LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mrs LJ Gerber MP (via videoconference)
Ms SL Bolton MP (via videoconference)
Ms JM Bush MP
Mr JE Hunt MP (via videoconference)
Mr JM Krause MP

Staff present:
Mrs K O'Sullivan—Committee Secretary
Mr B Smith—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE PROPERTY LAW BILL 2023

TRANSCRIPT OF PROCEEDINGS

Tuesday, 21 March 2023

Brisbane

TUESDAY, 21 MARCH 2023

The committee met at 12.31 pm.

CHAIR: Good afternoon. I declare open this public hearing for the committee's inquiry into the Property Law Bill. My name is Peter Russo, the member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the lands on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all share. Other committee members with me here today are Jonty Bush, the member for Cooper, and Jon Krause, the member for Scenic Rim. Attending via videoconference today are Laura Gerber, the member for Currumbin and deputy chair; Sandy Bolton, the member for Noosa; and Jason Hunt, the member for Caloundra.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages.

COSSU, Ms Casey, Legal and Policy Officer, Real Estate Institute of Queensland

MERCORELLA, Ms Antonia, Chief Executive Officer, Real Estate Institute of Queensland

CHAIR: I now welcome representatives from the REIQ. Thank you for being here. Good afternoon. I invite you to make an opening statement of five minutes.

Ms Mercorella: Thank you for the invitation to come and speak about this important proposed legislative reform. I would like to begin by acknowledging the Turrbal and Yagara people, the traditional custodians of the land on which we meet today, and I pay my respects to their elders past, present and emerging and I wish to also extend that respect to Aboriginal and Torres Strait Islander peoples here with us today.

The REIQ is the peak body representing real estate professionals across Queensland. Our enduring purpose is to lead a sustainable industry which continues to make significant contributions to the Queensland economy and to strengthen conditions for those working within our industry. We aim to make important contributions to government legislation and policy settings, to advocate for balanced regulation for the benefit of all stakeholders and to provide industry-leading training for real estate professionals in Queensland. The REIQ membership and customer base includes over 30,000 property professionals. Collectively, Queensland's real estate sector directly employs over 46,000 people—we are the state's second largest employer—and of course real estate is one of the top 4 industries which comprises over 50 per cent of all of Queensland's small business landscape. The importance of the real estate sector to the economy of Queensland should never be understated. Real estate in Queensland is expected to contribute a whopping $27.5 billion in direct taxes over the forward estimates to the Queensland state budget. The total value of Queensland housing is $1.6 trillion. Further, in the last calendar year we have seen over 130,000 housing and unit sales in Queensland.

The REIQ has been involved in the property law review since its inception in 2014. Here we are today speaking about the bill and we wish to acknowledge that we have actively participated in the development of this bill and accompanying regulation. Over the past eight months we have delivered seven submissions to the Property Law Act review team and we have held countless meetings with various stakeholders and of course the PLA review team, providing important feedback in relation to various parts of the bill that are of most relevance to our members and our profession. In this regard, we wish to commend the PLA review team for giving stakeholders the opportunity to provide extensive feedback through the consultation process.

As we have noted throughout the consultation period, the REIQ does commend the department and the state government in progressing the rewrite of the Property Law Act 1974. Having said this, we do have some concerns with the bill being introduced into parliament, we think prematurely, by the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence on 23 February 2023. Although we appreciate and acknowledge the time constraints and finite sitting dates remaining in the current term of government, we are disappointed that the bill was prematurely introduced while discussions in relation to material matters were still being worked through—indeed, only days preceding 23 February. The importance and complexity of rewriting the Property Law Act arises from foundational significance to our society and the broader economy of the Property Law Act in establishing property rights and the rule of law relating to property and other legal and contractual rights more broadly.

A significant part of the Property Law Act is the introduction of a mandatory seller's disclosure regime here in Queensland. Notably, the REIQ has advocated for the introduction of a seller's disclosure regime for a number of years now on the basis that such a regime would enhance, without inhibiting, the unique property landscape we operate in here in Queensland. As a key objective of the regime, we consider it essential to balance the level of information provided to the buyer within the seller's own knowledge with the time and financial cost of obtaining such information to ensure the property sector is not unfairly burdened and contracts can continue to be practically and efficiently facilitated. We strongly support the four guiding principles of the regime—namely, that information provided should be within the seller's knowledge and/or readily available by search at a reasonable cost to the seller; information should be of value to the buyer in making their decision to purchase a property; information should be in an accessible form, easily understood and capable of being relied on by the buyer; and, finally, a single legal framework should provide consistency in the content and timing of disclosure and remedies available for failure to comply.

Specifically, the REIQ holds concerns about the following matters: the prescriptive requirements for providing disclosure documents at auction, which currently under the bill vary depending on whether the auction has commenced, and how the average person will be able to understand obligations and comply within that environment; the regressive reintroduction of the community management statement disclosure when selling lots in a community title scheme; the current form of seller's disclosure statement and body corporate certificate being unnecessarily complex with potentially irrelevant information and ultimately not fit for purpose; a buyer's ability to terminate without having to prove that they have been materially impacted by any error or omission; the onerous requirement for a seller to disclose statutory encumbrances that may not be searchable; and the lack of infrastructure available for the broader community to comply with disclosure requirements, particularly those living in regional or remote locations across Queensland.

In addition, we wish to raise a new issue that has recently been brought to our attention by the Strata Search Agents Association of Queensland. Very briefly, we understand that there is contention around the party that is permitted to prepare a body corporate certificate under the amendments to section 205 of the Body Corporate and Community Management Act. The REIQ supports a general provision providing for flexibility so that the body corporate, a seller or a seller's agent may prepare the body corporate certificate with relevant information to be obtained from the body corporate by a search of their records. As for the mechanism which is appropriate, we would recommend further consultation is taken on this point so that this particular issue may be considered thoroughly by stakeholders.

As we have seen over the past three years, the real estate sector is a key driver of our economy and material changes to the operation and stability of the sector will have far-reaching implications for all Queenslanders. For this reason, it is imperative that the final disclosure regime introduced in Queensland does not cause unnecessary delays, excessive cost and/or create an unreasonable level of risk in relation to contract sales in Queensland. Thank you.

Mrs GERBER: Thank you, Antonia, for that oral submission and also for the REIQ's written submission. I wanted to just confirm mostly: when you say that the bill was prematurely introduced because there were, as at the day before it was introduced, matters still being negotiated, are those the issues that you just talked about then? Have you provided the committee with a list of the issues that the REIQ considers were still being negotiated at the time that the bill was introduced, or is that something that you could take on notice so that we have a succinct list of those issues that you believe were still needing to be consulted on and negotiated?

Ms Mercorella: Yes. Certainly we would be happy to provide that succinct list. I believe, however, that our submission does outline our position in respect of that, with the exception of that new matter that I raised right at the end in relation to the strata issue.

Mrs GERBER: Okay. Excellent.

Ms Mercorella: We would be very happy to provide that to the committee.

Mrs GERBER: That would be great. Thank you very much. I have a follow-up question on one of those issues that was raised in the oral statement. I want to get a bit more detail around REIQ's position on the community management statement. I know that that is of concern to both REIQ and a number of other stakeholders. I also note that in previous iterations back in I think 2013 it was repealed because of its onerous nature and the amount of red tape it caused. I also note DJAG's response to REIQ, which details a number of elements that the seller disclosure report needs to have in it. I am after REIQ's position on that and whether there is an alternative way forward that allows for the ease of those important matters contained in the CMS, including by-laws, the identification of exclusive use of common property areas and a number of other things, that REIQ sees in relation to the CMS?

Ms Mercorella: As you have noted, previously there was a requirement to provide a copy of the community management statement in relation to the sale of a lot in a CTS scheme. That was a failed legislative measure. It was introduced in 2014 and shortly thereafter was repealed. To be very clear about this, if I cast my mind back to 2014 when we first started to talk about the property law review, one of the fundamental pieces of research it was centred on showed that if you give a buyer too much information it actually has a counterintuitive impact and it undermines the objective of the disclosure scheme. It overwhelms the buyer and therefore they are likely to ignore the community management statement but also potentially the rest. With a community management statement, we absolutely acknowledge that in some instances it may only be a few pages in length. Of course, we also know that a community management statement can be voluminous—hundreds and hundreds of pages. You can appreciate that in the case of the latter, it could overwhelm a buyer.

To be very clear about this, we agree that the community management statement has very important information contained within it. However, if we think about the normal course of events where a buyer will then engage a solicitor to act for them and conduct certain due diligence, in particular, when buying a lot in a community management scheme, that would normally be part of the due diligence process that a solicitor would undertake on behalf of their client. They would take them through the contents of that and the most salient points so that the buyer can understand exactly what they are taking on.

On the issue of community management statements, I think it is important to note that we are concerned about the lack of understanding that we see associated with buying a lot in a community management scheme. It is very clear that buyers do not always understand that what they are purchasing in that context is quite different to buying a freestanding home, for example. I think it is incredibly important that buyers are better educated in this respect so that they understand the rights and obligations that are associated with buying into a scheme of this nature.

What we would recommend is that more is done to educate the community. The reality is when you are at the point of buying, in many respects one has already invested emotionally into that property and so more needs to be done ahead of that buying decision. Certainly we would support and strongly recommend that more resources are dedicated to this issue so that the community has a better understanding. We have all been talking about the current housing crisis that is facing Queenslanders. We know that building up is likely to be part of that solution into the future. We do need to do more to make sure that Queenslanders understand what buying into a community titles scheme brings with it.

Mrs GERBER: Just to clarify, is it your position that including the CMS in the bill may end up being another failed legislative requirement if it is not coupled with the education that you have just talked about—

Ms Mercorella: Absolutely.

Mrs GERBER:—or do you think it should not be in the bill at all?

Ms Mercorella: Our preference is that the provision of a community management statement is not a requirement under the disclosure regime. To the question of what else could be done, we would be very supportive of an educational campaign as outlined.

CHAIR: I have a question in relation to the place of settlement. There has been a suggestion I believe—and correct me if I have misread your submission—that it takes place at the nearest office of the land registry. Have you had a chance to see the department's response?

Ms Mercorella: I am not sure that we have. On the issue of place of settlement?

CHAIR: Yes.

Ms Cossu: We maintain that is an outdated position and that it should be the office of the seller's solicitor.

CHAIR: At the office of the seller's solicitor?

Ms Cossu: Or we had a couple of options outlined.

CHAIR: I just want to put to you what the department said. I hope I am not putting you at a disadvantage if you have not seen it. Basically, they are saying that there may be issues as a result of a number of settlements needing to occur simultaneously. Therefore, they would regard the land titles office as a neutral location.

Ms Cossu: It might be worth also acknowledging the recent enactment of the Land Title Regulation, the introduction of mandatory e-conveyancing in Queensland, so physical settlements will be a lot more limited than previously. On that point, we would also note that a lot of the land registry offices have closed in regional parts of Queensland. That also speaks to the fact that it might be more appropriate to have a more modern solution.

CHAIR: I acknowledge your suggestions in your submission. I am not trying to put them to one side. I am interested in what the department was saying. On the subject of e-conveyancing, does the REIQ know what proportion of the sale of properties is being conducted via e-conveyancing?

Ms Cossu: There was a little bit of data that we highlighted in an article recently. That was from an e-conveyancing provider. That specified previously it was around 80 per cent, but it had increased over the last couple of years since the uptake in Queensland has been higher. In other states such as Victoria and New South Wales where e-conveyancing has been mandated for a few years now, it is closer to 90 to 95 per cent.

Ms Mercorella: We did see an accelerated adoption of digital conveyancing over COVID-19. We were very slow to adopt in Queensland, but the pandemic certainly moved it along at a very rapid pace. As Casey has mentioned, with digital conveyancing now being mandated, I think we will see the majority of transactions happening via what is at the moment an exclusive platform, but potentially there will be others in the future.

CHAIR: If you were doing e-conveyancing, would that deal with multiple settlements and purchases that may all be intertwined?

Ms Cossu: Absolutely and those provisions specifically speak to the location of the property in terms of being a marker for things like business days and other issues.

CHAIR: Casey, you mentioned there is an article about e-commerce. Is that easy to find? If not, I will not worry about it.

Ms Cossu: We are happy to locate that.

CHAIR: If you cannot locate it, do not stress. If you can find it, the secretariat and I would be happy to receive it.

Ms BOLTON: I have two quick questions. Are you a member of a community titles legislation working group? Are you involved in that? If you are, are you dealing with that body corporate certificate situation that you mentioned in the new issues at that level?

Ms Mercorella: Yes, we are members of that committee and I am happy to hand over to Casey, who attends those committee meetings.

Ms Cossu: This issue has been discussed quite broadly within the group. The group has actually consulted on their version of a draft body corporate certificate. That version is not the same as the draft body corporate certificate that was provided in August of last year with the draft bill at the time. We look forward to seeing an updated version of that certificate. It is of interest to our membership as well as a number of the other stakeholders which we understand will be discussed this afternoon.

On the point of the body corporate certificate, our view is that it should be concise. It should definitely include information that will provide value to the buyer, and that comes back to those guiding principles of making sure that the information provided is actually going to give value to the buyer. Just to add on the CMS point, the QUT final report actually recommended against providing the CMS. It also noted that a warning statement should be included that the buyer should obtain advice about by-laws and certain other things that might affect the liveability of living in a community titles scheme. It is definitely our position; that is what we would say is the preferred option.

Ms BOLTON: Included in those drafts has there been any mention, including at the group, regarding information such as the duration of management contracts as in what is remaining when someone is purchasing?

Ms Cossu: I believe there may be some information. I actually have a copy. I will just take a moment to look at that. I believe there is information about the management rights referred to on the certificate. I will just double-check that.

Ms BOLTON: That is all right. I realise we are short on time. We can take it on notice.

CHAIR: We are good. Casey will tell us.

Ms Cossu: There are a lot of pages, sorry.

CHAIR: Casey, I will take on board what Sandy said. Would it be easier if we gave you time?

Ms Cossu: Yes, we can take it on notice.

CHAIR: You were right, Sandy.

Ms BOLTON: Thank you. This is a very quick question. REIQ supported statements regarding flooding. Do you believe there should be mandatory disclosure on natural hazard risks?

Ms Mercorella: Specifically on floods or broader than that?

Ms BOLTON: Broader than that including landslip—any natural hazard.

Ms Mercorella: Flooding is an important issue for the community. If I think again about the issue of flooding, even just coming up with a definition of flooding is quite contentious and not as simple as one might think. Again, we are supportive of information being provided that allows a buyer to make an informed decision. If a property floods that is information that we think is absolutely relevant to a purchasing decision.

The challenge we have with flooding disclosure is that, as you can appreciate, there is not a consistent way of accessing that information. Depending on which local government the property is situated in, access to information about flooding can be quite limited and, of course, the level of sophistication that is available in respect of flooding can vary quite a bit across local government areas. That is our concern about mandating flooding disclosure.

If there were a way of creating consistency of information and the information could be verified as being accurate, it would be something we are open to. Certainly over the years the REIQ has done an enormous amount of education around the issue of flooding and encouraging buyers to do their due diligence in respect of flooding. That might be through local government searches but it may even be marching up and down the street and trying to find a person in that street who has lived there for a very long time and has knowledge. The other issue with flooding, as we all know, is that if a property has flooded in the past it is not always an indicator that it will happen again in the future and vice versa. Again, it is one of those issues that I think is an important one and requires ongoing education.

In terms of broader issues outside of flooding, we know that that is increasingly becoming an important issue for buyers. We would be supportive of potentially looking at expanding disclosures to encapsulate those matters but, again, our support for disclosure of such matters would absolutely be predicated on the information being accessible and not too onerous for a seller to have to undertake.

Mr HUNT: Thank you very much for your very detailed submission. I would like to make that plain at the outset. Are there any changes that could be made around processes for auctions to clarify and streamline those requirements? I know that you have a strong view on it. I wonder if you can tease that out a little bit today.

Ms Mercorella: Thank you. We do have some concerns with the current drafting of the bill in relation to the giving of a disclosure statement in the context of an auction. You would have noted that the bill differentiates the way that it is given depending on whether or not the auction has commenced. Literally, minutes will matter in this context. We think it adds a layer of complexity that is not useful and indeed quite unhelpful. Also, if I may say respectfully, it reveals a lack of understanding about the process of an auction. If we think about an auction in Queensland, it is by its very nature quite different to buying something under private treaty conditions. One goes to an auction knowing that they do not have statutory cooling-off rights. The contract needs to be conditional; in other words, if you need to get your pest, building and finance in order—all of that—you will need do that before you register to bid.

In that context, we do not see the benefit of an entire provision dealing with a bidder who might come along a minute into the auction and an entirely different process for the giving of the disclosure document because the auction has officially commenced. The reality will be that that buyer will have a very limited opportunity in any event to review the contents of said disclosure document. Of course, if you are going to an auction, as a general rule you have done your due diligence beforehand. We do know, having said that, that there are stories of people walking past with the dog and deciding to bid unplanned. It does happen, as ridiculous as that may sound. Again, if you are going into an auction—taking into account that statutory cooling-off rights are not available and you are buying unconditional—

you are already prepared to take on a fairly significant risk. We are of the view that the giving of the disclosure document in an auction context should be simple. There should be the one method for giving the disclosure document. One should not differentiate that procedure based on whether the auction has or has not commenced.

Mr KRAUSE: You touched on the issue of a mandatory sellers disclosure regime in the bill. What are your thoughts on that? Does it apply to issues that are in the knowledge of the seller—for example, damp in a house, water damage or things like that? Do they need to be disclosed and should they need to be disclosed?

Ms Mercorella: We do support the introduction of a sellers disclosure regime. The reason is that we believe it will create consistency across all contracts of sale in Queensland. At the moment, our contract—the REIQ contract, which is of course endorsed by the Queensland Law Society—is the main contract used but it is not the exclusive contract used. We believe that it is a fair and balanced contract. The vendor has to provide certain warranties and certain disclosures need to be made, but there would be nothing stopping me from selling my property to Casey simply by picking up a piece of paper and writing down the key commercial terms and both of us signing off on that. We know that there are a less robust contracts out there being used, so I think consistency is something that is important for Queenslanders. Again, we think we have to be careful about the scope of that regime. It needs to be balanced. There is certain information that we believe is reasonable for a seller to have to provide, again, aligning with those guiding principles that I mentioned at the outset, but the buyer must also understand that there is a certain amount of due diligence that they must perform. When we purchase a property, whether it be for our home or for an investment, it is likely to be the most valuable asset we acquire, so that responsibility must be taken seriously. A buyer must understand that there is a certain level of due diligence that they must perform on their own and fund. Each buyer will of course have their own needs and interests. We certainly would not want to see Queensland getting to a stage where a seller is required to disclose each and every fact, element or matter about a property. We do not think that would be appropriate.

As a general rule, we agree with most of the matters that need to be disclosed. One of the areas that we are concerned about—we have been vocal about this from the outset—is the requirement to disclose statutory encumbrances. We do agree with the idea of unregistered encumbrances having to be disclosed. As a general rule we agree with those. Those are things like an unregistered lease, which only the seller would be aware of and the buyer would be incapable of searching any records for that. When it comes to an unregistered encumbrance, our concern is that statutory encumbrances are not always able to be searched for easily. Our preference is that statutory encumbrances are carved out from the regime altogether, simply because our view is that as a community we must acknowledge that services are provided—telecommunications, drainage, water, gas et cetera. Most of us will have some sort of statutory encumbrance that impacts our property.

Mr KRAUSE: Is that because if the buyer cannot search for them neither can the seller?

Ms Mercorella: Therein lies my point. Our preference is that statutory encumbrances are not disclosed, but if statutory encumbrances needed to be disclosed—which is currently the position—then we say that it should be restricted to statutory encumbrances that are reasonably expected to be known to the seller. That would mean that in the definition of 'unregistered encumbrances', which is at section 5(a) (iv), we would like to see that particular subsection qualified the way the subsection is qualified, which refers to 'an unregistered charge, mortgage, easement' et cetera and then goes on to read 'reasonably expected to be known to the seller'. If a statutory encumbrance must be disclosed—not our preferred position—the n we would like to see at minimum that requirement qualified by adding those same words that appear in subsection (iii).

Mr KRAUSE: In terms of the seller disclosure statement, there is an issue that was raised in your submission about there being a statement from the buyer confirming receipt of the documents. Can you explain why that is an important point in your submission from a practical point of view?

Ms Cossu: In previous versions of the bill, there was something to the effect that the buyer signing an acknowledgement that they received the documents is conclusive evidence or evidence that they have received those documents. That is not in this iteration of the bill and it is also something that we would suggest be reintroduced, because we think it is an important statutory protection to be able to obtain that evidence.

Mr KRAUSE: To keep the contract going. Thank you for that. In relation to the seller disclosure statement and what might be a minor technical error or omission in validating that process, can you give us an example of what one of them might be?

Ms Mercorella: Absolutely. This, for us, is an incredibly important issue. Many in the room would remember the property agents and motor dealers legislation which, as a result of certain drafting issues, saw a range of disputes and contract terminations arising. We have a serious concern about the way that termination rights work under the current bill. Very simply, there are three limbs to the current bill. Basically, limb No. 1 is if the statement or certificate is inaccurate or incomplete in relation to a material matter; No. 2 is if at the time the contract is signed by the buyer the buyer is not aware of the correct state of affairs regarding the matter; and No. 3 is if the buyer had been aware of the state of affairs concerning the matter they would not have signed the contract. We are supportive of those three limbs, but the critical limb that is missing—there should be a fourth limb, in our opinion—is that the buyer should have to be materially impacted. There must be a material detrimental impact to the buyer.

The language we would like to see inserted as a fourth limb is that the buyer would be materially prejudiced if required to complete the contract. That threshold would be the exact same threshold that is found throughout various other relevant legislation in Queensland. There are two parts to why we say that. First of all, we are concerned with the definition of a 'material matter'. It is a very confusing and convoluted definition. In fact, we have had a group of lawyers sitting in a room arguing about it. That is why I make the reference to the property agents and motor dealers legislation which was later repealed.

Prevention is always better than cure. One of the responses we were given when we raised our concerns about this is that that could be left to the courts to determine. Goodness me! Why would we want to leave this to the courts to determine? Why would we want to put parties to the expense and inconvenience associated with legal action? This could be rectified now.

For example, zoning is one of the matters that we understand would be a material matter. Zoning needs to be disclosed, quite rightly. If you were to simply insert 'residential' but actually it was a high-density residential zone, currently under the bill we read that as being something that would enable the buyer to potentially terminate the contract. It may well be that that zoning error could be quite relevant and may well give rise legitimately to termination rights, but we would argue that the buyer should have to be materially prejudiced by the error.

I guess what we are saying is: what we do not want to see happen here in Queensland is buyers using the regime in a way to, if they have had a change of heart post contract, post execution, terminate the contract or taking the disclosure statement or document to a lawyer and asking them to comb through it bit by bit to find a technical error so they can find an out. That is not the point of the regime, so we would like to see that threshold raised slightly to be consistent with that that appears, for example, in the Body Corporate and Community Management Act, which does require some form of the buyer being materially prejudiced.

Mr KRAUSE: Do you have any other concerns or recommendations regarding the bill or any other matter of property law?

Ms Mercorella: Yes, a couple of other things. Probably the primary concern is that there does not seem to be a suggestion that there will be an infrastructure that will support the introduction of the regime. If we look at other jurisdictions where a similar statutory disclosure regime exists, it is possible to go about obtaining the required information quite easily and quite quickly. That is not the case in Queensland. As you can appreciate, depending on the document or the search, the time frame and the costs associated with obtaining that information may vary quite significantly depending on the local government involved. Our support for this regime is predicated on the basis that—and if we go back to one of those guiding principles—it is really important that sellers are able to access the information quite easily and without excessive expense. It is important that, if and when this regime is introduced, there is the appropriate infrastructure to support the seller to comply with these new requirements.

CHAIR: I am conscious of time. We have gone over. I understand there were two matters taken on notice. The first was a list of issues that Laura was asking about from the introduction of the bill. Is that accurate, Laura?

Mrs GERBER: Yes, thank you. That was accurate.

CHAIR: I was chasing that e-conveyancing article, but if that is not able to be obtained easily just let the secretariat know. Sandy, you wanted consideration of the body corporate certificate?

Ms BOLTON: Yes, thank you.

CHAIR: If you could provide those to the secretariat by Tuesday, 28 March, we would appreciate it. If there are issues getting them in by that date, could you please communicate with the secretariat? Obviously the reason we ask for it by that date is so it can be included in our deliberations

Ms Mercorella: Of course.

CHAIR: Thank you for your attendance and very fulsome submission.

Ms Mercorella: Thank you, Chair. Thank you, committee.

MELLOY, Mr Greg, Executive Committee Secretary, Unit Owners Association of Queensland

STEVENS, Mr Wayne, Executive Committee Vice-President, Unit Owners Association of Queensland

CHAIR: Good afternoon. Thank you for attending. We invite you to make an opening statement of up to five minutes.

Mr Melloy: The Unit Owners Association is a civil society group established in 1978 representing strata owners funded by membership subscriptions. In 2011 and 2012 the UOAQ was in the office of Paul Lucas, the Attorney-General, for the last review of the BCCM Act. Over recent years we have been interacting with the Brisbane City Council and the Gold Coast City council regarding the issues of short-term accommodation in residential buildings. In late 2020, after much discussion, the UOAQ received an invitation from the Deputy Premier to participate in the community titles legislation working group and the UOAQ committee representatives met with the Attorney-General.

While the 2020 agenda for the CTL working group was more substantial, you could characterise the CTL working group meeting in 2021 as avoiding the main issues in strata living. The one exception is the proposed body corporate certificate in the statutory seller disclosure statement. The UOAQ has requested a simple disclosure in plain English of the lawful use of the land as stated in the development approval. This suggestion was rejected by all, including all the public servants. These opposing views claim the development approval document was a large, complex document, too big to be included with the body corporate certificate, but somehow the similar sized and equally complex but uncontroversial building management statement document is proposed to be included. We ask why.

To further understand, we must review the process of councils that approve a development proposal for a residential use of a piece of land and issue a development approval. The developer then designs, builds and has certified the residential buildings class 2 residential. They sell lots to owner occupiers and nonresident investors. A developer then often sells a 25-year management rights accommodation module contract for the building to a hotel operator. The UOAQ believes these contracts can be sold for a larger sum than could be obtained if the contracts observed lawful use, abrogating the developer's fiduciary duty to the eventual owners. The CTL working group response was 'DJAG recommends that the body corporate certificate include a warning to the buyer that short-term letting may be occurring in a scheme or may occur in future in a scheme'. It appears the department of justice recommendation is condoning noncompliance with the law.

From my experience in my working life in a large multinational corporation, I have learned that it is no use having a major insight into a problem if no-one of any consequence will agree with you. In November 2021 the UOAQ met with Mr Damien Walker, who was the Deputy Premier's director-general and is now the chief of staff in the Premier's office in South Australia. We discussed with Mr Walker that owners do not seem to understand their property rights when purchasing a residential strata lot but there seem to be no significant problems with the Planning Act and the Building Act but there is a major problem with local government enforcing of the lawful use of the land. Our 20-minute meet and greet turned into a 50-minute exchange of issues and potential solutions. I regarded Mr Walker to be a highly competent executive and welcomed his commitment to find a solution. However, we never heard from Mr Walker or any of his staff again—no returned emails, no returned phone calls. He must have left our meeting and been told by his staff not to go anywhere near this problem or the UOAQ and to run to the hills, and he did.

The second person is His Honour Judge William Everson. In his judgement of February 2023 in the Planning and Environment Court regarding Spice Apartments in South Brisbane, Judge Everson has noted, 'The short-term accommodation business running since 2016 at Spice is apparently unlawful.' The UOAQ has been advising the Spice committee for several years. The building is on land approved for use as multiunit dwellings, as are many strata buildings in Queensland. Judge Everson starts his judgement with a simple English definition of the term 'multiunit dwelling' in the development approval and 'short-term accommodation', demonstrating the difference, much as the UOAQ has requested in the seller disclosure statements. Interestingly, the Spice management rights holder has taken the Brisbane City Council to the Planning and Environment Court requesting to force approval for an application to change the land use which was initially made without the owners' knowledge or consent. Five other buildings with similar applications were approved by council, we believe without the owners' knowledge or consent. The Brisbane City Council has told the UOAQ on multiple occasions that this application would not be necessary as the usage for short-term accommodation was self-assessable in a residential building, so why would the council bother to defend such a court action?

To date there has been no enforcement action of the development approval. These letters from the council are outlined in a submission to the CCC, but they have declined to investigate. Why does it appear that there is an effort to suppress the lawful use of residential strata buildings by some Queensland public officials?

There are six areas proposed for exclusion from the body corporate certificate which might attract legal proceedings under the consumer protection legislation provisions for deception by omission and the Human Rights Act. There is no good reason any of these items—lawful use, building defects, flood overlay and building services—should be excluded other than to appease the self-serving interests of the strata industry lobby groups. In the public interest, the proposed body corporate certificate should fully inform a prospective purchaser and include all of these items, but particularly the simple English description of the approved lawful use. Thank you.

Mrs GERBER: Thank you very much for your oral submission just then and also your written one. I just wanted to go back to your last statement and get you to expand for the committee on your position regarding why a simple English statement on the lawful use of land should be required for a body corporate certificate.

Mr Melloy: It is called seller disclosure and the disclosure is about the property. We consider lawful use to be something that is not well understood in the community and causes a lot of problems with strata properties. A lot of our members have these problems. We were surprised by the level of pushback from the CTL working group. Let us remember: that is our sole interaction with this, other than the more recent interaction with the property law review team, or whatever they call themselves. It is an issue that we have come back to again and again and never got a reasonable answer in response to. The lawful use under the development approval is not that hard, and Judge Everson came out and explained it perfectly well so I cannot understand why we cannot do it.

Ms BOLTON: Good afternoon, Greg and Wayne. With your experience with the community titles legislation working group, apart from this specific issue that, as you said, you have had pushback on, how has the group been working overall?

Mr Melloy: In my working life I have run a number of such meetings. We have been at this for just short of two years. We have had multiple meetings to consider what should have been things which were quite simple, but we spent two hours discussing it. On the key issue of management rights, which is what we were attending for, we made a 400-and-something-page submission. We have had a discussion session about everybody's views on that, but we have heard zero back regarding the government's position on this.

Ms BOLTON: How long has that been?

Mr Melloy: I think the management rights issue came up in 2022, in April or May, and we put a big submission in in July. So that is just on nine months and we have not heard a dicky bird back. We did have a meeting regarding everybody's position, but as far as specific suggestions made on behalf of owners we have heard nothing.

Ms BOLTON: You say in your submission that you were shouted down by lobby groups.

Mr Melloy: That is the polite way to put it.

Ms BOLTON: Can I ask who are these groups and which sessions are you referring to where you were shouted down?

Mr Melloy: Everybody except the girl who was sitting in my seat here. The girl from the REIQ has been more than polite, and everybody else has had a very strident opinion on it. Without naming names, it is everybody else in the room—not the public servants who were involved. They have been professional and polite, but we have had some very robust views expressed in that session.

Ms BOLTON: Thank you.

Mr KRAUSE: Thanks for your submission. Can I just clarify: do the issues that have arisen that have led to you making this submission relate to Airbnb operations and unit managers running short-term accommodation within residential unit buildings that really do not fit the approved use under local government approvals?

Mr Melloy: Let us take an example. The Premier owns a lot in an apartment building in Main Beach, and it has a big sign out the front saying 'no short-term accommodation'. I am fairly sure that is because the management rights contract has been written to limit the stay to anything more than six months if they are going to let it out. Other contracts which are in buildings which are not quite so old

have no such restrictions and they are there because the operator and the investor-owners make a lot more money out of short-term accommodation. If you look at the Gold Coast City council, for instance, they believe they get hundreds of these sorts of submissions saying, 'We've got this in our building. Can you please come and fix it?' and they just do not respond.

Mr KRAUSE: Is it an issue with noncompliance with DAs or management contract?

Mr Melloy: Both.

Mr KRAUSE: Sorry if I have missed it, but how would your idea about having the simple planning description of the approved use in the body corporate and the disclosure certificate improve the situation? Is it about putting potential buyers on notice about what it is approved for?

Mr Stevens: We sent to the committee on Friday a copy of the contravention of development approval from our town planner. This contravention document demonstrated what is going on in Queensland in terms of how properties are used. That contravention document disclosed that there was a hotel operating in a building that had been built for dwelling use. It had been provided to the Brisbane City Council four years ago and still no action has taken place.

The other document that we provided was the case that was listed on AustLII and delivered in the planning court only five weeks ago where the judge, having reviewed the conduct that was going on at Spice Apartments since 2017, stated that it was apparently unlawful. We have all of this evidence that is coming forward, yet we are not getting the government or councils in a position to address this unlawful use. We are asking that the seller disclosure statement include a clear statement to the market so that purchasers clearly understand what they are buying, which they are not getting at the moment. We want in the seller disclosure statement what the use happens to be. Multiunit dwelling has been defined in these other documents that have been presented.

Mr KRAUSE: Thank you. That is what I wanted to get to.

Mr Melloy: It has nothing to do with Airbnb. They are just a real estate agent who are online.

Mr HUNT: What do you think needs to be done before the new scheme commences to make sure that everyone is aware of their rights and responsibilities?

Mr Melloy: That is a rather large ask, I think. I do not think there is a simple answer to that question, certainly not within the sphere of the Property Law Act. Our presence here is only because we have been constantly asking the question, 'Why aren't you disclosing this?' and we have been constantly getting bad answers. We have been to the Attorney-General's office. We have written to the Deputy Premier. We have met with the director of planning. We have met with all sorts of people and they are all just going, 'Look over here.' It is just not right. Major reform of the BCCM Act would be a major thing, but that is the second tranche of this CTL working group and I certainly wish them luck with that.

Mr KRAUSE: Mr Melloy, how many unit owners does your association represent? I ask that in the context of wondering how widespread you think these sorts of issues are of unlawful short-term accommodation uses when they should be long-term dwellings.

Mr Melloy: When we got invited to this CTL working group, we met with the Attorney-General and we said, 'You really need to get some professional consultants in to define what the problem is.' She said, 'Yes, but that's not going to happen, and can you please contribute to this working group in a positive way?' So we took that as a commitment that we would do so.

We have conducted an online survey and we got 1,850 responses. About 55 per cent of people said they are happy in their strata buildings. There were 37 per cent or something, and there are a few people who do not know, in the middle there. We have done work which looks at: how competent is your committee; how good is your caretaker; do you get value for money; do you get harassed and bullied.? The answer to that question was that 60 per cent of the respondents said they had witnessed or been subject to harassment and bullying. The answers were somewhere between that 55 per cent and 38 per cent of being happy or unhappy. We have done that piece of work, and we have given that to the CTL working group and we have given that to the executive groups that are running it.

We have done a piece of work where we have got a lot of case studies. We have gone through and asked people to tell their story about strata, and some of those stories would make your hair curl. I had to stop ringing people because I would spend an hour on the phone with somebody telling you their story. It is just dreadful what happens in some of these buildings. We have written all of those things out and we have presented them to the CTL working group. We are currently doing a

comparative financial study just to see, across the 30 or 40 years that these buildings have been addressed, how much money it actually costs. That is in its early stages. We are doing a range of consulting work and we would encourage the government to go and do it to define what the problem is so that you could make decisions.

Mr KRAUSE: Could you tell us now, or perhaps in the future, how many units are not in the general housing pool because of issues you are talking about with short-term accommodation?

Mr Melloy: No, I do not understand that question. There are 500,000 lots in strata in Queensland. We claim to represent them all. Some of those people are our members. Some of those people are on our mailing list.

Mr KRAUSE: I understand. So you do not have coverage across all of them?

Mr Melloy: We are a volunteer organisation.

Mr KRAUSE: I understand.

Mr Stevens: It could be somewhere between 100,000 and 200,000 lots.

Mr Melloy: Which are under management rights.

Mr Stevens: That is simply a guess.

Mr Melloy: The ARAMA numbers are 230,000, but the government need to do their own work to figure out what this is so that they can advise the executive government.

Mr KRAUSE: Is that lots or units?

Mr Melloy: It is the same thing.

Mr Stevens: The truth is that the Gold Coast has the highest centre of tourism activity in the state. There are many buildings down there that have short-term accommodation in buildings with approved use for dwelling use. All of those lots are being unlawfully used, and there are thousands and thousands of them.

Mr KRAUSE: It would not just be the Gold Coast though, no doubt. It would be in other parts of Queensland too—in Brisbane.

Mr Melloy: And Spice Apartments is across here in South Brisbane.

Mr KRAUSE: That is interesting, given there has been a lot of coverage lately about people who cannot get into homes at all, yet—

Mr Melloy: There is a whole pile of residential units which are empty because they are being used as hotel rooms. Yes, tell us about it. We joined those dots.

Mr Stevens: If the lawful use of those buildings was enforced, if the councils were required to enforce the planning law, those properties would be available for housing.

Mr Melloy: And the government need to know what that number is, and they do not.

Ms BOLTON: I am going to move away from that to go to your submission where you mentioned the percentage of owners to terminate a scheme. Basically at the moment it is 75 per cent. What is the percentage you feel is needed that would be suitable?

Mr Melloy: We did make an inquiry before we came in about the fact that that subject would not be discussed.

Ms BOLTON: Sorry.

Mr Melloy: But I am happy to talk about it. The number that was put forward in the CTL working group was—

CHAIR: Hold the phone. I understand that it may be outside the scope of the bill, but you have the committee's indulgence.

Mr Melloy: We suggested a higher number than 75 per cent. We were told in the CTL working group that there would be a financial statement put together which decided that the building was no longer viable to be maintained, and we put a number of 95 per cent on that. It could have been 90, but let us say that we put a lot on it. The thing we are drawing attention to is these older buildings are often retirees' homes and they want to stay in them. Then some developer comes along and decides that they want to have the property, they buy into it and they start to bully people. Bullying is very prevalent in this industry with commercial interests. There is a government report on this apparently that the CTL working group have commissioned but not yet released. We would like to see the mechanisms.

CHAIR: Who commissioned the report?

Mr Melloy: The ORP—the Office of Regulatory Policy that are running the CTL working group—have engaged Deloitte. We participated in that last September-October at Deloitte down the other end of the city. When that comes through, we imagine that will be released.

Ms BOLTON: Thank you. That is all, Chair.

Mr Melloy: There is a lot more water under the bridge on that one before we understand what the government's proposal is.

CHAIR: I understand that that is in the second tranche of body corporate legislation.

Mr Melloy: Yes, it is. That is hopefully what is going to happen.

Mrs GERBER: I want to ask a follow-up question in relation to the member for Scenic Rim's line of questioning. Are you able to tell the committee—and forgive my ignorance if it is already in your submission—what you consider to be the time frame for a short-term rental or short-term accommodation? What is the actual time frame that you put on that?

Mr Melloy: There are variable ranges in the different legislations that control this. Around three months is where you get a residential tenancy agreement; I think that is up to a minimum of three months. Some management rights contracts have six months in them—nothing less than six months. Either a building is a hotel or it is a resort or it is a residential property. We have mixed the two in Queensland, and that is not right.

Mrs GERBER: I guess what I am getting at is when you are saying 'the short term' are you also referring to the highly lucrative short term of renting it out for a week?

Mr Melloy: Yes.

Mrs GERBER: Yes, so that is what you are talking about as well?

Mr Melloy: Correct.

Mr Stevens: Under the Planning Act, the definition of 'short term' and 'tourist accommodation' is rentals under three months.

CHAIR: Unless someone has a burning question, I was going to finish this session. I take it by the silence there are no burning questions left.

Mr KRAUSE: I have one more for clarification to Mr Melloy. Are there some developments where there is an approval for both uses?

Mr Melloy: If you walk down Charlotte Street, most of the buildings there, with the exception of the Westin Hotel, which has what we think is an appropriate structure, are being used as mixed use. We have various people who are members of our organisation who bought into these things. They sold their family home in the suburbs, they moved into the city thinking, 'Isn't this great?' and then they ended up living in a hotel. Two-thirds of the owners were foreign investors and for the rest of them a lot of them sold out and moved on.

Mr KRAUSE: I understand that, but the question was are some approved for both uses rather than one or the other?

Mr Stevens: Those people who bought into those properties used as a hotel thought they were buying into a residential building.

Mr KRAUSE: Exclusively residential?

Mr Stevens: Yes, and this is why it is necessary to have the lawful use documented in the seller disclosure statement because it is not there. The development approval does not exist. It is not in the CMS. There is a lot of material that—

CHAIR: I am just conscious of the time. I understand Jonty may have the last question.

Ms BUSH: You have outlined a couple of issues relating to what you perceive as potential council actions. I just note that we have representatives from the Local Government Association of Queensland coming up in this hearing program and wondered—we obviously have our questions for them—what question you believe we could be putting to them on the issues you have raised.

Mr Melloy: Why are they not enforcing the law would be a good one. In our interaction with the director-general of the local government group—Steven Miles's director-general—it was put to us whether we would advocate something similar to the Noosa Shire Council, which has some sort of registration scheme. The bottom line is, no, enforce the law please. If a building has been built and sold as a residential building, then an investor does not come in and change all that and a management rights holder does not come in and change all that.

Ms BUSH: You mentioned some specific actions they could be doing around the mapping of that. Are there any outstanding actions—specific actions—given your involvement in the working group that you think could be put to them?

Mr Melloy: Okay. So you could ask them why does the Noosa Shire Council have a scheme such as they have. Why do we have the Sunshine Coast Regional Council writing letters which acknowledge the use of a multi-unit dwelling and its incompatibility with short-term accommodation? You could ask them why the Brisbane City Council thinks short-term accommodation is self-assessable, for Christ's sake, and why the Gold Coast council run for the hills? We were told to go away because they were having an internal review and please do not call them. So it is a five- or six-year effort of trying to define this and get a sensible answer out of it and we have been unable to do it to date, so ask them why they are not enforcing the law.

Ms BUSH: Thank you.

CHAIR: Thank you, Mr Melloy and Mr Stevens. That brings to a conclusion this part of the hearing. Thank you for your attendance and thank you for your written submission.

Mr Stevens: Thank you for the opportunity.

Mr Melloy: We do appreciate it.

LESSIO, Ms Nicole, Lead, Intergovernmental Relations, Local Government Association of Queensland (via videoconference)

SMITH, Ms Alison, Chief Executive Officer, Local Government Association of Queensland (via videoconference)

CHAIR: I welcome representatives from the Local Government Association of Queensland. Good afternoon. Thank you for joining us. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Smith: Thank you very much for having us present our submission today on behalf of local governments across Queensland. Can I firstly start, however, by acknowledging the traditional owners of the land on which we gather. Nicole and I are dialling in from Canberra, so it is the Ngunnawal people of Canberra that we would like to pay our respects to and to elders past, present and emerging.

I am sure everyone in the committee is well aware of the LGAQ. We have been in existence since 1896 and we are the member association for all councils across Queensland. Our role is to provide trusted advice, support and advocacy for all members of councils across Queensland. On behalf of our councils, we would like to thank the committee very much for the opportunity to speak to this inquiry. We are really pleased to speak further to our submissions that we have made on this very important subject.

At the outset we would like to acknowledge in particular the great consultation work that has been undertaken by the Department of Justice and Attorney-General on the proposed scheme and the draft legislation. When we look at Queensland, unlike other jurisdictions across Australia, there is today no formal seller disclosure regime in practice. What that means is people in Queensland buying real estate really have to be buyer beware, and it is different in other states where there are provisions and a framework to tell buyers of risks before going into what is one of the most expensive purchases they will make in their lifetime. Overall, the LGAQ supports the introduction of a statutory seller disclosure scheme. We would like to see that in Queensland and as a sector local government has been making the call for this for a number of years now.

If we look at the time since September 2022, the LGAQ has in fact made three submissions to the state government on this matter and these have been informed by the experiences shared to us by our council members and their communities and it comes off the back of a motion that councils brought to the LGAQ annual state conference back in 2008. It was subsequently again supported last year at our annual conference as well. So we remain concerned that the scope of the proposed scheme just does not go far enough. It does not in its current form meet the recommendations of the royal commission that was held into the national natural disaster arrangements and it does not currently reflect the desire of Queensland councils to have a consistent scheme that flags all of these issues. We would like to see Queensland's conveyancing laws align with those in other jurisdictions and to introduce a mandatory disclosure framework for natural hazard risks at the sale and prior to property purchase.

I will touch quickly on our original submission. Essentially it is critical, we believe, that flood and other natural hazard risks are easily mapped out in advance for buyers, as I say, to align with what currently exists in other states and it should be mandatory so that buyers are alerted to potential hazard risks for any property that they are looking to purchase. Queensland councils, as I say, have overwhelmingly endorsed this concept of a mandatory seller disclosure scheme and we believe that it is important for potential Queensland homebuyers to have this and be afforded this same awareness that exists in other states. We want this so that they can make informed decisions. We want this so that they can take steps to mitigate impacts. Prevention is key and it is much better to be alert, informed and advised prior to unwittingly finding yourself in a position of harm or being in harm's way. It is also important when you think about rising insurance costs being aware of the risks up-front before entering into a very important decision.

We have made four recommendations in our submissions to this inquiry. Really quickly, they include the disclosure of natural hazard risks consistent with what our members are calling for; aligning to other jurisdictions; delivering on the recommendations of the Royal Commission into National Natural Disaster Arrangements; and to be complemented by a comprehensive statewide awareness and education program. Any change like this needs to have consistent and very significant consultation so people are aware of the change.

In closing, I would like to note the comments of the Attorney-General in her introductory speech of this bill in which she has committed to continuing to consult with the LGAQ and our members in order to find a solution to ensure that natural hazard risk can be included in the scheme. We would like

to thank the Attorney-General for the approach that she and her department have taken on this and we look forward to working collaboratively with the team in the department to make this a reality—a reality for future homebuyers, just as it is afforded in other states to those potential homebuyers. It is with those opening remarks that I would like to thank the committee for the opportunity to appear before you and invite you to ask any questions that you might have about our submission. Thank you.

Mrs GERBER: Thank you, Alison, for your written submission and for appearing via video link today. I just wanted to go to the crux of your submission which is that you would like mandatory flood and natural hazard risks to be part of the disclosure statements. Has the Local Government Association had the chance to review the department's response to your calls for that? It was published last week, and if you have not I will talk you through it.

Ms Lessio: We have not had a chance to have a review of that as yet so we would be happy to hear from them.

Mrs GERBER: DJAG has essentially said that they will continue to work with you, but that there are some inherent risks in making it mandatory. They have also highlighted the Queensland Law Society's submission in outlining some of those risks. The two risks that I perceive are directly relevant to your association and to the councils is one that whilst many councils provide flood modelling, it is maybe outdated and quite historical and there might be some inconsistent approaches across councils and if it were made mandatory it could open some councils potentially up to the risk of an increase of liability. In this regard the QLS has recommended that the state government make funding available to all local governments to include research on historical flood events and develop mapping and for DJAG to work with the Department of Resources to develop a standard property flood information form for local governments to use before further consideration is given to making it mandatory. I was just after your view on those submissions and recommendations from DJAG and the Queensland Law Society.

Ms Smith: You have touched on an important element of our submission and that is that what is introduced in Queensland needs to be consistent. We are well aware from talking to our members that there are at least three types of these planning certificates that exist to varying levels of information. What we would like to see is the ability to arrive at a consistent framework that is the same no matter where you are in the state that covers a standardised set of criteria that is going to be helpful for those potential homebuyers. To that point, that is why we are welcoming of the approach by DJAG to work consultatively on this. More work needs to be undertaken to be able to arrive at a framework that actually has that standardised level of information that is sufficient for Queensland given that we are a decentralised state and we have some unique areas. We need to have that consistency so we welcome that particular move. We would like to ensure that what can be arrived at is not just consistent, but it is at a price that is not abhorrent to potential homebuyers, it is affordable, it is accessible and, in turn, it is one that is also not going to lead to cost shifting onto councils to be able to provide this.

Mrs GERBER: Are you able to point the committee to a jurisdiction or a state in Australia that has currently achieved that?

Ms Smith: In our submission we talk to the fact of New South Wales and Victoria having systems that we think are good, we think that Queensland could easily align to, to be able to replicate what they are doing in those communities.

Ms BOLTON: Further to the member for Currumbin's questions, do you believe within that consistent framework, the mapping in the disclosure would that include the whole CHAP as in adaptation planning and modelling not based on historical records but on projected levels?

Ms Lessio: Obviously the CHAPs have been put in place and lots of work has gone into making those adaptation plans. From our point of view, it would be an incredibly helpful thing for those particularly on the coastlines to have that information as part of that certificate. However, for consistency we would have to have that consultation with our members to make sure that was achievable across the entire state.

Ms BOLTON: You would have heard earlier the submission of the Unit Owners Association. Are you aware of any reason there would be difficulties enforcing unlawful use with residential units that are being utilised for STAs?

Ms Smith: Regrettably, we are at Parliament House in Canberra today so we have not been across the previous submissions made to the inquiry. We would need to take that particular question on notice. Can I say on this topic that it does come down to the fact of taking the time to consult widely to get the right framework in place and then having it backed up by a comprehensive engagement strategy to absolutely communicate through to those affected how it would work, when it takes effect and so on. I mentioned in the previous answer to the member for Currumbin that New South Wales and Victoria are really good examples of where this exists. If I take you to our submission, in item 2.1

we highlight some of those provisions that exist in New South Wales which help to provide colour as to how their system works and how it can work really well. For example, in New South Wales their planning certificates include—they are not limited to—elements such as the names of the relevant planning instruments, what the development control plans are, zoning and land use under the relevant planning instruments, flood related development controls, bushfire prone land, council and other public authority policies on hazard risk restrictions, contribution plans, property vegetation plans, biodiversity stewardship sites—I will not read through them all, but it absolutely clearly maps it out. It makes it so much harder for there to be any confusion about what would sit within them.

Ms BOLTON: Could you take on notice my question to raise with your members as to why there would be difficulty enforcing buildings that are being unlawfully used as outlined by the Unit Owners Association?

Ms Smith: Thank you, member. We are happy to take that on notice.

Mr Hunt: Do you think the bill overall meets its objective, which is the modernising of the property framework and the streamlining and simplification of the language?

Ms Smith: That has not been an issue that has been of concern to our members so I guess my answer would be that we believe that it is straightforward. We believe that it is incredibly timely. We would have liked to have seen this come into effect in 2018 when our members first raised the issue. The property cycle obviously has peaks and troughs, but it is important to have a consistent framework that underpins this all the way across the state.

Mr KRAUSE: I do not really have a question but I suppose I could ask, if nobody else has a question, whether there are any other concerns or recommendations?

CHAIR: It is alright if you do not have a question.

Mr KRAUSE: I did actually just ask one. I wanted to ask the LGAQ if there were any other concerns or recommendations about the bill that they want to raise with us in case that question has not been asked.

Ms Lessio: The mandatory seller disclosure is absolutely the primary concern that we have with the bill and the fact that we have consulted multiple times over it. We have raised this issue in each of our submissions so obviously that has been a sticking point and we really love to see that going forward and we are very much looking forward to working with DJAG, the Attorney-General's office and our members to get a consistent approach across the state.

Mrs GERBER: I have a question to tease out some of the finer details around mandatory disclosure. At the moment the process is that a buyer would have to contact their council or local government and query what the natural disaster risks are for the prospective property they are looking to purchase; is that right?

Ms Smith: Correct, yes.

Mrs GERBER: Are you able to talk us through how much work local governments currently do, and if it is easier to use a case scenario use the Gold Coast or whatever is easiest for you, including money they currently spend, answering queries about natural disaster risks in relation to the sale of properties and how much information they need to present to prospective buyers around that.

Ms Smith: I might start and I will ask Nicole, if she has any further material, to weigh in. As I said at the outset and it states in our submission, we are aware that there are varying ways that this is done across the state, which means that there are varying levels of information that are provided by councils and they come at varying levels of cost to their potential property buyer. That is why consistency is important and affordability for both the potential buyer and for the council in terms of its own resources to do this work are satisfactorily met. That is our absolute goal in this process. It does depend on the level of information that is required. I started to read out before in the earlier question just some, not all, of the different provisions that exist in New South Wales under their framework and you can see that it is quite an onerous level of searches of various regulations, legislation, titles et cetera. That, of course, needs to be met by the council which is why there needs to be some form of payment made for the provision of those services. I will ask Nicole if she has any examples that she could share.

Ms Lessio: I know that there are councils that have to send an officer out to collect this information manually and there are others that can do it from the desktop. Obviously councils need to recover their costs and that is very important for their financial sustainability. The fact that those different ways of collating that information are across our state is something that we need to address in that consistency argument. We are looking forward to working with everybody to make that happen.

Ms Smith: And something key in the consultation process ahead that we would like to map out.

Mrs GERBER: Are you able to give the committee even a ballpark figure as to what the costs might be—a range even?

Ms Lessio: It depends on the level of information that is required. There are planning certificates for some councils that are around the $150 mark and then there are planning certificates for multiple parcels of land, bigger parcels of land, for more information that go up to $10,000 per certificate. It depends on the level of information at this point and obviously that would be for a commercial development as well. At the moment that is something that is inconsistent across the state. The levels of information are inconsistent so to try to have that consistent approach in information provided and in cost would be great and making sure that that is not an impost on councils to affect their financial sustainability would be wonderful as well.

Ms BUSH: My question is to the point that the member for Noosa picked up on. Perhaps to help guide you, Alison, it may be good if you do have a chance to look at the broadcast or revisit the submission from the Unit Owners Association. It seemed to be around councils being quite disparate in how they investigate complaints around unlawful use of community title schemes. I think we were quite interested in that. Perhaps if that helps guide your response, I provide that feedback.

Ms Smith: Thank you for that statement. We will certainly take note of that. I guess in closing, at the height of this is keeping people safe. It is about providing information upfront. We know from our council members that often there can be quite serious disputes following a sale which can be quite expensive. This is something that would help to prevent that from happening, but, most importantly, it is about preventing people making mistakes unwittingly and putting themselves in the position of being in harm's way. Obviously in Queensland we are no stranger to natural hazards—bushfires, floods et cetera. On behalf of our members we see this as an important opportunity to get it right, to get it safe and to do so in a cost-effective way. Thank you.

Mrs GERBER: I have one quick question. I want to go back to the member for Cooper's question drawing your attention to the previous submitters' evidence and what was raised around short-term accommodation. It was specifically around the use of private dwellings for short-term accommodation. Forgive me, it might be a simple answer. Can you have a dwelling that has a mixed use in that it is approved for short-term accommodation as well as residential?

Ms Lessio: There are, unfortunately, across the state, varying ways in which councils deal with short-term accommodation. We know that Noosa, for example, has a housing plan that includes regulating those accommodations and we know that Brisbane has had a situation where they are wanting to make sure that they can get the data and the information on those homes. The challenge that local government has is that we do not have the data on where those accommodations are so councils cannot rate them differently if they are not aware that those units are being used for short-term accommodation. That is something we have been working hard on and wanting to get a consistent approach on, that data sharing from the providers and obviously the state government for any information that you have as well to be able to make that sort of consistent approach across the state because we just do not have the information.

Mrs GERBER: Just so we are all aware, when we say short-term accommodation, are we talking about properties that are being used for stays of between seven days to three months, or what is the definition of short-term accommodation for local governments?

Ms Lessio: I would have to take that question on notice, actually. I do not know whether there is a consistent approach for what short-term accommodation is classed as. Obviously the Airbnbs, the Stayz, the Expedias, those groups that are using short-term, can make it anything from one night to longer so we would have to take that one on notice.

Mrs GERBER: What work needs to be done in order to better understand how much of the housing market is being used for short-term accommodation?

Ms Lessio: It is simply around that data to get that information. We know that the providers have a huge swathe of information that they could provide, but they are not willing to share that at this point. It has been a problem that our members have been raising with us so we are in conversation with the government about the ability to be able to do that so, yes, we will continue those conversations.

CHAIR: Unless anyone has a burning question, I will close this session. We have some questions on notice: could you outline if there would be any difficulty enforcing unlawful use of strata titled property; and the definition of short-term accommodation.

Ms BOLTON: Sorry, Chair, can I add my question? My question specifically was what difficulties have the different councils and the members of the LGAQ experienced in being able to enforce where buildings are being unlawfully used for STAs when they are in the planning scheme as residential.

CHAIR: We are asking if you could provide those answers to the secretariat by Tuesday, 28 March. If there is difficulty in meeting that time line will you communicate that to the secretariat. We ask for that date because we would like to use those answers in our deliberations. Thank you for your attendance and thank you for your written submission.

Proceedings suspended from 2.19 pm till 2.34 pm.

CHRISTENSEN, Professor Sharon, Member, Property and Development Law Committee, Queensland Law Society

DEVINE, Ms Wendy, Principal Policy Solicitor, Queensland Law Society

DUNN, Mr Matt, General Manager, Advocacy, Governance and Guidance, Queensland Law Society

CHAIR: I now welcome representatives from the Queensland Law Society. Good afternoon. Thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Devine: Thank you, Chair, for inviting the Queensland Law Society to appear at the public hearing on the Property Law Bill 2023. In opening I would like to respectfully recognise the traditional owners and custodians of the lands on which this meeting is taking place, Meanjin, Brisbane. I recognise the country north and south of the Brisbane River as the home of both the Turrbal and Yagara nations and pay deep respects to all elders past, present and future.

The Queensland Law Society is the peak professional body for the state's legal practitioners, over 14,000 of whom we represent, educate and support. QLS would like to commend the Department of Justice and Attorney-General for their extensive consultation and work during the development of the bill. QLS has participated in the review process of the Property Law Act since the initial discussion papers were released almost 10 years ago by the Commercial and Property Law Research Centre of the Queensland University of Technology.

We welcome the introduction of the bill to modernise Queensland's property law and we particularly welcome the introduction of the seller disclosure scheme. This will have significant benefits for both sellers and buyers in clarifying and consolidating the current disparate seller disclosure obligations. It will empower prospective buyers to be better informed when making a decision to offer to purchase land. The seller disclosure scheme will dramatically change the way in which property is bought and sold in Queensland. It will affect lawyers and real estate agents and many others in the property industry and will involve reworking standard contracts and other processes to ensure that our members' clients have the full benefit of the new framework.

The bill represents once-in-a-generation change to Queensland's property law. For this reason, QLS recommends that a transitional period of at least 12 months be allowed between the legislation being passed and the act taking effect. This time is needed for the legal profession and the wider property industry to become familiar with the changes and ensure that practices and documentation are properly updated.

We are broadly supportive of the approach taken in the bill, but we have identified some specific concerns in our written submission and we take this opportunity to highlight two particular issues. The first relates to the opening clauses of the bill, and this is not addressed in our written submission. We recommend amending clause 7(b) and clause 8 to clarify that the contracts and arrangements contemplated in those clauses may be signed by an authorised agent of the party to the relevant arrangement. At present, these clauses only refer to a contract being signed by a party to the arrangement and they do not include a reference to an authorised agent. These clauses are intended to replace the current sections 11 and 59 of the Property Law Act, both of which presently refer to signing either by the party or their authorised agent.

Because the current legislation includes those references, omitting the reference to an agent could give rise to an interpretation that the bill intends to change the legal position so that following the passage of the bill a contract will no longer be enforceable if signed by an agent. We believe this is not the intent of the legislation. Ensuring that contracts can continue to be signed by properly authorised agents is a critical part of standard industry practice and so we recommend that this be clarified before the bill is passed. We consider this omission cannot be overcome by relying on section 35A of the Acts Interpretation Act. We suggest that it could be clarified by amending the provisions or by adding a drafting note to the division.

Secondly, we highlight our concern that the bill proposes an exemption from seller disclosure where a seller can state that they have been unable to obtain the necessary information from a body corporate. As outlined in our submission, we are concerned that this drafting is now too wide. We recommend this exemption should be limited to where there are no body corporate records and annual contributions are not levied on owners. Usually such schemes were established by a group title plan under the Building Units and Group Titles Act 1980, but there may be other examples.

I am joined today by Professor Sharon Christensen, who is a member of the Queensland Law Society's Property and Development Law Committee, and by Matt Dunn, QLS General Manager of Advocacy, Governance and Guidance, and we would welcome any questions from the committee.

Mrs GERBER: Thanks for your appearance today. I was wondering if you had the opportunity to listen to the Local Government Association's submission before the break. I wanted to talk briefly and get the QLS's opinion on the Local Government Association's recommendation that natural hazards and flooding be made mandatory in the disclosure statement. I note that you have addressed it in your submission by saying that there are some inherent complications in that councils record the flood risks differently, there are inherent differences between the way different councils deal with the natural hazard risks and there are also some costs associated with that and that before it was made mandatory I think you recommended that there is funding made available to all local governments to research historical flood events and develop mapping and for DJAG to work with the Department of Resources to develop a standard property flood information form for use. I am just wondering if you can talk the committee through the kind of resource that you think is necessary in order to do that—that is, the money as well as what kinds of resources are needed.

Ms Devine: I am afraid we were not able to listen in to the Local Government Association's appearance—we were on our way travelling here—but we were aware of their submission. Sharon, did you want to take that question?

Prof. Christensen: I think your question, Laura, relates to what we see as the practical resources that might need to be available. From our understanding, there are very different sets of information available to different councils. Some have quite sophisticated sets of information, such as the Brisbane City Council, and others have very little by way of information for flooding. Some of the regional councils have very little. In terms of the resources that might need to be available, for some it is going to be quite significant. They would need to undertake flood modelling to be able to come up with information that would meet the standard and a standard whereby you can explain clearly to a buyer what the risk is. I think some of the risk we see with racing ahead and providing the information that might be good in some and not good in others is that buyers may be misled about the frequency and severity of the risk in some cases which I do not think would be beneficial to buyers at all thinking, 'There's a low risk here,' when in fact there might be a high risk. So there would be quite a bit of resourcing in that area as well as thinking about then the clarity of the information that would be on the form. So how do you explain to someone that it may flood every year or that it floods the old one-in-100 years that actually means there is a one per cent chance that it may flood every year, not every 100 years? There would need to be some consideration about clear terminology, so you would need to consult with a variety of experts in relation to that as well.

I guess from the society's perspective there is quite a bit of work to do in that space and we did have some discussions with the department about what would be an immediate way of bringing flooding to the attention of buyers and settled on a warning that they should investigate the matter and provide various links and places such as their local government to find that information.

Ms BOLTON: Further to the member for Currumbin's question, would you see that the CHAP, or coastal hazard adaptation planning, and the modelling for future events and the different levels should be included within that information?

Prof. Christensen: There is obviously an argument that all manner of natural hazard that is relevant to a property should be disclosed: coastal hazards, flooding, bushfires as they are in Victoria, cyclones and any other hazards that might exist. The issue then is how do you clearly convey the actual risk to a buyer of a property. Some other jurisdictions have struggled a little with that—even overseas—in how they clearly articulate a risk to buyers. I do not think there is sufficient research as yet to be able to say that this is a model or this is a way in which you might do that. Again, from the society's perspective, making a buyer aware of all relevant risks to a property would be something that we would see the disclosure regime should be aiming towards in its next stage of progress.

When this was recommended to the government there was a recommendation that a staged approach be undertaken because it is quite a significant practical change to the way that property is conveyed in Queensland. Primarily, aside from noting flooding risk, most of the other information that will be disclosed is already required to be disclosed either pre contract or as part of the REIQ contract. As we said in our introduction, we have taken all of those ad hoc items of disclosure that currently exist and put them into one consistent framework that makes it easier for sellers to know what to disclose and easier for buyers to know what to expect will be disclosed to them about the property. We would see this as stage 1. Some of the things you are talking about which require a little bit more consultation and work should definitely be part of stage 2.

Ms BOLTON: For clarity, that projection for a property that does not flood at the moment but in 50 years may—

Prof. Christensen: It may.

Ms BOLTON: You are saying that in stage 2 that should be looked at and included?

Prof. Christensen: Yes.

Mr HUNT: Thank you for your submission and your time. Does the QLS have a view around changes being made to processes for auction around clarifying and streamlining the requirements for people turning up to auction and registering pre and post auction?

CHAIR: Or during.

Mr HUNT: Yes, I have learnt that this morning as well.

Prof. Christensen: Let's start with pre auction. The QLS's general proposition would be that a buyer should receive all the relevant information about the property before they embark upon the auction process. Ideally, you should have some time to look at that information, digest it and decide, 'Am I going to buy the property and what am I going to pay for the property?', on the basis of that information. That would be the ideal approach.

The legislation recognises that that is not always the case and I have been at auctions where someone rolls in from shopping and decides this property looks good and they are going to bid for it. Sometimes they arrive before the auction starts. In that scenario if they have not looked at the property before, the legislation would require a copy of the disclosure documents be given to them at that point. If, however, they arrive during the auction, the way in which this section would operate is if you have not received a copy of that, the seller satisfies the requirement if there is a copy on display at the auction; and if the buyer requests a copy, a copy is given to the buyer at that particular point when they register. Whilst the drafting of that section may appear to make it look complicated, I think the way I have just described it is how you would seek to comply with what is there. At the end of the day, the important part is that the buyer receives a copy of the disclosure information before they sign the contract, even if it is five minutes before they sign it during an auction.

CHAIR: Is it not the case that if you turn up to an auction, say on a whim, you still have to register?

Prof. Christensen: Correct, you do have to register and at that point—

CHAIR:—they can hand you the disclosure notice.

Prof. Christensen: Exactly. I would suggest it would be good practice at that point to hand them the disclosure document.

CHAIR: Pardon my lack of knowledge on this. Is it fair to assume that if a mortgagee exercises their power of sale they are still required to issue a disclosure notice?

Prof. Christensen: Yes. A mortgagee would go through the usual sale process just like any other seller and yes, they are required to provide a disclosure document. The only mortgagee exempt from that is a local government.

CHAIR: That is what I was coming to. At the moment, they are already exempt, aren't they?

Prof. Christensen: Under the bill—

CHAIR: No, before the bill. I am trying to work this out. Historically, are they exempt now?

Prof. Christensen: All mortgagees are required to give some level of statutory disclosure currently. What would normally happen is any disclosure in the contract would normally be excluded. There is some statutory disclosure they cannot contract out of currently such as a contaminated land disclosure, for example.

CHAIR: What about the local government?

Prof. Christensen: I would have to look at that. I am pretty sure they are still required to give that disclosure.

CHAIR: At the moment?

Prof. Christensen: At the moment.

CHAIR: If the bill is passed they will not have to; is that your issue?

Prof. Christensen: If the bill is passed they are exempt, yes, from disclosure.

CHAIR: You are saying why should they be when a mortgagee in possession has to comply?

Prof. Christensen: Yes. The other reasoning or rationale behind that is a lot of the information would be held by the local government so they would know the information and what they do not know is easily discoverable by search at a reasonable cost.

CHAIR: It may be outside the bill, if a mortgagee sells a property they have to satisfy that they have a fair and reasonable price, but if the local government sells, they do not need to?

Prof. Christensen: No, they are governed by different legislation.

CHAIR: And that is outside—

Prof. Christensen: That is outside the Property Law Act, yes.

CHAIR: I will not go there.

Mr KRAUSE: You just asked one of my questions, Chair. I will ask a different question on the same matter. Over the years there have been a number of disputes about the efforts of mortgagees to obtain a good price when they are selling a property. You have obviously had a very good look through the bill. Is there any change to the position that presently exists in this bill?

Prof. Christensen: No. There is still a duty on a mortgagee to get the best price for the property and there is a heightened duty on a mortgagee of a residential property to make sure that they undertake relevant repairs and market it properly to obtain the market value for the property. That has not changed.

Mr KRAUSE: The other issue I wanted to touch on is the seller disclosure regime. I see your support for the conceptual approach taken to the scheme. I want to put a particular question to you which I also asked one of the other witnesses. If a landholder has knowledge of damages being caused to their property—damp, water, mould, things like that—does the bill contain any specific obligation for that to be disclosed by the seller?

Prof. Christensen: No.

Mr KRAUSE: Your submission says the details for the requirements of a disclosure statement and certificate will be set out in regulation. Is that sort of granular detail something we might see in regulation, or is that a different type of regulation?

Prof. Christensen: The Property Law Regulation draft that we have currently seen does not have anything about structural defects in the property. The recommendation was not to require that to be disclosed at this point. Contracts are usually subject to obtaining a building and pest inspection. After a lot of consideration we decided that the best place for that obligation to lie for a variety of reasons related to liability for reports is the person who obtains the report. Currently, a lot of sellers, particularly for auctions, will do a building and pest report and hand it over. They are usually fairly vanilla and buyers might seek to rely upon that or some buyers still get their own building and pest report anyway. We did not see that as necessarily falling within the principles in relation to easy to obtain and also being accessible by the buyer and transparent to the buyer. It is better for them to obtain their own report.

Mr KRAUSE: And rely on that?

Prof. Christensen: Yes.

Ms BUSH: I have a question in relation to your written submission around clause 186 and minimum compensation for encroachment. Can you expand a bit on your views on that?

Prof. Christensen: That is the clause around the encroaching owner and they can get three times market value unless they can demonstrate it was not deliberate or negligent. We realised that is the current provision in the Property Law Act, but we think that is going to be difficult for subsequent owners. A lot of times these encroachments come to light many years down the track after they have occurred. It is very difficult for the current owner of the property to actually demonstrate that it was not deliberate; they did not actually put the encroachment there. Our suggestion is that we should retain the three times provision but only retain it where that current owner has deliberately or negligently put the improvement on the other property.

I think the clause goes back to about the 1920s when surveying was not as good; we did not have the plans that we have now. It is very difficult to demonstrate that something that was maybe constructed 80 years ago was actually deliberate. They might have genuinely tried to put it in the right place within the boundaries and just not been able to because they could not accurately decide where those boundaries are. There is a whole street in Auchenflower where everyone is half a metre over. This would enable each of those owners to get three times the value of their property in terms of that encroachment. From the society's perspective we did not see that was necessarily a fair outcome in the circumstances.

Mr KRAUSE: Sharon, I am aware there was a case in the High Court a couple of years ago in relation to the Limitation of Actions Act with regards to mortgagees' power of sale. From recollection it was a dispute about a mortgagee enforcing 15 or 20 years after the mortgage was given. Are you familiar with that?

Prof. Christensen: I am vaguely familiar. It was about recovery of possession after the 12-year period.

Mr KRAUSE: That is right. Ultimately, it was determined that the Limitation of Actions Act still applied and could be contracted out of. I want to ask whether you have any views about that particular matter from a policy perspective. It is an interesting case and it led to some interesting circumstances after such a long term of not being enforced.

Prof. Christensen: I do not know that I can make much comment because I have not looked at the case in detail. Sorry.

Mr KRAUSE: No worries. It is something I was interested in as a former lawyer.

CHAIR: There being no further questions, I will take the opportunity to close this session. Thank you for your attendance. Thank you for your written submission. As always, we find the Queensland Law Society to be very beneficial to our deliberations.

BOS, Ms Laura, General Manager, Strata Community Association Queensland

CANNON, Ms Jessica, Advocacy Director, Strata Community Association Queensland

MARLOW, Mr Kristian, Policy and Media Officer, Strata Community Association Queensland

CHAIR: Good afternoon. Thank you for being here. I invite you to make an opening statement of up to five minutes after which committee members will have some questions for you.

Ms Bos: We are delighted to be in attendance today. Thank you very much for your invitation to participate and appear before the Legal Affairs and Safety Committee to give evidence regarding the Property Law Bill 2023. We also pay our respects to the elders past and present of the land on which we stand, the beautiful Meeanjin country. Broadly speaking, we are supportive of the bill and accompanying regulations. We have been delighted with the effort to modernise property law in Queensland and we hope the government will accelerate the pace of reform.

In the community titles sector, changes are desperately needed on a host of fronts. Significant reform to management rights, regulation of body corporate managers and the dispute resolution framework are important aspects of reform that are needed for the benefit of all stakeholders in the property sector. SCA Queensland has viewed this particular bill through the prism of our membership which represents a very large portion of the property industry. We have body corporate owners, we have body corporate managers—we represent every service that works in body corporate from the legal fraternity right through to our pool maintenance people. We have looked at and examined this from that perspective. We are pleased with sections 104, 105 and 106 and the explicit protections they provide to property industry professionals and particularly our members. We have been happy with the consultation between us and the government in this regard and we generally support the matters which need to be contained in the draft body corporate certificate, though we would welcome the addition of the acknowledgement of the existence of the Office of the Commissioner for Body Corporate and Community Management. We acknowledge that they play a very important role in our sector.

One matter of concern for us is section 4 of the Property Law Regulation 2023, specifically around prescribed certificates. We believe the requirement to give a community management statement is overdisclosure, particularly coming from this if the intent is to inform and ensure that consumers were well informed. Excessive disclosure in our opinion confuses rather than informs and behavioural science research indicates it diminishes rather than enhances consumer outcomes. We urge the committee to reconsider this. These documents can be many dozens of pages long and are likely to confuse rather than inform, if that is the intent.

SCA Queensland hopes the delivery of reform to the community titles sector is rapid over the next 12 months. We have been waiting for 25 years for meaningful changes and with strata housing a priority for alleviating the Queensland housing crisis, we hope all members see this need and work in a bipartisan fashion to ensure change comes in the best possible form as soon as possible as an increasing share of Queenslanders make strata home. Today I am joined by Jessica Cannon from the SCA Queensland board and Kristian Marlow, our policy and media officer. We would invite questions. Thank you.

Mrs GERBER: Thank you very much for coming in this afternoon. I wanted to go to your main issue with the bill which is around the community management statements. I note that REIQ was also concerned with those and stand with you in your position on that. I wanted to understand if there is a way forward. I do not know if you have had a chance to look at DJAG's response to your written submission and if you have not I am happy to take you through a little bit of what they have said, but if you are aware of it I will not bother.

Mr Marlow: We are not aware of DJAG's response.

Mrs GERBER: DJAG has essentially pointed out the important information in the CMS as the reason it is required as a mandatory disclosure as part of the prescribed certificates. They have said that it includes the exclusive use plan, important by-laws, lot entitlements and any architectural and landscaping code. I wanted to understand from you if you see a way forward. I understand your position is that you do not think a CMS is necessary, but, given DJAG's response, is there anything else you would like to submit?

Ms Cannon: Without seeing the response, it is a little bit difficult to comment on, but a few of the points that you did raise there are already included in the certificate and in the statement. A lot of the information that is in the CMS is already included in the certificate and statement as well. I take

your point that what is not being disclosed without the community management statement is the exclusive use plan and, more relevantly, the by-laws. SCA Queensland's position on it though is that this information is very readily available to prospective buyers and it is a very easy search that is available to them under their, I guess, available searches in the purchase process. The concern with disclosing the entire community management statement is (a) the duplicity of information but also (b) the concern that prospective buyers are not going to use that as a fruitful or useful disclosure process. The association has not specifically turned its mind to whether there is a proposal in terms of the way forward, but in our mind it would be redirecting the buyers to alternative searches that are available to them, whether that is a simple dealing search of the community management statement or potentially a more comprehensive body corporate record search where they can do a more thorough investigation as well. The position is that the information is there. The concern in giving the community management statement as a part of the certificate is that it is somewhat duplicitous and an overburden on prospective buyers as well.

Mr Marlow: If I could add to what Jess said, this requirement was introduced in Queensland in 2011. It was considered too onerous and repealed. I do not see any factors which are different which would change the fact that it may be difficult to make work in practice.

Mrs GERBER: Thank you, that answered the next part of my question which was do you see this being at risk of having to be repealed for the red tape concerns that essentially happened in 2013? REIQ submitted that it would be better served if there was education to buyers around where they could find this information. What is your view on that?

Ms Cannon: We support REIQ's submission on that front as well. Ultimately the information is readily available to all prospective buyers and there are multiple avenues that buyers can explore to get this additional information if they choose to do so. We do support that we think it would be repealed. Some of the community management statements that I have come across are 100, 120 pages long. That is a lot of information on top of everything else that buyers are getting in the sale process, or the purchase process, so we would support the fact that it would be repealed. The information is available elsewhere and perhaps the solution would be to focus on education and giving notification of where that information can be found should buyers want to go through that process.

CHAIR: To pick up on that, is there a reason these documents are so large? Do they have to be that large? Is there not a process whereby that information could be condensed without destroying the important things that a buyer needs to know about what they are getting into? It may not even be as part of the bill, but a lot of people wrote about how big these things are and I kept on thinking to myself, 'Why?'

Ms Cannon: I take your point. There is no limitation at the moment in terms of length of community management statements. The bigger factors in terms of why they are so big is the scheme land component. If you are dealing with a 500-lot scheme it goes through every lot and plan. That can take pages. It also comes down to your by-laws as well. Body corporates can choose to have five by-laws in place, they could choose to have 50, 100 by-laws in place. For the larger schemes, a big component is also the exclusive use grants that are given, so your schedule E will step through every lot and every grant they have and then it has to attach all of the plans on top of it as well. I take Laura's and the committee's point about there is valuable information in there, but they can be very big documents to have to produce and distribute in terms of disclosure.

Ms BOLTON: Good afternoon everyone. I note in your submission that you are a member of the Community Titles Legislation Working Group. We heard earlier from the Unit Owners Association that also sits on that group. Can I ask why there is any difficulty at the broader group level or from Strata Community Association supporting, in that seller disclosure, including the actual lawful use of the site, planning wise, in a simplified way? Can you unpack that for me because I am really struggling to understand because it sounds like a pretty reasonable and simple thing to do?

Mr Marlow: The Queensland body corporate legislation has several accompanying regulation modules which provide further guidance on how schemes are managed. They are designed to give life, for lack of a better term, to different kinds of schemes. A couple of those regulation modules, or one specifically, the accommodation module, is designed theoretically for a combination of potentially short-stay and long-stay residents. That can kind of create a bit of a grey area with body corporate law. Beyond that, in terms of the lawful use, without breaching confidentiality, that is never an issue that has come up within our membership. Our membership wanted to focus on getting clear understandings of costs and obligations in the most succinct form as possible so we have body corporate consumers, lot owners, who are aware of their obligations and hopefully abide by them and contribute in their own way to harmonious community living.

Ms BOLTON: If I am a potential purchaser, how would I tell in that purchase transaction whether where I am buying into is for residential use or for short-term accommodation? What is there on any disclosures or anything that is readily there so I can tell straightaway?

Ms Cannon: I guess the simple answer is I do not see anything in there at the moment in terms of whether there is a differentiation between a long-term residential scheme compared to a short-term residential scheme. I do concur with Kristian's submission that it is somewhat grey and obviously it conflicts between the Body Corporate and Community Management Act versus the Building Units and Group Titles Act in terms of whether a body corporate can pass a by-law that restricts short-term letting. At the moment the law is pretty settled for the Body Corporate and Community Management Act that you cannot have a by-law that prohibits short-term letting, but under the building group titles act there was the Fairway Island decision which does support that happening. I guess there is not anything clear in the disclosure statement at present that would alert a prospective buyer to whether there is short-term permissible lots or allowance in the disclosure statement. It is, though, akin to what we spoke about before with the community management statement. There are ways that prospective buyers can go and get some towning or zoning advice about what they can and cannot use their lot for, but that would be an additional step for them should they wish to do so.

Ms BOLTON: I am really struggling with this because I understand it is a grey area. I am not sure I can understand as to why if it is not there at the moment readily available it cannot be, because if you have a set of units or a block of units that is within the planning scheme it is designated, and I know in Noosa we have designated as in either residential or designated for tourist accommodation. Why is there a grey area and is there any capacity in this bill to address that grey area?

Mr Marlow: The regulation modules make it a grey area. We understand the government is currently doing a holistic review into short-term letting. We have always publicly supported the ability of bodies corporate to be able to ban short-term letting. Why there is a grey area I cannot really dive in too deep into that. As Jess noted, you can do planning searches and things like that. Obviously I read today about some of the success the Noosa region has had with its local council law, but I note that there were still an estimated, I think, 1,200 properties that were off that. The issue of short-term letting is a very nuanced one and it will require perhaps a whole-of-government solution and one that might involve local governments, bodies corporate and even the state government more broadly.

Mr HUNT: Have you had a chance to look at some of the other submissions and what they have had to say about body corporate managers not being able to provide the same level of clear information as, say, a strata search agent?

Mr Marlow: We have read those submissions. Our view is that there is a role for strata search agents to play working with body corporate managers under the new disclosure regime. We also believe that our members are very professional and we think that they are perfectly capable of working with other professionals to ensure that disclosure is accurate and appropriate. Our managers are trained. They have professional indemnity insurance if they are members of SCA Queensland and we are committed to continuing to professionalise them and we believe that a regulatory regime may come into effect perhaps as early as late this year, but we are very confident in what our members do and their ability to provide services to lot owners, either existing or prospective.

Mr HUNT: Where do you think that that initial hesitation came from with some of the other submitters? What caused that line of reasoning, do you think? I know I am asking you to put a position.

Mr Marlow: I cannot put myself in someone else's shoes accurately.

CHAIR: There being no further questions, I want to thank you for your written submission and thank you for your attendance today.

NEWTON, Mr James, Manager, Policy and Regulatory Affairs, Shopping Centre Council of Australia

NICOLAS, Mr John, Partner, Gadens, Shopping Centre Council of Australia

CHAIR: I now welcome representatives from the Shopping Centre Council of Australia. Good afternoon and thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have questions for you.

Mr Newton: The SCCA represents major shopping centre owners and managers in Queensland and across Australia. With me I have John Nicolas. John is a partner with Gadens and specialises in shopping centre development and retail leasing. He has been advising the SCCA throughout the department's consultation and drafting on the Property Law Bill. We appreciate the opportunity to appear before the committee today.

Our interests in the Property Law Bill relate primarily to part 9 concerning leases. We have engaged with the Department of Justice and Attorney-General since December 2021 and made five submissions at various stages of drafting. We are very grateful that the department liaised closely with the SCCA throughout the development of the bill and thank them for the opportunity to do so. Broadly we have sought to ensure that the provisions of the bill remain consistent with the existing Property Law Act 1974, the drafting is contemporised and made more user friendly without being oversimplified or departing too far from legal concepts, and that the bill intersects with the Retail Shop Leases Act in a manner that does not give rise to any uncertainty.

As committee members may well be aware, retail leasing is heavily regulated. The Property Law Act is overlaid by the Retail Shop Leases Act which prescribes more detailed and specialised provisions with respect to retail leases. We also operate under and are governed by the unfair contract terms regime under Australian contract law and the Small Business Commissioner Act with respect to disputes and a number of other matters. Whilst there is limited overlap between the Property Law Act and these separate pieces of legislation, we would be keen to ensure that no fundamental changes to or inconsistencies with the Retail Shop Leases Act are introduced which could give rise to disputes and uncertainty in the landlord-tenant relationship.

Deliberations with the department largely focused on ensuring that the balance of the landlord-tenant relationship was retained with clarification of drafting to reflect accepted everyday practice; more specifically requirements pertaining to tenant breaches, landlord demands and rights of entry; giving of notices to designated persons—whilst not a new concept, the definition of 'designated persons' has been broadened; and also various time frames, interpretation issues and practical amendments. Our feedback and advice was mostly either incorporated or responded to or explained to our satisfaction.

One minor outstanding issue that our submission to the committee highlights is one suggested drafting amendment to standard term No. 3, 'Maintain and leave the premise in good repair'. We raised this concern throughout the consultation process and disagree with the final drafting which is actually unfavourable to landlords and will likely just be contracted out of. While we do not believe this to be the bill's intent, we remain unclear as to why it has not been amended per our advice.

We are also aware of recommendations made by the Real Estate Institute that pertain to leases, one of which is pertinent to our sector. In general terms we agree with the REIQ in that proposed section 164(4) could be redrafted to be more explicit that a lessee's right to renew, extend or re-sign a lease not apply if they fail to comply with the requirement to give notice of their intention within the time frame required by the lease. This is especially important in the retail leasing context as the Retail Shop Leases Act contains provisions that require a landlord to give notice to tenants about the date by which the tenant is required to give such notice.

In terms of our position, these issues aside, we have reviewed the bill and support its passage through parliament. The key source of property law in Queensland has ultimately been improved and rules relating to leasing simplified as a result. Thank you again for the opportunity to appear before the committee and answer any questions about the bill which we will endeavour to do today and also respond promptly to any questions taken on notice. Thank you, Chair.

Mrs GERBER: Thanks for appearing this afternoon. I am wondering if you can point the committee to another jurisdiction that has adopted the amendment that you have been consulting on and would like to see included in relation to the leases and leaving the property in a state of good repair, I think it was.

Mr Newton: John, unless you can answer that, we—

Mr Nicolas: Yes, I am happy to answer. Other jurisdictions have similar implied standard terms that arise under corresponding legislation. We are not necessarily saying that the concept is wrong. The concept is that a tenant has to leave the premises in a certain condition. All we are seeking to clarify is that it ought be the condition that they received the premises in and there is a practical issue that arises where quite often in shopping centres especially tenants will continue to renew a lease and they may be in there 20 years down the track under lease No. 4. What we are simply saying is that there should be a threshold to which the condition ought apply. On a strict reading of the current drafting, it would apply to their current lease whereas if they had been in there under successive leases perhaps the correct threshold should go back to the very beginning, and that could be subject to a number of other issues that arise down the track.

To James's point though, these implied provisions are very often contracted out of, as is permitted under the relevant legislation. Again, that occurs in all jurisdictions. I certainly look at New South Wales, where I do a lot of work, and that is certainly the case. So it is not, to put it colloquially, a die in the ditch sort of issue for us but just something that we raise as a day-to-day issue that often arises where we have these arguments over what is the threshold. If these implied terms were to apply, we just want to ensure that the threshold is clear.

Mrs GERBER: So the answer to my question is that there is not another Australian jurisdiction that has it. It is all implied in other jurisdictions.

Mr Nicolas: It is implied everywhere. These similar sorts of implied terms apply in all other jurisdictions, to answer your question directly. I am not sure whether the threshold issue that we are raising is the same in all other jurisdictions, but we would like, if we are improving the legislation, to be clear to make that clarifying point.

Ms BOLTON: You may have already mentioned this and I missed it, so forgive me. Is there evidence of Queensland courts interpreting the start of the lease or the lease as the beginning of the annual renewal of a lease?

Mr Nicolas: It is not so much the annual renewal. It is the lease under which they are occupying the premises at that time. Usual rules of construction or interpretation are that you read the words on their face and they get given the meaning that they appear to have on a usual reading. Quite often you will see a lease say that it is to be made good to the condition as at the commencement date, and that is okay for the lease to say that. The issue with the implied terms under the legislation, if they were to apply and were not contracted out, is that they do not make that stipulation as to what the line in the sand is in terms of the condition to which they need to be returned. Again, we would ordinarily in a lease say they have to be made good to the condition they were in at the date of first commencement, whether under this lease or a preceding lease. The implied terms under the legislation do not make that clarification. They just simply say they need to be made good, and the obvious question is 'to what?' That is simply the clarification we are trying to make.

CHAIR: I have a question which comes from your written submission. I understand your point about putting a term whereby you know what is expected of you. You state—

> We request that the Committee refer our suggested amendment to the Department and/or the Office of the Queensland Parliamentary Counsel for advice as it would appear that the intent of this standard term is either not being met, or is needlessly unfavourable to landlords.

The words I am a bit confused about are 'needlessly unfavourable to landlords'.

Mr Nicolas: Is that in relation to this particular issue of the implied term?

CHAIR: I am just trying to link it. You stated that you had raised this prospective amendment with the department late in the drafting process, and then you have your recommendation. Am I overcomplicating it?

Mr Newton: Ultimately, this is a minor issue that we have brought up over successive submissions and we made a late appeal for the drafting to be amended. However, we did not hear back. That was a time frame issue.

CHAIR: I accept that and you have made that clear. I am just trying to work out what 'unfavourable to landlords' means.

Mr Nicolas: It results in disputes about what the threshold is. What we are trying to avoid is a dispute, which is to the detriment of all parties not just the landlords.

CHAIR: You do not want to land in court. No-one wins.

Mr Nicolas: Correct.

Mr HUNT: Representing stakeholders from right across the country, you will have learned some lessons and brought those learnings to your submission, I have no doubt. What do you think is missing? At the same time, do you think the bill has succeeded in modernising the property framework and the related processes? It is a fairly broad question.

Mr Newton: In broad terms, yes, from our perspective, our interest is in part 9 pertaining to leasing where we are satisfied and comfortable with the changes made. There are a couple of amendments that we would suggest, but on the whole it has improved the drafting and we are happy with it from our sector's perspective.

Mr Nicolas: I tend to echo those comments. The drafting is simpler and easier to understand so it has achieved that purpose. In terms of what is missing, as James alluded to, leasing generally is heavily regulated and retail shop leasing especially so. To the extent that the bill does not deal with something, it is dealt with by other legislation. From our perspective, it is not missing anything because it is dealt with elsewhere. I am thinking of certain provisions of leases that are quite often negotiated—indemnities, termination rights, those sorts of things. They are picked up in either the unfair terms regime or the special legislation that applies to retail leasing.

I do not think there is anything missing from the Property Law Act. As a body of legislation that is intended to deal with the main issues and the important issues, it does that and I think it does it in a balanced way. I look at, say, a breach scenario in Queensland. A landlord has to give a notice to the tenant before they seek to re-enter. In New South Wales, by way of comparison, if a tenant has not paid rent, the landlord can simply re-enter; there is no requirement to give notice. From that perspective, I think the bill fairly apportions risk and liability between landlords and tenants and it has achieved that purpose.

Ms BUSH: Thanks for attending and thanks, James, for being diligent and staying in for most of today. A lot of the questions I had around your submission have been spoken to, but you kind of foreshadowed at the end that there might be some last-minute amendments sought by some stakeholders around early lease terminations, hardship provisions and rental caps. Do you anticipate that that is something which might reasonably come up, or was it kind of a statement around foreshadowing that?

Mr Newton: Throughout drafting, we were not privy to the inputs of other industry groups that represent small businesses, tenants or the like. Their experience in this space tells us to be cautious and defensive. With the benefit of hindsight, the committee's consultation was not used to prosecute some arguments that we may have expected to be brought to the fore during the drafting and deliberations with the department, which I think in our mind we would imagine considered and ultimately put to one side any arguments that might look to fundamentally reshape the status quo. Later in the year we have a statutory review of the Retail Shop Leases Act so I am sure some of those arguments might be borne out then.

CHAIR: There are no further questions, so I would like to thank you for coming this afternoon and for your written submission.

HADDLEY, Ms Jessica, President, Strata Search Agents Association Queensland Inc.

RUTLAND, Ms Lisa, Treasurer, Strata Search Agents Association Queensland Inc.

CHAIR: Welcome. I invite you to make an opening statement of up to five minutes, after which committee members will have questions for you.

Ms Haddley: I am president of the Strata Search Agents Association of Queensland, which is a newly incorporated body of professional search agents. Lisa and I are both principals of our own body corporate search agency businesses. In addition to that, in my previous career I worked as a solicitor.

Our members are specialist practitioners of body corporate disclosure. Although our industry has existed since the mid-1990s, it was not represented in the Community Titles Legislation Working Group. Given our specialisation in this field, we really believe we are ideally placed to provide informed comment on the planned seller disclosure regime in part 7 division 4 of the bill, particularly in relation to the proposed body corporate certificate.

Our association does support the objects of the bill, being the implementation of a statutory seller disclosure scheme in Queensland to empower buyers to make more informed decisions to purchase. However, we do not believe the bill as introduced meets this objective for lots and community title schemes. Our association's main concern is the proposed body corporate certificate. It is our view that important legal, practical and commercial considerations have been overlooked in determining in particular the mechanism by which sellers will obtain this certificate.

Our primary concern is that sellers will no longer be carrying out their own searches as part of the pre-contract disclosure process. Instead, they are going to be required to pay for a pre-prepared disclosure document in the form of a body corporate certificate. This document can only be prepared by the body corporate or its agent, which in most cases will be a body corporate management company.

Strata search agents such as Lisa and I will no longer undertake this work as a seller's agent. Monopolisation of this important disclosure function will likely have significant negative consequences for both buyers and sellers. Arguably, the only parties that stand to benefit from this monopoly are going to be the large players in the body corporate management space, which will likely welcome this new lucrative revenue stream.

It effectively means that sellers will no longer be able to meet their implied warranties under section 223 of the Body Corporate and Community Management Act without undertaking their own additional inspection of the body corporate records. We briefly cover these implied warranties in our submission, but in a nutshell they require sellers to undertake their own pre-contractual searches of body corporate records. In fact on page 4 of the REIQ's contract for sale of residential lots in community titles schemes, sellers are specifically warned that—

… the Contract include warranties by the Seller about the Body Corporate and the Scheme land. Breach of a warranty may result in a damages claim or termination by the Buyer.

The warning further states that prior to contract—

Sellers should consider whether to carry out an inspection of the Body Corporate records to complete this section.

The body corporate industry is largely unregulated. As noted in SCCA's submission, which has been verbally reaffirmed in the evidence they have just given, limitation of buyer remedies have been inserted into the act which essentially means that this unregulated industry will be protected from liability for defective certificates. A buyers only recourse under the bill as proposed will be termination of the contract prior to settlement. Sellers will have no recourse for defective certificates, except to sue the body corporate, which is effectively suing themselves as they are a member of the body corporate. This is not in the interests of the consumer and will result in the implementation of what we feel will be an inferior strata disclosure scheme to the one that is currently operating.

Our submission covers at length the reasons we consider the consumer will be worse off under the proposed changes. We also include a number of recommendations. Our overarching recommendation is that, instead of sellers attaching this body corporate certificate to their seller disclosure, what they should attach is a certificate of inspection of body corporate records. That document, we would suggest, would include the majority of information proposed by the bill as well as the documentation suggested, and that can be provided by the body corporate on the proposed five business days notice. Alternatively, it can be obtained directly by the seller or the seller's agent as an interested party, by them being granted access to search the body corporate records within one business day so as to prepare their own certificate.

This very minor change to the bill will uphold the principle of privity of contract. It is going to enable sellers to be able to tick those implied warranties in their contract because they know that what in fact they are disclosing to the buyer is accurate, and they are not going to have to rely on what, in most cases, will be an automated printout from a third party which bears no responsibility for defective certificates. In our view, it also supports one of the main concerns of the REIQ submission and that is namely the lack of infrastructure for the broader community to comply with this disclosure obligation. I note that Ms Mercorella from the REIQ, in her evidence to the committee earlier today, supported search agents' ongoing role in the seller disclosure process. Our view is that search agents should continue to play a key role in that infrastructure. Thank you, committee.

Mrs GERBER: Thank you very much for appearing this afternoon. Have you had a chance to view DJAG's response to your submission, particularly in relation to search agents being included in the definition? If you have not, I am happy to talk you through it, but if you have, I am interested in your response to that.

Ms Haddley: We have seen DJAG's response to our first submission which was quite disappointing from our perspective. Is that the response that you are referring to?

Mrs GERBER: I think there has been a subsequent one.

Ms Haddley: Nothing that we have received directly. The earlier response they provided to us was to the effect that search agents were able to act on behalf of the buyer or, indeed, on behalf of the body corporate as the body corporate's agent, but what our main concern in that regard is the conflict of interest. If we are to act as an agent for the body corporate, effectively the seller is unable to satisfy their implied warranties. Was there anything else specifically that you wanted?

Mrs GERBER: I think that their most recent response perhaps is a little different to that. They have said that their response is that the existing section 206, disclosure statement, and section 205, body corporate information certificate, will be replaced by the body corporate certificate, prepared by the body corporate or a person authorised by the body corporate for an interested person, but they are saying that this could include a body corporate manager or potentially a search agent.

Ms Haddley: I think the delineation there is that under the current mechanism in the bill, the certificate is obtained from the body corporate, so it is a body corporate prepared document, or the body corporate can engage an agent to prepare that document. What we are saying is that the certificate itself needs to be something that the seller can elect to prepare after undertaking their own independent investigations of the body corporate records. This is important because without eye-balling the records themselves, without reading or sending an agent such as ourselves with experience to read through the minutes of meetings to see what levy motions have passed, to look at the community management statement, to confirm that the interest entitlements and the contribution entitlements are actually reflected in the role, you are essentially going off the say-so of records which may not be factually accurate.

I can tell you, from my personal experience—and I know Lisa is the same—day in, day out we are looking at documents that are wrong, that have errors. We are finding schemes where a motion was passed in the previous general meeting for the registration of a new CMS because by-laws have changed, and the strata manager has just forgotten to register the CMS. If more than three months has passed, a general meeting needs to be held to pass a fresh motion. For example, we are finding insurance which has expired. If the platform that they are using has incorrect insurance information inputted into it, which is basically a data entry error, that will be reflected by a faulty, defective certificate. The seller has no way to determine whether or not that information is accurate without actually eye-balling the certificate of currency. As search agents, we go in there and we manually read and review the documents. We pull out our calculators, we calculate the levies as they should be as per the motions and we compare that to what has been levied on the actual statement. This level of detail is not something that is done within the body corporates as far as we are aware. Largely it is a fairly brief process which involves pressing a button in StrataMax or DocMax, spitting out the relevant levy information. Nine times out of 10, this is carried out by very junior staff, not experienced body corporate managers.

Mrs GERBER: Where does the liability for errors in the certificate rest?

Ms Haddley: Under the proposed bill, the liability does not rest with the body corporate. You will note from SCA Queensland's submission, their recent one, which only ran to two pages—which I found quite disappointing considering the matters raised—they said they were pleased with the limitation on the buyers' remedies inserted into the bill. What I gather they mean from this is they are pleased that the buyers are not able to sue the body corporate for producing defective or incomplete certificates.

That may well be in the interests of the body corporate manager who is pocketing money for preparing these certificates, but it is not in the interests of the seller whose contract falls over, and it is not in the interests of the buyer.

Mrs GERBER: I note that your submission also talks about your industry and some job losses and how it might mean that your nuanced work is affected by the proposed amendments in this bill. Can you give us an indication of how many jobs are supported by a strata search and what kind of losses you are talking about?

Ms Rutland: There are 14 members of Strata Search Agents Association Queensland. In my business, I employ four people.

Ms Haddley: I employ four people as well. What we should point out, though, is that our association was hastily organised in the last couple of months in response to the bill because we were not actually included in the CTL working group. We found out about the bill after the consultation period had closed. I took it upon myself to, when I found out about it, reach out to as many search agency businesses that I could. Of course, we do not have all of them yet because it has been such a quick process. What I can say from my business personally, I have a business that 100 per cent prepares seller disclosure statements. In the past, I have also acted for buyers producing purchaser reports, but such was the volume of demand for the service that we provide, typically to real estate agents, that now my business exclusively prepares these section 206 disclosure statements.

One of my employees, who is the most competent, remarkable person, has only been doing this in her professional working life. She is 30 and this is the only job she has ever done. She does not have any qualifications. If this legislation were to come in, effectively she will be unemployed because we will no longer have a business.

The argument is that it is still open for search agents to undertake purchaser reports, but as we note, not all purchasers spend the money to undertake purchaser inspections, and then you will have the businesses fighting it out for the small volume of purchaser reports that there are. We argue that seller disclosure—proper seller disclosure by search agents who are actually reading the documents—is preferable to automated disclosure prepared by the body corporate which is not an independent party. They have a vested interest arguably in not disclosing information that could indicate mismanagement of schemes.

CHAIR: What is the solution?

Ms Haddley: We provide a solution in our submission and it is a very simple one: that basically search agents still be allowed to act as an agent for the seller in order to prepare a document. You can call it a body corporate certificate, but I have suggested that we call it a certificate of inspection of body corporate records. Rather than this be a printout generated from DocMax that is essentially money for jam for the body corporate managers, provided within five business days, search agents or sellers themselves, if they have the capability to do so, can be granted access to search the body corporate records as we currently do soon one business day's notice, and then prepare their own certificates.

CHAIR: Going back a step, what happens now? Do body corporates issue—

Ms Haddley: That is what happens now.

CHAIR: No, hear me out. Slow down. What happens now? Body corporates do not do the certificates; is that correct?

Ms Rutland: The body corporate prepares a section 205 certificate. They are always prepared by the body corporate manager. The section 206 disclosure can be prepared by the body corporate manager.

CHAIR: So the body corporate certificates in relation to section 206—

Ms Rutland: No, in relation to section 205.

Ms Haddley: They are planned to go. The strata managers currently are doing these 205 certificates, and sellers currently do the 206.

CHAIR: So they will no longer exist?

Ms Rutland: The 205 certificate is a certificate for the buyer—

CHAIR: They will no longer exist?

Ms Haddley: No, it will be replaced by this one document. What we are saying is that it should not be a document that may only be prepared by the body corporate because it is effectively denying sellers the ability to satisfy their implied warranties, and it is going to open up a whole host of issues. What we are suggesting is that this document can be prepared by the body corporate on the proposed

five business days. Alternatively, the seller or the seller's agent can be granted access to the records to prepare their own certificate. It is a very minor change to the bill itself, but it could have huge implications for the real estate industry. We typically turn around—

CHAIR: Slow it down. How does it have implications for the real estate industry?

Ms Haddley: Real estate agents can currently go direct to the body corporate for all of their seller disclosures if they want to, but the body corporates have seven days to prepare these documents. If the real estate agent wants it sooner than that, the body corporates typically charge urgency fees which are quite high. Instead, what they typically do is put an order through a business such as mine or Lisa's or one of our other members. We will book in that search as soon as we can—sometimes it is the same day, sometimes the next day—and we will typically get that disclosure out to them within 24 to 48 hours more cheaply than the body corporates do it.

Ms Rutland: The strata managers do not do the section 221 implied warranties. All they are doing are the section 206 disclosure requirements. The sort of work that we do is incorporating both section 221 and section 206.

CHAIR: Did you meet with representatives from DJAG on 15 February?

Ms Haddley: Yes, we did.

Mrs GERBER: Talking practically, if the bill passes in its current form, and it means that your businesses are essentially redundant, locked out of being able to provide the certificate for a seller, and then we see a case of a defective certificate, for example, as you have described, but it is not picked up, how would a seller pick that up? How will that be picked up? I understand that you said that the recourse would be to end the contract or you sue the body corporate, which is essentially suing yourself. Talk me through the practical outcomes of—

Ms Haddley: The seller can only pick it up by doing their own independent inspection of the body corporate records. The seller will have to pay for this body corporate certificate and then they will have to pay again to search the records to satisfy themselves that the certificate is in fact accurate. It does not make a whole lot of sense to have this document—

Mrs GERBER: But if they do not do that? What if the seller does not pay? If the seller gets that certificate and says, 'I am satisfied that I have done my due diligence here and use that,' and then there is a sale that happens as a result of that, where does the liability rest and what could be the potential consequences of that?

Ms Rutland: Depending on what the error is, the buyers would presumably do their own due diligence investigations in addition to the disclosure. If they find an issue then they are free to terminate the contract without any—

CHAIR: Wouldn't a buyer engage yourself to do that search?

Ms Rutland: They can do, yes, but they do not have to.

CHAIR: Do they now?

Ms Rutland: Yes, absolutely.

Ms Haddley: They do. The process is generally disclosure at the outset from the seller and then the buyer undertakes their own due diligence prior to settlement.

CHAIR: Does the buyer or their lawyers use your service?

Ms Rutland: Yes, absolutely.

Ms Haddley: Not typically at the time of contract. Usually it is prior.

Ms Rutland: My business is different from Jessica's business. I do both, buyer searches and—

CHAIR: What I am trying to work out, I sign a contract to buy a unit, I go to my lawyer, I say, 'I have just bought this.' He tells me all the searches he is going to do, he asks me for my cheque. There are two options from my understanding, a lawyer can go and do it himself—

Ms Haddley: Which rarely happens.

CHAIR: It rarely happens because—

Ms Haddley: They are too highly paid.

CHAIR: We will not go there. The committee is not dealing with that at the moment. Or they go to you.

Ms Rutland: Yes, absolutely.

Ms Haddley: Yes, that's right. The extent of inquiries undertaken—

CHAIR: I understand that there may be a reduction if this bill passes—

Ms Haddley: No. It is the quality of disclosure we are talking about.

CHAIR: No, I understand your reservations about how body corporate managers will perhaps not be as diligent as what your service is. What I am trying to ascertain is that you will still have an operable business, maybe not as great—

Ms Haddley: I will not.

CHAIR: At all? So no purchasers' solicitors will come to you?

Ms Haddley: I do not act for purchasers. My business has in the past, but as I explained to the member for Currumbin, the volume of seller disclosures we were preparing was so large that now we exclusively act for sellers, typically via real estate agents. Lisa will still most likely have a portion of her business, but many of our members, my business, will totally end.

CHAIR: Your business is solely providing certificates to sellers?

Ms Haddley: We undertake seller disclosure. That can look very different to the 206 disclosure prepared by body corporates because we actually disclose a lot of documentation as a matter of convention.

CHAIR: Your business is structured around providing seller certificates

Ms Haddley: Seller 206 disclosure statements and associated documentation to satisfy sellers' implied warranty.

CHAIR: Thank you. I have got it. Are there any further questions from the committee? We have gone over time. We do that quite often.

Mr KRAUSE: I would like to thank the submitters for their comprehensive work and explanations.

CHAIR: If there are no more questions, I conclude this session. Thank you for your written submissions. Thank you for coming along and explaining all that to us.

NOBLE, Mr Brian, Private capacity

CHAIR: Good afternoon. Thank you for being here. If you wish to make an opening statement we allow five minutes. We are not strict. We will not cut you off at 5½ or six minutes. After your statement we will ask you some questions.

Mr Noble: Thank you very much, committee, for hearing me and inviting me along. I am a solicitor and I have been practising for about 37 years, primarily in property law. I said in my submission that the proposed section 65 of the Property Law Bill is a very useful step forward in relation to easements. It is an area of law that most of us do not get involved in the detail, but since I have been in practice on my own I have had a number of clients come to me in relation to enforceability of easements and it has highlighted the lack of protection of parties to easements or owners of land.

Easements are a peculiar creation. They give somebody a right over another person's land. That right is not exclusive so it is not like a lease. It attaches to land and therefore when the land is sold, whether the land is benefited by the easement or is burdened by the easement, that easement remains in place. As between the original parties to the easement, the terms of that easement are binding on both parties, like a contract. When both of those parties sell their properties, the issue arises as to which of those clauses in the easements are enforceable and which can be enforced by one party. Because easements have been around since the 12th century they have very much an old common law response to things which says basically those covenants that are negative covenants in the easement, such as you will not interfere with the dominant tenement's right to use the land, they are enforceable by subsequent owners, but a clause in an easement which says that the grantee will contribute to the cost of maintaining the easement, that is not enforceable against subsequent owners who are the grantee unless they are drafted in a particular way. What that means is that the document that you look at when you buy a piece of land and you look at your easement and you look at the words in the easement, those words might say one thing to you as the reader of the easement, but as to their legal enforceability are completely different—absolutely completely different.

The QUT property law paper in 2018 has a really good synopsis of what the history of this section is and why it is necessary, but I submit that it should go further and say that all covenants in easements should be binding on subsequent parties so that when everybody reads that easement, the terms of the easement that are enforceable are there in black and white for everybody to read. That is an enormous step forward from the position we are in now and there is concern in the QUT paper that it might be going too far in the sense of people might take advantage and try and put clauses in easements which are not appropriate. What I am suggesting is that we go the whole way, but then we have exceptions to say that if there are certain issues that should not be in the easement that there is a legislative prohibition on those types of clauses. The state government in relation to busway easements, easements of support for busways, in section 28A of the transport act says that all the terms of busway easements are binding on subsequent owners. So the state has gone to the extent of saying that all provisions of certain types of easements are binding on subsequent owners of the land that benefits from the easement and the land that is burdened by the easement. I am saying that should apply because from a consumer point of view the person in the street needs to know what his rights are.

I acted for some people up at Noosa Waters a few years ago. They had reciprocal easements over a driveway. They were the body corporate, so each body corporate had reciprocal easements. The easements were put in place by the developer, all very normal, and I said to the client, 'You are not the original party to the easement so you have no contractual rights as against the other body corporate. You have to rely upon what the common law says.' I said, 'You have no rights to enforce the recovery of moneys from the other body corporate, they have no rights to recover from you because of the way it is drafted and the right to require them to maintain the property is not enforceable either. It reads as plain as you are entitled to recover those moneys, but the law does not let you do that because they are not drafted as negative covenants.'

CHAIR: Could you repeat that, sorry?

Mr Noble: Because the particular easement, the obligations to pay were not drafted as a negative covenant or in a covenant in a way—this is a peculiarity of it. The courts say if you are going to try to have a right to recover money as between subsequent owners, not the original parties, that the provision to pay the money has to be so entwined with the right to use the land and not as a standalone covenant; in other words, peculiar drafting, which no-one knows with any certainty that they have achieved that you cannot recover the moneys from the other party to the easement.

CHAIR: What is a negative covenant?

Mr Noble: If you have the road through your parcel of land and you say I will not interfere with the benefit of the landowner using that road, that is a negative covenant. There is a whole heap of historical law in relation to this and we in Queensland and lots of other jurisdictions passed statute to overturn what is the common law and to make it more reflective of today's current requirements. At the moment what is proposed in section 57 is that clauses and easements which relate to use, maintenance or ownership pass down the line so that subsequent owners can enforce clauses which relate to use, ownership or maintenance. I think subsection 3 gives a couple of examples of what are use, maintenance or ownership, but they do not cover a lot of other clauses which are commonly found in easements these days and easements that the government itself requires in easement documents, whether they are the grantor or the grantee.

Mrs GERBER: Can I ask a question?

Mr Noble: Feel free because I was not too sure how much information I needed to provide about this law of easements so I am happy to take questions.

Mrs GERBER: Have you seen DJAG's response to your written submission?

Mr Noble: It doesn't really—

Mrs GERBER: It confused me as well. Essentially what DJAG is saying is that New South Wales only covered positive covenants and in Queensland we have made it broader and we are applying it to all covenants and essentially as drafted clause 65 applies to a covenant contained in a registered easement over burdened land, for the benefit of other land, and provides that an obligation, whether positive or negative in relation to the use, ownership or maintenance of the burdened land binds the guarantor and the guarantee of the easement and their successors in title. Accordingly, what DJAG is saying is that only covenants in registered easements will have the benefit of the section. Is that essentially what you are asking for?

Mr Noble: No. I agree with what DJAG says, as put into the legislation. I am saying that what is proposed by DJAG does not go far enough to cover off all the types of clauses that are currently being drafted into easements. For instance, I have a client, a grazier, who bought a parcel of land. There is a big gas pipeline through the land. It is potentially quite explosive. There is an easement in place between the original owner of that land and the person who installed the pipeline. My fellow is the third owner down the track of the land through which the easement runs. Under the easement the grantee, the owner of the pipeline, has to take out public liability insurance and it has to indemnify the landowner from any damage caused from the pipeline being broken or whatever. My fellow, who is third down the line, is not legally entitled to enforce those obligations against the owner of the pipeline under the current law.

I have spoken to a number of people about this who are quite senior practitioners and academics in the law as well and they have said that what is proposed by DJAG does not cover off the obligations to take out insurance or the obligation to indemnify. That to me is completely unreasonable because when that person goes to buy the block of land, he reads the easement and it says that the holder of the easement will take out insurance—I am just using this example; there are lots of other clauses—they will indemnify him and they will take out insurance. That obligation cannot be enforced by the landowner. It can be between the original landowner and the original easement. This is really peculiar law. This is the law.

Mrs GERBER: Why can it not be enforced?

Mr Noble: Because it is not a negative covenant.

Mrs GERBER: When this bill comes into effect, it still cannot be enforced?

Mr Noble: When you look at the words 'use, maintenance or ownership' and you look at the examples in proposed subsection (3), none of them cover off the obligation to take out insurance or the obligation to indemnify.

CHAIR: What is the solution, Brian?

Mr Noble: You say that every covenant in an easement that relates to the use of the easement land is binding on successive owners. The Northern Territory government actually has no restrictions. New South Wales is too narrow. We are going to be better than New South Wales but we are not going as far as the Northern Territory. The reason I would like to go as far as the Northern Territory is I do not want people coming to me or other lawyers saying, 'What do these words mean?', and we are having an argument about what they mean. You can have exceptions for people who draft easements and try to incorporate clauses that abuse the system; I have no problem with that. What is expected by parties and clients in relation to drafting easements today is completely different to what it was 60 years ago.

CHAIR: The obligation is to be passed from purchaser to purchaser?

Mr Noble: The statute says if it is in the easement then subsequent owners of either the burdened land or the benefited land have to take responsibility and can enforce their rights under the easement.

CHAIR: In your example about the gas pipeline, if this was the way you suggest, the current owner would be able to take action against the person if they did not have proper public liability insurance—

Mr Noble: Correct—or an injury occurred—

CHAIR:—because of their pipe?

Mr Noble: Yes. Take a home for instance. If you have your own house block and you have a shared driveway with a neighbour, not an uncommon situation. The neighbour has some vehicle that is not required to be registered, so put to one side registration laws. If that person injures your child or injures you and you want to have a go at them, in an ideal world you would take it—I beg your pardon. The reciprocal driveways have reciprocal access easements, so there is basically an arrangement. Each of you are subsequent owners of the properties. The easements provide that if one party damages the other, there will be an indemnity. The easement requires insurances to be taken out. The other party does not take out the insurance. There is no obligation to take out the insurance; there is no obligation to indemnify. Say somebody gets injured and you want to go and sue that person but that person has no money because the house is not worth enough, that could all have been addressed if you had the obligation to take out insurance. That is an example. I can give you a whole heap of other examples.

CHAIR: I believe you have made clear what needs to happen. I am conscious that we have gone over time. I give the committee who are still around the opportunity to ask questions. If not, I propose to close this session and move on to the next. Thank you, Mr Noble, for coming along and thank you for your fulsome explanation and your written submission.

Mr Noble: Thank you.

CHAIR: As a practitioner I know how busy one could be.

DAPONTES, Ms Alexandra, private capacity

CHAIR: Good afternoon and thank you for being here. I invite you to make an opening statement. We say five minutes, but we will not pull you up if you go over. After that the committee members will have some questions for you.

Ms Dapontes: In particular I am objecting to the seller disclosure. We do not need a more informed position prior to signing a contract to purchase land because protections already exist in the Fair Trading Act which apply to representation by the real estate agent. If the agent's representations are untrue, the vendor is liable to the purchaser for loss suffered by the purchaser. As a result of relying on agent representations, any misleading or deceptive conduct by the real estate agent on behalf of the seller is covered already in existing Australian Consumer Law.

Real estate agents have to be licensed in Queensland and the licences are given by the Queensland Office of Fair Trading. A person who has suffered a loss caused by a real estate agent may claim compensation from a compensation fund under the Queensland Agents Financial Administration Act 2014. There is already current pre-existing legislation on this. I do not feel that further red tape should be introduced because the buyers are already protected.

On the second aspect of the disclosure by the seller, the buyers are protected by solicitor's insurance. The buyer should do their own searches via a professional conveyancing solicitor. If disclosure is left up to the seller they may not have enough experience in the property to make full, correct and accurate disclosure and it may be unreliable. In any event, the buyer should do their own searches via their professional conveyancing solicitor. They should not rely on the seller to make disclosure as it may not be truthful or reliable or accurate, as previously stated. The buyer should always make their own investigations of the properties they are buying and the obligations should be based on the buyer, not the seller, to make disclosures and discovery.

I feel that the buyer should use professional solicitors who specialise in conveyancing and have experience in conveyancing and know exactly what searches to do to make discovery in regard to any property—for example, main roads searches for future roads going through the property, land tax that may be owing et cetera. If the conveyancing lawyers make a mistake, the buyer is covered by the lawyer's obligation. The obligation should not be placed 100 per cent on the sellers, who may not make accurate disclosure or they may not have the correct information to make disclosure on the property they are selling. Basically, I feel that the discovery of any information regarding any property should be done on the buyer's side by experienced conveyancing lawyers who can be relied upon.

Mrs GERBER: Thanks for your appearance this afternoon. Can you tell the committee a bit more about why you think that? What has informed your experience?

Ms Dapontes: My experience is that I have worked in law for 24 years. I work at a law firm. I have previously worked in conveyancing for a conveyancing firm. They did legals as well as conveyancing, so I have a background of experience in conveyancing. I am also currently studying at university for a degree in law, but mainly my experience is roughly 24 years of working in conveyancing for part of that time and litigation and assisting the barristers and my principal, who is a litigation solicitor. From my knowledge and my experience of working in law, I really do not think that the seller should be obligated to make disclosure because they have a current ongoing obligation to make full and frank disclosure anyhow. The buyer should not just rely on the seller making discovery or disclosure because the seller may not have the accurate information. They may get it wrong, so the buyer should always—always—do their own discovery and searches through a professional conveyancing solicitor. That way I feel that they will be fully protected.

Mrs GERBER: Have you had any experience doing conveyancing in New South Wales?

Ms Dapontes: No, but the degree that I am studying is from Southern Cross University, it is in New South Wales, so we study both New South Wales and Queensland law.

Mrs GERBER: But have you had any experience doing conveyancing in New South Wales?

Ms Dapontes: No.

Mr HUNT: Thank you very much, Alexandra, for taking the time to come in and making the submission. I can tell that it is something that you do feel very strongly about. Correct me if I am wrong, but the concern is that a layperson like myself should, from the outset, engage a professional to take care of all of these matters, taking the onus off myself and also taking the risk off myself. Is that right?

Ms Dapontes: Correct, because from my experience in working in conveyancing there are so many things that can go wrong and so many things where the seller or buyer can get sued by the other party. You need a very experienced conveyancing law firm that knows what they are doing because

the lawyers are not only experienced but also insured, so if they make a mistake then the buyer, for example, of a house is protected by that. From my experience of doing conveyancing, there are so many things that could go wrong. Once you sign that contract with the real estate, there are so many things that can go wrong and to rely on the seller to make that disclosure and to make it law where the seller has to make disclosure is going to give a buyer a false sense. A lot of people like to do their own legals. Because there are so many things on the internet and in books, a lot of people like to do their own legals, but there are so many things that you need to know and a buyer buying a house really needs a conveyancing solicitor because, as I said, so many things can go wrong. You might not do the right searches and then the next thing you know you have bought a $2 million house and they are building a main road through it and your house will be resumed by the government.

Mr HUNT: If there are so many things that can go wrong, is another layer of disclosure—and I am not putting words in your mouth; you can correct me—a good thing given that there are so many things that can go wrong or has it, in your view, just added another level of complication that a layman could fall foul of?

Ms Dapontes: Another layer of disclosure is good, but what would happen is the buyer might be mistaken into relying heavily on the seller for disclosure and the seller may get it wrong. I own a property. I have only owned one for some 25 years or whatever. I do not know everything about that property previous to those 25 years and I may get it wrong. For example, if a seller has to make disclosure, it would be things like if there was a meth lab—a drug lab—because obviously that affects the house and certain remediation has to be done which costs $30,000 to $40,000 roughly or it might be that the seller is not a person who is up with business or those sorts of things or they might not be experienced in this sort of thing and the buyer would then be relying on a seller to make disclosure when buying a property. Buying a property entails a lot of money usually and you are relying on the seller to make disclosure. It may not be accurate. They may have it wrong.

A buyer would be protected by a conveyancing lawyer who has experience and knows what to look out for. I would put more of my trust into a conveyancing solicitor if you are buying property rather than reliance on the seller, because you are relying on a seller to make disclosure and it may not be right and it may not be true. A seller has their own agenda. They want to sell for as much as they can. They want to get top dollar for their property, so it may not be true what they are telling you, it may not be accurate, they might be mistaken and various things like that. I feel the obligations for discovery should really be placed heavily on the buyer to do their own searches and get a solicitor to do it, basically. I would not recommend anyone doing their own conveyancing when buying property. It is very dangerous.

Mr HUNT: Thank you very much, Alexandra.

CHAIR: Thank you for your attendance today and thank you for your evidence. That brings to a conclusion this hearing. Thank you to everyone who has participated today and to all those who helped organise this hearing. Thank you to our wonderful Hansard reporters. A transcript of the proceedings will be available on the committee's webpage in due course. I also want to thank the secretariat staff for their help in putting this hearing together. I declare the public hearing closed.

The committee adjourned at 4.37 pm.