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11 July 2022

Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000

By e-mail: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear Secretary,

**Submission to Parliamentary Committee  
Building Units and Group Titles and Other Legislation Amendment Bill 2022 ("Bill")**

We act for *The Lessees – The Arbour on Grey – South Leasehold BUP 107061* and *The Lessees – The Arbour on Grey – North Leasehold BUP 107035* and are instructed by the committee of each of our clients to make the following submission on their behalf.

**1. About our clients**

- 1.1 Our clients are bodies corporate constituted under the modified form of the *Building Units and Group Titles Act 1980* ("Modified BUGT Act") as set out in Schedule 4 of the *South Bank Corporation Act 1989*.
- 1.2 The Modified BUGT Act is not identical to the *Building Units and Group Titles Act 1980* ("BUGT Act") because it is unique to the South Bank titling system, which involves leasehold land, whereas the BUGT Act is for freehold land. However:
  - (a) the governance and management provisions of the Modified BUGT Act are substantially the same as those in the BUGT Act; and
  - (b) both pieces of legislation have similar dispute resolution provisions, based on a "Referee".

**2. Our clients' submission**

- 2.1 Our clients make no submission on the Australian Consumer Law related provisions of the Bill.
- 2.2 Our clients are supportive of the policy objectives behind those provisions of the Bill which deal with the BUGT Act and the *Mixed Use Development Act 1993* ("MUD Act"). However, our clients submit that the BUGT Act amendments proposed by the Bill should be extended to the corresponding provisions of the Modified BUGT Act. That way, bodies corporate constituted under the Modified BUGT Act will also have the benefit of the governance and management improvements being introduced.



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- 2.3 Viewing the Bill more broadly, our clients submit that the current proposals are merely a “band-aid solution” to a much more serious problem and the Parliament needs to adopt a more comprehensive solution.
- 2.4 Queensland’s common interest subdivision laws currently involve:
- (a) *Body Corporate and Community Management Act 1997* (“BCCM Act”)
  - (b) *Sanctuary Cove Resort Act 1985* (“SCR Act”);
  - (c) *Integrated Resort Development Act 1993* (“IRD Act”);
  - (d) MUD Act; and
  - (e) Modified BUGT Act.
- 2.5 The numerous bodies corporate constituted under the SCR Act, IRD Act, MUD Act and Modified BUGT Act (“Historical Acts”) operate under an entirely different regulatory regime to bodies corporate constituted under the BCCM Act; a regime which is based on the antiquated and substantially discontinued BUGT Act. Even the meeting procedures in the Historical Acts are based on the Schedules in the BUGT Act.
- 2.6 As for the dispute resolution provisions in the Historical Acts, they are not fit for purpose. For example, in the case of both the BUGT Act and the Modified BUGT Act, the office of the Referee requires a special resolution of a body corporate to authorise a simple application to enforce a by-law against a tenant (as opposed to an owner). A special resolution cannot be achieved if more than 25% of the total number of owners, holding more than 25% of the aggregate lot entitlement, vote against the motion. This makes it difficult (impossible in some cases) for a body corporate to enforce its by-laws against tenants, one of the most fundamental of its obligations.
- 2.7 In contrast, under the BCCM Act (which regulates the vast majority of bodies corporate in Queensland) a resolution of the committee is all that is required to authorise an application to enforce its by-laws.
- 2.8 The Bill addresses this problem for all bodies corporate under the Historical Acts, except for those under the Modified BUGT Act (which regulates our clients). In our clients’ submission, as a minimum, the proposed changes to the BUGT Act should also be made to the Modified BUGT Act.
- 3. Transitioning of Historical Acts**
- 3.1 In our clients’ submission, the time has come for the Historical Acts to be phased out and all bodies corporate transitioned to the BCCM Act so all Queensland bodies corporate can be managed under a single piece of legislation. Despite the planning complexities that will be involved, there is no reason why this cannot be done.<sup>1</sup>

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<sup>1</sup> The writer personally endorses the referenced statement. Between 1995 and 1997 the writer was the consultant, to both the Goss and Borbidge Governments, on the formulation of the BCCM Act and also personally drafted the Modified BUGT Act in 1991 on behalf of the Goss Government. At the time of developing the BCCM Act it was always intended to transition the Historical Acts to the BCCM Act, but this was considered difficult and too time consuming (particularly given that the balance of power in the Parliament of the day was held by an independent member).



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3.2 Despite the Modified BUGT Act being based on leasehold title and the BCCM Act being based on freehold title, there is also no reason why the BCCM Act cannot regulate both leasehold and freehold land. That is the case in New South Wales where both leasehold and freehold land can be strata subdivided under the *Strata Schemes Development Act 2015* (which repealed and replaced the prior separate laws, the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986*).

3.3 In the event of the BCCM Act allowing subdivision of leasehold land, its use for that purpose could (if required) be restricted to land owned by State and local governments, as was originally the case in New South Wales.<sup>2</sup> This alone would be a significant mechanism which would allow State and local governments to promote development of public land (without disposing of the freehold) in the lead up to the 2032 Olympic and Paralympic Games.

#### 4. To summarise

- 4.1 Our clients make no submission on the Australian Consumer Law related provisions of the Bill.
- 4.2 Our clients are supportive of the policy objectives behind those provisions of the Bill which deal with the BUGT Act and the MUD Act. However, our clients submit that the BUGT Act amendments proposed by the Bill should be extended to the corresponding provisions of the Modified BUGT Act.
- 4.3 Our clients also submit that the Bill should not be seen by the Parliament as a solution to the disjointed and confusing collection of strata and community title legislation in Queensland. It is no more than a “band-aid” solution to some immediate problems and needs to be followed, as a matter of urgency, by a comprehensive transitioning of bodies corporate under the Historical Acts to the modern environment of the BCCM Act.
- 4.4 While there will be a cost involved in developing those transitional provisions (to ensure they work effectively), that cost will be minimal compared to the costs being borne by bodies corporate, their managers and lawyers, struggling to cope with the complexities of the current legislative regime.
- 4.5 Our clients are appreciative of the opportunity to make this submission.
- 4.6 Our clients’ contact details are care of Bugden Allen Graham Lawyers.

Yours faithfully  
Bugden Allen Graham Lawyers

[Redacted signature]

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<sup>2</sup> In 1999 the *Strata Schemes (Leasehold Development) Amendment Act 1999* was passed by the New South Wales Parliament to extend the application of leasehold strata titles to privately owned land.