

Proclamation—Body Corporate and Community Management and Other Legislation Amendment Act 2023

Explanatory notes for SL 2024 No. 16

made under the

Body Corporate and Community Management and Other Legislation Amendment Act 2023

General Outline

Short title

Proclamation—Body Corporate and Community Management and Other Legislation Amendment Act 2023

Authorising law

Section 2 of the *Body Corporate and Community Management and Other Legislation Amendment Act 2023*.

Policy objectives and the reasons for them

The *Body Corporate and Community Management and Other Legislation Amendment Act 2023* (Amendment Act) received assent on 22 November 2023.

Some provisions of the Amendment Act (relating to limiting the use of sunset clauses to terminate ‘off the plan’ contracts for the sale of land and confirming the policy intent regarding release of buyers’ deposits under ‘off the plan’ residential property contracts) commenced on assent.

The objective of the Proclamation is to fix 1 May 2024 for the commencement of the provisions of the Amendment Act that are not in force. The provisions that are to commence are sections 4 to 25, 27 to 45 and part 5.

Sections 4 to 25 and 27 to 45 of the Amendment Act amend the *Body Corporate and Community Management Act 1997* (BCCM Act) to:

- allow for termination of uneconomic community titles schemes if 75% of owners agree in particular circumstances;
- allow an adjudicator to approve for a body corporate to put in place alternative insurance arrangements if the body corporate cannot comply with the required level of insurance for particular buildings;

- provide that a body corporate can make by-laws that prohibit or restrict smoking on common property or an outdoor area, and clarify smoking as a nuisance, hazard or unreasonable interference;
- clarify that body corporate by-laws cannot prohibit the keeping of animals on a lot or common property or restrict the number, type or size of an animal that may be kept by an occupier, and a body corporate must not unreasonably withhold approval to keep an animal;
- clarify existing powers of bodies corporate to tow outside of the BCCM Act, and remove the impediment to bodies corporate towing a motor vehicle owned or operated by an owner or occupier of a lot in a timely manner;
- enhance by-law enforcement and improve access to records in layered arrangements of community titles schemes; and
- clarify and streamline administrative and procedural requirements, improve transparency and accountability in body corporate governance, and ensure a body corporate is provided with documents necessary to perform its functions.

Part 5 of the Amendment Act makes consequential amendments to the *Land Title Act 1994* to reflect the amendments to the BCCM Act contained in the Amendment Act regarding termination of community titles schemes.

The policy objectives and reasons for the reforms to be introduced by sections 4 to 25, 27 to 45 and part 5 of the Amendment Act are contained in the explanatory notes accompanying the Amendment Act.

Achievement of policy objectives

The policy objective is achieved by fixing 1 May 2024 for the commencement of the provisions of the Amendment Act that are not in force.

Consistency with policy objectives of authorising law

The Proclamation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Proclamation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

Commencing the provisions of the Amendment Act that are not in force (that is, sections 4 to 25 and 27 to 45 and part 5) will:

- facilitate renewal and development of ageing or uneconomic community titles schemes;
- enhance alternative insurance arrangements for bodies corporate that cannot comply with the required level of insurance for particular buildings;

- provide greater protections for residents of community titles schemes from second-hand smoke;
- reduce the barriers to lot owners and occupiers keeping animals in community titles schemes;
- assist bodies corporate to manage parking issues;
- support transparency in layered arrangements of community titles schemes and facilitate enforcement of by-laws in layered arrangements of community titles schemes; and
- improve the operation of the BCCM Act in relation to governance issues, including administrative and procedural matters.

Commencement of the amendments to the BCCM Act not in force will involve costs for Government, for 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 to understand and apply the changes.

In the short to medium term, commencement of provisions of the Amendment Act that are not in force may lead to an increase in enquiries to the Office of the Commissioner for Body Corporate and Community Management (BCCM Office) about the operation of the new provisions. Also, there may be an initial (likely modest) increase in demand for dispute resolution services of the BCCM Office and District Court due to the expansion of the jurisdiction to deal with disputes about the new scheme termination process, and as a result of new provisions being tested.

The costs for Government are not anticipated to be substantial and will be met from the existing budget allocations of the BCCM Office and District Court.

The commencement of the amendments to the BCCM Act not in force is not anticipated to impose any significant costs on the community titles sector.

Consistency with fundamental legislative principles

The Proclamation is consistent with fundamental legislative principles.

Consultation

In 2021, the Department of Justice and Attorney-General established a Community Titles Legislation Working Group (CTLWG), comprised of key stakeholders from the community titles sector, to provide advice on a range of issues relevant to the sector.

The CTLWG was consulted on a suitable date for commencing the provisions of the Amendment Act that are not in force.

A Summary Impact Analysis Statement has been completed, which identifies that the proclamation is not subject to regulatory impact assessment requirements under the *Queensland Government Better Regulation Policy*, as it is a regulatory proposal that is machinery in nature commencing the provisions of the Amendment Act that are not in force.