

Are owners and their committees exploited?

UOAQ Policy

The value and risk of building management requests made to owners should be significantly simplified. Developers and owner decisions should not bind any owners for a period of more than 3 years. Owners do not understand their common law duty of care to other owners and are not provided with valid decision criteria via an open competitive tender process and this poor understanding is exploited by the commercial interests. Requests for gifts of multimillion-dollar, 25-year contracts and extensions, are presented as industry norms, exploiting owners.

UOAQ Owner Survey Feedback:

- 85% of respondents claimed they had no formal training in the operation of their committees and *the Body Corporate and Community Management Act 1997 (BCCM Act)*. If so, how do committees operate properly and understand their role, responsibility, and common law duty of care to other owners?
- 36% of respondents claimed to live in a disharmonious community. These responses correlated closely to a poor response to the questions regarding the management of their building by their committee and the caretaker.
- 59% of respondents indicated they were satisfied with information provided, vote outcomes and decisions taken at general meetings. This result is surprising and above the satisfaction trend observed for other areas of review by the survey.
- Most owners were unaware of the lawful use of their building.
- 65% of respondents have experienced or witnessed bullying, harassment, or intimidation in their building, rising to 95% in poorly managed buildings.
- Written comments indicate that many committee's chairmen do not understand their role and overestimate their decision-making powers as provided by the BCCM Act.

Current Position - The imposition of management rights without owner consent

- These practices that impose management rights and exploit strata owners *only happen in Queensland*. Yet the Queensland State Government keeps asking the question regarding the validity of imposing these rights, not only in the letter establishing the CTS Working Group, but also in the 2012 review into management rights commissioned by the Attorney General, Paul Lucas.
- The management rights for the building are sold to the highest bidder by the developer without any involvement or approval from the eventual owners. These contracts bind the new owners without their consent. They are sold with no reference to the capability of the contractor to perform the required tasks, or even if the contracts are suitable for the required purpose. The developer is the only beneficiary. Owners are left with a heavily indebted contractor who must recover the initial purchase price from owners via inflated fees and non-performance of duties.

- These contracts can include binding owners to cleaning, security, utility contracts for electricity, water, internet, telephone services, often retained by the developer or their associates.
- These management rights contracts are then routinely extended by an ordinary resolution by uninformed owners who participate in a body corporate vote (even if that vote does not represent an actual majority of owners.
 - Owners are forced to accept building services contracts without the benefit of a competitive tender process based on agreed requirements for the building.
 - Owners are expected to bind other owners in 20 years' time to a contract extension with no provision for review of their suitability or competitive costs.
 - These extensions may be contrary to the fixed term provisions of the BCCM Act, (as yet s. 117 of the BCCM Act is untested in the courts).
 - These contract reviews require no reference to the competitive market to provide fair value, or even to ensure that the contracts cover the required duty outcomes. Such as it might be reasonable to expect a cleaning contract to provide an outcome of a clean building. Not so.
 - Owners are assuming that these requests are a community norm, and that the government has got their back, that their consumer rights are protected. Not so.
 - 36% of survey respondents reported being unhappy with the management of their building.
 - 65% of survey respondents report that they have experienced or witnessed bullying, harassment, or intimidation in their building, rising to 95% in poorly managed buildings.
 - Is this outcome the result of the imposition by the state of management rights holders on strata communities, and the coercive and abusive methods used to protect those contracts?
 - Are owners being exploited?
- The practice of imposing long term management rights contracts with no ability to review or manage disputes is not only contradictory to most of the provisions of s. 4 Secondary Objects of the BCCM Act but could be contradictory to the common law duty of care, and the requirement for informed or non-coercive consent in contract law. **BCCM Act Secondary Objects** (emphasis added) include:
 - to balance the rights of individuals with the responsibility for **self-management** as an inherent aspect of community titles schemes;
 - to promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes;
 - to encourage the tourism potential of community titles schemes without diminishing the rights and responsibilities of owners, and intending buyers, of lots in community titles schemes;
 - to provide a legislative framework accommodating future trends in community titling;



- to ensure that bodies corporate for community titles schemes have control of the common property and body corporate assets they are responsible for managing on behalf of owners of lots included in the schemes;
- to provide bodies corporate **with the flexibility they need** in their operations and dealings to accommodate changing circumstances within community titles schemes;
- to provide an appropriate level of consumer protection for owners and intending buyers of lots included in community titles schemes;
- to ensure accessibility to information about community titles scheme issues;
- to provide an efficient and effective dispute resolution process.
- How can a 25-year contract be flexible? As circumstances change how does a 25-year contracts “provide bodies corporate **with the flexibility they need** in their operations and dealings to accommodate changing circumstances within community titles schemes”?

Current Position - Committee Operation

- The following opinions are informed by member feedback and the comments from the UOAQ [Owner Survey in 2021](#).
- The annual elections make active committee members requesting reform vulnerable to a concerted campaign by the caretaker to remove them.
- The direct election of the chairman, treasurer and secretary positions is not consistent with our government norms. Many useful candidates and their contributions to the management of their buildings are lost via one versus one position elections. Many incumbent chairmen become entrenched and dominate the committee and owners. Other committee members do not understand the process or obligations of the committee. Casual vacancies are filled at the discretion of the committee rather than owner choice.
- Committees often misunderstand their authority. A committee is elected to represent the interests of owners in the scheme. The committee is elected by those owners, and it is intended that the committee will engage with those owners to understand their wishes. Often a committee will develop a belief in what they think is best for the scheme, without holding meetings with owners and becoming aware of the broader concerns. To maintain harmony and good management of the scheme, a committee must provide opportunity for engagement with the owners they serve outside of formal committee meetings.
- The current seven committee positions do not facilitate review and compromise with a wide range of positions and opinions.
- The committee members do not have to declare their interests and financial results from the letting pool nor their conflict of the interest when deciding on motions. Owners cannot compel the committee member to do so.. The committee can be stacked by members who favour the caretaker, and who then obtain preferred returns in the letting pool. Impartial decision making and reporting is jeopardised.
- This committee structure favours the Caretaker strategy to “divide and conquer” the owner community when improvements to the management performance is requested by owners.



Current Position – General Meeting Information, Voting and Decisions

- 59% of respondents indicated they were satisfied with information provided, vote outcomes and decisions taken at general meetings. This result is surprising and above the satisfaction trend observed for other areas of review by the survey.
- Owner committees have a legislated spending limit to curb their power to improve the building. However, owners who bother to vote at an annual general meeting (**AGM**) can bind all other owners to contracts for 25 years and vote to give millions of dollars of value to management rights holders via extended or new contracts without any restrictions or requirements to be properly informed. These body corporate votes potentially violate the common law duty of care to other owners.
- For example, a “vote without dissent motion” is required to allocate exclusive use of common property.
- A “majority motion” i.e. at least 50% of all lots must record a positive vote to pass a motion requesting a poorly performing contractor to “move on”. This type of motion could be seen to protect a caretaker from overzealous owners.
- However, a simple ordinary motion is all that is required for a minority of owners pass a motion to gift a large expensive management contract. For example in a 100 lot scheme, 34 lots vote yes, 33 vote no, and 33 lots do not vote at all, yet all lots are bound to the new contracts for 25 years. This type of motion could be seen to also protect and reward a poorly performing caretaker.
- Developers demand high prices for management rights contracts, but owners are forced by legislation to give away new contracts and extensions to management rights holders.
- Owners are given 21 days’ notice of complex matters requiring their review an decisions. There is no required provision for owner review meetings that outline the details of the proposals.
- The Supreme Court of Queensland and the District Court have determined various statements regarding the requirements for explanatory material and the disclosure of legal advice regarding the motions to extend or renew contracts. Perhaps a simpler view is provided in a recent BCCM adjudication Illawong Lakes Resort [2021] QBCCMComr 518 where the Adjudicator noted:
 - *[34] In another matter the District Court found that explanatory material presented by a committee did not need to be a balanced assessment of the issue, although the committee would have a duty to inform owners of material disadvantages to a proposal that it knew of.16*
 - *[35] The Queensland Civil and Administrative Tribunal (QCAT) has said that owners have a legitimate expectation of sufficient information to enable them to weigh up the pros and cons and vote in their own best interest.17 Information must be full, frank and open, and not misleading or tricky, but it does not need to present both sides of the argument. However, the Tribunal noted that too much detail could mislead a voter as too little.*
 - *[36] In a further matter, the QCAT said that to overturn a vote based on concerns about the adequacy of the explanatory material, there would need to be material evidence that voters were misled, confused or overborne.18*
 - *[37] There is no legal requirement that a committee (or any other submitter of a motion) obtain legal advice about a proposed motion. Where legal advice has been obtained, there is*



similarly no statutory requirement to give that advice to those considering the motion. Whether its circulation would be appropriate in any particular case will depend on the circumstances.

- There are no boundaries provided by the BCCM Act or by Case Law precedents to reduce or eliminate exploitation of uninformed owners by proposals to a body corporate.
- Thus if an owner is presented with a proposition to give new contracts to a caretaker, there is no requirement to provide material to allow an owner to form a decision to vote other than very short approved form. Perhaps this explains the very high level of owners deciding to not vote in general meetings, and does call into question the integrity of the body corporate decision making mechanism outlined in the BCCM Act.
- Perhaps this situation can be compared to buying a car. The buyer is only allowed to go to one dealer and must make a binding decision on the first car presented to them. The only options are Yes, No, or do not vote. Perhaps in Communist East Germany, where you could buy a Trabant sedan or walk, this may be seen as a proper decision process. Perhaps you might be able to pick the colour of the Trabant, but not in Queensland.
- There is no legislated requirement for alternatives that allows for a competitively priced market-based outcome that suits your buildings needs to be achieved. Normal market processes involve an open review of options, with exploration of price and functional options.
- The intense commercial interests and legal pressure applied to uninformed owners in many cases could be considered as exploitation and contribute to high toxicity of lobbying in the scheme.

Benchmarks:

- Owners are unaware of the details of how other states operate. Is the government planning to fix that?

An Alternative Model - Committee Operation and Body Corporate Decision Making:

- The committee structure and their election process should be reformed to include
- The number of members should be changed to an even number such as eight (8), to facilitate a greater level of compromise, discussion, and review.
- Members should be elected for a 4-year term, with 2 candidates elected each year, or a similar formula to ensure wider level of participation. This reform will prevent a rapid change of members, but also ensure turnover, similar to the senate-style of rotation of members.
- There must be a one-year break before a person can be re-elected.
- The positions of chairman, treasurer and secretary should be elected by the committee members to ensure a turnover of entrenched participants and allow a greater level of participation by interested owners. This change is consistent with our State Parliamentary system.
- This change will also remove the presidential style of the chairman position. The chairman's only legislated role is to run the meetings, and many chairmen are unaware that the role has no independent decision-making capacity.



- Casual vacancies are first filled by the person at the previous AGM ballot with the next most votes, only if this options are exhausted they can be filled by committee's decision.
- Each committee member must register with the BCCM Commissioner and complete an online set of training regarding the processes of the committee, the common law duty of care, the BCCM Act and training in collaborative decision making. They should complete and pass a simple online quiz before taking up their role.
- No contractor should be permitted to influence or lobby for any committee election outcome. The conflicted position of caretaker/letting agent as well as owner **must** be recognised in lobbying, too. There is significant conflict of interest ramifications for such lobbying. Provisions could include the penalty of termination of their contract.
- Committee members must declare any conflict of interest, be it actual, perceived or otherwise at the time of being nominated, including their or their associates' financial interests in the building contracts or other services, or be compelled to declare such when asked by owners at the committee meetings before voting on the motions.
- For decisions greater than a certain dollar value or type of decision, a process of review for owners of the proposed changes i.e., new contracts, quotes for building painting must be completed prior to the decision. For instance, 3 months prior to new contracts being approved, a comprehensive set of papers must be circulated, and a review of the proposal be conducted via a meeting with owners.
- Committees are appointed to carry out the wishes of owners. In larger schemes neighbours and committee members do not know all owners in the scheme and there is no opportunity for the committee to be informed by owners. An opportunity should be established to allow all members of the scheme to review material regarding major decisions, to meet casually and be fully informed 3 months before any major considerations are introduced.
- The type, complexity, value, and time spans of decisions that owners are requested to make, require significant simplification.
- Developers and owner decisions should not bind any owners for a period of more than 3 years.
- All proposals above a certain dollar value e.g. double major spending limit, should include proposals adopted by a competitive open tender process against a predetermined set of specifications and requirements. **A majority resolution** should be required for approval of these proposals.
- The dollar value of owner decisions should be significantly reduced or increased decision level required.
- There are occasions when major decisions need to be made by the body corporate. In these circumstances the committee will be seeking advice, in many cases months in advance of a vote of owners at a general meeting.
- There is currently no requirement for a committee to engage with or inform their owners until the calling of the general meeting and giving 21 days' notice. There are many decisions where 21 days' notice is not adequate.
- The proposed changes include the requirement to conduct information 'question and answer' sessions at least three months in advance for all decisions over an agreed dollar value.



Transition:

- Change the committee membership election structure and process.
- Mandate committee member training in the BCCM Act and committee processes and common law duty of care responsibilities.
- Create owner information and training regarding the new management processes.
- Change the process of body corporate decision making to provide for information sessions three months prior to a body corporate vote.
- Ban the sale of management rights by developers, nothing to buy, nothing to sell, just the provision of high quality, competitively priced, building services.
- Ban the extension of current management rights contracts.
- Introduce a requirement for an open competitive market base tender process to provide a valid basis for all owner voting decisions, avoiding expensive legal disputes.

