

Property Law Bill 2023

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See attached:

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10 March 2023

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

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

Dear Ms O'Sullivan

Submission on Property Law Bill 2023 (Qld)

I write to you as the President of the Strata Search Agents Association Qld Inc. (**SSAAQ**), with executive committee approval to make a submission on behalf of the SSAAQ on the Property Law Bill 2023 (**the Bill**) and associated legislation.

A. SSAAQ

1. SSAAQ was formed and incorporated under the *Associations Incorporation Act 1981* (Qld) in response to the (then draft) Bill. SSAAQ's membership includes representatives of businesses which operate throughout Queensland, from Gold Coast to Cairns, and which provide the majority of independent body corporate disclosure services within the State. Combined, the membership of SSAAQ has over 300 years' experience in the body corporate disclosure space, which makes it uniquely qualified to provide informed comment on the seller disclosure scheme proposed by the Bill, draft Body Corporate and Community Management and Other Legislation Amendment Regulation 2023 (**Draft BCCM Regulation**) and draft Property Law Regulation 2023 (**Draft PL Regulation**).

2. SSAAQ's members perform a range of services including:
 - a) **body corporate disclosure statements** on behalf of sellers in accordance with sections 206 and 223 of the *Body Corporate and Community Management Act 1997* (Qld) (**BCCM Act**). For this service, their clientele are predominantly real estate agents and sellers as these disclosure statements are provided by sellers to buyers prior to or at the time of contract.
 - b) **pre-purchase body corporate reports** for buyers. For this service, clientele are generally purchasers, including those engaged via solicitors. These reports are generally comprehensive reports obtained prior to settlement as part of a buyers' due diligence process.
 - c) **ancillary services** including acting as returning officers and settlement agents as well as the filing of court documents and undertaking title searches.

3. All members of SSAAQ undertake detailed searches of body corporate records, generally being physical searches of paper documents or databases at the offices of body corporate managers (but also remotely via electronic portals in some cases). They also carry out searches of the records of self-managed schemes.

4. Most strata searches involve reviewing lot-specific information provided by the bodies corporate such as owner rolls and levy statements/registers, as well as other documents including:
 - a) Community Management Statements (**CMS**), plans and title documents;
 - b) Financial documents, such as bank reconciliation reports and balance sheets;
 - c) Insurance policies and certificates;
 - d) Pool safety certificates;
 - e) Contract, asset and other registers;
 - f) Reports including sinking fund forecasts, insurance reports, cladding reports and workplace health and safety reports;
 - g) Meeting minutes; and
 - h) Correspondence relating to specific lots.

5. Although SSAAQ's members are not employed by body corporate managers, they attend body corporate management workplaces every day to search their records in intricate detail. SSAAQ's members are therefore extremely familiar with the software programs that body corporate managers use, their staffing, capabilities, weaknesses and workloads.

B. CONSULTATION AND BACKGROUND

1. SSAAQ's position is that inadequate consultation was undertaken with their industry in the early stages of the Bill. With the exception of one practitioner personally invited to be a panellist in the review process in another capacity, SSAAQ's members were unaware of the consultation period until after it had already expired. No representative of the body corporate disclosure industry was included in the Community Titles Legislation Working Group (**CTL Working Group**). The Property Law Act Review Team (**Review Team**) may have been unaware of the existence of the decades-long established body corporate disclosure industry in Queensland, given its existence was not cited in the 2014 or 2017 reports on Seller Disclosure in Queensland, the Bill's explanatory notes or first reading speech. SSAAQ appreciates this oversight is likely due to their (then) lack of an industry body rather than intentional exclusion.
2. Notwithstanding their early exclusion from the consultation process, upon learning of the proposed changes, the group now comprising SSAAQ's membership made a detailed submission to the Review Team on the exposure draft of the Bill (**First Submission**), raising several concerns, most notably in relation to the draft Body Corporate Certificate for the sale of a lot included in a community titles scheme under the BCCM Act (**Body Corporate Certificate**).
3. In late February 2023, SSAAQ's executive committee met with senior representatives of the Department of Justice and Attorney General and discussed SSAAQ's concerns about the Body Corporate Certificate. In this meeting, SSAAQ was advised that the exclusion of strata search agents from the consultation process was an unfortunate oversight and that SSAAQ's perspective raised several matters not previously indicated by the CTL Working Group. SSAAQ was then invited by the Department to make this submission to the Legal Affairs and Safety Committee (**the Committee**).

C. SUBMISSION SUMMARY

1. This submission exclusively deals with the proposed Body Corporate Certificate as that is SSAAQ's members' primary area of expertise. Whilst it does not consider the equivalent certificate for the sale of a lot under the *Building Units and Group Titles Act* (**BUGTA Certificate**), many of the points made below are directly applicable to that document.

2. This submission re-iterates key aspects of the First Submission, the Review Team's response and SSAAQ's reply to matters raised by the Review Team. Recommendations are then made by SSAAQ in relation to the proposed Body Corporate Certificate.

SSAAQ's Position

3. **Supports statutory seller disclosure:** SSAAQ supports the introduction of a statutory seller disclosure scheme for sales of freehold land in Queensland, under which a seller will be required to give a buyer a disclosure statement and prescribed certificates.
4. **Does not support merging pre-contract and post-contract disclosure:** SSAAQ does not support merging the current section 205 BCCM Act body corporate information certificate (**Section 205 Certificate**) with the current section 206 BCCM Act seller disclosure (**Section 206 Disclosure**) as these documents perform very different functions in practice.
5. **Does not support body corporate responsibility for pre-contract disclosure:** SSAAQ does not support the introduction of the Body Corporate Certificate if this document can only be provided by the body corporate or its agent. This Victorian model does not suit Queensland's existing legislative regime or infrastructure.
6. **Does not support weakening existing disclosure requirements by allowing exemptions:** SSAAQ does not support the inclusion of regs 4(1)(h)(ii)(B) and 4(1)(i)(ii) in the PL Regulations, which permits non-provision of body corporate disclosure.
7. **Recommends requiring registered documents to be kept by bodies corporate:** SSAAQ supports requiring bodies corporate to keep current copies of all documents registered with Titles Queensland.
8. **Recommends certificate of inspection:** SSAAQ supports a Certificate of Inspection of Body Corporate Records, which may be provided by the body corporate or its agent, but preferably by the seller or its agent. This accords with the principle of privity of contract between seller and buyer and will enable sellers to satisfy their implied warranties under section 223 of the BCCM Act.

9. **Recommends retaining Section 205 Certificate:** SSAAQ supports retaining the Section 205 Certificate as a document principally obtained by the buyer from the body corporate/its agent at the time of settlement, rather than prior to contract.
10. **Recommends refining certificate:** SSAAQ recommends a seller-provided Certificate of Inspection of Body Corporate Records with less complexity than the Body Corporate Certificate.

Reasons for SSAAQ's Position

11. It is SSAAQ's view that converting what is currently a seller disclosure obligation into a body corporate obligation will have numerous unintended consequences including (see further detail at Part E below):
 - a) **Conflicts of interest:** bodies corporate will be exclusively reporting on their own management, where currently this can be done by an independent third party;
 - b) **Auto-generated documents:** Body Corporate Certificates will be generated directly from StrataMax or equivalent software and will not be manually reviewed. In other words, there will likely be no quality control by the practitioner (body corporate manager) with the most hands-on knowledge of the content;
 - c) **Slower:** significantly slower standard turnaround times, from 24-48 hours to 5 business days;
 - d) **More expensive:** charging of urgency fees by bodies corporate for faster turnaround times;
 - e) **Consumer confusion:** due to bodies corporate having no obligation to explain or interpret what will be an automatically generated "information dump";
 - f) **Reduced consumer due diligence:** consumers will be less likely to obtain purchaser reports, given the points noted above;
 - g) **Administrative burden:** this will be unmanageable for smaller body corporate managers and self-managed schemes, particularly smaller schemes (such as duplexes and "six-packs") which typically are the most common scheme types;
 - h) **Insurance implications:** for bodies corporate and their managers as certificates are produced at their risk;
 - i) **Impact on privity of contract:** intrusion of a third party (the body corporate) into the legal contract between seller and buyer; and
 - j) **Impact on commercial transactions:** real estate agents will be required to wait 5 days to offer contracts.

D. BODY CORPORATE CERTIFICATE

1. The proposed Body Corporate Certificate is an 11-page document, which replaces the existing Section 206 Disclosure and Section 205 Certificate with a single document, which can only be provided by the body corporate or its agent.
2. The Body Corporate Certificate appears to be modelled on the section 151 Owners Corporation Certificate in Victoria. It is understood that there is not, nor has there ever been, an equivalent to the Section 206 Disclosure in the state of Victoria. As a result, that jurisdiction does not have a body corporate disclosure industry of the kind currently successfully operating within Queensland. It is SSAAQ's understanding that all body corporate disclosure obligations within Victoria are provided by individual owners' corporations themselves (and their managers).
3. SSAAQ respectfully submits that converting the current regime to a model equivalent to that operating in Victoria will:
 - a) unnecessarily complicate an already complex disclosure regime;
 - b) negatively impact on the quality of disclosure provided to the consumer (albeit unintentionally); and
 - c) result in the destruction of the body corporate disclosure industry operating within Queensland, including widespread job losses.

E. DETRIMENT TO THE CONSUMER

1. There are likely to be a range of unintended negative implications for the consumer arising out of the proposed abandonment of the Section 206 Disclosure and Section 205 Certificate in favour of the catch-all Body Corporate Certificate.

Conflicts of interest - Loss of checks and balances

2. The current independent commercially operating regime provides checks and balances on body corporate managers and self-managed schemes. This is essential, as there is no proactive enforcement of body corporate legislation in Queensland and schemes are subject to decisions by a volunteer committee which has no mandated educational qualifications. As an independent third party, sellers' search agents carry out a review of body corporate records and will often uncover issues of improper management within schemes, such as:
 - a) poor financial management, including the absence of or insufficient sinking funds for capital works requirements;

- b) expired insurance policies;
- c) sinking fund forecasts that have been approved at general meetings but never obtained;
- d) CMS's which have been neglected to be registered;
- e) CMS contribution and interest entitlements that are incorrectly recorded on the roll;
- f) missed general meetings; and
- g) mistakes in levies issued to/paid by lot owners.

3. Review Team's response:

"It is noted that some of the matters you note may be identified by search agents may also be apparent in a body corporate certificate, such as absence of sinking funds and expired insurance policies. It is also noted that, under the seller disclosure scheme, buyers will still be able to make their own searches of body corporate records (including through a search agent). The draft body corporate certificate released for consultation in August 2022 strongly encourages purchasers to conduct a search of body corporate records before entering into a contract."

4. SSAAQ's reply:

A lack of independent review of body corporate records could lead to conflicts of interest in the carrying out of disclosure obligations. Missing, inadequate or out-of-date information can only be identified if a manual search of records is undertaken wherein insurance policies, financial statements and other documents are read and reviewed each and every time. They will not be identified if data has been inaccurately entered into computer systems or not updated, as frequently occurs. Furthermore, less scrupulous managers may be inclined to hide or not disclose information of a kind that reflects poorly upon their (mis)management of schemes. For example, a lapsed insurance policy or missed levies. The recommendation that buyers be required to conduct pre-contract searches imposes an unreasonable financial and administrative burden on the consumer when this information can easily be disclosed by the seller as is what currently occurs with a Section 206 Disclosure.

Detriments to consumer service

5. A highly competitive body corporate disclosure industry has grown from the current statutory regime in Queensland. Due to its competitive nature, it provides unparalleled customer service and choice for consumers. This current environment has fostered competitive pricing for

disclosures, quick turnaround times and exceptional customer service. If search agencies do not do a thorough job, they do not receive repeat custom.

6. Most search agencies provide disclosure statements within 24-48 hours for a *fixed* cost, they do not charge “urgency fees” and will respond to queries and requests for updated documents at no or little extra cost to their clients. Nearly all body corporate management businesses where SSAAQ’s members conduct searches charge urgency fees for turnaround times that are shorter than those mandated by legislation.

7. Undoubtedly, for the handful of larger body corporate management businesses (many based inter-state), concentrating body corporate disclosure “in house” will present a welcome lucrative revenue stream for them. Unfortunately, that will not correlate with any benefit to the end consumer. This is because:
 - a) the body corporate manager will hold a monopoly on the performance of this disclosure function, with no incentive to provide timely, cost effective or useful information to purchasers;
 - b) certificates will most likely be auto-generated at the push of a button from programs such as StrataMax (as that is what occurs in other jurisdictions) without information being manually reviewed or interpreted, which can lead to inaccurate data;
 - c) these functions will likely be performed by inexperienced junior staff, instead of being prepared after a comprehensive search of records by experienced search agents. Many search agents have years more experience in this space than even some senior body corporate managers;
 - d) body corporate managers have a commercial incentive to charge “urgency” fees for providing certificates within 24-48 hours rather than the proposed legislatively mandated 5 business days. This is already happening in Victoria and NSW. In fact, these urgency fees are already being charged by most body corporate managers in Queensland for Section 206 Disclosures and Section 205 Certificates. That is why in Queensland the overwhelming majority of sellers engage private search agents for Section 206 Disclosures rather than going directly to body corporate managers. Such urgency fees are typically not charged by search agency businesses due to the commercially competitive environment in which they operate;
 - e) bodies corporate will be under no obligation to help the consumer to interpret the “information dump” they receive as part of the Body Corporate Certificate.

8. Review Team's response:

"Your submission suggests the introduction of the body corporate certificate will result in poorer consumer service for those obtaining the certificate...Your comments that search agents are able to turn around disclosure in a short timeframe at a relatively low cost are noted...A seller must disclose the body corporate certificate to a buyer prior to entering into a contract of sale. DJAG anticipates that sellers may obtain the body corporate certificate prior to placing their property on the market. In most cases, DJAG does not expect that sellers will generally need to obtain a certificate in less than the required 5 business days...You also raise concerns that the amendments will lead to certificate automation and associated risks. DJAG notes any automated certificates will need to comply with the requirements of the approved form, and the approved form will contain explanatory material to assist buyers."

9. SSAAQ's reply:

In practice, sellers generally *do not* obtain a Section 206 Disclosure at the time of listing the property for sale, with good reason. Properties may be listed for several weeks or even months without any potential buyers being identified. If body corporate records are inspected weeks or months prior to contract, there is a risk that the information provided will be out of date or inaccurate. For example, an extraordinary general meeting may be held in which special levies are raised for repairs. If a search of body corporate records is carried out prematurely, then such essential information will not be disclosed. SSAAQ's membership acts for thousands of sellers either directly or via their agents and can advise that sellers almost *always* require their disclosures in less than 5 business days due to commercial exigencies.

Regardless of what explanatory material will be provided to buyers, SSAAQ cannot understand how replacing what is currently a thorough manual investigation of body corporate records with an automated, slower and likely more expensive process will benefit the buyer or the seller. Furthermore, such changes will lead to the potential closure of businesses which currently prepare Section 206 Disclosures as body corporate managers will be disinclined to outsource what will constitute a new lucrative source of revenue.

Reduced consumer vigilance

10. Due to the vast volume of documentation included with the mandatory Body Corporate Certificate, purchasers will be less likely to make their own further enquiries such as obtaining

the crucial *pre-settlement* comprehensive strata search, which would disclose matters such as special levies, defects, future major capital works projects, etc. In the haste to complete a transaction, particularly so in the current market, it is SSAAQ's view that consumers are considerably less likely to spend substantial time on body corporate matters or understand what they will mean for the consumer in the long run.

11. The volume of material disclosed to the consumer will likely have the unintended consequence of lulling the consumer into a false sense of confidence. The principle of *Caveat Emptor* or "buyer beware," which forms the backbone of property transactions in Queensland will be inadvertently undermined.

12. Review Team's response:

"Due to the volume of information provided in the body corporate certificate, your submission suggests that buyers will be less likely to seek a search of body corporate records, which would disclose matters such as special levies, defects, future major capital works projects.

As noted by the Property Law Review, the principal rationale for requiring pre-contract seller disclosure is usually to reduce the information asymmetry between the seller and buyer, on the basis that the seller has more knowledge about the property, and to ensure that a buyer is aware of all relevant facts about the property before agreeing to purchase...The intention of introducing the seller disclosure scheme, in line with the relevant guiding principles, is to transparently and effectively provide information of value to a buyer to inform their decision to purchase, and balance the information cost between the buyer and seller...Under the seller disclosure scheme, the buyer of a lot in a community titles scheme will receive a seller disclosure statement and body corporate certificate from the seller, which together will provide information of value to a buyer to inform their decision to purchase. As many buyers currently do not obtain a body corporate information certification or a search of body corporate records, it is anticipated that buyers will receive additional information of value when deciding to purchase under the seller disclosure scheme...As noted above, the draft body corporate certificate released for consultation in August 2022 strongly encourages purchasers to conduct a search of body corporate records before entering into a contract [emphasis added]...The format and contents of the body corporate certificate are still under development, and refinements are intended to occur to the certificate to ensure that the information in the certificate is easily accessible to buyers."

13. SSAAQ's reply:

Buyers may look at several properties prior to making a decision to enter into a contract. It is not reasonable or practical to expect buyers, who typically do not engage the services of a solicitor until *after* signing a contract, to carry out their own pre-contractual searches of numerous body corporate records prior to deciding which property they wish to buy. This is particularly notable because diligent buyers will likely also undertake their own searches prior to settlement. This places an unacceptable administrative and financial burden on the *consumer*. A far better solution is for the seller to provide adequate (not automated) pre-contractual disclosure.

F. DETRIMENT TO PROPER ADMINISTRATION OF SCHEMES

1. If the functions currently performed by sellers' agents are taken entirely "in house" by body corporate managers, this will lead to an unmanageable administrative burden, particularly for smaller managers or self-managed schemes. On the former, there are still many small and sole trader body corporate managers in Queensland, noting also that this sector remains unregulated and without any mandated qualification requirements. On the latter, SSAAQ understands that up to three-quarters of all schemes in Queensland are comprised of six lots or less. Additional staff will need to be hired to perform this disclosure function, causing increased body corporate administration fees for lot owners in strata title schemes (many of which are on fixed incomes).
2. Most self-managed schemes will have no capacity or expertise to produce these certificates. Many self-managed schemes do not even prepare minutes of meetings, let alone an 11-page comprehensive document. SSAAQ's members often attend to search these schemes and they have little documentation whatsoever. To place this disclosure obligation on self-managed schemes will impact on their proper management and also be to the detriment of the consumer. Search agents perform a valuable function in assisting sellers to meet their obligations and consumers to understand what they are reading. Most self-managed schemes, simply put, do not have this capability.
3. An additional consequence for bodies corporate and their managers will likely be increased insurance premiums/issues around insurability for professional indemnity insurance policies for body corporate managers ill-equipped to provide this disclosure. If the Body Corporate Certificate is given under the authority of the Body Corporate, it is also given at their risk.

4. Review Team's response:

"Your submission raises concerns about the burden for bodies corporate arising from the introduction of the body corporate certificate, and the risk associated with production of the certificates...DJAG notes that bodies corporate are currently required to provide a body corporate information certificate upon request. The new body corporate certificate replaces the existing certificate. The information to be included in the certificate is information that is already required to be kept by the body corporate. In many schemes, many parts of the certificate will not need to be completed as they may not be applicable."

5. SSAAQ's reply:

The Body Corporate Information Certificate, otherwise known as a Form 13 is a 2 page document that takes little time to prepare and is easily automated. It has been characterised by one body corporate manager to the writer as "money for jam". The proposed Body Corporate Certificate is an entirely different document. It is more than 5 times the length and includes vastly more information and documentation. In SSAAQ's view, in order to be accurate and informative, it will take an experienced search agent at least one hour to prepare. An inexperienced person will take far longer and may not know or understand which parts of the form do not apply, leading to defective certificates. SSAAQ expects that the exemptions proposed by regs 4(1)(h)(ii)(B) and 4(1)(i)(ii) of the Draft PL Regulations are an attempt to overcome the obvious issues with requiring self-managed schemes to provide such disclosure. SSAAQ respectfully submits that including such exemptions is not in the best interest of the consumer.

G. IMPACT ON PRIVACY OF CONTRACT

1. The mandatory involvement of an unrelated third party (the body corporate) in the contract between buyer and seller could have significant unforeseen legal consequences. As noted in SCA Qld's submission regarding the proposed Bill, this encroaches on the common law doctrine of privity of contract. Mandatory disclosure or due diligence should only be carried out by parties to the contract or their self-appointed agents.

2. Review Team's response:

"Your submission raises concerns about the involvement of the body corporate in the contract between the buyer and seller. DJAG considers it is unable to provide any further specific comment on this point, as it could be construed as providing legal advice..."

3. SSAAQ's Reply:

This is an unsatisfactory response to an important legal issue that is not resolved in the Bill. Clause 104 of the Bill allows a buyer to terminate a contract for the sale of a lot if the Body Corporate Certificate is inaccurate or incomplete in relation to a material matter affecting the lot. Clause 106 stipulates this is the buyer's sole remedy against the seller for a defective certificate. However, what remedy does a seller have in circumstances where an unrelated third party (the body corporate) has prepared the defective certificate? It seems the seller's only remedy is against the body corporate or its agent that prepared the defective certificate. This exposes bodies corporate to increased risk of litigation from sellers.

H. IMPLIED WARRANTIES

1. Pursuant to section 223 of the BCCM Act, sellers warrant certain matters, both at the time of contract and the time of completion. Those "implied warranties" require the seller to warrant that body corporate records do not disclose certain matters, including:

- a) any latent or patent defects in the common property or body corporate assets; or
- b) contingent or expected liabilities of the body corporate that are not part of the body corporate's normal operating expenses.

2. Pursuant to section 224 of the BCCM Act, a buyer may cancel a contract and recover a deposit where a breach of warranties is established. In the First Submission, SSAAQ queried whether sellers would retain these section 223 warranties, and if so, how sellers could satisfy these warranties if the body corporate or its agent was performing pre-contractual disclosure about bodies corporate matters rather than the seller.

3. Review Team's response

"There are no planned amendments to the operation of implied warranties in section 223 of the BCCM Act. The seller will still need to disclose any matters affecting the warranty statements. As is currently the case, it is intended the legislation will not prescribe how the seller must obtain this information"

4. SSAAQ's reply:

The Review Team's response highlights the major issue with the proposed scheme. Namely, that sellers are obliged to warrant certain matters are not disclosed by body corporate records at the time of contract pursuant to s 223 of the BCCM Act, but that sellers will no longer be carrying out the required search of body corporate records to reveal such matters. Instead, sellers will be entirely reliant on a certificate to be prepared by the body corporate or its agent (at the seller's cost). Any failure to disclose by the body corporate, will allow a buyer to terminate a contract for breach of seller's warranty. If the seller wishes to satisfy itself of all facts allowing it to meet these warranties, the seller must carry out its own additional pre-contractual searches of the body corporate records (again at its cost). Most sellers will not elect to undertake such enquiries.

I. IMPACT ON COMMERCIAL TRANSACTIONS

1. Internalising body corporate disclosure obligations for strata title scheme within bodies corporate will have negative commercial implications for businesses such as those in the real estate industry due to wait times and backlogs for body corporate certificates, including delayed signing of contracts and lost sales. Real estate agents will be unwilling to wait 5 days to offer a contract, therefore will be required to pay the inevitable urgency fees that body corporates will charge. This is less than ideal for a state experiencing a housing crisis.

2. Review Team's response:

'Your view [is] that requiring body corporate involvement in preparing body corporate certificates may result in service delivery issues that may result in delayed signing of contracts and lost sales...As noted above, the body corporate certificate will be required to be disclosed prior to entering into a contract of sale. DJAG anticipates that sellers will obtain the body corporate certificate prior to placing their property on the market. It is not anticipated sellers will generally need to obtain a certificate in less than the required 5 business days...DJAG will be working closely with relevant stakeholder groups to ensure the real estate sector is fully aware and prepared for the implementation of the reforms, and can provide appropriate advice to sellers.'

3. SSAAQ's reply:

SSAAQ's refers to its comment at part E, paragraph 9 above, which highlights why sellers will not/should not obtain a Body Corporate Certificate prior to listing a property for sale. SSAAQ reiterates that its members' experience is that sellers will generally always require such

information in less than 5 business days due to commercial exigencies. It is likely that real estate agents will pay any urgency fees to secure a contract, the cost of which will in turn be passed onto the seller.

J. RECOMMENDED AMENDMENTS

The introduction of the proposed Body Corporate Certificate will, in SSAAQ's view, result in an inferior pre-contractual body corporate disclosure scheme than that currently operating in Queensland, unless certain changes are made to the proposed seller disclosure scheme for strata title properties: Suggested changes are as follows:

1. **Certificate of Inspection of Body Corporate Records:** the certificate included with the seller disclosure statement (cl 99 of the Bill) would be more aptly called a Certificate of Inspection of Body Corporate Records. This certificate may be obtained by a seller directly from the body corporate or its agent within the proposed 5 business days if the body corporate agrees. If the body corporate does not agree, or if the seller otherwise elects, the seller or the seller's agent may inspect the records of a body corporate upon the provision of notice to the body corporate, in order to prepare its own certificate (as currently occurs under s 206 of the BCCM Act). The timeframe for granting access to search body corporate records should be reduced to 1 business day as that is, in practice, the time frame in which most bodies corporate currently provide access to search agents to search their records. This "seller-produced" certificate will:
 - a) allow sellers to meet their s 223 BCCM Act implied warranties;
 - b) negate the unnecessary duplication of time consuming and expensive pre-contractual searches by buyers and sellers; and
 - c) allow for the timely preparation of certificates without additional "urgency fees".

2. **Information included with the certificate:** the information to be included in/with the proposed Certificate of Inspection of Body Corporate Records can include the matters prescribed by the Draft BCCM Regulation, save that:
 - a) Any amounts owed or penalties payable to the body corporate by the owner of the lot should be excluded, as that information is better provided at the time of settlement in the Form 13 Body Corporation Information Certificate as that information will change;
 - b) Insurance information should be limited to public liability and building insurance, rather than all insurance policies taken out by the body corporate. Further, details regarding insurance

premiums, excesses, date of last valuation and broker contact details are not necessary information to be provided at time of contract;

- c) Sinking fund information should be limited to the balance and not include the recommended balance as this would be unduly onerous to include as it necessitates manual review of oftentimes complex lengthy forecasts, with little instructive value to the purchaser without additional commentary. As standalone information, they can be misleading and may lead to false assumptions about capital accumulation. The balances only have value when measured against pending works and past works completed. This information can be gleaned through a purchaser strata search;
- d) Engagement by the body corporate of a person as a caretaking service contractor. This is an unduly burdensome requirement, which may include the details of numerous service providers, with little value for the consumer at contract stage as such providers may frequently change. This is information that can be obtained through a purchaser strata search prior to settlement.

3. **Retention of Body Corporate Information Certificate:** SSAAQ supports the retention of the Body Corporate Information Certificate, in lieu of the update mechanism which allows for the provision of “stated financial information” to an “interested person” in clauses 263 and 275 of the Bill. SSAAQ considers this mechanism to be inadequate as important information required for settlement should be provided in the form of a certificate rather than in a telephone conversation or via email, where information conveyed may be misinterpreted or misconstrued, with potentially serious implications for settlements.
4. **Contracts conditional upon search of body corporate records:** Contracts for the sale of lots in community titles scheme should include an option for buyers to engage an agent to undertake a search of body corporate records prior to settlement. This would operate in a similar way that building and pest inspections and finance clauses currently operate in standard REIQ contracts. Oftentimes purchasers are unaware that these searches are a possibility. Purchasers should be discouraged from undertaking their own strata searches (just like they do not undertake their own building or pest inspections) as the typical purchaser does not have the knowledge or experience to know what matters to look out for, where in the records to find them, or which documents can be relied upon for finality.
5. **Registered titles documents to be kept by body corporate:** if sellers are required to disclose Building Management Statements, Community Management Statements, plans or other

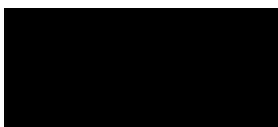
documents registered with Titles Queensland, these documents must be required to be kept by the body corporate at its own expense. Otherwise, sellers may only obtain such documents at significant expense via platforms such as CITEC.

6. **No exemption from body corporate disclosure:** the exemptions in regs 4(1)(h)(ii)(B) and 4(1)(i)(ii) of the Draft PL Regulations should be removed. SSAAQ expects these exemptions are included to account for bodies corporate that either do not keep proper records, fail to provide a certificate upon request, or do not have the expertise to provide the required certificate. Such exemptions do not exist under the current scheme where sellers, or more likely their agent, are required **without exemption** to inspect body corporate records for the purpose of providing adequate disclosure. Inclusion of these provisions reinforces SSAAQ's position that sellers and their agents should be responsible for such disclosure, instead of body corporates that are ill-equipped and unqualified to do so. Including such exemptions can only serve to weaken the body corporate disclosure scheme currently in place.

K. COMMITTEE HEARINGS

Since the introduction of the Bill, SSAAQ has contacted various industry bodies and stakeholders with a view to achieve a consensus-driven approach to any proposed amendments to the Bill. SSAAQ is keen to ensure the passage of legislation that achieves in implementation its stated objectives, without unintended detrimental consequences to buyers, sellers or industry. To this end, SSAAQ welcomes the opportunity to discuss matters raised in this submission at any Committee hearings.

Yours sincerely



Jessica Haddley
President
Strata Search Agents Association Qld Inc.