

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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Submission to the Committee for Legal Affairs and the Safety Committee

Background

About me:

- Bachelor of Laws from University of Queensland
- Practiced as a solicitor 2003 – 2006, primarily the area of property and conveyancing
- Body corporate manager since 2006
- Started my own body corporate management company in 2011, where I continue to work (as an owner of the business).
- I also own and live in a lot in a community title scheme.

I have read the proposed Body Corporate and Community Management Act and Other Legislation Amendment Bill 2023 (“Draft BCCM Bill”), the Property Law Bill 2023 (“Draft Property Law Bill”), and the Property Law Regulation 2023.

I would like to express my extreme disappointment in such a short consultative time for our industry for such a significant change. One week, during the busiest time of our year, is not fair. I have spoken with several other strata managers this week who were not even aware that there were proposed changes to the disclosure statement/information certificate system, especially as some of the changes are not in the Draft BCCM Bill which is where most of us focussed our attention.

I was very disappointed in some inaccuracies in Report No 45, 57th Parliament – Property Law bill (the Report). It states (page 14, clause 2.2.3):

“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.”

This is blatantly not true, unless DJAG was referring to a buyer’s actions prior to signing a contract. However, it is almost 100% of buyers that obtain an Body Corporate Information Certificate.

Further, the same clause states:

“...that no real estate or legal professionals have raised concerns about the proposed 5-day timeframe under the seller disclosure scheme”.

If this is true, then adequate discussion was not held with the real estate industry. We get calls constantly from owners/sales agents needing information for Disclosure Statement urgently because they have a buyer who is leaving town today and they need to sign a contract. Waiting 5 days constantly will have the Real Estate industry tearing their hair out.

Submission

I broadly support the submission made by Jessica Haddley on behalf of the Strata Search Agents Association Queensland (SSAAQ). However, I have some comments to add in relation to issues that specifically affect the Strata Management Industry, and well as highlighting some of the issues that have been raised by the SSAAQ.

1. Disclosure Statements and Information Certificates should be maintained as separate documents and not be merged into the new Body Corporate Certificate ("Certificate").
 - a. These documents currently serve two different purposes. While I believe that there may be some benefit in increasing the information made available to buyers before signing a contract, there should still be two discrete documents during the conveyancing process.
 - b. The proposed Certificate with the information proposed to be disclosed will be so voluminous as to confuse and stress buyers, and/or discourage them from reading it at all.
 - c. The proposed Certificate will encourage buyers to *not* preform a records inspection search to independently confirm the information provided to them, which means that there will be a higher likelihood of buyers purchasing property with something that they still do not understand. For example, if there are harmony issues within the residents of the scheme, or proposed building works/special levies that are expected but not approved yet – none of this will show up on the Certificate.
 - d. I have grave concerns over the timing of the Certificate. I have not seen anything that states how current the Certificate needs to be when signing the contract. Owners and agents already regularly call to ask whether their Disclosure Statement that they got two months ago (because, say, they had a contract fall through) is still current. Is there a proposed requirement for the Certificates? How will we answer these questions? If sellers are using Certificates that are already out of date (because, say, an AGM has been held and the levies have changed, or the insurance has just been renewed), how is that beneficial to the buyer or the conveyancing process as a whole? If it is expected that sellers obtain the Certificate when listing the property, and not when they find a buyer, that just increases the chance the information is out of date by the time the buyer signs, and certainly by settlement.
 - e. If a seller has to wait 5 days for a Certificate to be provided by the body corporate and they risk losing a buyer due to the delay, it will increase the chances of them not providing one at all and providing reasons for doing so as "one could not be obtained in time", leaving buyers with *less* information than they get under the current legislation.
 - f. I submit that the daily operation of body corporates changes too often to be able to adequately disclose much information to a buyer to gain any real benefit to the conveyancing process without significant risks of inaccurate or out of date information being disclosed. If the disclosure requirements are increased, it should only be to the minimal amount necessary to give meaningful information to the buyer (for example, provision of CMS), and it should come with clear warnings to a buyer to not rely on the information and to have it independently verified.

2. As the financial impact of these changes on the strata management industry is significant, strata managers should not be limited to the current information certificate fee for providing the Certificate, or at a minimum the Certificate fee should be increased.
 - a. It is unfair that to expect strata managers to provide more information, increasing our liability and workload, for less money they we are currently able to charge.
 - b. Most strata managers provide information directly to sellers to assist them with providing Disclosure Statements to buyers. We can choose our charge for this service. Most managers charge between \$130.00 and \$190.00 for this service. For the provision of the information certificate (non-urgent) we are allowed to charge \$78.93. Therefore, for each unit we manage that sells, we generally make in the at least \$210.00 – \$270.00.
 - c. These proposed changes will limit us (assuming the Certificate fee is not increased) to charging two lots of \$78.93 - \$157.86.
 - d. Therefore, we will be doing *more* work, and taking on *more* liability, for \$50 to \$110 *less* per sale.
 - e. I have a relatively small business, and this will likely cost us in the vicinity of \$12,000 next year. When you extrapolate this across the industry, we are looking at hundreds of thousands of dollars per year that will be wiped from our income, while *increasing* our workload and liability. We will have to get this income back somehow, which will likely be in raised management fees.
 - f. The above is only the affect on strata managers – the affect on the strata search/inspections industry will also be significant and needs to be added to this.
 - g. The impact on these industries is not off-set by any real gain to buyers. The information in the Certificate is already available to buyers during the conveyancing process via independent searches. The proposed changes is likely to result in *less* buyers asking the questions they should be asking, or independently checking, because they think they know everything they need to know.
 - h. I take this opportunity to point out that a rates search with most local councils, which provides far less information that the Certificate will, costs in the vicinity of \$250.00. That is the commercial reality of this process.
 - i. I also point out that under the Certificate proposal, a body corporate will be expected to provide information such as the Certificate of Classification, registered Community Management Statement and information about whether short term rentals are permitted, which are all documents held and controlled by government departments, yet the obligation to provide this information for a restricted fee is not imposed on them, only on volunteer committees and private strata management businesses.
 - j. The comments in the Report seem to assume that the strata management industry will simply update our software so that the certificates are simply the “push of a button”. I would like to point out that software upgrades are expensive and require a lot of testing by the users, for free. Somewhere along the line, our industry has to pay for this, whether it is a dollar cost, or it is the cost of other upgrades that will improve our efficiency being delayed.
 - k. Further, with the proposed depth of information required in the Certificate, this is possibly something that will move from a processing staff task to one that needs to be done, or at least checked, but a body corporate manager or other senior staff member, deepening the effect on our industry and our ability to keep our management fees low for clients.

- I. While the proposed changes limit our liability to a buyer, they do not limit our liability to a seller. Stepping back from legal and financial liability, the proposed changes do nothing to help us with our social, reputational and moral liability. If we make an error in the documents, or even if a buyer feels as though we made an error due their misinterpretation of the information, we still risk abuse from the client, a buyer who is unhappy with us from the beginning of our relationship and them disparaging our business reputation in the community.
3. If the proposed changes proceed, then some items should **not** be included in the Certificate. I have not found in the proposed legislation what the expected items for disclosure in the Certificate are, so my understanding is based on verbal discussions with others in the industry. Therefore, I may think that something is going to be disclosed that actually will not be.
 - a. Levy position of the seller – a buyer does not need to know this at the time of signing the contract. I feel disclosing that a seller is in arrears to anyone who attends an open home, or expresses interest in a property, is a breach of privacy of the seller. If a seller is in arrears, providing this information to the buyer gives the buyer an unfair advantage in price negotiations. I also expect that strata managers will receive complaints and abuse for providing this information, regardless of whether we are legally required to provide it or not (just like we receive abuse now for providing owner’s roll information to other owners).

I feel that this may also discourage sellers in financial distress from listing their property for sale (when they really should) for fear of their financial position being made public. I live in a regional city – people know people, and that information would be gossip.
 - b. Information about short-term letting – the body corporate often doesn’t know what the council’s rules are about this. If it has not been raised before, they have not asked the question of the council. Bodies corporate would now be expected to get this information, even if no one is interested in short-term letting in the scheme?
 - c. Certificate of Classification – many bodies corporate do not have this on their records, especially older schemes. It is expensive to obtain these documents from councils, especially for small 4 lot schemes. Are schemes now expected to get these documents just in case someone wants to sell?
 - d. Sinking Fund balance – this is fraught with danger. You can have \$400,000 one day and \$5 the next if the invoice for the building re-paint has just been received. Also, is it the amount in the sinking fund on the balance sheet or in the bank account? Do you have \$30,000 in the sinking fund if there is another owner who owes \$30,000 in sinking fund levies so that money is not actually available to be drawn on until the debt recovery process is resolved?

Conclusion

I am happy provide any further information to the Committee or any other party in relation to the proposed changes.