Department of Justice and Attorney-General

Consultation guide

Queensland Property Law Review

Lot entitlements under the *Body Corporate and Community Management Act 1997* – Final Recommendations

Closing date for submissions: 23 December 2016

Queensland Government

Have your say

The Commercial and Property Law Research Centre of the Queensland University of Technology (QUT) has examined body corporate lot entitlement issues as part of a broad review of property law being conducted on behalf of the Queensland Government.

QUT has provided a report to the Government recommending a new system for dividing body corporate costs between lot owners (for example, home unit owners). While QUT conducted public consultation in its review, QUT's final recommendations have not been publicly released until now. You can obtain a copy of QUT's *Lot entitlements under the Body Corporate and Community Management Act 1997 – Final Recommendations* (the Lot Entitlements Report) at the community consultations page of the Department of Justice and Attorney-General website at www.justice.qld.gov.au.

The Government wants to hear community and industry views about QUT's findings and recommendations before making any decisions about possible changes to the current laws for apportioning costs in community titles schemes.

The Government is particularly interested in whether you think the recommendations provide a fair and practical way of dividing body corporate costs between lot owners. You may also wish to comment on the costs and benefits of the recommendations.

While you are encouraged to read QUT's Lot Entitlements Report in full, this Consultation Guide is designed to provide a brief snapshot of QUT's key recommendations, and address some frequently asked questions.

You can have your say by making a written submission by 23 December 2016 to:

Email	**Post**
QUTreviewBCCM@justice.qld.gov.au	QUT Review - BCCM C/- Office of Regulatory Policy Department of Justice and Attorney-General GPO Box 3111 Brisbane QLD 4001

Privacy statement

Any personal information you include in your submission will be collected by the Department of Justice and Attorney-General (the Department) and the Queensland University of Technology for the purpose of undertaking the review of Queensland's property laws. The Department or the Queensland University of Technology may contact you for further consultation regarding the review. Your submission may also be released to other government agencies as part of the consultation process.

Submissions provided to the Department and the Queensland University of Technology in relation to this paper 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 that considers any legislation resulting from this review.

Overview

In recent years, principles for the setting and adjustment of contribution schedule lot entitlements have been a difficult and challenging issue for the community titles sector and government. Despite a number of changes to the BCCM Act, lot entitlement issues have continued to cause significant concern for some lot owners and bodies corporate.

Following its review of lot entitlements under the BCCM Act, QUT has recommended that the use of contribution schedule lot entitlements to apportion body corporate costs be discontinued and that a new system for dividing body corporate costs between lot owners be introduced.

Key recommendations of QUT's lot entitlements review

Under the BCCM Act, each lot in a community titles scheme is allocated with a single figure, representing the contribution schedule lot entitlement for the lot. This single figure, as a percentage of the total contribution schedule lot entitlements for the scheme, is used to work out each lot owner's share of most body corporate expenses.

One of QUT's key findings is that a single figure used to allocate expenses in community titles schemes is incapable of adequately differentiating appropriate contributions for lots in modern schemes.

QUT has recommended that the use of contribution schedule lot entitlements to allocate body corporate expenses be discontinued and that a new system for dividing body corporate expenses between lot owners be introduced.

Under QUT's proposed system, body corporate expenses would be allocated into one of three categories, based on the *benefit* lots receive from the particular expense as well as the cost *burden* each lot creates in relation to the expense. The proposed expense categories are:

- **Category 1** - expenses that benefit all lots equally
- **Category 2** - expenses that benefit all lots, but differently
- **Category 3** - expenses that only benefit some lots.

Many expenses incurred by bodies corporate benefit all lots equally and would be treated as **Category 1** expenses under QUT's proposed system. These expenses would typically relate to the administration of the body corporate (for example, preparation of general meeting documents), cleaning and regular maintenance of common property and body corporate assets, and payments to service contractors. Most expenses dealt with in the body corporate's administrative fund budget would normally be expected to benefit all lots equally, and fall within **Category 1**.

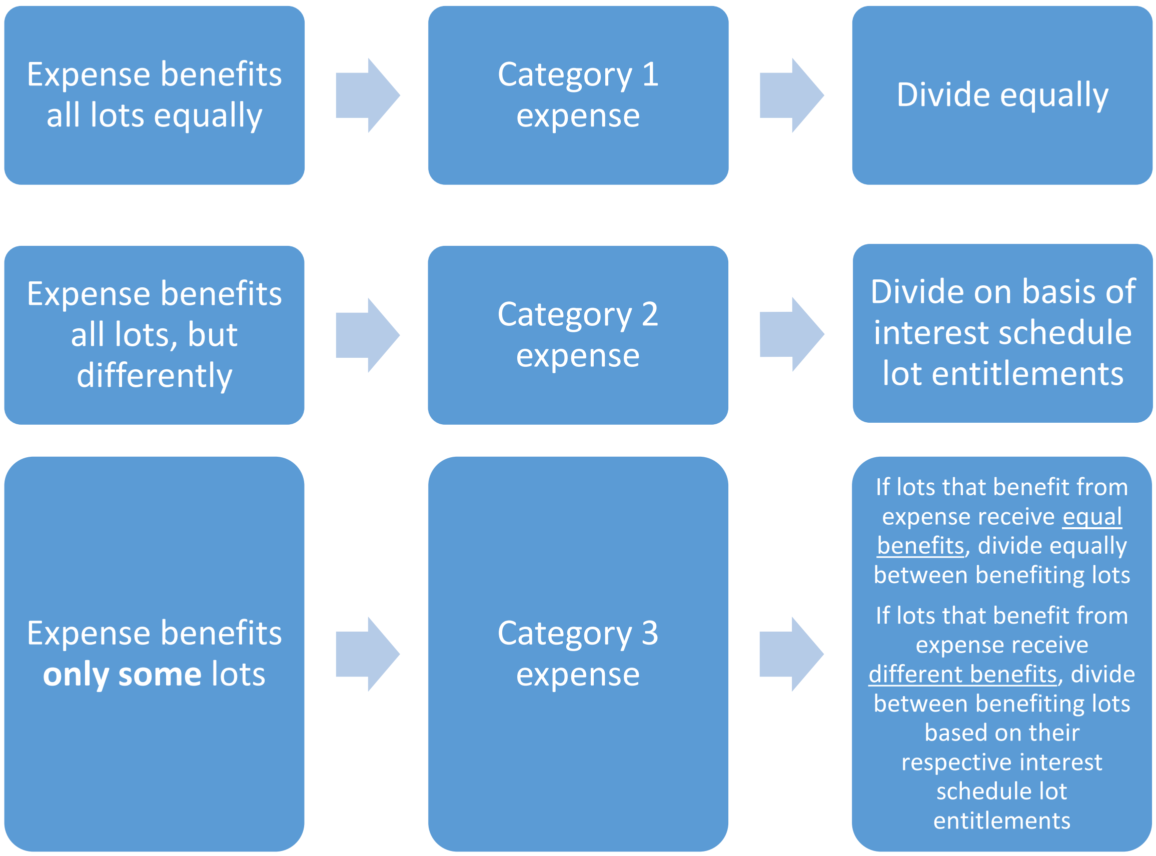
Some expenses of a body corporate benefit all lots, but differently, depending upon the location, size or nature of the lot. Similarly, the location, size or nature of a lot may mean that the particular lot imposes more of a cost burden in relation to a particular expense, compared to other lots included in the scheme.

These expenses would be treated as **Category 2** expenses and divided on the basis of each lot owner's respective ownership interest in the common property (as reflected in the interest schedule lot entitlements for the scheme). It is expected that **Category 2** expenses would typically relate to capital expenditure incurred by the body corporate and normally be part of the body corporate's sinking fund budget. Examples of **Category 2** expenses could include costs incurred by the body corporate to repair or replace the roof, or repainting the building. **Category 2** expenses would also include costs of premiums incurred by the body corporate in relation to building replacement insurance and public liability insurance.

Finally, and less commonly, some body corporate expenses benefit some, but not all, lots in the community titles scheme. These types of expenses would be treated as **Category 3** expenses and only apportioned between the owners of the lots that benefit from the particular expense. Depending on the nature of the expense, **Category 3** expenses would be apportioned between lot owners who received a benefit from the expense either equally, or based on the respective interest schedule lot entitlements for the affected lots.

The following diagram illustrates Categories 1, 2 and 3.

QUT recommendations for dividing body corporate expenses between lot owners



Note on costs of utilities - water

Contribution schedule lot entitlements are currently used to divide water costs between lot owners in some schemes, for example, where water supply is not individually metered to each lot. Under QUT's recommended system for sharing expenses, water costs in such schemes would be divided equally between lot owners. However, as this approach is less than ideal in particular situations, QUT has also recommended further consultation be undertaken with utility service providers to identify possible options for billing processes to more closely reflect actual use of utilities by each lot in the scheme.

Developer obligations

QUT has recommended a statutory obligation be imposed on developers to exercise reasonable skill, care and diligence, and to act in the best interests of the body corporate, when allocating expenses into the expense categories and when setting interest schedule lot entitlements at the establishment of a community titles scheme.

Interest schedule lot entitlements

QUT's recommended system for sharing expenses places a greater emphasis on the interest schedule lot entitlements for a community titles schemes as a means of allocating expenses in the scheme. QUT has recommended that the interest schedule lot entitlements for new schemes be set based on the relative market value of the lots determined by a valuation by a registered valuer as at the date the scheme is established.

Proposed transitional arrangements and dispute resolution

QUT has recommended that the new system for dividing body corporate expenses between lot owners apply to **all** existing and new community titles schemes.

In this respect, QUT has proposed a transitional period of up to three years, by the end of which existing bodies corporate would need to have decided on the allocation of expenses into the three expense categories (**Categories 1, 2** and **3**) and commenced applying those categories when levying contributions from lot owners.

QUT has also recommended that, where there is a dispute about the appropriate allocation of an expense, either the Office of the Commissioner for Body Corporate and Community Management or the Queensland Civil and Administrative Tribunal could resolve the matter, depending on the complexity of the dispute.

Frequently asked questions

The current consultation process

1. Have the laws about body corporate lot entitlements and fees changed?

No. The Government will carefully consider stakeholder views about QUT's recommendations before deciding on possible changes to body corporate laws. Any future changes to the body corporate laws will need to be introduced into, and passed by, the Queensland Parliament before they take effect.

2. Where can I obtain a copy of QUT's Lot Entitlements Report?

You can obtain a copy of QUT's report titled *Lot entitlements under the Body Corporate and Community Management Act 1997 – Final Recommendations* at the community consultations page of the Department of Justice and Attorney-General website at www.justice.qld.gov.au. This Consultation Guide only provides a snapshot of QUT's key recommendations and you are encouraged to read QUT's report in full.

3. What happens next?

After stakeholder submissions have been fully assessed and considered, the Government will make an announcement about its response to QUT's findings and recommendations about lot entitlements. Updates on possible changes to body corporate laws will be posted on the Department of Justice and Attorney-General website as further information becomes available.

QUT's recommendations

4. What is the rationale behind QUT's proposed system for allocating body corporate costs?

QUT has highlighted that a single figure (currently the contribution schedule lot entitlement) is incapable of adequately differentiating appropriate contributions for lots in modern community titles schemes. Categorising body corporate expenses into one of three categories could enable a more direct and transparent allocation of body corporate costs to lot owners, reflective of both the cost burden that each lot creates on the expenses of the body corporate and the benefit that each lot receives from the expenditure of the body corporate.

5. What are the categories of expense under QUT's recommendations?

Category 1 expenses benefit all lots equally and would be shared equally by lot owners. Examples of category 1 expenses could include costs relating to body corporate management services, cleaning common property and servicing elevators.

Category 2 expenses benefit all lots, but in different ways. Examples of category 2 expenses could include capital expenditure and body corporate insurance premiums. Category 2 expenses would be shared on the basis of each lot owner's respective ownership interest in the common property (as reflected by the interest schedule lot entitlements for the scheme).

Category 3 expenses only benefit some lots in the scheme. An example of a category 3 expense could be the maintenance of an elevator that exclusively services particular lots in the scheme. Category 3 expenses would only be divided between lot owners that benefit from the expense, either equally or on the basis of the respective interest schedule lot entitlements for the affected lots, depending on the nature of the expense.

6. If adopted, would QUT's recommendations affect my body corporate?

Yes. If QUT's recommendations are fully adopted, all bodies corporate in Queensland would need to change how each lot owner's body corporate contributions are calculated. For each expense, bodies corporate would need to decide whether the expense falls within Category 1, 2 or 3, which would determine how the expense is shared between lot owners. For small, simple community titles schemes, this is unlikely to be a difficult process. However, the process may be more complicated in larger, more complex schemes.

7. Would my body corporate contributions increase if QUT's recommendations are incorporated into the body corporate laws?

Your body corporate contributions could remain the same, increase or decrease if QUT's recommendations are adopted, depending on the nature and characteristics of your community titles scheme. While it is expected that for the majority of lot owners there would be very little change (if any) in their actual body corporate contributions under the proposed system, there may be more significant changes for lot owners in some schemes.

8. What if the body corporate can't agree on what category an expense is?

It is expected that information and education resources would be made available to assist bodies corporate to understand and apply the proposed system. In addition, the recommendations propose that dispute resolution would be available through the Office of the Commissioner for Body Corporate and Community Management or the Queensland Civil and Administrative Tribunal.

9. When would bodies corporate have to start using the proposed system for allocating body corporate expenses?

QUT recommends that, if the proposed system is legislated, existing schemes should be required to comply with the new system by the end of a staged transition period that would last up to three years. Bodies corporate would not be required to change their arrangements during stage 1 (which would last 12 months), but could adopt the new system if agreement can be reached. Bodies corporate could also use stage 1 as an opportunity to obtain professional advice in preparation for stages 2 and 3. In stage 2, bodies corporate would be required to decide on an allocation of expenses complying with the new system **no later than** the first annual general meeting of the body corporate that falls one year after legislation introducing the proposed system commenced. The new allocation of expenses decided by the body corporate would then apply from the start of the following financial year for the scheme (stage 3).