

From: [Jonathon Noonan](#)
To: [Legal Affairs and Community Safety Committee](#)
Subject: Body Corporate and Community Management and Other Legislation
Date: Thursday, 11 October 2012 4:43:29 PM

Dear Committee, Please see attached my submission in relation to your review of the Body Corporate and Community Management and Other Legislation Amendment Bill 2012

Regards

Jonathon Noonan

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TO

Research Director,

Legal Affairs and Community Safety Affairs Committee,

Re; Body Corporate and Community Management and Other Legislation Amendment Bill 2012.

Dear Committee,

I am the owner of a Penthouse located at 181 The Esplanade,Cairns.

I have resided at this address for 9 years.

There are 37 apartments in the complex; 35 2 bedroom apartments and two Penthouse apartments.

When I purchased my Penthouse in 2003, the payment of the Administrative Fund and Sinking Fund was determined on the basis of the level on which the apartment was located. The lowest floors paid the least,the Penthouse owners the highest. In general terms, the two bedroom owners were paying for 25 lot entitlements whilst the Penthouse owners were paying a massive 80 lot entitlements.

This was obviously unfair and disproportionate with what the other owners were paying.

The Penthouse owner received no greater benefit or use of the complexes facilities than any other owner.

Every owner had one car park.

The Body Corporate and Community Act, the 'Act' which regulates the activities of the 5000 Body Corporates in Queensland, provided a means for an owner to address this irregularity.

By making an application to the Commissioner,an owner could seek approval from that office,to engage a duly authorised and qualified Adjudicator to access the lot distribution,and adjudicate on the fairness of that distribution.

On 29th June 2004,Gary Bugden, a prominent Brisbane based Barrister, was

appointed by the Commissioner to adjudicate on the lot distribution at 181 The Esplanade.

In handing down his decision, Mr Bugden found that the lot distribution was unusually dis-proportionate ,and that the distribution was not fair and was not equitable!

He ordered a redistribution of lot entitlements for all owners on the basis of fairness.

He made no order regarding the Interest Lot Distribution.He deemed that as the Penthouses were considerably larger than the 2 bedroom apartments,the Penthouse owners should bear a heavier burden for insurance and other attributable expenses.

We both accepted this as a fair and reasonable decision!

In 2011, the Hon. Member for Southport, Peter Lawler, introduced a Private Members Bill into Parliament, which would in effect overturn all Court and Adjudicator decisions made retrospectively, and revert all those buildings that had been the subject of a ruling, to their original lot distributions.

He could not give the media or the public any decisive explanation as to the reason for the Bill other than the repeated comment 'I WANT TO MAKE IT FAIR!'

The legislation was retrospective, with no right of appeal by an owner, and indeed excluded an owner completely from submitting a case to their Body Corporate Committee. It required just ONE owner to request a lot revision.

The Bill was opposed by the Queensland Law Society and by the Unit Owners Association of Queensland.

The President of the Law Society said of this Bill,

"How can any Government continue to allow a law that removes the rights and liberties of individuals retrospectively and which are inconsistent with the principles of natural justice!"

and also

"When this legislation was introduced, the LNP Shadow Minister, Jann Stuckey stated that this legislation was abominable, and the LNP staunchly opposed it!"

This Bill became an Act of Parliament in April 2011.

In May, an owner requested that the committee commence action to have the lot entitlements reverted to the prior schedule under the provisions of this Act.

The lot entitlements for all owners were reversed in November 2011.

This has placed an intolerable burden on the two Penthouse owners.

Our Body Corporate levies have increased fourfold, from \$10000 per annum to \$40000 per annum.

I am in the terrible situation of now having to move out of my home for the last 9 years and have been forced to rent my Penthouse out.

I have approached a number of Real Estate Agents in the hope of selling, but they have all said that with such horrific Body Corporate

fees, I will have no hope of finding a buyer!

I am so delighted and relieved that the newly elected Government and the Attorney -General and Minister for Justice have seen the merit in introducing this Bill into Parliament to rectify the previous flawed amendment Bill, and I commend the Government and the Minister in doing so.

Your's Sincerely,

Jonathon Noonan

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