if they wish to be on their body corporate committee. We believe this is excessive. We welcome the opportunity to answer questions.

Mrs GERBER: Thank you for your appearance and for your written submission. I note that cost recovery is a big aspect of both your written submission and your oral submission. We have heard from other submitters about the problems associated with not having the recovery of costs enshrined in this bill. I have some correspondence here that says that the legislation obliges bodies corporate to litigate to recover the cost but then they cannot recover the cost of litigation. Quite often the body corporate does not have the money to be able to move forward anyway. Can you talk the committee through what you are proposing specifically in relation to the legislative enshrinement of the recovery of costs? If you are litigating I note that you would be in a tribunal and then costs might follow the event and it might be determined by the tribunal or judge that has determined the litigation. What in this bill needs to be there in order for that to work in terms of cost recovery?

Mr Carlson: A large part of this bill is following provisions that are set out in the Body Corporate and Community Management Act almost word for word. You could take the same approach and look at any regulation modules of the Body Corporate and Community Management Act and use the same wording which is 'an entitlement of a body corporate to recover as a debt all costs reasonably incurred in recovering outstanding contributions'. The words are right there; they just have not been replicated.

To your other question, you made the point that litigation would be in a court or tribunal and costs ordinarily in litigation follow the event so it should be to the judge—just like any civil litigation—to determine the costs that follow the event. The difference for levy recovery for a strata community is that bodies corporate that are governed by the Body Corporate and Community Management Act have an added protection. That is the ability to claim at the same time that they are claiming unpaid levies the costs that are reasonably incurred. Typically, the recovery of those costs by community title schemes is far higher than the recovery that an ordinary litigant has before a court or tribunal which is essentially standard bases of costs or even for smaller claims, which most levies would be, you are limited to scale amounts that are set out in the Magistrates Court.

You mentioned litigation in a tribunal. That would ordinarily be in the Queensland Civil and Administrative Tribunal. If a BUGTA body corporate sought recovery of levies in QCAT they would not have the ability to recover all of their costs because in QCAT the general presumption is that each party will bear their own costs of that litigation. All they would be able to recover is their filing fees so you are left in the unfortunate situation of volunteer committee members having to undertake the recovery process for themselves rather than engaging professionals to do it.

Mrs GERBER: Thank you, that is very helpful.

CHAIR: Are you part of the Community Titles Legislation Working Group?

Mr Marlow: Yes, we are a member of that working group.

CHAIR: I understand that—and correct me if I am wrong about this—some of the issues that you raise are basically outside the long title of the bill. I am not raising that as a criticism because obviously information we receive helps us. Do you understand that the cost recovery in relation to debt is outside the long title of the bill?

Mr Carlson: Respectfully, the SCA does not. Part of what has been introduced into this bill to address situations in a particular resort, as we understand it, is to compel a body corporate to commence a proceeding to recover outstanding levies and contributions within two years and two months of those levies being outstanding. That has been introduced to the bill to try and address a particular situation. The submission of SCA is that, if you are going to do that because you see a public policy benefit in committing bodies corporate to recover outstanding contributions, you may very well just be committing a body corporate to an expensive litigious process for the recovery of just $15,000 in levies when they will be limited to scale, whereas every other community titles scheme in Queensland has the benefit introduced through the Body Corporate and Community Management Act of being able to recover all costs reasonably incurred. If you do not replicate this in this bill these bodies corporate will not be able to make the commercial decision that ordinary litigants in Queensland do; that is, is it commercial to commence proceedings at this stage to recover this debt.

Ms BOLTON: Kristian, your submission states that the information service provided by the commissioner is held in high regard. We have heard from previous witnesses that there have been difficulties with the commission, including complaints et cetera and cases timing out. Going forward, what do you see the role of the commissioner evolving into to accommodate not only the changes but also what will come out of the working group?

Mr Marlow: We are really pleased as an organisation that Queensland has a body corporate commissioner. It is the only role of its kind in the world. We are pleased to see that funding has been allocated in the budget to improve resourcing there, particularly to take on some of these education and information services. Broadly speaking, we would like the commissioner to be able to operate a bit more flexibly, to do things like declare people vexatious. We would like the commissioner to have appropriate powers to deal with what comes to them and the flexibility to be omnipotent within the reasonable parameters of a decision-maker.

Mr HUNT: Thank you very much for your submission. I would like to delve a little further. One of the things you were pleased about was the potential for further scrutiny of complaints or issues that you thought were frivolous and vexatious. In a previous role I worked in a department that had clauses around frivolous and vexatious complaints, and that was extremely problematic. Can you give me an example of what frivolous and vexatious complaints would be—it can be a real-life example or a generic one—and how you think these changes go some way to addressing that?

Mr Carlson: This bill proposes to empower a referee—essentially a dispute resolution officer—to dismiss an application on the basis that it is frivolous, vexatious, misconceived and without substance and award costs of up to $2,000. An example of a dispute resolution application that may be frivolous or vexatious might be an application filed by, for example, the proprietor of a lot in one of these BUGTA bodies corporate which does not raise any serious legal question and has simply been put in to frustrate a body corporate or committee. Absent this provision in the bill that is being proposed, the ability to award costs of up to $2,000, a referee is obliged to accept that application even though on its face it is frivolous and vexatious. They will ordinarily send it out for submissions by affected stakeholders, many of whom may incur costs by having to respond to that application.

As it presently sits, the Building Units and Group Titles Act does not empower a referee to award any costs. Indeed, appeals from a referee go to a magistrate who individually constitutes an appeal tribunal. Even those magistrates as an appeal tribunal under BUGTA do not have any power to award costs whatsoever. For many decades BUGTA bodies corporate have been operating in this regime where a litigant, even if they are bringing a complaint that is vexatious, has no costs exposure before

the referee at first instance and has no costs exposure before the appeal tribunal at second instance. Then an appeal from the appeal tribunal goes to the Queensland Court of Appeal, and that is the first occasion at which there is a costs exposure.

SCA advocated for the provision that has made its way into the bill to allow a referee to award costs of $2,000, and it mirrors what is in the Body Corporate and Community Management Act. SCA also advocates for wider protections to stakeholders in these strata communities to allow a referee or a commissioner to declare a particular person vexatious. That may stop them from filing applications that will incur costs unless they convince a referee or commissioner at first glance that there is merit. SCA has also advocated for the appeal tribunal to have power to award costs in a way that would mirror the power that QCAT has to award costs if the interests of justice require it.

Mr KRAUSE: This question is to whoever would like to answer. In the public briefing from the department there were some references made, from my recollection, about bringing the acts we are dealing with into line with the BCCM Act, but then when I asked about cost recovery measures there was reference made to the fact that that was being dealt with in a third tranche of reforms which would be discussed by the working group around these issues. Given that some things are being harmonised between the two acts in this bill but that particular issue is subject to some sort of third tranche or further consultation, does your association have any concern that there might be a movement away from the position of being able to recover costs more broadly?

Mr Marlow: I do not believe that is likely. We have certainly been advocating for making it much easier to recover costs and bringing things to a head quicker with referrals to costs assessors if people dispute their costs. Broadly speaking, we think that is probably the major deficiency of this bill. While there is a bill before the parliament and the members of parliament are required to vote on it, I think there is consensus that it would be best practice to ensure there is an ability to recover costs. While this is on the table we certainly think that would be an appropriate amendment to this bill to ensure that costs can be recovered. If there is a view—and we hope there will be some positive reform to the BCCMA to make it even easier to recover costs—that can be potentially dealt with at a later date. While the book is open, so to speak, and while we are ostensibly cloning sections of the BCCMA within the BUGTA we may as well go the whole hog and look at best practice based on what is available.

Mr Carlson: The SCA does not expect there would be a 180-degree turn from the current position. What we expect the public policy debate to centre on when that review continues will be reducing disputes about whether a particular recovery cost is reasonable. They are looking at a recommendation the Queensland University of Technology put forward many years ago, which is to remove disputes about reasonableness by saying, 'Here is a scale of costs for typical actions that are taken in the recovery of outstanding contributions,' and so long as the cost is in accordance with that scale amount there can be no dispute about reasonableness. The contributions the SCA has made to that working group about the review of recovery costs have indeed been trying to avoid bodies corporate and lot owners incurring further costs to argue about recovery costs and simplify the process.

CHAIR: It would simplify the process if there was, as you just described, a regulation that set out costs. From memory, that is provided for in other legislation, is it not?

Mr Carlson: Yes, it is. Typically in civil litigation there is a scales of costs for litigating in any of Queensland's courts. What is being looked at in the context of that review is incorporating something similar for typical actions that a body corporate would take internally such as issuing arrears, reminder notices and letters of demand, and payment plan arrangements. In terms of legal costs that are incurred in a court in recovery contributions, it is SCA's position that that can be most simply dealt with by having the reasonableness of costs referred to a court-appointed costs assessor who can cost effectively make a determination. The current state of law under the BCCMA is that it is for a judge or magistrate to hold a trial to make a decision about whether those costs have been reasonably incurred. SCA continues to advocate for the adoption within this bill of the ability of a BUGTA body corporate to recover its costs. We think that simply mirroring what is in the BCCMA is an easy way to do that to protect bodies corporate from having to make uncommercial decisions. That could occur even though the ability to recover costs or the mechanism for the recovery of costs is under review in the BCCMA.

CHAIR: Thank you. That brings to a conclusion this part of the hearing. I would like to thank you for your attendance in person. Thank you for your written submissions; they have been very helpful to the committee.

O'SULLIVAN, Ms Lee, Community Body Corporate Committee

CHAIR: Would you like to make an opening statement, after which the committee members will have some questions for you.

Ms O'Sullivan: We thank you for the opportunity to appear before this committee and for your work. Most of the proposed changes are helpful. The focus on education is useful. Excluding those with management rights and body corporate managers from being voting members of committees is especially welcome. Unfortunately, some of the proposed changes create more problems than they fix. The lack of action to address the enforcement of laws and licensing regulations, the lack of qualifications for those with management rights and body corporate managers and lengthy 25-year rights contracts are disappointing. It would have been useful if these problems could have been identified at the working group stage.

There are two problems with the proposed changes: firstly, the requirement for a nominee to be a community body corporate committee member to be a member of a subsidiary committee. Some subsidiary bodies corporate only have two to four owners and a committee requires three. Having a body corporate manager as a delegate, which is a response that I read the other day in earlier submissions, I think creates a conflict of interest. I think it was a departmental response that suggested having a body corporate manager as a delegate. I think that is probably a conflict of interest and that can cause some problems, particularly when the body corporate manager is not particularly helpful.

The second is information disclosure. The need to give all owners seven days notice of a committee meeting at which they cannot vote is a waste of time as it is with the BCCM Act. Many owners complained of 'death by email' and many are confused as to why they are being sent notices when their votes cannot be counted. This was brought in last year and it is causing some problems already. It seems to be for the benefit of body corporate managers, who can charge owners to send out extra notifications and then have to explain to people why their votes cannot be counted and so forth. It is not really solving any problems. To deal with problematic decisions from committees you need half the people on the body corporate to make a change. There is also that facility at the end. You have a review process of seven days after that decision is made, so it seems to be doubling up. There are also problems with financial mismanagement by managers.

Not all these people who have management rights are letting agents and they are not real estate agents—they do not have that qualification—and they fall through the cracks. They cannot be dealt with through the Office of Fair Trading. We have a body corporate manager who has letting rights but she does not exercise them. We have had problems with financial management and there is nowhere to go with that. She has administration rights, so she does effectively the job of the body corporate manager. We do not have a body corporate manager. We have her, but she has delegated it to someone else to do the actual work.

Some of the documented examples of financial mismanagement by the current Osprey manager are: refusal to pay bills and late payment of bills; the use of CBC funds to pay for repairs to the roof of a subsidiary body corporate without authority; overpayment of herself by $23,000; putting owners at risk of a $3 million fine because of a contravention of the by-laws and the Planning Act; use of incorrect voting entitlements to determine voting/subsidiary body corporate levies to the CBC resulting in two schemes paying an estimated extra $50,000 over a long period of time while some schemes paid a total of $50,000 less; having the Osprey CBC pay for a workers compensation premium for the manager who was a trustee for a trust and was ineligible for it; withholding of audit reports from nominees of the subsidiary bodies corporate. The two audit reports had details of the $23,000 overpayment and the incorrect levies.

It goes on: banning CBC members and nominees from contacting the auditor with information about the overpayment of the manager; living offsite 1,000 kilometres away without permission; contravening section 187 of the MUDA. Financial mismanagement by managers also occurs in schemes under the BCCM Act. Managers in all schemes have control of vast sums of money and they regularly have a 25-year contract; that is fairly normal. More and more people live in and own units. These managers are unqualified, unlicensed and unregulated except by the real estate licence requirements and letting agent requirements, and that excludes a lot of people. Owners would benefit from having financial managers who are qualified, licensed and well regulated.

It is difficult to see how making more laws about units will make things better for owners if there is no effective enforcement. The office of the body corporate commissioner is swamped with disputes. It takes six months to get a referee order. It cannot enforce its orders. Additional funding to include MUDA and BUGTA is welcome but most likely inadequate given the current workload of the office. The office of the body corporate commissioner needs additional funding above that proposed.

Finally, we have concerns that the proposed changes to body corporate laws seem to be disproportionately informed by input from lobby groups, the service providers like Strata Community Australia, at the working group stage and not the owners. We would like to see this remedied. Owners pay for everything and bear all legal responsibility for their schemes. Ultimately, these unresolved problems, as outlined above, feed into the housing crisis in Australia.

Mrs GERBER: Thank you, Lee, for your written submission and your oral submission. I understand that the department has provided some responses to the concerns that you have raised and said that some of those concerns are outside the long title of the bill. I do not want to dismiss any of that. I understand that your submission might be that this is a missed opportunity to address those issues, but my questions will deal with what is within the scope of the bill. I want to touch on two issues that have already been raised and get your view on them as an interested party, particularly not being in strata title management or not having that viewpoint. Two issues that have been raised have been around cost recovery and the conflict of interest. I will first touch on the conflict of interest provisions. If you have a contract with a related body corporate you cannot be on your body corporate. If you live in, for example, Sanctuary Cove you cannot take on a contract with anyone, for example, from Hope Island. I was interested in your views on that given your particular placement.

Ms O'Sullivan: I missed that bit about Hope Island and Sanctuary Cove. If you have a contract—

Mrs GERBER: They were just two examples of different bodies corporate. If you have a contract, for example with, Sanctuary Cove, you cannot then take on a contract at a different location like Hope Island.

Ms O'Sullivan: I understand.

Mrs GERBER: I am interested in your perspective on that.

Ms O'Sullivan: That is already happening. We have that situation in our body corporate scheme; we have someone who is working somewhere else. That is fairly common actually. There are a couple of people who basically are getting a chain of management rights together and there is a massive conflict of interest with it. We have a manager who should be 1,000 kilometres from where she is. We have an issue with breach of contract. There are significant costs and possible serious financial consequences if you lose an action taken against you because you have dismissed someone because of breach of contract. There is a massive problem with conflict of interest within bodies corporate, within those management schemes, getting your relatives to have units there, getting your friends or people who do work for you as owners as the body corporate manager—there are all sorts of conflicts of interest in those schemes and they are not able to be dealt with effectively at the moment.

Certainly it is a massive problem. There are people who are currently trying to amass these management rights—businesses—not just in one place but several places. They then subcontract them out to other people who we, as owners, have absolutely no input in choosing. We are stuck with them and cannot do anything about it. We have that situation at the moment and it is very problematic. We have had about three different managers who have been doing the job. As I said, the financial management has already been outsourced. It is a management and administration agreement we have with this person. The administration agreement has been outsourced and that is contravening section 187 of the MUDA. We could take action on that as well but, again, a referee order takes six months. You have the issue of what exactly is the problem, and often explaining these complexities to get permission to take action legally is extremely difficult. Because it is such a complex scheme, most people have a limited understanding of how it works and how decision-making is done.

Yes, it is a massive problem and it is getting worse. I think it has become a lot worse in the last five years or so. There seems to be a great movement of people wanting to amass these management rights—businesses—and they have no intention of living on the site even though it is part of their contract. Is that the sort of issue you are speaking to?

Mrs GERBER: Yes. Thank you. That is very helpful. I also touched on one of the other issues that has been raised by a number of submitters and I am interested in your view on it. That is around the cost recovery provisions, or the lack thereof, in this bill. It has been raised with us that this bill needs to incorporate some cost recovery provisions because the body corporate is obliged to recover costs and without provisions allowing them some way to recover those costs, the bill is deficient. I am interested in your perspective on that.

Ms O'Sullivan: I think it is fairly self-evident that if you are obliged to take legal action to recover costs, the costs should be able to be reimbursed to that body corporate. That seems to be fair. That is certainly an issue that does need to be dealt with because the costs of taking legal action are significant. We have had legal action taken within the scheme and it is very expensive. In terms of recovering $3,000 worth of costs, it is going to cost you a lot more than that if you want to start taking legal action.

Then you have the issue of taking legal action if you are a CBC. It is a major undertaking to get that through the subsidiary schemes and then through the CBC. A lot of people do not necessarily understand the importance of it, so it can be extremely expensive and extremely problematic. Most people just let it go. You have a lot of schemes like Couran Cove, which has had a lot of problems with getting costs recovered. I think it is something that does need to be looked at but, again, I have not spent a lot of time thinking about it.

Mrs GERBER: Just for context for the committee, are you able to give us some examples of how much you are talking about when you say that there are significant costs associated with litigation and it should be able to be recovered?

Ms O'Sullivan: In one of the subsidiary schemes—I was the chairperson at the time—we had the manager contravening one of the by-laws relating to the use of a gym facility. It also contravened the Planning Act and there was a $3 million fine that we could have had inflicted on us. We decided we would take some action. A couple of the owners got their own personal legal advice at a cost of about $4,000. The body corporate then had to have an extraordinary general meeting. They got the permission through the body corporate to take legal action to get a referee order. We had the manager in the background trying to lobby against that. It was extremely unpleasant and difficult. Then we had all the issues associated with the cost and so forth.

It ended up costing the members of that scheme collectively about $14,000 to get a referee order because we used a solicitor. Subsequently, people have sought referee orders through the other schemes. They have done it by themselves which is not easy. It is difficult and they did get a referee order eventually. They did not get a solicitor because it would have cost $15,000. There are some very good solicitors who will do a great job. It is just that you have to justify to your owners spending $15,000. If you have a scheme that only has 10 members, that is difficult.

At that stage, the subsidiary scheme took the action to force the CBC to take action because the CBC was dominated by the manager and her friends. We were told incorrectly that each subsidiary body corporate had the same number of votes, that they had one vote each when, in fact, one vote for one subsidiary scheme would have had a value of 30 and some of them had four. For years we had been told that this was the way things were. Eventually, we sorted that mess out. Essentially a block was put in place to stop us getting things done through the CBC, which should have taken the action, so we then had to take action through the referee. We asked for a referee order to get the CBC to take action to enforce the by-law to stop us being fined $3 million. The referee order also said the manager had to stop doing what she was doing with regard to the contravention of the by-law. It is fairly labyrinthine, but that is what you have to go through to take legal action. The subsidiary had to force the CBC, the community body corporate, to take action to do what it should have done in the first place to enforce the by-laws and that cost the subsidiary scheme $15,000. Those are the sorts of costs involved.

CHAIR: You said you were liable to a fine of $3 million?

Ms O'Sullivan: It was $3 million for contravention of the Planning Act. The manager's property had this separate gym that was to be used only as a gym; it said that in the by-laws. We said, 'You're not using it as a gym.' We rang the council and said, 'What's going on with this?' They said, 'There's a $3 million fine because the land is zoned to be used in this way.'

CHAIR: It was a $3 million fine for whom?

Ms O'Sullivan: It was for the body corporate. The manager had been renting out this facility to some spiritual healing business that could only be used as a gym.

CHAIR: The breach that you are talking about for the $3 million would have come to the body corporate as a result of not using the space for its designated purpose?

Ms O'Sullivan: It would have been for not enforcing the by-law that said she could only use it as a gym. The CBC did not enforce the by-law, so we had to force the CBC to enforce the by-law to stop this happening. It is pretty labyrinthine. That is why you cannot imagine how a layperson could deal with it. People got advice from a solicitor at their own expense to find out what was going on. The solicitor said, 'Yeah, it's a $3 million fine,' because we had spoken to the council and they said, 'Yes, it's a $3 million fine. You should do something about it.' That is the sort of thing you can have and that cost a lot of money and a lot of—

CHAIR:—angst.

Ms BOLTON: Have you been asked to sit on the Community Titles Legislation Working Group? Your knowledge and your input has been fabulous. If you have been asked, you would obviously be able to address that elephant in the room.

Ms O'Sullivan: I have not been asked to appear on it, but I would be very happy to be involved with it because I do have an understanding of the BCCMA because I own another property that is subject to that act and we have had a range of issues there. I would be happy to do that.

CHAIR: That brings to a conclusion this part of the hearing. Thank you, Lee, for your written submission. Thank you for appearing before the committee this morning. Your evidence is very helpful.

BOWDEN, Mr David, Chairman, Eco Body Corporate Committee, Couran Cove Resort

LESTER, Ms Leith, Proprietor, Eco Body Corporate Committee, Couran Cove Resort

CHAIR: Good afternoon. I invite either both of you or one of you to make an opening statement—whatever you feel comfortable with—before we ask you questions.

Mr Bowden: I will talk to our submission. I thank the committee for its time today. We are very encouraged by the detail contained within the Building Units and Group Titles and Other Legislation Amendment Bill as it addresses many of the key problems that have crippled Couran Cove over the past several years. One of the major problems has been the non-payment of subsidiary body corporate levies by the owner/operator and major investor in Couran Cove over many years. These corporate entities have used this considerable debt to control the community body corporate, inflate levies and collapse property values across the development with the ultimate aim of disenfranchising all mum and dad owners. While the proposed legislative amendments certainly address issues of debt and representation on bodies corporate, we believe that the legislation could be further strengthened by addressing the inherent unfairness of allowing corporate entities to vote at general meetings of the community body corporate whilst also owing huge debts to bodies corporate within the community.

Currently, a CBC member can owe debts to subsidiary bodies corporate and yet retain voting rights in the community body corporate general meetings because they are financial and on a single CBC lot. Meanwhile, the indebtedness of subsidiary bodies corporate prevent their representation on the CBC executive committee as well as voting at CBC general meetings. This has denied hundreds of owners a say on the CBC and it allowed corporate entities that control the CBC to issue inflated levies and additional special levies to recoup debts owed by those same corporate entities. This could be prevented if the same rules that apply to the voting rights of indebted proprietors and subsidiary bodies corporate were also applied to members of the community body corporate.

Under BUGTA, a member of the subsidiary body corporate is not allowed to vote at a general meeting of the subsidiary body corporate if they owe a debt to the subsidiary body corporate. Applying the same principle to a community body corporate, a member of the CBC should be precluded from voting at a CBC general meeting if they owe debt to anybody corporate within the community. This additional amendment addresses a key issue that debts across the whole development must be taken into consideration with respect to voting at general meetings of the CBC.

We have suffered greatly from a small number of indebted entities that have used shortcomings of the BUGT and MUD acts to wield undue power over the CBC and act against the interests of the wider community. We applaud the proposed legislative changes in the bill and believe the revised legislation will help prevent indebted entities or their associates from inflicting further financial pain on private owners. These legislative revisions have provided a good description of an ‘associate’, but it is possible that some parties may dispute an association. Therefore, we would like to also be assured that an arbiter or referee has the power to rule on whether an association exists between two entities. That concludes the opening statement. We are happy to answer questions.

CHAIR: Leith, did you want to make an opening statement?

Ms Lester: I have jointly written the opening statement with Dave. Basically, I think you can take that as our opening statement.

CHAIR: Yes, thank you.

Mrs GERBER: Thank you for your opening statement. I just wanted to touch on a couple of issues that have already been raised with the committee and get your view on them: the cost recovery provisions, or lack thereof, in this bill and the conflict of interest provisions. Given you have been sitting in the committee hearing the whole time, did you have a view that you wanted the committee to understand better around those two issues?

Mr Bowden: I think it has been stated already about mirroring the BCCM in that regard. We are comfortable with that change.

Mrs GERBER: Are you happy with that?

Mr Bowden: Yes.

Mrs GERBER: In relation to the conflict of interest issues that have been raised, do you have a view that you would like the committee to understand around those? Do you want me to run through what that is?

Ms Lester: Yes, please.

Mrs GERBER: Essentially, if you have a contract with a related body corporate, you cannot be on your body corporate if it is related. The example I gave to the prior submitter was that if you live in Sanctuary Cove you cannot take on a contract with anyone from Hope Island—two different body corporates. The prior submitter talked about the problems that she has experienced in relation to there being a perceived or actual conflict of interest around that. I am interested in your experience of that and if you have anything you would like the committee to be aware of?

Ms Lester: We have a huge conflict of interest issue at Couran Cove because the owner/operator of the resort is also the service provider. The CBC has a contract with that service provider to provide services to all the subsidiary bodies corporate as well as the direct entities belonging to the CBC. Basically, the resort owner is formulating the budgets as the operator, presenting them to the CBC and then voting them through at general meetings of the CBC. This is a huge conflict of interest. At general meetings because you do not have to declare a conflict of interest, they get away with it all the time. We are paying hugely inflated levies. Under the service agreement, they are supposed to present their costings at the end of the financial year—in other words, the real costs to the operator—and then compare that to the budget that was prepared. The differences are supposed to be made up between the CBC and the operator. This has never happened and the operator basically is refusing to show the subsidiary bodies corporate what their real costs are.

When we have problems where we are trying to interpret legislation—we have disputes—very often we go to the body corporate manager, which in our case is SSKB, and will say to them, 'Well, we do not think the CBC is following the provisions of the act as they stand.' They will basically say, 'Well, we think this' which is usually whichever is the easiest thing for them to go along with which is usually someone either threatening them or, dare I say, they are passing money under the table or whatever. They will just say, 'Well, you go away and get personal legal advice because we are not lawyers.' Every time we have a dispute like this, we have to either as a body corporate or as a person go and get legal advice. In our case, in the last year or so it has cost tens of thousands of dollars.

Mr Bowden: Way over that. There have been a number of issues, yes.

Ms Lester: Then the CBC engages in litigation against the subsidiary bodies corporate. Again, that is sheeted home to all the individual owners within the resort. I know that there has been extra money allocated to dispute resolution. At the moment, the referee system is completely overwhelmed. Decisions are taking far too long and bodies corporate are becoming unworkable because we have interim orders stopping us from making any resolutions or acting on any resolutions. It would be far better if the state government had some sort of independent legal panel of experts, say three people from big legal firms who deal with BUGTA and MUDA on a regular basis, so that if a proprietor has a difference of opinion with a body corporate manager or the body corporate manager wants to check that what they are telling you is correct, they can put in an application to this panel and get an answer within five business days. You might have to pay a fee, like $50 or something, to make an application so that people are not just putting in vexatious applications all the time. Then you get an answer straight away and it would just decrease the flow of work to any referee.

The committee probably understood from the submission we put in that we think there needs to be amendments to the way general meetings are held in the CBC in that, if someone who is sitting on the CBC committee—even though they may be financial on the two lots that are direct members of the CBC—owe debts within the community, that is to the other subsidiary bodies corporate, they should be precluded from voting at general meetings because that is where all these inflated levies are voted through basically by the operator. In a lot of cases, these corporate entities will make themselves financial just before a general meeting so they can be voted on to the committee and then will not pay their body corporate debts for a whole year. They are actually unfinancial at the time of the AGM. I think this is a huge loophole that needs to be addressed with regard to voting at CBC general meetings.

Mrs GERBER: You are not the first submitter to have said that to us, so thank you very much for your submission today and thank you for appearing.

Ms Lester: Thank you.

Mr Bowden: Just to add to that, there is a general understanding that a general meeting is the best because everybody gets to vote. It is not restricted to a few. However, when you are a CBC, as we mentioned earlier with only two or three eligible people, the general meeting turns on its head in terms of accountability. Suddenly it becomes very easy to have a general meeting and push through anything you want because you are the only people in the room—there is only a couple of you. I understand why people have concerns about the general meeting provision in wider body corporates, but in situations like this when we have a CBC it can really come and bite us on the bum. That is just a point of view.

CHAIR: Sandy, do you have a question?

Ms BOLTON: No. Thank you, Chair. Leith has already answered my question in response to Laura.

Ms BUSH: Dave and Leith, firstly, thanks for appearing. I am sorry for your experience. You have been fulsome in terms of the information you have given. I just have a quick clarifying question: have you had a chance to review the response from the department to some of the issues that you have raised? If so, is there anything you would like to add to their response?

Mr Bowden: Yes, I have had a look at it. They were a bit concerned about the general meeting issue because of the wider implications in other areas. We, of course, can only give our somewhat jaded view of Couran Cove, but nevertheless we think it is a very important point to make. We are not lawyers. If they can take what we have said on board and perhaps go back and have another look at that we would very much appreciate it.

Ms Lester: In terms of changing the actual clauses, it would be relatively minor. I think this concept that if you are supposed to be representing the best interests of a community, you cannot do that if you are indebted to the community and then you are precluding subsidiary bodies corporate being represented on the community body corporate. You are basically using debt as a weapon to control the resort. I think just this one small tweak would go a long way to stopping that.

Mr KRAUSE: We have not heard from any of the parties that are apparently engaging in this sort of practice. Why do you think that might be?

Mr Bowden: There was one submission put in from one of those parties. He is not here today obviously. He obviously did not write it, it was from his legal team, I believe. I have to leave it to the department's assessment of that as to what they thought of it. I do not know what to tell you. The guy that put the submission in is paid. He is an outsider with no ownership of anything within our community. We consider him as a gun for hire. As to his reasons for not being here today, I could only speculate that he depended on a lawyer's advice, he does not really know the issues as we have presented them here today and probably would not want to answer the kinds of questions which you have put. I have got to admit, I am a little surprised by you guys. You are really good. I was not sure what to expect here today.

Mr KRAUSE: You can come back again, Mr Bowden.

Mr Bowden: I have got a renewed view of parliamentarians in Queensland. Congratulations.

Ms BUSH: We will have you back any time.

Mr Bowden: That is all I can tell you.

Ms Lester: I could add that the fellow that put in the submission is currently illegally representing the marine body corporate. He was representing the marine body corporate at the CBC level despite the fact that he is not an owner or member of the marine body corporate. He is a nominee of an owner who is an associate of the corporate entity that owes a nearly $2 million debt to the marine body corporate. He is being paid by our CBC, by all of us, $2,000-something a week to supposedly implement single billing for our utilities. From our experience all he has done is try to cut off the gas to the eco body corporate completely and it was only through our efforts that we got gas bottles installed and that cost us, legally again, to get that done and he has not made any progress on single billing for utilities at all, so paying for utilities outside of our body corporate levies, which used to happen but then the corporate entity that owes all the debts decided that, no, when he owned the resort before he sold it on to the next corporate entity, it would be better that we paid those utilities within the levies and he is now using that as reason for litigation against the owners because he says he should not be paying these utilities on the vacant lots.

CHAIR: Can we unpack that a little bit? You had a situation where your utilities were supplied to your unit?

Ms Lester: That is right. We had an electricity meter, a gas meter and we paid for water depending on—

CHAIR: Upon usage.

Ms Lester: Yes.

CHAIR: Then it went from that ticking along, you paying your bills as they arrived, and then at some point in time—

Ms Lester: In 2017.

CHAIR: Someone decided that you were no longer going to pay your gas bill, for example.

Mr Bowden: What happened was when the resort was first set up it was done very well. It was individual metering, reticulation was great, everything was done very well. About 2017 what happened was it got a little bit hard and in the case of electricity specifically the resort owner at that time went to the regulator and found it too onerous to continue with a proper metering system so instead they incorporated these charges for services into our general levies. It was, I guess, the best they could do at the time. Fast forward a few years and we have a situation where we are changing from a resort type short-term accommodation to having increasing numbers of permanent residents. With that kind of inequity involved it is obvious that you should try to go back to individual metering. This man was hired to do that. Unfortunately he did not do that. We had an issue last year where there was what I am going to call an alleged safety issue with the reticulation of gas. The gas was turned off to 100-odd cabins and they basically refused to turn it back on again until we signed up to their bottom line as to who and how much and everything would be paid. We did not do that. As you can imagine, there is a huge trust problem here. We talked about by-laws and inappropriate by-laws earlier. They weaponised the by-laws against us and said you are not allowed to put in gas bottles yourselves because the by-laws say you are not allowed to put in additions. I do not want to get into the whole thing.

CHAIR: No. I wanted to understand how you ended up where you ended up. I understand.

Mr Bowden: We ended up with gas but we had to do it ourselves.

Ms Lester: If I might add that there were families living over there with little kids who had no gas for five months or more.

CHAIR: I am conscious of time. We have four minutes left on the clock. Does anyone have a burning question for either Leith or David before I close?

Mr KRAUSE: Mr Bowden, you mentioned something about there being a referee or an adjudication about the definition of associate in the conflicts provisions. In the Corporations Act there are definitions of related entities, similar to associates. It is fairly conclusive about who is and who is not a related entity. Why do you think there needs to be some sort of arbitral body about this when if you write the definition correctly it should be plainly apparent who is and who is not an associate, as it is in most cases? I have never heard an argument about a related entity definition under the Corporations Act so why do you think we need an adjudicating body around that?

Mr Bowden: Possibly it is my own bruises coming out. As a community we are pretty informed these days, but we started off as an uninformed community. We were subjected to some I guess you would call them corporate players who were pretty good at what they did. These were insolvency lawyers, they had property experience, they had legal experience and they were very good at getting around the law. We have seen some associations arrive if you like which are hard to define, under-the-table associations, if you like, and with enough digging you end up finding out that, in fact, there is an association there. I would not put it past these guys to come up with, as I said, some under-the-table associations which, on any independent evidence, you would say these people are working together, but it might be hard to determine it. I am not aware of that act, by the way, so I cannot be sure. I am just looking for some kind of fallback from the inevitable point where these guys are going to work around whatever law we bring in place because that is the way they do things, that is all. I might be naive.

CHAIR: No. That concludes the hearing for today. Thank you to everyone who has participated. Thank you to the Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. There were no questions on notice. I declare the public hearing closed.

The committee adjourned at 1.09 pm.