

## **Submission in relation to the Building Units and Groups Titles and Other Legislation Amendments Bill 2022 (the Bill)**

This is a submission by Darren Philip in his personal capacity in relation to the Bill and as the chairman of the committee for COURAN COVE RESORT - MARINE APARTMENTS GTP 106784.

### **MATTERS ADDRESSED IN THESE SUBMISSIONS**

Initially, these submissions will address pertinent issues of any amendments contemplated by the Bill together with matters which should, but have not been, addressed by the Bill.

Then, we set out a brief history of prior examinations and recommendations in relation to BUGTA (Building Units and Group Titles Act 1980) and its coexistence with the BCCM (Body Corporate and Community Management Act 1997).

It is submitted that there are amendments that need to be made to BUGTA to address a number of identified and unidentified shortfalls in the existing legislative regime.

However, the Bill seeks to do this piecemeal and does not address a number of shortcomings in the existing legislative regime governing real property under both MUD and BUGTA.

### **Shortcomings of the Bill**

In summary the Bill does not properly address the following matters:

#### **1. PROPOSED NEW DEFINITION OF "Associate" - Clause 5 of the Bill**

This casts too wide a net, is unrealistic and will most likely result in an increase of disputes as to who is an "Associate".

Under the Bill's proposed amendments if, for instance, a sibling owes a "relevant debt" then another sibling cannot be an electable person under section 41B.

This is one simple example of how the amendments contemplated by the Bill are ill conceived and may well result in the breach of privacy. For instance, is a proprietor of a lot expected to examine the financial affairs of anyone who may fall under the proposed definition of "associates".

#### **2. MONETARY JURISDICTION of the REFEREE - Section 78 of BUGTA**

Under Section 78 of BUGTA the jurisdiction of the Referee is limited to \$1,000. This is ambiguous.

There is at least one instance currently, under appeal where the monetary impact of an order sought by the applicant (now appellant) will be in excess of \$1 million dollars and possibly involves the transfer of real property.

These are matters which we do not believe were initially contemplated by the authors of the legislative regime but rather have been manipulated by people who are seeking to exploit perceived "loopholes" in the existing legislative regime.

This threshold should be revisited as to its amount and to take into account the ramifications of the relief sought by any application.

### **3. COSTS ORDERS - Section 107 of BUGTA and proposed amendments – Clause 18 the Bill**

The net effect of section 107 is that for a filing fee of less than \$100.00 a person or persons have the ability to interfere (while acting in bad faith) in a process without bearing any responsibility for their actions.

The expense to a Body Corporate, and by extension all of its members, of opposing such matters can be in the tens of thousands of dollars without fear of any ramifications on the applicant/appellant, as one would expect in any normal legal dispute.

Clause 18 of the Bill only goes only part way to discouraging bad faith applications and does not take into account the realities of litigating complex matters.

### **4. SERVICE AND COMMUNICATION BY EMAIL – Section 127 BUGTA**

It is accepted that under the BCCM that service by email is effective.

This has been endorsed by the issuing of PD 33 to this effect.

One would assume that logically, and by virtue of legal precedent and legislation, that this would extend to service under BUGTA.

Unfortunately not. A Body Corporate, is currently going through an appeal in which Active Law, a law firm of Woolloongabba, via its Special Counsel, have made submissions to a Tribunal to the effect that

- a. BUGTA does not allow for service by email;
- b. Therefore, any orders of a Referee under BUGTA that are sent by email only does not EVER take effect under section 127 of BUGTA.

Taken to its logical conclusion this would seem to lead to the outcome that any orders of a Referee that are or have been issued by email only (we believe that is the majority of such orders) never, have or will, take effect under section 127 of BUGTA.

This “loophole” needs to be addressed such that no further time or money is spent opposing what, on the face of it, appears to be an absurd outcome which would clearly fly in the face of common sense.

### **5. POWERS OF COMMITTEE TO MAKE AN APPLICATION TO A REFEREE – clause 20 of the Bill - section 121A amendment**

The current situation is that before making an application under BUGTA for an order from a Referee a committee must seek the consent of the members at a general meeting. This process works and is in no need of change.

The proposed amendment seeks to remove this safeguard.

While the case can possibly be made in limited circumstances for an urgent application to be made without the need for a general meeting, the removal of this safeguard by the proposed amendment is unnecessary and removes the need for transparency and disclosure by a committee.

This clearly does not promote best practice in corporate governance and the amendment should be either removed altogether or severely limited in its implementation.

## **HISTORY OF PROPOSED AMENDMENTS TO THE CURRENT LEGISLATIVE REGIME**

There have been various attempts to “get this right” so to speak when it comes to transitioning real property governed by BUGTA, the various enabling acts and the BCCM.

Unfortunately, none of them seem to have “fixed” the perceived shortcomings.

We summarise below a short, and admittedly, incomplete history of attempts to address some of the perceived shortcomings of the current legislative regime.

### **The Issues Paper (2017)**

The Issues Paper identified that at least 580 schemes are still governed by BUGTA and its prime objective was to determine whether BUGTA “*should be modified to more closely approximate provisions in the BCCM Act*”. Consideration was also given to whether BUGTA should be:

1. wholly repealed and replaced with the BCCM act:
2. maintain the status quo: or
3. amended BUGTA in a staged process to align it more closely with the provisions of the BCCM Act.

The Issues Paper stated that:

*“it may be possible to replace the BUGTA with the BCCM act thereby bringing the specified acts under a more contemporary body corporate management framework.”*

It then went on to say that:

*“this may result in a reduction of red tape, improved consumer protection for lot owners and schemes currently regulated by the BUGTA and a more streamlined and consistent legislative approach to community leavening Queensland”*

It is worthwhile noting that throughout the Issues Paper the emphasis is placed on potential issues with legislation relating to Sanctuary Cove, The Integrated Resort Development Act and the Mixed Use Development Act.

Throughout the Issues Paper it was acknowledged that any attempts to transition from BUGTA to the BCCM act will be lengthy, expensive, time-consuming and possibly have dramatic consequences. It was acknowledged that “*the financial and administrative burdens imposed by such a transition would have to be evaluated in terms of the cost versus benefits*”.

It was further acknowledged that there should be a “*demonstrated need and supporting economic rationale*” as part of any discussion to transition from BUGTA to the BCCM act, either in part or in whole.

## The Recommendations (2018)

The Recommendations essentially recommended that the dispute resolution processes, and body corporate procedures contained in BUGTA be amended to more closely resemble the processes and procedures contained in the BCCM act.

There were 7 recommendations made and they were all qualified on the basis that they were made *“subject to any necessary modifications to accommodate the different nature, features and characteristics of the bodies corporate under BUGTA”*

This qualification is an acknowledgement that each body corporate should be reviewed individually and most likely one overall solution does not exist for each of the 580 individual bodies corporate.

The recommendations are summarised as follows:

1. the BCCM provisions relating to dispute resolution and debt recovery be incorporated into BUGTA:
2. the BCCM procedural requirements running a body corporate be incorporated into BUGTA:
3. the delegation of decision making authorities in BCCM be incorporated into BUGTA:
4. the BCCM provisions in relation to bylaws be incorporated into BUGTA.

## The BCCM Act Under Review

At the same time as conducting an investigation into any possible transition from BUGTA to BCCM Act the Centre has been conducting an investigation into possibly extensive amendments to the BCCM act.

This has involved the issuing of the following papers by the Centre:

1. 2015 Property Law Act review relating to procedural issues under the BCCM Act

These issues included: procedures for general and committee meetings; electronic distribution of notices; electronic voting; and a range of miscellaneous issues that had been raised by body corporate stakeholders and industry groups.

This paper had 89 questions and made 64 recommendations.

2. 2017 Final Recommendations relating to procedural issues under the BCCM Act

This paper had 29 questions and made 29 recommendations relating to the enforceability of bylaws, debt recovery procedures and termination of schemes.

## SUMMARY

We can, and will, if requested provide a more fulsome submission however, given the time and expenditure restraints, we set our initial comments in summary below.

In short, the Bill:

1. Is well intentioned.

2. Is part of long process seeking to address certain shortcomings in the current legislative regime.
3. at times, goes too far.
4. at other times, does not go far enough; and
5. appears to be a “band aid” solution without addressing many underlying issues.

Dated this 12<sup>th</sup> day of July 2022

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Darren Philip