



Building Units and Group Titles and Other Legislation Amendment Bill 2022

**Report No. 30, 57th Parliament
Legal Affairs and Safety Committee
August 2022**

Legal Affairs and Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mrs Laura Gerber MP, Member for Currumbin
Members	Ms Sandy Bolton MP, Member for Noosa
	Ms Jonty Bush MP, Member for Cooper
	Mr Jon Krause MP, Member for Scenic Rim
	Mr Jason Hunt MP, Member for Caloundra

Committee Secretariat

Telephone	+61 7 3553 6641
Email	lasc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/LASC

Acknowledgements

The committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

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

Contents

Abbreviations	ii
Chair’s foreword	iii
Recommendations	iv
1 Introduction	1
1.1 Role of the committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Bill	2
1.4 Government consultation on the Bill	2
1.5 Should the Bill be passed?	3
2 Examination of the Bill	4
2.1 History of Queensland’s body corporate legislative schemes	4
2.2 The impetus for the Bill	5
2.3 Amendments proposed by the Bill	6
2.4 Issues raised in submissions	9
2.4.1 Issues raised that were outside the scope of the Bill	11
3 Compliance with the <i>Legislative Standards Act 1992</i>	12
3.1 Fundamental legislative principles	12
3.1.1 Rights and liberties of individuals	12
3.1.2 General rights and liberties of individuals – right to privacy and confidentiality	13
3.1.3 Administrative power and natural justice	14
3.1.4 General rights and liberties of individuals – penalties	15
3.2 Explanatory notes	16
4 Compliance with the <i>Human Rights Act 2019</i>	17
4.1 Human rights compatibility	17
4.1.1 Freedom of association (HRA s 22)	17
4.1.2 Right to privacy (HRA s 25)	19
4.1.3 Right to property (HRA s 24)	20
4.2 Statement of compatibility	22
Appendix A – Submitters	23
Appendix B – Officials at public departmental briefing	24
Appendix C – Witnesses at public hearing	25
Statement of Reservation	26

Abbreviations

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
Bill	Building Units and Group Titles and Other Legislation Amendment Bill 2022
BC	Body corporate
BCCM	<i>Body Corporate and Community Management Act 1997</i>
BCCM Legislation	<i>Body Corporate and Community Management Act 1997</i> and its regulations
BUGT Act/BUGTA	<i>Buildings Units and Group Titles Act 1980</i>
committee	Legal Affairs and Safety Committee
DJAG / the department	Department of Justice and Attorney General
FTA	<i>Fair Trading Act 1989</i>
HRA	<i>Human Rights Act 2019</i>
LSA	<i>Legislative Standards Act 1992</i>
MUD Act/MUDA	<i>Mixed Use Development Act 1993</i>
OFT	Queensland Office of Fair Trading
QUT	Queensland University of Technology

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Building Units and Group Titles and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider 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*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and officers from the Department of Justice and Attorney-General.

I commend this report to the House.



Mr Peter Russo MP

Chair

Recommendations

Recommendation 1

3

The committee recommends that the Building Units and Group Titles and Other Legislation Amendment Bill 2022 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019*
- for subordinate legislation – its lawfulness.²

The Building Units and Group Titles and Other Legislation Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly and referred to the committee on 21 June 2022. The committee is to report to the Legislative Assembly by 12 August 2022.

1.2 Inquiry process

On 28 June 2022, the committee invited stakeholders and subscribers to make written submissions on the Bill. Fifteen submissions were received.

The committee received a public briefing about the Bill from the Department of Justice and Attorney-General (DJAG/the department) on 11 July 2022. A transcript is published on the committee's web page; see Appendix B for a list of officials.

The committee received written advice from the department in response to matters raised in submissions. The departmental response to submissions noted that in some instances, stakeholders have raised issues and concerns outside the scope of the Bill, for which a departmental response was not provided in relation to the substance of those matters.

The committee held a public hearing on 22 July 2022 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

1.3 Policy objectives of the Bill

The main reform objective of the Bill is to fix identified deficiencies in the *Building Units and Group Titles Act 1980* (BUGTA) and the *Mixed Use Development Act 1993* (MUDA) to make body corporate (BC) governance fairer for proprietors. Advice from the department is that the Bill:

... does so in a manner that is largely based on provisions of the BCCM legislation, but it does not attempt to broadly harmonise the BUGT Act and MUD Act (or other specified Acts) with the BCCM legislation. Many stakeholders would support such harmonisation of the Acts. As part of a review of property law, QUT [Queensland University of Technology] made high-level recommendations about harmonising the BUGT Act and BCCM Act, including to the extent necessary, the specified Acts. However, substantial additional policy and legislative work would be required to develop those recommendations into concrete legislative reforms.³

1.4 Government consultation on the Bill

As advised by the department:

While the amendments contained in the Bill are generic and not intended to be a direct intervention in disputes arising at Couran Cove, consideration has been given to representations of Couran Cove proprietors about what they perceive as the deficiencies in the MUD Act and BUGT Act that adversely impact on fair and transparent body corporate governance in relevant developments and which result in detriment to proprietors.

Targeted consultation with members of the Community Titles Legislation Working Group (CTLWG) (which includes peak bodies such as Strata Community Australia, Queensland Law Society, and Australian College of Strata Lawyers) was conducted to assist the development of measures included in the Bill. Modifications were made to several measures in response to feedback provided.

An exposure draft of the Bill was released on 29 April 2022 for three weeks of public consultation, with 31 submissions received in response. Most submitters viewed the MUD Act and BUGT Act as generally in need of reform and supported most amendments proposed. While there were calls for broader and additional reforms to the MUD Act and BUGT Act (and other specified Acts), these were not practical to incorporate given the relative urgency of the Bill's objectives.

Feedback prompted the redevelopment of several measures to avoid unintended consequences – including ensuring that tighter committee eligibility rules extending debtor restrictions to associates would not apply to personal or family relationships, as well as including additional safeguards for the use of certain offset arrangements, and by balancing a significant expansion of scope for proprietors to make dispute resolution applications with a power for referees to order moderate costs (up to \$2,000), where an application is vexatious, frivolous, misconceived or without substance.

As part of consultation feedback, a commercial interest at Couran Cove (an owner of multiple developed and undeveloped lots) claimed the measures in the Bill only address 'one side' of concerns underlying various disputes at Couran Cove. The same submission also raised concerns about the continuity of utility services provision on the basis that changes to committee eligibility would remove the utility service provider's capacity to protect their own interests through membership of the executive committee for the 'highest-level' community body corporate.

It is not the role of committee governance to protect specific commercial interests - that type of role would be definitive of a conflict of interest. A committee is established to serve the interests of the body corporate and its proprietors. While an ongoing potential risk of cessation of utility services must be acknowledged, it must also be recognised that this has been a risk at Couran Cove for some time.

³ Departmental briefing note, p 6.

In that respect, the potential future risks regarding utility services at Couran Cove arguably do not justify refraining from making broader improvements to the MUD Act and BUGT Act in the interests of making body corporate governance fairer and more transparent in relevant developments.

There has been no specific consultation on the Fair Trading Act gift card infringement notice amendments. However, a national consultation process was undertaken in 2018 on the gift card requirements in the ACL, and the Fair Trading Act amendments are consequential to these requirements.⁴

In respect of pursuing avenues for further reform, the departmental response to submissions noted:

The Government has established a Community Titles Legislation Working Group (CTLWG) to provide advice on key community titles-related issues. The CTLWG includes representatives of peak stakeholder bodies and is chaired by the Deputy-Director General, Liquor, Gaming and Fair Trading, DJAG. The topics being considered by the CTLWG include by-laws, debt recovery, seller disclosure, regulation of body corporate managers, management rights, residential amenity, bullying and harassment, and termination of community titles schemes. As a future stage of work the CTLWG will also consider options for further harmonising the BUGTA (and related legislation) and the *Body Corporate and Community Management Act 1997* (BCCM Act).⁵

The committee also observed that stakeholders raised the issue of BC's needing the ability to recover costs expended in recouping outstanding BC levies/contributions, via legal action. The committee notes that this is one of the topics being considered by the CTLWG.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

The committee recommends that the Building Units and Group Titles and Other Legislation Amendment Bill 2022 be passed.

Recommendation 1

The committee recommends that the Building Units and Group Titles and Other Legislation Amendment Bill 2022 be passed.

⁴ Departmental briefing note, pp 5-6.

⁵ Departmental response to submissions, p 1.

2 Examination of the Bill

This section discusses the committee's examination of the Bill.

2.1 History of Queensland's body corporate legislative schemes

Body corporate (BC) legislative schemes in Queensland, the history:

- prior to commencement of the *Body Corporate and Community Management Act 1997* (BCCM Act), complex multi-layer BC-based developments and resorts were established under special planning laws ('specified Acts') such as the *Mixed Use Development Act 1993* (MUDA) in combination with the *Building Units and Group Titles Act 1980* (BUGTA)
- simple single-layer developments originally established under BUGTA transitioned to the BCCM Act on its commencement and have since benefited from further protections for lot owners (e.g. unit owners) that aim to secure transparent and fair BC governance
- the BCCM Act currently applies to most of Queensland's BC based developments
- the proprietors of multi-layer schemes under MUDA (and other specified Acts) have generally not benefited from those original (or subsequent) BCCM Act improvements
- on reviewing property laws for the Government, QUT's Commercial and Property Law Research Centre recommended increased harmonisation of BUGTA with BCCM Act
- In addition issues arising at Couran Cove Island Resort (CCIR), a multi-layer development under BUGTA and MUDA highlighted significant deficiencies in those Acts in respect of ensuring fair and transparent BC governance and the availability of remedies when it is not. The CCIR concerns highlight that the Acts do not always adequately address issues such as:
 - conflicts of interest that influence BC decision making
 - frequent and costly disputes and court proceedings
 - corporate interests owing large debts to subsidiary (i.e. lower-level) BC, thus preventing, under debtor voting prohibitions, the subsidiary from participating in governance decisions made by the overarching 'parent' (i.e. higher-level) BC
 - disruptions to privately provided utility services
 - problems accessing government services and assistance for BUGTA or MUDA issues.

As the department advised at the public briefing for the Bill:

Most of the community titles scheme developments in Queensland are governed by the *Body Corporate and Community Management Act 1997*, which I will refer to as the body corporate act. That is not to say that this type of development did not exist prior to 1997. Indeed, since the 1960s Queensland has had legislation allowing for the subdivision of land into individually owned freehold lots and common property. The predecessor to the body corporate act was BUGTA. While BUGTA allowed for the subdivision of land using building units and group titles plans of subdivision, unlike the body corporate act it did not effectively facilitate complex, multilayered developments. As a result, several complex, multilayered developments were established prior to the body corporate act using a combination of specialist planning legislation and BUGTA. The specialist planning laws that I refer to are also known as specified acts and include the *MUD Act*, the *Integrated Resort Development Act 1987* and the *Sanctuary Cove Resort Act 1985*.

Governance of basic bodies corporate established under BUGTA transitioned to the body corporate act upon its commencement of 1997. However, those complex developments established under a combination of the specified acts and BUGTA did not transition to the body corporate act. Retention of the specified acts and BUGTA for those complex developments was, at least in part, due to concerns that integrating and transitioning these specialised planning, titling and structural elements of the existing specified act developments into the body corporate act carried a lot of complexity and risk, particularly given that many of the relevant developments were being undertaken in stages that were not yet complete. This essentially means that there are a number of complex, multilayered community title developments in Queensland, including some mixed-use schemes—that is, a mix of commercial and residential use—that continue to operate under the relevant specified act creating the development and BUGTA.

An example of a development which is under the MUD Act and BUGTA is Couran Cove Island Resort on South Stradbroke Island. Couran Cove has a layered arrangement of bodies corporate which includes an overarching community body corporate along with four subsidiary bodies corporate that have been established for parts of that site that have been further subdivided. The members of the community body corporate are the four subsidiary bodies corporate along with owners of two other lots within the site that have not been further subdivided. The members of the subsidiary bodies corporate are the proprietors or the unit owners of the lots within the subsidiary subdivisions. These include residents as well as small investors.⁶

2.2 The impetus for the Bill

At the committee's public briefing for the Bill, the department advised:

There are several important drivers for this bill. Stakeholders are concerned that BUGTA has not kept pace with the modern body corporate act and, as a result, proprietors and BUGTA developments do not enjoy the same protections as unit owners in the body corporate schemes. The government has received representations from some proprietors at Couran Cove about a range of issues impacting on that development. These issues and concerns have further highlighted the substantial discrepancies between BUGTA and the body corporate act in terms of body corporate governance arrangements and the protections for proprietors.

This bill is not designed to be a direct intervention in the various disputes at Couran Cove; however, it is the case that regard has been had to the concerns and issues arising at Couran Cove in terms of identifying deficiencies in the MUD Act and BUGTA, particularly when you compare it to the body corporate legislation. These issues and concerns have also been considered in identifying and developing the potential improvements to the legislation contained in the bill.

Many of the amendments contained in the bill are based on existing provisions of the body corporate act and will go some way to ensuring that unit owners benefit from similar governance arrangements and protections, regardless of whether their body corporate is subject to the body corporate act or BUGTA. I do note that in some cases the amendments contained in the bill go further than the body corporate act, and this is to reflect the nature of those complex schemes operating under the MUD Act and BUGTA.⁷

⁶ DJAG, public briefing, 11 July 2022, pp 1-2.

⁷ DJAG, public briefing, 11 July 2022, p 2.

2.3 Amendments proposed by the Bill

In summary, the Bill:

- proposes amendments, in many cases modelled on existing BCCM provisions, to address the identified deficiencies of BUGTA and MUDA to increase transparency and fairness of BC governance for proprietors (e.g. unit owners) in relevant developments
- includes **unique measures**, not in BCCM legislation, and expands the scope of how particular measures adopted from BCCM legislation are applied by BUGTA and MUDA amendments
- provides for new **information and education services**, comparable to those provided for BCCM schemes, to assist proprietors in BUGTA governed developments
- facilitates BC **access to dispute resolution services** by relaxing the current requirements. Currently, a BC cannot commence proceedings against a person (other than a proprietor) without first obtaining BC approval by special resolution. The Bill relaxes the special resolution requirement in relation to applications for a referee's order under BUGTA's dispute resolution provisions. This change will make it easier, for example, for a subsidiary BC to seek referee's orders to resolve a dispute it is having with a community BC
- provides **greater flexibility for dispute referees** by stipulating that, although they must observe natural justice, they must act with as little formality and technicality as possible, and not be bound by the rules of evidence, similar to the existing rules for BCs and adjudicators under BCCM legislation
- expressly requires community and precinct BCs and executive committees (under MUDA) and subsidiary BCs and committees (under BUGTA) to **act reasonably** when executing their functions, including making/not making a decision (similar to the BCCM legislation)
- (for 'higher-level' BCs under MUDA) where a BC under MUDA enters into an agreement for the provision of amenities or services (including to a subsidiary BC and its proprietors), and it is an essential utility service (water, gas, electricity, sewage), the BC must take all **reasonable steps to ensure continuity** of the amenity or service⁸
- enhances the eligibility requirements for a nominee representing a subsidiary BC on a 'higher-level' BC (of which the subsidiary is a member) to ensure **nominee suitability**. Under the Bill, a nominee must be a member of the executive committee (for a precinct BC under MUDA) or committee for the subsidiary (for a subsidiary BC under BUGTA), or the chairperson by default if no nominee is chosen, or a suitably authorised BC manager. This approach is largely based on the BCCM legislation (with some exceptions)
- strengthens provisions governing **debtors** and the composition of committees under BUGTA and executive committees under MUDA - service contractors, letting agents, BC managers, and persons owing a debt (along with prescribed 'associates' of those persons) will not be eligible for election to the committee, in recognition for the potential for related conflicts of interest to impact on the performance of their duties. These restrictions are based on the

⁸ The DJAG brief on the Bill advises that "This express measure is not based on the BCCM legislation; however, it responds to possible uncertainty under the MUD Act about obligations of a community (or precinct) body corporate regarding continuity of essential utility services it has entered into an agreement to provide (either by itself or through another person)."

BCCM legislation, but apply more broadly under the Bill so that a person's role or debt status in any body corporate within the greater development affects their eligibility. This recognises the complexity of MUDA and BUGTA developments and the reality that conflicts of interest associated with business or commercial interests may affect multiple BCs

- addresses potential **conflicts of interest** affecting committees by requiring (BUGTA scheme) committee members to both declare, and refrain from voting on, matters in which they have a conflict of interest;⁹ provides that a committee member (BUGTA) or executive committee member (MUDA) owing a debt to the BC is not entitled to vote on a motion before the committee; and committee (BUGTA) and executive committee (MUDA) members will be prohibited from receiving certain benefits from service contractors and letting agents without express BC approval¹⁰
- ensures contribution payments must be paid as monetary amounts unless a BC general meeting resolves to allow an **'offset' arrangement** where payments are satisfied by another form of fair value exchange. To safeguard minority owners, a proprietor who benefits from an offset arrangement is not entitled to vote on the resolution that approves it. This measure is unique to MUDA and BUGTA and developed in response to concerns from stakeholders about the operation of those Acts. The departmental brief notes that 'similar concerns about the use of offsets do not appear to be prevalent in community titles schemes under the BCCM Act at this time'¹¹
- contributes to improved financial management under BUGTA by specifically providing for **recovery of certain aged debts**¹²
- **preserves the voting rights of unfinancial subsidiaries** to participate in decision-making of community and precinct BCs where the subsidiary is unfinancial because the owners of undeveloped land in the subsidiary have failed to pay their contributions. This recognises that debts owed by undeveloped lot owners can disenfranchise subsidiary proprietors who pay *their* contributions, while, simultaneously, undeveloped lot owners may retain input into governance through associated entities and ownership of property in other parts of the development, despite them owing large debts¹³
- requires **prior notice of committee meetings** (BUGTA) and executive committee meetings (MUDA) be provided to committee members, proprietors and mortgagees; with minutes of those and general meetings to be provided to proprietors and mortgagees within 21 days¹⁴
- akin to the BCCMA, the Bill allows referees to order moderate costs (up to \$2,000) where a dispute resolution **application is frivolous, vexatious, misconceived or without substance**

⁹ This approach is based on the BCCM legislation and MUDA

¹⁰ These approaches are based on the BCCM legislation.

¹¹ DJAG briefing note, p 4.

¹² Being proprietor contributions outstanding for 2 years after the due date (plus the 30-day discount period that may be approved by a BC under BUGTA). A BC must commence recovery proceedings within 2 months. DJAG briefing note, p 4.

¹³ This measure is not based on BCCM legislation and is unique to MUDA. "The issue does not appear to be a prevalent concern for BCCM Act schemes at this time" DJAG briefing note, p 4.

¹⁴ These requirements are based on the BCCM legislation. DJAG briefing note, p 4.

- makes consequential minor amendments to the infringement notice regime under the Fair Trading Act (FTA) to ensure the Commissioner for Fair Trading/Office of Fair Trading (OFT) can issue infringement notices if there are reasonable grounds to believe that a gift card provision¹⁵ in the Australian Consumer Law (Cth) (ACL) has been contravened, consistent with the existing ability of the Australian Competition and Consumer Commission (ACCC) under the ACL. The Bill also aligns the FTA infringement notice penalty unit amounts with those prescribed for these offences in the *Competition and Consumer Act 2010* (Cth)¹⁶ to ensure OFT can issue equivalent infringement notice penalties for gift card offences as the ACCC¹⁷

The Bill's reforms were outlined by the department at the committee's public briefing:

... The bill amends BUGTA to facilitate government information and education services for proprietors in BUGTA related developments, consistent with those services already provided for lot owners under the body corporate legislation through the Office of the Commissioner for Body Corporate and Community Management. The bill also contains amendments to make it procedurally easier for bodies corporate to access dispute resolution services and to provide referees appointed under BUGTA with more flexibility and clarity in relation to how they go about resolving disputes. In terms of government services, I note that as part of the 2022-23 budget the government committed additional funding of \$2.5 million over three years for the Office of the Commissioner for Body Corporate and Community Management to implement the reforms in the bill.

The bill also includes amendments for improving body corporate committee governance, including: a requirement to act reasonably; provisions to prevent conflicts of interest by tightening up committee membership and committee voting eligibility; and provisions to ensure important information about body corporate governance activities is given to proprietors. The amendments support the financial viability of bodies corporate by placing restrictions around the use of inappropriate offset arrangements to satisfy levy contributions in place of monetary payments and by putting in place appropriate debt recovery time frames.

The amendments will also prevent proprietors in subsidiary schemes, especially resident lot owners, from being excluded from participation in community body corporate governance solely due to debts owed by owners of undeveloped lots in their subsidiary. The amendments will also ensure that where the community body corporate has arranged for the provision of essential utility services to proprietors they must take all reasonable steps to ensure the continuity of supply of those services; for example, by undertaking necessary repairs and maintenance as quickly as practicable. In combination, these measures

¹⁵ ACL gift card provisions prohibit post-purchase fees on gift cards, require cards to have a minimum 3 year expiry date and require a gift card's expiry date to be prominently displayed. DJAG briefing note, p 2.

¹⁶ 55 penalty units (pu) for a corporation (\$12,210) or 11 pu for an individual (\$2,442). DJAG briefing note, p 5.

¹⁷ The ACL is a national application law scheme providing a set of generic consumer protections. The ACL is applied as a Commonwealth law through the *Competition and Consumer Act 2010* (Cth), referred to as the ACL (Commonwealth), and as a law of Queensland through the Fair Trading Act, referred to as the ACL (Queensland). In Queensland, the ACL is jointly administered and enforced by the Queensland Office of Fair Trading (OFT) and the Australian Competition and Consumer Commission (the ACCC). The Fair Trading Act mirrors the Commonwealth's ACL infringement notice regime, in order to provide a nationally consistent infringement notice regime for the ACL. This differs from, and operates separately to, the Queensland penalty infringement notice regime under the *State Penalties Enforcement Act 1999*. The ACL gift card provisions apply in Queensland via the ACL (Queensland). DJAG briefing note, p 2.

are expected to significantly improve the governance of developments under the MUD Act and BUGTA, providing more appropriate protections for residential and small investor proprietors.

Stakeholder consultation has been undertaken in terms of the amendments that have been outlined in your briefing package. Targeted stakeholder consultation was undertaken during the development of the bill through the Community Titles Legislation Working Group, which includes key stakeholders such as the Strata Community Association of Queensland, the Queensland Law Society and the Australian College of Strata Lawyers. DJAG also had discussions with some proprietors at Couran Cove to better understand their key concerns. Initial concerns about the potential for some measures to have unintended consequences were addressed through a refinement of the proposals in the bill.

On 29 April 2022 an exposure draft of the bill was released for three weeks of public consultation and 31 submissions were received. Whilst stakeholders clearly believe that the MUD Act and BUGTA need reform, consultation did reveal some concerns about particular measures and how they would be implemented. Where possible, the proposals and amendments contained in the bill have been adjusted or refined in response to those issues raised. There were also calls for broader and additional reforms to the MUD Act, BUGTA and other specified acts that were not practical to incorporate given the relevant urgent need for targeted reforms provided by the bill. However, in that regard I note that the Community Titles Legislation Working Group is expected to look at the broader harmonisation of BUGTA and specified acts with the body corporate act as part of its future work program.

A further purpose of the bill is to provide for effective and consistent enforcement options for gift card requirements under the Australian Consumer Law. This is administered in Queensland through the Fair Trading Act.¹⁸

2.4 Issues raised in submissions

The submissions received by the committee for this inquiry traversed a broad spectrum of BC related issues, some outside the scope of the bill.

The specific issues raised in the submissions (other than those that were outside the scope of the bill) have been individually addressed by the department in its response to submissions, available on the committee's webpage.

Broadly, issues canvassed in submissions and addressed in the response to submissions included:

- extending conflict of interest provisions to proprietors at general meetings
- BC committee members receiving benefits
- whether requirement for BC committees to act 'reasonably' is too open to interpretation
- how referees must act
- costs orders for dispute resolution applications
- information and education services for owners and tenants regarding their rights and obligations
- notice of BC committee meeting should include a comprehensive agenda of proposed topics
- BC committee meetings should be video and/or audio recorded for transparency
- long term owners should be allowed to make reduced payments in cases of financial hardship

¹⁸ DJAG, public briefing, 11 July 2022, pp 2-3.

- person elected to multiple committee positions should relinquish a position to another owner
- BC under the historic Acts should transition to the BCCM Act
- subsidiary BC representation and voting
- composition of BC committees
- information disclosure requirements and associated compliance costs
- seven days to challenge committee decisions can prevent/delay action on urgent matters
- voting at committee meetings by debtor members
- suggested non-participation in committee discussions where a conflict of interest declared
- committee membership eligibility requirements
- candidate eligibility if they have a BC debt
- associates owing a debt to the BC
- definition of 'associate' too broad, makes person ineligible for committee if a relative is a debtor
- extending voting ineligibility rules
- closing dates for nominations/motions
- subsidiary BC nominees for overarching community/precinct BC
- needs further review of relevant legislation by CTL working group before changes made
- timeframe for providing committee meeting minutes (21 days) is too long
- broader distribution of minutes proposed
- committee should be required to meet 3 or 4 times per year
- suggests only proprietors should be eligible for election to committee
- committee member who becomes ineligible/not an electable person should vacate position
- BC manager should be a non-voting committee member
- 'nominee' of a BC manager should be defined, as BC manager may be a company
- caretaking service contractors
- powers of a referee to order payment of money
- notice of committee meetings and noticeboard
- code of conduct of voting committee members (in sched 2 of MUDA, should also be in BUGTA)
- general meeting minutes should be 'full and accurate'
- nominees of subsidiary bodies corporate
- monetary jurisdiction of referee and referee costs order
- whether electronic service of referee costs order under BUGTA permissible
- authority to initiate dispute resolution application

- BUGTA and MUDA should be amended to allow electronic attendance at meetings/email

2.4.1 Issues raised that were outside the scope of the Bill

Those issues raised that were outside the scope of the Bill include:

- lot entitlements
- by-law compliance and enforcement
- impacts of short-term letting (including via online platforms) on lot owners
- short-term letting and management rights
- regulation and occupational licensing of 'onsite' or 'resident' managers
- performance and regulation of BC managers
- that amendments should be extended to the *South Bank Corporation Act 1989*
- discrepancies in regulation of inappropriate or unreasonable by-laws under BUGTA/MUDA
- recovery of costs reasonably incurred in recovering unpaid contributions (BUGTA schemes)
- need for broader reform to 'specified' Acts.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals.¹⁹ Provisions in the Bill that make a person ineligible to be a member of a committee (BUGT Act) or executive committee (MUD Act) could be considered to restrict the rights and liberties of individuals.²⁰

Committee member eligibility

Under the Bill,²¹ a person may not be elected as a voting member of a committee (BUGT Act) or executive committee (MUD Act) if the person or an associate²² of the person:

- owes a debt to the BC or an associated BC²³
- is a BC manager for the BC or an associated BC.²⁴

According to the explanatory notes, the committee member ineligibility criteria that would be introduced by the Bill is similar to, but wider than, the ineligibility criteria in the *Body Corporate and Community Management Act 1997* and its regulations (BCCM legislation). The explanatory notes provide the reason for the difference:

The broader scope of the criteria for BUGT Act and MUD Act bodies corporate acknowledges that unlike the majority of BCCM schemes, developments under these Acts are complex, multi-layered arrangements where the governance processes and financial circumstances of the multiple bodies corporate comprising

¹⁹ *Legislative Standards Act 1992*, s 4(2)(a).

²⁰ See explanatory notes, p 12.

²¹ Clauses 10 and 11 (BUGT Act, new s 41B and amended s 42(6), respectively) apply to eligibility for election as chairperson, secretary, treasurer or member of a committee of a body corporate; cl 31 and 39 (MUD Act, new s 166C and amended s 185(7A), respectively) apply to eligibility for election as chairperson, secretary or treasurer, or as another member of an executive committee of a body corporate.

²² ‘Associates’ are defined in cl 5 (BUGT Act, new s 26B) and existing s 214E (MUD Act).

²³ In this case, associates of the person do not include familial/personal relationships: cl 10 (BUGT Act, new s 41B(b)).

²⁴ Clause 10 (BUGT Act, s 41B); cl 31 (MUD Act, s 166C). These provisions also set out other ineligibility criteria.

the development are interrelated, as can be the interests of commercial entities operating within or across multiple bodies corporate.²⁵

The explanatory notes acknowledge that the Bill's ineligibility criteria could be seen to restrict the rights and liberties of individuals, but note that committee membership itself is 'not a right but a statutorily created role to which a person may be elected, and on which a person serves, not in any personal capacity to further their own interests, but to serve the interest of the body corporate and its proprietors'.²⁶

The explanatory notes add:

It is therefore critical that committee members, given the responsibility of governance on behalf of other members, not only be model members of any body corporate within their development in terms of meeting their financial responsibilities, but also be free from conflicts of interest (whether personal, or through their associates) that may impact on performance of their governance role when it comes to appropriately setting budgets, commencing debt recovery proceedings, and other related matters.²⁷

Committee comment

Noting that committee members are elected to serve the interests of the BC and its proprietors, and that the ineligibility criteria are intended to reduce the likelihood of conflicts of interest, the committee is satisfied that the proposed ineligibility criteria are consistent with fundamental legislative principles.

3.1.2 General rights and liberties of individuals – right to privacy and confidentiality

The requirement in the Bill that a committee member has to disclose to a meeting the member's direct or indirect interest in an issue may impact on that person's right to privacy and confidentiality.

Conflicts of interest

A committee member must disclose any direct or indirect interests in an issue being (or about to be) considered at a committee meeting, if the interest could conflict with the appropriate performance of the member's duties about the consideration of the issue.²⁸

A person appointed to represent a committee member is similarly required to disclose the person's interest if it could conflict with the appropriate performance of the person's duties, and is required to disclose the member's interest if the person is aware that the member, if present, would be required to disclose the interest.²⁹

The BUGT Act and the MUD Act require minutes of meetings to be kept and allow members of the BC to access and inspect them. The Bill would amend these Acts to also require that minutes be given to BC members and their mortgagees.³⁰ Thus any declaration of a conflict of interest would be made known beyond those at the meeting.

The explanatory notes advise that the amendments relating to conflicts of interest are designed 'to ensure executive committee and committee decision making is in the best interests of the body corporate and its proprietors'.³¹

²⁵ Explanatory notes, p 12.

²⁶ Explanatory notes, p 12.

²⁷ Explanatory notes, p 12.

²⁸ Clause 15 (BUGT Act, new s 45B).

²⁹ Clause 15 (BUGT Act, new s 45B).

³⁰ Explanatory notes, pp 9-10.

³¹ Explanatory notes, p 8.

According to the explanatory notes:

Requiring a person entrusted with the responsibility of committee decision making on behalf of the body corporate and its proprietors to disclose and avoid conflicts of interest with the potential to influence that decision making, is a reasonable and appropriate means of enhancing transparency and probity of body corporate governance.³²

The Bill's proposed disclosure requirements and related voting restrictions are consistent with the approach taken to dealing with conflicts of interest affecting committee members in the BCCM legislation and the MUD Act.³³

Committee comment

Given the proposed amendments' consistency with the existing provisions in the BCCM legislation and MUD Act, and noting the intention of the provisions is to enhance body corporate committee governance, the committee is satisfied that any breach of the right to privacy resulting from the conflict of interest provisions is justified in the circumstances.

3.1.3 Administrative power and natural justice

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation:

- makes the rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review
- is consistent with the principles of natural justice.³⁴

These aspects of fundamental legislative principles are relevant when considering the amendments that would enable a referee to order costs against an applicant whose application is frivolous, vexatious, misconceived or without substance.

Order for costs

The Bill inserts a new provision³⁵ which applies where a referee orders the dismissal of an application for an order³⁶ made under Part 5 'Disputes' of the BUGT Act, for the reason that the application is frivolous, vexatious, misconceived or without substance; and no prescribed deposit accompanied the application. The new provision provides that the referee may order costs against the applicant to compensate specified parties, limited to a total amount of \$2,000.³⁷

The explanatory notes state that this power is consistent with the power of an adjudicator under the BCCM legislation to award costs of not greater than \$2,000 and will 'act to limit any increase in applications that are frivolous, vexatious, misconceived or without substance that might arise from enhancements to grounds for seeking dispute resolution included elsewhere in the Bill'.³⁸

³² Explanatory notes, p 8.

³³ Specifically, BCCM Standard Module, s 66 and MUD Act, s 188A; explanatory notes, p 20.

³⁴ *Legislative Standards Act 1992*, s 4(3)(a) & (b).

³⁵ Clause 18 (BUGT Act, new s 94C).

³⁶ BUGT Act, s 75(4).

³⁷ Clause 18 (BUGT Act, new s 94C); cl 19 amends BUGT Act, s 110, to expand the existing instances in which a deposit can be forfeited to include 'misconceived or without substance' to maintain consistency with cl 18.

³⁸ Explanatory notes, p 21.

The applicant may appeal the order of a referee to a tribunal.³⁹

Committee comment

Given the limit placed on the total amount of costs able to be ordered by the referee, and the existing right to appeal an order, the committee is satisfied that the power granted by the Bill for a referee to order costs has sufficient regard to the rights and liberties of individuals.

3.1.4 General rights and liberties of individuals – penalties

The creation of new offences and penalties can affect the rights and liberties of individuals. A penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.⁴⁰

Australian Consumer Law - infringement notice provisions – gift cards

The Bill proposes to amend the *Fair Trading Act 1989* (FTA) to include various infringement notice provisions relating to gift cards into the Australian Consumer Law (ACL) in Queensland, which would allow the Commissioner for Fair Trading to issue an infringement notice to a person if they have reasonable grounds to believe that person has contravened the gift card provisions.⁴¹

The Bill provides for a penalty of 55 penalty units (\$7,906.25⁴²) for a corporation or 11 penalty units (\$1,581.25) for an individual.⁴³

The ACL is a national law providing a set of generic consumer protections and applied as a Commonwealth law⁴⁴ and as a law of Queensland through the FTA, referred to as the 'ACL (Queensland)'. In Queensland, the ACL is jointly administered and enforced by the Queensland Office of Fair Trading (OFT) and the Australian Competition and Consumer Commission (ACCC).⁴⁵

According to the explanatory notes, the FTA mirrors the Commonwealth's ACL infringement notice regime, in order to provide a nationally consistent infringement notice regime for the ACL in Queensland:

The Commonwealth infringement notice regime applies and operates outside of the Queensland penalty infringement notice regime under the *State Penalties Enforcement Act 1999*.

The ACL gift card provisions prohibit post-purchase fees on gift cards; require a minimum three-year expiry date for gift cards; and require the expiry date of the gift card to be prominently displayed.

The ACL gift card provisions apply in Queensland via the ACL (Queensland). However, further consequential amendments are required to the infringement notice regime under the Fair Trading Act to ensure that OFT has the power to issue infringement notices for breaches of the gift card requirements, consistent with the ability already afforded to the ACCC under the ACL (Commonwealth).⁴⁶

³⁹ BUGT Act, s 106.

⁴⁰ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2008, p 120.

⁴¹ Clause 26 amends FTA, s 31, to insert new subsection 31(2)(a)(va), which provides that ss 99B(1), 99C, 99D(1), 99E and 99F(2) in Part 3-2 of the ACL, are infringement notice provisions.

⁴² The value of a penalty unit is \$143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

⁴³ Clause 27 amends FTA, s 33.

⁴⁴ Through the *Competition and Consumer Act 2010* (Commonwealth), referred to as the 'ACL (Commonwealth)'.

⁴⁵ Explanatory notes, p 3.

⁴⁶ Explanatory notes, p 3.

The explanatory notes assert that the ‘gift card infringement notice amendments are consistent with fundamental legislative principles’ but include no detail considering the matter.⁴⁷

Committee comment

Given the amendments seek to ensure consistency between the Commonwealth and Queensland ACL, and the amount of the penalties is consistent with penalties for breaches of another division of chapter 3, part 3-2 (Consumer transactions) of the ACL,⁴⁸ the committee is satisfied that the infringement notice provisions relating to gift cards have sufficient regard to the rights and liberties of individuals.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee comment

Explanatory notes were tabled with the introduction of the Bill. The committee notes that the explanatory notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill’s aims and origins. However, in the committee’s view, it is arguable that the explanatory notes could have been more fulsome in their identification, and consideration, of potential breaches of fundamental legislative principle.

⁴⁷ Explanatory notes, p 13.

⁴⁸ See Division 3 (Lay-by agreements) and FTA, s 3, item 6.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.⁴⁹

A Bill is compatible with human rights if the Bill:

- does not limit a human right, or
- limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.⁵⁰

The HRA protects fundamental human rights drawn from international human rights law.⁵¹ Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

4.1.1 Freedom of association (HRA s 22)

a) nature of the human right

Section 22(2) of the HRA protects the right of every person to freedom of association with others. This right is intended to protect the right of individuals to form associations for collective purposes. It specifically includes the right to form and join trade unions, but extends to any association through which a group of people might pursue a common objective or collectively assert their rights. For example, the American Convention on Human Rights includes the right to associate freely for 'ideological, religious, political, economic, labor, social, cultural, sports or other purposes' (ACHR, art 16(1)). Membership of a BC would satisfy the concept of an 'association' for the purposes of this right. A person who is seeking to become a member of a BC committee may also have other associations that are protected by s 22.

b) nature of the purpose of the limitation

The proposed amendments limit freedom of association by imposing eligibility restrictions on those seeking election to a BC committee. A person would be ineligible to be a voting member of a committee if they, or one someone they associate with, owes a BC debt; is a BC manager; or is party to a service or letting arrangement with a BC (cl 10). Clause 5 clarifies the types of relationships which constitute an 'association' for this purpose, and includes both family and business relationships. As such, the amendment has potential to limit freedom of association in two ways: first, by limiting an individual's ability to join the BC committee and, second, by indirectly limiting who they associate with

⁴⁹ HRA, s 39.

⁵⁰ HRA, s 8.

⁵¹ The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

in other contexts (e.g. by choosing to avoid certain associations which might trigger the ineligibility rules).

The explanatory notes state that these new eligibility rules are intended to ‘ensure the probity and quality of governance provided by committees’ by avoiding potential conflicts of interest on the part of members (be they actual or perceived conflicts).⁵² The limitation is therefore designed to ensure the good governance, financial sustainability and integrity of BC operations for the benefit of all stakeholders.

c) the relationship between the limitation and its purpose

There appears to be a clear and rational link between the limitation and its stated purpose. Rules which prevent a person from being a member of a committee based on their own activities or those of an associate would serve to address any conflict of interest arising from those activities.

d) whether there are less restrictive and reasonably available ways to achieve the purpose

As the Statement of Compatibility notes, a less restrictive means of achieving this purpose would be to allow an individual member to declare a conflict of interest in relation to relevant business of the committee, and to recuse themselves from participating in decision-making on the particular matter. This is a common practice in committees in other fields (and is provided for in relation to certain BC matters in cl 15).

It would also be less restrictive to enable a person to seek a waiver where they could demonstrate that the relationship in question was unlikely to present a conflict of interest.

These may, however, be less effective at achieving the purpose of the restrictions. Certainly, requiring separate declarations for particular items of business would add to the administrative burden of the committee, and the effectiveness of this process would depend on the individual in question engaging in the process in good faith. It would not, as the Statement of Compatibility says, be effective if a person is not inclined to disclose their other interests. Further, if the purpose of the amendments is to ensure the integrity, transparency and legitimacy of BC operations more broadly then a general rule as to eligibility is likely to be more effective than a procedure for issue-by-issue disclosures.

e) the importance of the purpose of the limitation

Maintaining the integrity of BC operations is of high importance for owners of building units individually and collectively, and for any tenants of those units. Processes which ensure transparency and accountability help to protect other human rights, such as the right to property, freedom of information, access to justice and equality before the law.

f) the balance between the importance of the purpose of the limitation and the importance of preserving the human right

Committee comment

In the committee’s view, the potential limitation on freedom of association is justified by the enhanced integrity which is likely to be achieved through these changes to body corporate committee eligibility rules. The benefits which stand to be gained by preventing actual or perceived conflicts of interests

⁵² Explanatory notes, p 5.

outweigh the relatively minor impact on freedom of association, and the limitation is justifiable in a free and democratic society based on human dignity, equality and freedom (HRA s13).

4.1.2 Right to privacy (HRA s 25)

a) nature of the human right

The HRA protects the right to privacy in s 25. As the Statement of Compatibility notes, this right is not absolute, but protects a person against arbitrary or unlawful interference with their privacy and reputation. The United Nations Human Rights Committee has explained that an interference with privacy can be arbitrary even if it is provided for by law, and that ‘arbitrariness’ includes an interference which is unreasonable or is otherwise incompatible with the aims of human rights law.⁵³

b) nature of the purpose of the limitation

Here, the limitation on the right to privacy occurs in the form of a requirement for a person to disclose a direct or indirect interest in an issue that is before the BC committee for consideration (cl 15, proposed s 45B of the BUGT Act - the ‘disclosure obligation’). A further limitation is implied by the requirement for an individual committee member to seek authorisation from the committee prior to receiving benefits through service arrangements with the BC or a proprietor (proposed s 45C of the BUGT Act – the ‘authorisation obligation’).

As is the case with the committee eligibility requirements discussed above, the purpose of these limitations is to ensure transparency in relation to potential conflicts of interests and to help guarantee impartiality and integrity in BC decision-making. The authorisation obligation in particular has the purpose of ensuring that decisions benefit the BC as a whole and not individual members.

c) the relationship between the limitation and its purpose

The limitation on the right to privacy inherent in the disclosure obligation is clearly connected to the purpose of avoiding any actual or perceived conflicts of interest. Where a decision of a committee has the potential to generate a personal benefit for an individual committee member, it is common practice for them to disclose their direct or indirect interest and/or to abstain from participating in the decision. The limitation on privacy implied by the authorisation obligation is also rationally connected to its purpose.

d) whether there are less restrictive and reasonably available ways to achieve the purpose

While there may be other specific processes for addressing actual or perceived conflicts of interests, they would likely all involve similar implications for the right to privacy, as they would inevitably involve disclosure of private or personal information in some form. Therefore, it is considered there are no reasonably workable methods that would be less restrictive on the right to privacy.

e) the importance of the purpose of the limitation

BC committees operate for the benefit of all owners, both individually and collectively, and indirectly for the benefit of any tenants. Good governance of BC affairs is critical to maximising these benefits and avoiding any actual or perceived partiality or corrupt behaviour. The purpose of the limitation on the right to privacy is therefore of significant importance.

⁵³ United Nations Human Rights Committee, General Comment 16, Twenty-third session, 1988.

f) the importance of preserving the human right

The right to privacy is of fundamental importance to the protection of individuals' dignity and autonomy, and supports the enjoyment of a wider range of human rights. That being said, a distinction can be made between privacy in personal or family matters, which are typically afforded a high degree of respect, and privacy in commercial or other business matters, which are commonly subjected to regulation and disclosure requirements. Individuals who seek election as members of a BC committee would likely expect some disclosure of relevant personal information. Therefore, while protecting the right to privacy is an important objective in a democratic society, the limitations implicit in the proposed amendments are at the lower end of the scale.

g) the balance between the importance of the purpose of the limitation and the importance of preserving the human right

Committee comment

It is the committee's view that, on balance, the interference with the right to privacy which occurs through the disclosure obligation and the authorisation obligation can be seen as justified in order to achieve their purpose, being the overall good governance of BC affairs.

4.1.3 Right to property (HRA s 24)

a) nature of the human right

Section 24(2) of the HRA protects a person against arbitrary deprivation of their property. 'Property' is not defined in the HRA. Section 24 follows the language of the *Universal Declaration of Human Rights*, but the right is not included in the *International Covenant on Civil and Political Rights*. Different understandings of the right exist across regional human rights systems. In Europe, the Protocol to the *European Convention on Human Rights* provides in Article 1 that 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.' Article 1 goes on to specify, however, that this provision shall not impair 'the right of a State ... to secure the payment of taxes or other contributions or penalties'. This suggests the right to property is not intended to place limits on a state's ability to impose fines or other monetary penalties (though this power might still be limited by other human rights protections). As with the right to privacy, the right to property is not absolute, but protects only against arbitrary deprivation of property. A deprivation will be arbitrary if it is unreasonable, disproportionate, or unjust.

b) nature of the purpose of the limitation

As the Statement of Compatibility notes, there are 2 potential limitations on the right to property found in the Bill.

The first is found in clause 18, which establishes a power for the referee to order costs up to \$2,000 against a party who has commenced an application considered to be 'frivolous, vexatious, misconceived or without substance' (new section 94C of the BUGT Act). The purpose of this limitation is to ensure that BC dispute resolution processes are fair and equitable, by discouraging frivolous or vexatious complaints. As the Statement of Compatibility explains, effective BC dispute resolution processes contribute to upholding property rights by enabling disputes which might affect property values to be resolved quickly and cheaply. Given the nature of building unit and group title

developments, disputes can also impact on other human rights, including the right to privacy, family, home and correspondence (HRA s 25). The effectiveness of dispute resolution processes can be undermined, however, by complaints which are vexatious or frivolous, and these can in turn impact negatively on human rights. The power to impose a costs order is intended to limit the instances of such ill-founded applications and to enhance confidence in the dispute resolution process overall. Broadly speaking then, the purpose of the limitation can be seen to align with the enjoyment of human rights, by helping to ensure due process, fair hearings, and access to justice.

The second limitation relates to infringement notices for gift card offences, which is discussed in more detail below.

c) the relationship between the limitation and its purpose

To the extent that the possibility of a contrary costs order might deter a person from commencing a frivolous, vexatious or misconceived application, thereby decreasing the likelihood of such complaints, there is a clear relationship between the limitation and its purpose. The effectiveness of this method as a deterrent is not something I am qualified to comment on, but it appears a rationale measure in this regard. The limitation would certainly contribute to the purpose of compensating some of the financial costs borne by those against whom a frivolous or vexation claim is commenced.

d) whether there are less restrictive and reasonably available ways to achieve the purpose

Costs orders are a common way of mitigating the nuisance and financial costs of an ill-founded legal complaint and deterring such complaints from being commenced in the future. While there may be other ways of achieving the same purpose, these would likely also have impacts on the right to property or other human rights.

Further, under the proposed amendment the referee will be authorised to issue a costs order of ‘up to \$2,000’. This is not considered to be an overly punitive figure, and the referee will be able to determine an amount which they consider to be appropriate within that range. Further, the decision of the referee in this regard is regulated by other rules to help ensure fairness and reasonableness, and the order may be appealed to the Magistrates Court. The limitation on the right to property inherent in this proposed amendment is therefore a moderate one.

Committee comment

In the committee’s view, it is therefore not considered that there are other less restrictive methods that would achieve the same purpose.

e) the importance of the purpose of the limitation

Ensuring the integrity and effectiveness of the BC dispute resolution process is a commendable objective which, as noted above, aligns broadly with respect for human rights.

f) the importance of preserving the human right

The right to property places important limits on state power and recognises the role that private property plays in supporting the enjoyment of the full range of human rights.

g) the balance between the importance of the purpose of the limitation and the importance of preserving the human right

On balance, the limitation on the right to property which would arise through the imposition of a costs order appears to be reasonable given the purpose of that limitation. The rules around the issuing of a costs order and the ability to have the order appeal lead to the conclusion that the limitation is neither unlawful nor likely to be applied arbitrarily. By deterring frivolous, vexatious or otherwise ill-founded claims, the amendment is likely to produce benefits for individuals subject to such claims, for BCs collectively, and for the integrity and legitimacy of BC dispute resolution processes more broadly. Each particular costs order is also likely to produce benefits in terms of enhancing the fairness of the process and outcome of the dispute. Overall, the limitation on the right to property is justified.

Committee comment

The committee concludes that the limitation on the right to property which occurs when a fine is issued is justified by the need to enforce obligations relating to gift cards. The imposition of a fine is regulated by the infringement notice regime, thereby reducing the possibility that the limitation on rights would be arbitrary. On balance, the benefits to consumers outweigh the potential impact on offenders' property rights.

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 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.

Appendix A – Submitters

Sub #	Submitter
001	Bob Lee
002	Gabrielle Clements
003	Maria Duffy
004	Ray Harvey
005	Bugden Allen Graham Lawyers
006	Australian College of Strata Lawyers
007	[Name Redacted] Community Body Corporate Committee
008	Strata Community Association
009	Confidential
010	The Eco Body Corporate Committee Couran Cove Resort
011	Sam Scanlon
012	Darren Phillip
013	Name Withheld
014	Daniel Purser
015	Cancer Council Queensland

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney General

- Mr Shane Brown, Principal Policy and Legislation Officer, Office of Regulatory Policy, Department of Justice and Attorney General
- Mr David Reardon, Director, Office of Regulatory Policy, Department of Justice and Attorney General
- Ms Victoria Thomson, Deputy Director-General, Liquor, Gaming and Fair Trading, Department of Justice and Attorney General

Appendix C – Witnesses at public hearing

Individual

- Mr Daniel Purser

Australian College of Strata Lawyers

- Mr Michael Kleinschmidt (via videoconference)

Individual

- Mr Ray Harvey

Strata Community Association

- Ms Laura Bos, General Manager
- Mr Jason Carlson, Advocacy Director
- Mr Kristian Marlow, Policy Officer

Community Body Corporate Committee

- Ms Lee O’Sullivan

Eco Body Corporate Committee, Couran Cove Resort

- Mr David Bowden, Chair
- Ms Leith Lester, Proprietor

Statement of Reservation

Report No. 30, 57th Parliament — Building Units and Group Titles and Other Legislation Amendment Bill 2022

Statement of Reservation

Sandy Bolton MP Member for Noosa

While submitters were broadly in support of the Building Units and Group Titles and Other Legislation Amendment Bill, a number of concerns were raised that should have been included, hence this Statement of Reservation.

Firstly, the funding relating to this Bill was provided in the 2022-23 budget. With the government committing an additional \$2.5 million over three years for the Office of the Commissioner for Body Corporate and Community Management to implement the reforms in this billⁱ, there was no additional ongoing funding provided for the Office of the Commissioner to address the delays being experienced.

This despite the increasing number of apartments and units in Queensland every year. In 2020-21 body corporate units grew by 1.8%ⁱⁱ. This is even greater than the population growth rate which averages around 1.5%ⁱⁱⁱ.

As a State we have been increasingly investing in apartment and unit community living and we need to also invest in the support services for these. The Unit Owners Association of Queensland have pointed out that the BCCM Office has been at 30 FTE for 7 years and that the staffing for Governor's Office is now by comparison 45 FTE^{iv}. A funding increase for the Office of the Commissioner is warranted and needed.

Secondly, a key issue was the narrow scope of the Bill and the limited range of issues it addresses.

Any legislation is going to have to deal with the trade-off between quick and narrowly focussed legislation development and broad and time-consuming development. Submissions during the Committee's inquiry highlighted that there are a broad range of issues that need to be addressed. The Department in its response to this noted that the Government has established a Community Titles Legislation Working Group (CTLWG) to provide advice on key community titles-related issues. This working group should consider all the issues submitted in this inquiry and develop appropriate legislative amendments.

Lastly, there is one issue raised in the inquiry that warrants further examination. The Bill introduces a new requirement for a body corporate in the BUGTA for the recovery of body corporate debts. This means that a body corporate must start proceedings to recover a debt where the contribution levy by a unit holder has been outstanding for 2 years and 30 days.

The Strata Community Association Queensland raised a significant problem with this provision, in that without the ability to recover costs the body corporate is obliged to incur significant costs, which may place the body corporate in a worse financial situation. As they stated in their submission:

At present in the strata title sector, including the BUGTA, the recovery of costs is a significant issue when it comes to levy recovery. It is important to have a pragmatic understanding of this from a public policy perspective. There are a few salient considerations at the outset of this discussion:

- *A body corporate cannot turn a profit;*
- *Bodies corporate are unable to set aside a “rainy day fund” or similar;*
- *The mechanism for cost recovery is litigious, litigation is obviously a large expense and theoretically unexpected by a body corporate.*

Given this, one recalcitrant owner can be a significant disruption to the finances of a given body corporate. If bodies corporate under the BUGTA are to be obliged to pursue debtors as this Bill seeks to legislate, then it is only fair given the abovementioned factors that they are not out of pocket on a net basis for pursuing them^v.

The Department gave two different responses to this issue. In their written response they stated that “Dispute resolution under the BUGT Act is intended to be relatively informal and low cost. In that respect, further expanding costs order powers of referees is not currently being proposed”, however in the public hearing they stated “debt recovery is not a matter that is typically dealt with by the referees as such. Outstanding levies are dealt with through normal debt recovery processes through the tribunal and the courts.”

This should have been resolved as part of the Committee’s deliberation process with a recommendation put forward and as I have highlighted a number of times, the practical functioning of the committee processes and its timeliness need to be part of the review I have sought.

Ten years after the reform of the Committee system in 2011, now is an appropriate time to do so.

Thank you to our Chair, my fellow Committee members, secretariat, submitters and hearing participants for their work in this inquiry.

May the CTLWG quickly address the issues that this bill has failed to.



Sandy Bolton MP

Date – 10 August 2022

Noosa

ⁱ Budget 2022-23, *Budget Paper No 4: Budget Measures 2022-23*, page 17.

ⁱⁱ Office of the Body Corporate and Community Management Commissioner, *BCCM Common Ground*, Issue 32, August 2021, <https://www.publications.qld.gov.au/dataset/bccm-common-ground-e-newsletter>

ⁱⁱⁱ Australian Bureau of Statistics, *National Population Statistics*, <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/dec-2021>

^{iv} Unit Owners Association of Queensland, *Who Gets What: Divvying Up the Dollar Pie*, 10 Nov 2021, <https://uoaq.org.au/2021/11/who-gets-what-divvying-up-the-dollar-pie/>

^v Strata Community Association of Queensland, submission to the Legal Affairs and Safety Committee Inquiry into the Building Unit and Group Titles and Other amendment Bill 2022, pages 1 and 2.