Property Occupation Bill 2013
Submission 004

[redacted]

03 January 2014

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000
Email: lacsc@parliament.qld.gov.au

Dear Sirs,

Re: Property Occupations Bill 2013
Motor Dealers and Chattel Auctioneers Bill 2013
Debt Collectors (Field Agents and Collection Agents) Bill 2013
Agents Financial Administration Bill 2013
Fair Trading Inspectors Bill 2013

In the interests of brevity, this submission is confined to the Property Occupations Bill 2013 and the Attorney General's introductory remarks as to the contents of that Bill, so far as they have implications for the Body Corporate and Community Management Act 1997 and those unit owners impacted either directly or indirectly.

Specifically the Bill:

- Deregulates resident letting agent commission rates.
- Removes the requirement for a resident letting agent to live on-site.
- Allows resident letting agents to manage more than one building.
- Removes the requirement for a resident letting agent to satisfy the chief executive that hey have body corporate approval and that they will live onsite to be eligible for a licence.
- Consolidates and rationalises the licence categories.

Deregulating resident letting agent commission rates.

This proposal removes consumer protection and any semblance of a fair commission rate. It will pit a collective of professional letting agents against individual unit owners, many of whom are resident interstate or overseas and have no concept of fair commission rates in Queensland. This places the balance of power in the hands of the Australian Resident Accommodation Managers Association (ARAMA). Letting agents have a vested interest in achieving the highest possible commission rate and, this is without the pyramid commissions currently being applied by travel agents and letting agents where 12% legislated commission rates are being jacked to 25% by dishonest letting agents. This money comes from the pockets of unit owners.

Deregulating fees or commissions has never worked. Solicitors charge what they want. Accountants charge what they want. In the case of the CPA the institute will not even investigate over charging by accountants. Doctors charge what they want and fuel

companies charge what they want. In all these examples costs to the consumer have risen to almost unaffordable levels. In the case of overcharging the professional associations claim that the charges are a civil contract between the supplier and the consumer, and the correct course of dispute action is legal redress in the courts. The cost of court action often exceeds any likely refund and therefore is not a viable option. The consumer is again left with no redress.

If the Committee considers this to be an exaggeration, then examination of the numerous cases of bodies corporate trying to rid themselves of ARAMA members should be investigated. Hundreds of thousands of dollars have been wasted by bodies corporate with no, or, limited success.

Moreover, if there is no regulation of commission rates, there is no recourse to the Office of Fair Trading (OFT) for unit owners to complain and get protection under the law – there being no law. Even with a regulated 12% commission rate, prosecutions have been very difficult to achieve. When they were achieved, the penalties handed down by the courts have not matched the extent of the crimes. This was demonstrated by the Phoenician Caretaker/Letting Agent prosecution when they were revealed as defrauding unit owners of rental income by inflating letting commissions. Also the recent Carmel by the Sea prosecution of the Caretaker/Letting Agent for diversion of letting unit owner's funds to their own lease back units. In both these cases the punishment was miniscule in comparison to the unit owner's funds misappropriated by the letting agents. Proving that in Queensland under the PAMDA Act crime does pay. Both of these prosecutions were corporate letting agents with more than one building under their corporate control, and were allowed to retain their letting license. In the Carmel by The Sea case, before entering court, OFT and Staymint's Legal Advisers (SLA) had negotiated an agreed settlement of a $35,000 fine, but would not disclose this in discussions with Carmel representatives before entering the court. The Carmel representatives were not able to obtain a copy of the charge sheet prior to the matter being heard. Staymint pleaded guilty to all 231 charges. The judge was highly critical of the OFT and confirmed the maximum penalties could have been up to $25M, so increased the fine to $50,000, but no conviction recorded against the company so their licence is not at risk.

In The Phoenician matter, again the matters were not determined by the court, but negotiated settlements were reached. The settlements included an admission by the accused and fines, and recovery of the OFT legal expenses. In The Phoenician case the exposure was $44 million and the fine was $130,000. With Carmel, a fine sought of $35,000 and an exposure to almost $3.5 million. Letting Agents must be discouraged from misconduct, by imposing penalties greater than 1% to 0.3% of potential profits from crime.

Currently full payments from guests are not disclosed to unit owner clients, and rental revenue is frequently passed through associated companies of letting agents, subjected to significant commissions (around 25%) without disclosure of those commissions to the clients of the letting agent. Letting agents also make charges against rental revenue of clients without disclosing the mark up they have imposed on the actual cost incurred. There appears to be nothing in the Bill to curtail this wide spread practise.

Rather than deregulating letting agent commission rates, the regulators would be well advised to increase regulation and punishment for fraud against clients.

Removing the requirement for a resident letting agent to live on-site.

This proposal is contrary to the original concept of resident caretaker/letting agents holding limited real estate licenses. The Committee should hold serious reservations as to the service levels provided to tourists if the letting agent is not accommodated on site. Moreover, the enforcement of by-laws and proper conduct of visitors and residents, currently the responsibility of letting agents, has not been addressed in the Bill.

The purpose of the original concept of resident letting agents was to provide 24 hour security and services to buildings. Especially those residential buildings that provide tourist accommodation. In Queensland many class 2 permanent residential buildings are misused for short term tourist accommodation without suitable modification of the fire detection and alarm system, that is only designed for permanent residential occupation buildings. In the event of a fire, without an onsite letting agent or caretaker, there will be no direction of guests to the fire escapes or fire refuge areas. Moreover, many of the misused class 2 buildings do not have a direct fire alarm connection to the fire service. Therefore, a telephone call is required to call the fire service. A telephone call that has, until this Bill, been the responsibility of the caretaker/letting agent.

Allowing resident letting agents to manage more than one building.

Again this proposal is contrary to the original concept of resident caretaker/letting agents. Real world experience has shown that in many cases it has been most difficult, if not impossible , to have a letting agent managing one building to perform in an efficient and cost effective manner. Experience has also proven that corporate letting agents managing multiple buildings are far more expensive to the body corporate and letting unit owners for commissions and maintenance of rental units. This is primarily due to the need to employ additional staff as the caretaker letting agent distributes duties such as reception, cleaning, gardening and maintenance to different personnel, whereas the original concept was that the resident caretaker/letting agent would perform all of these tasks. The idea that the resident/letting agent moves to a management roll, at the expense of the unit owners, was never envisaged by the original concept, and introduces a further layer into the structure.

The body corporate has a dual responsibility to rental unit owners and residential unit owners, and body corporate committees usually have at least one absentee rental owner representing the interests of rental owners. The standard of visitor accommodation constitutes a major part of the longer term memory of the visitor/tourist experience, and certainly is one of the major subjects of recommendation to friends and associates. Thus the standard of accommodation has considerable impact on new and repeat tourism business. The body corporate committee through the rental owner representative ensures that the rental agent as part of his caretaking duties performs to the required standard of presentation of the complex.

This safeguard will become increasingly important if as proposed in the Bill, rental agents are to be permitted to service more than one building, and will not be required to live within the building.

Removing the requirement for a resident letting agent to satisfy the chief executive that they have body corporate approval and that they will live onsite to be eligible for a licence.

This proposal in the legislation to make letting agents NOT responsible to the body corporate removes the last line of protection for rental unit owners from unscrupulous letting agents and undermines the position and authority of the body corporate. Individual letting unit owners would not have the financial resources to take a letting agent to court. Especially when the letting agent is backed by the resources of ARAMA. Personally I am becoming increasingly concerned at the conduct of the Attorney General in dealing with Body Corporate and Community Management (BCCM) matters. The Strata Community Association (SCA) and Australian Resident Accommodation Managers Association (ARAMA) appear to be receiving preferential treatment from the Attorney General compared to the Unit Owners Association Queensland (UOAQ). This is difficult to understand when the true facts of the unit industry are considered.
The first truth that must be recognised is that the owners of the units in a building collectively own the building and common property. (Not SCA or ARAMA). The unit owners purchase the developers units making the development financially viable.

The second truth is that the Unit Owners are the only financial contributors to the Queensland unit industry. Every cent that goes into the industry eventually comes from the unit owners pockets. (Not SCA or ARAMA) This fact is self evident for residential unit owners; however, investment unit owners also yield their rental returns to commissions and costs associated with letting their unit. These unit owners are the supporters of the Queensland Tourism accommodation industry. (Not SCA or ARAMA)

Undermining the position and authority of the body corporate in running and controlling their building is a long held objective of ARAMA. ARAMA has consistently and persistently used the tactic of division of the body corporate, by pitting residential unit owners against investment/letting unit owners, to achieve their aim. The insistence of ARAMA having the building office placed on title to the caretakers unit, rather than included in common property, was also a tactic to entrench caretaker control of the building that was owned by the body corporate.

The Attorney General has played into the hands of ARAMA (partially due to lack of consultation with UOAQ) by including this proposal in his Bill. A proposal that provides advantage to no one other than ARAMA.

Consolidating and rationalising the license categories.

Quoting His Honour District Court Judge McGill when determining Palm Springs Residences – v – Patterson at [21] "I have no idea what that provision means, if anything." I can only guess it is whatever the Attorney General determines.

Gregory J. Carroll