UNIT OWNERS ASSOCIATION QLD

Helping unit owners since 1978

UOAQ Response to Property Law Review December 2022

Thank you for the opportunity for the Unit Owners Association of Queensland (**UOAQ**) Committee to comment on the revisions to the Property Law Act. We make the following points.

1. A purchaser is entitled to be fully informed on the property they are purchasing, which requires a complete disclosure of the matters that a reasonable person would believe should be received. Any reasonable government official would recognise this proposition as being fundamental to property law.
2. The UOAQ Committee was unable to review the latest draft of the Body Corporate Certificate. There has been much comment to the Community Titles Legislation Working Group (**CTLWG**) regarding the suitability of the drafts.
    a. The primary objection was the omission of the lawful approved use of the building as defined by the development approval issued by local government under the Planning Act, and the certificate of classification issued by the licensed certifier under the Building Act.
    b. The submission made to the CTLWG is attached. This proposal was ignored without comment by the CTLWG reviewers.
    c. The letter from Victoria Thomson in response to the UOAQ protests at having our input completely ignored, did not advance the debate, and any reasonable person would question the motives. The disclosure of the lawful use of the building cannot be ignored to favour the interests of developers and management rights holders to subvert the intentions of the Planning Act, and disadvantage residential owners.
    d. The omission will make any body corporate certificate subject to legal challenge under the Australian Consumer Law for misleading and deceptive conduct. Does the Property law review have any legal advice that says otherwise?
3. The UOAQ Committee objects to the omissions as stated in the Property Law Regulations Schedule 1, Section 1 Information Not included.
    a. The UOAQ notes that ***flooding history*** is under review, please confirm this understanding by reply email.
        i. While a full history of flooding will not be available, it will be useful to provide information regarding the known flooding risk as defined by the Local Council and the development approval.
        ii. The development approval will have information regarding the elements of approval that might be relevant to flooding

iii. A tick box that identifies that the development approval and the local council has elements that refer to flooding may prompt further investigation by the prospective purchaser.

b. The UOAQ objects to the exclusion of the "**limits imposed by planning laws on the use of the land**", and "**current or historical use of the property**".

i. There seems to be a concerted effort by the industry lobby groups to suppress the development approval or frustrate compliance

ii. The development approval contains statements that define the lawful use of the property/land, and these statements must be included in any seller disclosure. The development approval is required to be in the Body Corporates records, so is available. These documents are difficult to change, so the version on the records is current.

iii. The development lobby groups would like to suppress the lawful use of land to enable investor owners to continue to use their residential strata properties for short term accommodation, rather than the approved residential use.

iv. The UOAQ suggested a simple statement of the lawful use of the property as per the development approval and the certificate of classification, plus a simple English definition of permitted uses and excluded uses as defined by the Planning Act and the Building Act.

v. The Brisbane City Council refuses to enforce their development approvals when owners object to short term accommodation and obfuscates any attempt to obtain clarity. Similarly, the Gold Coast City Council have issued a statement that makes no sense and is designed to be that way.

vi. It is patently clear that councils and the state government have a clear awareness of the impact of the clarity that the development approval delivers to the Queensland tourism industry. Government's current preference is to not allow the cat out of the bag and keep the community confused. This cannot last forever. It will be challenged, and the established law must prevail. Section 164 Planning Act: "A person must not contravene a development approval"

vii. The danger to Queensland is that if governments obfuscate and delay, they will pose increasing threats to the Olympic Games accommodation facilities by relying on existing facilities that are operating in contravention of Section 164. Addressing the issue now allows the accommodation industry the available time to convert to the needs of this premier international event with the required facilities that are operated lawfully and safely.

viii. The UOAQ has since 2016 met with countless government officials to try to convince them that there is a major problem. Many have denied our interpretation of the law but a number have acknowledged our position. No one has told us that we are wrong.

ix. While there was a lot of conversation regarding this matter within the CTLWG, the strata industry lobby groups manage to shout down the owner representatives' voices. The UOAQ's recommendations and calls for concern are ignored by the CTLWG officials. We would hope to avoid having to say "we told you so"

c. The UOAQ objects to the exclusion of "**services that are or may be connected to the property**"

i. The current practice of developers is to sell contracts under the management rights provisions for services such as Hot water, internet, telephone, electricity supply and other utility services.

ii. These contracts place restrictions on access to available fair market options provided to the wider community and pricing of these services within a building.

iii. A full disclosure is required of any and all of the services pre-sold, as this conduct is not widely known within the community, and it is inconsistent with past business practice and should be highlighted to any potential purchaser to be properly fully informed. Any benefits available by engaging in the contestable market being denied, should be fully disclosed as eventually the purchaser will become informed and seek retribution. Only disclosure can protect that developer. That disclosure should be made as part of the body corporate certificate.

iv. Most Australians expect that when buying a property, the price being paid is for the full property on offer as presented. Should that not be the case, any exclusions must be clearly specified and agreed upon by both buyer and seller prior to settlement. A reliance on a statement buried in a 500 page Off the Plan sales document is unsatisfactory in matters of this kind and if a buyer is not made to fully understand this he should be able to walk away from the purchase.

d. The UOAQ objects to the exclusion of "structural soundness of the building or pest infestation" and "current or past building approvals for the property"

i. The property law review should confirm these elements are not defined as requirements for building management under the BCCM Act.

ii. Excluding these elements as part of this Seller Disclosure requirement will mean these elements are acknowledged as

being not important, but yet they sound like important elements for the ongoing management of the building that are being swept under the carpet by the industry lobby groups.

iii. These elements should be defined and provided as input to the reforms under review by the CTLWG.

4. Division 4 Seller disclosure for sales of lots, Subdivision 1 Preliminary, Section 95 Definitions.

a. Disclosure statement, for a lot, see section 99(1)(a) Lot (b) does not include

i. (ii) a proposed lot under the BCCM Act 1997, the BUGTA 1980 or the Land Sales Act 1984

b. This section seems to confuse the total issue. Section 99 Seller must give buyer disclosure statement (2)(a) be in the approved form

5. UOAQ has recommended the approved form is inadequate as it does not include a description of the approved use

a. This recommendation has been totally ignored and no one has offered an explanation as to why. This is unacceptable.

b. UOAQ is totally suspicious as to the government's motives in the construct of this Property Law Bill 2022. The failures of the Planning Act and Building Act demonstrate there is much at fault in this area and the current manoeuvres are an attempt to obfuscate further and not address the real issues. In reviewing this act and failing to provide for adequate disclosure of the lawful use and building classification seeks to hide the truth and keep the community confused. This is totally deliberate.

Encl.:

- A - UOAQ Submission to CTS Working Group February 2022
- B - UOAQ Rationale for proposed sample of BC Certificate
- C - UOAQ Sample of BC Certificate and Disclosure Statement
- D – Response to Minutes – CTWLG meeting – 9 December 2021 -Disclosure Statements – Draft BC Certificate
- E – Owners Survey – Media Release
- F – UOAQ Survey Report
- G – Are owners and their committees exploited?
- H – Does the BCCM Act dispute resolution process resolve disputes?