

2018

Property Law Review
Final Recommendations:
*Consistency between the Body
Corporate and Community
Management Act 1997 and the
Building Units and Group Titles Act
1980*

Commercial and Property Law

Research Centre

Preface

The Commercial and Property Law Research Centre at the Queensland University of Technology (**QUT**) was established in 2013. The Centre is a specialist network of researchers with a vision of reforming legal and regulatory frameworks in the commercial and property law sector through high impact applied research.

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1. Background

1.1. Review of Queensland Property Laws

In August 2013, the Queensland Government engaged the Commercial and Property Law Research Centre (the **Centre**) at the Queensland University of Technology (**QUT**) to conduct an independent and broad-ranging review of Queensland's property laws. The purpose of this review is to identify options for reducing red tape, unnecessary regulation and property law duplication.

A core element of the review includes the options for the modernisation, simplification, clarification and reform of the *Property Law Act 1974* (Qld) in light of case law, the operation of other related legislation and changes in practice. The review also includes a range of issues involving community titles schemes arising under the *Body Corporate and Community Management Act 1997* (Qld) (**BCCM Act**). The Centre has previously prepared a number of Issues Papers and Final Recommendations, which have been released by the Department of Justice and Attorney-General.¹

This report, which is the final paper to consider body corporate issues, follows from *Property Law Review Issues Paper: Consistency between the Body Corporate and Community Management Act 1997 and the Building Units and Group Titles Act 1980*² (**Issues Paper**) and deals with the *Building Units and Group Titles Act 1980* (Qld) (**BUGTA**). The BUGTA remains in effect for a number of mixed use and resort developments throughout the State which are facilitated by specific legislation referred to as the **specified Acts**.³ The specified Acts are:

- *Integrated Resort Development Act 1987* (Qld) (**IRDA**);
- *Mixed Use Development Act 1993* (Qld) (**MUDA**);
- *Registration of Plans (HSP (Nominees) Pty Limited) Enabling Act 1980* (Qld) (**HSP Nominees**);
- *Registration of Plans (Stage 2) (HSP (Nominees) Pty Limited) Enabling Act 1984* (Qld) (**HSP Nominees Stage 2**); and
- *Sanctuary Cove Resort Act 1985* (Qld) (**SCRA**).

1.2. The Issues Paper

The Issues Paper provided a brief overview of the history of body corporate legislation in Queensland situating the specified Acts, the BUGTA and the BCCM Act in a historical context before outlining several differences between the BUGTA and the BCCM Act. This was followed by a number of specific questions about whether it is necessary, or even possible, to bring the developments under the

¹ For a full list, see <http://www.justice.qld.gov.au/corporate/community-consultation/community-consultation-activities/current-activities/review-of-property-law-in-queensland>.

² Commercial and Property Law Research Centre, *Property Law Review Issues Paper: Consistency between the Body Corporate and Community Management Act 1997 and the Building Units and Group Titles Act 1980*, available at http://www.justice.qld.gov.au/__data/assets/pdf_file/0010/534970/qut-issues-paper-consistency-between-bugta-bccma.pdf.

³ *Body Corporate and Community Management Act 1997* (Qld) s 326 (definition of 'specified Act').

specified Acts into a more contemporary body corporate legislative framework, something that has been signalled by previous governments as a policy objective.⁴

The Issues Paper did not provide specific proposals for reform but did discuss a number of differences between the BCCM Act and the BUGTA and asked whether the BUGTA should be modified to more closely approximate provisions in the BCCM Act. It was intended to gauge the perceived need for, and the feasibility of, reform. The Issues Paper sought public comments on whether there is detriment being suffered by lot owners in the resorts and other developments that continue to be regulated by the BUGTA as compared to lot owners in schemes under the BCCM Act. The Issues Paper also discussed several possible approaches for reforming the BUTGA and the specified Acts, should there be a demonstrated need. Public feedback was sought as to whether there is support for such reform and what types of issues may arise in implementation.

As demonstrated by the submissions to the Issues Paper there is strong support for some reform of the BUGTA and the specified Acts to more closely approximate the provisions of the BCCM Act.

1.3. The Submissions

The Centre received a total of 41 submissions to the Issues Paper. Of these, 26 submissions were received from individuals (including those who identified themselves as committee members, or chairs of their body corporate). A further 10 submissions were received from companies and organisations, such as developers, body corporate services companies or organisations such as the Strata Community Australia, the Queensland Law Society and others. A total of five submissions were received from bodies corporate, including subsidiary bodies corporate (e.g. those bodies corporate created on the registration of a group titles plan or a building units plan under the BUGTA⁵) and principal bodies corporate⁶ (where the submission was expressed to be made on behalf of the body corporate, not in the name(s) of individuals). The scheme from which the largest number of submissions was received was Sanctuary Cove (12 submissions) followed by Hope Island (nine submissions).

Of the total number of submissions, only nine directly answered the questions posed in the Issues Paper. Some of the other submissions made general comments about the topics covered in the Issues Paper. Some submissions did not engage with the topics raised in the Issues Paper but instead commented on specific issues in relation to their own scheme or areas where they felt legislative change could be useful.

⁴ Queensland, Legislative Assembly, *Parliamentary Debates*, 'Resorts and Other Acts Amendment Bill: Second Reading Speech' (Hinchliffe, SJ, 19 May 2009), 303; Queensland, Legislative Assembly, *Parliamentary Debates*, 'Local Government Electoral Bill 2011: Second Reading Speech' (Lucas, PT, 16 June 2011), 1968.

⁵ *Building Units and Group Titles Act 1980* (Qld) s 27. These bodies corporate are generally residential bodies corporate and for ease of discussion, are referred to as subsidiary bodies corporate throughout this report.

⁶ Referred to by different names i.e. the principal body corporate or primary thoroughfare body corporate under the *Sanctuary Cove Resort Act 1985* (Qld); or the community body corporate or precinct body corporate under the *Mixed Use Development Act 1993* (Qld). For ease of discussion, the phrase principal layer or principal body corporate is used throughout this report.

Of the 41 submissions, slightly more than half (23 submissions) expressed a clear or implied view as to whether the BUGTA (or the specified Acts) should be changed. The vast majority (18 of these 23 submissions) supported changing the BUGTA or the specified Acts. The most common view expressed was that the BUGTA and the specified Acts should be amended to more closely resemble the BCCM Act. A smaller number of submissions (six) expressed clear support for a full and complete transition to the BCCM Act.

Only five submissions expressed a view against legislative changes. Of these, the most common reasons cited included the difficulty, the compliance costs and the lack of benefit to lot owners and the public. The Property Council of Australia (Queensland) argued that there was no compelling rationale for change and stated that the efficiencies gained would not outweigh the significant public and private resources that would need to be expended in the process. Mulpha, the developer and owner of Sanctuary Cove stated that it is vehemently opposed to any action that would separate planning, titling and body corporate legislation at Sanctuary Cove. Although, it should be noted that Mulpha conceded that if there is a perceived need to augment the BUGTA, Mulpha would prefer an approach that included a limited number of specific provisions into the existing legislative framework rather than one that brought about wholesale changes on a broad range of issues.

One submission, received from the Hope Island Principal Body Corporate, is particularly detailed in terms of the suggested amendments to the BUGTA and the IRDA. It lists specific sections of the IRDA and the BUGTA that should be amended and the specific sections of the Standard Module⁷ that should be inserted, or modified for insertion, into the BUGTA and the IRDA.

Given the strong support in the submissions received, the Centre recommends that the BUGTA and the specified Acts should be amended to more closely approximate the BCCM Act. This should be done in terms of dispute resolution processes and residential body corporate procedural matters, including notice periods, proxies, conflicts of interest and by-laws. A full list of the Centre's Recommendations is included at paragraph 1.4 below. Each Recommendation is then further discussed in the context of the responses to the Issues Paper.

1.3.1. South Bank

The *South Bank Corporation Act 1989* (Qld) is not a specified Act for the purposes of the BUGTA. As such, the Act was generally excluded from the discussion in the Issues Paper. The South Bank Corporation, the statutory body created by the *South Bank Corporation Act 1989* (Qld), made a submission to the Issues Paper stating that the *South Bank Corporation Act 1989* (Qld) relies on a 'Modified Building Units and Group Titles Act' contained in schedule 4 to that Act. Schedule 4 relies upon the BUGTA in a number of respects, including in relation to dispute resolution.

The South Bank Corporation submitted that if the BUGTA is repealed, it will be necessary to review the modified BUGTA in schedule 4 to decide whether the relevant parts of the BUGTA should be redrafted as stand-alone sections in the modified BUGTA. Further, it was submitted, any changes to

⁷ *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld) (**Standard Module**).

the BUGTA or the specified Acts should be considered in light of whether equivalent amendments are required to the modified BUGTA in schedule 4.

As discussed further below, the Centre's Recommendations do not call for the repeal of the BUGTA. The Recommendations in this report have been made in the context of the BUGTA and the specified Acts and do not generally consider the impact on South Bank. To the extent that any of the Centre's Recommendations are accepted, it will be necessary to separately consider whether equivalent changes to the *South Bank Corporation Act 1989* (Qld) are needed. This is reflected in the final Recommendation.

1.4. The Recommendations

Following from the Issues Paper and the submissions, the Centre has formed the view that there should be changes to the operation of the BUGTA and the specified Acts so that bodies corporate under the BUGTA and the specified Acts more closely resemble the BCCM Act position in relation to the following areas:

- dispute resolution; and
- procedural issues (as discussed in the Issues Paper).

The Recommendations are intended to achieve an outcome where bodies corporate under the BCCM Act, the BUGTA and the specified Acts are subject to the same requirements for dispute resolution and body corporate procedures, except to the extent specific modification is required.

The Centre does not recommend replacing the BUGTA with the BCCM Act at this time. However, if there is a perceived need for further changes (beyond implementing these Recommendations) towards harmonising the BCCM Act and the BUGTA, such changes should be the subject of further consultation with interested stakeholders.

A full list of the Recommendations is set out below. This is followed by a detailed discussion that reviews the questions asked in the Issues Paper and provides a brief snapshot of the submissions received in response to the questions. Parts 2-3 below set out the rationale for each Recommendation.

Recommendation 1

It is recommended that part 5 of the *Building Units and Group Titles Act 1980* be replaced with chapter 6 of the *Body Corporate and Community Management Act 1997*, subject to any necessary modifications to accommodate the different nature, features and characteristics of the bodies corporate under the *Building Units and Group Titles Act 1980* and the specified Acts.

Recommendation 2

It is recommended that schedule 2 of the *Building Units and Group Titles Act 1980* be replaced with the *Body Corporate and Community Management (Standard Module) Regulation 2008*, subject to any necessary modifications to accommodate the different nature, features and characteristics of the bodies corporate under the *Building Units and Group Titles Act 1980* and the specified Acts.

Recommendation 3

It is recommended that the specified Acts and the *Building Units and Group Titles Act 1980* be amended so that bodies corporate constituted under those Acts are subject to the same restriction in relation to delegation of decision making authority as applies under the *Body Corporate and Community Management Act 1997* section 97, subject to any necessary modifications.

Recommendation 4

It is recommended that the by-laws for each subsidiary body corporate constituted under the *Building Units and Group Titles Act 1980* section 27 for the specified Acts should, subject to any necessary modifications and appropriate savings and transitional arrangements, be:

- subject to the same limitations as are in place for bodies corporate under section 180 of the *Body Corporate and Community Management Act 1997*; and
- consolidated into a single document, to be kept up-to-date by the body corporate and made available for inspection by lot owners and prospective purchasers.

Recommendation 5

It is recommended that the State Government engage with bodies corporate and interested stakeholders in the schemes under the *Building Units and Group Titles Act 1980* and the specified Acts to determine the following:

- the most appropriate method of implementing each Recommendation above; and
- the extent to which there is a need for further legislative reform.

Recommendation 6

It is recommended that the State Government engage with bodies corporate and interested stakeholders in the plans under the *Building Units and Group Titles Act 1980* and the specified Acts to determine the most appropriate method of addressing such further reform (if any) that may be required at each particular scheme by considering amendments to the relevant specified Act.

Recommendation 7

It is recommend that to the extent any of these Recommendations are accepted for the *Building Units and Group Titles Act 1980* and the specified Acts, that there be separate consideration of whether equivalent reform is needed to the *South Bank Corporation Act 1989*.

2. The BUGTA and the BCCM Act

The Issues Paper briefly addressed several differences between the BCCM Act and the BUGTA.⁸ The areas discussed included:

- dispute resolution;
- the procedural requirements for running a body corporate;
- delegation of decision making authority; and
- by-laws.

The following discussion provides a brief overview of the material discussed in the Issues Paper and the questions that were asked. This is followed by a discussion of the responses that were received and finally, by the Centre's recommended approach.

2.1. Dispute resolution

In a general sense, referees under the BUGTA and adjudicators under the BCCM Act have similar powers in terms of the types of orders that can be made⁹ and the types of powers that can be exercised.¹⁰ The BCCM Act is more detailed and nuanced, and while this may arguably give adjudicators wider powers, in fact any differences are unlikely to have a significant impact on decisions that can be made. However, the process of dispute resolution under the two Acts is quite different.

2.1.1. Dispute resolution under the BCCM Act

A dispute will exist for the purposes of the BCCM Act if the dispute is between specified parties – e.g. a dispute between two or more owners or occupiers, a dispute between the body corporate and a lot owner or occupier. Other parties to a dispute may include body corporate managers, service contractors, letting agents and committee members. A party may apply to the Office of the Commissioner for Body Corporate and Community Management (**BCCM Commissioner's Office**) for dispute resolution only if the dispute falls into the definition of a 'dispute'¹¹ for the purposes of the BCCM Act.¹² While the BCCM Commissioner's Office does not give legal advice, it performs a vital information and educational service to assist lot owners and members of the public to understand the rights and obligations under the BCCM Act.¹³

The dispute resolution process commences with self-resolution – where the parties to the dispute attempt to resolve the issue themselves.¹⁴ If this fails, a party to the dispute may then apply for

⁸ A full list of the differences between the two Acts is beyond the scope of these Final Recommendations, as it was beyond the scope of the Issues Paper.

⁹ *Building Units and Group Titles Act 1980* (Qld) ss 75-95; *Body Corporate and Community Management Act 1997* (Qld) s 276 and schedule 5.

¹⁰ *Building Units and Group Titles Act 1980* (Qld) s 75(2)-(4); *Body Corporate and Community Management Act 1997* (Qld) ss 269-272.

¹¹ *Body Corporate and Community Management Act 1997* (Qld) s 227.

¹² See chapter 6 of the *Body Corporate and Community Management Act 1997* (Qld).

¹³ *Body Corporate and Community Management Act 1997* (Qld) 232(3).

¹⁴ *Body Corporate and Community Management Act 1997* (Qld) schedule 6 (definition of 'dispute resolution').

conciliation,¹⁵ which is non-binding and informal. It involves the parties meeting with an independent conciliator who will assist the parties to reach their own resolution.¹⁶ If the dispute is not resolved by conciliation, a party may apply for adjudication¹⁷ (although it may be possible, in specific circumstances, to by-pass conciliation and proceed immediately to adjudication).¹⁸ Adjudication is a more formal process where an adjudicator will decide the dispute on the basis of submissions by the parties.¹⁹

If necessary, an adjudicator's decision may be enforced by an order of the Magistrates Court.²⁰

An aggrieved person²¹ may appeal the decision of an adjudicator to the Queensland Civil and Administrative Tribunal (QCAT) on a question of law,²² or with leave, on a question of fact or mixed fact and law.²³ Further appeals may be made to the Queensland Court of Appeal and ultimately, to the High Court of Australia.²⁴ Complex disputes under the BCCM Act are resolved by QCAT or a specialist adjudicator.²⁵

2.1.2. Dispute resolution under the BUGTA

By contrast, dispute resolution under the BUGTA is more limited. There is no information and education service available for lot owners in schemes registered under the BUGTA. Further, there is no requirement for informal dispute resolution under the BUGTA itself, although the IRDA, SCRA and MUDA all require that the applicant has made reasonable attempts to resolve the dispute or matter using internal dispute resolution processes.²⁶ Any appeal of a decision made by a referee is heard in the Magistrates Court and then may be appealed to the Supreme Court.

Under the BUGTA, dispute resolution applications are made to a referee.²⁷ A referee has power, on application, to make particular orders.²⁸ Depending on the type of order sought, only particular people may bring an application for that order. For example, any person may apply for an order that

¹⁵ *Body Corporate and Community Management Act 1997* (Qld) s 239A.

¹⁶ For details on the conciliation process, see <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/body-corporate-disputes/types-of-dispute-resolution/conciliation-for-body-corporate-disputes/>.

¹⁷ *Body Corporate and Community Management Act 1997* (Qld) s 239B.

¹⁸ For example, *Body Corporate and Community Management Act 1997* (Qld) s 241(3).

¹⁹ For details of the adjudication process, see <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/body-corporate-disputes/types-of-dispute-resolution/adjudication-for-body-corporate-disputes/>.

²⁰ *Body Corporate and Community Management Act 1997* (Qld) ss 286-288. An adjudicator's order may also be enforceable by seeking an order to appoint an administrator for the scheme, either under the BCCM Act or in the Magistrates Court.

²¹ *Body Corporate and Community Management Act 1997* (Qld) s 289(1)(c) (definition of 'aggrieved person').

²² *Body Corporate and Community Management Act 1997* (Qld) s 289(2).

²³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 142(3)(b).

²⁴ For a case that was recently appealed all the way to the High Court, see *Ainsworth v Albrecht* [2016] HCA 40.

²⁵ *Body Corporate and Community Management Act 1997* (Qld) schedule 6 (definition of 'complex dispute').

²⁶ *Integrated Resort Development Act 1987* (Qld) s 179C; *Sanctuary Cove Resort Act 1985* (Qld) s 104C; *Mixed Use Development Act 1993* (Qld) s 214D. This requirement was added by amendments in 2009 and 2011.

²⁷ *Building Units and Group Titles Act 1980* (Qld) s 72. The referee under the BUGTA is managed through the BCCM Commissioner's Office.

²⁸ *Building Units and Group Titles Act 1980* (Qld) ss 75-95.

the body corporate make available documents.²⁹ However, only a proprietor may apply for an order to force a body corporate to make an insurance claim or vary certain contributions.³⁰ Only a person entitled to vote at a meeting of the body corporate may bring an application for an order to: revoke an amendment of a by-law; repeal a by-law; or reinstate a previously repealed by-law.³¹

On receipt of an application, the referee is given powers to notify parties of the application, including the body corporate to which the application relates and any other parties the referee believes would be affected by the order sought, and to invite them to make submissions.³² The referee may requisition further information from the applicant³³ and make such investigations as the referee thinks fit, including entering the parcel of land to which the dispute relates.³⁴

After the referee makes an order in response to an application, the applicant, a person who made a submission on the application or a person required to do or refrain from doing something under the order³⁵ may appeal to the Magistrates Court. Under the BUGTA, the only ground on which an appeal may be made is that the referee acted unreasonably by making the order.³⁶

After the Magistrates Court has made a determination of an appeal, the appellant, the original applicant, the body corporate or a person required to do or refrain from doing something under the determination may appeal to the Supreme Court on a question of law.³⁷

2.1.3. The Issues Paper Questions

The Issues Paper asked several questions about dispute resolution.

Questions from Issues Paper

- 1. Should the dispute resolution provisions in the BCCM Act replace the dispute resolution provisions in the BUGTA?**
- 2. If so, should the same dispute resolution provisions apply to plans under the BUGTA for all issues, or are there some issues where, due to the nature of the plan itself, different provisions should apply? What are these issues and what is the best way to deal with the difference?**
- 3. What is the best way to deal with a dispute between a lot owner in a subsidiary layer and a body corporate in a principal layer?**

²⁹ *Building Units and Group Titles Act 1980* (Qld) s 84.

³⁰ *Building Units and Group Titles Act 1980* (Qld) ss 82-83.

³¹ *Building Units and Group Titles Act 1980* (Qld) s 88.

³² *Building Units and Group Titles Act 1980* (Qld) s 73(1)(c)-(d).

³³ *Building Units and Group Titles Act 1980* (Qld) s 73(1)(a).

³⁴ *Building Units and Group Titles Act 1980* (Qld) s 73(1)(f)-(g).

³⁵ *Building Units and Group Titles Act 1980* (Qld) s 106(1).

³⁶ *Building Units and Group Titles Act 1980* (Qld) s 106(2).

³⁷ *Building Units and Group Titles Act 1980* (Qld) s 108(1). See also s 7 (definition of 'Court').

Of the submissions that directly responded to the first question, all but one of them supported, or at least said they would not object, if the dispute resolution provisions in the BCCM Act were to replace the dispute resolution provisions in the BUGTA.

Of the submissions that responded to the second question, there was support for having the same dispute resolution provisions apply to all disputes as the issues for bodies corporate are generally very similar. It was noted that there should be some specific exclusions, e.g. in relation to the issue of development control by-laws under the IRDA, which are dealt with by QCAT.³⁸

In response to the third question, several views were presented. Some submissions supported giving lot owners standing as against the principal layers in the body corporate structures. Some submissions said there should be no changes and the current system should remain in place. This means that under the BUGTA there will not be standing for lot owners in the subsidiary body corporate to take direct action against the principal layer (just as there is no ability for the principal body corporate to take direct action against a lot owner in the subsidiary scheme).

The BUGTA does not contain provisions about disputes between lot owners in a subsidiary layer and the body corporate at the principal layer. However, a number of the specified Acts contain a limited right for a proprietor or occupier of a lot in a subsidiary body corporate to apply to QCAT to deal with a matter relating to the application, contravention, or alleged contravention, of the development control by-laws, if the proprietor or occupier is directly and materially affected by the matter.³⁹

Other submissions said that they would support a position that allowed standing for some issues, but not for others, much like what the Centre has recommended for schemes under the BCCM Act.⁴⁰

2.1.4. Recommendation

The dispute resolution provisions in the IRDA, the SCRA and the MUDA currently provide that (aside from specific disputes, generally relating to the transfer of management rights, contractual matters or development control by-laws) disputes about the operation of the specified Act or the rights and obligations of a person under the BUGTA must be determined in accordance with part 5 of the BUGTA.⁴¹ The HSP Nominees and HSP Nominees Stage 2 Acts do not include dispute resolution provisions, although it is generally accepted that the dispute resolution provisions in the BUGTA apply.⁴²

³⁸ E.g. *Integrated Resort Development Act 1987* (Qld) s 179B.

³⁹ See *Sanctuary Cove Resort Act 1985* (Qld) s 104B; *Integrated Resort Development Act 1987* (Qld) s 179B; *Mixed Use Development Act 1993* (Qld) ss 214B, 214C.

⁴⁰ See Commercial and Property Law Research Centre, *Government Property Law Review: Final Recommendations: Procedural issues under the Body Corporate and Community Management Act 1997*, Recommendation 54 at [70], available at http://www.justice.qld.gov.au/__data/assets/pdf_file/0008/529784/final-recommendations-procedural-issues-paper.pdf.

⁴¹ *Sanctuary Cove Resort Act 1985* (Qld) s 104A; *Integrated Resort Development Act 1987* (Qld) s 179A; *Mixed Use Development Act 1993* (Qld) s 214A.

⁴² See *Allungah* [2017] QBCCMCmr 461 at [4] citing earlier decisions of the referee in relation to schemes under *Registration of Plans (HSP (Nominees) Pty Ltd) Enabling Act 1980* (Qld).

The Centre is of the view that the dispute resolution procedures in the BCCM Act should replace the dispute resolution provisions in part 5 of the BUGTA so that disputes under the BUGTA are determined in accordance with chapter 6 of the BCCM Act. Further, disputes under the specified Acts that are currently determined under part 5 of the BUGTA should be determined under chapter 6 of the BCCM Act. The change to the dispute resolution provisions in the BUGTA and the specified Acts to adopt, or to at least more closely approximate, the BCCM Act provisions is strongly supported by the majority of the submissions received in response to the Issues Paper.

This outcome may be achieved either by repealing part 5 of the BUGTA and adopting chapter 6 of the BCCM Act or by amending part 5 of the BUGTA to match chapter 6. Either way, the provisions of chapter 6 of the BCCM Act, as applied to the BUGTA and the specified Acts, may require modification to accommodate the particular nature, features or characteristics of the body corporate in question.

In addition to amendments to the BUGTA, it may be that the specified Acts will require amendment so that those sections which allow particular disputes to be determined under part 5 of the BUGTA⁴³ refer instead to chapter 6 of the BCCM Act. However, if part 5 of the BUGTA is amended to match chapter 6 of the BCCM Act, it may not be necessary to modify the specified Acts. The HSP Nominees Acts will require specific amendment to provide for disputes to be dealt with under chapter 6 of the BCCM Act as there are currently no dispute resolution provisions in that legislation.

In 2007, the *Resort Development and Management in the Twenty-First Century* discussion paper⁴⁴ stated that the structures of the BCCM Act, the SCRA and IRDA are so different that it would be impossible to apply the BCCM Act rules to a dispute involving a principal body corporate. In the Centre's view, this is incorrect, particularly if chapter 6 of the BCCM Act is modified to allow for the particular nature, features or characteristics of the body corporate on question.

However, there are some disputes that may arise under the specified Acts that should not be dealt with under the BCCM Act procedures. Currently, these disputes⁴⁵ (generally relating to development control by-laws, contractual matters or transfer of management rights) are required to be dealt with by QCAT. In the Centre's view, these disputes should continue to be dealt with in this manner. This means that those disputes which are currently required to be decided by QCAT will continue to be dealt with by QCAT.

In relation to disputes between lot owners in subsidiary schemes and principal bodies corporate, the Centre has recently recommended changes to the BCCM Act to give lot owners standing for some issues directly against the principal body corporate (and vice-versa). To the extent that such recommendation is accepted, it is appropriate to apply to disputes arising under the specified Acts.

⁴³ *Sanctuary Cove Resort Act 1985* (Qld) s 104A; *Integrated Resort Development Act 1987* (Qld) s 179A; *Mixed Use Development Act 1993* (Qld) s 214A

⁴⁴ Queensland Government, Department of Local Government, Planning, Sport and Recreation, *Resort Development and Management in the Twenty-First Century*, Discussion Paper, March 2007, 24-25.

⁴⁵ *Integrated Resort Development Act 1987* (Qld) s 179A(2)(a); *Sanctuary Cove Resort Act 1985* (Qld) s 104A(2)(a); *Mixed Use Development Act 1993* (Qld) s 214A(2)(a).

Recommendation 1

It is recommended that part 5 of the *Building Units and Group Titles Act 1980* be replaced with chapter 6 of the *Body Corporate and Community Management Act 1997*, subject to any necessary modifications to accommodate the different nature, features and characteristics of the bodies corporate under the *Building Units and Group Titles Act 1980* and the specified Acts.

2.2. Procedural issues

A second area discussed in the Issues Paper relates to body corporate meeting procedures. The BUGTA contains rules for body corporate procedures in Schedule 2.⁴⁶ Part 2 of Schedule 2 applies to subsidiary bodies corporate which are the group titles plans and building unit plans created under the BUGTA.⁴⁷ The Schedule also applies, with some modifications, to principal layers of the body corporate under the IRDA,⁴⁸ MUDA⁴⁹ and SCRA.⁵⁰

Generally, the procedures are very similar for bodies corporate under the BUGTA and the BCCM Act. Under both Acts, the lot owners make up the body corporate and pay levies to fund the maintenance of the common property. The body corporate holds an annual general meeting to decide on budgets and elect a committee to handle the day-to-day operations. The notice of the meeting must be given to lot owners and only specified parties are eligible to nominate for a committee position, to vote or to put forward a motion for consideration. Any meeting of the body corporate other than the annual general meeting is an extraordinary general meeting.

Under the BUGTA, meeting procedures are set out in Schedule 2. Part 1 of Schedule 2 deals with the first annual general meeting of the body corporate and Part 2 of Schedule 2 deals with general meetings other than the first annual general meeting. The schedule applies regardless of the size of the scheme.

Under the BCCM Act, body corporate meetings and committee meetings must be held and conducted in accordance with the Act itself⁵¹ and the relevant Regulation Module.⁵² There are five Regulation Modules, each designed to provide for different types of schemes. The **Regulation Modules** are:

- the Standard Module, which is the default module that applies at most schemes;
- the **Commercial Module**,⁵³ designed for schemes that are, or are intended to be, predominately composed of commercial lots;

⁴⁶ Part 1 of schedule 2 relates to the first annual general meeting. Part 2 of the schedule applies to meetings other than the first annual general meeting.

⁴⁷ *Building Units and Group Titles Act 1980* (Qld) s 27.

⁴⁸ *Integrated Resort Development Act 1987* (Qld) s 106(7)-106(9) (for primary thoroughfare body corporate) and s 143(6)-143(9) (for principal body corporate).

⁴⁹ *Mixed Use Development Act 1993* (Qld) s 172(8)-172(11).

⁵⁰ *Sanctuary Cove Resort Act 1984* (Qld) s 27(5A)-27(5C) (principal body corporate) and s 70(5)-70(5C) (primary thoroughfare body corporate).

⁵¹ *Body Corporate and Community Management Act 1997* (Qld) s 101 (committee meetings) and s 104(1) (body corporate meetings).

⁵² *Body Corporate and Community Management Act 1997* (Qld) s 21.

⁵³ *Body Corporate and Community Management (Commercial Module) Regulation 2008* (Qld) (**Commercial Module**).

- the **Accommodation Module**⁵⁴, designed for schemes that are, or are intended to be predominately accommodation lots;
- the **Small Schemes Module**,⁵⁵ designed for schemes with six or fewer lots; and
- the **Two-lot Module**,⁵⁶ designed for specified two-lot schemes where decisions are made by lot owner agreements.

A brief list of procedural differences between the BCCM Act and the BUGTA is presented in the table below. These were discussed in greater detail in the Issues Paper.⁵⁷ The table is by no means a complete list but it does highlight significant differences between the BUGTA and the BCCM Act (and Regulation Modules).

Issue	BUGTA Approach	BCCM Act Approach
Notice of annual general meeting	7 days ⁵⁸	21 days ⁵⁹
Proxies ⁶⁰	Proxies must be in writing under the hand of the person making the appointment (or their agent) and may be either general or particular. ⁶¹ No other provisions in the BUGTA about proxies.	Body corporate may prohibit proxies; ⁶² If the scheme is 20 or more lots, a person may hold proxies for no more than 5% ⁶³ of the lots. If less than 20 a person may hold a proxy for only one lot. ⁶⁴

⁵⁴ *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (Qld) (**Accommodation Module**).

⁵⁵ *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* (Qld) (**Small Schemes Module**).

⁵⁶ *Body Corporate and Community Management (Specified Two-lot Module) Regulation 2011* (Qld) (**Two-lot Module**).

⁵⁷ Commercial and Property Law Research Centre, *Property Law Review Issues Paper: Consistency between the Body Corporate and Community Management Act 1997 and the Building Units and Group Titles Act 1980*, available at http://www.justice.qld.gov.au/__data/assets/pdf_file/0010/534970/qut-issues-paper-consistency-between-bugta-bccma.pdf, 24-29.

⁵⁸ *Building Units and Group Titles Act 1980* (Qld) Schedule 2, Part 2 s 1(4)(a).

⁵⁹ Standard Module s 74; Accommodation Module s 72; Commercial Module s 41. Under the Small Schemes Module s 36 the body corporate may decide on a different period.

⁶⁰ Note that in 2009 and 2011, the specified Acts were amended to restrict the use of proxies at the principal levels: *Sanctuary Cove Resort Act 1985* (Qld) ss 47B-47G; *Integrated Resort Development Act 1987* (Qld) ss 168A-168F; and *Mixed Use Development Act 1993* (Qld) ss 201A-201L.

⁶¹ *Building Units and Group Titles Act 1980* (Qld) schedule 2 part 2 s 17. See also section 50A.

⁶² By special resolution, for particular things, or altogether: Standard Module s 107(2); Standard Module s 107(2); Accommodation Module s 105(2). This option is not available under the Commercial Module or the Small Schemes Module.

⁶³ Or 10% under the Accommodation Module.

⁶⁴ Standard Module s 107(4); Accommodation Module s 105(4). This restriction does not apply under the Commercial Module or the Small Schemes Module.

Issue	BUGTA Approach	BCCM Act Approach
Conflict of interest	A person who has a financial interest in a prescribed arrangement ⁶⁵ may not vote on that arrangement as a proxy for another person. No other provisions about conflicts in the BUGTA.	A voting member of the committee must disclose direct or indirect conflicts of interest in a matter being considered by the committee and refrain from voting on the matter. ⁶⁶
Delegation of decision making	The body corporate may delegate all of its powers to a body corporate manager ⁶⁷ except the power to make a delegation of power ⁶⁸ or to decide certain restricted matters. ⁶⁹	The body corporate cannot delegate its powers ⁷⁰ (for example, to a body corporate manager) unless specific circumstances exist. ⁷¹
By-laws⁷² - Location	By-laws contained in schedule 3 of the BUGTA will be the by-laws for a plan, except where the by-laws in the schedule are amended, added to or repealed by the body corporate. ⁷³ Changes to the standard by-laws must be lodged within 3 months of the change and do not come into force until recorded on the registered plan by the registrar of titles. ⁷⁴	By-laws are included as a schedule to the community management statement (CMS) registered when the community titles scheme is created. ⁷⁵ If the CMS does not contain by-laws the schedule of by-laws in the BCCM Act may apply. ⁷⁶ Amendments to the by-laws take effect when a new CMS containing the amendment is registered.

⁶⁵ Generally, being any arrangement between the original owner and the body corporate relating to carrying out duties of the body corporate or conducting a business on body corporate property: *Building Units and Group Titles Act 1980* (Qld) s 7 (definition of 'prescribed arrangement').

⁶⁶ Standard Module s 53; Accommodation Module s 53; Commercial Module s 27; Under the Small Schemes Module, the office holder must disclose the conflict but can be authorised to vote: Small Schemes Module s 21.

⁶⁷ *Building Units and Group Titles Act 1980* (Qld) s 50(1)(a).

⁶⁸ *Building Units and Group Titles Act 1980* (Qld) s 50(2)(a).

⁶⁹ *Building Units and Group Titles Act 1980* (Qld) ss 50(2)(b), 46.

⁷⁰ *Body Corporate and Community Management Act 1997* (Qld) s 97.

⁷¹ *Body Corporate and Community Management Act 1997* (Qld) ss 98, 120; See also for example Standard Module s 7(2); Accommodation Module s 8(2); Small Schemes Module s 8(2).

⁷² It is noted that under the specified Acts there are different types of by-laws, (e.g. development control by-laws; primary and secondary thoroughfare by-laws; precinct by-laws; community property and activities by-laws) however the focus here is on the difference between the BUGTA and the BCCM Act in relation to the schedule of by-laws in each Act.

⁷³ *Building Units and Group Titles Act 1980* (Qld) s 30.

⁷⁴ *Building Units and Group Titles Plan 1980* (Qld) s 30(3)-(3A).

⁷⁵ *Body Corporate and Community Management Act 1997* (Qld) s 66(1)(e).

⁷⁶ *Body Corporate and Community Management Act 1997* (Qld) s 168.

Issue	BUGTA Approach	BCCM Act Approach
<p>By-laws - restrictions</p>	<p>A by-law may not restrict the transfer or other dealing with a lot, or destroy or modify any easement, service right or service obligation implied or created by the BUGTA.⁷⁷</p> <p>By-laws may impose a monetary liability on a lot owner.⁷⁸</p>	<p>A by-law may not:</p> <ul style="list-style-type: none"> • restrict the type of residential use of the lot if the lot may be used for residential purposes; • prevent or restrict a transmission, transfer, mortgage or other dealing with a lot; • discriminate between types of occupier (i.e. owners versus tenants); • impose a monetary liability (unless it is an exclusive use by-law); or • be oppressive or unreasonable having regard to the interests of all owners and occupiers and the use of the common property.

The Issues Paper discussed each of the items raised in the table above and asked several questions about body corporate procedural matters as follows:

<u>Questions from the Issues Paper</u>
<p>4. Should the body corporate procedures that apply to community titles schemes under the BCCM Act be made to apply to plans under the BUGTA? If so, what is the best way to achieve this?</p> <p>5. If BUGTA plans are transitioned to the BCCM Act, is a new Regulation Module for mixed use and integrated resorts under the specified Acts required? If so, how would it differ from the existing Regulation Modules?</p> <p>6. In addition to the dispute resolution and the procedural matters discussed above (and leaving aside titling and town planning considerations) what other areas or differences between the BUGTA and the BCCM Act should be considered for amendment?</p>

Question 4 asked whether the procedures under the BCCM Act that apply to bodies corporate should be made to apply to plans under the BUGTA. Of the submissions that responded, all but one supported (or said they would not object, if a need is perceived, to) making the body corporate procedures

⁷⁷ *Building Units and Group Titles Act 1980* (Qld) s 30(6).

⁷⁸ A person who becomes the proprietor of a lot at a time when another person is under an obligation in a by-law to pay money to the body corporate is jointly and severally liable with the other person to pay the money: *Building Units and Group Titles Act 1980* (Qld) s 9A.

consistent across the BCCM Act and the BUGTA. A small number of submissions supported a full and complete move from the BUGTA to the BCCM Act for all bodies corporate under the specified Acts. However, the majority of the submissions that responded to this question commented that specific changes to address discrete issues would be more welcome than complete repeal of the BUGTA and the specified Acts. It was suggested by several submissions that the specified Acts should continue to apply to principal bodies corporate while BCCM Act procedures could be applied to subsidiary (generally residential) bodies corporate.

In response to question 5 about the need for a new Regulation Module, it was generally submitted that the Standard Module would be appropriate. A small number of submissions (generally those that supported a full transition to the BCCM Act) argued in favour of a new Regulation Module to deal with large and mixed-use schemes.

Questions 6 asked what other areas or differences between the BCCM Act and the BUGTA should be considered for amendment. A number of issues were raised. These include, among others:

- body corporate expenditure in plans with different formats;
- standardising pre-contract disclosure and conveyancing processes;
- a code of conduct for committee members, strata managers and building caretakers;
- adding a requirement for the body corporate to act reasonably;⁷⁹ and
- scheme termination (extinguishment of plan).⁸⁰

While there may be merit in addressing a number of these issues, the Centre is of the view that they should form part of a further round of changes, should it be perceived necessary following the implementation of the Recommendations in this report.

2.2.1. Procedural Recommendation

The Centre is of the view that schedule 2 of the BUGTA should be replaced with the Standard Module, subject to necessary modifications to accommodate the different nature, features and characteristics of the bodies corporate under the *Building Units and Group Titles Act 1980* and the specified Acts.

The Standard Module should apply to bodies corporate under the BUGTA and the specified Acts. Subsidiary bodies corporate created under section 27 of the BUGTA for the purposes of the specified Acts rely on schedule 2 of the BUGTA for body corporate procedures⁸¹ so replacing one set of rules with a different set of rules should be a relatively straight forward process. However, the Centre recognises that, due to the nature or structure of the subsidiary bodies corporate under the BUGTA, the provisions in the Standard Module may need modification to apply. This can be achieved by replacing the reference to schedule 2 of the BUGTA with a reference to the Standard Module but subject to specific modifications as necessary. These modifications could be listed in the BUGTA itself.

⁷⁹ As set out in *Body Corporate and Community Management Act 1997* (Qld) s 94(2).

⁸⁰ See *Building Units and Group Titles Act 1980* (Qld) ss 25-26; *Integrated Resort Development Act 1987* (Qld) ss 68-71; *Mixed Use Development Act 1993* (Qld) ss 108-111.

⁸¹ *Building Units and Group Titles Act 1980* (Qld) s 29(1) (for first annual general meeting) and s 29A(3) (for a meeting of the body corporate that is not a first annual general meeting).

Similarly, the principal bodies corporate under the IRDA, the MUDA and the SCRA are subject to schedule 2 of the BUGTA, as modified by the specified Act.⁸² In a similar way, the reference to schedule 2 of the BUGTA could be replaced with a reference to the Standard Module. Any necessary modifications could be expressed in the relevant specified Act.

It is recognised that the Standard Module is broader in its scope than schedule 2 of the BUGTA. Further, it is recognised that a one-size-fits-all approach may not be appropriate in all circumstances for bodies corporate across the BUGTA and the specified Acts. To accommodate this, it is recommended that to the extent procedural differences are required, due to the inherent nature, features and characteristics of a specified Act, that the BUGTA and each specified Act should contain any necessary modifications to the Standard Module as needed.⁸³

Recommendation 2

It is recommended that schedule 2 of the *Building Units and Group Titles Act 1980* be replaced with the *Body Corporate and Community Management (Standard Module) Regulation 2008*, subject to any necessary modifications to accommodate the different nature, features and characteristics of the bodies corporate under the *Building Units and Group Titles Act 1980* and the specified Acts.

2.2.2. Delegation of decision making

While not technically procedural in nature, the issue of delegation of decision making was discussed in the context of body corporate procedures because it relates to actions that a body corporate may, or may not, take in conducting its affairs. As pointed out, the BCCM Act and the BUGTA have completely different rules relating the body corporate's ability to delegate decision making authority.

Only a small number of submissions commented on the issue of delegation of decision making by the body corporate. One submission stated that delegation of decision making is a significant shortcoming of the BUGTA and the specified Acts and strongly supported removing this inconsistency between the BUGTA and the BCCM Act. Another submission (although not specifically mentioning delegation) argued that limitations on the statutory functions of the principal body corporate could constrain that body corporate from engaging in activities that are integral to its identity as a resort destination.

In the Centre's view, there seems to be no reason for the different approach to the issue of delegation. If the body corporate procedures are to be aligned, the issues of delegation of decision making authority should also be aligned.

⁸² See *Integrated Resort Development Act 1987* (Qld) s 106(7)-106(9) (for primary thoroughfare body corporate) and s 143(6)-143(9) (for principal body corporate); *Mixed Use Development Act 1993* (Qld) s 172(8)-172(11); *Sanctuary Cove Resort Act 1984* (Qld) s 27(5A)-27(5C) (principal body corporate) and s 70(5)-70(5C) (primary thoroughfare body corporate)

⁸³ This approach is the same as is currently in place for the principal layers of the body corporate under the specified Acts which are required to comply with Part 2 of Schedule 2 of the BUGTA as modified by the specified Act. See for example, *Sanctuary Cove Resort Act 1985* (Qld) s 70(5)-70(5C).

2.2.3. Delegation Recommendation

With respect to delegation of decision making authority, the Centre is of the view that the same rules should apply to bodies corporate under the BUGTA and the specified Acts as apply under the BCCM Act. This means that subsidiary bodies corporate constituted under the BUGTA⁸⁴ and principal bodies corporate constituted under the specified Acts will not be able to delegate decision making authority except in limited circumstances.

The Centre recognises that the circumstances where a body corporate under the BUGTA and the specified Acts may require an ability to delegate decision making authority may be different than the limited circumstances where such delegation is available under the BCCM Act. For example, a principal body corporate at Sanctuary Cove or under the IRDA may require the ability to delegate decision making to a thoroughfare body corporate (or vice versa). For this reason, the Centre's recommendation allows for necessary modification in each specified Act.

Recommendation 3

It is recommended that the specified Acts and the *Building Units and Group Titles Act 1980* be amended so that bodies corporate constituted under those Acts are subject to the same restriction in relation to delegation of decision making authority as applies under the *Body Corporate and Community Management Act 1997* section 97, subject to any necessary modifications.

2.2.4. By-laws

The issue of by-laws, again, while not technically procedural in nature, also illustrates a stark difference between the BCCM Act and the BUGTA. The BCCM Act requires the by-laws to be included as a schedule to the community management statement (**CMS**) for the scheme. There are some cases where the CMS does not contain by-laws and the standard by-laws in the BCCM Act will generally apply (although the Centre understands this is rare).

Under the BUGTA, the by-laws for a subsidiary body corporate will be the by-laws in the BUGTA Act, unless they have been modified or amended, and the amendments have been registered with the Titles Registry.

The by-laws for the principal layers of the body corporate are different, in that these by-laws are regulated by the relevant specified Act. The discussion below and the Recommendation that follows applies just in relation to by-laws of the subsidiary bodies corporate created under the BUGTA and does not extend to by-laws under the specified Acts, such as community by-laws or development control by-laws.

⁸⁴ *Building Units and Group Titles Act 1980* (Qld) s 27.

2.2.5. By-laws under the BCCM Act

In 2017, the Centre made a number of recommendations for amendments to the BCCM Act in relation to governance issues.⁸⁵ The recommendations included giving bodies corporate the power (generally by resolution without dissent) to pass and enforce by-laws that allow bodies corporate to (among other things):

- tow away vehicles;
- prohibit the keeping of pets;
- prohibit smoking in a lot where that smoke drifts into other lots; and
- impose a monetary fine on lot owners for breach of by-laws.⁸⁶

To the extent that such recommendations are accepted for schemes under the BCCM Act, the Centre is of the view that they are appropriate to apply to subsidiary bodies corporate under the specified Acts.

2.2.6. By-laws under the BUGTA

Any changes to the enforceability and validity of existing by-laws in a subsidiary body corporate must protect existing rights. This means that by-laws currently in place for subsidiary bodies corporate for the specified Act, which are valid and enforceable under the BUGTA should remain valid and enforceable under the BCCM Act. This will require saving provisions and transitional provisions that may make the legislation more complicated. However, in the Centre's view, this is the only way to avoid unnecessary impact on existing rights.

A similar approach was taken in 1997 when the vast majority of BUGTA plans were transitioned to the BCCM Act. The transitional provisions in the BCCM Act provided that existing BUGTA plans were taken to be community titles schemes and that the by-laws in force for the new scheme were the by-laws that, immediately before the commencement of the transitional arrangements, were the by-laws in force for the plan.⁸⁷ Further, the by-laws for the new scheme were declared to continue to have effect even if a scheme established after the transition could not include such by-laws.⁸⁸

To the extent that existing by-laws for a subsidiary body corporate under the BUGTA are valid and enforceable, they should remain so under any new rules. For this reason, the Recommendation below contemplates necessary modifications to the limitation on by-laws under the BCCM Act when equivalent provisions are enacted in the BUGTA.

⁸⁵ Commercial and Property Law Research Centre, *Government Property Law Review Options Paper Recommendations: Body corporate governance issues: By-laws, debt recovery and scheme termination*, available at http://www.justice.qld.gov.au/__data/assets/pdf_file/0007/508714/qut-recommendations-by-laws-debt-recovery-and-scheme-termination.pdf.

⁸⁶ Commercial and Property Law Research Centre, *Government Property Law Review Options Paper Recommendations: Body corporate governance issues: By-laws, debt recovery and scheme termination*, 16-40.

⁸⁷ *Body Corporate and Community Management Act 1997* (Qld) s 337(2)(g)(i).

⁸⁸ *Body Corporate and Community Management Act 1997* (Qld) s 340.

2.2.7. By-law Recommendation

The Centre is of the view that part of implementing the BCCM dispute resolution procedures for subsidiary bodies corporate established under BUGTA for the purposes of the specified Acts will require that these bodies corporate maintain a consolidated list of the applicable by-laws in force for the body corporate. This may require changes to the practices of the body corporate when it comes to recording by-laws, although the Centre understands that sophisticated schemes with professional management generally maintain a list of the relevant by-laws in place. This means that the regulatory burden of the change will be minimal but, in the Centre's view, it will create a better outcome for dealing with disputes.

Further, as part of implementing the recommendation relating to dispute resolution, the Centre is of the view that the by-laws under the BUGTA should be subject to the same restrictions as by-laws under the BCCM Act. However, this should be qualified to the extent necessary to ensure those by-laws already in places that are currently valid and enforceable do not become unenforceable after legislative changes are made. This may be achieved using transitional provisions similar to those discussed above at paragraph 2.2.6. Any new by-laws created for BUGTA plans, and amendments to existing by-laws, made after the commencement of the Recommendation should be subject to the restrictions.

The Centre recommends that subject to savings and transitional provisions for existing by-laws for plans under the BUGTA, the same by-law restrictions that apply under the BCCM Act should be made applicable to subsidiary bodies corporate under the BUGTA. The by-laws should be incorporated into a single, consolidated document that is available for inspection by lot owners and prospective purchasers.

Recommendation 4

It is recommended that the by-laws for each subsidiary body corporate constituted under the *Building Units and Group Titles Act 1980* section 27 for the specified Acts should, subject to any necessary modifications and appropriate savings and transitional arrangements, be:

- subject to the same limitations as are in place for bodies corporate under section 180 of the *Body Corporate and Community Management Act 1997*; and
- consolidated into a single document, to be kept up-to-date by the body corporate and made available for inspection by lot owners and prospective purchasers.

2.3. Recommendation – Further consultation

The Centre has recommended a number of significant changes to the dispute resolution provisions and the procedural requirements that apply to bodies corporate under the specified Acts. The Recommendations call for a degree of variation for each specified Act in order to account for legislative differences that may be necessary due to the nature or structure of the particular specified Act. The most effective method of implementing such changes, and ensuring that the necessary variation is appropriate in each case, is to engage in further consultation with lot owners and other interested stakeholders to determine the best method of implementing these Recommendations.

As part and parcel of this further consultation, the State Government should take the opportunity to determine the extent to which there is a need for further legislative changes beyond that contemplated by these Recommendations. As discussed at paragraph 2.2 above, a number of issues that were not addressed in the Issues Paper were raised by the submissions. Given this, the Centre is of the view that there may be merit in further consultation with interested stakeholders to determine the extent to which further legislative changes (beyond that in these Recommendations) is required or desired.

The Centre recommends that the State Government engage in further consultation with bodies corporate, lot owners and interested stakeholders to determine the best way of implementing these Recommendations and the determine whether there is a need for further legislative changes.

Recommendation 5

It is recommended that the State Government engage with bodies corporate and interested stakeholders in the schemes under the *Building Units and Group Titles Act 1980* and the specified Acts to determine the following:

- the most appropriate method of implementing each Recommendation above; and
- the extent to which there is a need for further legislative reform.

3. Views about transition

After considering a number of differences between the BCCM Act and the BUGTA, the Issues Paper sought input from the community as to whether there is a need for a transition from the BUGTA to the BCCM Act for the plans that continue to be governed by the specified Acts.

The Issues Paper discussed the possibility of a transition and flagged a number of issues that may arise, should a transition take place. Several questions were asked about the need for a transition. However, the threshold question was really whether lot owners in developments under the specified Acts were experiencing detriment as compared to lot owners in schemes under the BCCM Act.

Question from Issues Paper

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

3.1. Detriment to lot owners

Of the submissions that responded to question 7, few raised issues beyond those already identified. Some submissions noted that the BUGTA is less prescriptive than the BCCM Act and that this is perceived as easier to navigate. One submission, although not commenting specifically on this question, argued that the large number of bodies corporate in the relatively small geographic area of Sanctuary Cove (stated to be 30 residential bodies corporate) is a problem for lot owners.

One submission noted that the referee does not have the ability to order costs against a lot owner who lodges meritless dispute resolution applications against the body corporate.⁸⁹ Another submission noted that lot owners in developments under the specified Acts are suffering minor detriment that could be negated by adopting BCCM procedures, dispute resolution and proxy provisions.

3.2. Views on transition

The Issues Paper asked a number of questions about a transition from the BUGTA to the BCCM Act. Several options were presented, along with a brief discussion of how each option might be implemented. Generally, there was only limited support for a full transition.

The questions in the Issues Paper were as follows:

⁸⁹ Under the BCCM Act, an adjudicator may make a costs order against an applicant for dispute resolution in particular circumstances where an application has been dismissed. However, the amount of costs ordered must not be more than \$2000: *Body Corporate and Community Management Act 1997* (Qld) s 270(4).

Questions from the Issues Paper

- 8. Of the following options, which do you support and why?**
 - The status quo approach (i.e. no change to the current system);
 - Amending the BUGTA to resemble the BCCM Act in particular respects;
 - A full transition from the BUGTA to the BCCM Act; or
 - Some other option (please provide details).

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

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

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

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

In regards to question 8, the most common response was that the BUGTA should be amended to resemble the BCCM Act, but that the bulk of the specified Acts could be left in place. The Queensland Law Society supported a full transition but believed it should be done in stages, leaving the principal bodies corporate to be regulated by the specified Acts while moving the subsidiary bodies corporate to the BCCM Act.

In terms of the advantages and disadvantages of a transition in question 9, very few were raised beyond what had been presented in the Issues Paper. However, one submission expressed a view against a full transition to the BCCM Act, noting that this could lead to unintended consequences. For example, such a transition, it was submitted, could result in a situation where some lots are worth more as development lots. This might mean that, potentially, the owners of say, a golf course in a development under a specified Act could decide to make an application under the *Planning Act 2017* (Qld) to redevelop the golf course as a series of high rise apartments. This may be contrary to what was intended under the specified Act, and could leave many owners stuck in a situation they had not thought possible at the time they purchased their lot.

Generally, it was noted that greater efficiency could result if there were to be more consistency between the BCCM Act and the BUGTA. The biggest risks identified were the compliance costs, the alteration of existing rights and the possibility of reducing property values. The Property Council argued that consistency in and of itself was not sufficient to support a transition. Many submissions that responded to question 10 argued that bodies corporate have the same needs and issues and could be regulated under the same legislative basis, whatever approach was taken.

In response to question 11, it was generally submitted that the specified Acts could be treated differently. The submissions that supported a full transition generally argued for a more uniform

approach to dealing with the specified Acts. The submissions that argued for smaller, more incremental changes generally said that different titling arrangements might require different considerations. Several submissions stated that a staged approach could involve the procedural and dispute resolution changes and then look at the possibility of further changes on a case by case. Some submissions suggested that the specified Acts could be transitioned one at a time. This might involve, for example, completely transitioning the MUDA to the BCCM Act before looking at the possibility of transitioning other specified Acts.

Question 12 was more of a hypothetical question in that it asked if a transition is desirable, should it be done in stages or all at once. A number of responses indicated that they did not support a full transition, making any response unnecessary. Others, however, indicated that a staged or moderate reform would be the most desirable. A small number of submissions (generally those that supported a full transition) argued for a quick and rapid change to a new regime as this would be the only way to bring about certainty.

3.3. Recommendation

As discussed, the submissions to the Issues Paper gave clear support for specific, targeted changes to the specified Acts and the BUGTA in order to address deficiencies in the dispute resolution provisions and the body corporate procedural requirements. Given this, the Centre does not recommend further changes towards a full transition at this time.

However, to the extent that other deficiencies in the specified Acts and the BUGTA are identified, or that there is a perceived need for greater harmonisation of the legislation, the Centre recommends that interested stakeholders should be consulted with a view towards a transition of one specified Act at a time. For example, if there is a demonstrated need, the MUDA, which is the specified Act that is closest in time to the BCCM Act, could be transitioned to the BCCM Act first. This could be followed by other specified Acts, using each transition as a learning opportunity to gauge the need for further changes. Such further steps towards transition are, of course, subject to an identified need and to implementation with the active participation of interested stakeholders.

In addition, to the extent any of the Recommendations in this report are accepted, it is necessary to consider whether equivalent changes should be made to the *South Bank Corporation Act 1989* (Qld).

Recommendation 6

It is recommended that the State Government engage with bodies corporate and interested stakeholders in the plans under the *Building Units and Group Titles Act 1980* and the specified Acts to determine the most appropriate method of addressing such further reform (if any) that may be required at each particular scheme by considering amendments to the relevant specified Act.

Recommendation 7

It is recommend that to the extent any of these Recommendations are accepted for the *Building Units and Group Titles Act 1980* and the specified Acts, that there be separate consideration of whether equivalent reform is needed to the *South Bank Corporation Act 1989*.

4. Conclusion

The Centre has recommended amendments to the specified Acts and the BUGTA so that the dispute resolution provisions and the procedural requirements for bodies corporate under those Acts are harmonised with the requirements under the BCCM Act.

Such amendments are strongly supported by a majority of the 41 submissions to the Issues Paper. The Centre has recommended that the implementation of these changes, and the identification of any further changes, should be the subject of consultation with interested stakeholders and bodies corporate from the relevant resorts and developments.

To the extent that there is a demonstrated need for reform beyond that included in these Recommendations, the Centre is of the view that this should be addressed on a case by case basis for each specified Act.

Despite the difficulty of this task, the goal of improved consumer protection, simplified legislation, administrative consistency and streamlined practices across the body corporate sector make the challenge worth the effort.