

Property Law Bill 2023

Submission No: 20
Submitted by: [REDACTED]
Publication: Making the submission public but withholding your name
See attached:

Submission on Property Law Bill 2023 (Qld)

I write to you in order to lodge a submission regarding the Property Law Bill 2023 and associated legislation.

1. My submission is particularly in relation to the proposed Body Corporate Certificate which I understand is currently in draft form and subject to change. While I agree that providing information in this format to a proposed buyer would be beneficial I do not support the provision of this information solely by the Body Corporate (or the Body Corporate Manager as the Body Corporate agent). The current model of requiring the Seller (through an agent or Solicitor if they so wish) to provide this information is more appropriate.
2. The proposed Body Corporate Certificate is currently an 11 page document. I have concerns that this may become a much larger document if information is provided by the Body Corporate, who in the interest of efficiency may be tempted to just insert "refer to attached" in certain sections - for example they may just attach the Sinking Fund Forecast instead of determining the recommended sinking fund balance at the start of the current financial year, or attach the Caretaking and Letting Agreements rather than detailing the required information on the certificate. Many buyers will not bother to read through all the documentation and end up signing the contract without looking at this information.
4. Buyer's will assume that as they have already received a large amount of documentation they will not need to obtain a buyer's search report.
5. An experienced and thorough search agent in the course of preparing a Disclosure Statement will check that information contained in the body corporate files is correct. I have often uncovered serious errors with levies that have been input to a body corporate program – just last week I carried out a search and noticed that levies for a building were actually input into the system at 10 times the amount that was approved at the AGM. Of course mistakes do happen however the point I am making is that the Body Corporate Manager may well have sent out a defective certificate in this instance had I not pointed out the inconsistency. Of course the Buyer does have the right to terminate the contract in such circumstance but where is the remedy for the Seller who has lost a sale due to an administrative error? A Search Agent can also alert a Body Corporate Manager to files that are missing Minutes or items that have not been obtained such as an Insurance Valuation Report that was approved at a meeting but never ordered.
6. The section containing a summary of amounts due but unpaid by the current owner is of particular concern and an incredible intrusion of privacy. A Seller may be in arrears through sheer bad luck and this information including penalties and recovery costs owing is proposed to be provided to anyone who may even be just considering a purchase of a lot. This will allow prospective buyers to assume the Seller is in desperate situation and encourage them to negotiate possibly a much less than fair price (particularly in a buyer's market). This is not a good example of balancing the interests of the Seller and the Buyer. Amounts owing should only be disclosed through a separate certificate, currently the Section 205 Certificate, once a contract is unconditional and settlement figures are being prepared.
7. If a scheme is self-managed and holds little documentation a Search Agent will take the time to assist the Secretary to provide the required information. Often you can ask the Secretary of a self-managed scheme for a basic document such as the Community Management Statement and they have no idea what that is. It will be a seriously onerous obligation to expect the Secretary of a self-managed scheme to correctly complete this proposed 11-page document on their own.

Making allowance for a Seller, through their Solicitor or Search Agent to provide the information required in the proposed Body Corporate Certificate will be an appropriate and welcome change to the legislation. Thank you for taking the time to consider my submission.