
From: [REDACTED]
Sent: Tuesday, 12 July 2022 3:17 PM
To: Legal Affairs and Safety Committee
Subject: Legal Affairs and Safety Committee - BUGTA Consultation - Building Units and Group Titles And Other Legislation Amendment Bill 2022

Categories: Submission

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

Dear Madam or Sir,

The invitation to make a submission to the consultation on the **Building Units and Group Titles and Other Legislation Amendment Bill 2022** is both welcomed and appreciated. This submission is made as, formerly, I was a Chairperson of a Community Body Corporate & Committee member and a Chairperson of a precinct Body Corporate. I continue to have a keen interest in governance as co-owner of a lot and this submission reflects practical experience with a particular layered scheme. This submission is informed by six years of practical experience and engagement.

Previously, the Noosa Springs Community Body Corporate Committee agreed to a Submission being made to the **Review of property law in Queensland - harmonising BUGTA and BCCMA in 2017**. It was believed that no action would be taken by government in regard to BUGTA following that review so the Consultation came as a surprise. The **Consultation Draft Summary of proposed amendments and Consultation process** paper also included a heading **Need for urgent targeted reform**. It is understood that the impetus for these proposed changes at this time related to issues mainly within one only of the 8 bodies corporate under MUDA yet all 8 will be affected. It is most unfortunate that the reasons and urgency for these proposed amendments were not provided. But having read some of the Referee's Decisions on Couran Cove disputes, the purpose of these amendments is clearer. The Minister's **Introduction** speech on 21 June 2022 confirmed Couran Cove as the impetus. However, it would still be preferable if no changes were made at this time but if improvements are to be made to the legislation, that a more complete review was conducted first as is proposed to be undertaken by the **Community Titles Legislation Working Group**.

Despite the changes proposed, the most pressing needs for any reform of the governing legislation remain neglected. These are:

- Harmonisation of MUDA with BUGTA;
- Education;
- Improved transparency; and
- Enhanced compliance and consequences for non-compliance to be prescribed.

With regard to education, there appears to be no training provided by the Office of the Commissioner for Body Corporate and Community Management which specifically addresses the needs of the MUDA/BUGTA communities. That is a major impediment to good governance and should be addressed and, if the new **BUGTA s132A Education and information service** achieves that, it would be most welcome. That prospect would be enhanced if "**must**" replaced "**may**" in the new **s132A (1)** then to read "**The Chief executive must provide an education and information service for helping—**" It is noted that this new section has practical effect for parties under MUDA schemes also. Hopefully, the government of the day will resource the Office of the Commissioner for Body Corporate and Community Management to provide education services to meet the need for them.

With regard to improving transparency, all information which is available to any committee should also be available to all members of the respective body corporate and, where that body corporate is a 'higher-level body corporate,' then to all members of all subsidiary bodies corporate also within that layered scheme. Both MUDA and BUGTA prescribe that the body corporate is the prime responsible entity. The committees are agents. Yet information for proprietors, who comprise the bodies corporate in reality, is not easily accessible. For example, the financial documents required under BUGTA to be presented to an AGM are a statement of accounts. At best these are a summary. Without access to the Cash Book and invoices supporting expenditure, scrutiny by proprietors is thwarted. If scrutiny is impeded, the possibilities for bad practices and/or bad behaviour are enhanced.

With regard to enhancing compliance, there is a need for meaningful consequences to be prescribed. Without meaningful penalties as now, recalcitrants have nothing to fear.

PROPOSED AMENDMENTS TO BUGTA:

The amendments proposed seem largely benign. The major basis for objecting would be that they appear to further complicate the Act. However, there are specific, largely practical issues with particular proposed changes. It is difficult to balance competing interests but if proprietors are to act on body corporate committees in a voluntary capacity, then the legislation should be more easily understood by the lay-person and not made more difficult.

The proposed amendment to **s38D** and **s45 (a)** and **(b)** for 21 days to circulate minutes is much too long; this should be no more than 7 calendar days. Minutes should be drafted by the secretary on the day of any meeting, provided to the Chair for review and then circulated, forthwith, to proprietors. Three weeks is an inordinate delay for such a straight forward task. Hansard is available within 24 hours. However, the more pressing need for amendment is to actually require the committee to meet. Preferably that would be three or four times per year. Currently, there is no such obligation. Accordingly, the intent of **BUGTA Schedule 4 s8** can be thwarted. The requirement to meet needs to be prescribed.

The new **s41B Meaning of electable person** and definition of same in new **s41A** is welcomed. An improvement to this section would be to ensure that only proprietors be electable. That would be achieved by deleting **s41B (a) (iii)**, the objective being that all committee members have a direct, vested interest in the work of the committee on behalf of the body corporate. In this regard, the new **s146 (2)** seems to assume that an *electable person* who is not an *electable person* will act honourably on the commencement and simply stand aside. Perhaps the chairperson, secretary or, preferably, the body corporate manager, as appropriate, should be charged with ensuring compliance. It should not be a responsibility of the relevant office bearer alone to make the decision to vacate. They might not.

The proposed inclusion of a new **s42A Non-voting members of committees** to include a body corporate manager has some merit. It will, in all likelihood, improve the calling and conduct of committee meetings. But if the number of meetings held should exceed the number provided for in the body corporate manager's contract with the body corporate, then it will increase the cost of operating a body corporate as each extra meeting will be charged for, probably at an hourly rate. It also requires clarification. In all likelihood, that body corporate manager will be a company. Accordingly, **s42A (1) (a)** should be amended to provide for the practical outcome of a change in personnel by adding to "**a body corporate manager**" the following words "**or its nominee.**" That provides for the easy replacement of a person on the committee as necessary. The proposal for a caretaking service contractor to become a non-voting member of the committee under **s42A (1) (b)**, is absurd. That would provide a service contractor with all detailed information about all matters pertaining to the body corporate including financial information. But it would also require the contractor to attend all committee meetings which may be very time consuming for them and for which they are unlikely to be compensated and perhaps little of which discussion is relevant to their role. This latter amendment is a practical nonsense and should be abandoned.

The intent of the new **s73A How referee must act** would be enhanced if the penalty value in the current **s78 (1) (a)** was to be increased from the present \$1,000 to a more meaningful level of, say \$20,000 and, in future, be described in terms of Penalty Units so that maintaining relativity becomes automatic. It is ironic that the Referee is to be empowered by a new **s94C** to make a limited costs order of up to \$2,000 against an applicant who makes an application which is frivolous, vexatious, misconceived or without substance while, in a successful complaint, a costs order is limited to only \$1,000. The amendment is anomalous.

The proposed replacement of **Schedule 4 s6** and **s7** will greatly enhance to transparency of committee meetings by requiring the secretary to serve notice of all committee meetings on all proprietors and the conduct of committee members by requiring all to vote. It is assumed that **agenda** in this context carries the wider definition of all documents as set down in **s29 (2)** of BUGTA. It is further suggested that the term **noticeboard** be redefined to include an electronic noticeboard. **The Acts Interpretation Act 1954 s39 Service of Documents** seems to provide for such by e-mail.

Further, there is a clear need for Code of Conduct in BUGTA such to be based on **MUDA Schedule 2**. That would obviate the need for a the new **s45B Conflict of interest**. But it could also mandate that members of the body corporate committee actually acquired an understanding of the governing legislation including BUGTA and the By-laws (not just a commitment to do so) and complied with those legislation, that they acted honestly and fairly, that they maintained confidentiality and acted in the best interests of the body corporate. There is an obvious yawning need for the inclusion of a Code of Conduct in BUGTA – that is urgent. Such an inclusion would complement the intent of the **new s132A Education and information service** and particularly **(1) (a)** of that new section.

There is also a need to ensure that minutes of general meetings are written and to an appropriate standard. **BUGTA s45** sets both out for meetings of committees as: **(4) A committee shall cause to be kept a record of its decisions, of any notices given to its secretary under subsection (3) and full and accurate minutes of its meetings**. But BUGTA is silent on those requirement for minutes of general meetings.

PROPOSED AMENDMENTS TO MUDA:

The new **s166C Meaning of electable person** includes at **(a) (i) a member of the body corporate; or**. However, **member** in this context is not defined. The same pertains with respect to **s169 (3A) (a)**. To determine what is a member of a subsidiary body corporate, it is necessary to refer to the decision of the Referee. Identical wording to the current **MUDA s169(3)** is found in **s140(4)** of the **Integrated Resort Development Act** and the **Sanctuary Cove Resort Act s24(4)**. That same wording has been considered in **Acacia [2017] QBCCMCmr 394: [20] A nominee must be a member of the subsidiary body corporate (that is, an owner) but does not need to be a member of the subsidiary's committee**. The Referee's decision on what is a **member** in this context is contained within the brackets as owner. It seems logical that **MUDA s169(3A) (a)** be amended by substituting "**member**" with "**proprietor ie owner,**" a term defined in **BUGTA s7** as: **proprietor means the person for the time being registered or entitled to immediate registration under the Land Title Act 1994 as the proprietor of a lot**. However, it is not essential for that nominee to be a member of committee. Further, the proposal that the body corporate manager ever be the nominee, is strenuously objected to. Proprietors with a vested interest in the body corporate should be the only persons entitled to be decision makers on behalf of the body corporate.

The proposed amendment to **s177 (i)** by **(fa)** includes a 21 day period in which to provide the draft minutes of a meeting. That period of grace should be no more than 7 days. Of greater importance is that the draft minutes be provided not only to all members of the 'higher level body corporate' but, in the interests of greater transparency, to all members of all subsidiary bodies corporate also. Further, those minutes should be required to be at the standard for minutes of the executive committee as "**true and correct**" or, even better, as "**full and accurate.**"

The proposed amendment to **s185B (1) (a)** to include a body corporate manager requires clarification. In all likelihood, that body corporate manager will be a company. Accordingly, **s185B (1) (a)** should be amended to provide for the practical outcome of such a change by adding to "**a body corporate manager**" the following words "**or its nominee.**" That provides for the easy replacement of a person on the committee as necessary. The proposal under **s185 (1) (b)** for a caretaking service contractor to become a non-voting member of the committee, is absurd. That would provide a service contractor with all detailed information about all matters pertaining to the body corporate including financial information. But it would also require the contractor to attend all committee meetings which may be very time consuming for them and for which they are unlikely to be compensated and perhaps little of which discussion are relevant to their role. This amendment is a practical nonsense and should be abandoned.

OTHER AMENDMENTS:

There are a couple of amendments, which are not being considered, which perhaps should be perhaps by the **Community Titles Legislation Working Group**. Firstly, MUDA does not require the Community Body Corporate to maintain an Administrative Fund or a Sinking Fund only, at **MUDA s177 (1) (i)**, a **fund** which **fund** is not defined in **MUDA Schedule 5 Dictionary**. By contrast, **BUGTA s38** clearly describes the purpose and requirements for both an Administrative Fund and Sinking Fund. The **Body Corporate and Community Management (Standard Module) Regulation 2020 s167** sets out the requirements for management of the Administrative and Sinking Funds and, at **s160**, how the budget for each Fund is to be set on an annual basis. Both MUDA and BUGTA could be improved in this regard.

Secondly, **MUDA 4** sets out in relation to words and expressions used in the **Building Units and Group Titles Act** that: **“Unless the contrary intention appears, words and expressions used in the Building Units and Group Titles Act 1980 have the same respective meanings in this Act.”**

Presumably that prescribes that the powers and duties of **secretary (BUGTA Schedule 4 (10))** and **treasurer (BUGTA Schedule 4 (11))** hold those same powers and duties with respect to MUDA. If not, they should.

Thirdly, **MUDA s180 (1) (c)** sets out that a **“reasonable fee”** is required to be paid before a proprietor may be entitled to information pertaining to the body corporate. However, if the body corporate has not set such a fee or refuses to set such a fee, then the proprietor may be denied access to information. Accordingly, a schedule of fees under a regulation based on **BUGT Regulation 2008 Part 5**, would be a welcome addition to MUDA.

IN CONCLUSION:

As a very interested member of the community, I thank the Legal Affairs and Safety Committee for the opportunity to make this submission and hope that my comments are both useful and coherent. If I may be so bold, should the Committee propose to hear from community members, I would welcome the opportunity to address the Committee.

Yours sincerely,

Sam Scanlon,

