Submission on the proposed amendments to the BCCMA from Jeff and Noela Yates.

Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 095

[redacted]

12 October 2012

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Re: Body Corporate and Community Management and Other Legislation Amendment Bill 2012

Dear Director,

As owners and occupiers of a lot in a strata-titled building affected by the 2011 Labor amendments to the BCCMA, we wish to make the following submissions for the committee's consideration:

SUPPORTING EVIDENCE FOR THE PROPOSED AMENDMENTS ALLOWING REINSTATEMENT

The new amendment bill as tabled in the house provides for the reinstatement of the contribution lot entitlements (CLE) previously determined by qualified courts and tribunals. These judgments had been overturned by the unreasonable reversion provisions introduced by the previous Labor government's 2011 amendments of the BCCM Act. As we and many other owners in our building were personally disadvantaged by those unreasonable Labor government amendments, we thank the present government for their attention to the matter.

Lot entitlements are not property taxes. They are intended to proportionally calculate each lot owner's fair share of the running and maintenance costs of the community complex. Every owner should be prepared to pay his fair share of those costs and not expect his neighbour to subsidise any of the costs arising from his use of the common facilities or his fair share of the costs of maintenance of his home.

All costs incurred in running and maintaining every scheme must be paid. Any change to the CLE invariably results in winners and losers. That is a mathematical certainty. However there has never been a demonstrated case where any lot owner in a scheme that was subject to a court or tribunal approved adjustment was levied more than a fair share of the costs of providing the services available to all lot owners as a result of the adjustment. Some levies increased, but that increase was only because the levies for those lots were previously being subsidised by other owners in the community. However this is not the case in most, if not all, of the schemes where the reversion of the previous court or tribunal approved adjustments has been compelled by the 2011 Labor amendments.

An example of inequality in lot entitlements can be demonstrated by comparing the original developer-set contribution lot entitlements for our building, Magic Mountain Two, with the adjusted values set by a qualified valuer and endorsed by an order of the District Court in 2003.

There are 7 units out of 79 which have the use of a lift, a convenience that comes with a significant maintenance cost. The contribution lot entitlements calculated by the application of the Equality Principle and endorsed by the court in 2003 acknowledged that the lift was an unequal benefit. The cost of lift maintenance was therefore equally divided among those seven units with the benefit of lift access, and their lot entitlements were increased accordingly.
Of these seven lots, the allocation for two of these lots, when expressed as a percentage of the average lot entitlements for all lots, increased so that they paid 119% of the average levy, the additional 19% being their fair proportional share of the lift maintenance. Now that the reversion process has been enforced, the CLE has reverted to the original and clearly unfair developer's allocations. Those two lots owners now pay only 73% and 85% of the average allocation respectively, far less than almost all of the lots without the benefit of the lift. Needless to say, the owners of these two units are in favour of the reversion, which truly gives them more than "a free ride" every time they use the lift at the expense of every other lot owner in the complex.

It is rarely acknowledged by advocates for the reversion process that significant costs are already quite properly shared on the basis of the actual value of each lot, and the CLE reinstatement will not affect the allocation of those costs. This is adequately covered in the present legislation by having two schedules of lot entitlements, Interest Lot Entitlements and Contribution Lot Entitlements. The cost of the building insurance for example, is shared between lot owners according to the Interest Lot Entitlements – a different set of figures which is based on the value of the lot being insured. The higher valued lots pay significantly more than lower valued lots for their share of the building insurance in proportion to the relative valuations of the lots as laid down in the Interest Lot Entitlement schedule.

SUGGESTED CHANGES TO THE PROVISIONS OF THE BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2012

1. Owner submission and committee decision periods

The steps to reinstatement laid down in the bill are quite clearly laid out in Division 3, but the lack of any maximum periods for owner submissions and committee decisions potentially allows reticent body corporate committees to unduly delay and complicate the reinstatement process.

a) Owner submission period: We refer particularly to Section 403 (3) (iv) and (4) which sets a minimum submission period of 28 days but no maximum. A maximum of 45 days would seem appropriate and would prevent unreasonable delays in completing the process, and we suggest that this limitation could easily be added to that section.

b) Committee decision period: The same issue occurs in Section 404 (2) which provides no time limits for the committee to make its decision on owners' submissions. A committee meeting only requires 7 days' notice. The end of the submission period would be known to the committee. They are required by the provisions to set the period in the first place. The maximum

period for the committee to decide on modifications under subdivision 3 should be no longer than 28 days after the end of the submission period and that should be specified.

2. Equality Principle

I must also respectfully ask the committee to seriously reconsider the retention of the Labor amendments which reintroduced the "Relativity Principle" as an acceptable principle for the determination of contribution lot entitlements (CLE).

In short, the Relativity Principle allows the allocation of the CLE using variable and subjective criteria which depends on estimated market price, or more usually the developer's listed price, and bears absolutely no relationship to the fair and equitable division of the costs involved in operating and managing the scheme.

The Equality Principle, which has been applied fairly without major issues for many years, operates on the basis that all costs should be shared equally, except where it is fair and equitable for particular lots not to be equal. Lots which use more of the community facilities or require more that the average maintenance cost are levied additional amounts to cover these additional costs. This principle has been tried and tested in the courts and can be determined easily and consistently by any qualified valuer. It is a testament to the fairness and utility of the Equality Principle that when it was applied, independent valuers for all parties to most disputes adjudicated under this principle came up with consistent and reproducible figures. This observation was made by Justices McPherson JA, Chesterman J and Atkinson JJ in their landmark decision in the Supreme Court of Queensland Centrepoint case.

In contrast, the Relativity Principle allows the CLE to be set by developers and their salesmen. Developers are more concerned with their short term marketing goals than they are with long term fairness and equality of the lot entitlements. They usually walk away from the development well before problems in the allocations, which they set to suit their own purposes, arise.

Before the time that the Equality Principle became enshrined in the law of Queensland, there were many examples of developers setting the CLE for their developments to aid their cash flow, their marketing or simply to provide "sweetheart deals" for friends, associates and themselves. It is also clear that when listing prices are used as a basis for lot allocations that there can be a wide disparity between the initial listing price and the final selling price, so some anomalies are built into the first allocations.

Even when fairly applied, every scheme that used the Relativity Principle for allocation of the CLE set by market conditions has the potential to become extremely unfair as time progresses. Prime views, which are a major contributing factor to otherwise identical lots having higher lot entitlements under Relativity Principles, can be ruined by subsequent adjacent developments or zoning changes. The relative values of lots invariably change with time and there is no way that these changes can be continuously reflected in the CLE to maintain equality in lot entitlements that by law remain static. Usage changes of adjacent lots or properties can adversely affect relative values of the units within the complex. The list of factors and conditions that cause changes in property values is almost endless.

Under the current legislation, disadvantaged owners have no practical means to appeal the Relativity Principle applied, or have it changed to the much fairer Equality Principle. Even if there was a provision for changing the Principle (for example a law that allows lot owners to appeal to the courts every time property values change to ensure that their levies remain fair and equitable), it would be fundamentally flawed.

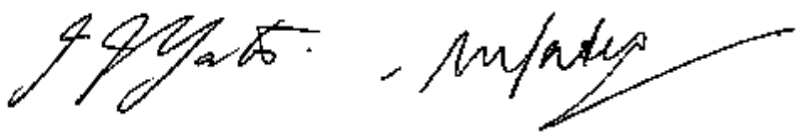
Some have likened the Relativity Principle to a property tax or council rates, but while it may be appropriate for governments to levy taxes and charges on a valuation basis, it is not appropriate to apportion the running costs and maintenance expenses of a strata titled scheme between the lot owners on that basis.

Government rates and taxes are subject to constant revision and adjustment of values according to locality, services provided, economic conditions and other criteria. Government regulated valuations can be appealed if property owners feel that they are unjust or inaccurate. Even if the proposed changes to the Act allowed it, it is simply not practical for a body corporate to constantly revalue the lots in their strata titled building on a regular basis and then adjust the CLE on the changed relativity. Such revaluations would be expensive, subjective and controversial, leading to further disharmony and legal challenges in the years to come.

Lot entitlements determined by the Equality Principle require no further adjustments as economic circumstances and property values change. All lot owners assume the responsibility for their fair proportion of the costs according to their proportion of their use of the facilities provided for the common benefit, and for their fair share of the maintenance of the buildings. These costs are easily determined and are predictable for budgetary purposes. In the event of any change to the physical configuration of the scheme or any challenge by one or more owners to an existing CMS, the appropriate courts or tribunals have clear and fair rules on which to base their decisions.

For these reasons we believe that the Relativity Principle or any other similar method that uses valuations, market estimates, asking prices or similar figures to generate the schedule of lot entitlements should not be an accepted principle for CLE determinations. The only reasonable, fair and reproducible principle for this purpose is the Equality Principle as tested and ratified by the full bench of the Supreme Court in the Centrepoint case referenced earlier.

Yours faithfully,



Jeff and Noela Yates