

## Strata Industry Queensland – Response to:

Unfair trading practices [Consultation paper](#) – DOCX 595.32 KB

Consultation on the design of proposed general and specific prohibitions (Nov 2024)

Appendix A: Existing general and specific prohibitions under the ACL (Page 27)

### Misleading or deceptive conduct/Unconscionable Conduct

1. Problems exist from the 1<sup>st</sup> day of engagement in strata when a property is advertised for sale. Residential property and Commercial or Hotel style.
2. Over past years Residential property was offered and was the cheapest provided by developers. Hotel accommodation was more stringently regulated, causing higher costs.
3. Use of property was regulated under the Planning Act established in the Development Approval (DA) issued by Local Government.
4. When the building was built Council issued a Certificate of Classification (Class 2 for Residential or Class 3 Hotel) permitting occupancy in compliance with the Building Act 1975.
5. Purchaser's buying a Residence found that Short Term Accommodation (STA) was operating in the building.
6. A building manager had been appointed and was promoting and operating STA.
7. The building manager claimed he had purchased a Management Rights Contract for 25 years from the Developer under an incorrect Accommodation Module.
8. Over 100,000 lots in Class 2 buildings were being withheld for STA while a housing crisis erupted.
9. It was discovered that the Developer had dishonestly applied Accommodation Module to the scheme that permitted a 25year contract intended by Legislators for Hotel use.
10. Owners in the scheme sought Town Planners advice and issued a Contravention of DA notice under Section 164 Planning Act 2016 "A person must not contravene a development approval" 4,500 penalty units.
11. This notice was not acted upon by Council and has remained outstanding for 5 years.
12. All of the above undertaken by Queenslanders in the purchase of a home, probably being the largest purchase most people will make in their lives.
13. A prudent purchaser will have referred these arrangements to a Conveyancing Lawyer to ensure the transaction is kosher, but the lawyer will have no reasonable access to the DA to confirm Council approved use.

### Attempts to raise these issues with the Queensland Government

1. In 2021 the Community Titles Legislation Working Group was established to review strata law, particularly in the area of Management Rights.
2. UOAQ engaged with officials for 3 years, bringing forward material requiring review of owners' interests
3. A major stumbling block was a request by UOAQ to review Seller Disclosure documentation requiring disclosure of Council Approved Use. This was vehemently refused by officials.
4. The review came to an abrupt premature end without considering any Management Rights issues, or the issues of misuse of premises caused by the conduct described above.

### Why

The Qld Government has established Strata Legislation that has produced the development of a Tourist Accommodation Industry through STA, in buildings that were built and sold for Residential purposes. These buildings were built for people to reside or live in. The entire costs of that Industry are totally paid for by the unsuspecting purchasers of these properties who have been misled and deceived by Developers and Managers who fail to observe Planning and Building Legislation also not upheld by Councils. These purchasers are provided inadequate access out of these unconscionable arrangements established and held in place for a ridiculous 25 years.

NSW has now decided to apply ACL to property sales, which must be followed by all other states, to avoid losses being suffered by owners and covered by the UOAQ Study "UOAQ Briefing for ACCC.pdf" as attached.

### Focus questions – general prohibition

1. Is the proposed general prohibition sufficiently clear to provide certainty regarding its application? If not, how could it be clarified?
  - A. It seems as though it could be effective over the issues represented. Clarification could be established by direct application to land and real property.
2. Do the proposed elements for a general prohibition accurately reflect the gaps in the ACL that an unfair trading practices intervention could address?
  - A. Not necessarily, but the summary statement does describe gaps.
3. Are there any unfair practices that would not be addressed by the proposed elements and existing ACL protections?
  - A. The Body Corporate and Community Management Act is a minefield of mischief to circumvent the protections of owners who have purchased strata property in Qld.
4. Should the proposed prohibition only apply where the conduct is unreasonable (that is, where it *unreasonably* manipulates or distorts, or is likely to *unreasonably* manipulate or distort, the economic decision making or behaviour of a consumer)? Or would an alternative approach of only capturing conduct where it is not reasonably necessary to protect the business's legitimate interests provide a better level of protection for consumers?
  - A. The purchaser of real property must be entitled to the fullest of protections in a purchase that is likely to be the largest ever made by most Australians. What applies in Qld is by no way reasonable, and there should never be any margin of unreasonableness that negates protection. Qld strata property sales demonstrates manipulations and distortions that have crept into this sector of commerce.
5. Is the requirement that detriment or likely detriment be 'material' appropriate?
  - A. The issue in Qld is that a purchaser buys a strata property in a building with a Council approval for dwelling use and a Certificate of Classification Class 2 and in time finds that the building is used as a hotel for short term accommodation to tourists. That is 'material' in the largest purchase that buyer will ever make.
6. Does the proposed grey list provide adequate guidance for businesses and regulators regarding how the courts will interpret the prohibition? Are there any additional examples that should be listed?
7. What would be the likely benefits to consumers associated with introducing the proposed general prohibition into the ACL? Where possible, please provide quantitative information.
  - A. The protection of a strata purchasers property rights.
8. Would there be compliance costs for businesses if the proposed general prohibition is introduced into the ACL? Would small businesses be disproportionately impacted noting that ACL reforms apply economy wide? Where possible, please provide quantitative information.

9. What additional resources (for example guidance material) may be required to support businesses, including small businesses, with implementing changes to their practices?
10. What is the maximum civil penalty a court should be able to impose for a breach of the proposed general prohibition?
  - A. The current fine for a Contravention of Development Approval under the Planning Act in Qld is \$725,850 for an individual and \$3.5mil for a company. Sections 163 to 165 of the Planning Act in Qld are not enforced. That must go to **'impeding the ability of a consumer to exercise their contractual or other legal rights'**
11. Should civil penalties commence when a general prohibition commences, or following a transition period? If you support a phased approach, is a two-year transition period adequate to give businesses confidence around the operation of the law before penalties apply?
12. Would a general prohibition on unfair trading practices, as proposed in this paper, adequately address the use of dark patterns that cause consumer detriment? If not, how should dark patterns be addressed?
13. Where unfair trading practices have been prohibited overseas, what lessons can be used to inform Australia's approach?
  - A. We don't have to go beyond Australia, The Arrow Asset Management case in the Supreme Court of NSW in 2007 determined that a property developer has a fiduciary obligation to act honestly in the conduct of his duty. The contents of the summary statement disclose conduct that is contrary to Australian Consumer Law