

Submission to the Legal Affairs & Community Safety Committee  
Legislative Assembly, Queensland Parliament

**RE: Body Corporate & Community Management & Other Legislation Bill Amendment 2012**

*This Submission is made by Lot owners in Trafalgar Towers, 120-122 Duporth Ave Maroochydore Q 4558, for whom the Amendment 2011 to the Body Corporate Contribution Entitlement Levies Legislation resulted in return to a grossly unfair Levies situation, with the added impediment of not allowing any form of appeal. We appreciate this Government's speedy review of the 2011 Amendment. Our purpose is to offer comment relevant to the 2012 Amendment (14<sup>th</sup> September) and now under review.*

We submit that the sole reason for the collection of Body Corporate Levies is to fund the general expenses incurred by an apartment block on behalf of all owners. Therefore

- 1. The central guiding principle of the new Amended Legislation should be to achieve FAIRNESS in determining and applying criteria and guidelines for Levy apportionment on all Lot Owners within an apartment complex.**

This principle was enshrined in 2003 *Body Corporate & Community Management* legislation, **"There should be just and equitable apportioning of individual Lot levies in relation to the impost on Body Corp expenditure."** The impact of the 2011 Amendment was to overturn this principle, reverting to **arbitrary and unfair determinations.**

- 2. Fairness and equity will best be provided by professional assessment – specifically, Quantity Surveyors. We suggest that Body Corporate Committees be required to obtain a professional assessment and to rely on the recommendations made in arriving at any variation of a Levies Apportionment Scheme.**

The goal of this recommendation is to minimise objections made to Entitlement Apportionments by disgruntled or vindictive individual Lot owners, creating acrimony, disharmony and unnecessary distraction to the Body Corporate Committee. To ensure a fair and democratic process, individual lot owners must also have safeguards - namely

- 3. There should be an appeal process which is simple, sensible and transparent where an owner believes there to be unfairness in determinations of Entitlement Apportionment among Lot owners.**

We suggest that dispute resolution be facilitated at Body Corporate Committee level, but disallowing Rules which require a "unanimous" vote, which allow one disgruntled owner to veto a resolution acceptable to a majority of owners in the apartment complex. The Amended legislation should also provide for independent arbitration as a last resort. We suggest that the Office of the Commissioner for Body Corporate & Community Management be re-instated.

**RE SPECIFIC PROVISIONS - 2012 AMENDMENT BILL**

In proposing the following further amendments we wish to stress to the Committee how very welcome and appropriate is the overall approach that has been taken in drafting the 2012 Bill.

- A. We submit that reinstatement of the last Adjustment Order is imperative.** According to our BCC Rules it is possible for one Lot Owner to effectively overturn the lawful order of the specialist arbitrator who deemed the previous contribution lot Entitlements to be **unfair and inequitable.**
- B. We are concerned that the timelines provided within the Bill will allow our Body Corporate Committee to extend the reinstatement process beyond a time that is reasonable.** The effect on our group will be to prolong what is clearly **an unfair and inequitable financial burden (currently \$18,786 gross, \$17,846 after discount).** Three of the five members are retirees on fixed incomes and our apartment is our only residence and we are unable to access Tax relief available to the majority of investor owners in our Scheme.

**SECTION 403(3)** That once the BCC has received a Reinstatement Request a **30 day** period represents a reasonable time period for the committee to issue notices to all owners inviting their submissions.

**SECTION 403(4)** That while the only provision is for a 28 day *minimum* period, it should more reasonably allow a maximum period of say, **40 – 45 days** for receiving responses. Undoubtedly some Lot Owners in our Complex will seek to obstruct the re-instatement process - the current open ended timeframe favours them, while affected owners continue to bear the inequitable financial Levy.

**SECTION 404(2)** That there must be a defined timeframe in which a BCC must decide on modifications, if any, to be made to a Scheme's last adjustment orders. We suggest that **14 days** is reasonable and adequate to be applied to this Section.

**SECTION 404(4)** That **60 days** allows a fairer and more reasonable period than current 90 days, for lodgement of a new Community Management Statement by a BCC.

We conclude with a brief background to this Submission to support our Submission and to provide the Committee with a glimpse of the personal impact that recurring reviews, followed by the 2011 Levy apportionment reversion order, have had on us and on relationships within our Trafalgar community.

#### **BACKGROUND TO SUBMISSION**

In 1982 the Developer of Trafalgar Towers assigned Body Corporate Levies to the 3 bedroom apartments (5) as **double** that of the 2 bedroom apartments (53). The apartments are NOT double in size, nor do they demand greater services from the BCC. Thus, the original assignment must be regarded as **arbitrary**.

In 2006 two independent Quantity Surveyor firms examined the cost impost of all Trafalgar Lots on Body Corporate expenditure. **Both experts established independently that the 3 bedroom apartments did not impose any significant additional cost (impost) on the Body Corporate.** They recommended a Lot apportionment Scheme based on actual and estimated costs; this was acceptable to us as it seemed to represent a **fair and accurate, but not quite equal, division** of costs throughout the lot owners. The Body Corporate Committee rejected this finding. A long, costly and acrimonious process ensued, ultimately resolved by Specialist Adjudicator Mr Gary Bugden (10/10/2006). He determined that the cost to Trafalgar Towers BCC was essentially the same for all Lots and directed that Levies be equal. Though legally correct, as this decision did not rely exactly on the actual data on costs provided by the Quantity Surveyors, it **could also be regarded as arbitrary**. Following unsuccessful appeals by owners of 2 bedroom units, all Trafalgar Towers Lot Levies became equal and remained so until the 2011 Amendment legislation. Increase in the reapportioned Levy on 2 bedroom owners was minimal while the relief to 3 bedroom owners was very significant.

**The effect of the 2011 Amended legislation is that the Levy Apportionment has reverted to the original requirement that 3 bedroom Lot Owners pay DOUBLE Levies, arbitrarily determined – without any recourse to an Appeal process.** We submit that this reflects clear injustice for 3 bedroom Lot owners, against the "just and equitable" apportionment principle still enshrined in legislation.

Trafalgar Towers is a remarkably cohesive and harmonious community and our Body Corporate Committee ensures efficient and capable financial management. It is regrettable that the current Amendment Bill is likely to stir disharmony again. We sincerely desire a speedy re-instatement process with the outcome that we, the signatories to this Submission pay our fair and equitable contribution to the BCC through our levy apportionment – nothing less and nothing more.

*We are respectfully yours*

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**ALL CORRESPONDANCE ON BEHALF OF SIGNATORIES TO**

**MR TERENCE SCHRODER** [REDACTED]

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