

TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2009 –
SENATE REVIEW

The hysterical objection to the proposed Trade Practices Amendment (Australian Consumer Law) Bill 2009 by the Property Council of Australia supported by, and couched in attempted logical terms and argument, clearly indicates the concern of the Property Council with the terms of their existing contracts and the impact of the proposed legislation. The same can be said of the Banks.

The property Council of Australia and Banks are not Consumer representative organisation, more accurately they are vested interest organisations with influence beyond their place in Australian society by virtue of large contributions to Governments (of any political persuasion).

The ultimate aim of the Property Council and Banks is to exclude 'Bodies Corporate' from the legislation, be they commerce, or, be they Unit Owner structures created to facilitate the community living management arrangements of individual owners in group title schemes.

In Queensland. owners entering a contract to purchase a residential unit, purchase not only their unit but also, a caretaking/letting contract negotiated between the developer of the unit building and the resident caretaker. The new unit owners have no say in the contract negotiation, but inherit a caretaker/letting agent that they did not employ and a 25 year or 10 year debt, and the burden of paying for the depreciating investment of the caretaker/letting agent. This debt will range from \$2M to \$5M. Any right thinking person can conclude that it is unconscionable for the developer to incur a future liability against the body corporate (unit owners) for his own financial benefit and enrichment, but that is the contract that is inherited by individuals buying into a body corporate structure.

A recent NSW Supreme Court Decision **Community Association DP No 270180 v Arrow Asset Management Pty. Ltd. & Ors [2007] NSWSC 527** found that:

Developers must not place themselves in a position of conflict or to profit from contracts entered into between the Body Corporate and Caretakers, without proper disclosure.

Must not act to the detriment of the body corporate.

If they do, they breach fiduciary duty and/or common law duty.

Unfortunately this does not solve the problems faced by unit owners entering a contract to purchase a residential unit under the Queensland Body Corporate and Community Management Act 1997. The proposed Trade Practices Amendment (Australian Consumer Law) Bill 2009 legislation is probably the only potential solution to the dilemma of unit owners in Queensland Bodies Corporate.

The Senate Standing Committee on Economics considering the Trade Practices Amendment (Australian Consumer Law) Bill 2009 is strongly recommended to retain the inclusion of Bodies Corporate (unit owners) in the legislation. This will ensure coverage of residential unit owners who are currently 10% of the Australian residential population and rapidly increasing as a result of the Government high density development policy.