




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 21 June 2022

BUILDING UNITS AND GROUP TITLES AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.15 am): I present a bill for an act to amend the Building Units and Group Titles Act 1980, the Fair Trading Act 1989 and the Mixed Use Development Act 1993 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights and I nominate the Legal Affairs and Safety Committee to consider the bill.

Tabled paper: Building Units and Group Titles and Other Legislation Amendment Bill 2022 [826](#).

Tabled paper: Building Units and Group Titles and Other Legislation Amendment Bill 2022, explanatory notes [827](#).

Tabled paper: Building Units and Group Titles and Other Legislation Amendment Bill 2022, statement of compatibility with human rights [828](#).

The main policy objective of the bill is to improve the operation of the Building Units and Group Titles Act, which I will refer to as BUGTA, and the Mixed Use Development Act, the MUD Act, with a focus on making body corporate governance arrangements fairer and more transparent for proprietors, such as unit owners, in relevant developments. The bill complements the government's ongoing reform agenda for the growing Queensland community titles sector, which includes consideration of issues and stakeholder concerns for a range of community titles related legislation. The bill also contains amendments to the Fair Trading Act to provide for efficient and consistent enforcement options for gift card requirements under the Australian Consumer Law.

Since the mid-1960s, successive Queensland acts have provided for community title style developments, allowing for land or buildings to be subdivided into individually owned freehold lots and common property. The Body Corporate and Community Management Act 1997, the BCCM Act, allows for the establishment of complex, multilayered community titles schemes, including developments intended to be progressively subdivided over a series of stages. The predecessor to the BCCM Act was the BUGTA, which did not cater for these types of complex developments. As a result, prior to the BCCM Act, several complex, multilayered community titles scheme developments were established using a combination of specialised planning laws in conjunction with the BUGTA. 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. Basic community titles schemes established under the BUGTA transitioned to the newly commenced BCCM Act in 1997. However, because of the substantial level of complexity and risk, multilayered developments did not transition to the BCCM Act and continue to be governed by both the relevant 'specified act; used to establish the scheme and the BUGTA.

The MUD Act provides for the approval, development and management of mixed use schemes. Under this act, an overarching 'community' body corporate is established as a governance body for the whole development. Importantly, the act also contemplates individual lots within the development being

further subdivided by a building units plan or group titles plan of subdivision under the BUGTA. If and when that occurs, a subsidiary body corporate is created under the act for the part of the development that has been subdivided by the building units plan or group titles plan. In general terms, body corporate governance arrangements for community and what are known as precinct bodies corporate are contained in the MUD Act. However, this act also imports certain governance provisions contained in the BUGTA. Governance of subsidiary bodies corporate created by building units plans or group titles plans of subdivision is also regulated by the BUGTA. This act also provides for dispute resolution for community, precinct and subsidiary bodies corporate.

As part of a property law review conducted for the government by the Queensland University of Technology, high-level recommendations were made for increasing the consistency between the BUGTA and the BCCM Act. In addition, serious concerns and disputes recently arising in some developments have highlighted limitations and deficiencies in both the BUGTA and MUD Act in terms of protecting the interests of proprietors and promoting efficient, transparent body corporate governance.

The bill is focused on making body corporate governance arrangements fairer and more transparent for proprietors in developments governed by the BUGTA and the MUD Act. These amendments aim to deal with the more pressing governance issues facing these developments, noting that further harmonisation of the BUGTA and the BCCM Act will be considered by the government-established Community Titles Legislation Working Group, as a later stage of work. This will be following the working group's consideration of a range of other important issues arising under the BCCM Act. In many cases, amendments contained in the bill are based on existing provisions of the more modern BCCM Act. In that respect, the bill will go a considerable way to ensuring that proprietors in relevant developments enjoy similar protections and services as unit owners in community titles schemes under the BCCM Act.

The bill includes amendments to support the provision of government information and education services to help proprietors and bodies corporate understand their rights, responsibilities and dispute resolution options. These services will be similar to those already provided by the Office of the Commissioner for Body Corporate and Community Management for unit owners in BCCM Act schemes.

The bill also aims to make dispute resolution more accessible and responsive. First, the bill will make it easier for bodies corporate to apply for referee orders by relaxing the current requirement for a dispute resolution application to be authorised by special resolution of the body corporate. This will reduce time and cost burdens for bodies corporate seeking assistance to resolve a dispute and will be particularly beneficial where an application needs to be made urgently, including to deal with an emergency. The bill will also provide referees with greater clarity and flexibility by providing that a referee must observe natural justice, act with as little formality and technicality as possible, and is not bound by the rules of evidence.

During consultation, some stakeholders expressed concern that measures in the bill, and a general increase in awareness of rights and responsibilities, may prompt increased demand for dispute resolution services, including via unmeritorious applications for referee orders. In response to these concerns, the bill includes a provision for a referee to make a limited costs order of up to \$2,000 against an applicant who makes an application that is frivolous, vexatious, misconceived or without substance.

Bodies corporate and committees make a range of important decisions that impact on the interests of proprietors. The bill includes provisions to impose a general requirement for community, precinct and subsidiary bodies corporate, as well as their committees, to undertake reasonable decision-making processes when undertaking their functions.

In complex mixed-use developments, the overarching body corporate may be responsible for the provision of essential utility services including, for example, sewerage services, electricity, gas or water. The bill amends the MUD Act to provide that if the body corporate has entered into an agreement for the provision of amenities or services for lots within the development, then the body corporate must take all reasonable steps to ensure the continuity of any amenities or services that are essential utility services.

The bill aims to strengthen eligibility requirements for executive committees under the MUD Act and committees under the BUGTA to ensure probity and promote quality of governance of those bodies. Accordingly, the bill contains amendments to make persons who owe body corporate debts ineligible to be elected to an executive committee or committee for a body corporate. The restriction will also apply if the person owes a debt to other bodies corporate within the development.

To increase the provisions' effectiveness in the context of complex layered arrangements, which may include related commercial interests across the development, a person will not be eligible for committee membership if they are associated with a person who owes a body corporate debt. In this context, an associate relationship will generally be of a business or commercial nature.

The bill will also prevent body corporate managers, service contractors and letting agents and their associates, as defined in the bill, from being eligible to be voting members of an executive committee or committee. The restriction reflects that these types of service providers may have a vested interest in certain matters being considered by a committee. However, body corporate managers and service contractors who are also letting agents will be able to be non-voting members of the committee to facilitate these service providers providing information to and receiving information from the committee.

In accordance with the MUD Act, a subsidiary body corporate requires a nominee to represent it on overarching bodies corporate, for example, the community body corporate. The bill will help ensure the appropriateness of nominees by requiring that they are a member of the subsidiary body corporate's committee.

In addition, the bill contains provisions to preserve the voting rights of a subsidiary body corporate that owes a debt to a higher level body corporate within the development in certain circumstances. Specifically, the amendment will address the situation where a subsidiary body corporate has been unable to meet its financial obligations to the higher level body corporate due to the failure of the owner of undeveloped lots within the subsidiary to pay its contributions to the subsidiary body corporate. This will ensure resident and small investor owners who have been paying their contributions are not disenfranchised in terms of decision-making of higher level bodies corporate due to the failure of an undeveloped lot owner to pay contributions.

The bill also contains important amendments to strengthen probity and transparency of committee decision-making under BUGTA by including provisions requiring members to disclose any conflict of interest in a matter being considered by the committee and to refrain from voting on the matter. This provision is based on existing provisions of both the MUD Act and the BCCM Act.

The issues that have arisen at Couran Cove Island Resort involve complex commercial arrangements, allegations of large amounts of unpaid debts, body corporate governance issues and other matters. In April of last year I met with a number of Couran Cove residents to discuss these concerning issues and I shared in their frustrations. As members would appreciate, it is not appropriate for me to intervene in governance processes of a particular body corporate or to intervene in judicial processes or the determination of individual disputes by a referee. I have also encouraged those affected by the current disputes at Couran Cove to obtain their own independent legal advice.

However, this bill will also improve financial management for bodies corporate under the BUGTA and the MUD Act by clarifying when a body corporate must initiate proceedings to recover unpaid contributions from owners. Amendments in the bill also require body corporate contributions to be paid in money and not via 'offset' arrangements, except in limited circumstances. In this respect, specific provisions have been included to ensure bodies corporate properly approve and receive fair value in relation to any offset arrangements.

To assist proprietors in being aware of important decisions and governance matters occurring in their body corporate, the bill contains new requirements for the distribution of committee and general meeting minutes, as well as notices of committee meetings. The bill also makes a number of technical and editorial amendments to the BUGTA and the MUD Act.

Finally, I note that the bill also includes minor amendments to the Fair Trading Act to enable infringement notices to be issued by the Queensland Office of Fair Trading for breaches of gift card requirements in the Australian Consumer Law. The relevant penalties will be 55 penalty units if the person is a body corporate or 11 penalty units if the person is not a body corporate. This change will ensure that the Office of Fair Trading is able to issue the same infringement notice penalties for gift card offences as can be issued by the Australian Competition and Consumer Commission. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.27 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Safety Committee

Mr DEPUTY SPEAKER (Mr Hart): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.