

## Inquiry into residential strata title insurance

---

**Introduction** With regards to our previous submission which was numbered 296, we would like to add further statements with regards to the below topics.

---

**Contents** This section contains the following topics:

<b>Topic</b>	<b>See Page</b>
Unlimited Liability Status of Body Corporates	2
Body Corporate Manager - Licenced	3
Insurance Cover	4
Builders/Developers - Defects	5

---

**Contact** Thank you for the opportunity to make a further submission in regards to insurance in strata units.

If you have any queries, please do not hesitate to contact us.

Bruce Grant and Margaret Grant ( [REDACTED] )

---

## Unlimited Liability of Members

---

### Background

Recently, we attended and spoke at the hearing in Townsville. At that hearing, we raised, amongst other matters, the matter of Body Corporates being subjected to unlimited liability (see s81 and s300 of the *Body Corporate and Community management Act 1997* ("BCCM Act")). It appeared to us, from the remarks from the panel, that this matter was not to be considered, as:

- It may limit some injured persons from obtaining a suitable pay-out, in the event that they were injured on Body Corporate property; and
- The panel was of the opinion that companies were not subjected to limited liability, but to unlimited liability in the same manner as Body Corporates.

In the handbook, Queensland Community Schemes Law and Practice at point 35-200, it states that unlimited liability corporations are rare and it is surprising that Body Corporates are akin to an unlimited liability corporation.

We believe that many owners of units would be unaware of this unlimited liability status of Body Corporates and/or the affect this could have on them if an event were to occur.

---

### Proposed Amendments

We suggested that Body Corporate owners should have their liability, with regards to their complex, limited to the amount of the value of their property in the complex (together with their public liability insurance), similar to that of shareholders in a company (s516 *Corporations Act 2001*).

For example, if an injured person sues a company and the company appoints a liquidator (as it cannot pay its debts), the injured person would become an unsecured creditor along with other unsecured creditors. Depending on the assets realised in liquidation, unsecured creditors, including any injured persons, could receive zero cents in the dollar. We believe that Body Corporate owners should be afforded these same rights.

We propose that the legislation should be amended so that Body Corporates are more closely aligned with the Corporations laws, particularly in regards to limited liability.

---

## Body Corporate Managers – Licensed

---

### **Background**

Under the present legislation, Body Corporate managers (as defined in s14 BCCM Act) are not licenced as the BCCM Act is silent on this issue. However, the BCCM Act does state that the letting agent (s16 (2)BCCM Act) is subject to the *Property Agents and Motor Dealers Act 2000*.

Body Corporate managers do not appear to operate audited trust accounts for the complexes they manage, even when this may mean that they are dealing with very substantial amounts of other people's money. Trust account audits can be approved by a general meeting of the Body Corporate.

---

### **Proposed Amendments**

We believe that Body Corporate managers should be licenced and their dealings with all owners should be fully disclosure (particularly with regards to commissions/fees/contractor charges etc).

As Body Corporates appear to be numerous in number and are spread throughout Australia, we believe that Body Corporate legislation (including the licencing of Body Corporate managers) should be a national legislation. We further believe that as there would appear to be substantial amounts of money involved, the legislation regarding Body Corporates should be approached in a similar way to corporate law.

We realise that there is legislation in place with regards to Body Corporates now; however, this legislation does not appear to be policed/monitored and Body Corporate committees and Body Corporate managers appear, in some instances, to run Body Corporates in a haphazard manner.

We believe that if there was enforceable national legislation with regards to Body Corporates and Body Corporate managers, this may ensure that insurance companies would be more confident when insuring Body Corporates and could lessen these exorbitant insurance premiums.

---

## Insurance Cover

**Background** We believe that Body Corporates should be insured. The consideration should be on the adherence to building codes, whether or not asbestos will be an issue, maintenance upkeep, on-site management, whether or not built on a known flood plain etc.

If insurance cover keeps spiralling, Body Corporates may not be able to keep up with maintenance and this may then give insurance companies another excuse as to why they cannot pay out on a claim or reduce the amount of the claim. It all appears to be a 'catch-22' for unit owners.

**Proposed Amendments** We believe that Body Corporate insurance companies should not make 'blanket' statements about Body Corporate complexes in North Queensland or anywhere else. We believe that insurance companies should consider other factors apart from the complexes location – being north of Mackay.

---

## Builder/Developer – Defects

**Background** As builders/developers and their associates are permitted to be voting committee members (and other owners are not afforded this same opportunity), it may also be worthwhile to legislate that Body Corporates should have defect reports prepared by independent third parties before the warranty period expires. As it appears at present, some builders/developers may appear to be able to ensure that a defect report is not prepared before the warranty period expires. If this occurs, the Body Corporate could be left to repair issues that could have been warranty issues. This will either be at the Body Corporate expenses or via insurance – as it would appear that many of these issues appear to be water ingress issues.

If there is a defect in the construction of strata units which allows water ingress or the like, it may affect all the units built compared to one builder erecting a house and only affecting that one building.

**Proposed Amendments** We believe that the legislation should state that Body Corporates must ensure that a building defects report is obtained before any warranty period expires. We believe that this could also help lessen insurance claims.

---