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October 7, 2012

Ray Hooper MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
BRISBANE

Body Corporate Management Act Amendment Act 2012

I refer to the reference to your Committee of the amendments to the Body Corporate Management Act as they apply to contribution schedules. In May 2012 I wrote to the Premier in similar terms to this submission (reference FTP-01370).

Over a number of years, our body corporate committee received sporadic complaints about inequitable levies (our lot entitlements range from 120 to 400). The Committee took no action but the complaints escalated when we installed water tanks for the care of common property gardens. The special levy for payment of the tanks highlighted that, for any work on the common property, although all owners would benefit equally, some owners were required to contribute between two and four times the amount that some other owners contributed.

The expenses of running apartment complexes like ours are considerable, not because some units are bigger than others, but because there are a number of community services (pool, gym, function facilities etc) and a large common property to which all units have equal access.

Not only are the levies unfair: water charges are allocated between units on the basis of the contribution levies. Apartments at the top end of the schedule appear to be using excessive water (up to four times as much) compared with Brisbane and local area averages. However much water the occupiers of apartments at the lower end of the schedule use, their average water usage appears to be low because they are heavily subsidised by some other occupiers.

Several years ago, following the more strident complaints about unfair levies, the body corporate manager advised the body corporate that we should address this issue having regard to the principles in 1997 Act. We sought advice and obtained a report from a quantity surveyor. That report confirmed that there were substantial inequities in the contribution schedule. The surveyor proposed a new schedule which took into account the principles in the 1997 legislation and several other matters (including outstanding matters from an earlier amalgamation of two schemes, the current sinking fund analysis etc),

In compliance with the Act, a resolution to adopt the proposed schedule was submitted to a general meeting. Although there was a majority in favour of the new schedule, to be adopted the resolution had to be passed without dissent. There were some dissenting votes and the resolution was not carried. In accordance with the Act at the time, an owner lodged an appeal with QCAT. All owners were given notice of the appeal as required under the Act and no submission was made. QCAT reviewed the

proposed new contribution schedule and ordered that it be adopted.

In 2011, following the 2011 amendment, an owner submitted a motion for reversion to the previous schedule. That owner had made no submission to QCAT before the new schedule was approved. The body corporate committee took advice and was advised that it had no option but to revert. Provisions in the Act allowed for submissions against reversion but the permissible grounds were so narrow as to be irrelevant. There was no reconsideration of the schedule based on any principle for the determining of schedules or on any other matter that might have been relevant to the amended schedule; there was no requirement for the motion to be seconded or considered by a general meeting.

Following the 2011 Amendment I wrote to the previous Premier; in a response I was advised that the "mechanism (for adjusting the schedule to accord with the 1997 principles) allowed one lot owner to apply for an adjustment to the contribution schedule lot entitlements for their scheme without consent from those who would be affected." That was a very simplistic statement of the procedures required to amend the schedule. Implementation of a new schedule required a proper evaluation using principles set out in the legislation. Although one owner could apply (or appeal) for an amended schedule, the proposed new schedule was subject to a review by QCAT and all lot owners had the opportunity to object.

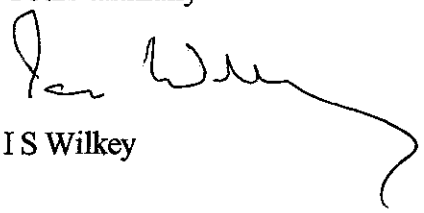
The response on behalf of the then Government also stated that the change meant that "lot owners who had diligently budgeted for anticipated costs when they purchased their lot and could no longer afford their fees." This is a plausible assertion but the fact is that people who buy or rent apartments in complexes that have substantial common amenities are not impecunious. Much more cogent arguments are those that underpinned the 1997 Act and the amendments which gave effect to the equitable principles.

Similarly, although it is important that lot owners have certainty about their contribution levies just as it is important that there is certainty about rates, water, power and fire service charges and all the other service charges we face living in a modern city, it is equally important that these levies and charges are equitable and that serious inequities are not ignored.

I trust that the new Government will proceed to reverse the 2011 Amendments.

I appreciate that the Government will look at the broader issues around the contribution and interest schedules. There are other matters that should be considered, one being the requirement that, in some circumstances, motions must be passed without dissent.

Yours faithfully



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