Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 089

TO: The Research Director,
Parliamentary Legal Affairs and Community Safety Committee

FROM: Edgar & Judith Gold, [redacted]

DATE: 14 October 2012

RE. Body Corporate and Community Management and other Legislation Amendment Bill 2012

We welcome this amended legislation as it attempts to restore the apportionment of contribution levies to a more fair and just method, as previously introduced by the Coalition Government in 1997. We trust that the new legislation will be in place and implemented as soon as possible so that those negatively affected by the current unfair system can expect some relief.

Our building, Admiralty Towers II, which has 193 apartments, followed the LNP 1997 legislative guidelines and engaged two very experienced, independent Quantity Surveyors to examine every conceivable cost component for the building. Each common area cost component was then equitably apportioned to each lot. The cost analysis for the apportionment of levies provided by both Quantity Surveyors was almost identical. The two reports were then submitted to a specialist Adjudicator (Mr Gary Bugden) who then made a determination for the adjustment of the Contribution Lot Entitlements by selecting one of the Quantity Surveyor's schedules. This decision was then ratified by the Commissioner. We cannot see a fairer system for determining equitable Contribution Lot Entitlements than this method.

Regrettably in 2010 the ALP Government decided to overturn this very fair legislation for very blatant political considerations. Although the Coalition made long and valiant efforts to oppose changing good law into bad the ALP prevailed and the legislation was changed in 2011. Coalition MP Jann Stuckey called the ALP Bill “abominable” in her speech in Parliament (as reported in *Hansard*) in which she made a compelling and indisputable argument against the ALP Bill at the time. The ALP asked for submissions on the legislation that resulted in widespread criticism from most Industry leaders who all thought the legislation was unfair and very bad law-- i.e. Experienced Loss Adjusters and Quantity Surveyors such as Leary and Partners; The Queensland Law Society; Australian College of Community Assoc. of Lawyers; Unit Holders Alliance, etc.
We attach the submission made by Edgar Gold at the time below as it clarifies the same points to be made today.

Under the 2011 ALP legislation our building schedule for the Contribution Lot Entitlements was reversed to the original developer’s schedule, which was quite incorrectly based on marketing strategies by apartment size and level instead of actual common area maintenance costs. As a result, owners on higher floors and/or in larger apartments now pay three or four times more in caretaking costs than owners in lower / mid- level apartments. Yet the Caretaker does no more work for us (all retirees) than anyone else. In fact, it is quite likely that the caretaker would have more work involving lower apartments with multiple residents and tenants.

It should also be considered that owners of penthouse and higher floor apartments are not necessary wealthy and able to meet this unfair financial burden and subsidise the costs for low rise apartments. Many of these owners purchased their apartments some years ago when costs were lower and they were probably still working. There are now quite a few owners, like us, who are self- funded retirees. On the other hand, many of the smaller, lower-level apartments are investment units and rented out at very significant rentals. Such 'investors' hardly need to be subsidized!

We trust that your Committee will recommend the repeal of the present ALP legislation especially in respect of buildings, such as ours, that have followed the LNP 1997 legislation. That legislation was, at that time, hailed as ground breaking legislation, even by Labour Ministers, and considered to be fair, just and equitable.

In considering the present Bill the following should be noted:

1. In cases, such as our building, where the reversal of the present system is required, the legislation should include a reasonable period of retroactivity, i.e. the date of the introduction of the Bill.
2. The period in which a Body Corporate Committee is required to notify all owners that changes have been applied for should be clearly spelt out—i.e. 30 days. Otherwise an uncooperative Committee could delay applications indefinitely. (s.403(3))
3. Following a submission a Body Corporate Committee should have a fixed period within which it is to decide what modifications, if any, are to be applied. It is suggested that this period should not be more than 14 days (s.404(2)).
4. The period of 90 days within which a new Community Management Statement, that includes the reinstatement of the earlier system, has to be submitted is too long. It is suggested that this period should be 30-60 days (s.404(4)).

Attachment: Submission to the ALP Govt. 2011.

The Body Corporate and Community Management Amendment Bill 2010: Turning good Law into bad!

A Comment by Edgar Gold, AM, QC

Unit owners have to pay three different charges. The first one is the normal City rates that all home owners pay. This is calculated on value, size etc. of the property and is a fair charge.

The second charge for unit owners is an interest levy that covers the building's insurance costs as well as contributions to the Sinking Fund (for major maintenance costs). This is calculated on the size of the apartment and is also a fair charge.

The third charge for unit owners is the contribution levy, which is the subject of the planned legislation. This levy is designed to cover all administrative, maintenance costs for the common areas in the building. Under the present legislation such "entitlements must be equal, except to the extent that it is just and equitable for them not to be equal." The reason for this 'equality' is that the maintenance of the common areas, i.e. lifts, electricity costs, cleaning costs, recreation areas maintenance etc. has nothing to do with the size of the units in the building. Basing this type of levy on unit size is as unfair as basing it on owners' wealth or bank balances. Yet, this what the Labour Government intends to do!

Larger units do not require more common area maintenance than smaller units. In fact, larger units often do have a slightly higher contribution levy as there are some areas that require extra work (i.e. more or larger windows to clean). Under the previous legislation, which was overturned by a court decision, owners in larger units often paid up to five times more than owners in smaller units. This was considered to be manifestly unfair as certain owners were, therefore, subsidizing other owners for exactly the same services simply because they lived in a larger unit. That is why we have the present legislation which the Government is attempting to overturn for what appear to be purely political reasons that are not well thought out.

Minister Lawlor, and his principal supporter Grace Grace, provide the often-quoted example that owners of large penthouse units are paying the same contribution levy as an elderly pensioner in a small ground-floor unit. It has already been pointed out above that owners of larger units pay significantly higher rates and administrative levies, than owners of smaller units. It is further misleading as, in actual fact, the larger units are more likely to be occupied by pensioners--many of whom have sold their family home and moved into a more manageable apartment--whilst the smaller, lower-floor units, especially in larger buildings, are very likely owned by investors who rent out such units at significantly high rents with commensurate high profits. Furthermore, as the contributions levy is a levy for the consumption of building services, it is likely that an elderly pensioner or retired couple, occupying a large apartment, have a much smaller impact on common area building services than six persons renting a smaller apartment in another part of the building. And yet the planned legislation is designed to now go back to the previous, unfair system. Furthermore, it seeks to do so retroactively, which will have a knock-on, unfair impact on those who have purchased units under the present system and will the find themselves with unexpected, significantly increased charges. I am certain that there will much confusion, litigation and unpleasantness about this in many buildings. Owners of the many investment units in Queensland will have a windfall profit and will be laughing all the way to the bank!