

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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Jessica Haddley
President
PO BOX 461
MIAMI QLD 4220

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Kathryn O'Sullivan
Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: lasc@parliament.qld.gov.au

Dear Ms O'Sullivan

Submission on the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (Qld)

I write to you as the President of the Strata Search Agents Association Qld Inc. (**SSAAQ**), with executive committee approval to make a submission on behalf of the SSAAQ on the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 (**the Bill**).

A. SSAAQ AND BACKGROUND

1. SSAAQ's membership includes representatives of businesses which provide independent body corporate services in Queensland, including:
 - a) body corporate disclosure statements;
 - b) pre-purchase body corporate reports; and
 - c) ancillary services including acting as returning officers and settlement agents as well as the filing of court documents and undertaking title searches.

SSAAQ's members work within the regulatory framework established by the *Body Corporate and Community Management Act 1997* (Qld) (**BCCM Act**) and the *Building Units and Group Titles Act 1980* (Qld) (**BUGT Act**) and associated subordinate legislation. SSAAQ's membership is therefore uniquely positioned to provide comment on certain administrative and procedural aspects of the proposed amendments to the BCCM Act.

2. SSAAQ welcomed the opportunity to provide a submission to and appear before the Legal Affairs and Safety Committee (**the Committee**) hearing on the proposed statutory seller disclosure regime earlier this year. Although SSAAQ's recommendation for the inclusion of a certificate of inspection of body corporate records was unfortunately not adopted by the Committee in its April report, SSAAQ views this further review of the BCCM Act as another opportunity to provide improved regulation of the body corporate management industry and to ensure, amongst other things, improved record-keeping and administrative processes in line with community expectations. SSAAQ notes that these considerations may not have been previously raised in the Community Titles Legislation Working Group (**CTL Working Group**) as it did not include any strata search agent representatives.

B. BODY CORPORATE CERTIFICATE

1. In its previous submission to the Committee, SSAAQ identified several potential pitfalls associated with the proposed amendment of section 205 of the BCCM Act to centralise disclosure of body corporate information in the hands of bodies corporate, or more commonly, body corporate managers. Concerns identified included:
 - a) conflicts of interest;
 - b) reliance on auto-generated documents;
 - c) intrusion of an unregulated third party into the privacy of contract between buyer and seller;
and
 - d) the impact on a sellers' ease of, or willingness to satisfy implied warranties where they are no longer legislatively mandated to search the records of the body corporate to undertake disclosure.

2. Whilst the Committee did not adopt SSAAQ's proposal of a certificate of inspection of body corporate records, SSAAQ was encouraged by its support for DJAG's statement that a "*body corporate could use a search agent to prepare a body corporate certificate or, a seller could use a search agent to verify information in a body corporate certificate.*"¹ This indicates the Committee does not consider detriment arising from a party other than the body corporate or body corporate manager preparing the body corporate certificate. SSAAQ therefore anticipates potential for further minor amendments to **s 205 (Information to be given to interested persons)** to include the following provisions:

¹Legal Affairs and Safety Committee, Inquiry into the Property Law Bill 2023, p. 7.

- a) The owner of a lot included in the scheme may elect to prepare its own body corporate certificate under this section after inspecting the body corporate's records under subsection (#).
 - b) Where an owner of a lot elects to prepare its own body corporate certificate, it cannot rely on the certificate against the body corporate.
 - c) A reference to an owner of a lot in subsection (a) includes an agent who is authorised to act for the owner.
3. The above suggested amendment does not pose any risk to bodies corporate as a buyer's sole remedy for a defective certificate is against the owner/seller (i.e. termination of the contract). Nor does it pose any risk to buyers as the buyer retains all rights against the owner/seller. However, it allows for the following significant benefits:
- a) prudent sellers may carry out their own inspection of body corporate records (as they are required to do under s 223 of the BCCM Act) without incurring additional unnecessary expense of paying for a body corporate-prepared certificate;
 - b) more complete disclosure to the buyer where a seller is unable to obtain a body corporate certificate from an unsophisticated or improperly managed body corporate;² and
 - c) preservation of the current body corporate disclosure industry and existing seller disclosure infrastructure and expertise as Queensland transitions to the new seller disclosure regime.

C. ACCESS TO BODY CORPORATE RECORDS

Methods of accessing records

1. SSAAQ's members conduct searches of body corporate records in three ways:
 - a) traditional searching of paper records held by the body corporate. A minority of (mostly smaller) body corporate managers provide access to records in this way;
 - b) attendance at the body corporate manager's place of business where electronic searches are undertaken on computer terminals, usually through strata software programs; and
 - c) remote searching through electronic file sharing websites.

2. SSAAQ supports the intent of the amendments proposed by clauses 24 and 25 that seek to clarify and streamline body corporate administrative and procedural requirements by confirming

² Regulations 4(1)(h)(ii)(B) and 4(1)(i)(ii) of the draft Property Law Regulations 2023

that certain electronic records are classified as body corporate records as well as facilitating the use of modern technologies by enabling body corporate records to be accessed electronically. These amendments are long overdue and align with the Property Law Review's recommendation to facilitate e-conveyancing, electronic transactions and the removal of out-dated legislative provisions. However, SSAAQ believes these amendments can go further to facilitate the adoption of electronic and remote searching of body corporate records. Particularly where remote electronic searching is permitted, there is generally more timely access given to body corporate records as managers are not limited to scheduling a search appointment from available search desks or computer terminals. It also saves on costs including search agent travel time, fuel and printing fees.

Definition of Interested person

3. An "interested person" is defined in s 205 of the BCCM Act to include the "agent" of an owner, buyer or other person who satisfies the body corporate of a proper interest in the information sought. SSAAQ notes that an "agent" is not included in the definition of an "interested person (layered arrangement)" in schedule 6 of the Bill. SSAAQ therefore seeks the inclusion of the word "agent" to align with the existing definition of "interested person" in the BCCM Act and confirm that search agents may be engaged on behalf of a body corporate or owner in a layered arrangement.

Place of inspection

4. SSAAQ notes that electronic searching (either at the premises of a body corporate manager or remotely) will only occur "*if the person and the body corporate agree...in accordance with that agreement*". Given the benefits of electronic (particularly remote) searching, SSAAQ suggests that where scheme documents are held electronically and the body corporate has the technical capability to provide such access, the body corporate should permit inspection in this manner. SSAAQ therefore suggests a note be included in the legislation to this effect.
5. SSAAQ is concerned that the wording "*otherwise – in person at a reasonable time and place nominated by the body corporate*" is vague and would benefit from clarity as to what constitutes a "reasonable" place. Some community titles schemes are managed in cities other than those in which the schemes are physically located. For example, a scheme that is located in Cairns may be managed in Brisbane. Alternatively, schemes may even be managed inter-state, which does occur from time to time with national body corporate management companies. SSAAQ therefore

suggests that a note be included in the legislation that a “reasonable” place will generally be in the same city or town where the scheme or interested person is located.

Cost of obtaining copies of records

6. The cost and time associated with printing body corporate records is a particular concern for SSAAQ members. Bodies corporate are currently entitled to charge printing costs of \$0.70 per page for providing copies of body corporate records. This provision was originally included at a time when all body corporate records were stored and presented for inspection in physical paper format. Search agents were required to use the body corporate’s photocopier for paper copies of records and a fee was naturally charged for this. The majority of professionally managed body corporate records are now stored in electronic format.
7. Some body corporate managers unfortunately use the per-page copy fee in the legislation as a loophole to generate revenue for their businesses. Some body corporate managers charge this fee for providing electronic copies of records. Other body corporate managers intentionally block or prohibit saving of electronic copies of documents and require persons to print electronically stored documents into paper copies thereby enabling them under the legislation to charge for printing per page. These paper records are then typically scanned by a search agent, saved electronically, then destroyed. In some searches, typically for larger body corporate schemes, there could be potentially hundreds of pages of records a search agent must obtain. The additional and unnecessary cost and time wastage in printing and electronically scanning what are already electronic documents is excessive and unnecessary.
8. SSAAQ suggests the inclusion of a note that specifies where bodies corporate provide access to search the records electronically the interested person may take electronic copies of documents at no additional cost. For clarity, electronic copies may be taken by saving the document on a storage device such as a USB, sending by email or saving to cloud file storage (e.g. Dropbox, Adobe Cloud etc).

D. BODY CORPORATE MANAGER CODE OF CONDUCT

1. In New South Wales, it is a requirement to have a strata managing agent licence to oversee strata or community titles schemes. There are two classes of licence and each has different

qualification and continuing professional development requirements.³ Body corporate managers do not need to be licenced in Queensland. Furthermore, there are no formal training requirements or qualifications required to be a body corporate manager.⁴ In Queensland any person can set up a body corporate management company with virtually no oversight until problems arise and a dispute is brought for adjudication before the Office of the Commissioner for Body Corporate and Community Management. Many schemes are exceptionally managed by experienced and diligent operators. Unfortunately, other schemes are not managed to an acceptable standard.

2. SSAAQ welcomes the amendments proposed by clause 42 of the Bill to the Code of Conduct for Body Corporate Managers and Caretaking Service Contractors in Schedule 2 of the BCCM Act **(Code of Conduct)** to specify that a body corporate manager or caretaking service contractor must not unfairly influence the outcome of a motion to be decided by the body corporate. SSAAQ is of the view that amendments to the Code of Conduct, section 118 of the BCCM Act and the record-keeping obligations in the various BCCM regulations should go further to:
 - a) improve the record keeping requirements in provision 11 of the Code of Conduct so that records are required to be kept in good and proper order, such that they may be easily searched and inspected;
 - b) require paper and electronic copies of the current registered Community Management Statement **(CMS)** and (where relevant) Building Management Statement **(BMS)** to be kept by the body corporate. These documents are the rule books for a scheme or building and may be easily obtained by bodies corporate online for a fee. It is a glaring oversight that a body corporate is not required to keep copies of arguably the most important of all documents in the extensive list of records they are required to maintain;
 - c) require the body corporate to present all records of the body corporate (not limited access); and
 - d) make section 118 of the BCCM Act a penalty provision for breaches of the Code of Conduct. Without the imposition of a penalty, a Code of Conduct is arguably paying lip service to regulation of the body corporate management industry.

³ New South Wales Government, Fair Trading, <https://www.fairtrading.nsw.gov.au/housing-and-property/property-professionals/licensing-certification-and-qualification/Licence-types-and-classes/strata-managing-agent-licence>

⁴ Queensland Government Website – Body Corporate Manager - <https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/roles/manager>

E. COMMITTEE HEARING AND CTL WORKING GROUP

SSAAQ appreciates the Committee's review of this submission and welcomes the opportunity to discuss matters raised therein at the planned Committee hearing. SSAAQ also seeks the opportunity to be included in any upcoming meetings of the CTL Working Group.

Should the Committee have any questions or require clarification of any matters raised by this submission, it should not hesitate to contact the writer directly.

Yours sincerely



Jessica Haddley
President
Strata Search Agents Association Qld Inc.