

4 September 2023

Our ref: [WD:PD]

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000



Dear Committee Secretary,

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

Thank you for the opportunity to provide a submission on the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (the **Bill**).

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law and help protect the rights of individuals and the community. 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 by the QLS Property and Development Law Committee, whose members have substantial expertise in this area.

Our high level comments follow.

1. Body corporate reforms:

- a. QLS appreciates having had the opportunity to participate in the Community Titles Legislation Working Group and broadly supports the reforms to the *Body Corporate and Community Management Act 1997* (Qld) (**BCCM Act**), including the amendments to allow for the termination of an uneconomic community titles scheme. We believe the proposed termination regime provides an appropriate balance between facilitating termination of "uneconomic" schemes and protecting the rights of "minority" owners.
- b. However, we have significant concerns with the drafting of some of the provisions which we believe will result in termination actions being open to challenge. This may, in turn, deter bodies corporate and potential developers from utilising the process.
- c. We also have concerns about unintended consequences as a result of the proposed amendment to section 59(3) of the BCCM Act. The proposed

amendment appears to have misconceived the reference to “seal” in the existing section.

2. **Early release of deposits from trust accounts** - QLS considers the amendments proposed to section 218C of the BCCM Act (and similar provisions in other legislation) are inadequate to address the current uncertainty in the interpretation of the section. As a result buyers will remain at risk of losing deposits.
3. **Sunset dates:**
 - a. QLS does not support deferring the introduction of the sunset date reforms to “off the plan” apartment contracts (and contracts for other community title lots) until a later date. In our members’ experience sunset dates are also being misused by apartment developers and buyers of apartments should be extended the same protection as buyers of land.
 - b. QLS is concerned that the proposed new section 19F(3) of the *Land Sales Act 1984* (Qld) (**LSA**) (which requires the Supreme Court to consider the viability of the seller’s business when deciding whether it is just and equitable to make an order to terminate contracts) will provide sellers with termination rights which presently do not exist. This is open to abuse and is contrary to the consumer protection objects of the legislation.
 - c. We also query the requirement to give a notice of intention to terminate 28 days prior to the sunset date. If a project is nearing completion and a survey plan has (for example) been lodged with Council for plan sealing or with the land registry for registration, the seller will not know whether the sunset clause can be satisfied by the sunset date.
4. **Timeframe for a response:** QLS is concerned at the short timeframe allowed for responses to the Bill. Having adequate time to consider the specific drafting of a bill is critical to ensuring the legislation as introduced will achieve its intended objectives. Although the substance of some of these reforms have been the subject of public consultation, and other topics have been discussed at the Community Titles Legislation Working Group, the truncated public submission period may mean that there are drafting issues and other unintended consequences which have not been identified. QLS highlights the risks of errors in legislation which is passed without adequate time for public scrutiny.
5. Given the short timeframes, QLS has identified the key issues with the Bill. If we have not commented on a particular issue, this should not be taken as assent or support.

If you have any queries regarding the contents of this letter, please do not hesitate to contact

[Redacted contact information]

Yours faithfully

[Redacted signature]

Chloe Kopilovic
President