

LEGAL AFFAIRS AND SAFETY COMMITTEE

Report No. 56, 57th Parliament

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

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 24 August 2023, the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (Bill) was introduced into the Legislative Assembly.

The objectives of the Bill are to:

1. deliver a key action of the 2022 Queensland Housing Summit by reforming the *Body Corporate and Community Management Act 1997* (BCCM Act) to allow for termination of uneconomic community titles schemes to facilitate renewal and redevelopment;
2. 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;
3. modernise and improve the operation of the BCCM Act in relation to by-laws and other governance issues, including administrative and procedural matters;
4. strengthen buyer protections under the *Land Sales Act 1984* (Land Sales Act) by limiting when sunset clauses can be used to terminate 'off the plan' contracts for the sale of land; and
5. make minor amendments to confirm the policy intent of existing provisions of the BCCM Act, *Building Units and Group Titles Act 1980* (BUGT Act), *Land Sales Act*, and *South Bank Corporation Act 1989* (South Bank Act) (collectively referred to as the relevant Acts) 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 (BCCM Act, BUGT Act, and South Bank Act).

After introduction, the Bill was referred to the Legal Affairs and Safety Committee (Committee) for consideration. On 6 October 2023, the Committee tabled its report (No. 56, 57th Parliament) on the Bill.

The Queensland Government response to the recommendations made by the Committee is provided below.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1 –

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

Queensland Government response:

The Government thanks the Committee for its consideration of the Bill and notes the Committee's recommendation that the Bill be passed.

Recommendation 2 –

The committee recommends that the Queensland Government develop an education campaign with the Community Titles Legislation Working Group (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.

Queensland Government response:

The Queensland Government supports this recommendation.

As the Committee may be aware, the Office of the Commissioner for Body Corporate and Community Management (BCCM Office) provides an information service under the BCCM Act. The BCCM Office offers and maintains a range of information resources on its website, including online training programs and 'webinars', as well as providing a telephone and email enquiry service and preparing a regular newsletter called 'Common Ground'.

The BCCM Office will be updating its resources and providing updates to the sector about the reforms, including the termination of community titles schemes reforms, as part of the implementation of the Bill.

Owners, body corporate committee members and any other interested persons who would like to obtain direct updates and information from the BCCM Office can subscribe to the 'Common Ground' newsletter.

As part of the implementation of the Bill, the Department of Justice and Attorney-General also proposes to seek the advice and guidance of the Department of Transport and Main Roads to prepare information resources that are targeted to improving the understanding in the general community and the community titles sector about the rights of a body corporate to tow vehicles.

The Department of Justice and Attorney-General also proposes to engage with key stakeholder groups for the community titles sector, such as those involved with the CTL Working Group, regarding educating their members about the reforms and to encourage their membership to share BCCM Office resources with their members.

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.

Queensland Government response:

The Queensland Government supports this recommendation in principle.

Clause 10 amends section 167 of the BCCM Act, which currently requires owners and occupiers to refrain from using their lot or the common property in a way that causes a nuisance or hazard, or unreasonably interferes with the use and enjoyment of another lot or the common property.

The amendment provides that a lot occupier contravenes section 167 if they regularly use, or regularly permit an invitee to use, a smoking product on the lot or common property, and the occupier of another lot or their invitee, or a person who is lawfully on the common property, is regularly exposed to the smoke or emission from the smoking product.

‘Regular’ will have its ordinary, everyday meaning.

It is appreciated that some stakeholders would like a definitive definition of what constitutes ‘regular’ smoking.

The policy intent behind the amendments is to capture regular or frequent exposure to smoke, and drafting advice regarding the necessary amendments to give effect to this policy intent was sought.

The amendments are intended to cover a wide range of possible circumstances in which the impacts of second-hand smoke on other residents are repeated and ongoing. Given this, it is not proposed to provide *statutory* guidance, such as statutory notes or examples in the legislation (for example, the number of times a smoking product is smoked a day or a week), as this may be too restrictive and not suit the wide range of circumstances in community titles schemes. Such inclusions could also lead to arguments about the precision of claims made about a specific number smoking instances, which might frustrate attempts to resolve disputes.

However, there will be more *general* guidance and information published regarding the Bill’s reforms, including changes relating to smoking, by the BCCM Office as part of the implementation of the Bill.

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.

Queensland Government response:

The Queensland Government does not directly support this recommendation.

The provisions in the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) for the approval of tenant requests to keep pets were considered during the development of the relevant Bill that implemented those amendments.

A landlord is required to respond to a tenant's pet request within a 14-day period under the RTRA Act.

Community titles schemes involve joint decision-making through a body corporate or its committee. The processes for making decisions in a body corporate do not enable the 14-day timeframe to be adopted for the body corporate approval of a request to keep a pet.

The interaction between the relevant Acts regarding timeframes for requests to keep pets from a tenant is clear. The RTRA Act clearly states that an authorisation to keep a pet or animal is subject to body corporate by-laws. Therefore, even if a landlord of a property included in a community titles scheme approved the keeping of an animal under a lease, the tenant would also need to obtain the body corporate's approval if this is a requirement under body corporate by-laws.

However, the Government is ensuring that comprehensive information resources, both written and video form, are available from the Residential Tenancies Authority and the BCCM Office to provide guidance to landlords and tenants about the processes relating to approval to keep an animal in a property included in a community titles scheme, including that body corporate approval processes may take longer than the 14-day timeframe for a landlord to respond to a tenant's pet request.

This information can be accessed at:

- <https://www.rta.qld.gov.au/during-a-tenancy/living-in-the-property/renting-with-pets> and
- <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/legislation-and-bccm/renting-body-corporate>.

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.

Queensland Government response:

The Queensland Government supports this recommendation.

The Department of Justice and Attorney-General proposes to seek the advice and guidance of the Department of Transport and Main Roads to prepare information resources that are targeted at improving the understanding in the general

community and the community titles sector about the rights of a body corporate to tow vehicles.

The Department of Justice and Attorney-General also proposes to engage with key stakeholder groups for the community titles sector, such as those involved with the CTL Working Group, regarding disseminating relevant resources to their members.

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.

Queensland Government response:

The Queensland Government supports this recommendation in principle.

Four new regulation modules under the BCCM Act and amendments to another regulation module commenced on 1 March 2021 after a comprehensive review and public consultation on the draft regulation modules.

The Government will consider the prescribed fees for obtaining electronic copies of body corporate records when next reviewing the regulation modules.

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.

Queensland Government response:

The Government supports this recommendation in principle.

As announced, a review will commence one to two years after the sunset clause amendments have commenced. This timeframe will enable an assessment of the property market response to the amendments.

It is anticipated the review will consider a number of matters, including the effectiveness of the amendments in addressing the issues being experienced by consumers in relation to the use of sunset clauses, property market conditions following the introduction of the amendments, and whether further reforms are required to protect people buying proposed community titles and similar lots 'off the plan'. It is also anticipated the review will include consultation with peak stakeholders with an interest in this issue.

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.

Queensland Government response:

The Queensland Government supports this recommendation in principle.

The 'release of deposit' amendments are minor clarifying amendments (in the form of statutory notes and an example) to confirm the policy intent of existing provisions of relevant Acts.

These amendments will be monitored as part of the general policy responsibilities of the Attorney-General's portfolio and if necessary, further amendments will be considered.

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 the how these reforms impact on owners in a community titles scheme.

Queensland Government response:

The Queensland Government does not directly support this recommendation.

A community titles scheme includes individual lots as well as common property that is jointly owned by the owners of all lots in a scheme. There is therefore a need for rules around the maintenance of property in the scheme.

The body corporate has a responsibility to maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition. A body corporate is also responsible for maintaining other parts of a building if it is created under a building format plan.

For landlords whose property is in a community titles scheme, a particular minimum housing standard may relate to part of the landlord's property or common property that the body corporate is responsible for maintaining.

If the body corporate is responsible for maintaining property, owners and tenants may ask the body corporate to undertake the maintenance. If a body corporate does not meet its maintenance obligations, the owner or tenant may seek dispute resolution under the BCCM Act.

The new minimum housing standards came into effect on 1 September 2023 for new tenancies and will come into effect on 1 September 2024 for existing tenancies. Accordingly, the Government does not currently support the

committee's recommendation to formally review the minimum housing standards as they relate to owners of lots in a community titles scheme.

The Government will however closely monitor the operation of the minimum housing standards in relation to community titles schemes.

The Government has also ensured the BCCM Office and the Residential Tenancies Authority have jointly implemented an information and education campaign about the minimum housing standards and how they impact on owners in community titles schemes, which has been delivered through both organisations. The campaign has included a webinar, videos, website content and newsletters.

The Government appreciates that some stakeholders have concerns that landlords may need to rely on bodies corporate to ensure that their property meets minimum housing standards. However, property ownership in a community titles scheme can be complex. Accordingly, a key message of the information campaign is that owners and bodies corporate need to proactively work together to ensure that the minimum housing standards are met, and that there is a need to adopt a proactive approach to property maintenance as body corporate decisions take time.

Queensland Legislative Assembly

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26 OCT 2023

Tabled

By Leave

MP: Hon. Y. D'ATH

Clerk's Signature: 