Parliamentary Committees



Inquiry into the Body Corporate and Community Management and Other Legislation Amendment Bill 2023

Report No. 56, 57th Parliament
Legal Affairs and Safety Committee
October 2023

Legal Affairs and Safety Committee

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All web address references are current at the time of publishing.

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Abbreviations and acronyms

Abbreviation	Definition
Attorney-General	Honourable Yvette D'Ath, Attorney-General and Minister for Justice, Minister for the Prevention of Domestic and Family Violence
Bill	Body Corporate and Community Management and Other Legislation Amendment Bill 2023
BCCM Act	*Body Corporate and Community Management Act 1997*
BCCM Regulation	*Body Corporate and Community Management (Standard Module) Regulation 2020*
BUGT Act	*Building Units and Group Titles Act 1980*
CMS	Community management statement
Property Law Research Centre	Queensland University of Technology's Commercial and Property Law Research Centre
committee	Legal Affairs and Safety Committee
CTL Working Group	Community Titles Legislation Working Group
DJAG	Department of Justice and Attorney-General
HIA	Housing Industry Association
Housing Summit	Queensland Housing Summit 2022
HRA	*Human Rights Act 2019*
Land Sales Act	*Land Sales Act 1984*
LSA	*Legislative Standards Act 1992*
Property Council	Property Council of Australia
Property Law Act	*Property Law Act 1974*
PLA report	*Final Report: Property Law Act 1974*
QLS	Queensland Law Society
QUT	Queensland University of Technology
REIQ	Real Estate Institute of Queensland
RSPCA	Royal Society for the Prevention of Cruelty to Animals
RTRA Act	*Residential Tenancies and Rooming Accommodation Act 2008*
SCA	Strata Community Association Queensland
Seller Disclosure Scheme report	*Final Report: Seller Disclosure in Queensland*
South Bank Act	*South Bank Corporation Act 1989*
SIE	Solutions in Engineering
UDIA	Urban Development Institute of Australia
UOAQ	Unit Owners Association of Queensland Inc

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (Bill).

Queensland is at a critical juncture in our state's fight against the housing shortage. Old legislative frameworks are no longer suitable and the time for change is now. This process of change involves examining the frameworks of other states and seeing the how their reforms have impacted the housing, body corporate and real estate sectors.

I was pleased to see that nearly every stakeholder recognised the grave nature of the housing shortage. This provides a common platform for all stakeholders to work from and identify solutions. Some solutions may seem unorthodox, or outside the box, but it is only with this kind of thinking that we can identify the right changes for Queensland.

The committee's task was to consider the policy goals of the Bill and the application of fundamental legislative principles – that is, considering whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The policy objectives of the Bill are to reform body corporate and community title legislation to allow for the termination of uneconomic community titles schemes; allowing adjudicators to approve alternate insurance arrangements; modernise body corporate and community title legislation that governs by-laws and procedural matters; strengthen buyer protections by limiting sunset clauses for 'off the plan' land sales; and make minor amendments to confirm the policy intent of existing laws governing deposits paid for 'off the plan' land sales.

The Bill mentions 'terminating' community titles schemes and this has caused alarm in certain quarters. I urge against thinking this way. The Bill is about the renewal and rejuvenation of under-utilised land that is close to services and infrastructure to increase Queensland's housing. This is the wording used by New South Wales in their *Strata Schemes Development Act 2015 (NSW)* which refers to 'strata renewal'.

The committee called for and received written submissions from stakeholders, was briefed by the Department of Justice and Attorney-General and heard evidence from organisations and individuals at a public hearing. On the basis of all evidence submitted, the committee is satisfied the Bill will achieve its policy objectives. The committee recommends the Bill be passed and has made additional recommendations to assist the Bill in achieving its objectives.

On behalf of the committee, I thank all individuals and organisations who made written submissions on the Bill and attended the public hearing. I also thank our Parliamentary Service staff and the department.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Executive Summary

On 24 August 2023, the Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence introduced the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (Bill) into the Queensland Parliament. The Bill was referred to the Legal Affairs and Safety Committee (committee) for detailed consideration.

The Bill proposes amending various Acts to achieve the listed policy objectives:

Body corporate and community titles scheme objectives

- Create a framework that allows for the termination of uneconomic community titles schemes
- Give adjudicators appointed by the Office of the Commissioner for Body Corporate and Community Management the power to approve alternative insurance arrangements
- Modernise and improve the provisions around body corporate governance and administration.

Land sales objectives

- Strengthen buyer protections by limiting sellers' use of sunset clauses for 'off the plan' contracts for the sale of land
- Make minor amendments to confirm the policy intent of existing laws on the release of deposits for 'off the plan' sales contracts.[1]

The committee invited stakeholders and subscribers to make written submissions on the Bill and received 95 submissions. The committee received a written briefing on the Bill from the Department of Justice and Attorney-General (DJAG) on 1 September 2023 and a public briefing on the Bill from DJAG on 11 September 2023. The committee also received advice from DJAG responding to the submissions on 6 September 2023 and 15 September 2023.

The committee held a public hearing on 7 September 2023 in Brisbane to speak with submitters.

The key issues raised during the committee's examination of the Bill included:

- termination of a community titles scheme for economic reasons
- approval of alternative insurance arrangements for bodies corporate who cannot obtain insurance on the market
- body corporate by-laws relating to smoking
- body corporate by-laws relating to pets
- towing of vehicles by bodies corporate
- enforcing by-laws between schemes in a layered community titles scheme
- body corporate governance, documentation and administration
- using sunset clauses to terminate an 'off the plan' land sale contract
- early release of deposits for 'off the plan' land sale contracts
- compliance with the *Legislative Standards Act 1992*
- compliance with the *Human Rights Act 2019*.

The committee recommends the Bill be passed.

[1] Explanatory notes, p 1. For the full list of legislation amended by the Bill, see section 1.2 of this report

1 Introduction

1.1 Background and referral

Attorney-General, media release, 23 February 2023

Property law will affect everyone at some stage of their life. Purchasing property, selling property, signing a mortgage and managing a lease are major transactions that affect Queenslanders everywhere.[2]

In 2013, the Queensland University of Technology's (QUT) Commercial and Property Law Research Centre (Property Law Research Centre) began a major review of Queensland's property legislation.[3]

The Property Law Research Centre recommended that Queensland create a modern Property Law Act and implement a statutory seller disclosure scheme.[4] These recommendations were implemented by the Property Law Bill 2023, introduced into Parliament in February 2023.[5]

The Property Law Research Centre also recommended reforming Queensland's body corporate and community titles scheme laws. A community titles scheme is an area of land that includes multiple lots, with common property managed by a single 'body corporate'.[6] Examples of buildings run as community titles schemes include duplexes, townhouses, shopping centres or apartment buildings.

The community titles sector is a major provider of housing and business infrastructure across Queensland. According to the Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (Attorney-General), there were 528,190 lots in 52,089 schemes across Queensland in June 2023.[7]

On 24 August 2023, the Attorney-General introduced the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (Bill) into the Queensland Parliament. The Attorney-General states that the Bill 'delivers on key government election commitments' and 'gives effect to reforms that have their basis in recommendations from the property law review' by the Property Law Research Centre.[8]

The Bill was referred to the Legal Affairs and Safety Committee (committee) for consideration.

1.2 Policy objectives of the Bill

The Bill amends the following property legislation:

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2 Hon Yvette D'Ath MP, former Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, 'New Property Law Bill introduced to Parliament', media release, 23 February 2023.

3 Department of Justice and Attorney-General, *Review of property law in Queensland,* www.justice.qld.gov.au/community-engagement/community-consultation/past/review-of-property-law-in-queensland.

4 Commercial and Property Law Research Centre, Queensland University of Technology, *Property Law Review Final Report: Property Law Act 1974*, p 53; Commercial and Property Law Research Centre, Queensland University of Technology, *Final Report: Seller Disclosure in Queensland*, p 8.

5 Property Law Bill 2023, explanatory notes, p 1.

6 The body corporate is the group of owners in a community titles scheme, who collectively manage common assets and property. See Queensland Government, *Body corporate legislation definitions*, www.qld.gov.au/law/housing-and-neighbours/body-corporate/legislation-and-bccm/definitions/legislation; Queensland Government, *Role of the body corporate*, www.qld.gov.au/law/housing-and-neighbours/body-corporate/roles/body-corporate.

7 Queensland Parliament, Record of Proceedings, 24 August 2023, p 2397.

8 Queensland Parliament, Record of Proceedings, 24 August 2023, p 2397.

- *Body Corporate and Community Management and Other Legislation Amendment Act 1997* (BCCM Act)
- *Land Sales Act 1984* (Land Sales Act)
- *Building Units and Group Titles Act 1980* (BUGT Act)
- *South Bank Corporation Act 1989* (South Bank Act).

According to the explanatory notes, the policy objectives of the Bill are to:

Policy Objectives

- Deliver a key action of the 2022 Queensland Housing Summit by reforming the BCCM Act to allow for the termination of uneconomic community titles schemes to facilitate renewal and redevelopment
- Deliver a 2020 election commitment to implement amendments to the BCCM Act to allow an adjudicator the power to approve alternative insurance arrangements, and make supporting amendments to complement this change
- Modernise and improve the operation of the BCCM Act in relation to by-laws and other governance issues, including administrative and procedural matters
- Strengthen buyer protections under the Land Sales Act by limiting when sunset clauses can be used to terminate 'off the plan' contracts for the sale of land
- Make minor amendments to confirm the policy intent of existing provisions of the BCCM Act, BUGT Act, Land Sales Act and South Bank Act about the release of deposits paid by buyers under 'off the plan' contracts for the sale of land (Land Sales Act) or lots in community titles-style developments.[9]

1.3 Consultation

1.3.1 Community titles scheme amendments

The Department of Justice and Attorney-General (DJAG) established the Community Titles Legislation Working Group (CTL Working Group) in 2021, chaired by the Deputy Director-General of Liquor, Gaming and Fair Trading, to provide community titles advice to DJAG.[10]

The CTL Working Group members are:

- Australian College of Strata Lawyers
- Australian Resident Accommodation Managers Association
- Owners Corporation Network
- Queensland Law Society (QLS)
- Real Estate Institute of Queensland (REIQ)
- Strata Community Association Queensland (SCA)
- Unit Owners Association of Queensland Inc (UOAQ).

The Bill was developed through consultation with the CTL Working Group.

Other stakeholders who were consulted on the Bill include the:

- Animal Welfare League
- Australian Apartment Advocacy

[9] Explanatory notes, p 1.

[10] Explanatory notes, p 23.

- Cancer Council
- Heart Foundation
- My Community Legal Inc.
- Property Council of Australia (Property Council)
- QUT
- Royal Society for the Prevention of Cruelty to Animals (RSPCA)
- Strata Owners Speak Out
- Tenants Queensland
- Townsville Lot Owners Group
- Urban Development Institute of Australia Queensland (UDIA). [11]

An exposure draft of the Bill was released for consultation between 17 May 2023 and 9 June 2023 to the CTL Working Group and relevant stakeholders.[12]

1.3.2 Off the plan land sales amendments

DJAG undertook public consultation from 22 August 2022 to 14 September 2022 on 'off the plan' issues relating to the use of sunset clauses to terminate a contract and the early release of deposits.

Consumers and property developers were invited to complete an online survey and a number of peak bodies were invited to make submissions. Submissions were received from:

- Housing Industry Association (HIA)
- Property Council
- QLS
- UDIA.

A consultation draft of the amendments to the Land Sales Act with respect to sunset clauses was released for targeted consultation between 17 May 2023 and 9 June 2023 to HIA, Property Council, QLS and UDIA.

1.4 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

[11] Explanatory notes, p 23.

[12] Explanatory notes, p 23.

1.4.1 *Legislative Standards Act 1992*

The committee's assessment of the Bill's consistency with the LSA is discussed below.

Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.[13]

The Bill raises the following issues of fundamental legislative principles (FLPs):

- regarding rights and liberties of individuals:
  - principles of natural justice
  - new offences being appropriate and reasonable, with the penalty being proportionate to the offence
  - legislation retrospectively affecting rights and liberties or imposing obligations
  - compulsory acquisition of property only with fair compensation.
- regarding the institution of Parliament:
  - regulation-making powers.

Committee comment

The committee is of the view that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament. Any relevant considerations of FLPs are discussed in section 2 of this report.

1.4.2 *Human Rights Act 2019*

The committee's assessment of the Bill's compatibility with the HRA is included below.

A law is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable.[14]

The Bill raises the following human rights matters and may impact the following human rights:

- Right to property
- Privacy and reputation
- Cultural rights

Committee comment

The committee is satisfied that any potential limitations on human rights proposed by the Bill are demonstrably justified. Any relevant considerations of human rights issues are discussed in section 2 of this report.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

13 LSA, s 4(2).

14 HRA, s 8.

1.5 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 be passed.

2 Examination of the Bill

The committee invited stakeholders and subscribers to make written submissions on the Bill. 95 submissions were received (see **Appendix A** for a list of submitters). Of the 95 submissions received and accepted by the committee, submissions 91 to 95 were received after the closing date.

Written briefing from DJAG

1 September 2023

Public hearing

7 September 2023

Public briefing with DJAG

11 September 2023

The committee received a written briefing on the Bill from DJAG on 1 September 2023 and a public briefing on the Bill from DJAG on 11 September 2023 (see **Appendix B** for a list of officials at the public briefing). The committee also received advice from DJAG responding to the submissions on 6 September 2023 and 15 September 2023.

The committee held a public hearing on 7 September 2023 in Brisbane to speak with submitters (see **Appendix C** for a list of witnesses). The submissions, correspondence from DJAG and transcripts of the hearing and briefing are available on the committee's webpage.

The following sections discuss key issues raised and material presented to the committee during the examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Termination of community titles schemes

The Bill proposes to amend the BCCM Act to establish a new process for the termination of community titles schemes in circumstances where there are economic reasons supporting the termination.[15]

The explanatory notes state that the 'community titles sector is a significant, and increasingly important, provider of housing, accommodation and investment options for Queenslanders'. [16]

Currently, a community titles scheme can only be terminated by:

- a resolution without dissent of the body corporate, supported by an agreement between all registered proprietors and lessees under registrable or short leases, about termination issues
- an order of the District Court.[17]

Stakeholders have raised concerns that there can be 'adverse consequences for lot owners where a body corporate is facing substantial costs to maintain, report or rectify buildings' and a small number of owners do not agree to terminate the scheme. These stakeholders suggest that terminating the scheme and selling the scheme land to a developer 'can make more economic sense than requiring all

15 Explanatory notes, p 8.

16 Explanatory notes, p 2.

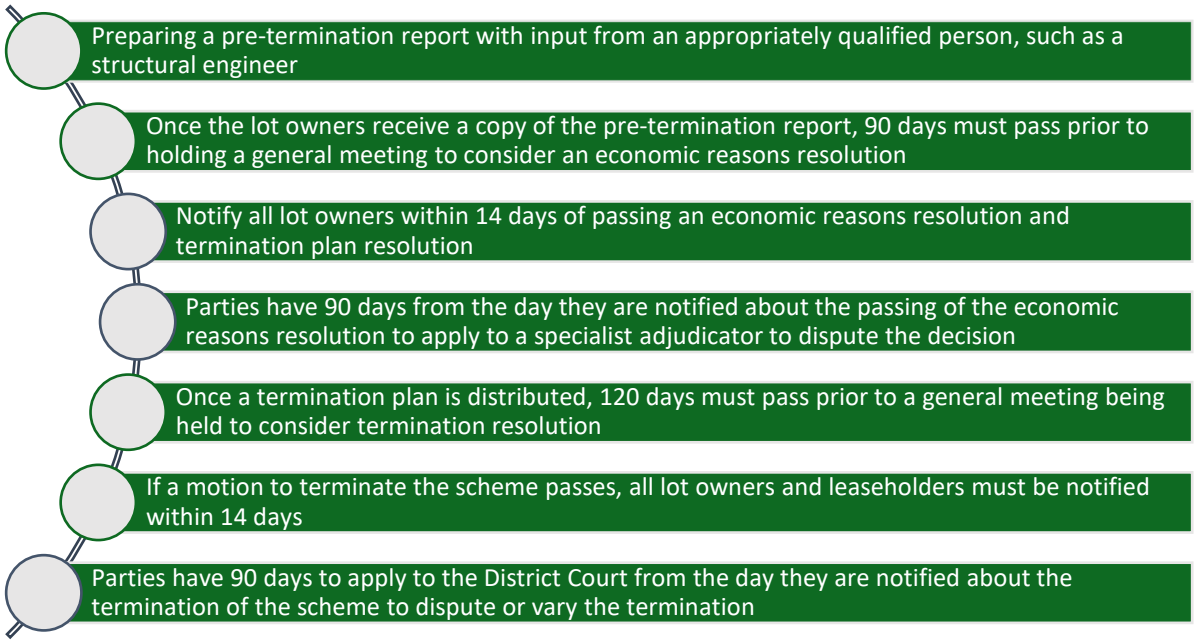
17 Explanatory notes, p 2.

owners to pay large contributions to enable the body corporate to meet its statutory obligations to keep buildings in a good and structurally sound condition'.[18]

In October 2022, the Queensland Government hosted the Queensland Housing Summit, with one of the key actions being to 'reform body corporate legislation to allow for terminating uneconomical community titles schemes to facilitate renewal and redevelopment'.[19]

In response to the key action of the Housing Summit, the Bill proposes to create a mechanism where a community titles scheme can be terminated for economic reasons. Economic reasons include when the scheme is not economically viable (in the case of a scheme of commercial lots) or when it is not economically viable for the body corporate to carry out the repairs and maintenance required to keep the property in good condition.[20]

The explanatory notes further state that the Bill aims to 'provide a balanced approach to termination of community titles schemes', recognising the need to facilitate renewal and redevelopment but also respecting the property rights of individual owners.[21] As such, the Bill contains multiple steps before a community titles scheme can be terminated for economic reasons,[22] including:



2.1.1 Stakeholder views

Most stakeholders broadly supported the proposed new framework for the termination of community titles schemes that were not economically viable.

The Property Council see it as a 'key measure in removing barriers to the redevelopment of older apartment buildings and delivering increased housing supply in locations well-services by infrastructure'. [23]

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18 Explanatory notes, p 2.

19 Explanatory notes, pp 2-3; Queensland Government, *Queensland Housing Summit: Outcomes report*, November 2022, p 17.

20 Bill, cl 7, new s 81A.

21 Explanatory notes, p 3.

22 Bill, cl 7.

23 Property Council, submission 41, p 2.

QLS 'broadly supports' the reforms and states the scheme strikes an appropriate balance between the ability to terminate uneconomic schemes and the rights of owners.[24]

REIQ found the reforms 'beneficial' and believes they should be progressed.[25]

The SCA also supports the amendments, stating the Bill balances property rights, body corporate governance and public policy 'in a reasonable and equitable fashion' and welcomes the 'flexibility of the process'.[26]

There were, however, varying recommendations on its application and its operation.

The Australian Resident Accommodation Managers Association (ARAMA) supported the principle of the scheme but believed a 75 per cent threshold to terminate was too low, and that a vote threshold of 90 per cent 'would provide greater protection for those long-term residents such as unit owners and tenants'.[27]

Strata Solve commended the government's increased focus on the rights and needs of tenants, and suggested the scheme termination provisions of the Bill be extended to provide for long-term occupiers who are not owners.[28] The Property Owners Association of Queensland also questioned whether the termination of uneconomic schemes takes tenants into consideration.[29]

Representatives of the property developer sector supported the scheme generally but recommended opening the scheme termination process to all community titles schemes over 30 years old, removing the economics reasons test, with the UDIA noting:

UDIA, public hearing transcript, 7 September 2023, p 9

We would suggest that, as was discussed earlier in the deliberations about the scheme termination coming forward, it should apply to any building over 30 years old without being so prescribed, as in this Bill, to just economic reasons.

The Property Council and Aria Property Group recommended the removal of the economic reasons test and allow any community titles scheme to use the new scheme termination provisions.[30] The Planning Institute of Australia (PIA) also recommended reconsidering the economic reasons test.[31]

Resident and property owner groups, especially those representing unit owners, were not supportive of the provisions. The Unit Owners Association Queensland (UOAQ) says the proposal shows 'a lack of consideration for the interests of all participants in the Queensland strata industry', stating a better solution to housing shortages would be stronger enforcement of planning regulations to stop residential buildings being used for short-term accommodation.[32]

Owners and owner groups queried whether individual owners would bear the cost of obtaining a pre-termination report (including a disputing report), applications for a specialist adjudicator and potential court costs. These stakeholders noted that body corporate funds could be exhausted if all parties could access them without limit.[33]

24 QLS, submission 90, p 1.

25 REIQ, submission 47, p 7.

26 SCA, submission 68, pp 1-2.

27 ARAMA, submission 13, p 2.

28 Strata Solve, submission 46, p 2.

29 POAQ, submission 87, p 2.

30 UDIA, submission 44, pp 12-13; Property Council, submission 41, p 2; Aria Property Group, submission 40.

31 PIA, submission 57, p 1.

32 UOAQ, submission 89, p 1.

33 UOAQ, submission 89, p 5; George Galea, submission 6.

The Main Beach Association and the Community Alliance Association state that the Bill is 'grossly unfair' and 'favours the interests of property developers' over the wider community.[34]

Solutions In Engineering (SIE), a building compliance reporting firm specialising in strata communities, raised concerns that the termination process may take some 12 months to complete stating 'a body corporate could not move through this process faster than 9 months from the original motion at an AGM to obtain a pre-termination report'.[35]

2.1.2 Department response

DJAG's response to submissions noted that the intended purpose of the Bill is to unlock well-located, well-serviced sites for redevelopment and boost housing supply, but limit the Bill's economic termination provisions to current schemes that are not (or in 5 years will not be) economically viable.[36]

DJAG, 6 September 2023, Attachment 1, p 14

Exposing lot owners arbitrarily to the threat of forced sale by private entities merely due to, for example, a rezoning to higher density of the site for their scheme, is not the intent of the reforms. That is not a risk to which owners of free-standing homes are subjected, and Government has not decided to apply that risk to owners of lots in community titles schemes.

The Property Council, UDIA and other property developer submitters called for the termination provisions to apply to any scheme, referring to the New South Wales model and recommendations by the QUT Property Law Research Centre. DJAG raised the following points in response:

- the Queensland reforms were developed with regard to the New South Wales model, but 'it is not clear that it is an approach that should be simply emulated because it exists'
- adopting the New South Wales model would require that bodies corporate apply to a court to give effect to their termination plans, and submissions from the property sector do not address this issue
- it is not the Bill's intent to arbitrarily expose lot owners to the threat of forced sale merely due to, for example, a rezoning to higher density of their scheme's land
- the Bill is consistent with the recommendations from QUT's Property Law Research Centre, which were to limit non-unanimous termination to where economic reasons exist, with 'the key factor [being] that the scheme buildings are uneconomic to repair because the cost of repairing or rectifying the building (for example to meet modern building codes) is prohibitively expensive'.[37]

DJAG noted submitters' concerns that the 'termination process is heavily influenced by/favours developers, will contribute to over-development, local infrastructure may not be sufficient, may not address housing needs'.[38] DJAG responded that:

> The termination reforms were informed by stakeholders with a wide range of perspectives. While the strong preference of development aligned stakeholders is that non-unanimous termination be allowed

[34] Main Beach Association, submission 62, p 2; Community Alliance Association, submission 74, p 1.

[35] Solutions IE, submission 24, p 5.

[36] DJAG, correspondence, 15 September 2023, attachment 1, p 14.

[37] DJAG, correspondence, 15 September 2023, attachment 1, p 14; Commercial and Property Law Research Centre, Queensland University of Technology, *Body corporate governance issues: By-laws, debt recovery and scheme termination*, p 57.

[38] DJAG, correspondence, 15 September 2023, attachment 1, p 6.

> without any requirement for limiting it to where economic reasons are established – the approach taken to require economic reasons appropriately weighs lot owner protections relative to developer interests.[39]

DJAG noted in its response to submissions that the majority of community titles schemes in Queensland are 4 lots and higher. This means the 75 per cent threshold proposed by the Bill 'allows it to apply to the majority of schemes … while still requiring at least three times as many owners to support termination than to oppose it'. DJAG stated that having a threshold of 90 per cent, as suggested by ARAMA, would exclude schemes with 9 lots or fewer.[40]

DJAG noted that tenants and occupiers who are not owners of the lots in the scheme will not have direct input into an economic reasons termination process, and that this approach was consistent with all decision relating to the administration of a scheme under the BCCM Act. Further, DJAG noted the Bill contains notice requirements and a dispute resolution pathway for leases with a lease term of 6 months or more that is impacted by the implementation of the termination plan. [41]

Regarding costs, DJAG stated in the public briefing that lot owners may obtain their own pre-termination reports, but that the body corporate is not required to pay.[42] However, if a body corporate passes a termination resolution, which is then contested by an aggrieved owner in the District Court, DJAG states that 'a body corporate has to pay for the proceeding, regardless of the outcome'.[43]

In response to the issues raised around the time frames to complete termination of a scheme, DJAG noted the amendments 'ensure lot owners have sufficient time to consider relevant reports, plans and proposed decisions as well as potentially act on their rights to dispute parts of the process'.[44]

2.1.3 Fundamental legislative principles

The amendments to terminate community titles schemes may seriously impact individuals, particularly aggrieved parties who do not support a scheme's termination where a termination resolution has been passed. The Bill proposes a range of measures which may reduce the impact of these amendments on the rights and liberties of individuals, including that:

- those involved in the termination process must disclose any interest and conflict of interest as soon as practicable and must not act, unless authorised by the body corporate[45]
- a termination plan must provide that each owner and lessee in the scheme must receive the minimum compensation amount on the sale of the scheme, as calculated by the formula proposed in the Bill[46]

39 DJAG, correspondence, 15 September 2023, attachment 1, p 6.

40 DJAG, correspondence, 15 September 2023, attachment 1, p 18.

41 DJAG, correspondence, 15 September 2023, attachment 1, p 20.

42 DJAG, public briefing transcript, 11 September 2023, p 5.

43 DJAG, public briefing transcript, 11 September 2023, p 6.

44 DJAG, correspondence, 6 September 2023, attachment 1, p 5.

45 For example, where a person is appointed by the body corporate to prepare a report, such as by a structural engineer (Bill, cl 7 inserts BCCMA Act, new s 81C).

46 The Bill also specifies that the amount of compensation to be paid to the caretaking service contractor must not be less than the market value of the management rights valued at the day the pre-termination report is given to lot owners (Bill, cl 7 inserts BCCMA Act, new s 81B(3)).

- where there is a dispute about an economic reasons resolution,[47] an aggrieved party may, within 90 days, apply[48] for an order of a specialist adjudicator to resolve the dispute[49]
- an owner of a lot may vote on the motion for a termination resolution, even if they owe a body corporate debt in relation to the lot[50]
- where a person applies for a court order regarding the termination plan, the body corporate must not act to implement the termination plan
- the Bill provides for a range of matters the court must consider when deciding whether to make an order.[51]

The explanatory notes identify potential public benefits in the amendments, including 'the potential for scheme land to be redeveloped in a way that provides increased housing opportunities'.[52] The explanatory notes also acknowledge the impacts on individuals who own or lease lots, or who have contractual arrangements with the body corporate:

> Consistent with many other aspects of community titles-related policy, issues surrounding termination of community titles schemes require a balancing of legitimate, but sometimes competing, interests within individual community titles schemes, as well as the broader community titles sector.[53]

The explanatory notes argue that considerations and impacts for individuals[54] must be balanced with the rights and interests of individual lot owners who are supportive of a sale and termination of a community titles scheme:

> In some cases, lot owners may be facing the prospect of paying very high body corporate contributions (levies) so that the body corporate can undertake extensive or costly repair, maintenance, or rectification work to meet its statutory obligations to maintain certain elements of the scheme in a good and structurally sound condition. For these lot owners, it may make more economic and financial sense to sell the scheme for potential redevelopment, than to continue to spend significant amounts of money on existing buildings forming the community titles scheme. However, the current requirement for a body corporate to authorise termination by resolution without dissent, means that it is not possible for a body corporate to terminate if there are a minority of owners who do not support termination, without undertaking proceedings in the District Court.[55]

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47 Such as: if the resolution was passed, an owner of a lot (aggrieved party) in the community titles scheme considers the resolution should not have been passed; or if the resolution was not passed, the body corporate or an owner of a lot (each also an aggrieved party) in the community titles scheme considers the resolution should have been passed (Bill, cl 7 inserts BCCMA Act, new s 81G(1)).

48 Under the BCCMA Act, ch 6 (as proposed to be amended by the Bill).

49 The Bill prohibits the body corporate that passed the economics reasons resolution from considering a motion to pass a 'termination resolution', until the dispute is resolved (Bill, cl 7 inserts BCCMA Act, new s 81G(3)).

50 Bill, cl 7 inserts BCCMA Act, new s 81K(8).

51 These matters include: whether the pre-termination report prepared by the body corporate evidences the existence of economic reasons for the termination of the community titles scheme; the percentage of lot owners voting in favour of implementing the termination plan; the aggregate market value of the common property and individual lots compared to the market value of the community titles scheme as a whole; the economic and social effects of the termination on a range of specified persons; and the terms of the termination plan (Bill, cl 7 inserts BCCMA Act, new s 81R).

52 Explanatory notes, pp 13-14.

53 Explanatory notes, p 14.

54 Such as the aforementioned provisions requiring a lot owner to sell their lot as part of a collective sale, despite the lot owner not being supportive of the sale, and provisions resulting in the terminating of leases and contractual arrangements. Such matters engage the right to property under the HRA.

55 Explanatory notes, p 14.

The explanatory notes refer to the Bill's proposed safeguards, including providing the District Court with broad discretion to make just and equitable decisions in determining disputes about termination resolutions and termination plans, and contend that these safeguards 'appropriately balance the rights and interests of individuals involved in community titles schemes, and in that respect, are consistent with FLPs'.[56]

2.1.4 Human rights

Clause 7 engages the right to property in section 24(2) of the HRA. A minority of lot owners may be forced to sell their lots as part of a collective sale against their will. Conversely, clause 7 will strengthen the rights to dispose of property of the large majority in a community titles scheme, and alleviate the need for them to expend resources on unsustainable maintenance requirements. Clause 7 could also lead to the early termination of leases, thus affecting the property rights of leaseholders.

The proposed scheme also engages the right to privacy in section 25(a) of the HRA. The concept of privacy encompasses non-interference in one's home. Forced sale of one's home against one's will, as well as the forced early termination of a lease, engages the right to privacy in the home. A person's rights regarding property over real estate, especially one's own home, and privacy with regard to the enjoyment of one's own home as an owner-occupier or lessee, are important rights in a modern democracy.

The limitation to both rights is designed to enhance the rights of majority lot owners who wish to collectively dispose of the property when it is not economic to keep it. At present, one dissent can force retention of titles in potentially ruinous circumstances. The limitation should also lead to redevelopment and renewal of community titles that are in a current state of decline which should ultimately lead to greater quantity and quality in housing supply. It should also enhance safety, as new developments will adopt modern safety standards.[57]

Balancing the property rights of the majority against those of the minority, while the minority might be forced to dispose of their property, the current law forces majority lot holders to persistently pay unsustainable maintenance costs unless they can dispose of the property separately (to a new lot-holder who would then be liable for those same costs).

All Australian States and the federal Constitution make provision for legislation to affect the compulsory acquisition of property with just compensation. It is well known in Australian law for property to be removed against one's will so long as one is fairly compensated. Compulsory acquisition of property with the payment of just terms is not a breach of human rights.[58]

Provision is made for just compensation under the proposed scheme and it is likely that a collective sale to a developer would garner greater compensation than is normally available under government acquisition schemes. While it is arguable that Clause 7 lacks the public interest justification which normally justifies compulsory government acquisitions, the forced transfer with market payment of one's lot as part of a collective sale of an uneconomic collective title to a single buyer (almost certainly a developer) is in the public interest by boosting the rights of other lot holders, and also boosting the renewal of viable housing stock.

Committee comment

The committee notes the support of many stakeholders for the economic reasons termination process of community titles schemes. The committee recognises that stakeholders have different positions on how broad the termination scheme should be in its application and the duration of the process.

56 Explanatory notes, p 15.

57 Statement of Compatibility, p 9.

58 See also *Lithgow v UK* (1986) 8 EHRR 329.

The majority of the committee believes the right balance has been struck regarding the interests of lot owners who wish to sell and those who do not, including the need for thorough evidence to support a dissolution of a scheme and an accessible dispute resolution process. The committee is satisfied that the proposed process considers the rights and liberties of lot owners, specified lessees, contractors and others. The committee is also satisfied that clause 7 is compatible with human rights given.

The majority of the committee believes that the Queensland reforms take the best parts of the New South Wales scheme, rather than copying it wholesale. The New South Wales legislative framework requires an application to the New South Wales Land and Environment Court in every instance,[59] whereas the Bill only proposes court as a dispute resolution mechanism. The committee agrees with DJAG that the mere existence of a legislative framework in another jurisdiction is not a good enough reason to legislate that framework for Queensland.

The committee does not support expanding the termination provisions to all community titles schemes or removing the economic reasons test. The committee notes that Queensland unit owners would be at an unacceptable risk of forcibly selling their homes, and that risk would not apply to freestanding home owners. The policy intent of the Bill is to unlock development opportunities for aging community titles schemes, not undermine the property rights of community titles scheme lot owners.

The committee observed considerable unease and uncertainty from unit owner groups around the proposed amendments and the committee notes the majority of unit owner groups that submitted to the committee were not supportive of the termination provisions. The two major areas of concern were on how the economic reasons termination process would occur, and who was responsible for the costs of disputing a termination process. The committee recommends the Queensland Government develop an education campaign, in collaboration with the CTL Working Group, to provide guidance and resources to these stakeholders, including information on the dispute resolution process available for lot owners.

Recommendation 2

The committee recommends that the Queensland Government develop an education campaign with the CTL Working Group to provide guidance and resources to organisations and individuals to support the proposed reforms including, in particular, information on the dispute resolution processes available for lot owners in community titles schemes.

2.2 Arrangements for authorisation of alternative insurance

The Bill proposes to amend the BCCM Act to allow the Commissioner for Body Corporate and Community Management to refer an alternative insurance application to an adjudicator, with the adjudicator granted the authority to approve the alternative insurance.[60]

Bodies corporate are required to insure certain structures and areas that are part of a community titles scheme. These insurance requirements are set out under the *Body Corporate and Community Management (Standard Module) Regulation 2020* (BCCM Regulation). Specifically, bodies corporate must insure:

- common property and body corporate assets for full replacement value[61]

[59] *Strata Schemes Development Act 2015 No 51 (NSW)*, Part 10, Division 6 and 7.

[60] Bill, cl 33, new s 243B; Bill, cl 36, new s 281A.

[61] BCCM Regulation, reg 197.

- buildings that include lots[62]
- against public risk.[63]

Currently, if a body corporate cannot comply with its insurance obligations (for example, due to an insurance policy not being available), it may apply to the Commissioner for Body Corporate and Community Management (BCCM Commissioner) for approval for alternative insurance arrangements. Alternative insurance arrangements can be approved if the BCCM Commissioner is satisfied that the insurance will give cover that is as close as practicable to the required insurance cover.[64]

The explanatory notes state that a 2020 election commitment of the Queensland Government was to amend the BCCM Act to allow an adjudicator the power to approve alternate insurance arrangements in place of the Commissioner.

The Bill proposes to amend the BCCM Act to allow the Commissioner to refer an alternative insurance application to an adjudicator, with the adjudicator granted the authority to approve the alternative insurance. The Bill will also provide increased guidance around how to make an application for alternative insurance and for deciding such an application.[65]

2.2.1 Stakeholder views

There was general support among stakeholders who commented on the alternative insurance arrangement reforms in the Bill. The SCA supported 'adding clarity to the process for alternative insurance proposals and endorses moves to ensure this can occur'.[66]

Stakeholders recommended the Bill include the option for adjudicators to approve self-insurance (or clarify that such options are available) and indemnity for bodies corporate who could not find adequate insurance in the market. Strata Solve recommended that adjudicators be granted the power to approve self-insurance,[67] and the SCA recommended 'greater legislative protection' for body corporate committees who could not secure full replacement value insurance, stating:

SCA, submission 68, p 7

> It is not the fault of [body corporate] committee members in most instances that full replacement value insurance is unavailable, and these volunteers should not be as exposed to litigation as they are under the current framework.

2.2.2 Department response

DJAG noted the SCA's support for the alternative insurance amendments.[68]

Responding to the recommendation that schemes be allowed to self-insure in certain situations, DJAG stated that the Bill 'does not include self-insurance as a form of alternative insurance' and that 'issues surround the viability, risks and uncertainties of self-insurance'. DJAG stated that the matter was explored by the CTL Working Group.[69]

Responding to calls for indemnity for body corporate committee members who cannot find adequate insurance, DJAG noted that:

62 BCCM Regulation, reg 198.

63 BCCM Regulation, reg 206.

64 Explanatory notes, p 3.

65 Bill, cl 33, new s 243B; Bill, cl 36, new s 281A; Explanatory notes, p 3.

66 SCA, submission 68, p 6.

67 Strata Solve, submission 46, p 5.

68 DJAG, correspondence, 6 September 2023, attachment 1, p 36.

69 DJAG, correspondence, 6 September 2023, attachment 1, p 37.

DJAG, 6 September 2023, Attachment 1, p 37

[S]ection 101A of the BCCM Act already provides that a committee member is not civilly liable for an act done or omission made in good faith and without negligence in performing the person's role as a committee member.

2.3 Second-hand smoke in community titles schemes

The Bill proposes to amend the BCCM Act to allow bodies corporate to make a by-law that prohibits smoking on a community titles scheme's common property, body corporate assets, or a lot's outdoor area.[70]

Second-hand smoking (or passive smoking) is when someone breathes in tobacco smoke from another person. Queensland Health states that passive smoking is a proven health hazard, with more than 600 medical papers linking passive smoking to disease.[71]

There are several mechanisms in Queensland law that directly or indirectly limit smoking in community titles schemes:

- smoking is prohibited in an enclosed place that is a common area of multi-unit residential accommodation under the *Tobacco and Other Smoking Products Act 1998*[72]
- owners and occupiers in a community titles scheme are prohibited from using their lot, or the common property, in a way that is a nuisance or hazard, or unreasonably interferes with the use and enjoyment of another lot or the common property[73]
- bodies corporate may make by-laws to regulate how people use and enjoy their lots, the common property and other body corporate assets.[74]

The explanatory notes state that these mechanisms are limited regarding smoking in community titles schemes:

- the prohibition under the *Tobacco and Other Smoking Products Act 1998* applies to enclosed common areas of a multi-unit residential accommodation, but does not apply to other areas of a community titles scheme
- disputes about whether smoking is a nuisance under the BCCM Act are often unsuccessful due to insufficient evidence
- bodies corporate do not have the power to use by-laws to completely prohibit an activity in a community titles scheme.[75]

In its review of Queensland property law, QUT's Property Law Research Centre recommended that bodies corporate be authorised to adopt a by-law without dissent that prohibits smoking in the common property or a lot's outdoor areas, such as a balcony or courtyard.[76]

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70 Bill, cl 11, new s 169A and 169B.

71 Queensland Health, *Passive smoking*, www.health.qld.gov.au/__data/assets/pdf_file/0014/440204/passivesmoking.pdf.

72 *Tobacco and Other Smoking Products Act 1998*; Explanatory notes, pp 3-4.

73 BCCM Act, s 167.

74 BCCM Act, s 169.

75 Explanatory notes, pp 3-4.

76 QUT Commercial and Property Law Research Centre, *Options Paper Recommendations – Body corporate governance issues: By-laws, debt recovery and scheme termination*, p 6.

The explanatory notes state that the Bill proposes amendments based on the Property Law Research Centre's recommendation, but with modifications by the CTL Working Group. The explanatory notes state that the amendments will support Queensland's smoking laws, which seek to improve health by creating a culture that reduces exposure to tobacco and other smoking products and second-hand smoke, supports smokers to quit, and discourages people from taking up the habit.[77]

2.3.1 Stakeholder views

REIQ, UOAQ, SCA, and Strata Solve broadly supported the amendments to the BCCM Act related to second-hand smoke.[78]

REIQ commended the Bill for providing clarity to bodies corporate, but also outlined reservations, noting that the language used may be too broad. REIQ stated that the adjudication process might become 'too difficult and onerous for a complainant', who will be required to establish the meaning of terms such as 'regular use' and 'regularly exposed to'.[79]

REIQ also suggested providing 'examples which may assist with interpretation and adjudication' and noted that disputes will increase after the reforms due to some lot owners and occupiers not adapting their behaviours.[80]

The SCA was pleased with the amendments but suggested changing 'regularly' to 'regularly or frequently' to 'more fully capture disruptive behaviour'.[81]

UOAQ recommended 'regularly uses' and 'regularly exposed to' should be defined in the BCCM Act.[82] UOAQ also recommended smoking be defined as hazardous, as current parameters suggest it is 'a mere nuisance'.[83] UOAQ also noted that 'the law does not consider the issue of smoke seepage', such as that produced when the occupier of a lot smokes inside it and allows smoke to drift into other lots.[84] UOAQ also asked whether there will be a campaign to inform owners of the changes.[85]

Strata Solve noted the Bill does not cover smoke produced by wood fires, meat smokers or barbecues, and recommended 'the Bill be amended so that "smoke" in general be captured', rather than only 'in relation to tobacco products'.[86] Strata Solve stated:

Strata Solve, public hearing transcript, 7 September 2023, p 43

The Bill in its current form limits smoke to smoke from a tobacco product—so cigarettes, vaping but it is only in relation to that definition. If there are nuisances or indeed hazards created by barbecues and wood-smoking products, they would still be a nuisance and a hazard potentially but the body corporate could not avail themselves of these provisions to do anything about it.

77 Explanatory notes, p 4.

78 REIQ, submission 47, p 10; UOAQ, submission 89, p 6; SCA, submission 68, p 6; Strata Solve, submission 46, p 3.

79 REIQ, submission 47, p 10.

80 REIQ, submission 47, p 10.

81 SCA, submission 68, p 6.

82 UOAQ, submission 89, p 6.

83 UOAQ, submission 89, p 6.

84 UOAQ, submission 89, p 6.

85 UOAQ, submission 89, p 7.

86 Strata Solve, submission 46, p 3.

2.3.2 Department response

DJAG acknowledged concerns and requests for clarity raised by REIQ, SCA, and UOAQ. DJAG noted that the intent behind the amendments is to cover regular or frequent smoke exposure, and drafting advice was sought to achieve this policy intent.[87]

DJAG noted REIQ's concern that the failure of some to adapt to the changes will cause an increase in disputes. DJAG acknowledged that some owners, occupiers and bodies corporate will need to commit time to the new processes to manage nuisance issues. The reforms might lead to increased demand upon the BCCM Commissioner's information and dispute resolution services; however, this will be closely monitored. DJAG anticipates the new processes 'should efficiently avert significant adverse impacts to residents'.[88]

DJAG acknowledged UOAQ's recommendation that smoking be defined as hazardous but stated such a definition is not necessary as the amendment has been constructed to ensure smoking clearly contravenes section 167.[89] DJAG writes:

DJAG, 6 September 2023, Attachment 1, p 28

This approach has been taken so as not to inadvertently limit the section or inadvertently lead to a situation where smoking can be found not to contravene the section (i.e. where someone puts it forward in a dispute as being a nuisance instead of a hazard).

DJAG acknowledged concerns raised by UOAQ that smoke seepage from unsealed areas (open windows, doors or ducted systems) is not covered by the Bill. DJAG responded that while the ability to create by-laws prohibiting smoking will not extend to indoor areas, 'the amendments to section 167 of the BCCM Act will help to ensure any smoking that occurs within an indoor area of a lot does not impact on people in other lots or on the common property'.[90]

DJAG confirmed that there will be a campaign to inform owners of the smoking changes, which may include:

- a Ministerial media statement announcing the commencement of the reforms;
- content on the Queensland Government website to promote awareness of the reforms;
- social media posts;
- articles in BCCM Office newsletter 'Common Ground';
- articles in industry newsletters/websites; and
- correspondence to key stakeholders advising of the commencement of the reforms.[91]

DJAG noted Strata Solve's recommendation that the Bill be amended to capture smoke from other sources, namely wood fires, barbecues, and meat smokers. DJAG responded that the Bill's intent is to address the health effects of second-hand smoke from smoking products, and limits its focus to 'smoking products' as defined under the *Tobacco and Other Smoking Products Act 1998*.[92]

87 DJAG, correspondence, 6 September 2023, attachment 1, p 28.

88 DJAG, correspondence, 6 September 2023, attachment 1, p 30.

89 DJAG, correspondence, 6 September 2023, attachment 1, p 28.

90 DJAG, correspondence, 6 September 2023, attachment 1, pp 30-1.

91 DJAG, correspondence, 6 September 2023, attachment 1, p 30.

92 DJAG, correspondence, 6 September 2023, attachment 1, p 29.

2.3.3 Human rights

Clause 10 states that an occupier breaches the BCCMA Act by using a smoking product, or by permitting an invitee to do so, in either their lot or on the common property, in such a way that it regularly exposes a person in another lot to smoke or the emissions of a smoking product.

Clause 11 authorises a body corporate to make a by-law which bans smoking in common areas and in outdoor areas of private lots, such as balconies and patios.

Clauses 10 and 11 arguably engage the right to property, as it restricts the use of a person's own property to the extent it restricts the use of tobacco products (by one's self or by a visitor) in the outdoor areas of a person's own home.

The right to use smoking products in the privacy of one's home (including outdoor areas), including as a cultural practice, is reasonably important. However, prevailing social norms are increasingly tilted against claims of 'smoking rights' due to the health consequences of smoking and passive smoking.

The limitation is designed to enhance the rights of other occupiers in the same body corporate schemes, including their rights to privacy in the home, the right to peaceful enjoyment of their property, the right to life and the right to health, given the established dangers of second-hand smoke.[93]

While it may enhance the health rights of those subjected to second-hand smoke outside the relevant lot, it might further endanger the health and life of the smoker and any other residents of the relevant lot if the person smokes indoors instead. However, the danger is caused by the insistence of the smoker upon smoking in the presence of other residents. A smoker is not forced to smoke indoors, and could go out into the street to smoke.[94] In some instances, the lack of ability to smoke in the outdoor areas of a lot may hasten a decision to quit smoking altogether.

Committee comment

The committee notes that these amendments were recommended by the QUT Property Law Research Centre and modified by the CTL Working Group. The committee also notes the support from stakeholders for these amendments.

The committee notes that second-hand smoking (or passive smoking) has been recognised in Australian law to be linked to several diseases since 1991.[95] The committee is satisfied the clauses are compatible with human rights and further believes these amendments support the aim of reducing the health impacts of smoking and passive smoking.

The committee notes the concern from REIQ that the amendments will lead to an increase in disputes over smoking. The committee recommends defining 'regularly' in the new section 167 of the Bill will help reduce the number of anticipated disputes.

The committee notes the recommendations from UOAQ and Strata Solve about expanding the smoking provisions to apply to smoke generated from other sources, such as fire pits, braziers and meat smokers. While the committee can see some merit in expanding the power of bodies corporate to ban any smoke-generating activity, the committee encourages further consideration by the Queensland Government on what such a legislative framework would look like, noting that backyard fires are traditionally regulated by local councils.

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93 Note that the HRA does permit rights not protected in the BCCMA Act (which includes the general right to health as opposed to the more limited right of access to health services in s 37) to be taken into account in the proportionality exercise (see s 12 HRA).

94 Statement of Compatibility, pp 10-11.

95 *Re Australian Federation of Consumer Organisations Incorporated v Tobacco Institute of Australia Limited* [1991] FCA 137.

Recommendation 3

The committee recommends that the Queensland Government review the proposed section 167 and consider whether guidance (such as statutory notes or examples) should be provided around the word 'regularly' contained with the section.

2.4 Keeping or bringing of animals on a lot or on common property

The Bill proposes to amend the BCCM Act to prohibit by-laws that ban occupiers from having animals; or by-laws that restrict the number, type or size of animals than an occupier may have. Occupiers will still require written approval from the body corporate to have an animal.[96]

According to the Royal Society for the Prevention of Cruelty to Animals (RSPCA), Australia has one of the highest rates of pet ownership in the world. The RSPCA states that nearly 70 per cent of Australian households own pets and there are approximately 28.7 million pets across the country.[97]

The explanatory notes state that there is no explicit guidance on how bodies corporate may regulate animals in a community titles scheme; however, decisions by tribunal and courts have established that it is unreasonable for by-laws to prohibit pets, or restrict the size, type or quantity of pets.[98]

The explanatory notes state that even with this body of decisions (and guidance material published by governments, law firms and body corporate firms), there is evidence that some bodies corporate continue to have invalid by-laws prohibiting or restricting pets.[99]

The Bill seeks to clarify and increase awareness of bodies corporate, owners and occupiers on their rights and obligations regarding pets by amending the BCCM Act to:

- prohibit by-laws that ban occupiers from having animals on a lot or the common property
- prohibit by-laws that restrict the number, type or size of animals than an occupier may have on a lot or the common property.

Occupiers will still require written approval from the body corporate to have an animal on their lot or on the common property.[100]

2.4.1 Stakeholder views

Stakeholders generally supported the provisions. The SCA welcomed clarity around pets, noting 'the increasing importance of pets to many people'.[101]

REIQ stated in its submission that it supported limiting a body corporate's ability to unjustifiably refuse requests to keep a pet, and that REIQ does not oppose 'the prohibition of a by-law that restricts the number, type or size of an animal that an occupier may keep'.[102]

REIQ notes that the timeframe a body corporate has to respond to a request for a pet under the Bill and the BCCM Act should be consistent with the timeframe under the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act). REIQ notes that the Bill does not stipulate a timeframe

96 Bill, cl 11, new s 169B.

97 RSPCA, *How many pets are there in Australia?* rspca.org.au/knowledge-base/how-many-pets-are-there-in-australia/#:~:text=There%20are%20currently%20an%20estimated,with%20pets%20by%20pet%20type.

98 Explanatory notes, p 4.

99 Explanatory notes, p 4.

100 Bill, cl 11, new s 169B.

101 SCA, submission 68, p 1.

102 REIQ, submission 47, p 11.

for a body corporate to respond to a request to keep a pet, and that the BCCM Act in its current form gives a body corporate 6 weeks to decide.[103]

REIQ, public hearing transcript, 7 September 2023, p 28

In relation to pets, we think it is very important that there is a consistency with the Residential Tenancies and Rooming Accommodation Act.

REIQ recommends a body corporate have 14 days to respond to a request to keep a pet by a lot owner or occupier. REIQ states this would align with the RTRA Act, 'which stipulates that if a lot owner does not provide an approval to their tenant within 14 days of receiving the request, the lot owner is deemed to approve the request'.[104]

Strata Solve suggest education is required to body corporates and lot owners prior to the commencement of the Bill stating '[c]onsiderable time and resources will need to be devoted to education and information on this issue'. Strata Solve, like REIQ, also recommended alignment between the BCCM Act and the RTRA Act when it came to timeframes and processes for pet requests.

2.4.2 Department response

DJAG noted the recommendation from REIQ about aligning the timeframes for pet requests across legislation, stating that the 14 day timeframe is not possible due to 'the current processes for making decisions in a body corporate'.[105]

DJAG stated that the timeframe for responding to pet requests would be outlined in a regulation module. According to DJAG, this is to allow for easy modification and is consistent with other procedural matters existing in regulation. DJAG stated the proposed timeframe to respond to pet requests will be 28 days, unless the decision requires a general meeting of the body corporate, in which case the 6 week timeframe applies.[106]

Responding to Strata Solve's recommendation about an education campaign, DJAG noted that implementing the Bill will require a range of activities by the BCCM Office, including 'staff training, systems changes and communication with stakeholders'. DJAG further commented that 'while implementation planning has commenced, further detailed implementation planning and activities will be undertaken prior to the Bill's passage'.[107]

2.4.3 Human rights

Clause 11 engages the right to property in section 24 of the HRA. A body corporate refusing permission for an owner or occupier to live with a pet engages the right to own property. The conditions and restrictions could engage the right not to be deprived of property, if their breach should lead to removal of the animal.

Australia has high levels of pet ownership. The right to own a pet is generally believed to be an important and life-enhancing right in Australia.[108]

The proposed amendments make clear that a 'no pets' policy is unreasonable, and blanket restrictions cannot be imposed on the number, type or size of animal. A person must however apply to the body corporate in order to lawfully keep or bring a pet onto their premises.

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103 REIQ, submission 47, p 11.

104 REIQ, submission 47, p 12.

105 DJAG, correspondence, 6 September 2023, attachment 1, p 33.

106 DJAG, correspondence, 6 September 2023, attachment 1, p 33.

107 DJAG, correspondence, 6 September 2023, attachment 1, p 35.

108 Statement of Compatibility, p 11.

The permissible restrictions that may be imposed on animal ownership are designed to protect the rights of other members or occupiers of the property. Notably, restrictions only apply where it is not possible, or where the owner of the animal is unwilling, to comply with conditions. Furthermore, a prospective pet owner can appeal the decision regarding conditions or restrictions by way of the BCCM dispute resolution provisions.

The body corporate is bound by an overarching requirement of reasonableness in imposing conditions or refusing pets.

Committee comment

The committee is pleased to note the increased clarity around body corporate by-laws and the keeping of pets, recognising the important role they play in the lives of many Queenslanders.

The committee is satisfied there is balance between the rights of the person who wants to keep or bring an animal onto body corporate premises, and other owners or occupiers. The prohibition of a blanket refusal against pets must be balanced with restrictions that aim to protect the rights of others in the scheme. The committee notes that ultimately, the rights of pet owners are increased by this measure, rather than decreased, in line with community attitudes in Australia to pet ownership.

The committee notes the feedback by REIQ and Strata Solve about creating legislative alignment between the RTRA Act and the BCCM Act. The committee believes further investigation is required to determine whether a person may comply with one Act but be in breach of another.

Recommendation 4

The committee recommends that the Queensland Government, in collaboration with the CTL Working Group, review the interaction between the *Residential Tenancies and Rooming Accommodation Act 2008* and the *Body Corporate and Community Management Act 1997* regarding timeframes for requests to keep pets from a lot owner or tenant.

2.5 Body corporate towing of vehicles

The Bill proposes to clarify a body corporate's existing power to tow a vehicle under the BCCM Act (or any other legislation), and remove the requirement for a body corporate to follow the by-law enforcement process for improperly parked vehicles.[109]

Improper parking of motor vehicles can interfere with the use and enjoyment of lot owners or occupiers in a community titles scheme, especially if the vehicle is blocking an entrance, exit or another piece of infrastructure.

Bodies corporate can manage parking on common property through body-corporate by-laws, but have no express authority to tow a vehicle under the BCCM Act. While there are other legal powers to tow a vehicle, if the vehicle is improperly parked on the common property and it is owned by an owner or occupier, the BCCM Act's by-law enforcement process must be followed. The process involves contravention notices and dispute resolution proceedings.[110]

According to the explanatory notes, stakeholders are concerned about the confusion around a body corporate's ability to tow vehicles, highlighting that the by-law enforcement process is long and there needs to be a faster response to parking issues in community titles schemes.[111]

[109] Bill, cl 9.

[110] Explanatory notes, p 5. For the full by-law contravention process, see the BCCM Act, Chapter 3, part 5, division 4.

[111] Explanatory notes, p 5.

The Bill proposes to address this by clarifying the existing power of bodies corporate to tow outside of the BCCM Act. The Bill also proposes removing the obligation on bodies corporate to follow the by-law enforcement process for vehicles that are parked in a way that breaches the by-laws.[112]

2.5.1 Stakeholder views

Stakeholders generally supported the amendments to body corporate towing provisions. One stakeholder, a body corporate manager, outlined the difficulty in having improperly parked vehicles towed under the current legislative framework:

Richard Fox, public hearing transcript, 7 September 2023, p 30

The current laws in Queensland are such that strata property managers and bodies corporate have no recourse to correct unfair parking practices on common property… I ask that the state government responsibly empower strata managers and bodies corporate to tow and/or fine vehicle owners after reasonable unbiased mediation fails.

REIQ supported the amendments for a body corporate's power to tow vehicles from a scheme's common property. REIQ suggested considering whether bodies corporate should meet certain requirements before exercising their right to tow. Examples of these requirements would include ensuring adequate signage and whether reasonable written notice was given to the vehicle's owner.[113]

REIQ also suggested that bodies corporate be encourage to update lot owners and implement a transition period, noting that stakeholders will need to be educated about how to enact these changes.[114]

Strata Solve noted the towing provisions were 'a constructive step in addressing a challenging issue',[115] recommending a body corporate's towing power apply to anyone parked in breach of by-laws (not just owners or occupiers) and that bodies corporate be allowed to remove abandoned vehicles.[116]

The SCA recommended that when there is an urgent need to tow a vehicle due to 'a hazard, obstruction, or other danger,' power should be delegated to a manager to authorise a tow truck operator. The SCA also suggested the laws of trespass should govern exclusive use areas, not the Bill's towing reforms.[117]

2.5.2 Department response

DJAG stated that the Bill clarifies the existing powers of bodies corporate to tow that are separate from the BCCM Act, and referred bodies corporate to the *Tow Truck Act 1973* for guidance. DJAG noted the amendments do not mandate the towing of vehicles or prevent bodies corporate from using another mechanism, such as the by-law enforcement process under the BCCM Act.[118]

DJAG, 6 September 2023, Attachment 1, p 24

The Bill will assist bodies corporate to manage parking issues by providing general clarification about the existing power of bodies corporate to tow outside of the BCCM Act, and removing the impediment to bodies corporate towing a motor vehicle owned or operated by an owner or occupier of a lot in a timely manner.

112 Explanatory notes, p 5.

113 REIQ, submission 47, p 9.

114 REIQ, submission 47, p 9.

115 Strata Solve, submission 46, p 3.

116 Strata Solve, submission 46, p 4.

117 SCA, submission 68, p 6.

118 DJAG, correspondence, 6 September 2023, attachment 1, p 24.

DJAG acknowledged the recommendation by REIQ that signage or written notice be provided to vehicle owners before towing, but ultimately stated that the requirements for towing are outside the scope of the BCCM Act.[119]

DJAG acknowledged REIQ's request for stakeholder education. DJAG proposed to seek advice from the Department of Transport and Main Roads regarding preparing materials to improve understanding about a body corporate's rights to tow vehicles.[120]

DJAG noted Strata Solve's support and acknowledged the recommendation to expand towing powers beyond owners and occupiers. DJAG responded that, for a community titles scheme, there is nothing in the BCCM Act preventing a body corporate from towing a vehicle 'under another Act or otherwise according to law (including under common law)'.[121]

DJAG noted that, currently, when vehicles owned or operated by owners or occupiers of a lot within a scheme are parked in contravention of body corporate by-laws, 'the by-law enforcement process must be followed'.[122] This can cause significant delays, so the Bill removes the requirement of a body corporate to adhere to the by-law enforcement process.[123]

DJAG noted Strata Solve's recommendation that bodies corporate be empowered to remove abandoned vehicles from common property, and the SCA's recommendation that the authority to engage a tow truck operator should be delegated to a manager when an unregistered vehicle poses an urgent risk. DJAG noted that these matters are outside the scope of the BCCM Act.[124]

DJAG noted that the SCA's recommendations that lot owners should be able to authorise the towing of vehicles in exclusive use areas, and vehicles parked without their permission on their lot, are outside the scope of the BCCM Act.[125]

DJAG raised concerns that this approach would likely take longer and might undermine the common law towing power of bodies corporate. DJAG expressed a belief that the Bill's approach will empower bodies corporate to rely on existing legal rights to authorise the towing of motor vehicles.[126]

2.5.3 Human rights

Clause 9 engages the right to property, as it facilitates the removal of vehicles by way of towing, which then requires towing and storage fees. Property rights are also engaged if the vehicle is damaged during the removal.

Clause 9 proposes the least restrictive means of achieving its purpose, which is to facilitate the timely removal of vehicles parked in violation of body corporate by-laws. It does not change the power of bodies corporate to deal with vehicles that are not owned by lot owners or occupiers. For the owners of towed vehicles, certain safeguards are available under the *Tow Truck Act 1973* and *Tow Truck Regulations 2009*.[127]

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119 DJAG, correspondence, 6 September 2023, attachment 1, p 23.

120 DJAG, correspondence, 6 September 2023, attachment 1, p 23.

121 DJAG, correspondence, 6 September 2023, attachment 1, p 24.

122 DJAG, correspondence, 6 September 2023, attachment 1, p 24.

123 DJAG, correspondence, 6 September 2023, attachment 1, p 25.

124 DJAG, correspondence, 6 September 2023, attachment 1, pp 25-6.

125 DJAG, correspondence, 6 September 2023, attachment 1, p 26.

126 DJAG, correspondence, 6 September 2023, attachment 1, pp 25-6.

127 Statement of Compatibility, p 17.

Further, the body corporate must still behave reasonably in authorising the removal of a vehicle.[128] For example, swift towing may not be reasonable unless the vehicle is directly impeding the rights of others, or endangering (or potentially) occupants of the relevant property.

Committee comment

The committee notes that lot owners' and occupiers' enjoyment of their property is linked to easy access. The committee also sees it as a matter of safety, as emergency vehicles must be able to access the common areas and individual lots in the event of a fire, medical incident, or other emergency.

The committee is satisfied that property rights of the owners and occupiers, which are already compromised by the fact that their property can be towed (but only after a dispute resolution process) are outweighed by the countervailing property rights of other persons, such as those whose access to their own carpark or property might be impeded, or where safety concerns are raised.

In the latter case, the committee is satisfied that the Statement of Compatibility is correct to say that even the right to life in section 6 of the HRA can be engaged on occasion by the failure to remove a wrongly parked vehicle (for example, if it blocked an ambulance or a fire escape).[129] The committee notes this balance is further solidified by the retention of the duty upon the body corporate to act reasonably in authorising the towing of a vehicle.

The committee heard from submitters and witnesses at the public hearing that the current system of using the by-law enforcement process for improperly parked vehicles was time-consuming and ineffective. Vehicles were parked in common areas, blocking lot owners from accessing their lots and, in some cases, access to fire hydrants.

Clarifying the towing power of bodies corporate and removing the need to follow the by-law enforcement process will ensure lot owners and occupiers can access their lot, improve public safety and assist bodies corporate in managing community titles schemes.

The committee notes the testimony of Richard Fox, a body corporate manager for a community titles scheme based in Everton Hills, where the difficulty in towing improperly parked vehicles has risks for several of the residents, which include elderly and disabled persons. The committee trusts that these reforms will address the problems and risks outlined in Mr Fox's testimony and assist body corporate managers in their work.

Recommendation 5

The committee recommends that the Queensland Government, in collaboration with the CTL Working Group, consider providing additional guidance and resources to bodies corporate regarding their powers to tow vehicles that are parked in contravention of a by-law, in particular, vehicles owned or operated by visitors.

[128] Explanatory notes, p 21.

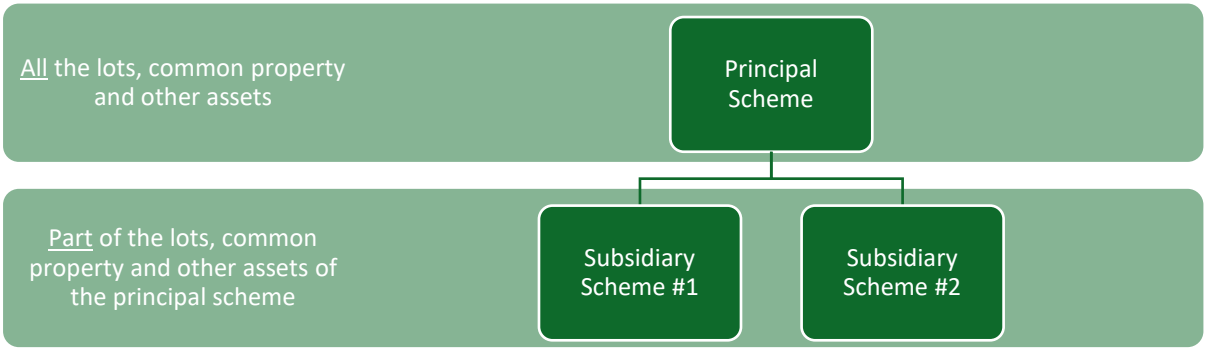
[129] Statement of Compatibility, p 10.

2.6 By-law enforcement processes and access to records in layered arrangements of community titles schemes

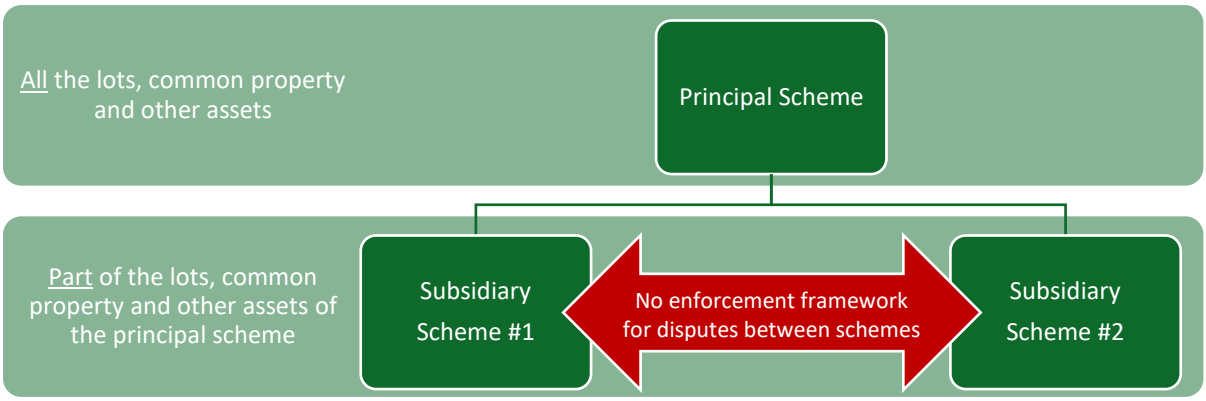
The Bill proposes to create a framework in the BCCM Act where by-laws of a scheme in a layered arrangement can be enforced against another scheme within the arrangement. To support this, the Bill will also amend provisions around access to records for schemes in layered arrangements.[130]

Large or staged property developments may create 'layered arrangements' of community titles schemes. These layered arrangements are where one overarching 'principal' community title scheme covers the entire property, with smaller 'subsidiary' schemes that only cover parts of the property.[131]

An illustration of these layered arrangements is below.



The BCCM Act has a framework for bodies corporate to enforce by-laws within their own community titles schemes, however there is no framework for enforcing by-laws **between schemes that interact with each other**, such as two subsidiary schemes in a layered arrangement.[132]



The Bill proposes to amend the BCCM Act to better facilitate enforcement of by-laws against a body corporate for, or an owner or occupier of a lot in, another scheme in a layered arrangement. The Bill includes amendments to improve appropriate access to records for schemes in layered arrangements to support this change.[133] The explanatory notes state these changes are in line with recommendations from QUT's Property Law Research Centre.[134]

In addition to the changes to the by-laws enforcement framework, the Bill also proposes amendments to clarify and streamline body corporate administration, improve transparency and accountability in

130 Bill, cls 14, 16-19 and 25.

131 Explanatory notes, p 6.

132 Explanatory notes, p 6.

133 Explanatory notes, p 6.

134 Explanatory notes, p 6.

body corporate governance, and ensure bodies corporate have the documents they need to perform their functions. The explanatory notes state that many of these amendments were informed by recommendations made by the Property Law Research Centre's review of Queensland property law.[135]

2.6.1 Stakeholder views

Few submitters commented on the layered scheme arrangements and other procedural reforms. The SCA supported the changes, stating they are 'pleased with the administrative amendments proposed' for layered schemes.[136]

Strata Search Agents Association Queensland (SSAAQ) noted that the definition of an 'interested person' for a community titles scheme does not match the definition of an interested person for a layered scheme as proposed under the Bill. Specifically, an agent can be an interested person in a community titles scheme, but is not for a layered scheme. SSAAQ recommends aligning the definitions for interested persons, regardless of whether a scheme is layered, so that agents may act on a person's behalf in a layered scheme.[137]

SSAAQ also raised the issue of costs for interested persons seeking copies of body corporate records. Under the BCCM Act, bodies corporate are required to provide documents to interested persons (usually lot owners, prospective buyers and their agents), but are allowed to charge printing fees. The fees are prescribed under the relevant regulation module, and are usually around $0.70 per page.[138]

SSAAQ states that these fees were for 'a time when all body corporate records were stored and presented for inspection in physical paper' and that the majority of body corporate records are now stored digitally. SSAAQ recommends this fee not apply to digital documents, stating:[139]

SSAAQ, public hearing transcript, 7 September 2023, p 9

Some [body corporate] managers are in the practise of charging this 70 cents per page fee for the provision of electronic records. Others actually block the saving of electronic copies of documents in searches and they then require agents or interested persons to print the electronic document so that they then have to pay the search fee… In some instances this can be hundreds of dollars of printing just in a single search where the documents are held electronically. It is avoidable in many cases and is certainly not in the spirit of the original intent of the legislation…

SSAAQ also recommended that bodies corporate have a statutory duty to ensure records are kept in a good and proper manner to ensure they are easily searched and inspected.[140]

2.6.2 Department response

Responding to SSAAQ's recommendation to align the definitions of an interested person, DJAG stated that modern drafting convention typically does not make reference specifically to agents, as the law of agency is applicable.[141]

135 Explanatory notes, pp 6-7.

136 SCA, submission 68, p 2.

137 SSAAQ, submission 69, p 4.

138 BCCM Act, s 205. For each modules fees, see the BCCM (Standard Module) Regulation 2020, reg 233; BCCM (Accommodation Module) Regulation 2020, reg 222; BCCM (Commercial Module) Regulation 2020, reg 179; BCCM (Small Schemes Module) Regulation 2020, reg 148; BCCM (Specified Two-Lot Schemes Module) Regulation 2020, reg 233.

139 SSAAQ, submission 69, p 5.

140 SSAAQ, submission 69, p 6.

141 DJAG, correspondence, 6 September 2023, attachment 1, p 39.

In response to the costs associated with obtaining copies of body corporate records, DJAG noted the fees are contained in the relevant regulation modules and that consideration of changes to these fees are outside the scope of the Bill.[142] In response to SSAAQ's submission that item 11 of the code of conduct should be amended to include that records should be kept in good a proper order, DJAG clarified that:

DJAG, 6 September 2023, Attachment 1, p 40

Item 3 of the code of conduct already requires a body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person's functions under the person's engagement.

Item 11 of the code of conduct also requires the body corporate manager, upon request by the body corporate or its committee, to demonstrate it has kept records in accordance with the BCCM Act.

Committee comment

The committee notes the comments from SSAAQ about costs for interested persons seeking copies of body corporate records and DJAG's comments that this is outside the scope of the Bill. The committee considers good record-keeping as key to ensuring confidence and mitigating risk for potential buyers and lot owners in community titles schemes.

The committee is pleased to note the code of conduct for body corporate managers includes a requirement for them to exercise reasonable skills, care and diligence in performing their functions, including the keeping and storing of records, however the committee is of the view that bodies corporate should not be profiting off the electronic search and provision of documents to lot owners.

The committee recommends DJAG consider reviewing the relevant document fee sections within each body corporation regulation module to confirm that they are fit for purpose.

Recommendation 6

The committee recommends that the Queensland Government consider amending the relevant sections of the 5 module regulations made under the *Body Corporate and Community Management Act 1997* to clarify whether the prescribed fee for obtaining a copy of a record kept by the body corporate applies to digital copies as well as printed copies.

2.7 Sunset clauses in 'off the plan' contracts for land

The Bill proposes to prohibit sunset clauses from automatically terminating an 'off the plan' contract for the sale of land. The Bill proposes that sunset clauses can only be used to terminate a contract with the buyer's consent, through a court order or through regulation.[143]

Queenslanders can enter into a contract to buy property before it is built and before the title to the lot has been created. This is known as buying 'off the plan'.[144]

According to the explanatory notes, there are concerns about the increase in sunset clauses being used by sellers to terminate 'off the plan' sale contracts. Once a contract is terminated, the seller can then re-list and sell the same property for a higher price. Buyers will get their deposit back when the

142 DJAG, correspondence, 6 September 2023, attachment 1, p 39. See footnote 34 for the relevant modules.

143 Bill, cl 50, new s 19C-19D.

144 Queensland Government, *Buying 'off the plan'*, www.qld.gov.au/law/housing-and-neighbours/buying-and-selling-a-property/buying-a-home/ways-to-buy-your-home/buying-off-the-plan.

contract is terminated, but there is a risk that rising house prices will make buying another house difficult, especially for first-time or vulnerable buyers.[145]

The explanatory notes state that there is a power imbalance between buyers and sellers, who are usually large property developers for 'off the plan' contracts. Few buyers have the money to take legal action against a property developer in the event they believe such a sunset clause has been misused.[146]

The Bill proposes to limit a seller's ability to use sunset clauses to terminate an 'off the plan' contract for land. A sunset clause can no longer automatically terminate a contract, and termination under a sunset clause can only occur with the buyer's written consent, a Supreme Court order or through regulation.[147]

The goals of these amendments are to:

- provide greater protection for buyers, as buyer confidence is critical to the property sector
- deter sellers from terminating an 'off the plan' contract without making a genuine attempt to finalise the contract.[148]

2.7.1 Stakeholder views

QLS expressed concerns that the Supreme Court would be required to consider the viability of the seller's business when deciding whether to terminate an 'off the plan' contract, stating it would give sellers termination rights that currently don't exist. QLS also believed the reforms should commence at the same time across all land sales contracts, stating that sunset dates are being misused by apartment developers and that 'buyers of apartments should be extended the same protection as buyers of land'.[149]

Property sector stakeholders were mostly against the sunset clause reforms. The UDIA strongly recommended against the reforms, stating it would add to housing supply constraints and increase unaffordability.[150] The Housing Industry Association (HIA) states there are enough consumer protections in place and did not support the amendments.[151]

The Property Council, while recognising that there have been cases where sunset clauses were used to terminate contracts, also urged against the reforms, stating that the system has enough buyer protections. The Property Council was especially against extending the reforms to apartments, urging against 'any interventions that will put further strain' on the housing market.[152] The Property Council and the UDIA raised the issue of litigation costs to the seller in applying to the Supreme Court to terminate an 'off the plan' contract.[153]

REIQ stated that the reforms do not strike a fair balance between the rights of consumers and 'the commercial realities and sustainability of property development'.[154] REIQ go on to state:

145 Explanatory notes, p 7.

146 Explanatory notes, p 7.

147 Bill, cl 50, new s 19C-19D.

148 Explanatory notes, p 7.

149 QLS, submission 90, p 2.

150 UDIA, submission 44, p 2.

151 HIA, submission 60, p 2.

152 Property Council, submission 41, p 5.

153 Property Council, submission 41, p 5; UDIA, submission 44, p 3.

154 REIQ, submission 47, p 14.

REIQ, submission 47, p 15

An alternative way to achieve stronger buyer protection, in our view, is for the State Government to create accessible information resources for buyers of off the plan lots to assist them with identifying key information they need prior to entering into a contract.

Although the seller is required to provide the buyer with a disclosure statement and disclosure plan, in some cases the legal drafting and complex technical information may overwhelm or be disregarded by the buyer. Not all buyers receive legal advice on disclosure information before entering into a contract, and it may be beneficial for information to be provided to prompt this necessary step, prior to a buyer entering into a contract. This could include a mandatory warning about the sunset date in contracts.

Law firm HWL Ebsworth stated that the Bill is 'a further barrier' to development in 'a highly regulated and cost-prohibitive market and does not encourage investment in a market where it is desperately needed'.[155]

The PIA broadly supported the intent of the changes and recommends it be closely monitored and reviewed to ensure no unintended consequences.[156]

2.7.2 Department response

DJAG noted the policy positions outlined by those submitters who did not support the changes to sunset clauses. DJAG stated that the policy intent of the amendments is to limit sellers' use of sunset clauses in relation to 'off the plan' contracts for land to better protect consumers.[157] DJAG added at the public briefing that the Bill seeks to address the power imbalance that exists between buyers and sellers in these contracts and ensure sunset clauses are being used appropriately.[158]

DJAG responded to claims from the property sector about the Bill's impact on the housing market and the ability to attract finance, stating:

DJAG, public briefing transcript, 11 September 2023, p 8

We spoke to particularly our New South Wales colleagues who advised us that they detected no significant change in the development process based on these interventions. In fact, they were considering in a review process whether or not they should tighten them. We spoke to the ACT and it was a similar outcome.

Responding to submissions on the cost of applying to the Supreme Court, DJAG noted that litigation is not the first step available to a seller. Court is only intended as an option if the buyer and seller fail to reach an agreement. DJAG states that the Bill also requires the buyer to respond to the seller's sunset clause notice within a specific timeframe.[159]

DJAG noted the comments that the Supreme Court's requirement to consider the viability of the seller's business would provide sellers with new termination rights. DJAG stated that the Supreme Court will be required to consider a wide range of factors as part of its deliberations, and that the Court can examine other factors if it chooses. DJAG states that the test is a balancing test and that the termination must be just and equitable.[160]

155 HWL Ebsworth, submission 22, p 2.

156 PIA, submission 57, p 2.

157 DJAG, correspondence, 6 September 2023, attachment 2, p 2.

158 DJAG, public briefing transcript, 11 September 2023, p 4.

159 DJAG, correspondence, 6 September 2023, attachment 2, p 12.

160 DJAG, correspondence, 6 September 2023, attachment 2, p 11.

DJAG added that the viability of the seller's business is only required to be examined to the extent that it is related to the performance of the contract, and that this puts a limit on the Court's consideration. DJAG states that the intent is for the Supreme Court to consider whether the seller can complete the contract, rather than complete the contract by the sunset date, as this gives scope for the contract to continue beyond the sunset date, with settlement occurring after a short delay.[161]

DJAG noted the sunset clause amendments in the Bill are the first stage of a two-stage approach. The second stage will look at whether there is the need for more reform for 'off the plan' contracts for community titles scheme (and similar scheme) lot sales. DJAG states that this review will commence 1-2 years after the amendments have commenced.[162]

DJAG noted the staged approach recognises increased pressures facing developers such as increased costs for building supplies, limited supply of skilled labour and extreme weather events. [163]

In response to REIQ, DJAG stated it has been undertaking awareness campaigns for 'off the plan' buyers, including social media, web updates and newsletter articles alerting buyers to the risks of 'off the plan' contracts. [164]

2.7.3 Fundamental legislative principles

2.7.3.1 Rights and liberties of individuals

The Bill's sunset clause amendments propose new restrictions on the existing rights of sellers,[165] which the explanatory notes concede may not have sufficient regard to the rights and liberties of individuals:

> … the amendments could be construed as changing the existing rights of sellers (property developers), as they will be subject to new limitations on the use of sunset clauses to terminate an 'off the plan' contract for land. This would limit the way in which a seller can exercise a term in a contract and add additional hurdles for a seller to meet in order to legally terminate the contract (i.e. obtaining the written consent of the buyer or by obtaining a Supreme Court order).[166]

However, according to the explanatory notes, any breach of FLPs by the proposed amendments is justified by providing greater protection for buyers, while still providing the ability for sellers to terminate the contract:

> … it is necessary to achieve a reasonable balance between the interests and risks undertaken by the contracting parties. While it is acknowledged that sellers will be subject to new limitations and costs in relation to land only contracts, it is considered that proportionate consumer protections and the resulting buyer confidence are critical to the success of the property sector.
>
> A power imbalance between buyers and sellers may leave buyers with little ability to negotiate changes to sunset clause provisions, particularly when there is a high level of demand (and therefore competition from other buyers) in the market. It is also likely that many buyers will not have the financial resources to pursue legal action against sellers in the event they believe the seller has used the sunset clause inappropriately.[167]

The explanatory notes acknowledge that the Bill's amendments affect rights and liberties or impose obligations retrospectively by applying to existing, unsettled contracts.[168] The notes offer the following justification for the potential breach:

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161 DJAG, correspondence, 6 September 2023, attachment 2, p 10.

162 DJAG, correspondence, 6 September 2023, attachment 2, p 4.

163 DJAG, correspondence, 6 September 2023, attachment 2, p 4.

164 DJAG, correspondence, 6 September 2023, attachment 2, p 4.

165 Explanatory notes, p 7.

166 Explanatory notes, p 22.

167 Explanatory notes, p 22.

168 Explanatory notes, p 22.

> It is anticipated there are a significant number of buyers with current 'off the plan' contracts for the sale of land, who are concerned about the potential future termination of their contracts.
>
> If the amendments were to only apply to 'off the plan' contracts for the sale of land entered into after commencement, it would take a significant amount of time for the additional consumer protections to take effect, as the timeframe between signing the contract and likely termination of the contract is 18 months (given the 18-month statutory timeframe for settlement of the contract under the Land Sales Act). Accordingly, to ensure the amendments are effective and the greatest possible number of buyers are protected, it is considered necessary for the amendments to apply to contracts that have been entered into but not settled by commencement.[169]

2.7.3.2 Regulation making power

The sunset clause amendments provide for a range of regulation-making powers.[170] The explanatory notes seek to justify the regulation-making powers by asserting:[171]

- they enable relatively speedy and flexible regulatory responses to changes or emerging issues in the Queensland property market
- the power to prescribe another way for a contract to be terminated[172] is appropriately constrained with a requirement that the regulation can only be made if the Minister is satisfied the prescribed way will provide consumer protection for a buyer
- the power in respect of a relevant event enables regulatory responses when new relevant events are identified, which could be in response to:

  > … changes to the regulatory processes for the registration of proposed lots in Queensland, or where it is identified that there are attempts to circumvent the requirements via tying termination rights to new types of events.[173]

Any regulations made pursuant to the powers in the Bill attract the requirements in the *Statutory Instruments Act 1992* for a regulation to be tabled and be able to be subject to a parliamentary disallowance motion.

2.7.4 Human rights

Clause 50 limits the rights of sellers to property by depriving them of certain rights to terminate contracts of sale. However, sellers in the context of 'off the plan' developments are normally development corporations. Only individuals have human rights under the HRA. Hence, no HRA rights are engaged if the seller is a corporation.

In the rare occasion that the seller is an individual, Clause 50 significantly rolls back the ability of sellers to use sunset clauses to terminate contracts with buyers for 'off the plan' properties. Currently, there are no limits on such a practice, beyond the need for any deposit to be refunded to the buyer.

The right to dispose of property as one wishes is an important property right. Clause 50 will enhance the property rights of buyers to prevent arbitrary termination of their anticipated purchase. While they will be refunded their deposit, the tendency in Australia for property prices to continually rise means that they will ultimately be prejudiced, as any new property that they buy will likely be

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169 Explanatory notes, p 22.

170 Being, the following new sections of the LS Act: power to prescribe a relevant event by regulation (s 19B); power to prescribe a way for the seller to terminate an off-the-plan contract for the sale of land under a sunset clause (s 19D(1)(c)); and power to prescribe a matter which the Supreme Court must consider in deciding whether it is just and equitable to make an order permitting the seller to terminate an off-the-plan contract for the sale of land under a sunset clause (s 19F(3)(k)).

171 Explanatory notes, pp 19-20.

172 Being an off-the-plan contract for the sale of land using a sunset clause.

173 Explanatory notes, p 20.

comparatively more expensive than the property they tried to buy under the "off the plan" scheme due to the passage of time.[174]

Committee comment

The committee is satisfied these amendments are compatible with human rights and prevent the opportunistic and arbitrary abuse of sunset clauses and enhance the rights of buyers.

The proposed amendments clearly impact the rights and liberties of sellers, whose existing ability to lawfully terminate a sale contract in accordance with a sunset clause will be limited by the Bill. The committee acknowledges these impacts but is satisfied that, taking into account the power imbalance between the parties, the Bill strikes an appropriate balance between the rights of buyers and sellers. The committee is also satisfied that the proposed amendments justify the delegation of legislative power, such that they have sufficient regard to the institution of Parliament and, by extension, to FLPs.

The committee recognises that many property developers operate lawfully and provide essential housing for Queenslanders. According to UDIA Queensland CEO Kristy Chessher-Brown, 94 per cent of developers had not used a sunset clause to terminate a contract over the past 3 years.[175]

However, the committee notes that there have been multiple media reports where Queensland buyers have had sunset clauses used to terminate their 'off the plan' contract, with the property developers then reselling the land at a higher price, sometimes even offering it back to the original buyer.[176]

The committee notes that under current legislation, there is a mechanism where a seller may terminate a contract and resell the lot at a higher price, and the rise in house prices over the previous years (25 per cent between February 2020 and February 2022)[177] provide a major economic incentive. Closing this loophole should not affect the vast majority of property developers that, by the property sector's own admission, do not use sunset clauses.

The committee believes that the reforms will provide homebuyers, particularly first-time homebuyers, with protections against having their contract unfairly terminated. Buyer confidence is an important component in any market, and the property market is no exception.

The committee is not convinced that applying to the Supreme Court to terminate an 'off the plan' contract will create an undue cost burden for sellers. An 'off the plan' contract may still be terminated by written agreement between the buyer and the seller. The committee believes this will encourage 'constructive conflict resolution' between the buyer and seller (as was suggested by the Property Council's submission), with litigation being a last resort.[178]

The committee has not been presented with any evidence that the amendments will negatively impact a property developer's ability to secure financing. Similar reforms were enacted in 2015 in New South Wales under the *Conveyancing Act 1919* and in 2021 in the Australian Capital Territory with the *Civil*

174 Statement of Compatibility, p 13.

175 C Border, S Rope and T Forbes, 'First home buyers 'missing out' on property boom as Qld developers strike out with sunset clauses', ABC News Online, 16 April 2022.

176 R Riga, 'Queensland government flags crackdown on land contract sunset clauses to protect buyers', ABC News Online, 12 June 2023; C Border, S Rope and T Forbes, 'First home buyers 'missing out' on property boom as Qld developers strike out with sunset clauses', ABC News Online, 16 April 2022; S Sharples, 'QLD couple's $250k home nightmare after developer activates legal sunset clause', news.com.au, 13 April 2023; S Sharples, 'QLD couple 'devastated' after developer's letter', news.com.au, 13 April 2023.

177 Martin Kelly, 'How COVID-19 changed Australia's housing market', Australian Financial Review, 20 March 2022.

178 Property Council, submission 41, p 5.

Law (Sale of Residential Property) Amendment Act 2021. Neither jurisdiction has seen a significant drop in property investment or development that can be linked to the reforms.

Housing is a basic need for all Queenslanders, hence there will always be demand. Housing also remains an attractive investment and an attractive asset. The laws of economics dictate that so long as there is demand and a favourable investment environment, financing will be available for Queensland's property developers.

The committee recognises DJAG will hold a review to consider if further protections are required for 'off the plan' buyers of proposed community titles and similar lots, and to consider the increasing pressures faced by developers. The committee recommends that this review consider how sunset clauses have been used since the implementation of the Bill and whether these clauses have been appropriately used, and the associated impact, if any, on consumer confidence and housing supply.

The committee was pleased to note DJAG has been conducting an awareness campaign for 'off the plan' property buyers, including encouraging buyers to seek legal advice and alerting them to potential risks associated with 'off the plan' land sales contracts.

The committee recommends DJAG continue collaborating with the CTL Working Group to develop education awareness campaigns around the new reforms, encourage certainty and reduce risks for homeowners, buyers and developers in relation to housing development.

Recommendation 7

The committee recommends that the Queensland Government review, within 24 months of the implementation of the Bill, the exercise of sunset clauses giving consideration to current housing pressures, practices by developers and sellers in relation to inappropriate use of sunset clauses, and the associated impact on consumer confidence and housing supply.

2.8 Release of deposits under an 'off the plan' residential property contract

The Bill proposes to make minor amendments to the BCCM Act, Land Sales Act, BUGT Act and South Bank Act to confirm the policy intent on when a deposit can be released. The policy intent is that a deposit can only be released to the seller at settlement or if the contract is finalised another way.[179]

Buying property 'off the plan' involves the buyer paying a deposit to a law practice or real estate agent, who holds the money in a trust account while the property is being built. The BCCM Act, Land Sales Act, BUGT Act and South Bank Act each have a legal framework that regulates deposits.

The policy intent for these Acts is:

> That a deposit can only be released, from a relevant trust account, to a party to the contract (such as a property developer who is the seller) at the time of settlement or if another contract finalisation event occurs where that party is entitled to the deposit.[180]

The explanatory notes state that there is uncertainty in the current law that could result in deposits being given to sellers too soon, which goes against the intent of the law. Stopping this 'early release' of deposits protects consumers from serious risks, such as the consumer losing their deposit if the seller becomes insolvent.[181]

[179] Explanatory notes, p 8.

[180] Explanatory notes, p 8.

[181] Explanatory notes, pp 7-8.

The Bill proposes to make minor amendments to the BCCM Act, Land Sales Act, BUGT Act and South Bank Act to confirm the intent of these laws.

2.8.1 Stakeholder views

QLS considers 'the amendments proposed to section 218C of the BCCM Act (and similar provisions in other legislation) are inadequate to address the current uncertainty in the interpretation of the section'.[182]

QLS in their supplementary submission also raised concerns over the use of the words 'otherwise according to law' contained in the current provisions:

QLS, submission 90, pp 7-8

> … [T]here is anecdotal evidence (from media reports and from our members' experience) that there are instances where deposits are being paid to developers prior to settlement occurring.
>
> QLS believes this is as a result of ambiguity in the drafting of these provisions, in particular the requirement that the deposit be held in a trust account "until a party to the contract or instrument becomes entitled, under this part of otherwise according to law."
>
> The phrase 'otherwise according to law' is being interpreted by some as allowing parties to expressly agree in the contract that the deposit can be released to the seller earlier than settlement. This accords with the common law position that if a buyer and seller agree, a deposit holder may be directed to release the deposit in accordance with their instructions.

Ralan Purchasers Rights Alliance stated that restricting the definition of 'another contract finalisation event' to events between the seller and purchaser was required. Ralan Purchasers Rights Alliance also suggested that amendments to the *Agents Financial Administration Act 2014* be considered, if necessary. [183]

2.8.2 Department response

DJAG noted the related proposed amendments were contained in clauses 26, 47, 49 and 56 and stated 'following detailed consideration of the issue, substantive change to the relevant provisions was not considered necessary'. DJAG further clarified that 'it was determined that statutory notes and an example could be added to the provisions, to clearly highlight the fact that parties cannot contract out of the provisions of the relevant Act'. [184]

Regarding concerns around uncertainty of the provisions, DJAG noted that the 'policy intent of the existing legislative provisions is that a deposit should only be released, from a relevant trust account, at the time of settlement or if another contract finalisation event occurs where that party is entitled to the deposit'.

In response to concerns raised about amending or removing the words 'according to law', DJAG stated that 'it was identified that removal of "according to law" from the relevant Acts might result in unintended consequences that would likely be inconsistent with the policy intent of these amendments.'[185]

In response to queries raised by Ralan Purchasers Rights Alliance, DJAG noted the 'Bill does not refer to a 'contract finalisation event' and that the term was used in the explanatory notes to 'highlight the policy intent of the existing provisions'.[186] Regarding amendments to the *Agents Financial Administration Act 2014,* DJAG noted this act 'regulates the establishment, management and audit of

[182] QLS, submission 90, p 2.

[183] Ralan Purchasers Rights Alliance, submission 85, p 1.

[184] DJAG, correspondence, 15 September 2023, attachment 2, p 16.

[185] DJAG, correspondence, 15 September 2023, attachment 2, p 15.

[186] DJAG, correspondence, 15 September 2023, attachment 2, p 16.

agents' trust accounts'. DJAG further clarified that as provisions regarding the rules regarding trust monies 'are expressed in different terms to those contained within the Land Sales Act, BCCM Act, BUGT Act and SBC Act', amendments to the *Agents Financial Administration Act 2014* were therefore not included in the Bill. [187]

Committee comment

The committee notes concerns raised by submitters regarding the release of deposits under an 'off the plan' contract. The committee also notes the response by DJAG in relation to these concerns and is pleased that statutory notes and an example have been added to the BCCM Act to provide clarity and reduce uncertainty around the release of deposits.

However, the committee is of the view that statutory amendments to legislation, although drafted with the best intention, can sometimes lead to ambiguity and unintended consequences, and therefore recommend the Queensland Government conduct a review of all proposed amendments within 24 months of the commencement of the Bill to determine any unintended consequences that may have arisen and address these unintended consequences as required.

Recommendation 8

The committee recommends that the Queensland Government conduct a review within 24 months of the commencement of the Bill to determine and address any unintended consequences that may have arisen by the proposed amendments.

2.9 Outside scope of Bill

Although outside the scope of the Bill, REIQ raised concerns regarding the Minimum Housing Standards prescribed by the RTRA Act which came into effect on 1 September 2023.[188]

According to Department of Housing, the prescribed Minimum Housing Standards will apply to new leases entered into from 1 September 2023 and will apply to all tenancies from 1 September 2024. The Minimum Housing Standards include requiring:

- the premises to be weatherproof and structurally sound
- fixtures and fittings to be in good repair and not likely to cause injury to a person
- locks on windows and doors
- the premises to be free of vermin, damp and mould
- privacy coverings
- adequate plumbing and drainage
- functioning kitchen and laundry facilities (where supplied).[189]

REIQ submits that, if the above requirements are not met, 'a tenant can seek a repair order against the lessor which may include an order that the lessor pay compensation to the tenant, abate rent until the repair order is carried out, and require that the premises are not let until the requisite repairs are

187 DJAG, correspondence, 15 September 2023, attachment 2, p 17.

188 REIQ, submission 47, p 17.

189 Queensland Government, Department of Housing, *Rental law reform,* www.housing.qld.gov.au/about/initiatives/rental-law-reform.

carried out'. Further, if the repairs are classified as 'emergency repairs'[190] the tenant may be entitled to arrange for the repairs to be rectified, up to a maximum value of 4 weeks' rent.[191] REIQ raises concerns that where the particular housing standard relates to part of the lot or property that is the responsibility of the body corporate rather than the individual owner (for example suitable plumbing and drainage to the premises), the 'lot owner may suffer financial consequences and loss for a matter that is not within their control'. [192]

Although recognising this as outside the scope of the Bill, DJAG noted the 'body corporate obligations under the BCCM Act include maintaining common property' and if a body corporate 'is not meeting its obligations, the owner of a lot may seek dispute resolution under the BCCM Act'. [193]

Committee comment

The committee notes concerns raised by REIQ regarding the interaction of the RTRA Act and the BCCM Act for owners who are leasing their premises. The committee also notes DJAG's advice that bodies corporate have obligations under the BCCM Act to maintain common property.

However, the committee is of the view that there may still be some uncertainty as to the interaction between the two Acts for owners and tenants in a community titles scheme and the effect this will have on both the owner when unable to control repairs and the tenant in undertaking emergency repairs.

To ensure both owners and tenants in a community titles scheme are protected and informed, the committee recommends the Queensland Government review the interaction between the BCCM Act and the prescribe Minimum Housing Standards to clarify the effect and impact of the housing standards on owners within committee title schemes.

Recommendation 9

The committee recommends that the Queensland Government in conjunction with organisations such as REIQ review the interaction between the *Body Corporate and Community Management Act 1997* and the Minimum Housing Standards, as prescribed by the *Residential Tenancies and Rooming Accommodation Act 2008*, in the particular with respect to how these reforms impact on owners in a community titles scheme.

190 According to the Residential Tenancies Authority, emergency repairs include a serious roof leak, gas leak, a fault or damage that makes the premises unsafe or insecure (this includes smoke alarms), a serious fault in a staircase, lift or other common area of the premises that unduly inconveniences a tenant in gaining access to or using the premises. See Residential Tenancies Authority, *Emergency repairs,* www.rta.qld.gov.au/during-a-tenancy/maintenance-and-repairs/emergency-repairs.

191 REIQ, submission 47, p 18.

192 REIQ, submission 47, p 18.

193 DJAG, correspondence, 6 September 2023, attachment 1, p 43.

Appendix A – Submitters

Sub #	Submitter
1	Name Withheld
2	Name Withheld
3	Michael Werts
4	Name Withheld
5	Ed Borton
6	George Galea
7	Name Withheld
8	Mike Myerson
9	Name Withheld
10	John Daly
11	Name Withheld
12	Name Withheld
13	Australian Resident Accommodation Managers' Association
14	Name Withheld
15	Name Withheld
16	Name Withheld
17	Gary Timuss
18	Owen Thorley
19	Richard and Julia Szabo
20	Graeme and Barbara Hughes
21	Name Withheld
22	HWL Ebsworth
23	Peter Conway
24	Solutions IE
25	Body Corporate Law Queensland
26	Committee of Mariner Court Body Corporate
27	David and Lia Hutley
28	Name Withheld
29	Name Withheld
30	John Yesberg
31	Royalie Walters
32	Name Withheld
33	Name Withheld

34	Sandra St Ledger
35	Ross and Beverley Robinson
36	Local Government Association Queensland
37	Name Withheld
38	Norman Locke
39	Strata Assist Queensland
40	Aria Property Group
41	Property Council of Australia Queensland
42	Name Withheld
43	Lung Foundation Australia
44	Urban Development Institute of Australia Queensland
45	Town Planning Alliance
46	Strata Solve
47	Real Estate Institute of Queensland
48	Townsville Lot Owners Group
49	KBW Community Management
50	Frank Fischl
51	Fred Douglas
52	Confidential
53	Name Withheld
54	Name Withheld
55	Confidential
56	Name Withheld
57	Planning Institute Australia
58	Name Withheld
59	Toni Leigh
60	Housing Industry Association
61	Name Withheld
62	The Main Beach Association
63	Martyn Tiller
64	Bardi Hudson
65	Jon Campbell
66	Amanda Sippel
67	Confidential
68	Strata Community Association

69	Strata Search Agents Association Queensland
70	Robyn Aydon
71	Garth McNeil
72	Name Withheld
73	Confidential
74	Community Alliance Association
75	Robert Cartledge
76	Name Withheld
77	Confidential
78	Confidential
79	Holmes Strata Reports
80	Lucinda Doughty
81	Name Withheld
82	Name Withheld
83	Name Withheld
84	Jan McDonald
85	Ralan Purchasers Rights Alliance
86	Australian Property Management Alliance
87	Property Owners Association of Queensland
88	Name Withheld
89	Unit Owners Association Queensland
90	Queensland Law Society
91	Name Withheld
92	Jon Low
93	Australian Apartment Advocacy
94	Andrew Christie
95	Mark McAvoy

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- David McKarzel, Executive Director, Office of Regulatory Policy
- David Reardon, Director, Office of Regulatory Policy
- Nina Starling, Director, Office of Regulatory Policy
- Belinda Guinea, Manager, Office of Regulatory Policy
- Sarah Garvey, Manager, Office of Regulatory Policy

Appendix C – Witnesses at public hearing

Queensland Law Society

- Matthew Raven, Chair of QLS Property and Development Law Committee
- Wendy Devine, QLS Principal Policy Solicitor

Urban Development Institute of Australia Queensland

- Martin Zaltron, Manager of Policy
- Matthew Derrick, Property Law Committee Member

Strata Community Association

- Laura Bos, General Manager
- Jessica Cannon, Advocacy Director
- Kristian Marlow, Policy and Media Officer

Strata Search Agents Association Qld

- Jessica Haddley, President

REIQ

- Antonia Mercorella, Chief Executive Officer
- Katrina Beavon, General Counsel

Richard Fox

Unit Owners Association

- Mike Murray, President
- Wayne Stevens, Vice-president

Main Beach Association (via videoconference)

- Deborah Kelly

Strata Solve (via videoconference)

- Chris Irons, Director

Solutions In Engineering (via videoconference)

- Dakota Panetta, National Sales Executive & Product Development Manager

George Galea (via videoconference)

Appendix D – Statements of Reservation

Statement of Reservation

The Opposition Members support action to relieve the current Housing crisis and ensure more Queenslanders can find security in their home. However, we believe this Bill has not allowed for adequate public scrutiny and hold concerns it does not meet its policy intent.

The Bill was introduced on 24 August 2023, and submissions closed on 2 September 2023. With just over six business days provided, it did not allow sufficient time for the complexity and significance to be weighed. The Opposition was contacted by several stakeholders who found this inappropriate and notes the submission from Queensland Law Society stating the short turnaround, "*highlights the risks of errors in legislation which is passed without adequate time for public scrutiny."*

The pattern of little consultation the Government continues to demonstrate does not allow for Queenslanders to have their say. A lack of consultation should not be a way for the Government to alleviate the pressures of various crises they are facing.

The changes to the termination of community titles schemes are significant, as it allows an individual lot owner to be forced to sell their home against their will to allow the scheme to be terminated if 75% of the owners in their community titles scheme agree and economic unviability is established. In the current climate, this could lead to residents being unable to find alternative affordable housing, in their community, and rendered homeless. There were many submissions from unit owners deeply concerned for the future of their homes should this aspect of the Bill be passed. Not only are they facing the possibility of losing their homes and communities, but some have expressed concerns about the unintended consequences of heightened levels of bullying. Unit Owners Association Queensland shared results from a 2021 survey of 1,850 owners and found 60% had witnessed or been subject to bullying and harassment in their strata community. The short turnaround time for this bill has not allowed for enough consideration of the impacts of these changes and whether the legislation provides enough protections for owners.

Concerningly, even the Department of Justice and Attorney-General does not seem to have had adequate time to measure the reach of these changes. When questioned, the Department could not provide how many schemes could be impacted, answering: *"I think it is fair to say that we have not done any formal modelling on how many schemes this could potentially impact*."

The key action precipitating this change from the 2022 Housing Summit was to *reform body corporate legislation to allow for terminating uneconomical community titles schemes to facilitate renewal and redevelopment having regard to the New South Wales approach.* However, multiple submitters, from both sides of this debate, have strongly argued that the clause, as it stands, will not alleviate the current crisis and does not deliver this policy intent.

Much like the bombshell documents that exposed how another Palaszczuk Government signature housing solution from the Housing Summit, to convert derelict accommodation at Griffith University into emergency housing, was nothing more than a last-minute media announcement that cost Queenslanders at least $2 million and delivered nothing but false hope, Opposition members are concerned that this is another rushed change from an under-pressure Premier, rather than genuine solutions to fix the Queensland Housing Crisis.

Queenslanders might rightly question the actions that have come out of the Palaszczuk Government's Housing Summit, which do not seem to stack-up and appear to be more about the Government announcing their way out of a media crisis rather than delivering genuine solutions to the Queensland Housing Crisis. However, the inadequate time allocated to the consideration of this action in its current form in this Bill severely limit thorough and robust examination and questioning of these actions.

The Government ought to give due process to allow for the thorough investigation and discussion of these matters to ensure it helps, rather than hinders, more Queenslanders get into secure housing. While the Opposition Members appreciate these changes are based on the QUT Property Law Review, given the final report was given to the Government on these matters six years ago, the general public ought to have had more than six days to consider whether the final form of these changes are appropriate.

Queensland is in the grips of a Housing Crisis, with nearly 40,000 Queenslanders now waiting on the Social Housing Waiting List. Despite making grand announcements, the Palaszczuk Government never delivers on its promises to house the vulnerable. After boasting about building 4,300 social homes since it came to office, a Productivity Commission Report revealed only 1,400 homes have been added to the Social Housing portfolio. The Palaszczuk Government says it has the state's largest concentrated investment in social housing. Yet, a Productivity Commission report found that for the past two years, the Palaszczuk Government has spent the least on social housing per capita compared to any other state or territory.

The tight markets across Queensland are compounded by poor planning and foresight on the Government's behalf when it comes to the approval of new residential dwellings in Queensland. Residential lot approvals decreased across the state by close to 40% between 2014/15 and 2019/20.

Rushing through this Bill will not alleviate the Housing Crisis. We need a stable government rather than this Palaszczuk Government that bounces from one crisis to another while Queenslanders suffer. Queensland deserves better.

Laura Gerber MP
Member for Currumbin
Deputy Chair

Jon Krause MP
Member for Scenic Rim

Sandy Bolton MP

Member for Noosa

Report No. 56, 57th Parliament — Body Corporate and Community Management and Other Legislation Amendment Bill 2023

Statement of Reservation **Sandy Bolton MP Member for Noosa**

This Statement of Reservation is to reflect the following concerns that have been raised by submitters and not addressed within Report No 56 of the 57th Parliament Legal Affairs and Safety Committee regarding the Body Corporate and Community Management and Other Legislation Amendment Bill 2023.

Primarily, issues raised around the termination provisions and impacts to residents, as well as the time frames provided for consultation, were reflected in both the feedback by submitters, and the volume of late submissions that even though accepted, could not be appropriately considered.

Of equal concern is that as noted by the Unit Owners Association QLD (UOAQ) there is insufficient representation on the Community Titles Legislation Working Group (CTL) by representatives of unit owner groups, and I ask that consideration be given to extend the current numbers on the group as a number of Committee recommendations within the report are referred to them.

That committee members had limited time to assess the final report was again insufficient, especially when information coming in from NSW regarding the failings in their amendments relating to termination provisions were not able to be appropriately assessed as to whether similar issues would or could arise from these amendments.

Lastly, that we were not provided sufficient data as to what these termination provisions will realistically achieve in efforts to increase housing diversity, understandably requires a consideration of decreasing the review timeframes within Recommendation 7 and 8.

Thank you to all who submitted, as well attended the public hearings. Both clearly articulated the concerns in what is a complex arena involving many legalities, and in which understandably has created angst for many unit owners in community title schemes across Queensland.

SANDY BOLTON MP
Member for Noosa

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