

Submission to Inquiry into Residential Strata Title Insurance

January 2012

Introduction

The Queensland Government supports this inquiry, and the additional inquiries into insurance in relation to natural disasters, as important processes to ensure the insurance market provides appropriate and affordable services to the community. The purpose of this submission is to provide information on matters which may assist the inquiry into residential strata title insurance, particularly as they relate to the experience in Queensland with community titles insurance in the twelve months following the 2010/11 floods and cyclones and the Queensland legislative requirements for insurance of community titles schemes.

The Queensland Floods Commission of Inquiry will also be examining the performance of private insurers and the findings will be included in the final report to Government due by 16 March 2012.

Insurance regulation is a Commonwealth Government responsibility

The Commonwealth Government has responsibility for regulating the general insurance industry and is best placed to determine what if any intervention in relation to the insurance industry is required.

Government intervention should only be called upon where there is clear evidence of a market failure be it through insurance becoming unavailable or unaffordable.

Insurance requirements for Queensland's community titles schemes

Although insurance regulation is a Commonwealth responsibility, Queensland has specific legislative requirements for insurance of community titles schemes. These requirements are contained in the *Body Corporate and Community Management Act 1997* (BCCM Act) and its associated regulations, which provides the regulatory framework for the majority of schemes, and the *Building Units and Group Titles Act 1980* (BUGT Act), which applies to a small number of resorts and mixed-use developments. Premiums for insurance policies required to be taken out by a body corporate (which is made up of each lot owner in a community titles scheme) are a body corporate expense and form part of the body corporate fees which must be paid by lot owners. The insurance premiums are generally portioned between each lot owner in a scheme based on the relevant lot entitlements applying to each individual lot.

BCCM Act

The following outlines the provisions of the BCCM Act and the Body Corporate and Community Management (Standard Module) Regulation 2008 as they relate to requirements for a body corporate to take out insurance for aspects of their scheme.

Under the BCCM Act and the Standard Module, bodies corporate must insure common property, body corporate assets and buildings in which lots are located. The type of survey plan registered for the community titles scheme affects the body

corporate's responsibility to insure a building. The common categories of plans registered as community titles schemes are:

- Building Format Plan – A building format plan of subdivision is a form of subdivision that normally occurs within a building. An example of a scheme that is established as a building format plan is a multi-storey block of residential units.
- Standard Format Plan – A standard format of subdivision plan defines land with references to marks on the ground or a structural element (for example, survey pegs in the ground). An example of a scheme that is established as a standard format plan includes a townhouse complex where on each lot is a building and a backyard or courtyard.

Common property and assets

The body corporate must insure the common property (such as a pool or fences) and the body corporate assets (such as plant and equipment) to full replacement value. The insurance policy must:

- cover damage* and the costs associated with the reinstatement or replacement of insured buildings, (including the cost of taking away debris and the fees of architects and other professional advisers)
- provide for the reinstatement of property to its condition when new.

Buildings

The body corporate must take out the following building insurance:

- building format plan — insurance for the full replacement value of each building which contains a lot
- standard format plan where a building on one lot has a common wall with a building on an adjoining lot — insurance for each building to its full replacement value.

A policy for building insurance must:

- cover damage* and the costs associated with the reinstatement or replacement of insured buildings, (including the cost of taking away debris and the fees of architects and other professional advisers)
- provide for the reinstatement of property to its condition when new.

* The regulations under the BCCM Act provide a statutory definition of damage for coverage under insurance required to be put in place under the legislation. This definition of damage includes earthquake, explosion, fire, lightning, storm, tempest and water damage, glass breakage, and damage from impact, malicious act and riot.

Optional building insurance

The body corporate for a scheme registered as a standard format plan may set up a voluntary insurance scheme. A voluntary insurance scheme covers a building on a lot that does not have a common wall with a building on another lot (a 'stand alone building'). The owner of a lot with a stand alone building is not obliged to take part in a voluntary insurance scheme.

BUGT Act

Bodies corporate regulated under the BUGT Act must insure, under a damage policy, the common property and buildings in community titles schemes created under the

building format plan (known as building units plan under the BUGT Act). The policy must be for reinstatement or replacement value thereof.

Community titles insurance issues – affordability and accessibility

The three areas of concern to lot owners/bodies corporate in community titles schemes that have been raised with the Queensland Government are the affordability of insurance premiums, accessibility to insurance policies and commissions received from insurance providers by Body Corporate managers. These two issues have been raised particularly by owners of lots in community titles schemes located in areas of northern Queensland (north of Mackay).

Since the 2010/11 floods and Cyclone Yasi, lot owners have described increases to their body corporate insurance premiums of between 130% and 360% on the previous year. For example, a lot owner in one scheme has reported that the body corporate's insurance premium has recently increased from less than \$50,000 to \$159,000 and a lot owner in a separate scheme has reported an increase in the body corporate's insurance scheme from \$25,000 to over \$118,000. These increases to insurance premiums are consequently resulting in significantly increased body corporate fees that must be paid by each lot owner in a scheme.

The Office of the Commissioner for Body Corporate and Community Management, which provides an information and dispute resolution service to the community titles sector under the requirements of the BCCM Act, has also received representations from lot owners who have reported significant increases to their body corporate levies in part as a result of increases to insurance premiums taken out by the body corporate.

Furthermore, it should be noted that insurance premium hikes affect the capital value of lots in a community titles scheme, making them unattractive as investments and difficult to sell as homes.

The Premier wrote to the Insurance Council of Australia in December 2011 expressing concern about the difficulty in obtaining affordable strata title insurance, particularly in relation to the Far North Queensland community of Brooklyn Village.

It is alleged that residential dwellings in the Village, approximately 25 homes, have been refused insurance as a whole, because of the unique strata title that applies over all properties.

The Body Corporate which manages the Village maintains that they have actively sought insurance for residences from a number of insurance companies, including through an insurance broker.

The implications of having an uninsured property can be particularly significant for those with mortgages which may make insurance a loan requirement.

The Premier requested the Insurance Council of Australia's urgent assistance in bringing this matter to the attention of its membership and underlining the importance of providing appropriate insurance for all Queenslanders who seek it.

The Premier also requested advice from the Insurance Council about whether the industry is aware of any similar circumstances that may exist for other strata titled properties in Queensland.

Unfortunately, the Insurance Council of Australia's reply indicated that insurers were unlikely to cover the residential component of the particular Village in question, due to it failing to meet their underwriting standards.

Moreover, the Insurance Council indicated that, compared to insurers who offer standard residential building insurance policies, there are relatively fewer insurers who specialise in strata cover. It was suggested that if changes were made to the zoning of properties, away from strata, this may increase the number of general insurer's able to consider providing insurance.

This apparently market failure in relation to providing affordable and accessible strata title insurance for residential dwellings is concerning, given Queensland currently has over 40,000 strata title schemes (commonly referred to as community titles) comprised of almost 380,000 individual lots.

The Queensland Government has also received representations from members of the public residing in community titles schemes concerned about a lack of disclosure of insurance related commissions by body corporate managers, and the potential impact on lot owners in terms of increased premiums and subsequently body corporate levies.

The BCCM Act has strict requirements for the disclosure of commissions/remuneration by body corporate managers, and that bodies corporate are empowered to take steps such as remedial action notices and/or termination in the event that a body corporate manager does not act in accordance with the Act.

Concerned lot owners are also assisted with information about dispute resolution through the Financial Services Ombudsman and where appropriate matters are referred to the Commonwealth Assistant Treasurer the Honourable Bill Shorten MP

Stakeholders and a number of concerned lot owners have expressed dismay at not only the cost of body corporate insurance in the State's Far North, but also the perceived lack of competition in this area with reports reporting that insurance companies are no longer approving policies for schemes located in this part of the State. This theme has been evident at regular stakeholder meetings held by the Office of the Commissioner for Body Corporate a Community Management.

Stakeholders have been encouraged to lodge independent submissions to this inquiry to raise additional problems which have been experienced. At least one major stakeholder has lodged a submission to this inquiry.