

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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Subject: Endorsement of Lucinda Doughty's Concerns for the Proposed BCCM Bill

To whom it may concern,

I am writing to express my strong support for the submission made by Lucinda Doughty concerning her concerns regarding the proposed BCCM Bill.

The concerns and insights that Ms. Doughty has put forth in her submission regarding the proposed BCCM Bill are well-researched, thoughtfully articulated, and underscore the potential impacts of this legislation on businesses, both small and large. Her ability to identify key areas of concern and propose practical solutions demonstrates her deep understanding of the intricacies of corporate governance and the broader economic landscape.

It is essential that the concerns raised by Lucinda Doughty are given due consideration during the deliberation of the proposed BCCM Bill. Her dedication to fostering an environment that encourages responsible business practices and economic growth is undeniable, and her submission reflects this commitment.

I urge you to take Lucinda Doughty's submission seriously and consider her recommendations into the ongoing discussions surrounding the BCCM Bill. Her expertise and insights will undoubtedly contribute to the development of legislation that balances the needs of businesses with the broader interests of consumers.

In conclusion, KBW Community Management wholeheartedly endorse Lucinda Doughty's concerns and recommendations regarding the proposed BCCM Bill.

I trust that you will give her submission the attention it deserves and consider her concerns seriously.

Thank you for your time and consideration.

Sincerely,

Ryan Wareing
Manager
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Proposed Changes to the BCCMA and Property Law Act

And the effect on Strata Managers

Important changes

- “PL Bill” = Property Law bill 2023 – <https://documents.parliament.qld.gov.au/bills/2023/3134/Property-Law-Bill-2023-8393.pdf>
- “PL Regulation” = Property Law Regulation 2023 - <https://documents.parliament.qld.gov.au/tp/2023/5723T210-DC7A.PDF>
- “BCCM Bill” = Body Corporate and Community Management and Other Legislation Amendment Bill 2023 - <https://documents.parliament.qld.gov.au/tp/2023/5723T1190-4C3A.pdf>
- “BCCMA” = Body Corporate and Community Management Act

Proposed Change	Method	Section of amendment bill
Removing Disclosure Statements and Information Certificates and replacing them with new “Body Corporate Certificate” which essentially combines the two current documents.	Removing s206 - s209 BCCMA	S237 BCCM Bill
	Removing s205 (4) – (6) BCCMA (the sections relating to information certificates) and replacing with new sections relating to	S263 PL Bill
New Disclosure Statements for all properties – houses, land and strata. Information in this Disclosure Statement will not require assistance from strata managers, as it’s the same information as for a sale of a house.	Inserting new requirements for disclosures for <i>all</i> sales	S99 of PL Bill S4 of the PL Regulation
Provide a copy of the CMS as recorded under the Land Title Act		S4(1)(h)(i)

Major Concerns

1. Loss of income from provision of information for Disclosure Statements, a significant revenue stream for strata managers and also search agents who provide this service.
2. Are new Body Corporate Certificates expected to be provided for the same fee as current Information Certificates, despite the fact that they will contain pages more information? (My understanding is that no increase in the prescribed fee has been proposed).
3. Information solicitors require for settlement figures:
 - Under the proposed changes, the information previously provided in the Information Certificates will now be provided at the time of signing the contract. This means it will be at least one month, but more likely 6 weeks to two months out of date by the time of

settlement. If it's a 90 day contract, which aren't unusual, it is even worse, especially when you consider that overdue levy interest is added monthly.

- Solicitors will require more up to date information before settlement. How? Will committees/strata managers have the right to insist they order another Body Corporate Certificate, with all of the other information still in there? Will the solicitors instead be using s205 to request a statement, at a current fee of \$40.92? This is a very low fee considering the importance of this information.
4. Privacy. If the Body Corporate Certificate contains the levy position of the seller at the time of signing the contract, this will be available to anyone interested in buying the unit. If the seller owes a debt, this then becomes public knowledge to anyone who has looked at the property. This is going to cause embarrassment to sellers, may discourage them from selling a property when they really should, increases the chances of abuse aimed at body corporate committees or strata managers for providing that information, and also lets potential buyers know that the seller is in financial distress giving them an unfair advantage in negotiations. It is also likely to scare some buyers who don't understand that the debt will be paid at settlement.

Minor Concerns

1. I understand the balance of the sinking fund is to be disclosed in the Certificate. Is this the balance sheet amount or the cash at bank amount? For example, if there is an owner in substantial arrears, there may be \$50,000 in the sinking fund on the balance sheet but nothing in the bank account. Isn't this disclosure then potentially misleading to buyers?
2. What is the requirement for timing of the Certificate? For example, if an owner obtains a Certificate for a contract and the contract falls through 3 weeks later, the information in the certificate is very likely to now be out of date (especially the levy position). Do they have to now pay again for another certificate? What about if they get the certificate in good faith (eg for an open home) but it just takes 3 weeks to negotiate a contract – that information may already be out of date. What liability is there on a seller for providing out of date information? Is there an acceptable timeframe (eg three months) for the date of accuracy of the information compared to the contract date?
3. CMS – what if a new CMS has been approved but not registered yet? Are sellers/body corporates protected for not disclosing this?
4. Report No 45, 57th Parliament – Property Law Bill states:

“DJAG stated that many buyers currently do not obtain a body corporate information certificate or a search of body corporate records, and that most buyers will now likely receive more useful information when deciding to purchase.”

It is my experience that almost all buyers obtain a body corporate information certificate (via their solicitor). I believe to do so is part of the Conveyancing Protocol for solicitors. This statement seems blatantly false.

5. It is interesting that the legislation requires volunteer body corporate committees, or private strata management businesses, to provide information that various government authorities hold/issue (copy of the registered CMS, whether short-term letting is allowed in the scheme, and copies of the certificate of classification) for a limited fee. Also interesting that a declaration of the levy positions is required to be provided at signing of a contract, but not other fees that run with the land such as Land Tax and local government rates.

Summary

My suggestions are:

1. The Body Corporate Certificate should not include the levy position of the seller.
2. The prescribed fee for provision of the Body Corporate Certificate should be increased to fairly compensate volunteer body corporate committees and/or strata managers for the increased disclosure requirements.
3. There should still be a legislative mechanism for buyers and their solicitors to obtain accurate levy position information before settlement.