

# Body Corporate and Community Management and Other Legislation Amendment Bill 2023

## Explanatory Notes

### Short title

The short title of the Bill is the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (the Bill).

### Policy objectives and the reasons for them

The *Body Corporate and Community Management Act 1997* (BCCM Act) provides for the establishment, administration, and termination of community titles schemes. The BCCM Act sets out the legislative framework for community titles schemes, addressing a wide range of matters including governance and decision-making structures, meeting requirements, financial and property management, insurance, and by-laws.

The *Land Sales Act 1984* (Land Sales Act) regulates contracts for what are commonly known as ‘off the plan’ sales of land in Queensland (more technically, the sale of proposed lots). Provisions dealing with ‘off the plan’ sales of apartments and other lots proposed to be included in community titles-style developments in Queensland are contained in the BCCM Act, the *Building Units and Group Titles Act 1980* (BUGT Act), and the *South Bank Corporation Act 1989* (South Bank Act).

The policy objectives of the Bill are to:

1. deliver a key action of the 2022 Queensland Housing Summit by reforming the 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 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, BUGT Act, Land Sales Act, and 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).

From August 2013 to January 2018, the Commercial and Property Law Research Centre of the Queensland University of Technology (QUT) undertook a broad-ranging,

independent review of Queensland's property laws (Property Law Review) for the Government. Among other things, the review considered aspects of the BCCM Act and related legislation, including scheme termination, by-laws, and procedural issues.

Relevant recommendations of the Property Law Review were considered by the Community Titles Legislation Working Group (CTL Working Group), which is comprised of key stakeholders from the community titles sector. This consideration has informed the amendments being pursued under policy objectives 1 and 3 above. While views of the CTL Working Group have also informed policy objective 2, alternative insurance arrangements were not within the scope of the Property Law Review. Policy objectives 4 and 5 concern property law matters that are not limited to the community titles sector and were not part of the Property Law Review or the CTL Working Group's terms of reference.

Further details regarding the policy objectives, and the reasons for them, are outlined further below.

### ***1. Termination of community titles schemes***

The community titles sector is a significant, and increasingly important, provider of housing, accommodation, and investment options for Queenslanders.

Under the BCCM Act, a community titles scheme can be terminated in two ways:

- (i) when authorised by resolution without dissent of the body corporate, supported by an agreement between all registered proprietors and lessees under registrable or short leases, about termination issues; and
- (ii) by order of the District Court.

While there continues to be significant growth in the community titles sector, some stakeholders have raised concerns that the current statutory arrangements for terminating community titles schemes do not adequately facilitate renewal and redevelopment of ageing or uneconomic community titles schemes.

In addition to concerns about restrictions on the potential redevelopment of community titles schemes, stakeholders have also raised concerns about adverse consequences for lot owners in a community titles scheme if a small number of lot owners do not agree to termination of the scheme, especially where the body corporate is facing excessive costs to maintain, repair, or rectify buildings within the scheme. In these cases, selling the scheme land to a developer for termination and redevelopment can make more economic sense than requiring lot owners to pay large contributions to enable the body corporate to meet its statutory obligations to maintain key elements of the scheme in a good and structurally sound condition.

In October 2022, the Queensland Government hosted the Queensland Housing Summit, which brought stakeholders together to identify solutions to the immediate housing challenges being experienced in Queensland and to chart a path forward towards a healthy housing system.

A key action arising from the Summit is to *reform body corporate legislation to allow for terminating uneconomical community titles schemes to facilitate renewal and redevelopment having regard to the New South Wales approach.*

Issues and potential alternative approaches to termination of community titles schemes were also considered as part of the Property Law Review.

Reforms in the Bill aim to provide a balanced approach to termination of community titles schemes, which recognise the need to facilitate renewal and redevelopment in appropriate cases, while also appropriately respecting individual lot owners' property rights. The termination reforms contained in the Bill were informed by the Queensland Housing Summit, the Property Law Review, the CTL Working Group, and approaches in other jurisdictions, including New South Wales.

## **2. Arrangements for authorisation of alternative insurance**

If a body corporate cannot comply with its obligation to insure particular buildings for full replacement value (for example, because the insurance is not available), it may apply to the Commissioner for Body Corporate and Community Management (the Commissioner) for authorisation to put in place alternative insurance in a form approved by the Commissioner. The Commissioner can approve alternative insurance if satisfied that the insurance will give cover that is as close as practicable to the required insurance cover.

The Bill will implement a 2020 election commitment to amend the BCCM Act to allow an adjudicator the power to approve alternative insurance arrangements in place of the Commissioner.

To support this change, the Bill will also provide increased guidance around the processes for making an application for alternative insurance and for deciding an application for alternative insurance.

It was also identified that there are some situations where bodies corporate may face difficulties obtaining insurance necessary to comply with the requisite insurance requirements, but these bodies corporate are not eligible to apply for alternative insurance – specifically, in relation to buildings on lots included in a community titles scheme that are created under a standard format plan of subdivision and have a common wall with a building on an adjoining lot. The Bill will extend the ability to make an application for an alternative insurance order to these circumstances.

## **3. Modernising and improving the operation of the BCCM Act in relation to by-laws and other governance issues**

### *Second-hand smoke in community titles schemes*

Second-hand smoke is a significant issue of concern for residents in community titles schemes, particularly as smoke from neighbouring lots can penetrate into other lots or the common property, given the typically close proximity of lots in these schemes. The significant negative impacts of exposure to second-hand smoke are well established. Second-hand smoke can also be an annoyance to residents in community titles schemes, particularly in terms of the smell.

The *Tobacco and Other Smoking Products Act 1998* prohibits smoking in an enclosed

place that is a common area of multi-unit residential accommodation but does not apply in respect of other areas under a community titles scheme.

Section 167 of the BCCM Act 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. Disputes about second-hand smoke emanating from one lot into another under section 167 of the BCCM Act have focused on whether smoking is a nuisance, and in many cases have been unsuccessful based on insufficient evidence to meet the test of nuisance at law.

The BCCM Act also provides that bodies corporate may make by-laws to regulate the use and enjoyment of lots, common property, and body corporate assets for a community titles scheme. While it is possible for bodies corporate to adopt and enforce by-laws relating to smoking, adjudicators and the Queensland Civil and Administrative Tribunal (QCAT) have interpreted the by-law provisions of the BCCM Act to not allow bodies corporate to enforce by-laws that completely prohibit activities in a community titles scheme.

As part of the Property Law Review, QUT recommended that a by-law prohibiting smoking in an outdoor area that is part of a lot (including a balcony and courtyard) or the common property be permitted, either in the by-laws in force upon establishment of the scheme or after establishment by a resolution without dissent. The Bill will amend the BCCM Act to provide greater protections for residents of community titles schemes from second-hand smoke. The approach in the Bill has been informed by a Property Law Review recommendation, with modifications based on the consideration of the recommendation by the CTL Working Group.

The Bill's approach will also generally support the aim of Queensland's smoking laws, which seek to improve health by creating a culture that reduces exposure to tobacco and other smoking products and second-hand smoke, supports smokers to quit, and discourages people from taking up the habit.

#### *Keeping or bringing of animals on a lot or on common property*

Australia has a high level of pet ownership and the keeping of animals in community titles schemes is a pertinent issue as more people choose to live in these schemes.

While there is no explicit guidance in the BCCM Act about how a body corporate may regulate animals, decisions of adjudicators, QCAT, and courts have resulted in a well-established body of interpretation about how the general provisions about by-laws in the BCCM Act and the requirements for bodies corporate to act reasonably apply in relation to animals. These decisions have established that by-laws that prohibit pets, or restrict the size, type or quantity of pets, are unreasonable. Also, to act reasonably, bodies corporate must consider each request to keep an animal on its merits, considering all relevant facts and circumstances and ignoring irrelevant factors.

The existing legislative framework as interpreted by adjudicators, QCAT, and courts appropriately balances the rights and liberties of owners and residents who wish to keep pets against those owners who want to live without disturbance that may be caused by pets.

While guidance material has been published by the Government and other entities involved in the sector (such as specialist law firms and body corporate management firms)

about the interpretation of the BCCM Act in relation to the keeping of animals, there is continued evidence that some bodies corporate have invalid by-laws that prohibit pets and that some bodies corporate are unreasonably refusing requests to keep an animal. This presents a significant barrier to lot owners and occupiers being able to have a pet.

The Bill seeks to reduce the barriers to lot owners and occupiers keeping animals in community titles schemes by clarifying and increasing awareness of bodies corporate and owners and occupiers about their rights and obligations in relation to pets, and support bodies corporate and owners and occupiers to reach agreement about keeping of animals in accordance with the law with less disputation.

As part of the Property Law Review, QUT recommended allowing a body corporate to make 'no pet' by-laws by resolution without dissent. However, following consideration of the recommendation by the CTL Working Group, it was determined that allowing bodies corporate to make 'no pet' by-laws would be out of step with community attitudes and expectations about the keeping of pets. Accordingly, the Property Law Review recommendation was not adopted.

#### *Body corporate towing of vehicles*

Problematic parking of motor vehicles can be a significant issue in community titles schemes, particularly in situations where the vehicle is blocking ingress or egress to the scheme or a lot, or blocking access to utility infrastructure.

A range of options are available to bodies corporate to manage parking on common property, including body corporate by-laws.

Where a body corporate considers that an owner or occupier of a lot in a community titles scheme has breached the by-laws of the scheme, chapter 3, part 5, division 4 of the BCCM Act sets out a procedure to be followed by a body corporate to enforce the by-laws. The procedure includes issuing a contravention notice and, in the event the notice is not complied with, the body corporate can commence proceedings in the Magistrates Court to enforce the by-laws or make a dispute resolution application under chapter 6 of the BCCM Act.

The BCCM Act does not provide any express authority for a body corporate to tow a motor vehicle. There is the ability for motor vehicles to be towed under legal powers outside the BCCM Act. However, if the motor vehicle is owned or operated by an owner or occupier of a lot included in the scheme and is parked in contravention of a body corporate by-law, the by-law enforcement process must be followed to enforce the by-law.

Stakeholders have expressed concern that there is confusion regarding the ability of bodies corporate to tow vehicles. Additionally, using the by-law enforcement process in the BCCM Act to enforce breaches of parking by-laws can lead to significant delays and stakeholders have highlighted that there is often a need to respond more rapidly to parking issues in community titles schemes.

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

As part of the Property Law Review, QUT recommended bodies corporate be able to tow vehicles after making an authorising by-law and erecting signage. However, following consideration of the views of the CTL Working Group and further examination of existing options available to bodies corporate to tow, the Property Law Review recommendation was not adopted, and an alternative approach was developed.

*Enhancements to by-law enforcement processes and access to records in layered arrangements of community titles schemes*

Layered arrangements of community titles schemes may sometimes be utilised for large, complex, or staged developments. A layered arrangement includes a principal community titles scheme, which is made up of the scheme land for all other community titles schemes in the group and its own common property (and any other lot included in the scheme where that lot does not constitute a community titles scheme). Other community titles schemes within the grouping are called subsidiary schemes.

In a layered arrangement, the community management statement for a subsidiary scheme, including the by-laws, has general effect subject to the community management statement for each higher scheme in the layered arrangement. In some cases, by-laws for a principal or higher-level scheme will apply to subsidiary schemes.

The BCCM Act sets out a procedure to be followed by a body corporate to enforce its by-laws. The procedure includes issuing a contravention notice and, in the event the notice is not complied with, the body corporate can commence proceedings in the Magistrates Court to enforce the by-laws or make a dispute resolution application under chapter 6 of the BCCM Act.

The procedure provided in the BCCM Act for a body corporate to enforce its by-laws relates only to enforcement of by-laws within each layer of the layered arrangement – for example, a body corporate for a subsidiary scheme and the owners and occupiers within that subsidiary scheme.

However, sometimes a contravention of a by-law by an owner or occupier of a lot in a scheme in a layered arrangement may directly and materially impact on owners or occupiers in another scheme in the layered arrangement.

The Bill will make amendments to better facilitate enforcement of by-laws against a body corporate for, or an owner or occupier of a lot in, another scheme in a layered arrangement, where appropriate to do so.

To support this change, and to support transparency between subsidiary schemes and higher schemes in a layered arrangement, the Bill will also include amendments to improve appropriate access to records for schemes in layered arrangements.

The proposed changes are in line with recommendations made by QUT in the Property Law Review.

*Administrative and procedural matters*

The Bill contains amendments to clarify and streamline body corporate administrative and procedural requirements, improve transparency and accountability in body corporate governance, and ensure bodies corporate are provided with documents necessary to

perform their functions. Many of these amendments were informed by recommendations made by QUT in the Property Law Review.

#### **4. Sunset clauses in 'off the plan' contracts for land**

'Off the plan' residential property contracts are complex, and involve non-standard terms and risks for both the buyer and seller, including risks linked with changes in the property market.

Concerns have emerged in the marketplace about increasing use of sunset clauses by some sellers (property developers) to terminate 'off the plan' sale contracts, which could potentially allow the seller to re-list and sell the proposed lot for a much higher price.

Although buyers will receive their deposit back on termination of the contract, changing market conditions and rising prices may mean they have difficulty affording another property, particularly in the case of first-time or vulnerable buyers.

Even if buyers seek legal advice, a power imbalance between buyers and sellers may leave buyers with little ability to negotiate changes. Many buyers also do not have the financial resources to pursue legal action against a seller in the event they believe the seller has used a contractual clause inappropriately.

The reforms in the Bill will limit the ability for sellers to use sunset clauses to terminate an 'off the plan' contract for land. This will provide greater protection for buyers, while still providing the ability for sellers to terminate an 'off the plan' contract for the sale of land in specified situations.

The intention behind the reforms is to provide proportionate consumer protections, as buyer confidence is critical to the success of the property sector. It is also intended to deter sellers from terminating an 'off the plan' contract for the sale of land without making a bona fide attempt to finalise the contract.

It is important to note the Bill will not apply in respect of sunset clauses contained within building contract terms, even when these terms are part of a linked land and house building contract, or a single 'house and land' contract. Building contract terms are separately regulated under the *Queensland Building and Construction Commission Act 1991*.

A review will commence one to two years after the reforms have commenced. The review will consider whether further reforms are required to protect people buying proposed community titles and similar lots 'off the plan'. The staged approach recognises the increased pressures currently faced by property developers in respect of labour and material availability, and costs for the construction of buildings.

#### **5. Release of deposits under an 'off the plan' residential property contract**

The relevant Acts each include a legislative framework regulating amounts held in trust accounts, generally referred to as deposits, for proposed lots. Essentially, all deposits for an 'off the plan' sale must be paid to a law practice or a real estate agent (or in limited circumstances, the public trustee). It has been identified there might be uncertainty in the existing provisions that could lead to the early release of the deposits to a seller (property developer), which is not consistent with the policy intent of these existing provisions.

It is important to prevent the early release of deposits to sellers as part of ‘off the plan’ residential property contracts, to maintain the integrity of buyer funds and prevent negative outcomes for buyers – for instance, to ensure buyers are refunded their deposit in a situation where a seller becomes insolvent.

The Bill will make minor amendments to the relevant Acts to confirm the policy intent of these Acts. That is, a deposit can only be released, from a relevant trust account, to a party to the contract (such as a property developer who is the seller) at the time of settlement or if another contract finalisation event occurs where that party is entitled to the deposit.

## **Achievement of policy objectives**

To achieve its objectives, the Bill amends the BCCM Act, BUGT Act, Land Sales Act, *Land Title Act 1994* (Land Title Act), and South Bank Act in the manner outlined below.

### **1. Termination of community titles schemes**

The Bill will retain the existing arrangements for termination of community titles schemes by resolution without dissent of the body corporate or by order of the District Court. However, the existing arrangements will be enhanced by prescribing a non-exhaustive set of specific matters for the Court to consider when deciding whether it would be just and equitable to terminate a community titles scheme.

To achieve the relevant policy objective, the Bill will amend the BCCM Act (with minor consequential amendments to the Land Title Act) to establish a new process for the termination of community titles schemes, in circumstances where there are economic reasons supporting the termination.

In summary, the new process for bodies corporate considering terminating the community titles scheme for economic reasons will involve:

- preparation of a *pre-termination report* containing prescribed information to assist the body corporate decide whether there are *economic reasons for termination* of the community titles scheme (as defined in the Bill);
- the body corporate at a general meeting deciding whether there are *economic reasons for termination* (a motion for an *economic reasons resolution* may be passed by majority resolution of the body corporate, the requirements of which are set out in section 107 of the BCCM Act);
- if the body corporate passes an *economic reasons resolution*, the body corporate may also pass a *termination plan resolution*, which requires the body corporate to prepare a *termination plan* which contains important information for lot owners to consider about a potential process for undertaking a sale of the community titles scheme to a single entity and for terminating the scheme;
- once prepared, the body corporate provides lot owners with a copy of the *termination plan* for consideration, and following a prescribed timeframe, the body corporate may hold a general meeting to consider a motion for a *termination resolution*, which in summary, is a resolution to implement the terms of the termination plan in order to terminate the scheme (a motion for a *termination resolution* will only be passed if 75% or more of all lot owners vote for the motion);



- if the motion for a *termination resolution* is passed, the body corporate must notify certain parties with an interest in the scheme of the resolution and must appoint a person as *facilitator* to assist the body corporate implement the termination plan;
- following implementation of the *termination plan*, including transfer of ownership of all lots and scheme land to the purchaser, the community titles scheme can be terminated through the lodgement and recording of relevant documents under the Land Title Act and the body corporate is dissolved.

The new arrangements for terminating community titles scheme for economic reasons may involve a lot owner being required to sell their lot, despite the lot owner not supporting the sale or termination of the community titles scheme. In addition, the interests of lessees and parties with contractual arrangements with a body corporate (including caretaking service contractors) may be adversely affected by a termination.

In recognition of these issues, the Bill contains several important protections, including:

- an ability of lot owners to dispute an *economic reasons resolution* by making an application for an order of a specialist adjudicator under the dispute resolution provisions of the BCCM Act (with the body corporate responsible for paying for the adjudication);
- a requirement that the termination plan provide at least a minimum compensation amount for lot owners upon the sale of the scheme, based on compensation they would be eligible to receive if the State was to acquire the scheme under the *Acquisition of Land Act 1967*;
- a requirement for termination plans to set out how the interests of lessees and persons with contractual arrangements with the body corporate will be compensated (with specific minimum compensation arrangements being prescribed in relation to lessees and caretaking service contractors that hold management rights agreements with the body corporate);
- an ability for particular persons with an interest in the scheme (including lot owners) to seek orders of the District Court in relation to the termination plan (including an ability for lot owners to seek an order that the termination plan not be implemented);
- a broad jurisdiction of the District Court to make any order that the court considers is just and equitable in relation to a proceeding about a termination plan.

The Bill also contains provisions to address the effects of the sale and termination of a community titles scheme (and dissolution of a body corporate) in relation to matters such as accrued charges, levies, rates, and taxes imposed by certain authorities.

## **2. Arrangements for authorisation of alternative insurance**

The Bill amends the BCCM Act to change the processes around authorisation of alternative insurance. This includes providing for an adjudicator to consider applications for alternative insurance, rather than the Commissioner; providing for an approved form for making of an adjudication application for approval of alternative insurance; and prescribing matters an adjudicator may consider in deciding the application.

The Bill also amends the BCCM Act to enable a body corporate to make an application for an alternative insurance order where the body corporate cannot comply with its obligation to insure buildings on lots included in the community titles scheme that are

created under a standard format plan of subdivision and have a common wall with a building on an adjoining lot.

### **3. *Modernising and improving the operation of the BCCM Act in relation to by-laws and other governance issues***

#### *Second-hand smoke in community titles schemes*

The Bill amends the BCCM Act to permit bodies corporate to make a by-law that specifically prohibits or restricts the smoking or inhaling of all or some smoking products on all or part of the common property or body corporate assets and on all or part of an outdoor area of a lot (but not the inside area of a lot). An outdoor area of a lot includes a balcony, courtyard, patio, and verandah.

The Bill also amends the BCCM Act to declare that a by-law restricting or prohibiting the smoking or inhaling of all or some smoking products is not, having regard to the interests of all owners and occupiers of lots included in the scheme, oppressive or unreasonable.

The Bill will define 'smoking product' as per the meaning in the *Tobacco and Other Smoking Products Act 1998*. This definition includes a tobacco product, herbal cigarette, loose smoking blend, a thing that is intended to be smoked in a hookah, and personal vaporiser.

The Bill further amends the BCCM Act to provide that an occupier contravenes the requirement that an occupier must not cause a nuisance or hazard or unreasonably interfere with the use and enjoyment of a lot or common property of another occupier if the occupier regularly uses, or regularly permits their invitee to regularly use, a smoking product, 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.

#### *Keeping or bringing of animals on a lot or on common property*

The Bill amends the BCCM Act to provide that body corporate by-laws cannot prohibit the keeping of animals in a scheme, or restrict the number, type or size of animals that may be kept.

The Bill also prescribes requirements in the BCCM Act that the body corporate must comply with, if a body corporate by-law requires an owner or occupier to obtain the body corporate's permission for keeping of an animal. These requirements include that the body corporate must not unreasonably withhold approval to keep an animal, the circumstances in which a body corporate may refuse to grant approval for keeping of an animal, and that the body corporate must provide its approval and conditions of approval in writing.

#### *Body corporate towing of vehicles*

The Bill modifies the BCCM Act to clarify that nothing in the BCCM Act prevents a body corporate from towing a motor vehicle from the common property for the scheme under another Act or otherwise according to law. According to law includes a body corporate's common law rights, as well as other legislation.

The Bill also amends the BCCM Act to provide that, when a motor vehicle owned or

operated by an owner or occupier of a lot in the scheme is parked in contravention of a by-law and the vehicle is towed by the body corporate, the body corporate is not required to comply with a requirement under chapter 3, part 5, division 4 (By-law contraventions), including contravention notice requirements.

*Enhanced by-law enforcement processes and access to records in layered arrangements of community titles schemes*

The Bill inserts provisions into the BCCM Act to allow a body corporate or an owner or occupier of a lot in a scheme in a layered arrangement of community titles schemes to enforce by-laws against another body corporate or an owner or occupier of a lot in another scheme in the layered arrangement. This will take the form of a dispute about by-laws. However, the dispute must relate to by-laws that are binding on both parties and the person commencing the proceeding must be directly and materially affected by the subject of the dispute.

The Bill also amends the BCCM Act to ensure the body corporate for a scheme in a layered arrangement, or the owners and occupiers of that scheme, may inspect or obtain records of the body corporate for another scheme in the layered arrangement for the purpose of identifying a person, to enable the issuing of a contravention notice for a breach of a body corporate by-law.

The Bill further amends the BCCM Act to clearly empower the body corporate for a subsidiary scheme, and owners of lots in a subsidiary scheme, to request to inspect, or obtain, the records of the body corporate of a higher scheme.

*Administrative and procedural matters*

The Bill amends the BCCM Act to clarify and streamline body corporate administrative and procedural requirements, improve transparency and accountability in body corporate governance, and ensure bodies corporate are provided with documents necessary to perform their functions, by:

- clarifying that particular electronic records that may be kept by a body corporate are classified as body corporate records;
- facilitating the use of modern technologies by enabling body corporate records to be inspected or obtained in a way agreed between the body corporate and the person requesting access (including via electronic access to documents such as through an online file sharing website);
- providing that a body corporate must give documents or other information it is required to give to a lot owner (or other person whose address for service is required to be given to the body corporate) in the way prescribed under the regulation module applying to the scheme;
- requiring the body corporate to advise the Registrar of Titles of a change in the body corporate's address for service;
- enabling disputes about the handover of materials and documents by the original owner of a scheme to a body corporate at the first annual general meeting to be resolved under chapter 6 of the BCCM Act;
- enhancing the code of conduct for body corporate managers and caretaking service contractors by prohibiting body corporate managers and caretaking service

contractors from ‘unfairly influencing’ the outcome of motions and committee elections;

- allowing bodies corporate to approve changes to their financial year at a general meeting once every five years;
- removing the requirement for the body corporate to keep a seal;
- clarifying the requirements for the counting of votes for a special resolution.

#### **4. Sunset clauses in ‘off the plan’ contracts for land**

The Bill amends the Land Sales Act to ensure sellers (property developers) can only use a sunset clause to terminate ‘off the plan’ contracts for land in the following ways:

- with the written consent of the buyer; or
- under an order of the Supreme Court; or
- in another way prescribed by regulation.

The Bill amends the Land Sales Act to include a list of matters the Supreme Court must take into account in making an order.

The Bill also provides that, in respect of another way prescribed by regulation, the regulation may only be made if the Minister is satisfied the prescribed way will provide consumer protection for a buyer.

The Bill also amends the Land Sales Act to provide procedural arrangements for a seller to seek the written consent of the buyer to terminate an ‘off the plan’ contract for the sale of land using a sunset clause. These include obligations on buyers in respect of responding to the seller’s written sunset clause notice and to act reasonably in the circumstances. However, if a buyer does not respond to the sunset clause notice, the failure to respond is not to be taken as evidence that the buyer consents to the termination of the contract under the sunset clause.

The Bill ensures that the new requirements apply to ‘off the plan’ contracts for the sale of land that were entered into before the commencement of the amendments, but not settled immediately before commencement. Effectively, this will result in the sunset clause amendments operating retrospectively to apply to some existing, unsettled ‘off the plan’ contracts for the sale of land.

The Bill also ensures that, in relation to seeking an order of the Supreme Court, the seller is liable to pay the costs of a buyer related to any proceedings for an order, unless the seller satisfies the Supreme Court that the buyer unreasonably withheld consent to terminate the contract under the sunset clause.

#### **5. Release of deposits under an ‘off the plan’ residential property contract**

The Bill makes minor clarifying amendments to the Land Sales Act, BCCM Act, BUGT Act and South Bank Act to confirm the policy intent of these Acts – that is, deposits can only be released, from a relevant trust account, to a party to the contract at the time of settlement or if another contract finalisation event occurs where that party is entitled to the deposit. The amendments take the form of statutory notes and an example, as substantive change to the provisions was not considered necessary.

The purpose of these minor amendments is to prevent the early release of deposits to property developers as part of 'off the plan' residential property contracts. This can help mitigate the negative outcomes for buyers – for instance, if a property developer becomes insolvent and the contract is terminated, there may be insufficient funds to refund buyer deposits.

## **Alternative ways of achieving policy objectives**

The relevant clauses in the Bill are the most effective and appropriate way of achieving the policy objectives. There are no suitable non-legislative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

While there will be costs for government implementation of the Bill, these costs are not expected to be substantial and will be met from existing budget allocations.

Implementation of the body corporate governance amendments to the BCCM Act (including changes to arrangements for the termination of community titles schemes) will involve costs for Government, including staff training and the creation of supporting material. In addition, there will be costs associated with the development of information and education resources to assist lot owners, committees, bodies corporate, and body corporate professionals understand and apply the changes to the BCCM Act.

In the short to medium term, passage and commencement of the Bill may lead to an increase in enquiries to the Office of the Commissioner for Body Corporate and Community Management (BCCM Office). Also, there may be an initial (likely modest), increase in demand for dispute resolution services of the BCCM Office and District Court.

Implementation of the amendments contained in the Bill dealing with sunset clauses and release of deposits will also involve some costs for Government in terms of staff training and the development of supporting materials to assist in communicating the changes to consumers, industry, and relevant property and legal professionals. There will also be a new jurisdiction for the Supreme Court in relation to termination, via a sunset clause, of 'off the plan' land contracts. However, it is anticipated this new jurisdiction is likely to be small.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with the fundamental legislative principles (FLP) in the *Legislative Standards Act 1992* (Qld) (LS Act). Aspects of the Bill that raise possible FLP issues, and justifications for any potential breaches, are addressed below.

### ***Legislative Standards Act 1992 – section 4(2)(a) – Legislation has sufficient regard to rights and liberties of individuals.***

#### *Termination of community titles schemes*

There are potential public benefits in reforming the BCCM Act to facilitate easier termination of uneconomic community titles schemes, including the potential for scheme

land to be redeveloped in a way that provides increased housing opportunities.

However, the impacts of the termination reforms on individuals who own or lease lots, or who have contractual arrangements with a body corporate, are also of critical importance. Consistent with many other aspects of community titles-related policy, issues surrounding termination of community titles schemes require a balancing of legitimate, but sometimes competing, interests within individual community titles schemes, as well as the broader community titles sector.

Requiring a lot owner to sell their lot as part of a collective sale, despite the lot owner not being supportive of the sale, has significant implications for the property rights of the lot owner. In particular, if the lot is used for residential purposes, requiring the sale of the lot could also have significant social and economic consequences for the lot owner (or occupier), especially if the lot is close to the person's family, friends, employment, or required medical or other services. Termination of a community titles scheme will also likely have financial impacts on service providers and contractors (including caretaking service contractors) who are engaged to provide administrative, caretaking, letting, and other services to the body corporate. In this respect, legislation facilitating non-unanimous termination of community titles schemes could be seen as not having sufficient regard to the rights and liberties of individuals.

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

In response to these issues and concerns, the Bill introduces a new process and decision-making threshold for a body corporate to terminate a community titles scheme where there are economic reasons to terminate the scheme. In these cases, and following a process designed to provide appropriate protections for unit owners, a body corporate may approve a motion for a termination resolution if at least 75% of owners vote for the motion.

To ensure that adverse impacts on the rights and interests of individuals who do not support the sale are mitigated and avoided where possible, the Bill provides several safeguards and protections including:

- approving a termination by at least 75% of lot owners will only be available where there are specific economic reasons for terminating the scheme (economic reasons are defined in the Bill) – in other cases, termination will continue to require a resolution without dissent of the body corporate, as well as an agreement on termination issues, or be authorised by an order of the District Court;
- detailed information about economic reasons will need to be set out in a pre-termination report that will be made available to all lot owners;

- the legislation will set minimum requirements for compensation of lot owners, lessees, and caretaking service contractors;
- disputes about economic reasons resolutions will be able to be determined by specialist adjudication, while disputes about termination resolutions and plans will be determined by the District Court, with provisions intended to reduce the exposure of minority owners to costs associated with these processes;
- the legislation will specify a range of factors for the District Court to consider in deciding whether it is just and equitable to make an order terminating the community titles scheme, including the economic and social effects of termination on each lot owner, as well as certain lessees and persons with contractual arrangements with the body corporate.

It is considered that the above safeguards and protections, including providing the District Court with broad discretion to make just and equitable decisions in determining disputes about termination resolutions and termination plans, appropriately balance the rights and interests of individuals involved in community titles schemes, and in that respect, are consistent with FLPs.

#### *Second-hand smoke in community titles schemes*

The Bill amends the BCCM Act to allow bodies corporate to make by-laws to prohibit smoking in outdoor areas of lots and the common property of community titles schemes. The Bill also provides that any regular smoking by an occupier is a nuisance, hazard, and unreasonable interference under section 167 of the BCCM Act if it impacts on other occupiers, invitees, or people lawfully on common property.

The proposed amendments may contravene the FLP that legislation have sufficient regard to the rights and liberties of individuals, as it will empower bodies corporate to prohibit an owner or occupier from smoking on their own property or on the common property (which is owned as tenants in common by the owners of all the lots in the scheme). In that respect, the changes may infringe on the individual freedoms of owners and occupiers to use their private property in the manner they choose.

However, it is considered any potential breach of FLPs is justified, as the changes will reduce exposure of owners and occupiers of lots in community titles schemes to second-hand smoke. There is a significant body of evidence indicating the harmful effects of second-hand smoke.

It is also important to note that owners and occupiers within a community titles scheme do not have unfettered rights. They are bound by the BCCM Act (including section 167 of the BCCM Act), and bodies corporate have a right under the BCCM Act to make by-laws to regulate the use and enjoyment of lots and common property in a community titles scheme. These provisions place some limitations on activities within lots to reduce or avoid adverse impacts on other occupiers in a scheme. However, the BCCM Act includes limitations on the content of by-laws, including requiring by-laws to not be oppressive or unreasonable.

#### *Access to records in layered arrangements of community titles schemes*

The amendments to the BCCM Act in the Bill to allow bodies corporate and owners and occupiers in a community titles scheme in a layered arrangement of schemes to access

the records of a body corporate for another scheme in the layered arrangement may potentially breach FLPs, by not having sufficient regard to the rights and liberties of individuals by impeding an individual's right to privacy.

However, it is considered any potential breach is justified, on the basis that, in communal living, there must be a balance achieved between privacy and access to information about other owners given the collective interests in the administration, management and control of the scheme. The changes are proposed to enhance the enforcement of by-laws in the layered arrangement, thus improving the overall amenity of the scheme and the enjoyment of lots and common property by lot owners, and to improve transparency and accountability in the management of schemes in the layered arrangement.

#### *Sunset clauses in 'off the plan' contracts for land*

The sunset clause amendments to the Land Sales Act in the Bill may potentially breach FLPs by not having sufficient regard to the rights and liberties of individuals. This is because the amendments could be construed as changing the existing rights of sellers (property developers), as they will be subject to new limitations on the use of sunset clauses to terminate an 'off the plan' contract for land. This would limit the way in which a seller can exercise a term in a contract and add additional hurdles for a seller to meet in order to legally terminate the contract (i.e. obtaining the written consent of the buyer or by obtaining a Supreme Court order).

However, any potential FLP breach is justified, as it is necessary to achieve a reasonable balance between the interests and risks undertaken by the contracting parties. While it is acknowledged that sellers will be subject to new limitations and costs in relation to land only contracts, it is considered that proportionate consumer protections and the resulting buyer confidence are critical to the success of the property sector.

A power imbalance between buyers and sellers may leave buyers with little ability to negotiate changes to sunset clause provisions, particularly when there is a high level of demand (and therefore competition from other buyers) in the market. It is also likely that many buyers will not have the financial resources to pursue legal action against sellers in the event they believe the seller has used the sunset clause inappropriately.

The amendments help to address this power imbalance and provide greater protection for buyers, while still providing the ability for sellers to terminate the contract.

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

The release of deposit amendments to the relevant Acts in the Bill may be viewed as potentially breaching FLPs by not having regard to the rights and liberties of individuals. This is because the amendments could be construed as changing the existing rights of sellers (property developers), as there is evidence that there is some uncertainty within industry about the existing ability of a developer to access amounts in a solicitor's or real estate agent's trust account.

The amendments are intended to confirm the policy intent of existing provisions in the relevant Acts, so it is arguable that no rights are being changed. Additionally, the amendments are designed to support the protection of buyers' money held in the relevant trust accounts, particularly in situations where a seller becomes insolvent, and the contract



is terminated. This need for protection outweighs any perceived right of sellers to access these funds.

#### *New penalties*

The Bill amends the BCCM Act to introduce new requirements, a breach of which creates an offence with associated penalties:

- Failure of a person to comply with a continuing contravention notice or future contravention notice given to the person by the body corporate (Clauses 14 and 16). Maximum penalty—20 penalty units.
- Failure of a body corporate for a community titles scheme in a layered arrangement of community titles schemes to permit an interested person to inspect the body corporate records or give the person a copy of the record kept by the body corporate (Clause 25). Maximum penalty—20 penalty units.

For legislation to have sufficient regard to the rights and liberties of individuals, new offences should be appropriate and reasonable, and the penalty should be proportionate to the offence.

Any potential breach of FLPs is considered justified. The penalties are required to ensure there are sufficient deterrents against non-compliance with the new requirements. The offence provisions and their associated penalties are consistent with existing offences and penalties within the BCCM Act in relation to similar requirements.

#### **Legislative Standards Act 1992 – section 4(2)(b) - Legislation has sufficient regard to the institution of Parliament**

##### *Termination of community titles schemes*

The Bill sets out a range of matters for the District Court to consider when deciding whether it is just and equitable to terminate a community titles schemes under chapter 2, part 9, division 3 or division 4. In addition to specifying particular considerations, the provisions require the court to consider a matter that is prescribed under the regulation module that applies to the scheme (see clause 7, new section 79(2)(e) (Terminating community titles scheme – application for court order) and clause 7, new section 81R(3)(h) (Court orders)). The inclusion of additional considerations for the court to be prescribed by regulation potentially raises the issue of whether the amendments have sufficient regard to the institution of Parliament (under the LS Act, section 4(2)).

The regulation modules made under the BCCM Act provide a range of procedural and administrative requirements applying to community titles schemes subject to the particular module specified in the community management statement for the scheme (or the Standard Module if no module is specified). This provides for a legislative framework that allows the tailoring of restrictions, requirements, or processes to match particular types of schemes (Accommodation, Commercial, Small Schemes, Specified Two-lot Schemes, and Standard).

Most factors considered relevant for the court to consider in deciding whether it is just and equitable to terminate a community titles scheme are explicitly set out in the proposed amendments to the BCCM Act as they can apply generically to any type of community title

scheme.

However, it is considered reasonable and useful to also provide a capacity to identify factors that are specific or intrinsic to certain types of schemes, in a regulation module applying to that type of scheme, particularly in response to future emerging trends or issues impacting on certain types of community titles schemes. In this respect, any inconsistency between the regulation-making power and fundamental legislative principles is considered justified.

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

The Bill amends the BCCM Act to provide two regulation-making powers relating to by-laws regulating the keeping of animals on a lot or on common property:

- new section 169B(4)(a) of the BCCM Act - If a body corporate by-law requires the written approval of the body corporate for the scheme, or the committee for the body corporate, to keep or bring an animal on the lot or the common property, the body corporate, or the committee must within the period prescribed by the regulation module applying to the scheme decide whether to grant the approval.
- new section 169B(6)(g) of the BCCM Act - The body corporate, or the committee, may refuse to grant approval to keep or bring an animal on the lot or the common property only if the body corporate, or the committee, is satisfied of particular matters. The matters include matters prescribed under the regulation module applying to the scheme.

The Bill could potentially breach FLPs, on the basis that it may not have sufficient regard to the institution of Parliament. However, any potential FLP is considered justified.

The primary object of the BCCM Act is to provide flexible and contemporary communally based arrangements for the use of freehold land. To achieve flexibility in the legislative framework to accommodate the management needs of diverse types of schemes, the BCCM Act provides management processes and procedures through a set of regulation modules designed for the different types of schemes.

This division of matters between the BCCM Act and the regulation modules is considered appropriate given the intent of the legislation to provide flexible management arrangements for community titles schemes.

The regulation-making power in new section 169B(4)(a) for prescribing the period within which the body corporate or committee must decide whether to grant an approval to keep or bring an animal on the lot or the common property is considered necessary. This is because the period is dependent on management processes and procedures set out in each of the regulation modules, including the way decisions may be made and the period of notice of that must be given before meetings. The regulation-making power will ensure that the period of time for deciding whether to grant an approval can be easily and rapidly updated if needed due to changes in other procedural requirements.

The regulation-making power in new section 169B(6)(g) allowing particular matters to be prescribed is considered necessary to enable relatively speedy and flexible regulatory responses to a new consideration where it may be appropriate for a body corporate to refuse to grant approval to keep or bring an animal on the lot or common property, which was not contemplated at the time the amendments to the BCCM Act were made. For

instance, it could be used in the event that a new law comes into force regulating a particular type of animal, which is not otherwise covered by the matters outlined in the rest of new section 169B(6).

*Administrative and procedural amendments - giving of documents by body corporate*

Several clauses in the Bill amend the BCCM Act to require the body corporate for a community titles scheme to give a copy of a record, a document, or information in the way prescribed under the regulation module applying to the scheme.

This could potentially breach FLPs, if the use of regulations in this context is not considered to have sufficient regard to the institution of Parliament.

The regulation-making power is considered necessary to enable relatively speedy and flexible regulatory responses to changes or emerging issues in modern technology to ensure that bodies corporate can communicate with owners and other persons in an efficient way.

Since 1 March 2021, the regulation modules under the BCCM Act prescribe how documents or information that are required to be given under the regulation modules by the body corporate to the owner of a lot or to a person whose address for service is held by the body corporate. The documents or information may be given by: (a) by delivering it to the person personally; or (b) by sending it to person's address for service (which may include an email address); or (c) if an agreement exists between the person and the body corporate that provides for the person to nominate another way for the document or information to be given, served or notified—in accordance with the agreement. These provisions facilitate the use of modern technology for communication in community titles schemes. For example, a body corporate and owner may enter into an agreement for documents or information to the owner through a file-sharing service.

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

The sunset clause amendments in the Land Sales Act in the Bill provide three regulation-making powers:

- new section 19B of the Land Sales Act, definition of **relevant event** – a regulation-making power to prescribe a relevant event by regulation.
- new section 19D(1)(c) of the Land Sales Act – a regulation-making power to prescribe a way for the seller to terminate an 'off the plan' contract for the sale of land under a sunset clause.
- new section 19F(3)(k) of the Land Sales Act – a regulation-making power to prescribe a matter which the Supreme Court must consider in deciding whether it is just and equitable to make an order permitting the seller to terminate an 'off the plan' contract for the sale of land under a sunset clause.

The Bill could potentially breach FLPs, on the basis that it authorises the amendment of an Act by a regulation. However, any potential FLP is considered justified.

The regulation-making powers are considered necessary to enable relatively speedy and flexible regulatory responses to changes or emerging issues in the Queensland property market, particularly given such markets can be unpredictable.

The regulation-making power in respect of prescribing another way where termination of an 'off the plan' contract for the sale of land using a sunset clause can occur is appropriately constrained with a requirement that the regulation can only be made if the Minister is satisfied the prescribed way will provide consumer protection for a buyer.

Similarly, the regulation-making power for prescribing matters for the Supreme Court to take into account when determining whether it is 'just and equitable' to terminate a contract, is of a nature contemplated by the Parliament.

The new regulation-making power in respect of a 'relevant event' is considered necessary to enable relatively speedy and flexible regulatory responses when new relevant events are identified. These new relevant events could be in response to changes to the regulatory processes for the registration of proposed lots in Queensland, or where it is identified that there are attempts to circumvent the requirements via tying termination rights to new types of events.

Similarly, the regulation-making power for prescribing matters for the Supreme Court to take into account when determining whether it is 'just and equitable' is also needed to enable relatively speedy and flexible responses where new factors are identified that should be taken into consideration when undertaking the 'just and equitable' consideration.

### ***Legislative Standards Act 1992 – section 4(3)(b) – Legislation is consistent with principles of natural justice***

#### *Arrangements for authorisation of alternative insurance*

The Bill amends the BCCM Act to provide that a body corporate may make an adjudication application for an alternative insurance order.

Except in emergency or urgent circumstances, under section 243 of the BCCM Act, a copy of the adjudication application and an invitation to make a written submission on the application is given to the respondent, the body corporate, lot owners and each other affected person.

The Bill provides an adjudication application for alternative insurance may be referred to an adjudicator without notice of the application or an opportunity to make a submission being provided under section 243 of the BCCM Act. This may contravene the FLP that legislation is consistent with the principles of natural justice.

However, it is considered any potential breach is justified because of the urgent nature of alternative insurance applications. Bodies corporate seek alternative insurance approvals because they are unable to obtain the requisite insurance for their building/s. Generally, a body corporate may not be aware of their inability to obtain insurance until close to their insurance renewal date. Delays in consideration of applications for alternative insurance could lead to buildings being uninsured, which puts the owners of lots at significant risk of monetary loss, should an event take place that would have otherwise been partially or fully covered by insurance (e.g. a natural disaster).

A number of safeguards will ensure consideration of the application for alternative insurance is appropriate. The adjudicator's decision-making criteria for alternative insurance are defined in the Bill. The insurance will only be able to be approved if an

adjudicator is satisfied that the body corporate cannot comply with the insurance requirement, and that the alternative insurance to be approved by the adjudicator is as similar as practicable to the required insurance.

Under the BCCM Act, an adjudicator must investigate an application to decide whether it would be appropriate to make an order on the application. As part of the adjudicator's investigation powers, the adjudicator may invite persons the adjudicator considers may be able to help resolve issues raised by the application to make written submissions to the adjudicator within a stated time.

The Bill also includes provision for the adjudicator to make a condition that, if the body corporate has not approved the proposed alternative insurance at a general meeting, that the body corporate must approve the alternative insurance authorised in the adjudicator's order within a specific timeframe.

Further, a lot owner will also be able to appeal an adjudicator's order to approve alternative insurance.

#### *Body corporate towing of vehicles*

The BCCM Act currently requires breaches of by-laws to be dealt with under the process in the Act, which provides for the body corporate to give a by-law contravention notice to the person it believes is breaching the by-laws. The decision to give the notice can be made by the committee, or the body corporate at a general meeting. The body corporate usually cannot take action to enforce the by-laws until it has sent a by-law contravention notice. If a person does not comply with a by-law contravention notice, the body corporate can decide to either start proceedings in the Magistrates Court or apply to the BCCM Office for dispute resolution in relation to the by-law contravention.

The Bill clarifies power for bodies corporate to authorise the removal of vehicles and may lead to circumstances where a person's vehicle is removed from the common property of a community titles scheme without a more extensive dispute resolution process that provides an opportunity for the vehicle owner to respond to allegations that they have breached a by-law before action is taken in relation to their vehicle.

In this respect, the new provision may contravene the FLP that legislation is consistent with the principles of natural justice.

However, it is considered any potential breach is justifiable. Bodies corporate may require the ability to remove vehicles from the common property in a timely manner, particularly where there is a need to urgently remove the vehicle (for instance, where it is blocking access so that emergency services may be unable to access the community titles scheme).

If a body corporate decides to tow a vehicle, there are still rights available to an owner or occupier to dispute the body corporate's actions. The body corporate is still required to make reasonable decisions under section 94 of the BCCM Act, and the body corporate may still be liable if the decision to tow is found to be unreasonable or unlawful.

***Legislative Standards Act 1992 – section 4(3)(g) – Legislation adversely affects rights and liberties, or imposes obligations, retrospectively***

### *Keeping or bringing of animals on a lot or on common property*

The Bill amends the BCCM Act to provide for a transitional provision, specifying that if a person applied before the commencement under former chapter 6, part 4 of the BCCM Act for the resolution of a dispute about whether a by-law about keeping or bringing of an animal on a lot or the common property is valid and enforceable, the dispute must be resolved under the Act as in force after the commencement. This amendment may potentially breach FLPs, on the basis that it affects rights and liberties, or imposes obligations, retrospectively.

However, any potential FLP breach is considered justified. The amendments in relation to keeping or bringing of animals largely confirm the established case law on the issue, meaning that the position regarding the validity of by-laws may not have greatly changed due to the amendments. Additionally, given the amendments are around by-law validity, as opposed to specific decision-making on a pet application, it is considered it is beneficial to allow these disputes to be decided under the new legislation, to provide certainty to the body corporate and owners and occupiers for the scheme regarding the by-laws going forward and avoid the need for subsequent applications and disputes to be made on the same subject matter.

### *Sunset clauses in 'off the plan' contracts for land*

The sunset clause amendments to the Land Sales Act in the Bill will apply to 'off the plan' contracts for the sale of land that were signed, but not completed, at commencement. Effectively, this will result in the amendments operating retrospectively to apply to existing, unsettled contracts. Accordingly, the amendments potentially breach FLPs, on the basis they adversely affect rights and liberties, or impose obligations, retrospectively.

However, any potential FLP breach is considered justified. It is anticipated there are a significant number of buyers with current 'off the plan' contracts for the sale of land, who are concerned about the potential future termination of their contracts.

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

The Government will ensure that consumer (buyer), as well as property and legal industry education is conducted so that all parties are aware of the commencement of the proposed reforms.

### **Legislative Standards Act 1992 – section 4(3)(i) – Legislation provides for the compulsory acquisition of property only with fair compensation**

#### *Termination of community titles schemes*

The termination reforms in the BCCM Act allow for sale of a dissenting owner's lot in circumstances where the body corporate has decided there are economic reasons for

termination, and subsequently 75% or more of all lot owners have voted to implement a termination plan for the scheme. For the dissenting owner, this could be seen as a compulsory acquisition of their property by a private entity.

The proposed termination procedure raises specific considerations in regard to the LS Act, section 4(3)(i) that sets out that legislation should provide for the compulsory acquisition of property only with fair compensation, as well as in terms of generally having sufficient regard to the rights and liberties of individuals (discussed above).

The potential for something akin to compulsory acquisition is inherent in the existing provisions of the BCCM Act that allow an application to the District Court for an order that it is just and equitable to terminate the scheme (which have been retained in the Bill).

In relation to the new process for terminating community titles schemes for economic reasons (new chapter 2, part 9, division 4 of the BCCM Act), the Bill aims to ensure that any 'compulsory acquisition' of a lot as part of a collective sale is subject to fair compensation for the lot owner. While the proceeds of sale of a community titles scheme will be distributed amongst lot owners on the basis of the relative market values of lots, the legislation imposes minimum compensation provisions for lot owners based on the amount that would be payable to the owners if the scheme was acquired by the State under the *Acquisition of Land Act 1967*. Accordingly, it is considered that this aspect of the Bill is consistent with fundamental legislative principles.

## Consultation

### *Amendments to the BCCM Act*

In 2021, the Department of Justice and Attorney-General (DJAG) established a CTL Working Group, chaired by the Deputy Director-General – Liquor, Gaming and Fair Trading, to provide advice to DJAG on a range of issues relevant to the community titles sector. The CTL Working Group members are:

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

Consultation with the CTL Working Group informed development of amendments to the BCCM Act that are included in the Bill. Other relevant stakeholders who were consulted in relation to the BCCM Act issues in the Bill include the Animal Welfare League, Australian Apartment Advocacy, the Cancer Council, the Heart Foundation, My Community Legal Inc., the Property Council of Australia (PCA), QUT, the RSPCA, Strata Owners Speak Out, Tenants Queensland, the Townsville Lot Owners Group, and the Urban Development Institute of Australia (UDIA).

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

The results of this consultation informed further development of the Bill.

### *Amendments relating to 'off the plan' residential property contracts*

DJAG undertook public consultation from 22 August 2022 until 14 September 2022 on two 'off the plan' issues: the use of sunset clauses to terminate a contract and early release of deposits. Consumers and property developers were invited to complete an online survey.

A number of peak bodies were invited to make submissions. Submissions were received from:

- Housing Industry Association (HIA);
- PCA;
- QLS;
- UDIA

The results of the 2022 consultation process informed development of the Bill.

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

The results of this targeted consultation informed further development of the approach in the Bill.

## **Consistency with legislation of other jurisdictions**

### *Amendments to the BCCM Act*

While consideration has been given to approaches in other jurisdictions in developing the Bill (including the approach to terminating strata schemes in New South Wales), the Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state. The amendments in the Bill do not impact on other jurisdictions or the Commonwealth and are not affected by any national legislation or work plans through the Council for the Australian Federation.

### *Amendments relating to 'off the plan' residential property contracts*

The amendments relating to the use of sunset clauses to terminate 'off the plan' contracts for the sale of land will broadly align with other jurisdictions that have safeguards with respect to terminations of 'off the plan' residential property contracts using sunset clauses. Similar legislation was passed in New South Wales in 2015, Victoria in 2019, and the Australian Capital Territory in 2021.

The remaining 'off the plan' amendments in the Bill are specific to the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another State. The amendments in the Bill do not impact on other jurisdictions or the Commonwealth and are not affected by any national legislation or work plans through the Council for the Australian Federation.



## Notes on provisions

### Part 1 Preliminary

Clause 1 states that, when enacted, the Bill may be cited as the *Body Corporate and Community Management and Other Legislation Amendment Act 2023*.

Clause 2 provides that sections 4 to 25, sections 27 to 45 and part 5 commence on a day to be fixed by proclamation.

### Part 2 Amendment of Body Corporate and Community Management Act 1997

Clause 3 provides that Part 2 amends the BCCM Act.

Clause 4 omits section 34 (Body corporate's seal) of the BCCM Act to remove the requirement for a body corporate to have a seal.

Clause 5 amends section 47 (Application of lot entitlements) of the BCCM Act to clarify the extent to which interest schedule lot entitlements are the basis for calculating a lot owner's interest upon termination of a community titles scheme under the different mechanisms for termination, as provided in the amended chapter 2, part 9 of the BCCM Act.

Clause 6 makes consequential amendments to section 59 (Taking effect of community management statement) of the BCCM Act to reflect the removal of the requirement for a body corporate to have a seal by clause 4. Specifically, clause 6 amends section 59(3) of the BCCM Act to remove the previous section 59(3)(b) that stated a community management statement has effect as if each person bound by the statement had signed the statement under seal.

Clause 7 replaces chapter 2, part 9 (Termination of community titles schemes) of the BCCM Act with a new chapter 2, part 9 titled 'Termination of community titles schemes—basic schemes'.

New part 9, division 1 sets out preliminary matters for the part.

New section 76 (Purpose of part) outlines the purpose of part 9 which, in summary, is to provide for the process for terminating basic community titles schemes and dissolving bodies corporate. A note to section 76 explains a community titles scheme that is not a basic scheme would need to become a basic scheme to be terminated under part 9.

New section 77 (Definitions for part) provides definitions of certain terms used in part 9.

New part 9, division 2 provides for the termination of community titles schemes by resolution without dissent of the body corporate for the scheme.

New section 78 (Terminating community titles scheme by resolution without dissent) retains the existing ability of bodies corporate under section 78(1) of the BCCM Act to authorise termination of the community titles scheme by resolution without dissent, with some minor editorial modifications. Consistent with the existing section 78(1), in addition to a resolution without dissent of the body corporate, for termination under new section

78, an agreement about termination issues (as defined in new section 77) is required to be entered into between all registered proprietors and prescribed types of lessees.

New part 9, division 3 provides for the broad jurisdiction of the District Court to order the termination of a community titles scheme in certain circumstances.

New section 79 (Terminating community titles scheme—application for court order) retains (with some modifications) the existing jurisdiction of the District Court under section 78(2) of the BCCM Act to order the termination of community titles schemes, upon application by certain persons, where it is just and equitable to do so. New section 79 retains (with editorial adjustments) provisions of the existing BCCM Act that allow the District Court to have regard to the views of certain specified parties with an actual or potential interest in the termination, as well as the ability to make orders about termination issues, to the extent necessary for the effective termination of a scheme, and to appoint an administrator to put the court's order into effect.

However, in addition to retaining elements of the BCCM Act, new section 79 includes additional measures to clarify and enhance the operation of provisions for District Court ordered terminations of community titles schemes.

New section 79(2) sets out criteria for the District Court to consider in assessing whether it would be just and equitable to make an order for the termination of a community titles scheme. For example, specified considerations include the economic and social effects of termination on the owners of lots included in the scheme (new section 79(2)(c)). While specific criteria are set out in new section 79(2) for consideration by the District Court, the court has broad discretion to consider 'any other matter the court considers relevant' (new section 79(2)(f)).

In addition, new section 79(4) enables the District Court to make orders for the appointment (or removal) of a trustee for the sale or physical division of property, if the Court considers such an order is necessary or desirable.

New part 9, division 4 contains new arrangements for termination of a community titles scheme, where there are economic reasons for termination.

New division 4, subdivision 1 provides for the application of division 4.

New section 80 (Application of division to particular schemes) provides for the circumstances and types of community titles schemes that may be terminated following the process contained in division 4. While division 4 is available to basic community titles schemes generally, it does not apply to a retirement village scheme within the meaning of the *Retirement Villages Act 1999*, to which the BCCM Act applies (new sections 80(1)(a) and (2)).

In providing for the application of division 4, section 80 foreshadows two key elements of the new process contained in division 4, those being, the preparation of a termination plan and the passage of an economic reasons resolution (new section 80(1)(b)). The terms 'termination plan' and 'economic reasons resolution' are defined in new section 81.

New division 4, subdivision 2 provides for the interpretation of division 4.

New section 81 (Definitions) provides definitions for certain terms used in division 4.

New section 81A (What are *economic reasons for termination*) defines ‘economic reasons for termination’ by describing two separate scenarios where economic reasons for terminating a community titles scheme would exist. New section 81A(a) may be applicable if all of the lots included in the scheme are used for commercial purposes. An economic reason for terminating this type of community titles scheme is that it is not economically viable for the scheme to continue.

New section 81A(b) is not limited to community titles schemes within which all lots are used for commercial purposes. Rather, section 81A(b) is focused on repair and maintenance considerations for community titles schemes. Specifically, an economic reason for terminating a community titles scheme is that it is not economically viable for the body corporate to carry out necessary repair and maintenance works to meet its obligations to maintain property within the scheme and body corporate assets in a good or structurally sound condition. The definition of economic reasons for termination in this context allows consideration of current repair and maintenance needs, as well as forecasted repair and maintenance requirements for the 5-year period after the day a pre-termination report (defined in new section 81C) is given to lot owners.

New section 81B (What is a *termination plan*) provides the definition, and prescribes required contents, of a ‘termination plan’. In summary, a termination plan is a document prepared by a body corporate for a community titles scheme setting out key information and proposing a process for termination of a scheme. The termination plan is central to a body corporate potentially considering a termination resolution (defined in new section 81), which is a resolution to implement the terms of a termination plan, in order to terminate the scheme.

New section 81B(1)(a) requires a termination plan to include information about the proposed approach to selling the scheme to a single entity. The provision caters for the scenario where a proposed buyer for the scheme is known, as well as situations where a body corporate is considering selling the scheme by public auction or tender.

New sections 81B(1)(b) to (h) require termination plans to contain other important information for lot owners to consider regarding a proposed termination of a community titles scheme. Key information to be set out in a termination plan includes an explanation of how the proceeds of sale, as well as the assets and liabilities of the body corporate, will be distributed to each lot owner in accordance with the ‘respective market value of a lot principle’ (defined in new section 81B(5)). This is in contrast to scheme terminations undertaken pursuant to the retained existing arrangements under the BCCM Act (and which are contained in new part 9, divisions 2 and 3), under which, lot owners’ interests upon termination are determined by application of interest schedule lot entitlements. Also, the termination plan must contain an estimate of the amount each lot owner will be entitled to on the sale of the scheme.

In addition, these subsections require a termination plan to include information about costs and expenses that will be deducted from the sale price, as well as information about how interests of lessees (both of individual lots and common property) and interests of parties to contractual arrangements with the body corporate will be compensated. For leases, either the lot owner or the body corporate will be identified as being responsible for compensating a lessee, depending on whether the lease is of a lot or common property.

New sections 81B(2) and (4) provide protection for lot owners and lessees by requiring

that these parties receive a minimum compensation amount on the sale of the scheme, which is based on the amount the person would have received if the scheme land was compulsorily acquired by the State under the *Acquisition of Land Act 1967*, less any outstanding debts the person owes to the body corporate.

New section 81B(3) provides protection for a caretaking service contractor (defined in schedule 6 of the BCCM Act) in relation to arrangements for termination of a community titles scheme. Specifically, the provision requires that the compensation to be paid to a caretaking service contractor must not be less than the market value of the management rights, valued at the day the pre-termination report is given to lot owners.

New section 81B(5) defines the ‘respective market value of a lot principle’ for the purposes of how a termination plan must set out the manner in which assets and liabilities of the body corporate, and proceeds of sale of the scheme, will be distributed for each lot.

New division 4, subdivision 3 provides for a pre-termination report, to assist bodies corporate to decide whether there are economic reasons for terminating the community titles scheme.

New section 81C (Body corporate must prepare pre-termination report) requires a body corporate to have prepared a pre-termination report before it considers a motion to decide an economic reasons resolution (that is, a resolution that decides that there are economic reasons supporting termination of a community titles scheme).

New section 81C(2) sets out information (including information prepared by appropriately qualified professionals) that is relevant to deciding whether economic reasons for terminating a community titles scheme exist, and which is required to be contained in a pre-termination report. New sections 81C(3) and (4) aim to ensure that a person with a conflict of interest does not prepare reports for a body corporate under section 81C.

New division 4, subdivision 4 provides for meetings and resolutions to decide particular matters regarding the termination of community titles schemes for economic reasons.

New section 81D (General meeting—economic reasons resolution) applies if a body corporate has prepared a pre-termination report. Under the provision, a body corporate must provide a copy of the pre-termination report to owners at least 90 days before the body corporate holds a general meeting to consider a motion about whether economic reasons for termination exist (new section 81D(2)). Such a motion must state the economic reasons for termination established by the pre-termination report (new section 81D(3)). If these conditions are met, the body corporate may, by majority resolution, pass an economic reasons resolution as defined by new section 81. The requirements for passing a motion by majority resolution at a general meeting of a body corporate are contained in section 107 of the BCCM Act.

New section 81E (General meeting—termination plan resolution) applies if a body corporate has passed an economic reasons resolution under new section 81D(4). In these circumstances, the body corporate may, at a general meeting, pass a termination plan resolution by majority resolution. Termination plan resolution is defined in new section 81, and in summary, is a resolution for the body corporate to prepare a termination plan (as defined in new section 81B). As stated above, the requirements for passing a motion by majority resolution at a general meeting of a body corporate are contained in section 107 of the BCCM Act.

New section 81F (Notice of passage of termination plan resolution) applies if a body corporate for a community titles scheme passes a termination plan resolution under new section 81E(2). Within 14 days after passing the resolution, the body corporate must give a relevant person written notice in the approved form that the resolution was passed. 'Relevant person' is defined in new section 81F(2) and includes lot owners, certain lessees, registered mortgagees, and any caretaking service contractor or letting agent for the scheme.

New section 81G (Dispute about economic reasons resolution) provides for the resolution of disputes about motions considered by a body corporate to pass an economic reasons resolution. The provision deals with situations where a person is aggrieved by the body corporate passing the motion and where a person is aggrieved by the body corporate not passing the motion. In both scenarios, under new section 81G(2) an aggrieved party may, within the 'objection period' defined in new section 81G(4), apply for an order of a specialist adjudicator to resolve the dispute. If an application is made by a person objecting to the body corporate passing a motion for an economic reasons resolution, the body corporate must not proceed to consider passing a termination resolution (that is, a resolution to implement the terms of a termination plan), until the dispute about the economic reasons resolution is resolved (new section 81G(3)).

New section 81H (Consolidation of proceedings for specialist adjudication) enables the Commissioner to recommend that multiple applications for specialist adjudicator orders about the same motion to pass an economic reasons resolution be dealt with together.

New division 4, subdivision 5 provides for termination plans and termination resolutions.

New section 81I (Application of subdivision) provides that subdivision 5 applies if a body corporate for a community titles scheme passes a termination plan resolution (as defined in new section 81).

New section 81J (Giving termination plan before general meeting) requires a body corporate to give each lot owner a copy of the termination plan at least 120 days before it holds a general meeting to consider a termination resolution. As defined in new section 81, a termination resolution of a body corporate is a resolution to implement the terms of a termination plan in order to terminate the community titles scheme.

New section 81K (General meeting to consider termination resolution) applies if a body corporate has passed an economic reasons resolution and has provided lot owners with a copy of a termination plan, in accordance with section 81J. In these circumstances, the body corporate may call a general meeting to consider a motion for a termination resolution. The motion for a termination resolution is passed if at least 75% of all lot owners vote for the motion.

Due to the seriousness of a motion for a termination resolution, new section 81K makes it clear that one vote only may be exercised for each lot in the scheme (new section 81K(5)), votes cannot be exercised by proxy (new section 81K(6)), and motions are decided by secret ballot, provided the regulation module applying to the scheme provides for secret ballots (new section 81K(7)). Also, despite anything in the relevant regulation module, a lot owner may vote on a motion for a termination resolution despite owing a body corporate debt at the time of the general meeting (new section 81K(8)). Allowing a lot owner to vote on more serious matters despite owing a body corporate debt is consistent with

arrangements for voting on motions to be decided by resolution without dissent under the regulation modules (for example, section 102 of the *Body Corporate and Community Management (Standard Module) Regulation 2020*).

To avoid confusion and uncertainty, new section 81K(3) provides that a general meeting considering a motion for a termination resolution must not consider any other motion proposing an alternative way to terminate the scheme.

New section 81L (Notice of termination resolution) applies if a body corporate considers a motion for a termination resolution and imposes certain notice requirements. Under new section 81L(2), if a body corporate considers a motion for a termination resolution, the body corporate must within 2 weeks after the motion is decided, provide notice advising the parties in new section 81L(2)(a) to (d) whether the motion passed. If the motion for a termination resolution was passed, the body corporate must also advise the parties in new section 81L(3)(a) to (d) that the motion was passed. Notices under new section 81L are required to be in an approved form, with new section 81L(4) setting out information that must be included in the approved form.

New division 4, subdivision 6 provides for certain administrative matters relating to the termination of a community titles scheme for economic reasons.

New section 81M (Appointment of facilitator) applies if a body corporate for a community titles scheme passes a motion for a termination resolution. In these circumstances, the body corporate must appoint a facilitator to assist the body corporate to implement the termination plan (new section 81M(2)). The facilitator is appointed in accordance with the terms and conditions decided by the body corporate and included in the instrument of appointment.

The appointment may authorise the facilitator to perform a function of the body corporate, the committee for the body corporate, or a member of the committee for the body corporate (new section 81M(4)). If the body corporate will require the facilitator to perform such a function, the appointment must be by ordinary resolution (new section 81M(5)). The engagement of professionals to provide support and assistance, such as the provision of legal or other advice, or administrative services, does not require an ordinary resolution of the body corporate, subject to general provisions of the BCCM Act and regulation modules, including those dealing with spending limits and restricted issues for committees.

New sections 81M(6) and (7) aim to ensure that a person with a conflict of interest does not act as a facilitator for a body corporate.

New division 4, subdivision 7 makes provision for court applications and court orders.

New section 81N (Applications to court about termination plan) allows the persons outlined in new section 81N(1) to apply for an order of the District Court in relation to the termination plan. The application must be made within 90 days after the day the body corporate gives a person notice under section 81L (new section 81N(2)(a)).

Subsections 81N(3) to (6) limit the types of orders that may be sought by each type of potential applicant. For example, in accordance with section 81N(3), while a body corporate may apply for an order that a termination plan be implemented even though a motion for a termination resolution was not passed, a body corporate cannot be an

applicant for an order that a termination plan not be implemented if the motion for a termination resolution was passed. A body corporate may be an applicant for an order varying the termination plan.

In contrast, under new section 81N(4), an owner of a lot included in the scheme may be an applicant for an order that the termination plan be implemented (even if the motion for a termination resolution was not passed), an order that the termination plan not be implemented (even if the motion for a termination resolution was passed), or an order varying the termination plan.

Persons with a leasehold or contractual interest in the scheme may only apply for orders that the termination plan be varied (new section 81N(5)), while a facilitator (defined by new section 81) may only apply for an order that each lot in the scheme be sold under the termination plan (new section 81N(6)).

New section 81O (Effect of applications to court) applies if an application is made to the District Court under subdivision 7. Specifically, if an application is made about a decision to pass a termination resolution, the body corporate must not take any action to implement the termination plan.

New section 81P (Consolidation of court proceedings) allows for multiple applications to the District Court for orders about the same termination resolution to be consolidated into one proceeding and heard together.

New section 81Q (Court proceedings and costs) makes certain arrangements for applications made to the Court about termination plans under section 81N. If a lot owner makes an application for an order that the termination plan be implemented under 81N(4)(a) (even though the body corporate did not pass a motion for a termination resolution), as the applicant, the lot owner has the onus of proving that it is just and equitable to implement the termination plan (new section 81Q(1)).

In contrast, 81Q(2) provides that for all other orders sought – for example if a lot owner is seeking an order that a termination plan not be implemented or that a termination plan be varied, or a person with a leasehold or contractual interest in the community titles scheme is seeking an order for the variation of a termination plan, the body corporate bears the onus of proving that implementation of the termination plan is just and equitable. The body corporate is also responsible for the reasonable costs incurred throughout the proceeding for all applications other than under 81N(4)(a).

New section 81R (Court orders) provides the District Court broad scope to make any order that it considers just and equitable in relation to a proceeding on an application under the subdivision, including an order appointing (or removing) a trustee for the sale or physical division of the property (new section 81R(2)).

New section 81R(3) sets out criteria for the District Court to consider in assessing whether it would be just and equitable to make an order in a proceeding for an application under the subdivision. For example, specified considerations include the economic and social effects of termination on the owners of lots included in the scheme (new section 81R(3)(d)). While specific criteria are set out in new section 81R(3) for consideration by the District Court, the court has broad discretion to consider 'any other matter the court considers relevant' (new section 81R(3)(i)). In addition, if considered necessary, the court can order the appointment of an appropriately qualified person to assist the body corporate

implement the termination plan in the way decided by the court (new section 81R(4)).

New part 9, division 5 provides for the effect of termination of community titles schemes.

New section 81S (Dissolution of body corporate) provides that if a community titles scheme is terminated under part 9, the body corporate for the scheme is dissolved. The section also provides for the effect of dissolution of a body corporate in relation to any assets and liabilities in existence at the time of termination. In summary, the owner of a lot (or lots) immediately prior to termination becomes entitled to the remaining assets and vested of remaining liabilities, subject to relevant agreements, court orders, or termination plans. New section 81S(5) enables the District Court (upon application of a person) to make orders for the custody, management, and distribution of body corporate assets.

New section 81T (Termination effected under Land Title Act) provides that termination of a community titles scheme takes effect and must be recorded under section 115V (Recording termination of scheme) of the Land Title Act.

New section 81U (Termination and accrued charge, levy, rate or tax) ensures that the termination of a community titles scheme does not affect a liability for a charge, levy, rate, or tax that had accrued on a lot before the scheme was terminated (new section 81U(1)). New section 81U(2) provides that for recovery processes, certain specified charges, levies, rates, and taxes are taken to have been levied on the former owner's interest in the lot, with the 'former owner' being defined as the person who was the owner of the lot immediately before the scheme was terminated (new section 81U(3)).

New section 81V (Particular leases) provides arrangements for the ending of certain leasehold interests in a community titles scheme that is terminated under division 4. Specifically, leases under the *Residential Tenancies and Rooming Accommodation Act 2008* and under the *Retail Shop Leases Act 1994* end on the day a buyer of the scheme is given vacant possession of all lots included in the scheme. Compensation for lessees impacted by the termination of a community titles scheme under division 4 are required to be dealt with in the termination plan under new section 81B. In addition, certain lessees are entitled to apply for an order of the District Court to vary a termination plan (new section 81N(5)), if for example, the lessee considers that their interests have not been appropriately dealt with under the termination plan.

Clause 8 amends section 106 (Counting of votes for special resolution) of the BCCM Act to remove now obsolete transitional requirements for the counting of votes for a motion to be decided by special resolution at a general meeting of the body corporate.

Clause 9 inserts new section 163A (Towing motor vehicles from common property) into the BCCM Act.

New section 163A(1) provides that nothing in the BCCM Act prevents a body corporate from towing a motor vehicle from the common property under another Act or otherwise according to law. The expression 'according to law' when used in Queensland legislation has a plain and established meaning of in accordance with applicable legislation and common law.

New section 163A(2) also provides that if a motor vehicle owned or operated by the owner or occupier of a lot included in a community titles scheme and parked in contravention of a by-law for the scheme is towed by the body corporate, the body corporate is not required



to comply with a requirement under chapter 3, part 5, division 4. Chapter 3, part 5, division 4 provides a process for a body corporate to enforce body corporate by-laws.

Clause 10 amends section 167 (Nuisances) of the BCCM Act to provide that an occupier contravenes the section if the occupier regularly uses, or regularly permits an invitee to use, a smoking product on the lot or common property of the scheme, and an occupier of another lot or an invitee of the occupier of the other lot, or a person who is lawfully on the common property, is regularly exposed to the smoke or emission from the smoking product in the other lot or on the common property.

Clause 11 inserts new sections 169A and 169B into the BCCM Act.

New section 169A (By-laws about use of smoking products) provides that a by-law for a community titles scheme may prohibit or restrict the smoking or inhaling of *all or some* smoking products only on particular areas of the scheme.

New section 169A provides a by-law may be made in relation *all or part* of the common property of the scheme or the scheme's body corporate assets (other than common property or a body corporate asset that an occupier of a lot may use under an exclusive use by-law). A by-law may also be made in relation to *all or part of an outdoor area* of: a lot included in the scheme; or common property an occupier of a lot may use under an exclusive use by-law; or a body corporate asset an occupier of a lot may use under an exclusive use by-law. Outdoor area includes a balcony, courtyard, patio or verandah that is part of the lot or the exclusive use area.

New section 169A also provides that a by-law that prohibits or restricts the smoking or inhaling of all or some smoking products on the specified areas is not, having regard to the interests of all owners and occupiers in the scheme, oppressive or unreasonable.

New section 169B (By-laws about keeping animals (other than guide, hearing and assistance dogs)) provides that a by-law must not prohibit the keeping or bringing of an animal on a lot or the common property of a community titles scheme. It must also not restrict the number, type or size of an animal that an occupier of a lot may keep or bring on the lot or common property.

New section 169B also sets out the requirements that apply if a body corporate makes a by-law stating an occupier must seek the written approval of the body corporate or the committee for the body corporate to keep or bring, or permit an invitee to keep or bring, an animal on the lot or the common property.

This includes that the body corporate must decide whether to grant the approval within the period prescribed by the regulation module applying to the scheme; may, in writing, grant the approval subject to conditions that are in the circumstances, reasonable and appropriate; and must not unreasonably withhold approval.

New section 169B further provides that a body corporate may refuse to grant approval only if the body corporate is satisfied, on reasonable grounds, of any of the matters listed in subsection (6) or prescribed under the regulation module applying to the scheme. The body corporate may withdraw its approval if the occupier does not comply with the conditions stated in written notice of conditions.

New section 169B does not apply in relation to an animal that is a guide, hearing or

assistance dog. Section 181 of the BCCM Act sets out rights relating to keeping or bringing a guide, hearing or assistance dog on a lot or the common property, and states a by-law cannot exclude or restrict a right given by the section.

Clause 12 amends section 180 (Limitations for by-laws) of the BCCM Act to clarify that if a by-law for a scheme applies to a subsidiary scheme in a layered arrangement of community titles schemes, a reference to a lot in section 180 includes a reference to a lot that is included in the subsidiary scheme.

Clause 13 amends section 182 (Continuing contravention notice) of the BCCM Act to provide that the section only applies to a basic community titles scheme that is not included in a layered arrangement of community titles schemes. It also modernises language in the section. This includes amending the heading of section 182 to be 'Continuing contravention notice—basic schemes not included in a layered arrangement of community titles schemes'.

The amendment means that section 182 will no longer apply to a community titles scheme in a layered arrangement of community titles schemes. Clause 14 inserts new section 182A which will apply similar provisions for a community titles scheme that is in a layered arrangement of schemes.

Clause 14 inserts new section 182A (Continuing contravention notice—layered arrangement of community titles schemes) into the BCCM Act.

New section 182A applies if a body corporate for a community titles scheme in a layered arrangement of community titles schemes reasonably believes that any of the following persons is contravening a by-law for the scheme that is binding on the person and given the circumstances it is likely the contravention will continue:

- an owner or occupier of a lot in the scheme;
- an owner or occupier of a lot in another community titles scheme in the layered arrangement of community titles schemes; or
- another body corporate of a community titles scheme in the layered arrangement of community titles schemes.

In these circumstances, the body corporate may issue a continuing contravention notice to the person, requiring the person to remedy the contravention.

New section 182A outlines what the continuing contravention notice must state and who must be given a copy.

A maximum penalty of 20 penalty units applies if a person fails to comply with the continuing contravention notice.

Clause 15 amends section 183 (Future contravention notice) of the BCCM Act to provide that the section only applies to a basic community titles scheme that is not included in a layered arrangement of community titles schemes. This includes amending the heading of section 183 to be 'Future contravention notice—basic schemes not included in a layered arrangement of community titles schemes'.

The amendment means that section 183 will no longer apply to a community titles scheme in a layered arrangement of community titles schemes. Clause 16 inserts new section 183AA which will apply similar provisions for a scheme that is in a layered arrangement of

schemes.

Clause 16 inserts new section 183AA (Future contravention notice—layered arrangement of community titles schemes) into the BCCM Act.

New section 183AA applies if a body corporate for a community titles scheme in a layered arrangement of community titles schemes reasonably believes that any of the following persons has contravened a by-law for the scheme that is binding on the person and given the circumstances it is likely the contravention will be repeated:

- an owner or occupier of a lot in the scheme;
- an owner or occupier of a lot in another community titles scheme in the layered arrangement of community titles schemes; or
- another body corporate of a community titles scheme in the layered arrangement of community titles schemes.

In these circumstances, the body corporate may issue a future contravention notice to the person, requiring that the person must not repeat the contravention.

New section 183AA outlines what the future contravention notice must state and who must be given a copy.

A maximum penalty of 20 penalty units applies if a person fails to comply with the future contravention notice.

Clause 17 amends section 183A (Copy of contravention notice to be given to owner) of the BCCM Act to require that if a body corporate gives a contravention notice to a person who is not the owner of a lot included in a scheme in a layered arrangement of community titles schemes, the body corporate must give a copy of the notice to the owner of the lot.

Clause 18 amends section 184 (Preliminary procedure for application by body corporate for resolution of dispute) of the BCCM Act, to ensure the preliminary procedures set out in the section for the making of an application by a body corporate for resolution of a dispute under Chapter 6 of the BCCM Act about the contravention of a by-law apply to disputes about by-laws in layered arrangements of community titles schemes.

Clause 19 amends section 185 (Preliminary procedure for application by owner and occupier for resolution of dispute) of the BCCM Act, to ensure the preliminary procedures set out in the section for the making of an application by an owner or occupier of a lot included in a community titles scheme for resolution of a dispute under Chapter 6 of the BCCM Act about the contravention of a by-law apply to disputes about by-laws in layered arrangements of community titles schemes.

Clause 20 renames section 189 (Regulation module may require body corporate to insure) of the BCCM Act as 'Insurance for community titles schemes', to reflect the content of the updated section.

Clause 20 amends section 189 to provide that if a body corporate for a community titles scheme cannot comply with the requirement under the regulation module applying to the scheme to insure particular buildings for full replacement value, the body corporate may make an adjudication application for an alternative insurance order. The section has the effect of extending the ability to apply for approval of alternative insurance to buildings on lots created under a standard format plan of subdivision that have a common wall with a

building on an adjoining lot, which was not captured under the previous Commissioner approval process.

Clause 20 also amends section 189 to declare that the body corporate may put in place for the scheme, in the way and to the extent the body corporate decides, additional insurance to the insurance it is required to put in place under the regulation module applying to the scheme or any alternative insurance approved by an adjudicator.

Clause 21 amends section 190 (Insurable interest) of the BCCM Act to clarify that the body corporate also has an insurable interest for the purpose of insurance put in place under an alternative insurance order.

Clause 22 amends section 191 (Responsibility of original owner) of the BCCM Act to insert a cross-reference to section 189(1) (Insurance for community titles schemes).

Clause 23 amends section 192 (Mortgagees) of the BCCM Act to ensure that a registered mortgagee's interest in a lot included in a community titles scheme is taken to be noted also on a policy for insurance put in place under an alternative insurance order.

Clause 24 amends section 205 (Information to be given to interested persons) of the BCCM Act to provide that a body corporate must permit an interested person to inspect the body corporate's records in a way agreed between the person and the body corporate, or otherwise in person at a reasonable time and place nominated by the body corporate.

Clause 24 also amends section 205 to provide that a body corporate must give a copy of a record kept by the body corporate to a person in a way agreed between the person and the body corporate, or otherwise in the way prescribed under the regulation module applying to the scheme.

Clause 25 inserts new section 205AAA (Information to be given to interested persons (layered arrangement)) into the BCCM Act.

New section 205AAA provides for the giving of information by a body corporate for a scheme in a layered arrangement of community titles schemes from the body corporate's records to the body corporate for another scheme in the layered arrangement or to the owner or occupier of a lot included in another scheme in the layered arrangement (an *interested person (layered arrangement)*).

New section 205AAA applies in addition to, and does not limit, section 205.

New section 205AAA provides that, within 7 days after receiving a written request from the interested person (layered arrangement), accompanied by the fee prescribed under the regulation module applying to the scheme, the body corporate must do either or both of the following as requested by the person:

- permit the person to inspect the body corporate's records in a way agreed by the person and the body corporate, or otherwise in person at a reasonable time and place nominated by the body corporate; or
- give the person a copy of a record kept by the body corporate in a way agreed by the person and the body corporate, or otherwise in the way prescribed under the regulation module applying to the scheme.

New section 205AAA also provides that the body corporate is not required to allow a

person to inspect or obtain a copy of a part of a record if the body corporate reasonably believes the part contains defamatory material.

However, if the interested person (layered arrangement) is a body corporate for another scheme in the layered arrangement of community titles schemes (other than the body corporate for a subsidiary scheme for the particular body corporate that has received the request), the body corporate that has received the request may only allow the interested person to inspect the records or give the interested person a copy of the record if the body corporate is satisfied the request is only for the purpose of identifying a person to whom a contravention notice under section 182A or section 183AA may be given.

However, if the interested person (layered arrangement) is an owner or occupier of a lot included in another scheme in the layered arrangement of community titles schemes (other than the owner of a lot that is included in a subsidiary scheme for the particular body corporate that has received the request), the body corporate that has received the request may only allow the interested person to inspect the records or give the person a copy of the record if the body corporate is satisfied of particular matters, including that a dispute about by-laws exists between stated parties and the record is needed to identify another person in order for the interested person to request the issue of a contravention notice to the other person or make a dispute resolution application.

Clause 26 amends section 218C (Disposal of amount held in prescribed trust account) of the BCCM Act to insert a statutory note in section 218C(3) regarding the operation of section 318 of the BCCM Act, which prohibits contracting out of a provision of this Act. This is intended to clarify that there cannot be early release of a deposit to a seller (property developer) under an 'off the plan' contract for the sale of a proposed lot under the BCCM Act.

Clause 27 amends section 227 (Meaning of *dispute*) of the BCCM Act.

Section 227 specifies categories of parties to a dispute. The clause inserts the following new categories of parties to a dispute into section 227:

- If the dispute is about access by an interested person (layered arrangement) to the records of a body corporate for a community titles scheme in a layered arrangement of community titles schemes—a dispute is between the person and the body corporate.
- If the dispute is about the giving of documents or material required to be given to a body corporate for a community titles scheme by an original owner under this Act—a dispute is between the body corporate and the original owner for the scheme.
- If a community titles scheme is included in a layered arrangement of community titles schemes, a dispute between the following parties is also a dispute if the dispute relates to by-laws that are binding on both parties and the person commencing the proceeding is directly and materially affected by the subject of the dispute—
  - (a) the owner or occupier of a lot included in the community titles scheme and the owner or occupier of a lot in another community titles scheme that is included in the layered arrangement;
  - (b) the body corporate for the community titles scheme and another body corporate that is included in the layered arrangement;
  - (c) the body corporate for the community titles scheme and the owner or occupier

of a lot in another community titles scheme that is included in the layered arrangement.

Clause 27 also amends section 227 of the BCCM Act to provide that an adjudication application made by a body corporate for an alternative insurance order is also a dispute.

Clause 28 amends section 238 (Who may make an application) of the BCCM Act to provide that the requirement for a person to make reasonable attempts to resolve a dispute by internal dispute resolution does not apply to a body corporate that makes an adjudication application for an alternative insurance order.

Clause 29 amends section 239B (Content of approved form for adjudication application) of the BCCM Act to clarify that the content of the approved form for an adjudication application prescribed in the section does not apply to an application for an order approving alternative insurance. The clause also amends the heading of section 239B to be 'Content of approved form for adjudication application—other than applications about alternative insurance'.

Clause 30 inserts new section 239BA (Content of approved form for adjudication application about alternative insurance) into the BCCM Act. New section 239BA outlines information the approved form for an adjudication application for an order approving alternative insurance must require the applicant to provide. This information includes details of the alternative insurance the applicant proposes to put in place and the grounds on which the application is made.

Clause 31 amends section 241 (Rejecting application) of the BCCM Act to provide that the Commissioner's power to reject an adjudication application because the Commissioner reasonably believes the applicant has not made a reasonable attempt to resolve the dispute by internal dispute resolution or department conciliation, does not apply to an application for an order approving alternative insurance.

Clause 32 amends section 243 (Notice to particular persons) of the BCCM Act to provide the requirement for the Commissioner to give written notice of an application to certain persons is subject to new section 243B.

Clause 33 inserts new section 243B (Referral to adjudicator—alternative insurance) into the BCCM Act. New section 243B provides the Commissioner may immediately refer an adjudication application for an alternative insurance order to an adjudicator without giving written notice of the application under section 243(1).

Clause 34 amends section 252H (Referral back to commissioner) of the BCCM Act to remove gender specific language.

Clause 35 inserts new section 265 (Specialist adjudication—dispute about economic reasons resolution) into the BCCM Act to provide that the Commissioner may recommend an application be the subject of specialist adjudication if the application is about a dispute relating to a motion for an economic reasons resolution. The new clause provides that the body corporate must pay the amount for the adjudication subject to section 270(3), which enables an adjudicator to make a limited costs order against an applicant if it appears to the adjudicator that the application is frivolous, vexatious, misconceived or without substance.

Clause 36 inserts new section 281A (Order approving alternative insurance) into the BCCM Act. New section 281A applies if a body corporate for a community titles scheme makes an adjudication application for an alternative insurance order.

New section 281A provides an adjudicator may make an alternative insurance order for the body corporate only if the adjudicator is satisfied of two matters:

- the body corporate cannot comply with the requirement under the regulation module applying to the scheme to put in place insurance for the scheme that insures for the full replacement value of particular buildings as set out in new section 281A(2); and
- the insurance cover under the alternative insurance is as similar as practicable to the insurance cover required under the regulation module applying to the scheme.

In deciding whether to make an alternative insurance order, new section 281A provides the adjudicator may consider any of the following: the number of insurers the body corporate attempted to take out insurance with; the reasons the body corporate was not insured by the insurers it attempted to take out insurance with; the cost of complying with the requirement to insure under the regulation module applying to the scheme.

Where the alternative insurance the body corporate proposes to put in place was not approved at a general meeting or, for a specified two-lot scheme, was not authorised under a lot owner agreement for the scheme, new section 281A provides the adjudicator may make an alternative insurance order on the condition that alternative insurance is approved at a general meeting, or for a specified two-lot scheme, confirmed under a lot owner agreement, within the period stated in the order.

Clause 37 amends section 283 (Change of body corporate's financial year) of the BCCM Act to insert a cross-referencing note.

Clause 38 amends section 315 (Service of notices etc.) of the BCCM Act to require the body corporate to give the registrar notice of the body corporate's address for service and that if the address for service changes, the body corporate must give the registrar notice of the new address within 30 days after the change. Section 315 is also amended to provide that the address for service of the body corporate is the address given to the registrar and recorded by the registrar on the indefeasible title for the common property as the body corporate's address for service. However, if the body corporate does not give the registrar notice of the body corporate's address for service, the body corporate's address for service is the address of the scheme land.

Clause 39 inserts new section 315A (Giving documents or information to persons) into the BCCM Act. New section 315A provides that if a body corporate must, under the Act, give a document or other information to an owner of a lot or other person whose address for service is required to be given to the body corporate, then the document or information must be given in the way prescribed under the regulation module applying to the scheme.

Clause 40 inserts new section 321A (Changing financial year) into the BCCM Act. New section 321A provides that a body corporate may change the financial year for the body corporate by ordinary resolution at a general meeting. However, new section 321A also provides the body corporate may only change its financial year once every five years.

Clause 41 inserts a new chapter 8, part 16 (Transitional provisions for the Body Corporate and Community Management and Other Legislation Amendment Act 2023) into the BCCM Act. The new part inserts new sections 448 to 456.

New section 448 (Definitions for part) provides definitions for the new part.

New section 449 (By-laws about smoking products made before the commencement) provides a by-law for a community titles scheme that is in force immediately before the commencement that prohibits or restricts the use of a smoking product by an occupier of a lot in the scheme or the occupier's invitee is enforceable to the extent that the by-law is consistent with new section 169A.

New section 450 (By-laws about keeping of animals made before commencement) provides a by-law for a community titles scheme about the keeping or bringing of an animal on a lot or the common property that is in force immediately before the commencement is enforceable to the extent the by-law is consistent with new section 169B.

New section 450 also provides that if, before the commencement, a person applied for the resolution of a dispute about whether a by-law about keeping or bringing an animal on a lot or the common property is valid and enforceable and the dispute is not resolved, the dispute must be resolved under the Act as in force from the commencement.

New section 450 further provides that if, before the commencement, a person applied for the resolution of a dispute about a decision about keeping or bringing an animal on a lot or common property and the dispute is not resolved, the dispute must be resolved under the Act as in force immediately before the commencement.

New section 451 (Code of conduct) provides new schedule 2, section 2(2) does not apply to a person's conduct as a caretaking service contractor before the commencement. It also provides that schedule 2, section 3 does not apply to a person's conduct as a body corporate manager or a caretaking service contractor before the commencement.

New section 452 (Alternative insurance) provides that if, before the commencement, a body corporate applied to the Commissioner under the regulation module applying to the scheme for authorisation to put in place alternative insurance in a form approved by the Commissioner, and immediately before the commencement the Commissioner had not decided the application, then the Commissioner must consider and decide the application as if the *Body Corporate and Community Management and Other Legislation Amendment Act 2023* had not been enacted.

New section 453 (Dispute resolution in layered arrangement of community titles schemes) provides that if: before the commencement, a person applied for the resolution of a dispute about a by-law made by a body corporate for a community titles scheme in a layered arrangement of community titles schemes; and the dispute was between the person and either the body corporate of another community titles scheme in the layered arrangement or the owner or occupier of a lot in another community titles scheme in the layered arrangement; and immediately before the commencement, the dispute is not resolved, then the dispute must be resolved under the Act as if the *Body Corporate and Community Management and Other Legislation Amendment Act 2023* had not been enacted.

New section 454 (Existing notices) applies if a notice, legal process or other document was served on a body corporate for a community titles scheme before the commencement. New section 454 provides that the notice, legal process or other document served under former section 315, it is taken to have been served under the BCCM Act.



New section 455 (Matters about termination taken before commencement) enables a community titles scheme to be terminated under the former chapter 2, part 9 provisions if actions outlined in new sections 455(1)(a) or (b) have occurred prior to the commencement of the *Body Corporate and Community Management and Other Legislation Amendment Act 2023*.

New section 456 (Disputes about particular matters) provides that new section 227 does not apply to the giving of documents or material by an original owner to a body corporate for a community titles scheme if the first annual general meeting of the body corporate is held before the commencement.

Clause 42 amends Schedule 2 (Code of conduct for body corporate managers and caretaking service contractors) of the BCCM Act to provide that a caretaking service contractor must not attempt to unfairly influence the outcome of an election for the body corporate committee. The clause also amends Schedule 2 to provide that a body corporate manager or caretaking service contractor must not unfairly influence, or attempt to unfairly influence, the outcome of a motion to be decided by the body corporate.

Clause 43 amends Schedule 4 (By-laws) of the BCCM Act, which contains by-laws that are the by-laws for a community titles scheme if the community management statement for the scheme does not include provisions that are, or that purport to be, the by-laws for the scheme. The clause amends section 11 (Keeping of animals) of Schedule 4, which provides that the occupier of a lot must not, without the body corporate's written approval, bring or keep an animal on the lot or the common property or permit an invitee to do so.

The clause amends section 11 of Schedule 4 to provide a body corporate may grant approval subject to conditions that are, in the circumstances, reasonable and appropriate. The clause also amends section 11 of Schedule 4 to provide that, if the body corporate grants the approval, the body corporate must give the occupier written notice stating the body corporate's approval and any conditions that the approval is subject to. The clause further amends section 11 of Schedule 4 to provide the body corporate may withdraw the approval if the occupier does not comply with the conditions stated in the written notice given to the occupier.

Clause 44 amends Schedule 5 (Adjudicator's orders) of the BCCM Act, which states orders an adjudicator may make. New orders added to the schedule include:

- An order approving alternative insurance to be put in place by a body corporate.
- If satisfied an economic reasons resolution was unreasonable—an order declaring that the resolution was, at all times, void.
- If satisfied a motion for an economic reasons resolution was not passed because of objections that were, in the circumstances, unreasonable—an order giving effect to the motion as proposed.
- If satisfied a decision of the body corporate to withhold approval for the keeping of an animal under a by-law was unreasonable—an order declaring that the occupier may keep the animal and the conditions on which it may be kept.

The clause also makes minor amendments to existing orders, to reflect other amendments

made by the Bill.

Clause 45 amends Schedule 6 (Dictionary) of the BCCM Act to define particular terms inserted by the Bill, or amend definitions in the BCCM Act consequential to the amendments in the Bill.

### **Part 3 Amendment of Building Units and Group Titles Act 1980**

Clause 46 states that Part 3 amends the BUGT Act.

Clause 47 amends section 49F (Disposal of amount held in prescribed trust account) of the BUGT Act to insert a statutory example in section 49F(3) regarding a term that allows for the payment of an amount paid under section 49E(1) of the BUGT Act, explaining that the contract would be void to the extent it purports to exclude, restrict or otherwise change the effect of a provision of this subdivision. This is intended to clarify that there cannot be early release of a deposit to a seller (property developer) under an 'off the plan' contract for the sale of a proposed lot under the BUGT Act.

### **Part 4 Amendment of Land Sales Act 1984**

Clause 48 states that Part 4 amends the Land Sales Act.

Clause 49 amends section 18 (Disposal of amount held in prescribed trust account) of the Land Sales Act to insert a statutory note in section 18(3) regarding the operation of section 22 of the Land Sales Act, which prohibits contracting out of a provision of this Act. This is intended to clarify that there cannot be early release of a deposit to a seller (property developer) under an 'off the plan' contract for the sale of proposed land under the Land Sales Act.

Clause 50 inserts a new Part 2, Division 4A (Off-the-plan contracts—sunset clauses) into the Land Sales Act, which addresses how sellers may terminate 'off the plan' contracts under sunset clauses.

New section 19A (Application of division) provides that Division 4A applies if a buyer and seller enter into an 'off the plan' contract and the contract includes a sunset clause.

New section 19B (Definitions for division) provides new definitions for Division 4A, including: *off-the-plan contract*, *registrar*, *relevant event*, *sunset clause* and *sunset date*.

New section 19C (No automatic termination under sunset clause) provides that a sunset clause cannot automatically terminate an off-the-plan contract, and if it purports to do so, the clause is taken to mean that the contract may be terminated on, or after, the sunset date in accordance with Division 4A.

New section 19D (When seller may terminate under sunset clause) provides for when a seller of a proposed lot may terminate under a sunset clause. New section 19D provides that a seller may terminate a contract in only three situations: with the buyer's written consent; or if the Supreme Court has made an order permitting the seller to terminate; or if a regulation prescribes another way the seller may terminate the contract under a sunset clause.

New section 19D provides that, in respect of a regulation prescribing another way the

seller may terminate a contract under a sunset clause, a regulation may only be made if the Minister is satisfied the prescribed way will provide adequate consumer protection for a buyer.

New section 19D also provides a definition for *sunset clause notice*. A sunset clause notice is a written notice given by the seller to the buyer at least 28 days before the sunset date. The notice must state particular information, including the seller's reasons for terminating the contract and that the buyer must respond to the notice no later than the day immediately before the sunset date.

New section 19E (Buyer's obligation on receipt of sunset clause notice) provides that if the buyer is given a sunset clause notice, the buyer must consider the information in the notice, and act reasonably in the circumstances and respond to the notice within the time stated in the notice. However, new section 19E also clarifies that if the buyer does not respond to the notice, the failure to respond is not to be taken as evidence that the buyer consents to the termination of the contract under the sunset clause the subject of the notice.

New section 19F (Supreme Court order to terminate under sunset clause) provides for when the Supreme Court may make an order permitting the seller to terminate an 'off the plan' contract under a sunset clause. New section 19F provides the ability for a seller to make an application to the Supreme Court for an order, and provides that the Supreme Court may make an order permitting the seller to terminate the contract under the sunset clause if the seller satisfies the Court it is just and equitable in the circumstances.

New section 19F also provides for the matters the Supreme Court must consider in deciding whether it is just and equitable to make the termination order, which includes *any other matter the court considers relevant and any other matter prescribed by regulation*.

New section 19F further provides that the seller must pay the costs of the buyer in relation to the Court proceeding for the order unless the seller satisfies the Supreme Court that the buyer unreasonably withheld consent to the termination of the contract under the sunset clause.

Clause 51 inserts a new Part 4, Division 3 (Transitional provision for Body Corporate and Community Management and Other Legislation Amendment Act 2023) into the Land Sales Act. The new part inserts new section 39 (Application of pt 2, div 4A to existing off-the-plan contracts).

New section 39 provides that Division 4A applies to 'off the plan' contracts that were entered into before the commencement, but not settled immediately before the commencement.

Clause 52 amends Schedule 1 (Dictionary) of the Land Sales Act to insert new definitions.

#### **Part 5 Amendment of Land Title Act 1994**

Clause 53 provides that Part 5 amends the Land Title Act.

Clause 54 makes consequential amendments to section 115U of the Land Title Act (Instruments required for terminating scheme) to reflect the amendments to the BCCM Act contained in the Bill regarding termination of community titles schemes, including the new

arrangements for terminating community titles schemes for economic reasons, as set out in new chapter 2, part 9, division 4.

### **Part 6 Amendment of South Bank Corporation Act 1989**

Clause 55 states that Part 6 amends the South Bank Act.

Clause 56 amends section 97N (Disposal of amount held in prescribed trust account) of the South Bank Act to insert a statutory note in section 97N(3) regarding the operation of section 97Q of the South Bank Act, which prohibits contracting out of a provision of this Act. This is intended to clarify that there cannot be early release of a deposit to a seller (property developer) under an 'off the plan' contract for the sale of a proposed lot under the South Bank Act.