Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 011

Ken McCarthy

[redacted]

Submission to the Legal Affairs and Community Safety Committee

Re: Body Corporate and Community Management and Other Legislation Amendment Bill (BCCMA)

Dear Committee,

Please accept my submission on the above amendment bill.

Foreword

I believe I can present compelling reasons why the amendment bill should be rejected by the Committee. It is the consequences of the amendment that will have a significant and adverse impact on thousands of unit owners.

This amendment seeks to reinstate the equalisation of levies. There is no logic, nor rationale that can be argued, as to why levies for a penthouse unit should be similar to the levies of a one bedroom unit. If there is no logic behind this amendment then what exactly is the driving force?

I will prove, without fear of contradiction that, levies should and must not be equal.

This amendment, if you recommend it to parliament, will deal a cruel blow to thousands of unit owners, particularly those on fixed incomes. ***When these unit owners purchased their unit they agreed to the levies disclosed at the date of purchase. So did the penthouse unit owners.*** Then why is the government so determined to interfere in a legitimate commercial transaction? Why is the government aiding and abetting a few at the expense of the many?

The smaller unit owners are not rorting the system. They have not sought to change the levies that they agreed to when they purchased their unit. They have no advocate in government standing up for their rights. The smaller unit owners are the victims of this whole charade. *The proposed amendment seems to be nothing more than a spiteful payback to the Labour Party's 2011 amendment.*

The Attorney General has represented his amendment as some sort of noble quest to right a wrong. He expects the parliament to accept superficial and unsupported comments he made when presenting this amendment. *Vague platitudes are no substitute for facts. It will be facts that I will present to the Committee. If the Committee cannot refute these facts then you must return the amendment to the Attorney General.*

In the absence of an in depth review or public consultation it seems that the government has placed the onus on unit owners to prove <u>why levies should not be equal</u>. Note at no stage has the AG presented any factual evidence <u>why levies should be equal</u>.

How many units will be affected by this amendment?

In a speech to parliament on the 5th April 2011 the Member for Currumbin, Ms J. Stuckey, noted that 120 applications had been received since 1997 to equalise levies. This affected between 5,000 and 10,000 lots *(refer attachment number 1)*. There were 40 applications suspended when the 2011 amendment was introduced. The more recent figure indicates that the rate of applications to adjust levies to an equal basis has increased significantly over recent times. If this amendment is passed then it is reasonable to expect that the rate of applications to adjust lot entitlements will grow exponentially.

According to comments made by Labor Minister Mr. P Lawlor, there are 39,000 community management schemes in Queensland comprising 364,000 lots *(refer attachment number 2)*. Taking into account Ms Stuckey's estimates of 5/10000 lots already adjusted, that leaves a staggering 354,000 lots (units) yet to be impacted by the equalisation legislation. *It is estimated that 60% of lots will be adversely affected. If accurate that equates to potentially 214,000 unit owners who may have their levies increased. Conversely, only 10/15% will receive a tangible benefit.*

My situation

I own a unit on the [redacted] floor of Q1 located in Surfers Paradise. Q1 is a high rise complex with residential units on level 3 through to level 74. I have owned this unit since the date Q1 was commissioned in October 2005. There are 526 units in Q1, with a mixture of one, two and three bedroom units, as well as a penthouse and sub-penthouse units. Many of the comments I make below relate to my own situation at Q1. *However, my situation would be similar to many other unit owners in other complexes.* My levies will increase by 20% if this amendment is passed. Others will experience increases of 30%, or more.

I believe it is relevant to point out that I was Treasurer of the Q1 Body Corporate for a period of 4 years. I was also a senior business banker with the NAB before I retired. I have a sound working knowledge of how a Body Corporate functions and how costs are allocated.

Summary

The following is a brief summary of my submission. I have segmented my submission for ease of reference by Committee members.

Section 1. *Refer to items numbered 1 - 4.* This section deals with the affects various changes to the legislation have had on my unit complex. Sub-headings include information on ***(1)*** background; ***(2)*** History of amendments; ***(3)*** lack of supporting evidence for the amendment and ***(4)*** who benefits.

Section 2. *Refer to items numbered 5 to 7.* This section deals with ***(5)*** flaws in the equalisation theory; ***(6)*** a comparison of costs on a floor basis and ***(7)*** how levies will be unfairly and improperly distributed.

Section 3. *Refer to items numbered 8-9.* This section provides a comparison between Contribution Lot Entitlements and Interest Lot Entitlements. Item ***(8)*** provides a comparison of ownership of Body Corporate assets and levies and ***(9)*** clarifies who uses common property.

Section 4. *Refer to items numbered 10-13.* This section deals with various comments made in speeches and the media. Item ***(10)*** deals with the judicial review of adjustment applications; in Item ***(11)*** I analyse the speech by the Attorney General. Item ***(12)*** refers to a speech by the member for Currumbin Ms. J. Stuckey and Item ***(13)*** refers to the inconsistent application of the legislation.

Section 5. My recommendations to the Committee.

SECTION 1

In this section I will detail the events leading up to this proposed amendment.

(1) Background

This amendment seeks to overturn legislation passed by the previous Labour Government, which became law in April 2011. The 2011 amendment allowed a lot owner to overturn a decision made by QCAT to equalise levies under Section 46A of the BCCMA. In essence, the 2011 amendment forced Bodies Corporate to adjust levies, which had previously been amended, *to the level set by the developer*. The developer's set levies were the levies unit owners agreed to when they purchased their unit. The 2011 amendment was welcomed by the majority of unit owners.

The amendment before the Committee overturns the 2011 amendment and will effectively reinstate the equalisation of levies principle, Section 46A of the act. This section of the Act allows one unit owner to apply to QCAT to have levies equalised. Section 46A is a widely discredited piece of legislation, which imposes harsh and inflexible conditions on the setting of levies.

The BCCMA (Section 46A) is the only legislation in this country that permits one individual to overturn terms and conditions in a contract entered into for a real estate purchase by others. It is a reprehensible piece of legislation. Should the Committee endorse this amendment the Committee will have embraced the concept that a government is entitled to interfere with agreements and contracts that may have been entered into years before.

This amendment overturns legislation passed in April 2011. The Committee should thoroughly review the 2011 legislation to understand the reasons why that legislation was introduced. Then, as typical Australians ingrained with a sense of fairness and equity, you will need to decide if the 2011 amendment was in any way contrary to these principles of fairness and equity.

(2) History

The following is a summary how the changes to the legislation, using Q1 as an example, have impacted on unit owners:

Levy adjustment number one. In July 2010 one unit owner successfully applied to QCAT, under section 46A, to have all levies made equal. This was five years after Q1 was commissioned. Under section 46A **one** unit owner was/and will be able to impose a change to the levies of the remaining 525 unit owners. As a consequence, levies for the penthouse owner reduced by 72%. Other large unit owners had reductions of up to 58%. As the level of yearly levies had to be maintained the reduction that the larger unit owners received had to be made up by increasing levies for smaller unit owners. Levies for many smaller unit owners increased by up to 30%. *Of the 526 units, 330 were adversely affected.* There was little change for a number of units with only a minority receiving a benefit. *The increase in levies reduced the market value of most units.*

Levy adjustment number two. Following the legislative amendment made in 2011, levies were adjusted back to the level that applied prior to the adjustment made in 2010. This adjustment occurred in July 2012.

Levy adjustment number 3. If the proposed amendment is passed unaltered, then levies will again be changed to the level that applied under the first adjustment. *This will be the third change to levies at Q1 in as many years.*

Legal and administrative costs for the first two amendments have cost the Q1 Body Corporate around $70,000. A third change will impose a minimum of $16,000 in costs *(refer to a QCAT submission made by the Body Corporate lawyers).* These costs will escalate if, as happened with the

2011 amendment, lawyers become involved. This is an unreasonable burden to be placed on unit owners. That is why I strongly recommend to the Committee that there should not be any change to levies for Bodies Corporate who had levies changed under the 2011 amendment.

Unit owners have every right to believe that they have become the plaything of politicians. This flip flopping on legislation is causing extreme stress to many unit owners, particularly those on fixed incomes. No other group has had to endure the sort of interference in their lives that various governments have imposed on unit owners. Unit owners now live in a constant state of anxiety, fearful of their own government. Stop playing politics with others lives.

(3) Poor assessment

It seems that each new government makes an attempt to fiddle with the BCCMA. At least Mr Lawlor had the good sense to seek public submissions before presenting his 2011 amendment to parliament *(refer to Mr Lawler's comments attachment number 2)*. There has been no such consideration by the current Attorney General.

The setting of Contribution Lot Entitlements is a complicated process. To finally get this right one would have thought that the Attorney General would have sought advice from professionals, who have knowledge of the financial aspects of a body corporate's operation. He didn't. Only lawyers have been involved in the amendment. This can only lead to a bad outcome.

I had asked the AG's office for any supporting information that had influenced him to propose this amendment. ***I expected that the AG would be in possession of an in depth financial analysis of the reasons why his amendment has validity.*** Surely it was not too much to expect that supporting evidence for the need to amend the legislation would be shared. Not so. I was simply directed to submit a Freedom of Information request *(refer attachment number 3).* Why make it difficult for an affected party to review this information (if any is held)?

The probability is that there has not been any attempt made by the AG to determine if the equalisation of levies is in fact fair and equitable. The attitude seems to be that any Labour Party policy is bad and LNP policy is good. Who cares about details, or who is disadvantaged!

(4) Who benefits from this proposed amendment?

The obvious beneficiaries are the penthouse unit and larger unit owners.

But it is some in the legal profession who also stand to make a solid 'earner', as a consequence of the AG's proposed amendment. There are potentially thousands of unit complexes still to go through the process of having levies equalised. A penthouse or large unit owner, who seeks to have their levies reduced, will need to engage a lawyer to prepare a submission to QCAT, and to have that submission supported by a Quantity Surveyors report. As detailed, in a speech to parliament made by Ms Stuckey on 5/4/11 a submission could cost between $10,000 and $20,000.

I would like to touch briefly on the plight of the most vulnerable in the body corporate community. These are mainly retired folk, either on a fixed superannuation income or on an aged pension.

Members of the Committee no doubt have parents or family who are retired or approaching retirement. The situation I am about to describe is a reality for thousands of retirees. Imagine if you will, that your relatives have retired and decided to move to a new life on the Gold Coast. They find a unit that suits their needs. They do their sums on the disclosed outgoings, which include body corporate levies, rates and utilities. Neither their real estate agent nor their solicitor warns them

that their levies could be increased without notice. They are old fashioned enough to believe that an agreement is long lasting and that a contract is binding.

After carrying out their due diligence your relatives decide to purchase a unit, let's say in Q1. After a couple of years, as happened to Q1 in 2010, a unit owner lodges an application with QCAT to adjust levies. Your relatives have neither a say, nor a vote in this process. QCAT has no choice but to approve the adjustment, which results in the levies that apply to your relative's unit increasing by 30%. That happens at around the same time they get a notice indicating that their electricity costs will increase by a similar percentage.

With the stroke of a pen your relative's retirement is no longer affordable. They may be forced to sell, but then discover that their higher levies will translate to a reduction in the value of their unit. How would you feel? Would you be angry; disappointed that your government who is supposed to protect the interests of its citizens just does not care? That your government would rather penalise a pensioner to benefit a penthouse unit owner. And to make matters worse your government cannot explain why levies should be equal?

SECTION 2

(5) Examples why the equalisation principle is flawed.

The basis for making levies equal is the notion that services are provided to all lot owners on an equal basis. In reality this is not the case. **This concept is a fraud**.

Contribution lot entitlements pay for the cleaning and maintenance of the Body Corporate common areas. There are only a couple of services that are supplied equally to all unit owners, and these cost less than 5% of the total Q1 budget.

The majority of Body Corporate costs are allocated to the cleaning, maintenance and providing services (lifts and mechanical services) to **each floor, not to individual units. There are no services provided to individual unit owners.

Each level has the same area of carpet, the same number of lights, consume the same amount of electricity for these lights and require the same amount of cleaning. Each floor has the same number of windows to clean. All services are provided equally to each floor. Then it is not unreasonable to expect that the units on each floor should share in the cost of the services provided to that floor. Just because there are ten unit owners on one floor and four on another, why should the four owners pay less for the provision of services? But this is the outcome of the equalisation of levies.

Example: Comparison of the cost of services to each floor and the levies paid per floor

The total Contribution Lot Entitlement levy for Q1 in the 2011/12 financial year was $3,380,263. If each floor shared equally in the cost to run and maintain the building, then each floor would pay one 72nd of the levy. The levy for each floor would then be **$46,948**. Compare this though to the amount each level will pay post the amendment championed by the Attorney General.

Proposed levy for all units on each floor		*Actual cost to provide services to each floor*
Level 74 (one unit)	$ 9,104	$46,948
Level 69 (4 units)	$28,404	"
Level 40 (7 units)	$47,340	"
Level 19 (10 units)	$66,641	"

What is the logic behind forcing the units on level 19 to pay $20,000 more than it costs to provide services to that floor? Why should the four unit owners on level 69 pay $18,544 less?

There is an additional reason why the larger units should pay a higher levy than a smaller unit. The penthouse at Q1 has an area of 942m2. The smallest unit in Q1 is a one bedroom unit of 84m2. Eleven one bedroom units could fit into the area occupied by the penthouse. A one bedroom unit, if this amendment is approved, will have an annual levy of $6554. The penthouse will have a levy of $9104.

If eleven one bedroom units did in fact occupy the space taken up by the penthouse, then the Body Corporate would receive 11 X $6554 levies for a total of $72094. Yet because the penthouse occupies the whole floor the Body Corporate is denied revenue of around $63,000. *Living in a penthouse is a lifestyle choice. Others should not be expected to subsidise this lifestyle choice.*

(7) How levies will be unfairly distributed

The table below details the percentage of levies paid by all units on each of these floors. *Table one* compares the percentage of levies paid by each floor, as determined by the developer (which are currently in place at Q1). *Table two* compares the levies that Q1 will revert to if this amendment is passed.

**You will note that the lower the floor, the greater the contribution that floor makes to total levies.

Contribution Lot Entitlements as a percentage of total entitlements:

Levies as set by the developer		***Levies that will apply if the amendment is passed***	
Level 74 (penthouse)	1.07%	Level 74 (penthouse)	.25%
Level 69 (4 units)	1.23%	Level 69 (4 units)	.79%
Level 40 (7 units)	1.30%	Level 40 (7 units)	1.33%
Level 19 (10 units)	1.53%	Level 19 (10 units)	1.86%

The above table clearly demonstrates the disparity in levies that exists between the different floor levels. There is no doubt that the higher floors are being subsidised by the units on the lower floors, even on the levy settings established by the developer. The proposed amendment just makes a bad situation worse.

I have attached a copy of the lot entitlements schedule as it relates to the above units. *Attachment 5* is the lot entitlements schedule that applies now. The total of all lot entitlements appear on the final page.

Attachment number 6 is a copy of the lot entitlements that applied after the 2010 amendment (to Q1 levies), and will apply again should the amendment be passed by parliament.

SECTION 3

(8) Comparison of Contribution Lot Entitlements to Interest Lot Entitlements.

There are two types of lot entitlements that apply to bodies corporate. One is the Contribution Lot Entitlements, which levies lot owners for costs to maintain the common property. The second is the **Interest Lot Entitlements (ILE)**.

The **Interest Lot Entitlements** determine the ownership of common property. Common property includes all areas not owned by a single unit owner. This includes the **foyer on each floor, the swimming pools, the gym, gardens etc.** The Interest Lot Entitlement is used to determine the share of the insurance cost each unit owner will pay.

Note that the AG's amendment, Section 47 Subsection 3 states that the Interest Schedule is the basis for determining the ''***lot owner's share of common property***". A unit owner's share of common property is determined by the "**market value"** of that unit.

Does it not seem inconsistent to the Committee that on one hand the legislation specifically determines that the percentage ownership of common property is based upon the **market value** of a unit (Interest Lot Entitlements). Yet on the other hand, the legislation dictates that Contribution Lot Entitlements is to be determined on the basis that all units have an **equal value.

The proposed adjustment to levy settings is a contrived arrangement to benefit the few over the many. Natural justice is being denied to the majority of unit owners.

This table records the 'Interest Lot Entitlements' (ownership of Common Property) as a percentage of total entitlements.

Level 74 (penthouse)	2.10%
Level 69 (4 units)	1.79%
Level 40 (7 units)	1.28%
Level 19 (10 units)	1.12%

The penthouse, for example, effectively has a 2.10% share of the entire property. But if you refer back to the Contribution Lot schedule above you will note that the penthouse, under the post amendment levy, will pay just .25% of the maintenance cost of the entire property.

******There is no other investment you can make in this country where you can own 2.10% of an asset, but only contribute .25% of all costs to maintain that asset.***

Q1 is insured for around $500,000,000. If there was an insurable event, then the following table details how the insurance money would be disbursed.

Level 74 (penthouse) would receive 2.10% of the payout or $10,500,000

Level 69 (4 units) with 1.79% interest would receive $8,950,000

Level 40 (7 units) with 1.28% interest would receive $6,400,000

Level 19 (10 units) with 1.12% interest would receive $5,600,000

To maintain an investment of $10,000,000 the penthouse unit owner will pay just $9,104 in levies. The penthouse levy will equate to 0.09% of the assessed capital value of the unit. Contrast this to the unit owners on level 19 who will pay $66,641 or 1.17% of the assessed value of the ten units to maintain their asset.

The unit owners on level 19 will pay a levy **13 times** the ratio of **maintenance** to **assessed value** as does the penthouse unit owner.

(9) Common use areas eg: pools, gym and garden.

These facilities are the only facilities that are shared by all unit owners. An argument often made, regarding these common facilities, is that as there are more units on the lower levels then the higher levels then more people from the lower levels use these facilities. Therefore, the argument goes, it must be just and equitable to make these unit owners pay more for these facilities.

Each floor of a high rise building generally has the same or similar floor area. Accordingly, each floor must be capable of accommodating the same number of people. That being the case then theoretically the same number of people from each floor can utilise the common facilities.

I recommend that the Committee ask the Attorney General's office to provide all correspondence and background material to this change to determine what the driving forces are behind this amendment. I suggest this, as firstly there has been an indecent amount of haste in trying to have this change enacted, and, secondly, that there is no concrete evidence produced by the Attorney General to support the need for these changes; other than he wants to overturn a Labour Government initiative.

SECTION 4

(1) Section 46A of the BCCMA

As you are aware this section of the Act allows a single lot owner to apply to QCAT to have levies equalised. The 2011 amendment closed the window on this section of the act. *The amendment now before the Committee intends to again open this window.*

1. The Attorney General, amongst many others, points out, with reverential deference, that as a judge makes a determination under this section of the Act that judge would have deliberated long and hard on all aspects of an application before making a learned judgement. **This is a myth.** The section of the act is very specific. There is no latitude for a judge to make a decision other than to make levies equal. Section 46A is similar to mandatory sentencing. You don't give a judge a choice so you get the result you want.

2. A Quantity Surveyor's report is required to support any application to adjust levies under 46A. Many commentators suggest that this report is proof positive that the equalisation of levies is justified. **This is the second myth**. A Quantity Surveyor (QS) is required to provide a report to justify why levies should be equal. A lot owner applying to have levies equalised is not going to hire a QS, and then ask the QS to make up his own mind what is fair and equitable. *The applicant tells the QS what he wants and the QS obliges.*

If I was to hire a QS and tell him that I want a report that divides levies on the basis of the area of each unit, then he will produce a report that supports this concept. But has my report any more validity than the one produced for an applicant who wants levies equalised. *To suggest that a QS report in any way validates the equalisation concept is misleading, if not deceptive.*

3. The Committee may well ask ''why haven't all unit complexes applied to QCAT to have levies equalised. Why are there thousands of unit complexes where levies remain at the level set by the developer?" There are a variety of explanations for this:

(a) Believe or not there are large unit owners who do not agree that all levies should be equal. That it is legitimate for a larger unit owner to pay more than a smaller unit owner. Change of ownership will more than likely see this change.

(b) There is a poor appreciation of the implications of Section 46A. Buyers of units generally accepted the levies set by the developer, and did not sift through the legislation to determine if they could gain an advantage over others.

(c) It is estimated that it costs between $10/20000 to lodge an application to adjust lot entitlements. Cost may be a disincentive.

Unit buyers will continue to purchase units with levies set at the developer rate. *The government is allowing these buyers to be ambushed or conned into believing the levies they sign up for will be the levies that will have to pay in the future.* It is not acceptable for a Government to allow this to continue. The government should amend the legislation so that levies for all unit complexes are equal, or leave the 2011 legislation in place. But of course it is easier for the government to allow others to enforce the legislation (46A) so that the unit owner seeking to change levies is blamed, and not the government.

(11) The Attorney Generals' speech to Parliament.

There was a paucity of any supporting evidence presented to parliament when this amendment was tabled. Members of parliament should not be expected to just rubber stamp legislation produced by the government executive. *All members owe a duty of care to the wider community, and if the government executive is presenting legislation that is flawed or unfair, then it is up to the members to bring this to the government's attention, and to reject the legislation.*

Introducing the amendment to parliament the AG referred to the ''most odious provision in the 2011 amendments". He was referring to the fact that under the 2011 amendment one lot owner could submit a motion to the Body Corporate, which would compel the Body Corporate to adjust lot entitlements. *But the AG's amendment does exactly the same thing. One unit owner will be able to force a change to lot entitlements.* In addition, a Coalition government introduced the 1997 legislation that again allowed one lot owner to adjust levies. How are the Attorney General's amendments any less odious than the 2011 amendment?

The AG also referred to an article that appeared in Q Magazine *(attachment number 4*). The AG was very complimentary about the journalist who wrote that article. ***Meaning no disrespect to the journalist, but inane comments comparing levies to the cost of a cup of coffee and self interested emotional rants from unit owners are no substitute for facts.***

It was solicitor, Anthony Delaney who gained most coverage in the article. Mr Delaney was the spokesperson for a group of penthouse owners who were threatening to take a class action against the government.

One particular case was covered in the Gold Coast Bulletin *(attachment number 5)*. This concerned an individual who had purchased a large unit in Surfers Hawaiian after levies had been equalised. Then the 2011 amendment forced an adjustment of levies, resulting in a substantial increase in this individual's levies. This was sighted as manifestly unfair.

What the article neglected to mention was the thousands of unit owners who had purchased a unit with levies set by the developer, only to see their levies increase when a unit owner made an application under Section 46A. How then is this any less unfair?

It seems somewhat ironic that the Attorney General's sympathies lie with the individual with the large unit. No mention of, and no concern expressed for, the other unit owners who have also suffered a similar fate.

**Mr Delaney makes much of the fact that the 2011 legislation overturned a court order ''by a considered learned judge after reading volumes of very thorough reports put together by an expert". The reality is different to this interpretation. Following the Centrepoint Court of Appeal decision in 2004 a ''learned judge'' in any subsequent applications to equalise levies had no choice, but approve the application. If there was any discretion then there would have been judgements with a different outcome. There haven't been any. Even in the Centrepoint case the judge made note of the inflexibility of the legislation.

The Attorney General also notes that he has received 110 letters objecting to the 2011 amendment. Is 110 the magic number by which a group of individuals can influence a government? Is that all it takes? Put this number into some sort of perspective. In Ms Stuckey's speech *(attachment no.1)* she states that between 5/10,000 units have been affected by the equalisation of levies. ***What she omitted to clarify was that the majority of this number had been adversely affected.*** So why should 110 complaints rate a mention? The number of letters the AG received is irrelevant.

The AG also states that the Unit Owners Association of Queensland had opposed the 2011 legislation. This was stated as if this had some value or importance. It doesn't.

***I want the Committee to understand that the Queensland Unit Owners Association does not represent me, or the vast majority of unit owners.** *I, like most if not all of the 330 affected unit owners at Q1, have never heard of this association or had anything to do with it until it was mentioned in the Minister's speech.* **Put no credence, as being representative of all unit owners, on any submissions made by this group.**

(12) Speech to Parliament by Ms J. Stuckey 5/4/11

The minister also refers the member for Currumbin's extensive critique of the 2011 amendment. Ms Stuckey was very critical of the amendment.

Refer attachment number one. Page 4, (fourth and fifth paragraphs).

In referring to applications before QCAT (to equalise levies) at the time the 2011 amendment was introduced Ms Stuckey notes ''***there are in the vicinity of 30 to 40 applications at various stages of progress awaiting decisions. These people will not be able to proceed under the provisions before the honourable members..".***

Ms Stuckey goes on to say ''***How can this be fair?" "Does the minister not care about these people?" "Are they somehow less important, less deserving of fairness."***

Ms Stuckey could as easily be referring to the AG's amendment. The AG's amendment does exactly the same thing as the 2011 amendment. The situation is identical.

Page 5, second last paragraph. Ms Stuckey states ''***Provisions in this Bill indicate that all it will take is one person to move a motion and the reversion must occur. Where is the fairness in that?***

I really do not need to provide any additional quotes. The Committee will no doubt get the message.

Perhaps the Committee should ask Ms Stuckey if she also make the same criticisms of the proposed amendment.

Inconsistencies

The AG has determined that a unit owner should only pay the same levy as any other unit owner, irrespective of unit size or value. However, the legislation is not consistent.

(1) If I amalgamate all 10 units on my floor into one unit, I cannot then apply to pay just pay one levy; on the basis that I own just one unit. No, I will be forced to continue to pay the levies that applied to all ten units. The combined levies for my floor, if this amendment is passed, will by $66,000. If I amalgamate all units I will continue to pay $66,000, even though I will just own one unit. Compare this to the penthouse unit, which also occupies one complete floor. The levies for the penthouse will be $9,104. This anomaly is contrary to the concept embraced by the AG that each unit owner should only have to pay an equal share of the levy contributions.

(2) Conversely, if the penthouse unit (942m2) was subdivided into 11 one bedroom units of 84m2, then the combined levies for these units would remain at $9700. Each unit would then only be required to pay an annual levy of $881. Compare this to the levy that would apply to a one bedroom unit on the 3rd floor, which will have an annual levy of $6554.

How then is it equitable that I would have to pay $66000 in levies if I amalgamated all units on my floor, compared to a subdivided unit on the penthouse level that would only pay $881?

At every turn the system benefits the large unit owners.

The AG has apparently stated that only 20 buildings will be affected by this amendment. That number (20) may be correct for buildings that had their levies changed under the 2011 amendment. But this number will grow exponentially if this amendment is passed unaltered. Thousands of unit owners are yet to be impacted by Section 46A.

The smart investors are already scoping out large or penthouse type units where levies have not been made equal. The strategy, as I understand it, is to purchase the unit then make application under Section 46A to equalise levies. Not only does the investor receive an immediate cash flow benefit, but the value of the unit will increase as a consequence of the lower levies.

Potential for legal action

Notwithstanding the fact that Section 46A has been in place since 1997, and confirmed in a Court of Appeal decision (Centrepoint case) in 2004 developers continue to bring units onto the market with levies set on a different principle other than the equalisation principle.

It stands to reason that the developers must have been aware of the legislation in place that would allow one owner to force levies to be made equal when they set levies at a different level. Even if the 2004 Court of Appeal case occurred after the levies were set, but before the units were settled upon then as far as I am concerned the developer should have made all purchasers aware of this risk, or alternatively should have reset levies to an equal basis.

In my opinion, a purchaser of any unit sold with levies set at other than an equal basis post the 2004 Centrepoint case should have been warned by the real estate agent or their lawyer that there was a risk that their levies could be adjusted after purchase. There is a very real potential for damages claims against real estate agents, lawyers and developers.

SECTION 5

Recommendation

I believe I have presented the Committee with sufficient evidence to warrant the proposed amendment being rejected. If the Committee disagrees with my assessments then I would hope that this disagreement will be factually based.

It is possible that the Committee will receive a significant number of proposals supporting the amendment. But do not allow the weight of numbers to sway you. The supporters of the amendment have had 17 months to organise. Gold Coast lawyer Anthony Delaney has boasted that he alone has around 200 unit owners signed up for his now defunct class action. A fairly insignificant number when compared to the 214,000 who may yet be adversely affected.

I ask that the Committee pay particular attention to submissions supporting the amendment. I can almost guarantee that these submissions will not be evidence based. I have not read any article, document or submission that can justify the equalisation of levies with anything other than the usual mantra ‘‘that it is fair to do so”.

Those opposing the legislation have not had the same opportunity to organise themselves. A window of just 19 days to make a submission is simply not good enough. The Attorney General has not sought public submissions on the proposed amendment. He has not sought advice from industry experts. It is almost as if he is rushing this amendment through to avoid a build up of opposition. *At the very least the Committee should demand more time for submissions.*

The Committee has a stark choice. If the proposed amendment proceeds, then the Committee has to accept that thousands of unit owners will be adversely affected. This will include a considerable number of the most vulnerable people in our society.

I recommend:

1. That the Committee requests the Attorney General to allow further time for submissions. Many unit owners at the Gold Coast live interstate or overseas. These owners will not be able to be informed of the proposed amendment in time to make a submission. I recommend that there be a period of at least 3 months, but preferably 6 months to allow time for affected unit owners to participate.

Those unit owners who support the amendment have had 17 months to put their case before the government. *With advertising about this amendment only commencing on the 30th September those unit owners opposed to the legislation have just 19 days to get advice, garner support and make a submission.* By any measure this short time frame is unfair.

2. (a) That the Committee return the amendment to the Attorney General (AG), *with a recommendation that a complete review of the way lot entitlements are determined be accomplished* by *an independent review panel.* A review of sorts has already been flagged by the AG. This review panel should include a broad cross section of those involved in the industry; including unit owner representatives. It is a mystery to many, as to why the AG did not complete this review before recommending changes to the legislation.

2 (b) Failing the adoption of (a) above that the Committee return the amendment to the AG, *with a recommendation that the amendment be altered so no future applications to revert lot entitlements under the April 2011 be permitted pending a review.* However, any adjustments made prior to the proposed legislation be permitted to remain unchanged pending a review.

As many commentators have stated there are considerable complexities involved in Body Corporate law. One really needs to be directly involved in the day to day functioning of a body corporate to gain an understanding of these complexities. I doubt that for most of the Committee, that you have any or many situations in your electorates where Body Corporate law is applicable.

I do not want the Committee to interpret these comments as in any way my suggesting that you will not be able to evaluate this issue. What I am alluding to is that there may be considerable value in your holding public hearings to be able to pose questions to the pro and anti supporters of this amendment.

I have also attached articles from the Property Council and from lawyers critical of the proposed legislation. No doubt there will be more, but probably not before submissions close.

Please note that with or without a public hearing I am more than willing to meet with the Committee, to clarify any of the matters I have raised in this submission.