

Property Law Bill 2023

Submission No: 11
Submitted by: Strata Community Association Qld
Publication: Making the submission and your name public
See attached:

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Re: Property Law Bill 2023- Strata Community Association (Qld) (“SCA(Qld)”)

Dear Committee,

About SCA (Qld)

SCA (Qld) is the peak industry association supporting Queensland’s strata sector, with more than 1,200 individual and corporate members who help oversee, advise, and manage assets worth tens of billions of dollars.

As the peak body for the strata industry, SCA (Qld) is in the unique position to understand the sector holistically. SCA (Qld) understand the strata sector from a broad array of viewpoints owing to our diverse membership. SCA (Qld) represents body corporate managers, community titles schemes with committee members acting as nominees, lot owners as individuals, and service providers to the strata industry including specialist insurers, painting suppliers, energy suppliers, solicitors, accountants, water and plumbing providers, banks, elevator maintenance professionals, cleaning providers, surveyors, valuers, glaziers, IT providers and pool servicing and maintenance providers.

At the time of writing, there were over 520,000 lots in more than 50,000 community title schemes across Queensland. SCA (Qld) members manage approximately 70% of these lots.

The Bill

As a stakeholder in the property sector, SCA (Qld) is pleased to submit feedback regarding the Property Law Bill 2023 (the “Bill”). SCA (Qld)’s main focus with respect of this bill is to support the modernisation of the sector, particularly the conveyancing process whilst also ensuring that the new seller disclosure regime for body corporate lots is fit for purpose and equitable.

Seller Disclosure

At present, SCA (Qld) is a participant in a root and branch review of the state’s body corporate law through the Community Titles Legislation Working Group (“CTLWG”) which is tasked with making recommendations to the Government about broad reform to the sector. SCA (Qld) made submissions to this body regarding seller disclosure throughout this process.

SCA (Qld) believes efficient consumer protection is best achieved through summary disclosure that is accessible and easily read by a lay person. SCA (Qld) reiterates our belief that excessive disclosure confuses rather than informs; can frequently lead to disputes, and that summary disclosure is the best way of transferring critical information.

SCA (Qld) is pleased with this element of the Bill as drafted, we believe an appropriate “happy medium” has been found in terms of the volume of disclosure required.

The information to be disclosed as specified by the Body Corporate and Community Management and Other Legislation Amendment Regulation 2023 (the “Regulation”) strikes, we believe an appropriate balance between efficient consumer protection and avoiding “over disclosure” which materially reduces consumer outcomes. As we have said throughout this process an appropriate balance is to ensure that key information is presented to prospective purchasers whilst not

overwhelming them, which has deleterious outcomes according to research¹²³ we have examined as an organisation.

Liability and Remedies

SCA (Qld) is pleased with the drafting of the Bill and the specific protections it grants to body corporate managers from liability. Subdivision: 3 Termination by buyer, specifically sections 104, 105 and 106 of the Bill ensure that body corporate managers are protected from liability. Privity of contract is an important legal principle and one we are pleased to see protected in this Bill.

Body corporate managers who are members of SCA (Qld) are required to have professional indemnity insurance and we believe this would be appropriate coverage in any case, regardless, we are pleased that our members are explicitly protected.

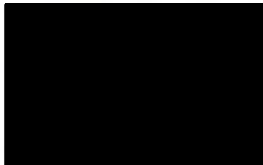
Office of the Commissioner

SCA (Qld) notes that the proposed certificate mandated by the Regulation contains no references to the Office of the Commissioner for Body Corporate and Community Management. We believe a brief summary of the duties and functions of the Commissioner's Office may be helpful to potential buyers. Even a simple acknowledgement of its' existence including dispute resolution and education services would be of benefit to consumers in the body corporate sector.

Conclusion

SCA (Qld) largely supports the Bill and accompanying Regulation as drafted in respect of their support of the community title sector and welcomes the passage of positive reform.

Kind Regards,



Laura Bos (General Manager SCA (Qld))

¹ Shmuel, B., 2007. Behavioral Science and Consumer Standard Form Contracts. Louisiana Law Review, 68(1).

² Australian Securities and Investment Commission, 2019. Disclosure: Why it shouldn't be the default. Australian Securities and Investment Commission.

³ P Lunn, M Bohacek, J Somerville, AN Choidealbha & F McGowan, PRICE Lab: An investigation of consumers' capabilities with complex products, report, Economic & Social Research Institute, May 2016.

Property Law Bill 2023

Submission No: 11 - *Supplementary Submission*
Submitted by: Strata Community Association Qld
Publication: Making the submission and your name public
See attached:

Legal Affairs and Safety Committee
Parliament House George Street
BRISBANE QLD 4000

Re: Further Commentary Regarding the Property Law Bill 2023

Dear Secretariat,

We thank the Legal Affairs and Safety Committee (the Committee) and yourselves for the time taken to prepare the Bill and allowing us to participate in the hearing. The Committee process is an integral part of Parliamentary scrutiny in Queensland.

SCA (Qld) wishes to submit additional evidence following our appearance before the Committee.

Community Management Statements

SCA (Qld) again expressly notes the issue around disclosure of the Community Management Statement (CMS). CMSs' can be hundreds of pages long, including complex survey plans and other nuanced parts of body corporate law which can be extremely difficult to comprehend for an expert body corporate manager or solicitor, let alone a lay person with no experience with body corporate or intricate knowledge of the legal system.

SCA (Qld) Queensland has informed its submission into seller disclosure through the lens of behavioural science, particularly with reference to specific research regarding standard form contracts¹ ("SFC Paper") and commensurate disclosure in the sale of complicated products including financial services² ("Disclosure Paper").

SCA (Qld) supports a succinct, efficient seller disclosure regime that discloses only the most critical matters in any easy fashion to the buyer.

SCA (Qld) does not believe that large volumes of disclosure lead to more informed consumers. As the Disclosure Paper notes, disclosure does not solve the complexity that is inherent in a transaction, nor the emotional dimensions of significant financial transactions.

Research cited by the Disclosure Paper³ noted that the ability of consumers to make good decisions was severely compromised by having to consider more than two or three factors. When you consider the multitude of factors a person is required to process by the draft regime at present, when the complexity of a CMS is added it will likely impinge on consumer outcomes.

Preparing Disclosure Statements

We note the comments of some stakeholders who are critical of the role body corporate managers may play in any new disclosure regime. The new regime is likely to be labour intensive and may require body corporate management businesses to either hire new staff or contract a large portion of this work out to existing search agent businesses. We also note that a search agent may be an agent of the body corporate according to feedback provided by the Department of Justice and Attorney General.

¹ Shmuel, B., 2007. Behavioral Science and Consumer Standard Form Contracts. Louisiana Law Review, 68(1).

² Australian Securities and Investment Commission, 2019. Disclosure: Why it shouldn't be the default. Australian Securities and Investment Commission.

³ P Lunn, M Bohacek, J Somerville, AN Choidealbha & F McGowan, PRICE Lab: An investigation of consumers' capabilities with complex products, report, Economic & Social Research Institute, May 2016.

Enhanced consumer choice as to the procurement of disclosure, as well as many significant checks and balances by various parties on the documentation throughout the process will help to deliver superior consumer outcomes to the prospective purchasers. We believe given this, the Bill should pass in it's current form.

Professionalism of strata

Of concern to SCA (Qld) were some comments made by one stakeholder who directly inferred that strata managers were unprofessional and incompetent and lacking in qualifications to perform searches. We note that there is no formal qualification required to perform this task.

SCA (Qld) members are qualified professionals who undertake continuous professional development. We provide an accreditation pathway to ensure our members are up to date on education and best practice.

We would also note, at present, SCA (Qld) puts emphasis on its members' professionalism, hence we require every member practicing in body corporate management to maintain a high standard of ethical and professional conduct as outlined by its Code of Conduct. The Code of Conduct is an integral part of the SCA (Qld) membership eligibility criteria and helps ensure that there is a high degree of confidence when dealing with SCA (Qld) members.

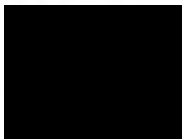
Additionally, as stated in our evidence before the Committee, SCA (Qld) has a goal to introduce regulatory barriers to body corporate management and enhance the professionalism of our sector. We are currently working with the Attorney General's Community Title Legislation Working Group on this issue.

We believe that a regulatory barrier will enhance the already rigorous standards we impose on our members, as well as ensuring non-members are professionalised, for the benefit of consumers.

We look forward to working collaboratively with Government to ensure a rigorous regulatory regime forms part of the body corporate legal framework into the future.

Thank you for the opportunity to give evidence before the Committee and we look forward to seeing the passage of the Bill.

Kind regards,



Laura Bos (General Manager SCA (Qld))