

From: [John Nolan](#)
To: [Legal Affairs and Community Safety Committee](#)
Subject: submission
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Attachments: [Document.pdf](#)

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Research Director,
Legal Affairs and Community Safety Committee,
Parliament House,
George Street,
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Thursday, 11th October 2012.

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

Dear Sir/Madam,

Your committee called for submissions re the above mentioned bill, please find below our submission.

We will be as concise as possible in an attempt to save a multipaged email.

HISTORY

Both, born and bred in Queensland and in our 60's, decided in early 2006 to start looking for a home on the Gold Coast which would suit us, both at that time and in our fast approaching retirement years. After looking for over 12 months found a unit which suited our needs.

One of the very first questions we asked was, "how much are the body corp. levies" ?

After allowing for certain future increases in these fees, certainly they were affordable.

Obtained a longer than normal settlement period on this unit, which enabled us to sell our home of over 20 years in Brisbane and thus moved into our new home, a unit in a building named, "19th Avenue", at Palm Beach.

Since moving into our new home we successfully endured the effects of the GFC when, (like so many other millions of people around the world), our super fund savings were very adversely effected however we were still aiming at retiring in the not too distant future.

In late 2011, (shortly prior to the Queensland state government elections), the previous state government introduced the BCCM Amendments 2011 legislation.

CURRENT SITUATION

Currently, we are both still working, to secure financial independence for retirement in the home we

chose for that purpose and also recover some of the losses sustained by our super fund.

The body corporate levies for our home fall due three times per annum, notices for the current period, (01/10/12 – 31/01/13), were recently issued twice.

The first notice dated 09/08/12 for the discounted amount of \$3345.01 was based on the lot entitlements which were ruled by the Southport Court, way back in 2002 to be fair and equitable. The second notice dated 13/08/12 for \$5672.89, (also at the discounted amount), was issued once the new CMS for our building became effective, (please find both notices as attachments).

This increase worked on either discounted or non discounted amounts is an increase of in excess of 69%.

Quickly realizing that with the new body corp. levies, (under the 2011 legislation), we would not be able to afford to stay in our dream retirement home long term and we may be forced to sell. We are also fully aware that we would lose more funds, as property prices are not what they were when we purchased, but we may still have no option but to sell.

Therein lies another problem, we have spoken to three real estate agents, who all concur that our unit is indeed desirable however, due to the huge increase in body corp. fees, (which under the 2011 legislation have jumped from \$209.06 per week to \$354.55 per week), would now make it extremely difficult to find a buyer for our property.

So long story short is, not only have our body corp. levies increased by, in excess of 69% under the BCCM Amendments 2011 legislation, but our home is now also almost unsaleable and all this is made possible, not through any wrong doing by ourselves, but by a decision made by a previous government. How can this ever be, fair and equitable ????

Our building is also a little unique in this area, as one of the lot owners on the ground floor is in fact, a restaurant. This restaurant is not only popular with residents and guests of the building but also is accessible to the general public, supplying both dine in or take away meals at very competitive prices, (26 dishes of the 38 dish main course menu, costing under \$20.00).

Owners of this establishment have already advised both the body corporate managers and also the building managers that they can not possibly afford to pay their increased body corporate fees and will not renew their lease.

The restaurant owners have also indicated that if the present lot entitlement scheme, (complying with the BCCM Amendments 2011 legislation), continues for any length of time, they may in fact be forced to just walk away.

The owners also point out that prior to their opening in 2004, a number of restaurants had failed in this exact same location. Figures supplied by the body corporate managers show that the annual levies for this restaurant have increased from \$10,445.76 to \$35,374.50, a rise of in excess of 238%, this rise due solely to the 2011 legislation.

When one considers that all of the stress, (both financially and mentally), in our building has been triggered by the actions of just one only lot owner who, (through their totally self indulgence greed, short sightedness and without any thought whatsoever for fellow residents, lot owners, or the overall good of the building, including the possible closure of an established restaurant), would, save a total amount of around only \$30 per week, (based on figures supplied by the body corporate manager), makes one wonder once again, how can this ever be, fair and equitable.

And this scenario was only made possible by the introduction of the BCCM Amendments 2011 legislation.

SUBMISSION

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BCCM Amendments 2011 Legislation

That the BCCM Amendments 2011 legislation was totally flawed by ;

- (a) allowing just a single lot owner, quite possibly against the wishes of the vast majority of other owners of a multi lotted building, (in the case of our building of 78 lots), to have the ability, by merely advising the body corporate committee of that building, that one only owner wishes to have the lot entitlements scheme returned to pre adjustment levels.

The effect is that one only lot owner, (who may have no knowledge whatsoever of the BCCM act or no knowledge of the history of the building, and even more importantly no legal qualifications whatsoever), has the power to automatically overturn a considered decision of a judge or adjudicator.

(b) denying other owners of any rights to oppose the reversion to the pre-adjusted levels, nor do other owners have any rights to appeal, despite the fact that, these pre adjusted levels having being previously ruled by a judge or adjudicator as unfair and inequitable.

(c) a quote from, (I believe), the Qld. Law Society ;

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.

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

- We congratulate the current government and strongly support the future introduction of this bill, as it correctly identifies and rectifies ;

- (a) the ability of a single lot owner, (even against the wishes of the majority of the community), to compel a body corporate to undertake the reversion process.

(b) allows a process for previous adjustment orders to be reinstated.

OUR SUGGESTED AMENDMENTS TO THE BILL

This bill in its current form gives some minimum time periods but is short in details on maximum time periods, therefore a body corporate committee which may not agree with this 2012 bill could, (despite the wishes of the majority of lot owners), stall the process to reinstate a previous adjustment order for quite some considerable time .

- The timeframe in having all aspects of the BCCM Amendments 2011 legislation reversed as soon as possible is of the utmost importance, especially for some in our society who, may be in similar circumstances to our restaurant owner mentioned above in this submission. And for these reasons we submit the following suggestions.

Section 403(3) ; Time period for written notice from committee to lot owners under section 403(2) is too long.

Taking into account other timeframes such as, committee decision making, submissions and lodgement of new CMS, we believe that a maximum period of 30 days would be ample.

Section 403(4) ; A required submission period of 28 days minimum is required here, but no mention of a maximum period appears.

Once again, a committee adverse to the reinstatement of previous orders may unjustly stall the process, therefore we suggest a maximum period of around 30 days should be set.

Section 404(2) ; No timeframe is mentioned in which a committee must decide if any modifications are required under subdivision (3) for the last adjustment order entitlements for the scheme.

As above, a committee adverse to this bill may intentionally delay its decision, therefore a time period ought to be applied to the provisions of Section 404(2), we suggest a time period of around 14 days.

Section 404(4) ; The time period proposed of 90 days, (after a committee makes a decision), for a committee to lodge a request to record new CMS is far too long.

Once again an adverse committee may intentionally delay this process.

The lodging of a new CMS is required however that document merely puts back in place previously recorded information therefore we suggest a timeframe of 60 days would be more than ample.

CONCLUSION

We personally wish to thank the current Queensland Government for attending to the horrific legislation known as, the BCCM Amendments 2011 legislation.

We understand that when the 2011 legislation was introduced to the house last year by the previous state government, the then LNP shadow minister, Jann Stuckey, described the BCCM Amendments

2011 legislation as abominable.

Thank you and your committee for requesting submissions re this matter, it enabled us to put our particular situation forward so your committee can have some idea of the devastating impact, both financially and mentally, that the 2011 legislation has had on, not only ourselves but also thousands of others in similar situations. When we purchased our unit, we crossed all the "T"s and dotted all the "I"s

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Then the previous state government shifted the goalposts, not only shifted them but moved them over the horizon so any hope of seeing them was gone.

As mentioned previously, time is of the utmost importance to all of us, but especially the business owners, (who's body corporate levies may at this point still be controlled under the BCCM Amendments 2011 legislation), risk losing their businesses should the 2012 bill be delayed in any way.

We are informed that your committee is to report to the house by Thursday, 22 November 2012. Trusting your committee's recommendation will be, to have all buildings that have already complied with the BCCM Amendments 2011 legislation by lodging a new CMS with the relevant department, are able to reverse that compliance immediately.

Thanks you to the current Queensland Government for addressing this legislation and hopefully after receiving your committee's report, will introduce the new bill to the parliament at the first available opportunity.

Thanking You,
Yours Sincerely,
John and Mary Nolan.