Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 074

[redacted]

12 October 2012

Chairman
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD. 4000

Dear Mr Hopper,

***BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2012***

Your Reference: 11.1.7.c of 19 September 2012

Sadly, on 6 April 2011 the majority of unit owners in Queensland took another step backward when the Government passed the Body Corporate and Community Management and Other Legislation Bill 2010. Every amendment to the Body Corporate and Community Management Act (BCCM A) since the 2003 amendments has further disadvantaged unit owners. It is true to say that most new legislation has winners and losers, unfortunately, the majority of unit owners have been the losers over the past eight years.

The 2011 amendments to the BCCM A reversed the 2003 amendment that introduced equalisation of body corporate contribution schedules making all unit owners contribute equally to the cost of day to day maintenance and operation of their scheme – unless there was a reason why that should not be so. Admittedly some unit owners were disadvantaged by the 2003 change having to contribute more to the body corporate funds, but many more were advantaged, and the schemes became fairer and closer to the Australian perception of a fair deal where every one pays their fair share. This of course compares to the socialist ideology where those who have worked and saved are expected to support the bludgers and wasters.

The 2011 legislation:

- Reversed all the decisions of adjudicators, the Queensland Civil and Administrative Tribunal, District Court and even the Supreme Court of Queensland, introducing fair and equitable contribution schedules following detailed and unbiased consideration of each situation.
- Reverted all existing buildings to the developer imposed contribution schedules that were more about selling units than equality of contributions by the owners.
- Removed the right of appeal against unjust contribution schedules for all existing units.
- Introduced new contribution setting rules based on unit unimproved capital value (that has no relationship to scheme maintenance costs), or relative value of units or other nebulous features that also have no relativity to the cost of maintenance of the scheme, or as a last resort, the existing criteria of fair and equitable. These rules simply allow developers to

revert to their old practise of allocating contribution schedules that help them sell units with no consideration of the future cost of running the scheme.

The 2011 legislation was introduced and passed by the Government against the advice of the Unit Owners Association of Queensland (UOAQ), the Community Titles Institute of Queensland (CTIQ), the Queensland Law Society (QLS), the Australian College of Community Association Lawyers (ACCAL), the Association of Residents of Queensland Retirement Villages (ARQRV), Leary and Partners, quantity surveyors who were involved in many of the schedule reviews, Liat Walker and Ros Janes directors of Success Law Pty Ltd, and many independent solicitors including John Mahoney (a highly experienced BCCMA lawyer) who headed his web site post "The Lot Entitlement Debacle".

The Government's own Scrutiny of Legislation Committee was highly critical of the drafting of the legislation reporting to the Parliament that: "In relation to whether the bill has sufficient regard to rights and liberties of individuals, the committee draws the attention of the parliament to:

- clause 5 permitting market value to be used as the sole consideration to set lot entitlements;
- clauses 7, 8, 12, 21 and 41creating offences and amending an existing offence provisions;
- clause 8 removing the right of lot owners in some community titles schemes to apply for adjustment of their contribution schedule lot entitlements; and
- clause 41 requiring bodies corporate to revert contribution schedule lot entitlements to their original settings on the application of one lot owner."

Last but not least, the Liberal National Party shadow Minister for Body Corporate and Community Management (Jann Stuckey) raised serious concerns with the legislation and recommended no less than 27 amendments – all of which were rejected by the Government.

The Labour Government claimed that there was a problem in the (BCCM) market place, and it is agreed that there was, and continues to be, a problem in the market place. The current problems are of the Labour Government's own making. Unfortunately the Labour Government inflated the problem of contribution schedules out of all proportion, and chose to demonise so called 'penthouse owners' as exploiting the 'loopholes in the BCCMA'. The impression conveyed was that every person living higher up in a building was rich – nothing could be further from the truth. Some higher floor owners purchased wisely 'off the plan' some are widows whose husbands have died since moving into their unit and some are even disability pensioners who are just surviving on their incomes. Selling is not an option because of the real estate agent fees and the stamp duty payable on any new residence. The past minister was made aware of these facts, but chose to ignore them, continuing to try and divide the unit owners and portray himself as the saviour of the disadvantaged.

The fact is that 120 buildings were adjusted, plus some 40 buildings were in the process of being adjusted, representing some 15,000 unit owners. Of those approximately 6000 may have been advantaged by the adjustments, 3000 (living on the middle height floors) experienced no change and approximately 6000 living on the lower floors may have been required to contribute their fair share to the cost of running the building and the facilities. The surprising fact is that the majority of the 6000 who were required to contribute their fair share agreed with the fair and equitable distribution of costs. This fact was established at a BCCM public meeting when the matter was put to the vote. There are of course the minority alarmist faction who predict devastating outcomes from legislation

causing all unit owners to contribute their fair share to the cost of running the building. Some of these alarmists claim to represent large numbers of unit owners in several buildings, but when tested as to the constitution of their group are found to be minority malcontents. The Unit Owners Association of Queensland Inc. is the only true representative voice of unit owners, and the UOAQ disassociate themselves from these minority vested interest groups.

When requested to provide an analysis of the responses to the public draft consultation Bill, the past minister declined to make the figurers available. Information received, indicates that the majority of the responses received by the Government condemned the Bill.

The reasons for condemning the Bill included:

- The 2003 legislation was (with only a few exceptions) working well and the 'fair and equitable' principle was seen by the majority of unit owners to be the best solution to a very complex problem. This opinion is supported by the fact that the 2011 legislation retained the same principle of 'fair and equitable' (Confused by two other disassociated principles).
- Unit owners had invested approximately $1.6 million complying with the legislation only to have the independent determinations reversed without appeal by the application of one malcontent.
- All new unit owners' post 2003 who purchased in adjusted buildings were placed in the same position as those whom the Bill was purporting to liberate from injustice.
- The Bill created two classes of unit buildings, those who pre the legislation were adjusted and post the legislation readjusted, now being stripped of any rights of appeal; and new buildings post the legislation who retain the right of appeal. This potentially impacted on unit values in pre legislation buildings because the contribution schedules could never be adjusted – no matter how unfair and unjust.

The Legal Affairs and Community Safety Committee may wish to extract the public responses from the archives to determine the level of support or otherwise for the 2011 legislation.

The purpose of the 'contribution schedule' is to establish:

(a) the lot owners liability for amounts levied by the body corporate to cover the cost of the running of the scheme:

  (i) for daily expenses by way of the 'administrative levy'; and

  (ii) for provision for future capital expenditure by way of the 'sinking fund levy'.

(b) the value of a lot owners vote for voting on an ordinary resolution if a poll is conducted for voting on the resolution.

The purpose of the 'interest schedule' is to establish:

(a) the lot owner's financial share of common property; and

(b) the lot owner's financial interest on termination of the scheme;

(c) unimproved value of a lot is for the purpose of a charge, levy, rate or tax that is payable directly to a local government, the commissioner of land tax or other authority and is calculated and imposed on the basis of unimproved value.

The principle of the contribution schedule is 'user pays'. This is fair and equitable and is adequately provided for in the existing and proposed legislation. Unfortunately, the principle underlying this schedule has not always been clearly defined in the Act, and many inequities

became entrenched. The amendment to the Act published in 2003 corrected this situation, and the allocation of contribution schedule points entered an ongoing phase of correction to align with the just and equitable contribution schedule principles now enunciated. As with all situations of change, there will be some resistance, and some who consider that they have been disadvantaged,

When all participants in a community living scheme contribute their fair and equitable share to the costs of running the scheme, there can be no disadvantage. Disadvantage arises when one member of the scheme is expected to subsidise another member of the scheme when both have equal access to and advantage from services and facilities. Thus the proposed legislation is fair and equitable to all involved in community living. This writer fully supports the BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2012 as presented to the Legislative Assembly.

**Proposed Future Changes**

The writer understands that a proposal has been placed before the Minister to change the contribution schedule by allocating the sinking fund contributions in accordance with the interest schedule allocation. The argument being: "……..the sinking fund budgets and expenditure should be based on the interest schedule calculation as that expenditure is predominantly related to major capital expenditure or items that generally bear a closer relationship to the value of the owners respective interests in the scheme." **this statement is incorrect and misleading!** and is based on a false assumptions and simplistic understanding of the purpose of the sinking fund. For example, relining the swimming pool, or replacing the pumps or heater, bears no relationship to an owner's interest in the scheme. Replacing the front door or elevator motors bears no relationship to an owner's interest in the scheme. Replacing the water supply lift pumps bears no relationship to an owner's interest in the scheme. Replacing the gymnasium equipment bears no relationship to an owner's interest in the scheme, and replacing the common property carpets bears no relationship to an owner's interest in the scheme. All of these items and the majority of sinking fund provisions are of equal benefit to all owners. If one owner receives a greater benefit, say from painting the exterior of a larger unit, then that is provided for in the proposed legislation and that owner's contribution will be higher.

Historically unit purchasers have been prepared to pay higher prices for higher floor units. This could be argued as giving the higher floor owners a greater interest in the total value of the scheme, but in reality the interest in the value of the scheme is set by a ratio of the unit size to the total scheme size. Higher interest schedule points does not give owners greater responsibility for maintenance of, or provision of, facilities and services that are equally available to all owners.

The contribution schedule inequities were addressed by the 2003 amendments to the Act. There have been a few instances where owners have manipulated the intent of the legislation for their own benefit. Such as amalgamating titles and then amalgamating contribution schedules. This was never the intent of the legislation, and the loophole has been closed by the 2012 Bill; and, the proposed amendments to the Act in relation to the contribution schedule are fair and equitable, except for the noted exception. Any amendment to change from the proposed legislation is fraught with danger from unforeseen consequences, and is contrary to the stated policy position of the Government – "user pays".

**Ministers Explanatory Speech - Closing Remarks**

The Minister stated:

> *"We want to be a government that gets the balance right and fixes this mess once and for all."*

The writer holds the same sentiment as the Minister and sincerely hopes that the Minister, having corrected the contribution schedule fiasco, continues to review the defective and corrupt Management Rights and other sections of the BCCM Act 1997, for the benefit of all unit owners. Failure in this mission will surely result in disaster for the Government's high density living policy.

Yours truly,

Greg Carroll
Unit Owner