strata community association® QLD

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Select Committee on Australia's Disaster Resilience
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee,

Re: Submission to Inquiry on Australia's Disaster Resilience

About SCA (Qld)

SCA (Qld) is the peak industry association supporting Queensland's strata sector, with more than 1,200 individual and corporate members who help oversee, advise and manage assets worth tens of billions of dollars.

As the peak body for the strata industry, SCA (Qld) is in the unique position to understand the sector holistically. SCA (Qld) understand the strata sector from a broad array of viewpoints owing to our diverse membership. SCA (Qld) represents body corporate managers, community titles schemes with committee members acting as nominees, lot owners as individuals, and service providers to the strata industry including specialist insurers, painting suppliers, energy suppliers, solicitors, accountants, water and plumbing providers, banks, elevator maintenance professionals, cleaning providers, surveyors, valuers, glaziers, IT providers and pool servicing and maintenance providers.

At the time of writing, there were over 520,000 lots in more than 50,000 community title schemes across Queensland. SCA (Qld) members manage approximately 70% of these lots.

SCA (Qld) has been a consistent advocate for many years for appropriate Government intervention to address market failures in the North Queensland insurance market. We are pleased to submit on this important issue of disaster resilience which is obviously linked strongly to the issue of insurance. Naturally our submission will focus on North Queensland, where there is a substantial population base and significant disaster risk posed by regular cyclones. Building disaster resilience in North Queensland is critical to the long term economic and social prosperity of the region.

Disaster management and resilience is inextricably linked with insurance premiums for both homeowners and businesses. Strata property faces unique difficulties in building resilience that we believe Federal Parliamentarians may not fully understand and we hope by illuminating these difficulties we can help ensure more resilient communities and affordable insurance premiums, particularly in North Queensland.

Queensland Strata Legislation

The widely acknowledged issues with respect of insurance in North Queensland are exacerbated by State strata Legislation. Queensland bodies corporate are governed by the *Body Corporate and Community Management* Act (1997) (henceforth "the Act") and accompanying Regulation Modules. This "modular" system is designed specifically to enable different types of schemes for particular purposes, whilst also allowing discreet changes should issues arise without the need for the passage of legislation. In addition to the Act, the vast majority of schemes are also regulated by the *Body Corporate and Community Management (Standard Module)* Regulation 2020 (henceforth "Standard Module").

The Standard Module at s 197 states:

(1) The body corporate must insure, for full replacement value—
(a) the common property; and
(b) the body corporate assets.

There are commensurate clauses in all other regulation modules. Given this, all bodies corporate throughout Queensland are obliged to insure. In other words, and unlike the case for free-standing homes, there is no option for a body corporate to be uninsured. Where the market cannot provide such insurance, a body corporate may seek the approval for "alternative insurance" through the Office of the Commissioner for Body Corporate and Community Management (henceforth "Commissioner's Office"). This process is in and of itself is administratively burdensome and can cost the scheme in question a significant sum and in any event, does not of itself provide the required insurance cover: it merely provides, if approved, a sanction for the body corporate from its legislative obligations. This also means they are inevitably left with a significant short fall in the value of their payout should a catastrophic issue occur. This can potentially render schemes economically unviable and lead to stranded assets. Given that the overwhelming majority of Australians have a huge portion of their net worth invested in their homes, this situation is untenable given the scale of it in North Queensland.

In addition to their legislated obligations around insurance, bodies corporate face significant barriers in raising money to invest in mitigation of their own accord due to their communal, democratic governance arrangements. To fund substantial mitigation works such as roof tie downs, a body corporate in North Queensland likely has two options:

- Significantly increase levies or raise a special levy specifically for the works; or
- Borrow money.

Both of these methods face significant regulatory hurdles.

The Standard Module requires a resolution without dissent (no votes against) to borrow a sum of money over $250 per lot[1]. Schemes under the *Body Corporate and Community Management (Accommodation Module) Regulation 2020* ("Accommodation Module") *Accommodation and Body Corporate and Community Management (Commercial Module) Regulation* 2020 ("Commercial Module") (the other types of scheme affected) require a special resolution[2] (a "super majority" of owners) to borrow a commensurate sum per lot.

These are both a very difficult threshold to achieve in practice. Particularly at a time when there is significant cost of living pressures on all owners. This means that it is unreasonable to expect that most schemes will be able to pass the resolution required to borrow a sum of money sufficient to fund extensive mitigation works.

It is also unlikely that most unit owners would be able to pay what would amount to tens of thousands of dollars upfront in the form of a special levy. Unit owners too are subject to the very same mortgage and cost of living stress that the rest of society is experiencing.

Even if a special levy to fund works is passed, given the amount of money required, it is likely some owners (particularly absentee owners) will not pay upon the levy being struck. This will mean the debt recovery proceedings under the Act becomes activated and the body corporate may be forced to commence disruptive and stressful litigation against one or more owners (potentially costing further the scheme further). Legislatively, bodies corporate are obliged to commence debt collection proceedings against owners after a period of 2 years and 2 months.

All the above exists in the broader context of a body corporate's general obligation to maintain common property. This obligation exists even where the cost of the maintenance is beyond the financial means of owners. Courts have held that the body corporate must continue to meet its obligations regardless of financial circumstances.

[1] S 171(2)
[2] S161 Accommodation Module, s121 Commercial Module

Given these arrangements, it is likely that only Government mandates and investment in this will help ensure resilient community titles schemes.

North Queensland Insurance Programs

SCA (Qld) is a strong supporter of the ARPC Cyclone and Related Flood Damage Reinsurance Pool (henceforth “the Pool”). We understand there are other bodies of work going into ensuring that pool functions optimally; however, its ongoing success is heavily linked to investment in mitigation.

The initial announcement of the Pool included references to the Strata Title Resilience Pilot Program, to be funded to the amount of $40 million. SCA (Qld) welcomes this program. Mitigation and risk reduction in Northern Australia will be critical to ensuring the ongoing Northern Australia insurance crisis is alleviated in some meaningful way.

The Pool has pricing principles which specifically incentivise risk reduction and mitigation works. This is a critical factor in the long-term sustainability of the Pool and Northern Australia more broadly. SCA (Qld) believes that the unique requirements of strata need to be considered in this context. For example, the requirements noted previously around borrowing and obligations around common property.

As stated above, the strata industry operates a consensus model of decision making whereby owners vote on whether or not to undertake works, both small and large. This communal nature can at times create a situation whereby owners collectively are reluctant to either raise or spend money within a scheme. In short, often times strata owners do not see the value in spending money on “the scheme” or “the body corporate”. When this occurs on a large and repeat scale, the whole scheme ultimately suffers. This is a common issue facing many in the sector.

Whilst SCA (Qld) welcomes the Strata Title Resilience Pilot Program, it should be accompanied by increased funding to this program to ensure widespread building standards improvement in the strata sector. Most importantly, there must be significant investment in ensuring roof construction is to an appropriate standard of cyclone resistance.

To ensure the Pool is sustainable longer term, it is advisable that mitigation funding be at the highest levels feasible. Widespread high quality construction will lower the overarching risk of catastrophic damage to strata schemes in the Northern Australia Region and have the long term effect of ensuring insurance is more available and more affordable to strata residents and businesses.

To this end, SCA (Qld) urges the government to make substantial continuing investment in strata resilience, acknowledging the difficult nature of raising the funds amongst individual communities as well as the substantial long-term benefits of same. Any increase in the present $40 million provided for this program will help ensure that the Pool operates as efficiently as possible.

Finally, SCA (Qld) notes that while the Committee is at this focused on Northern Australia, the challenges of strata insurance affordability and availability are increasingly being felt in the South East Corner. SCA (Qld) regularly receives feedback from its members about insurance being refused for strata schemes for reasons including the scheme being located on an island, containing short-term letting or being in a known flood area. While SCA (Qld) acknowledges these are separate issues to those faced in Northern Australia, it is nonetheless essential to note that the challenges of strata insurance exist elsewhere in the State. Given the uniqueness of strata operations noted elsewhere in this submission, those challenges are likely to increase into the future.

Conclusion

SCA (Qld) wishes to impress upon the committee the need to have strata specific carveouts in all legislation when it comes to resilience programs. Put simply, to subject strata to the same requirements or applying the same regulatory or procedural framework as detached housing will lead

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to sub-optimal outcomes. SCA (Qld) urges the committee to directly fund and design programs for strata housing specifically to ensure that this important section of the community is not left behind.

Appropriately designed investment in strata property resilience also has the added bonus of delivering greater outcomes per dollar invested, owing to their shared infrastructure.

SCA (Qld) thanks the committee for the opportunity to provide a submission and would welcome any chance to speak with its members directly about the importance of appropriately investing in the strata sector and its resilience to disasters.

Kind regards,

Laura Bos (General Manager SCA (Qld))