Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 24 August 2023

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Introduction

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (11.23 am): I present a bill for an act to amend the Body Corporate and Community Management Act 1997, the Building Units and Group Titles Act 1980, the Land Sales Act 1984, the Land Title Act 1994 and the South Bank Corporation Act 1989 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Legal Affairs and Safety Committee to consider the bill.

Tabled paper: Body Corporate and Community Management and Other Legislation Amendment Bill 2023 1190.

Tabled paper: Body Corporate and Community Management and Other Legislation Amendment Bill 2023, explanatory notes 1191.

Tabled paper: Body Corporate and Community Management and Other Legislation Amendment Bill 2023, statement of compatibility with human rights 1192.

The Body Corporate and Community Management Act 1997, which I will refer to as the BCCM Act, provides for the establishment, administration and termination of community titles schemes in Queensland. Community titles scheme can take a variety of forms, including duplex homes, townhouse complexes, residential apartment buildings, gated communities as well as commercial and mixed-use developments. As of June this year, Queensland had 528,190 individual lots—for example, units—in 52,089 schemes. The BCCM Act must evolve to meet the current and future needs of the growing number of Queenslanders who are choosing apartments and other communal-based arrangements.

The bill delivers on key government election commitments, including a new process for the termination of community titles schemes—which was also identified as a key action from the housing summit last year—as well as new arrangements for the authorisation of alternative insurance for certain schemes. The bill also gives effect to a range of reforms that have their basis in recommendations from the property law review which was undertaken for the government by the Commercial and Property Law Research Centre of the Queensland University of Technology.

Each of the proposed reforms to the community titles framework in the bill were also considered by the Community Titles Legislation Working Group. The working group was established in 2021 pursuant to a Palaszczuk government election commitment with the purpose of providing views and advice about important issues relating to community titles schemes and potential reform options. The working group is comprised of representatives from the Australian College of Strata Lawyers, the Australian Resident Accommodation Managers Association, the Owners Corporation Network, the Queensland Law Society, the Real Estate Institute of Queensland, Strata Community Association and the Unit Owners Association Queensland. Other stakeholders with relevant specialist knowledge were also engaged on particular issues as part of the working group process. I would like to take this

opportunity to thank the working group members and other stakeholders for their important contributions. Their views have helped inform government decision-making with respect to the reforms in the bill.

I will now give a brief overview of the amendments to the community titles scheme framework in the bill. The bill provides a new process to facilitate the collective sale and termination of community titles schemes with the support of 75 per cent or more of lot owners where the body corporate has decided there are defined economic reasons for termination. The new process is a significant and innovative new addition to the current requirements for terminating community titles schemes which essentially require unanimous agreement of the lot owners or, alternatively, an order of the District Court. Under the new process contained in the bill, the economic reasons for termination are either that it is no longer economically viable, or within five years will be no longer economically viable, to repair or maintain the scheme or, for a scheme of a purely commercial nature, that it is not economically viable for the scheme to continue.

Key elements of the new termination process for uneconomic community titles schemes include preparation of a pre-termination report which will include detailed information, including professional reports, to help lot owners decide if there are economic reasons for terminating their scheme; development of a termination plan that will set out critical information for lot owners to consider about the proposed process for terminating the scheme, including arrangements for distributing proceeds of the sale of the scheme; and appointment of an independent facilitator to assist the body corporate to implement the termination plan.

The termination of a community titles scheme is a serious matter that has potentially significant impacts on lot owners, lessees and persons with contractual arrangements with the body corporate. Accordingly, the bill contains key safeguards and protections, including minimum compensation requirements for lot owners and lessees, based on the arrangements that would apply if the state acquired the scheme under the Acquisition of Land Act 1967, as well as compensation for caretaking service contractors based on the market value of the management rights and review and dispute resolution pathways that are available to lot owners at key points in the termination process.

This new approach for terminating uneconomic community titles schemes strikes the right balance of ensuring that a significant majority of lot owners who wish to sell the scheme and are locked in to excessive maintenance, repair or rectification costs through their body corporate levees simply because a small number of owners do not wish to sell, while also providing appropriate protections and safeguards for those minority owners.

If there are no economic reasons for the termination of the scheme then the existing process for termination by a resolution without assent or an order of the District Court to terminate the scheme on just and equitable grounds will remain as options for achieving termination.

As mentioned, the bill also introduces a new process for the authorisation of alternative insurance. The bill provides that an adjudicator may make an order authorising alternative insurance. This will move decision-making on alternative insurance to adjudicators rather than the Commissioner for Body Corporate and Community Management who currently approves this type of application.

The bill will provide that an adjudicator may only make an alternative insurance order if satisfied that the body corporate for a community titles scheme cannot comply with the requirement to ensure particular buildings under the regulation module applying to the scheme for full replacement value and that the insurance cover under the alternative insurance is as similar as practicable to the cover required under the regulation module applying to the scheme. To support the alternative insurance changes, the bill will provide increased guidance around the processes for making and deciding an application.

The bill will also enable a body corporate to make an application for an alternative insurance order where a body corporate cannot comply with its obligations to insure buildings on lots included in the community titles scheme that are created under a standard format plan of subdivision and have a common wall with a building on an adjoining lot. Bodies corporate in these circumstances previously were unable to apply to the commissioner for approval of alternative insurance.

The bill also addresses second-hand smoke drift in community titles schemes. Second-hand smoke and its smell can often penetrate into neighbouring lots or the common property given the typically close proximity. To address these concerns, the amendments in the bill intend to strengthen protections for residents in community titles schemes against second-hand smoke drift from neighbouring lots.

Bodies corporate will be able to make a by-law that prohibits or restricts smoking on common property or outdoor areas of lots such as balconies and patios. It is important to note though that, consistent with the object of self-management, making such a by-law will not be compulsory and it will be up to each body corporate as to whether they make the by-law and if so what areas and smoking products the by-law will apply to.

The existing requirement in the BCCM Act for occupiers not to cause a nuisance or hazard or unreasonably interfere with the use and enjoyment of another lot or the community property will also be clarified with respect to smoking. The amendments will provide that this requirement is contravened if an occupier or their invitee regularly uses a smoking product and the occupier of another lot, their invitee or another relevant person is regularly exposed to the smoke or emission from the smoking product either in the other lot or on the common property.

Reflecting contemporary attitudes, the bill also amends the BCCM Act to provide greater clarity around the regulation of pets in community titles schemes. There is a well-established body of judicial and quasi-judicial interpretation relevant to the keeping of animals in community titles schemes. However, it is apparent that some bodies corporate have invalid by-laws that seek to impose a blanket prohibition on animals and are unreasonably refusing requests from occupiers to keep an animal.

The bill provides explicit and clear guidance about the status of animals in community titles schemes to assist bodies corporate, owners and occupiers to deal with the keeping of animals in accordance with the law. The bill is clear that body corporate by-laws cannot prohibit the keeping or bringing of an animal on a lot or the common property of the community titles scheme or restrict the number, size or type of an animal that an occupier of the lot may keep or bring on the lot or common property for the scheme.

The bill will also prescribe the circumstances when a body corporate may refuse a request to keep an animal, based broadly on the existing judicial and quasi-judicial interpretations of the BCCM Act. The bill will provide a body corporate may only refuse a request to keep an animal if the body corporate is satisfied on reasonable grounds of particular matters. For example, the body corporate could refuse the request if keeping the animal would pose an unacceptable risk to the health and safety of an owner or occupier, such as a risk to a person with a severe allergy that could not be reasonably managed by conditions or where the owner or occupier is unwilling or unable to comply with reasonable conditions.

The bill will also enable bodies corporate to respond more rapidly to inappropriate parking by lot owners and occupiers on common property. A body corporate can use the by-law enforcement process in the BCCM Act to enforce breaches of parking by-laws, but this can lead to delays in dealing with parking issues. Towing a vehicle under legal powers outside the BCCM Act may provide a timelier remedy for bodies corporate and the bill provides general clarification regarding the availability of these legal powers.

However, it may be unlawful for a body corporate to tow a vehicle belonging to an owner or occupier that is parked in contravention of a body corporate by-law on parking without going through the process set out in the BCCM Act to enforce body corporate by-laws. The bill will provide that, if a vehicle owned or operated by the owner or occupier of a lot is parked in contravention of a body corporate by-law and is towed by the body corporate, the body corporate is not required to comply with the BCCM Act by-law enforcement processes.

The bill also provides a process for enforcement of by-laws in layered arrangements of community titles schemes. The bill, in the interests of transparency and accountability, provides enhanced rights for subsidiary scheme bodies corporate and owners of lots in subsidiary schemes to access the records of higher level schemes in a layered arrangement in particular circumstances.

The bill will again improve transparency and accountability in the governance of community titles schemes by amending the code of conduct for body corporate managers and caretaking service contractors. The amendments will ensure both body corporate managers and caretaking service contractors are prohibited from unfairly influencing the outcome of a committee election or a body corporate motion.

The amendments will also facilitate the use of modern technologies by the body corporate to enable interested persons to access body corporate records electronically if both parties agree. The bill will clarify and streamline other body corporate administrative and procedural requirements, including by removing the requirement for a body corporate to have a seal. By modernising the BCCM Act, the Palaszczuk government is ensuring that living in community titles schemes continues to be an attractive option for many Queenslanders.

The bill will also make unrelated amendments to strengthen consumer protections for off-the-plan contracts. The bill will limit when sunset clauses can be used to terminate off-the-plan contracts for the sale of land under the Land Sales Act 1984. Off-the-plan residential property contracts are complex and involve nonstandard terms and risks for both the buyer and the seller, including risks linked with changes in the property market. As a result, I strongly encourage buyers considering an off-the-plan residential property to seek legal advice prior to signing the contract.

To strengthen consumer protections for off-the-plan contracts for the sale of land, the bill includes amendments to ensure sellers can only use a sunset clause to terminate off-the-plan contracts for land under the Land Sales Act with the written consent of the buyer, under an order of the Supreme Court or in another situation prescribed by regulation. The bill also provides procedural arrangements for a seller to seek the written consent of the buyer to terminate an off-the-plan contract for the sale of land using a sunset clause. This includes obligations on buyers in respect of responding to the sellers written sunset clause notice, although it is important to note that failure to respond will not be taken as buyer consent to the seller terminating the contract.

The amendments in the bill will apply to off-the-plan contracts for the sale of land that were entered into before the commencement of the amendments but not settled immediately before commencement. Effectively, this will result in the sunset clause amendments operating retrospectively to apply to some existing, unsettled off-the-plan contracts for the sale of land.

The bill also provides that, in relation to seeking an order of the Supreme Court, the seller is liable to pay the buyer's costs related to any proceedings for an order unless the seller satisfies the Supreme Court that the buyer unreasonably withheld consent to terminating the contract under the sunset clause. A review will commence one to two years after the sunset clause amendments have commenced to consider whether further reforms are required to protect people buying proposed community title and similar lots off the plan. The staged approach recognises the increased pressures currently faced by the property industry in respect of labour and material availability and costs for the construction of buildings.

Separately, the bill includes minor amendments to existing provisions relevant to off-the-plan contracts in the BCCM Act, the Land Sales Act, the Building Units and Group Titles Act 1980 and the South Bank Corporation Act 1989. Each of these acts includes a legislative framework regulating amounts held in trust accounts such as deposits for proposed lots. Essentially, all deposits for an off-the-plan sale must be paid to a law practice or a real estate agent or, in limited circumstances, to the Public Trustee. These entities must hold the amount in their prescribed trust account.

The minor amendments in the bill clarify and confirm the policy intent, which is that a deposit can only be released from a relevant trust account to a party to the contract, such as a seller, at the time of settlement or if another contract finalisation event occurs where that party is entitled to the deposit. These changes will make it clear that sellers such as property developers cannot gain early access to deposits paid by buyers under off-the-plan contracts for the sale of land or lots in community titles style developments.

I thank the community and the property industry for responding to surveys the government released last year on these issues. I would also like to thank relevant industry bodies and legal stakeholders for the feedback provided on the amendments. Their contributions have been taken into consideration and informed government decision-making on these amendments. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (11.40 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 Walker): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.