

Property Law Bill 2023

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10th March 2023

Attention: Kathryn O'Sullivan

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

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

Dear Ms O'Sullivan

Submission on the Property Law Bill 2023 (Qld)

I write this letter as a concerned Strata Search Agent and as a consumer (purchaser) of strata property. I personally have over 15 years' experience as a Strata Search Agent (in both NSW and Queensland), 13+ years' as a legal 'precedent' researcher for Barristers in Sydney and 5+ years as a legal conveyancing assistant. I hold qualifications as a Licenced Strata Manager, professional indemnity insurance (not once has a client made a claim from the insurer as the level of service provided has been exemplary.

As a Strata Search Agent I believe the consumer (both the vendor and the purchaser) have rights when selling or purchasing a strata property. I personally have discovered the Strata Industry is unique, there is very little to nil understanding of strata properties in general and particularly strata ownership responsibilities including financial obligations, community living, building compliances and repairs/maintenance. Providing a huge pile of documents to either the vendor or purchaser with no explanation is simply a waste of time. Complicating it further by the introducing of proposed new legislation without considering all the facts is asking for trouble.

I am a member of the Strata Search Agent Association (Qld) Inc and fully support and endorse the submissions forwarded by our Association (SSAQ). I oppose the Bill in its current format. In addition please accept this submission for consideration.

Disclosure Statement - Consumer Protection (Vendor)

When a consumer (purchaser) buys a car, a fridge or a washing machine a person undertakes their own research to determine the make, model, specifications to consider variables and alternatives. This may involve speaking to salespersons at the store, the used car dealer in the car yard, or taking measurements of the fridge to ensure it fits into the kitchen space in their home. Other factors might be warranties, reading brochures, research on the company selling the product (ebay vs David Jones), determining and weighing up reliability of services including recourse in the future if there are problems with the product.

The above is known as first level research (or disclosure).

Currently the first level of research in Strata / Body Corporate sales of property is undertaken by an independent party ie the Strata Search Agent for the reason they are experienced, qualified and knowledgeable in disclosing what is required at this level (for inclusion in Contract of Sale). Certain information such as the levy contributions a purchaser will need to pay, insurance coverage etc provide some details relevant to the purchaser's decision about whether to proceed further.

Disclosure Statement - Consumer Protection (Purchaser)

At present the first level of research (Disclosure Statements) are provided mostly by independent, qualified, experienced Strata Search Agents. This offers the consumer (as purchaser) reassurance that the information being provided is factual and unbiased.

When a consumer (purchaser) has made a decision as to what make, model, colour etc of say a car further research is then undertaken. This may involve taking the vehicle for a test drive, asking undertaking further research eg RACQ and then booking an independent qualified mechanic to inspect the car and provide a report as to its roadworthiness including any large mechanical problems of which the buyer would need to be aware of.

At this stage in the property transaction the purchaser is then required to make their own independent research known as 'due diligence'. The purchaser may or may not be aware of the need to conduct further more in depth research in the form of ordering a full Strata / Body Corporate Report.

The above is known as second level research (or disclosure) – to be undertaken by the purchaser.

Consumers of Property (Strata / Body Corporate)

The proposed legislation before Parliament does not address the two different aspect of consumers in the property transaction as 1) vendors and as 2) purchasers. In a property transaction a solicitor acts exclusively for the vendor. Another solicitor acts exclusively for the purchaser. This ensures the best interests of their client (either as vendor or as purchaser) are protected.

Strata Search Agents have been instrumental in providing Disclosure Statements for consumers (both as vendors and purchasers) as they are completely independent of ALL parties in the transaction including vendors, purchasers, their agents (real estate agents or strata managing agents) and their legal representatives (both (solicitors/conveyancers).

The proposed legislation has been designed to provide 'transparency' of Body Corporate documentation to ensure sales proceed smoothly. However there is no process to ensure the documentation being provided on behalf of the vendor is independent or accurate. There is no process to ensure the documentation received by the purchaser is comprehensive or provides all the necessary information to make an informed decision. There is no process to ensure both the vendor and/or the purchaser are protected at law. There is no process to ensure the purchaser is aware that 'limited' or first level disclosure does not mean 'full' or second level disclosure is required. The word 'disclosure' in the eyes of purchasers is misleading as unsuspecting buyers assume everything they need or should know has been disclosed lulling them into a false sense of security.

Disclosure Statements (Body Corporate)

When purchasing the largest expense in any person's lifetime (a home) in the current market often in excess of \$500,000.00 and regularly over \$1million (in this case within a strata / body corporate complex) the government has intervened in both the first and level research (or disclosure) by the introduction of new legislation as follows:

1. The first level research (disclosure) is to now be undertaken by Strata / Body Corporate Managers (or Assistants within their offices) via the press of a button to produce a Body Corporate Disclosure Document providing financial balances, levy contributions, insurances, Community Management Statement and other particulars. Note this disclosure is to be 'mass

produced' via a computer program with no checks that the information being provided is true, accurate and comprehensive. It will result in an additional 50+ pages added to a Contract of Sale that will in all likelihood not be read by the purchaser/consumer.

2. If the new legislation is to be introduced the first level of disclosure is now to be undertaken by the vendor's Strata / Body Corporate Manager (who is not independent and acts for the vendor as one of the owners in the Body Corporate scheme).
3. Consider, if the Disclosure Statement provided by the Strata / Body Corporate Manager is not correct and both the vendor and purchaser relies on this document in the decision to purchase who is legally liable? The vendor, the vendor's solicitor, the real estate agent or the Body Corporate Manager who provided it for the vendor to include with the Contract of Sale? The vendor could sue the strata / body corporate manager who provided the Disclosure document. The purchaser could sue all parties.
4. A recent case in Victoria involved a 'group sue' by a purchaser in relation to inaccurate or incomplete information for which he relied upon for the purchase. The Statement of Claim included the vendor, the vendor's solicitor and the Body Corporate Manager. The purchaser won.
5. If the legislation is passed in Qld the above legal ramifications will become common place events offering little to nil protection to both the vendor or the purchaser as there is now a maze of persons involved. There is no clear avenue or remedy for either consumer (as vendor or purchaser).
6. If the legislation proceeds the purchaser will now be given a bundle of documents perhaps 50 to 100 pages (of which they are unable to interpret). The Body Corporate Manager is not (by law) permitted to provide legal advice or interpretation to the purchaser. Confusion reigns.
7. The purchaser is overwhelmed and believes everything is needed to make an informed decision has been disclosed. This unfortunately is not the case.
8. The purchaser (and the legislation) has not considered the overriding legal term 'caveat emptor' or 'buyer beware'. Under this prevailing legal doctrine the purchaser is responsible for making full enquiries and undertaking all the necessary research to ensure the product (in this case possibly a \$1million property) is fit for purpose.
9. The legislation does not consider how the purchaser is to know or become aware of the more important issues in Body Corporate plans (and potentially high additional costs after the purchase) including Flammable Cladding, Asbestos, Fire Compliance, Building Defects, Waterproofing Issues / Roof Replacement, Special Levies, Supreme Court proceedings, poor management (administration and/or financial).

Body Corporate / Strata Reports

After the first level research (or disclosure) the legislation does not identify or endorse or recommend the purchaser undertaking the necessary second level research to satisfy the legal doctrine 'caveat emptor'.

Second level research involves undertaking a full independent search of the Body Corporate records. This involves the Strata Search Agent making an appointment with the Strata / Body Corporate Manager, undertaking a comprehensive research of often hundreds of documents to determine what is necessary or important for the purchaser to be aware of. Strata Search Agents (highly experienced) in this area are easily able to identify the required documents and/or request missing documentation or further information if required. The Strata Search Agent then compiles a Strata or Body Corporate Report providing insight into all relevant and important matters (including the body corporate being underinsured, special levies not being posted to the levy ledger statement and remain outstanding, outstanding major capital works or insurance claims etc) to the purchaser and the purchaser's solicitor.

I list some of the hundreds of examples of what I personally have uncovered during a search of the records and reported in the Strata Report:

1. A 396-page Defect Report on 3 lot Strata Plan that was 18 months old. Plus a \$1million quote to rectify the building defects. The builder was about to go into liquidation.
2. A quote found in the records for a \$1million roof replacement and a proposed Special Levy.
Note: This was not on the agenda of any meeting nor discussed in Minutes of Meetings. Email correspondence noted the roof replacement project and special levy was to be determined in a few months' time. (Calculations based on the prospective purchaser's lot – he was purchasing the penthouse – was \$35,000.00 in a future Special Levy possibly 1 month after he purchased.)
3. Self-managed strata plans with no Insurance Valuation Report, no bank account, no Minutes of Meetings. The owners had 'guessed' insurance coverage, did not realise they had to have recorded Minutes (preferring to agree to matters over the garden fence). More concerning was there was no 'savings' for major building works eg roof replacement.
4. Dysfunctional strata plans where owners and/or body corporate managers changed every year or two resulting in non-functioning body corporate plans and very unhappy neighbours.

5. Missing, complete or actual Causation Reports, Engineering Reports, Building Reports identifying major concrete cancer, underpinning and subsidence rectification works, insurance claim denied due to existing building issues.

The Consumer (as Vendor)

The consumer (as vendor) relies upon the first level of disclosure for properties via:

1. Disclosure Statement

The Consumer (as Purchaser)

The consumer (as purchaser) relies upon the both the first and second levels of disclosure for properties via:

1. Disclosure Statement
2. Body Corporate / Strata Reports

The consumer (both vendor and purchaser) rely on receiving clear, accurate, comprehensive information from an independent party to the property transaction. This was and continues to be the role of the Strata Search Agent.

The Role of the Strata Search Agents

The Strata Search Agent (unless their voice is heard) provides a vital role in the property transaction process. Consider:

1. Credentials – The Strata Search Agents Association Qld Inc are an independent body of professional Strata Search Agents. All members are experts in their field, have numerous legal and strata qualifications, are highly knowledgeable (300+ combined years' strata records experience), have professional indemnity insurance (in the event of an adverse event), have successful small businesses with employees and happy clientele with repeat business built up over many years providing a valuable service to vendors, purchasers, real estate agents and solicitors/conveyancers.

2. Specialisation – The Strata Search Agents are specialists in the area of body corporate disclosure and the provision of strata / body corporate Reports. They are industry specialists and are passionate in protecting consumers rights (both as vendors and purchasers).
3. Communication – The Strata Search Agent searches the records, provides the Disclosure Statement or Strata / Body Corporate Report and most importantly is able to speak directly with the vendor or purchaser if there are any questions as they are the ones that searched the records, they provided the service and they are independent (with no vested interest in the outcome of the sale/purchase).
4. Purposeful – The Strata Search Agent provides Disclosure Statements or Strata Reports that are fit for purpose (factual, timely, checked and cross referenced) and can be relied upon by all parties in the property transaction. A Strata Manager (or Strata Assistant) cannot provide any guarantee in relation to Disclosure Statements to the level Strata Search Agents can.
5. Independent – The Strata Search Agent is the ‘ONLY’ person in the property transaction that is completely independent. The Strata Search Agent has no vested interest in the sale/purchase, receives no commission, is not affiliated with any parties including the real estate agent or the body corporate manager. However, the proposed legislation has completely left their voice and the provision of their services out of the property transaction.
6. Impartial - The Strata Search Agent is completely impartial and is able to provide unbiased, accurate information which is relevant at different times in the sale/purchase transaction ie Disclosure Statement (first level research) and Body Corporate / Strata Report (second level research).

Future Problems with the Current Legislation

The Legislation appears to have been hurried through without any thought, reference or foresight in relation to the future repercussions including:

1. Destruction and/or decimation of all the Strata Search Agents Association including numerous small businesses (many job losses as many Strata Search Agents employ workers in their business).
2. No legal protection for consumers as vendors or purchasers (if Disclosure Statements are not provided in a timely manner, are not accurate, are confusing and/or mislead the purchasers into believing they have all the facts to make an informed decision).

3. No legal protection for consumers as purchasers (if independent Strata Reports are not sought as purchasers, real estate agents and solicitors believe the new Disclosure Statement provides all the information needed). Purchasers will not longer make further enquiries and/or purchase independent Strata Reports further eroding their 'caveat emptor' buyer beware legal right that was waived as a result of relying on a new Disclosure Statement provided by a non-independent party in the transaction.

Protection of Consumers (Purchasers of Strata Property)

If for any reason a product purchased by the consumer is faulty there are avenues the consumer can take to resolve or rectify the problem including legal warranty eg a new refrigerator perhaps replacement, a second-hand car repairs for up to 6 months. If the consumer is not satisfied a complaint can be lodged with multiple agencies who deal with consumers and products.

If a consumer (purchaser) buys a defective strata property and/or the facts are not known by the purchaser at the time of signing a Contract of Sale. What avenues other than protracted and costly legal remedies are available to the purchaser (or vendor).

The proposed legislation as it currently stands has the unintended consequence of stripping protection completely away from consumers (as vendors and purchasers).

If you have any questions or which further information or clarification on any matter I would be please to assist.

Yours sincerely

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