

27 September 2017

Our ref WD:PROP

QUT Review - BCCM  
C/- Office of Regulatory Policy  
Department of Justice and Attorney-General  
GPO Box 3111  
Brisbane QLD 4001

By email: [REDACTED]

Dear QUT Review Team

**Property Law Review – Issues Paper – Consistency between the *Body Corporate and Community Management Act 1997* and the *Building Units and Group Titles Act 1980***

Thank you for the opportunity to provide comments on the issues paper *Consistency between the Body Corporate and Community Management Act 1997 and the Building Units and Group Titles Act 1980*. Queensland Law Society appreciates being consulted on this important issue.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide.

QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of the QLS Property and Development Law Committee who have substantial expertise in this area.

**Question 1 - Should the dispute resolution provisions in the *Body Corporate and Community Management Act 1997* (BCCM Act) replace the dispute resolution provisions in the *Building Units and Group Titles Act 1980* (BUGTA)?**

QLS considers that it would be highly desirable to align the dispute resolution provisions of BUGTA and the BCCM Act.

Conceptually, it is not efficient to have two different dispute resolution procedures under BUGTA and BCCM Act and it makes sense to have consistent processes, subject to ensuring that the transitional provisions are carefully drafted to ensure existing rights are protected.

Provided this is done carefully, it is unlikely that any party will be disadvantaged by an aligned dispute resolution process.

**Question 2 - If so, should the same dispute resolution provisions apply to plans under the BUGTA for all issues, or are there some issues where, due to the nature of the plan itself, different provisions should apply? What are these issues and what is the best way to deal with the difference?**

QLS is not aware of any issues relating to the nature of the plans which would require different treatment.

However if the BCCM Act were amended to allow for adjustment of lot entitlements, further thought would need to be given to whether this should apply to BUGTA schemes.

**Question 3 - What is the best way to deal with a dispute between a lot owner in a subsidiary layer and a body corporate in a principal layer?**

The concept of dispute should be extended to include a dispute between an owner of a lot and any body corporate established under a specified act of which the owner is a member, either directly or through membership of one or more subsidiary bodies corporate (where a subsidiary body corporate is a body corporate established under BUGTA or a specified act which is itself a member of another body corporate).

**Question 4 - Should the body corporate procedures that apply to community titles schemes under the BCCM Act be made to apply to plans under the BUGTA? If so, what is the best way to achieve this?**

Yes. Initially the concept of reproducing relevant provisions in BUGTA and the specified acts seems the best way of achieving this.

**Question 5 - If BUGTA plans are transitioned to the BCCM Act, is a new Regulation Module for mixed use and integrated resorts under the specified Acts required? If so, how would it differ from the existing Regulation Modules?**

Whilst there are particular differences between development under the specified acts and those under the BCCM Act, conceptually there does not seem to be any reason why a separate regulation module would be necessary.

The standard regulation module permits layered schemes which operate in substantially the same manner as a PTBC and PBC. Most of the concepts in the specified acts (eg lot entitlements, primary thoroughfare by-laws, development control by-laws) can be accommodated by the BCCM Act and the standard module.



The most challenging issues seem to be around progressive development (right of the developer to carry out the development in accordance with the approved scheme and allocation of lot entitlements), transitioning permitted development and uses to the planning regime, transitioning titling structures to the *Land Title Act 1994* (particularly stratum subdivision under the *Mixed Use Development Act 1993* (MUDA)) and matters specific to the specified acts such as thoroughfares, canals and facilities.

These are probably best dealt with in transitional provisions and the *Land Title Act 1994* and the *Planning Act 2016* rather than a separate regulation module.

**Question 6 - In addition to the dispute resolution and the procedural matters discussed above (and leaving aside titling and town planning considerations) what other areas or differences between the BUGTA and the BCCM Act should be considered for amendment?**

Pre-contract disclosure and other conveyancing related matters should ideally be standardised.

Consideration should be given to adopting the concept of a precinct or community management statement as a single document recorded in the land registry which includes the description of all lots, lot entitlements, the current by-laws and exclusive use allocations.

Transitional arrangements similar to those which applied for schemes which transitioned to the BCCM Act could be used. The differences would be that lot entitlements would stay as they are (that is, a single lot entitlement for each lot), the concept of future development would not be included (or would incorporate the gazetted scheme under the relevant specified act) and Schedule D would be limited to development control by-laws (where applicable). This is a more modern and convenient way to source this information (for bodies corporate, owners and conveyancing) and would also aid in the three staged transition contemplated in the paper).

The rules about making changes to the CMS would differ (to align more with the procedures under the relevant specified act).

The effect of this approach is not to change the framework for the individual bodies corporate but to collate the information relevant to each body corporate in a single registered document, which would simplify the conveyancing process. The process could be transitioned whereby each body corporate is required to adopt a CMS over a period of say 2 years.

**Question 7 - Is there a detriment being experienced by lot owners in bodies corporate that continue to be regulated by the BUGTA? Some areas to consider include dispute resolution, proxy votes, delegation of executive committee powers, conflict of interest, and contractual terms for body corporate managers?**

QLS does not have specific details but is aware anecdotally of some issues, particularly regarding the length and terms of management rights contracts.

**Question 8 - Of the following options, which do you support and why?**

- The status quo approach (i.e. no change to the current system);
- Amending the BUGTA to resemble the BCCM Act in particular respects;
- A full transition from the BUGTA to the BCCM Act; or
- Some other option (please provide details).

QLS ultimately prefers option 3 - a full transition from the BUGTA to the BCCM Act. However it is recognised that it is likely a staged approach will be required and this will initially involve aligning the BCCM Act and BUGTA in certain respects only.

A single common legislative framework is preferred as it allows for greater efficiencies in management and administration and greater transparency and understanding for all stakeholders: government, bodies corporate, owners, buyers, body corporate managers and lawyers.

It may be possible to transition BUGTA schemes to the BCCM Act but leave higher level schemes (eg PTBC's and PBC's) to be regulated by the specified acts. This would at least provide for consistency in dealing with the management and sale of the residential lots which would constitute the vast majority of lots within these developments.

**Question 9 - In your opinion, what are the advantages or disadvantages of transitioning from the BUGTA to the BCCM Act for those plans that continue to be regulated by the BUGTA?**

It is highly desirable to have a single consistent legislative framework and procedures – for management, consumer education, consumer protection, conveyancing procedures. The only disadvantage is the complexity involved and the risk of altering existing rights, particularly those rights of the developer to carry out development progressively.

**Question 10 - In your opinion, are there sufficient reasons to justify a transition to the BCCM Act for bodies corporate that continue to be regulated by the BUGTA?**

Yes. The current regime(s) are complex and require specific expertise to manage and transact with. Many people assume dealing with a BUGTA body corporate is the same as dealing with a BCCM Act body corporate.

There is no 'standard contract' for selling and buying lots in a BUGTA scheme. This creates practical issues and expense for lot owners.

The advantages of transitioning BUGTA bodies corporate to the BCCM Act are for reasons of consumer protection, consumer education and consistency where possible.



**Question 11 - Should the specified Acts be treated differently for the purposes of a transition to the BCCM Act? That is, would it be appropriate to transition from the BUGTA differently, depending on the specified Act concerned?**

Further consideration needs to be given to the specific provisions of the specified acts however conceptually they should all be transitioned at the same time. The MUDA may be more complex given the stratum subdivision provisions (which have no equivalent under the LTA) and the existence of management statements.

There may be some benefit in completely transitioning the HSP Nominees scheme first as this is a completed project and is has a relatively simple structure and will enable consideration of the issues which will arise under the other specified acts.

**Question 12 - If a transition is desirable, do you support a moderate approach involving staged implementation of amendments or do you prefer a radical approach involving a complete change? Why?**

QLS supports a moderate approach.

For the reasons outlined in the paper, there are complex issues involved which will need to be considered over a period of time. It will be necessary to consider the implications for each of the specified acts and perhaps even individual sites. These issues will be significantly reduced once a scheme has been fully developed.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Wendy Devine on [REDACTED].

Yours faithfully

[REDACTED]  
Christine Smyth  
President