




Speech By
Peter Russo
MEMBER FOR TOOHEY

Record of Proceedings, 8 November 2022

BUILDING UNITS AND GROUP TITLES AND OTHER LEGISLATION AMENDMENT BILL

 **Mr RUSSO** (Toohey—ALP) (12.09 pm): I rise to speak in support of the Building Units and Group Titles and Other Legislation Amendment Bill 2022. The Building Units and Group Titles and Other Legislation Amendment Bill was introduced into the Legislative Assembly and referred to the Legal Affairs and Safety Committee on 21 June 2022. The policy objectives of the bill are to: improve the operation of the Building Units and Group Titles Act 1980 and the Mixed Use Development Act 1993 with a focus on making body corporate governance arrangements fairer for proprietors; and provide for effective and consistent enforcement options for gift card requirements under the Australian Consumer Law in Queensland. The committee, in its report No. 30 which was tabled in the Assembly on 12 August 2022, has recommended to the Assembly that this bill be passed.

Stakeholders and subscribers were invited by the committee to make written submissions on the bill, with 15 submissions being received by the committee. I would like to thank those subscribers and people who appeared before the committee to give evidence. The submissions received by the committee for this inquiry traversed a broad spectrum of body corporate related issues, some outside the scope of the bill. There have been successive Queensland acts providing for community title style developments since the mid-1960s. These acts have allowed for land or buildings to be subdivided into individually owned freehold lots and common property. The arrangements covering the community title style developments were established to provide a governance body for these developments. Over time, the governance for these developments became more complex.

The Body Corporate and Community Management Act allowed for the establishment of complex, multilayered community titles schemes, including developments intended to be progressively subdivided over a series of stages. Prior to the commencement of the Body Corporate and Community Management Act, several complex, multilayered community titles scheme developments were established using a combination of specialised planning laws in conjunction with the Building Units and Group Titles Act. These specialised planning laws, also known as the 'specified acts', include the Mixed Use Development Act 1993, the Integrated Resort Development Act 1987 and the Sanctuary Cove Resort Act 1985.

In these complex and multilayered developments, the overarching body corporate may have been responsible for the provision of essential utility services, including, for example, sewerage services, electricity, gas or water. The predecessor to the Body Corporate and Community Management Act was the BUGTA, which did not cater for these types of complex developments. Basic community titles schemes established under the BUGTA transitioned to the newly commenced Body Corporate and Community Management Act. However, because of the substantial level of complexity and risk, multilayered developments did not transition to the Body Corporate and Community Management Act and continue to be governed by both the relevant 'specified act' used to establish the scheme and the Building Units and Group Titles Act.

Historically, the proprietors of multilayer schemes under the Mixed Use Development Act and other specified acts have generally not benefited from those original or subsequent Body Corporate and Community Management Act improvements. Evidence provided to the committee and the department during the public consultations for the exposure draft of the legislation highlighted concerns around a lack of requirements to ensure acceptable levels of probity in governance processes and a lack of protections for proprietors.

Identified deficiencies in the current legislation revealed issues such as: conflicts of interest that influence body corporate decision-making; frequent and costly disputes and court proceedings; corporate interests owing large debts to subsidiary, that is, lower level body corporate, thus preventing, under debtor voting prohibitions, the subsidiary from participating in governance decisions made by the overarching 'parent', that is, a higher level body corporate; disruptions to privately provided utility services; and problems accessing government services and assistance for Building Units and Group Titles Act or Mixed Use Development Act issues.

At the public hearing, the committee heard from witnesses, some of whom gave their evidence as individuals who had experienced issues when trying to resolve outcomes that arose from one or more of these identified deficiencies. Mr Daniel Purser, one of the individuals who appeared as a witness at the hearing, stated—

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.

...

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.

Targeted stakeholder consultation was also undertaken by the department of justice during the development of the bill including with the Community Titles Legislation Working Group, which includes key stakeholders such as the Strata Community Association of Queensland, the Queensland Law Society and the Australian College of Strata Lawyers. While there were some initial concerns about the potential for some measures in the draft legislation to have unintended consequences, these were addressed through a refinement of the proposals in the bill during the consultative period.

Key aspects were identified as being essential to achieving the objectives of the bill. These were: supporting information and education services; enhancing dispute resolution; obligations of bodies corporate; committee eligibility; subsidiary body corporate representation and voting; committee decision-making; financial management; and information disclosure. The proposed bill includes amendments for improving body corporate committee governance, including: a requirement to act reasonably; provisions to prevent conflicts of interest by tightening up committee membership and committee voting eligibility; and provisions to ensure important information about body corporate governance activities is given to proprietors.

The proposal under the bill whereby a person may not be elected as a voting member of a committee or executive committee if the person or an associate of the person owes a debt to the body corporate or an associated body corporate, or is a body corporate manager for the body corporate or an associated body corporate, was welcomed by the stakeholders and communicated with the committee during the inquiry. This process will provide the opportunity for the people most affected—that is, the unit holders themselves—by the actions, or inactions, of the body corporate to have a voice in their body corporate. The amendments support the financial viability of bodies corporate by placing restrictions around the use of inappropriate offset arrangements to satisfy levy contributions in place of monetary payments and by putting in place appropriate debt recovery time frames. The amendments will also prevent proprietors in subsidiary schemes, especially resident lot owners, from being excluded from participation in community body corporate governance solely due to debts owed by owners in their subsidiary. I commend the bill to the House.