



Unit Owners Association of Queensland Inc. Submission

27 MAY 2016

Opening statement.

HOUSING AS A HUMAN RIGHT:

“Governments must do more and society itself must do more to end violations of housing rights, do more to protect the weakest and most vulnerable among us, do more to ensure the basic necessities of life and livelihood for all and do more to find and grasp the most effective means of guaranteeing an adequate place in which people can live in peace, security and dignity.”

Commonwealth of Australia National Conference on
Homelessness Council to Homeless
Address by Chris Sidoti, Human Rights Commissioner
4 September 1996

UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948

Article 7

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Article 8.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 17

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

BODY CORPORATE

Body Corporates and Unit Owners Corporations are the vehicle whereby 10% of all Australian strata housing, rising to 25 % of housing in Sydney and Queensland, are about to or, have entered contracts to purchase Strata Units as places of dwelling or domicile or, investment to provide accommodation to Australian tourists. In the vast majority of purchase contracts, sole purchasers are required to negotiate with developers, members of the real estate industry and vested interest solicitors where they are at a disadvantage in experience and negotiating skills.

The Competition and Consumer Act 2010 - section 2 states:

“The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.”

The 2010 publication of the Act effectively disenfranchised 10 to 25% of the Australian population by excluding body corporates and strata owners' associations from the protection of the Act. This disenfranchisement is repugnant to objects of the Act and is offensive to the Universal Declaration of

Human Rights 1948.

Many Australians dream of owning an apartment in Queensland, and some 420,000 of them, together with other nationalities, have realised that dream. However, the dream is soured by the realisation of deprivation of human rights by the Body Corporate and Community Management Act 1997 (BCCMA).

By virtue of exclusion from the Australian Consumer Act 2010, the unit owners of 427,913 lots in Queensland (as of December 2015) are deprived of rights available to citizens owning non-strata residential property.

The Unit Owners Association Queensland Inc. (UOAQ) unashamedly represents the unit owners of Queensland - the sole financial supporters of the Queensland unit industry:

- Unit owners purchase the developers' product.
- Unit owners employ the solicitors necessary for contracts, transfers and disputes.
- Unit owners employ the Body Corporate Managers. (Strata Community Australia)
- Unit owners employ the Caretaking / Letting agents. (Australia Resident Managers Association)
- Unit owners employ the numerous tradesmen required to maintain the buildings and services.
- Unit owners pay the cost of mandatory inspections: e.g. fire safety reports, workplace health and safety reports, swimming pool compliance reports and sinking fund analysis reports.
- Unit owners pay the building and common property insurance.
- Unit owners pay the local council rates, the water rates and consumption and the electricity supply charges and consumption.
- Unit owners pay local council loadings on rates such as height in building taxes and rented unit taxes.
- Unit owners support the Queensland economy by provision of residences to workers and employees of industry and commerce.
- Unit owners support the Queensland tourism industry by provision of accommodation to tourists.
- Unit owners support the Queensland Government policy of high density urban redevelopment.

The strata management companies who are creating artificially inflated Management Rights and forcing up the cost of unit ownership do not own the units they manage and therefore contribute nothing to the unit industry.

Notwithstanding this total and sole financial support of the Queensland unit industry, the unit owners are discriminated against by the *Body Corporate and Community Management Act 1997* (BCCM Act) contrary to the its objectives:

"(g) to provide an appropriate level of consumer protection for owners and intending buyers of lots included in community titles schemes; "

The BCCM Act purportedly introduced to regulate the Body Corporate industry has been influenced by vested interest of developers, building caretakers, letting agents and Body Corporate managers. The unit owners, the only source of funding for the industry, are financially disadvantaged by a piece of legislative deception that does not comply with the *Queensland Legislative Standards Act 1992*, and allows unconscionable unit purchase contracts contrary to the intent of Australian Consumer Law.

Unit owners are disempowered by the provisions of the BCCM Act and are deprived of adequate return on investment (ROI) to allow upkeep and maintenance of their units and buildings. Twenty-five year contracts and 5.5 times goodwill derived there-from translate into excessive caretaker costs. This lack of return to unit owners is causing accelerated depreciation of buildings and lower standards of accommodation for tourists and degraded living standards in Queensland unit buildings and complexes.

The BCCM Act is instrumental in allowing developers to sell unconscionable 25 year contracts that impose a financial burden on all future unit owners. Mantra Australia Pty Ltd recently paid \$20.7 million for the management rights for the Soul building on the Gold Coast and \$31.0 million for Chevron Renaissance. As explained above, the only source of funding is the unit owners who are lucky to receive 1% or 2% ROI. The caretaker receives approximately 40% on his investment (thus accounting for 5.5 to 6 multiples for good will). Mantra advertises that shareholders can expect 6% to 8% ROI.

The BCCM A *section 180 (3)* removes the right of unit owners to manage how their building (that they collectively own) is occupied. This disempowers the unit owners allowing pop-up brothels, all night parties and clandestine drug labs to occupy units and removes control over Airbnb and Stayz.

The Queensland Government has not displayed any desire to restore balance to the unconscionable situation between developers, caretakers and unit owners under state legislation; therefore, inclusion of body corporate contracts in Australian Consumer Law is the last remaining opportunity for rights of Queensland unit owners to be restored.

This submission by UOAQ is lodged in the interests of unit owners in Queensland. The UOAQ contests that when the original Australian Consumer Law legislation was introduced particularly relating to unfair contract terms, Bodies Corporate were specifically excluded from its coverage. At 2.1.2 the meaning of 'consumer', under issues, that the definition of consumer be extended to include charities and not-for-profit organisations, and that may provide the opportunity to address the rightful inclusion of bodies corporate.

When the ACL was introduced in 2011, it specifically excluded Bodies Corporate without any consultation or explanation to stakeholders. This leads to the belief that legislators succumbed to the lobbying of the development sector and the Property Council of Australia (PCA) in particular, they would be greatest beneficiaries of this exclusion. The PCA is currently lobbying for a change to the Queensland BCCM Act to reduce strata building approval for redevelopment from 100% to 75% of owners. **The UOAQ recommends that a minimum of 82%, should be the approval thresh-hold figure for majority owner agreement in schemes of 10 Lots or more and 100% for schemes with 9 or less Lots.** Even the

highest density cities such as Singapore have an over 80% minimum approval thresh-hold. Otherwise a 4 unit block could overrule 25% of the owners automatically where developers already have existing unit holdings in many sites up and down the coastal sea-front of the Gold Coast and no doubt elsewhere also.

The PCA argument and reasoning for lower than 100% owner agreement in strata title is that existing unit blocks are “heavily dilapidated” and “rapidly deteriorating assets”. The question must be asked as to the quality of building construction of new unit developments if they must be demolished after 30 to 40 years. This could be a lack of Consumer Protection Law, requiring increased builder warranty periods to raise building standards **or** has a lack of any Construction Quality Assessment Scheme and control regulation created the major *numbers of defects* the PCA claim **or** perhaps industry self-regulation in property construction has failed strata title consumers and their communities.

How do heritage building after a 100 years remain standing in excellent condition while new buildings with the latest building materials, methods and technology become “*dilapidated, beyond restoration, often becoming safety hazards*” (quote from PCA) within just a few decades? Introduction of new comprehensive regulation of construction standards and stronger enforceable Australian Consumer Laws are required to protect strata title consumers.

Single dwelling owners of four adjoining development lots in a street would never be exposed to such a campaign where 75% could force 25% to sell their home, but the PCA considers that strata owners have less rights than single dwelling owners. Individual Australians do have a Constitutional right to own strata titled and freehold property whereas the countries the PCA often sight as the Collective sale and Urban Regeneration model for us to follow and achieve some times purposely do not recognize or have citizens right to own property enshrined in their Constitution.

Many owners in Australia, in both individual houses and strata schemes have achieved 100% agreement to sell for redevelopment, in fact, most redevelopments on the Gold Coast have, as legislated been 100% agreed to en bloc sale and interstate standalone home owners in Canberra and in Sydney have sought and achieved 100% agreement to sell collectively for redevelopment as well as strata titled property - all without or prior to NSW Government changes to legislation.

Termination issues are rarely mentioned in dispute resolution applications to the Queensland BCCM Commissioner's Office or in the Queensland District Court, so why is an arbitrary 75% or more collective sale ruling being raised by the PCA? In a Nutshell the Property Council of Australia's objective is to make it easier, quicker and cheaper for their members (developers) to purchase prime location redevelopment sites for their members' maximum commercial gain.

Realising that strata living is expanding to a situation where it will eventually become the largest form of home choice in Australia, it is bewildering that these homeowners representing such a substantial proportion of the Australian community should be denied protections afforded by Australian Consumer Law.

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Q. 9

Are there any changes that could be made to improve their effectiveness, or address any of the issues raised in section 2.2? Are there any gaps that need to be addressed?

A.

Yes.

UOAQ sees this section as an opportunity to address the exclusion of bodies corporate from the provisions of ACL. The objectives of the *Body Corporate and Community Management Act 1997* at *Section 2* and *Section 4* state:

2 Primary Object

The primary object of this act is to provide for flexible and contemporary communally based Arrangements for the use of freehold land, having regard to the secondary objects.

4 Secondary Objects

The following is one of the secondary objectives of this act—

(g) to provide an appropriate level of consumer protection for owners and intending Buyers of lots included in community titles schemes;

This objective clearly provides a basis for removing the exclusions of bodies corporate under the current provisions of ACL.

Management rights

In the Foreword of the Discussion Paper *Management Rights in the Community Titles Schemes* issued in 2011 by the then Attorney-General in Queensland Paul Lucas stated:

"Developers typically sell the management rights during the original owner control period as part of the economy of the development and before governance responsibilities transfer to the body corporate.

This practice has become an issue for many lot owners who are of the view that long term contracts for services may be sub-standard, overpriced, or inappropriate for many schemes. There are also claims that there is an increasing corporatisation of the management rights sector and that this, together with rapid turn-over in ownership and a significant increase in the value of management rights contracts in the past decade, has led to predatory and unconscionable conduct."

These various stakeholder perceptions and claims should be subject to some objective examination.

The Discussion Paper generated 207 submissions but was never proceeded with, demonstrating the lack of consumer protection provided by the Queensland government notwithstanding the objectives of the

BCCM Act.

In 2007 the Arrow Asset Management case (Community Association DP No. 270180 v Arrow Asset Management Pty Ltd & Ors [2007] NSWSC 527) was handed down in the New South Wales Supreme Court and reported in Queensland as having implications in Queensland. This case effectively stopped developers from selling management rights in NSW. In NSW the strata law is evolving totally differently to Queensland. Since 2012 Queensland governments have refused to allow any review of management rights legislation and continue to ignore the precedent established by the Arrow Asset Management case.

United States of America considers it unconscionable for a developer, whilst they control the owners corporation, to sell a contract that imposes obligations on future owners. Such conduct, considered unconscionable in USA, and denied by law in NSW, still continues to exist in Queensland.

Queensland governments ignoring the disquiet in the community refuse to even consider stopping the sale of future management rights agreements by developers (being the beneficiary), that would allow this unfair and oppressive regime to come to an end. Body corporate law has been designed to perpetuate these arrangements indefinitely by unreasonably disallowing bodies corporate to seek compensation for the additional value when a manager requests premature extension of tenure. These arrangements demonstrate a clear failure by government to provide reasonable consumer protection as prescribed at *section 4(g)* of the BCCM Act.

It would seem that if the Queensland state government is unwilling to provide reasonable consumer protection prescribed by its own state laws, access to federal legislation may offer a means to some relief, thus bodies corporate should be provided with the protection of ACL.

Q. 11

Are there any changes that could be made to improve their effectiveness, or address any of the issues raised in section 2.3? Are there any gaps that need to be addressed, or overseas models that could provide a useful guide?

A.

Yes.

We will use this question to address the issues of purchasing an apartment in Queensland. While it is generally accepted that the purchase of a home is the largest single purchase most Australians will make in their lives, there is considerable shortcomings in the disclosure procedures required by body corporate law. The BCCM Act prescribes procedures that are to be followed to provide disclosure of management rights obligations that often are ignored or not fully followed. Purchasers often do not become aware of these obligations until they have resided in the property for some years. The controversy generated by misunderstood management practices leads to disputation and disharmony. Owners then become aware that they have been obligated to 25 year contracts, they had no opportunity to approve, and are almost impossible and excessively expensive to extricate themselves from.

Addressing 'unfair' commercial practices (2.4.1)

Management rights as permitted under the BCCM Act in Queensland fit the criteria described in the issues paper at 2.4.1 addressing 'unfair' commercial practices.

Q 15

Should the ACL prohibit certain commercial practices or business models that are considered unfair?

A.

Yes.

Management rights in Queensland in particular. These arrangements are considered unconscionable in USA and prevented by law in NSW.

Q 25

Are there any barriers to consumers and businesses enforcing their rights and seeking access to remedies under the ACL? Are there barriers to private action that need to be addressed?

A.

Yes.

Both BCCM Act and Queensland Office of Fair Trading present barriers. There are also issues of the Australian building codes being disregarded and/or not enforced by both state and local government that adversely impact on unit owners

Q 28

What are the experiences of consumers and businesses in dealing with ACL regulators? Could they play a greater role in promoting private action or take action in other areas that would help consumers enforce their rights under the ACL?

A.

Yes.

Evidence can be provided demonstrating the breakdown of ACL in Queensland to the detriment of owners in community title schemes. Queensland government legislates to protect the interests of developers and their ability to sell management rights while ignoring the adverse impact on owners.