

Consultation Draft

Building Units and Group Titles and Other Legislation Amendment Bill 2022

**Summary of proposed amendments and
Consultation process**



1. Purpose of the Bill

Legislative context

The *Building Units and Group Titles Act 1980* (BUGT Act) was, prior to the commencement of the *Body Corporate and Community Management Act 1997* (BCCM Act), the primary legislation for the establishment and self-regulation of shared-ownership schemes (ie. **body corporate type schemes**) in Queensland.

In addition, five special purpose planning Acts (**'specified Acts'**) were established to allow, **in combination with the BUGT Act**, the creation of **complex developments** with a mix of distinct uses, ownership, and governance structures (including having multiple bodies corporate in one development, which are sometimes called **'layered schemes'**).

Most bodies corporate regulated under the BUGT Act were transitioned to the BCCM Act shortly after the BCCM Act commenced. However, the **BUGT Act remains** in effect for certain bodies corporate in specified Act developments.

The five 'specified Acts' include the *Mixed Use Development Act 1993* (MUD Act), which applies to eight Queensland developments.

The **MUD Act** itself separately regulates what are known as **community and precinct bodies corporate (sometimes called 'higher-level' bodies corporate)** in MUD Act developments.

Need for urgent targeted reforms

The **BUGT Act** and the **MUD Act** have **not kept pace** with the BCCM Act in modern governance **requirements** for bodies corporate and in ensuring proprietors are provided sufficient **protections**.

While there have been some issues of concern identified in the five specified Acts generally, the deficiencies of the MUD Act combined with those of the BUGT Act have created **serious challenges** for the effective governance of the complex developments established **under the MUD Act and also, in part, subject to the BUGT Act**.

The Building Units and Group Titles and Other Legislation Amendment Bill 2022 (the draft Bill) includes a range of amendments to the BUGT Act and MUD Act that address the most pressing issues facing proprietors in the relevant bodies corporate.

The proposed amendments to the MUD Act will benefit what are known as **community and precinct bodies corporate (sometimes called 'higher-level' bodies corporate)** in MUD Act developments.

The proposed amendments to the BUGT Act will provide benefits to bodies corporate regulated by the BUGT Act (often called **'subsidiary bodies corporate'**, as they are in turn represented on higher-level bodies corporate) and their proprietors, **within any development** that was established **under any of the five specified Acts**.

Overview of the Amendments in the Bill

Information and education services

The draft Bill amends the BUGT Act (clause 17) so that government may provide information and education services to **assist proprietors** understand rights, responsibilities, and dispute resolution options under the BUGT Act (including provisions of the BUGT Act that are applied in separate laws, such as the MUD Act), and to **assist referees** to increase their proficiency at resolving disputes. This amendment is based on the BCCM Act.

Enhanced dispute resolution

The draft Bill will **improve dispute resolution** services for proprietors. Amendments to the BUGT Act are included to provide referees greater flexibility when dealing with applications for dispute resolution by clarifying that a referee:

- must observe natural justice,
- must act with as little formality and technicality as possible, and
- is not be bound by rules of evidence (clause 15).

This amendment more closely aligns the BUGT Act with the dispute resolution provisions of the BCCM Act relating to adjudicators.

Amendments will also ensure that where BUGT Act bodies corporate need to urgently make an application for an order of a referee to deal with a dispute, that they can do so **without needing** to incur the expense and delay of passing a **special resolution** at a general meeting (clause 16).

Obligations of bodies corporate

The draft Bill includes amendments that will require bodies corporate regulated under the MUD Act (clause 25, 26) or the BUGT Act (clause 5) to **act reasonably** when carrying out their functions.

This beneficial general requirement, modelled on the BCCM legislation, will establish overarching obligations for bodies corporate to act reasonably when undertaking decision-making processes, as well as providing **additional scope for referees** to receive and determine applications for orders to resolve disputes.

In addition, amendments will ensure that where a MUD Act regulated body corporate has entered into an agreement to provide **utility services**, whether directly or through another party, it will be obliged to take all reasonable steps to **ensure continuity** of that utility service (clause 30).

Committee eligibility

Bodies corporate under the BUGT Act must elect a committee, while those under the MUD Act must elect an executive committee, to perform a range of governance functions on behalf of the body corporate.

The draft Bill aims to **enhance eligibility requirements** for committee membership, as well as for nominated representatives of 'subsidiary' bodies corporate on 'higher-level' bodies corporate of which they are members.

Modelled on provisions of the BCCM legislation, the amendments will make **persons owing a debt to any body corporate within a particular development**, and their **associates**, ineligible to be elected as a committee member (BUGT Act – clause 9, 10), or an executive committee member (MUD Act – clause 24, 32).

It is appropriate that persons entrusted with a governance role be not only model members in terms of **meeting their fundamental financial responsibilities across the broader development**, but also be free from the potential influence of outstanding debts on their committee governance role.

The amendments will also make persons who are a **party to a prescribed arrangement** of a type equivalent to the role of a service contractor, letting agent or body corporate manager for any BUGT Act regulated body corporate in a development, and their associates, **ineligible to be elected as a committee member** (BUGT Act – clause 9, 10).

Amendments will similarly make service contractors, letting agents and body corporate managers for any MUD Act regulated body corporate in a development, and their associates, **ineligible to be elected as an executive committee member** (MUD Act – clause 24, 32).

The positions of **ineligible** committee or executive committee voting **members** will be **vacated on commencement** of the amendments (BUGT act – clause 19, MUD Act – clause 37).

The relationships between committees and caretaking service contractors and body corporate managers will also be enhanced by new arrangements based on the BCCM legislation.

Caretaking service contractors (or their equivalent in prescribed arrangements) and body corporate managers will be **deemed to be non-voting members** of committees (BUGT Act – clause 11, MUD Act – clause 33). These changes are modelled on the BCCM legislation.

Subsidiary body corporate representation and voting - higher level bodies corporate

The draft Bill also includes amendments to the MUD Act (clause 27) to ensure the **suitability of representatives from subsidiary bodies corporate nominated for a higher-level body corporate** by requiring that a nominee must be a committee member (for subsidiaries regulated under the BUGT Act) or executive committee member (for subsidiaries regulated under the MUD Act), or a body corporate manager to whom the subsidiary body corporate has delegated powers.

In combination with the enhanced committee eligibility requirements, this will ensure nominated representatives are suitable for the important role they play in **representing their subsidiary on the higher-level body corporate**, and potentially as an elected member of the executive committee for that body corporate.

Debts owed by undeveloped lots within a development have the potential to disenfranchise multiple subsidiary bodies corporate in terms of entitlement to vote on higher-level bodies corporate, while simultaneously allowing interests associated with undeveloped lots to retain input into body corporate decisions (for example, through the ownership of other lots).

To address this issue, the draft Bill includes amendments to the MUD Act (clause 28) to **preserve a proportion of voting entitlement for subsidiary bodies corporate** that would otherwise not be entitled to vote **as members of a higher-level body corporate** because they are unable to meet their financial contributions due to contributions **not paid by owners of undeveloped lots**.

Committee decision making

The BUGT Act does not have provisions dealing with **committee member conflicts of interest**, unlike the MUD Act (and the BCCM legislation, and other specified Acts).

To address this deficiency the draft Bill includes amendments to the BUGT Act (clause 14) to ensure that committee members for bodies corporate **under the BUGT Act** must **disclose a conflict of interest** in relation to a **matter** being considered by the committee, and to refrain from voting on a **motion** regarding the matter.

Schemes under the BCCM legislation have benefitted from other contemporary reforms also designed to avoid conflicts of interest and preserve probity of decision-making processes, by ensuring only committee members who meet their financial responsibilities to the body corporate are eligible to vote on motions before the committee, and prohibiting voting committee members from receiving certain benefits from service contractors.

Accordingly, the draft Bill includes amendments that will make an executive committee (MUD Act – clause 36) or committee member (BUGT Act – clause 14) **ineligible to vote on committee motions if they owe a debt to the body corporate**.

Voting members of committees (BUGT Act – clause 14) or executive committees (MUD Act – clause 36) will also be expressly **prohibited** from receiving a **benefit** from a service contractor unless disclosed to and **approved** by the body corporate, or the benefit is a service the contractor is engaged by the body corporate to provide, or is some other service provided at market price directly to the committee member.

Financial management

A proprietor's fundamental responsibility is ensuring their obligations to the body corporate are met. It is vital that the legislation ensures that this responsibility cannot be avoided through inappropriate 'offset' arrangements designed to reduce debts, that may involve an exchange that is not monetary, and that may leave the body corporate with insufficient funds to meet its responsibilities.

The draft Bill includes amendments (BUGT Act – clause 6, MUD Act – clause 29) clarifying that **levies** must be paid to the body corporate as a **monetary amount**. However, the amendments will also ensure bodies corporate have sufficient flexibility to explicitly approve appropriate offset arrangements in certain, limited circumstances.

The draft Bill also includes amendments based on the BCCM legislation that will oblige bodies corporate under the BUGT Act to commence **debt recovery proceedings** for outstanding contributions **within 2 years and 2 months** of the contribution being owed (Clause 7). This change will only apply to contributions that become outstanding following commencement of the Bill and is based on the BCCM legislation (Clause 19).

Information disclosure

Ensuring appropriate and timely disclosure of body corporate and committee meetings and decisions is an integral element of good body corporate governance. Modelled on provisions of the BCCM legislation, the draft Bill includes amendments that will **require minutes** of committee and executive **committee meetings** to be provided to members of the body corporate **within 21 days** of the meeting (BUGT Act – clause 13, MUD Act – clause 35).

The body corporate will also be required to provide **minutes of body corporate meetings** to members of the body corporate **within 21 days** of the meeting (BUGT Act – clause 8, MUD Act - clause 30). Both requirements will allow a person to opt out of receiving the minutes.

Have Your Say

All members of the community are invited to provide written feedback on the draft Bill.

The Department of Justice and Attorney-General is particularly interested to hear from owners, service providers and bodies corporate associated with developments under the BUGT Act and MUD Act in regard to:

- improving the effectiveness of the proposed amendments
- potential unintended or unforeseen consequences
- technical or drafting errors.

Please provide submissions by email to: BUGTA_Consultation@justice.qld.gov.au

Submissions must be received by: 5:00 PM, Friday 13 May 2022

Privacy Statement

Any personal information you include in your submission will be collected by the Department of Justice and Attorney-General (the Department) for the purpose of obtaining comment on this issue. Your submission may also be released to other government agencies as part of the consultation process. Submissions provided to the Department will be treated as public documents. This means that they may be published on the Department's website, together with the name and suburb of each person or entity making a submission. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in the submission. However, please note that all submissions may be subject to disclosure under the *Right to Information Act 2009*, and access applications for submissions, including those marked confidential, will be determined in accordance with that Act. Submissions (or information about their content) may also be provided in due course to a parliamentary committee when considering legislation.