Body Corporate & Community Management & Other Legislation Amendment Bill 2012
Submission 123

[redacted]

16 October 2012

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

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

Dear Sir/Madam,

I attach a copy of my submission regarding the aforementioned Bill for the consideration of the Committee.

I am an owner of a unit situated at the Gold Coast. It is a personal submission although I am presently the chairman of the body corporate committee, an honorary role as are all committee positions of all body corporates. In preparing this submission I have relied upon my experiences as a body corporate committee member and I will utilise some of those experiences to help explain the real impacts of applying legislation. The focus of this submission is the lot entitlements only.
The submission is somewhat longer than the recommended ten pages but I thought it important to review the past legislation and the views expressed by members during past debates. The submission also contains an outline of the experience of a body corporate in meeting the legislative requirements of the 2011 amendments.

If possible, I would appreciate being informed of the dates the Committee will meet to discuss this particular Bill and if permitted I would welcome the opportunity to be in attendance to observe the activities and deliberations of the Committee.

Should it be the wish of the Committee, I am prepared to be in attendance for any questions members have regarding my submission.

Yours sincerely,

John Sutherland

Submission to Legal Affairs and Community Safety Committee

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

Contents of submission:

NOTE: Generally, words in bold are my highlighting.

LEGISLATIVE BACKGROUND:

1. The scheme I am body corporate chairman of consists of 244 lots from the ground floor to the 46th floor with two penthouses across levels 45 and 46, 2 units on each of the floors 40 to 44, 5 units on each of the floors 36 to 39, 6 units on each of the floors 1 to 35 and two units at ground level of which one is the lot of the letting agent and the other is approved for use as a licensed restaurant and cocktail bar.

2. The construction of these apartments was completed in 1982 and at the time it was the tallest high-rise on the Gold Coast. Many of the original purchasers or their beneficiaries continue as owners in the building. When the original Community Management Statement was registered the relevant legislation was the ***Building Units and Group Titles Act 1980*** (BUGT Act). Although the relevant papers have been misplaced or destroyed, the process applied by the developer to determine the lot entitlements schedule would have had to have satisfied section 19 of the BUGT Act which was as follows:

> *"19. Lot entitlement.*
>
> *(1) Every plan lodged for registration and every notice of conversion shall have endorsed upon it a schedule specifying in whole numbers the lot entitlement of each lot and a number equal to the aggregate lot entitlement of all lots contained in that plan, and that* ***lot entitlement shall determine-***
>
> ***(a) the voting rights of proprietors;***
>
> ***(b) the quantum of the undivided share of each proprietor in the common property;***
>
> ***(c) the proportion payable by each proprietor of contributions levied pursuant to section 32.***
>
> *(2) In a group titles plan the* ***lot entitlement of each lot shall*** *(as nearly as is, practicable)* ***bear in relation to the aggregate lot entitlement of all lots contained in that plan the same proportion as the unimproved value of that lot bears to the sum of the unimproved values of all the lots contained in the plan.***
>
> *(3) Every group titles plan lodged for registration as such shall be accompanied by a certificate under the hand of a valuer registered under the provisions of the Valuers Registration Act 1965-1979 setting out his opinion as to the unimproved value, and the lot entitlement, of each lot contained in the plan."*

3. So under the BUGT Act, the lot entitlement allocated to each lot in a plan reflected the valuer's opinion of the proportion of the unimproved value each lot should bear. In reality, while the aggregate unimproved value of the land would have already been known, the factors relied upon by the valuer in forming his/her opinion of the unimproved value of each lot may have included the area of each lot, the floor level, inclusions such as private rooftop swimming pools, saunas, etc. and without doubt the market value. The intent was to attribute to each unit a share of the unimproved value which was represented by a whole number, the lot entitlement, and the lot entitlement

became the factor for determining levy contributions and effectively assigned a share of the unimproved value of the land for the purpose of calculating council rates.

4. This method of determining lot entitlements presumably won the minds of the legislators in 1980 because it was a method that most closely equated with the processes for determining unimproved value of property across the State of Queensland and once unimproved values were determined for all land across the State that data was in turn relied upon to calculate council rates across the State.

5. It is also worth noting at this point what rights and burdens attached to the lot entitlements. A higher lot entitlement meant one had a stronger voting influence, had a greater equitable interest in the common property but carried the burden of contributing a more significant portion of the levies imposed to meet the administration fund outlays necessary to meet maintenance, repairs, etc. as well as the sinking fund capital outlays.

6. Section 32 of the BUGT Act dealt with levy contributions as follows:

> *"32. Levies by body corporate on proprietors .*
>
> *(1) A body corporate may levy the contributions determined by it in accordance with section 38 (1) (j) and (k) and contributions referred to in section 38 (1) (q) and the amount (if any) determined pursuant to section 38 (2) in respect thereof by serving on the proprietors notice in writing of the contributions payable by them in respect of their respective lots.*
>
> *(2)* ***Contributions levied by a body corporate shall be levied in respect of each lot and shall be payable,*** *subject to this section,* ***by the proprietors in shares proportional to the lot entitlements of their respective lots."***

7. There was nothing unusual about section 32 of the BUGT Act and like principles continue today except that the structure of lot entitlements has been altered, as have the rights and burdens associated with them.

8. The law remained the same until the enactment of the ***Body Corporate and Community Management Act 1997*** (BCCM Act '97). That Act, along with the regulations, introduced very significant change and in the process was intended to overcome the complexities emerging as a consequence of the variety of bodies corporate - holiday accommodation, residential accommodation, mixes of commercial and residential, etc.

9. One of the changes related to lot entitlements, replacing what had been a single lot entitlement with a contribution lot entitlement schedule and an interest lot entitlement schedule.

10. Interestingly, when the bill was introduced no special mention was made of the changes to lot entitlements in the first reading. Unfortunately, the Explanatory Notes accompanying the Bill did little more than repeat the words of the Bill and provided no reasoning for the change proposed.

11. The Hon H. W. T. Hobbs (Warrego—Minister for Natural Resources) was the Minister responsible for introducing the Bill on 20 April 1997. Fewer than ten members participated in the second reading debate and only one of those made any reference to the lot entitlements. That was the Hon. G. N. Smith (Townsville) who (on 9 May 1997), amongst other things, said:

"The establishment of two sets of lot entitlements by way of an interest and contribution schedule is an important advance because it establishes a basis for the ongoing administrative maintenance charges which might well relate to the size or character of a particular lot. Up to this point, ***some developers have been less than honest by way of the use of the single schedule and have brought about a situation whereby the owner of a unit or lot which is three times the size of another lot may be obliged to pay only the same contribution****."*

12. This statement is a little surprising since the new contribution entitlement schedule was intended to lead to a greater degree of equity in payments by all lot owners regardless of the size of individual lots.

13. Looking at the legislation, the relevant sections of the BCCM Act '97 are sections 44, 45 and 46 which read as follows:

*"**Lot entitlements***

44.(1) A "lot entitlement", for a lot included in a community titles scheme, means the number allocated to the lot in the contribution schedule or interest schedule in the community management statement.

(2) The "contribution schedule" is the schedule in a community management statement containing each lot's contribution schedule lot entitlement.

(3) The "interest schedule" is the schedule in a community management statement containing each lot's interest schedule lot entitlement.

(4) The "contribution schedule lot entitlement", for a lot, means the number allocated to the lot in the contribution schedule.

(5) The "interest schedule lot entitlement", for a lot, means the number allocated to the lot in the interest schedule.

(6) A lot entitlement must be a whole number.

(7) To avoid doubt, it is declared that a change to a lot entitlement takes effect only on the recording of a new community management statement incorporating the change.[14]

14 Except where the body corporate is required to lodge a request to record a new community management statement under section 46 (Court adjustment of lot entitlement schedule) or 47 (Limited adjustment of lot entitlement schedule), the body corporate requires a resolution without dissent in order to consent to the recording of a new community management statement incorporating a change in a lot entitlement schedule. See section 55 (Body corporate to consent to recording of new statement).

Application of lot entitlements

45.(1) This section states the general principles for the application of lot entitlements to a community titles scheme, but has effect subject to provisions of this Act providing more specifically for the application of lot entitlements.

(2) The ***contribution schedule lot entitlement*** *for a lot is the* ***basis for calculating—***

*(a) the **lot owner's share of amounts levied by the body corporate**, unless the extent of the lot owner's obligation to contribute to a levy for a particular purpose is specifically otherwise provided for in this Act;[15] and*

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

*(3) The **interest schedule lot entitlement** for a lot is the **basis for calculating—***

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

*(b) the **lot owner's interest on termination of the scheme, including the lot owner's share in body corporate assets on termination of the scheme**; and*

*(c) **the unimproved value of the lot, 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 that is calculated and imposed on the basis of unimproved value.*

(4) Neither the contribution schedule lot entitlement nor the interest schedule lot entitlement for a lot is used for the calculation of the liability of the owner or occupier of the lot for the supply of a utility service to the lot if the amount of the utility service supplied to each lot is capable of separate measurement, and the owner or occupier is billed directly.

15 The regulation module applying to a community titles scheme might provide that a lot owner's contribution to some or all of the insurance required to be put in place by the body corporate is to be calculated on the basis of the lot's interest schedule lot entitlement..

Court adjustment of lot entitlement schedule

*46.(1) **It is not a requirement for a community management statement for a community titles scheme that the contribution schedule lot entitlements be equal for each lot included in the scheme, or that the interest schedule lot entitlements be directly proportional to the market values of the respective lots.***

*(2) Nevertheless, the **owner of a lot may apply to a District Court for an order for the adjustment of a lot entitlement schedule**.*

*(3) If an application is made under subsection (2), the **order of the court must be consistent with—***

(a) if the order is about the contribution schedule—the principle stated in subsection (4); and

(b) if the order is about the interest schedule—the principle stated in subsection (5).

*(4) **For the contribution schedule, the respective lot entitlements should be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.***

*(5) **For the interest schedule, the respective lot entitlements should reflect the respective market values of the lots** included in the scheme when the court makes the order, except to*

the extent to which it is just and equitable in the circumstances for the individual lot entitlements to reflect other than the respective market values of the lots.

(6) If a lot mentioned in subsection (5) is a subsidiary scheme, the market value of the lot is the market value of the scheme land for the subsidiary scheme.

(7) For establishing the market value of a lot created under a standard format plan of subdivision, buildings and improvements on the lot are to be disregarded.

(8) If the court orders an adjustment of a lot entitlement schedule, the body corporate must, as quickly as practicable, lodge with the registrar a request to record a new community management statement reflecting the adjustment ordered.

Maximum penalty for subsection (8)—100 penalty units."

14. So, in so far as these provisions are concerned, what had changed from the BUGT Act? First and foremost what had been a single lot entitlement schedule was split into two schedules, the contribution schedule and the interest schedule and each lot was to have a lot entitlement whole number for each schedule. Hence a contribution schedule lot entitlement and an interest schedule lot entitlement.

15. Previously under the BUGT Act the lot entitlement was applied to determine an owner's contribution to both the administration fund and the sinking fund levies in their entirety but that lot entitlement was based on unimproved value as discussed at paragraph 4.

16. Now, under the BCCM Act '97 it was to be the contribution lot entitlement that was applied to determine one's administration and sinking fund levies. But pursuant to section 46(4) the contribution lot entitlements were to be equal so all owners paid an equal share of administrative and sinking fund levies unless it was "*just and equitable in the circumstances for them not to be equal*". So no longer was the unimproved value the principal factor thus aspects of floor area, floor level, specific penthouse features or the like, or market value were not to have any impact unless they became relevant as a consequence of the exception.

17. However, there is one variation provided for by note 15 to section 45(2) above and that is in relation to how the insurance costs are to be met be owners.

18. Our body corporate operates under the Standard Module Regulations and the relevant provision is section 182(1) of the Body Corporate and Community Management Standard Module Regulations.

182 ***Premium***

(1) The ***owner of each lot*** *that is included in the community titles scheme and is covered by reinstatement insurance required to be taken out by the body corporate is liable* ***to pay a contribution levied by the body corporate that is a proportionate amount of the premium for reinstatement insurance that reflects—***

*(a) for a lot created under a building or volumetric format plan of subdivision—**the interest schedule lot entitlement of the lot**; and*

(b) for a lot created under a standard format plan ……"

19. The cost of insuring the common property and the body corporate assets is not met equally by all owners as owners must contribute to this cost based on the interest lot entitlements**.** Is this in fact a recognition that because owners have differing legislated rights over ownership of the common property that it was perceived to be unreasonable for all to contribute equally to this cost?

20. Looking more closely there were other changes regarding the relevance of the interest schedule lot entitlement. Under section 45(2)(b) the value of an owner's vote on an ordinary resolution was now to be determined based on contribution schedule lot entitlement. The consequence of this change, bearing in mind what was said at paragraph 5, was that since all owners were to share more equally in the costs then there should not be significant variances in the value of an owner's voting power.

21. But under section 45(3) the interest schedule lot entitlements were to continue to be relied upon to determine an owner's share of common property. In fact this aspect was taken a step further and the interest schedule lot entitlements were also to be relied upon to determine an owner's interest in the scheme and in body corporate assets on its termination.

22. This aspect of the legislation is particularly interesting as this placed in the hands of certain owners a greater interest in the common property and the body corporate assets even though the legislation had reduced their obligation to contribute to the on-going maintenance, repair and replacement costs of the scheme.

23. It is also important to note that section 45(3)(c) maintained the status quo for calculation of rates payable directly to a local government. So rate accounts received by owners from local government continued to be determined based on the interest schedule lot entitlements which reflected the proportional distribution of the unimproved value of the property. That at least continued some equity with all ratepayers in that those who held lots of greater value paid more in rates just as one expects a land owner in Hedges Ave Palm Beach to pay more in rates than one who owns land in streets more distant from the beach.

24. Before moving on from the BCCM Act '97 another critical aspect is addressed in sections 46(1) and 46(2). I think the intent of section 46(1) was to recognise that many schemes were already in existence when the BCCM Act '97 became law and that most of those schemes would not satisfy the new provisions. I do not believe it was the intent for all the old schemes to change. Although the remainder of section 46 spelt out how lot entitlements were to be determined into the future and provided that an owner could apply for an adjustment to a lot entitlement schedule that avenue was not made simple or cheap as one had to apply to a District Court.

25. Consequently, for the pre-1997 Community Management Statements the result was that for most schemes the contribution schedule lot entitlements and the interest schedule lot entitlements remained identical.

26. On 3 December 2002 the Hon. S. Robertson (Stretton—ALP) (Minister for Natural Resources and Minister for Mines) introduced the ***Body Corporate and Community Management and Other Legislation Amendment Act 2003*** (Amendment Act 2003). In that portion of the Minister's speech for which leave was granted to incorporate it into Hansard he provides an outline of the changes proposed to section 46 of the BCCM Act '97 but no comment on the reasons or benefits of those changes:

> *"This Bill addresses four matters in this area:*
>
> *First, it provides guidance for the lot entitlements by the developer, with the same criteria to be used for their adjustment.*
>
> *Second, **a specialist adjudicator will be able to adjust lot entitlements**, as an alternative to the District Court.*
>
> *Third, **parties applying for lot entitlement adjustment by specialist adjudication will bear their own costs**, to avoid threats of costs being sought against people opposing an application.*
>
> *Fourth, it provides further guidance on matters that need to be considered when adjusting lot entitlements, specifying the factors a court or adjudicator may and may not consider when deciding what are 'just and equitable' circumstances."*

27. The second reading debate resumed on 27 February 2003 and Mr Seeney (Callide—NPA) (Deputy Leader of the Opposition) spoke in support of the Bill and with regard to section 46 and in part he said:

> *"This bill addresses four issues relating to that issue of lot entitlements. It provides guidance for the establishment of lot entitlements to reflect the criteria used for their adjustment. It **addresses the issue of a specialist adjudicator**, as an alternative to the District Court, who may adjust a lot entitlement. It **addresses the issue of parties bearing their own costs** in relation to applications for adjustment of lot entitlements to avoid situations where threats are being made that if people oppose an application the applicant will seek costs against them. And it provides further guidance regarding matters to be considered in the adjustment of lot entitlements. It had been suggested that in previous decisions the court has been hamstrung by the lack of statutory direction for matters the court could take into account in reaching a decision. This bill specifies matters that the court or the specialist adjudicator, which is part of this bill, may need to have regard to in deciding just and equitable circumstances.*
>
> *The opposition is supportive of the amendments proposed with regard to lot entitlements. I will briefly talk about one of the clauses that addresses this issue. Clause 10 amends section 44 of the act to change the requirement for the number that is allocated for the contribution schedule lot entitlement. This amendment reinforces that usually the numbers in this schedule are equal unless it can be demonstrated that it is just and equitable for it to be otherwise.*
>
> *The explanatory notes that accompany this bill provide three examples of how this is best applied. I think they are worth mentioning. Where a basic community titles scheme contains lots having different users—for example, a combination of residential and business lots such as restaurants and small shops—the contribution schedule can be different to reflect the higher*

maintenance and utilities use of the shops in comparison to the lower requirements for the residential lots. I think that would be considered by most people to be a fair and commonsense approach. It certainly brings a fair approach for different users involved in a community titles scheme, which was of particular concern to unit owners in the reforming of the presently applied 1997 act."

28. The explanatory notes to which Mr Seeney referred are as follows:

"Example 1 Where a basic community titles scheme contains lots having different uses, for example a combination of residential and business lots (restaurants, small shops and the like) the contribution schedule can be different to reflect the higher maintenance and utilities use of the shops in comparison to lower requirements for the residential lots.

Example 2 In a layered scheme there may be a difference in the contribution schedule of each basic scheme in the layered arrangement depending on the nature of each of the basic schemes. If the layered scheme was a building that comprised a number of basic schemes including a car park, shopping centre, hotel and residential schemes, the contribution schedule would be different between, for example, the car park and the shopping centre to reflect the different service needs, the different levels of consumption of utilities and the different maintenance and refurbishment costs. A similar difference would exist between the hotel and the residential schemes.

Example 3 In a basic scheme, if all the lots are residential lots ranging in size from a small lot to a penthouse, the contribution schedule lot entitlements generally would be equal. However, the contribution schedule may be different if the penthouse has its own swimming pool and private lift. The contribution schedule should recognise this type of difference. The other lots in the scheme despite being of differing size or aspect would be expected to have equal contribution schedule lot entitlements."

29. I think all would endorse and accept that there needs to be variance in the contribution entitlement schedule to reflect the different uses in a scheme; hotel, shops, car parking, residential lots, etc. To the extent that in examples 1 and 2 there are residential lots as there is in example 3, then whether all should contribute equally is a matter for further debate which I will discuss later in this submission. However, it is worth asking now that if a swimming pool provides a reason for the contributions to be greater by that lot owner why then wouldn't a larger floor area enabling one to have more bedrooms also give rise to a reason for greater contributions?

30. There were three other members of the Parliament whose speeches in the second reading debate made reference to the lot entitlement aspects and I would like to draw these comments to the attention of the Committee not because they will necessarily favour the conclusions I will draw later but because they help us to better understand the reasoning behind the changes and the implications of the changes.

31. The first was Mr Bell (Surfers Paradise—Ind) who said:

*"I am **a little unhappy with the provisions relating to lot entitlements**, but I think that **I should have been here in 1997 when the previous act made such provisions, because I see a lot of feeling in the community that there should be a differential in unit entitlements and in***

levies when one considers that one person may have a five bedroom penthouse and one person might have a one bedroom unit on the second floor*. Parallel, you see in local government a person with a very large house on the river paying a lot more through council towards the upkeep of parks and streets compared with someone who has a very modest cottage elsewhere. Nonetheless,* ***1997 has basically shut the door on the principles and I do not think there is very much I can do about that here. But I have a lot of people who do feel that the penthouse owner should be paying a whole lot more and should continue to do so for all of the services rendered.****"*

32. The second member was Mr Strong (Burnett—ALP) who when speaking of the contribution entitlements said:

"The contribution scheme determines the contributions to the cost related to the day-to-day operation of the scheme that should be shared equally amongst all the lots. For example, a person who owns a penthouse in a high rise would contribute more than their neighbours through the interest schedule to cover things like rates and insurance, factors that are linked to the value of their own property. ***Those same people might pay the same as their downstairs neighbours under the contribution scheme, which would go towards things like pool maintenance, cleaning the common property or gardening costs—that is to say, matters that all residents share equally. There is a reason that we use this schedule; it is fairer. It means that, if someone owns a unit that is worth twice as much as somebody else's unit, they are not contributing twice as much for the cost of the gardening but they are still paying a fair share for their rates."***

and then a little later on the processes for having entitlements adjusted said:

"The current laws also allow these entitlements to be adjusted by the District Court. This poses a number of problems. ***The only way lot entitlements can be adjusted is for the owners to seek remedy through the District Court. Nobody needs to be told of the huge cost of pursuing these issues through the courts. That is why this bill introduces an amendment that would allow people to go to specialist adjudicators before having to go to the District Court. This is not only a much cheaper alternative****; it means people do not have to go through the ordeal of court process, and it is a much less imposing environment to resolve these matters. Being able to go through a specialist adjudicator under the act's dispute resolution procedures does not mean people cannot follow any grievances through the court system. Applying to the District Court will still be an option. This bill just provides another option; a simpler option—an option that may be more likely to reach a swift resolution."*

33. It seems from what was said by Mr Strong about paying equally being fairer that he must not have been aware that owners were not to share equally in the body corporate assets and the common property.

34. And the third was Mrs Lavarch (Kurwongbah—ALP) who said:

"The two areas that were raised were in relation to the contributions to the running costs of the body corporate according to the lot entitlements. A lot of the questions related to the dispute mechanisms in relation to seeking an order that the contributions be equal. As

members can appreciate, most of the town house developments in Pine Rivers were built in the early 1990s. So they came under the provisions of the pre-1997 act and people had no means by which to address the fact that they had unequal lot entitlements and that they were making contributions to the body corporate fees in an inequitable way.

*The concern was that, given that we have reversed the presumption under the provisions of this bill—instead of proving why they should be equal, for the first time we are putting within the provisions of the bill that they should be equal unless it can be shown otherwise—**what we are doing to the people who are under existing schemes who have unequal contributions to the body corporate is putting the cost on the owner to bring it in line with what it will be for all the new developments or new bodies corporate**. From now on, for each development built it will be equal unless proven or shown otherwise. We then have all of those bodies corporate that are presently unequal, unless an owner brings an application to the District Court if they cannot get a vote without dissent from the body corporate or the extra provision in this bill with the special adjudicator. They still ask: **as an owner why should they be paying the costs to go to the special adjudicator—which I appreciate would be much cheaper than going to the District Court—to have an equal contributions schedule?***

At the meeting they were saying that, if the body corporate was required to pay—so that they have the same presumption as we are now putting in the legislation—that would be a far more equitable situation for the bodies corporate than having those who are presently unequal having the class of the owners paying to go to the adjudicator and for everyone else the starting point will be just that the body corporate will be paying for it. I hope that I have been able to articulate their argument here this afternoon."

35. I have not attempted to research the extent of cases brought before the District Court to seek adjustment to lot entitlements but I suspect the number of cases was limited. However, the Amendment Act 2003 with its provision to seek an order from a special adjudicator presumably led to more cases even if it took some time before this happened.

36. Another encouragement to lodge applications for lot entitlement adjustments was the precedent set in *Fisher v. Body Corporate for Centrepoint Community Titles Scheme 7799 (2004) QCA214* as determined before the Court of Appeal.

37. Once the applications to vary contributions entitlements gathered momentum and owners realised the financial consequences of the changes confronting them there was an outcry from those who saw themselves as being disadvantaged.

38. As a result another bill was introduced, the ***Body Corporate and Community Management and Other Legislation Amendment Act 2011*** (Amendment Act 2011). This bill was introduced on 23 November 2010 and in addressing the aspect of lot entitlements the Minister, Hon. PJ Lawlor (Southport—ALP) (Minister for Tourism and Fair Trading), said:

"To date, there have been about 120 applications to the Queensland Civil and Administrative Tribunal and its predecessors seeking contribution schedule adjustment orders for schemes right across Queensland. These decisions have affected thousands of lot owners and many more applications are pending. There are thousands of schemes potentially subject to

contribution schedule adjustment orders which could impact upon tens of thousands of lot owners.

We have a problem in the marketplace. It needs to be fixed. That is what this bill is about. The problem is that a lot owner can make an application to QCAT or a specialist adjudicator to seek adjustment of a scheme's contribution schedule. If successful, ***an adjustment order can significantly change the relativities between the contribution schedule lot entitlements and drastically increase the amount a lot owner must pay for their annual body corporate fees. This can then have a negative flowon effect, reducing the capital value of a lot****.*

A lot owner can then find himself or herself locked into an untenable situation. They ***cannot afford the increased fees but cannot afford to sell at fire sale rates****. Regrettably and typically, contribution schedule adjustment orders tend to have the most adverse consequences for the many lot owners on low and fixed incomes. There has been no single cause of the problem. A chain of events and decisions over time, including a failure in 1997 to fully appreciate the transitional implications arising from the enactment of the BCCM Act, have combined to give rise to the current problem."*

39. I think it is fair to say that the Minister's speech does succinctly summarise the issue in contention for one group of owners regarding the lot entitlements and provides an explanation of the reasons why the legislation was considered necessary.

40. Five other members spoke during the debate on the Amendment Bill 2011 before the new Minister responded and the bill was passed. The focus of that debate was very much about the community concerns raised with those members but did not focus heavily on the processes proposed in the Amendment Act 2011 for lot entitlements to be reversed to those that applied at an earlier point in time. I have set out below our body corporate experience by stepping through the process provided for under the bill from the point of receiving an owner's motion to the point of having a new Community Management Scheme registered.

41. Just eighteen months later we are entering the next phase with the introduction of the ***Body Corporate and Community Management and Other Legislation Amendment Bill 2012*** (Amendment Bill 2012) which, in so far as lot entitlements are concerned, is designed to reverse the impacts of the Amendment Act 2011.

LEGISLATIVE IMPACTS ON OUR BODY CORPORATE:

42. At the outset, I appreciate that the experience of any one body corporate may vary significantly from the experience of others but I think it is important to inform the Committee of our experience as one that has lived each step of the relevant legislation and the amendments to it so far.

43. As previously stated, the construction of our apartments was completed in 1982. The developer set the entitlements, presumably in the absence of records, based on the provisions of the BUGT Act to reflect an allocation proportionate to the original market value. Levies were determined on the basis of the original lot entitlements for 27 years. Units were bought and sold and, if other purchasers were like me, they took an interest in the level of body corporate levies and determined that the outlays were reasonable for the unit they planned to purchase and decided they could meet those outlays on an on-going basis. It is very doubtful that any purchaser after the BCCM '97 Act was warned by their solicitor or a real estate agent that the law had changed and that there were now provisions that enabled an owner to seek to have the lot entitlements changed.

44. Out of the blue the lot entitlements did change in July 2009 following an application brought by two owners, resulting in a decision to create a schedule of contribution entitlements. One of these two owners owned a lot on level 42 and the other on level 44, both levels having only two units per floor. Henceforth, 73% of expenses were to be shared equally among all owners which generated a very significant variation to the contributions of each owner, particularly those at the higher levels.

45. The eagerness of the two owners to bring this application before a special adjudicator was probably to least partly driven by the fact that levies being collected by the body corporate were rising. After many years of insufficient sinking fund levies to meet future costs of major capital repairs the owners had agreed to additional levies, including special levies. The additional levies, in the vicinity of $ 3,000,000, were to enable the body corporate to meet the cost of replacing the balustrades and to repaint the building.

46. If the levies over those 27 years had been set at a rate to accumulate the funds for these and other future outlays the burden would not have been so horrendous, but they weren't. From my understanding this was common then as low levies helped sales and this is still a problem in many of the newer buildings today even though there are obligations to forecast future expenses and accumulate funds to meet these.

47. Some owners purchased their unit upon retirement pre-1997 and moved to Queensland, settled in a great environment and based on their projections believed their savings, superannuation, etc would enable them to live comfortably while meeting their financial commitments. But with the changes to lot entitlements they found it more of a struggle to meet their commitments. This was not something they would have envisaged when they purchased their lot. Consequently, they saw the Amendment Act 2011 as a fair remedy to their predicament.

48. Of course there are others who have sufficient financial capability to meet whatever they have to confront but they too were disgruntled about the impacts the lot entitlement changes had upon them. For those whose contributions reduced, they will welcome the Amendment Bill 2012.

49. For many owners on the lower levels, levies increased excessively while the special levies were being paid and then came back to a 25% increase on an on-going basis.

50. And of course these additional burdens occurred during a period of global financial crisis.

51. With all these factors coinciding not only have many owners suddenly had to pay more but the combination of higher levy contributions and dire economic circumstances has meant the value of their unit (their capital asset) has dived by 30%+.

52. The Amendment Act 2011 had legislative effect from 14 April 2011 and an owner immediately drew the body corporate committee's attention to that fact. That owner was made aware of the formal processes necessary under the 2011 amendment provisions and at that point (3 May 2011) the body corporate committee received a formal request from that owner seeking reversion to the pre-adjustment order entitlements.

53. Throughout the process that followed owners showed a keen interest in the outcome as ultimately it would impact their financial position favourably or unfavourably.

54. By flying minute dated 13 May 2011 the body corporate committee acknowledged receipt of the motion lodged by an owner satisfying the legislative requirements in which that owner had sought that the contribution schedule be adjusted to reflect the pre-adjustment order entitlements. By that same flying minute the body corporate committee resolved to lodge a proposal for adjustment of the contribution schedule and also resolved to forward notification to all owners informing them of the receipt of the motion, of the body corporate committee's intention to lodge a proposal for adjustment and to invite all owners to submit any relevant submissions within 28 days.

55. The notification to owners along with necessary attachments was forwarded to owners on 18 May 2011.

56. When the body corporate committee (BCC) met on 18 June 2011 only one submission had been received (17 June 2011). In its deliberations the BCC resolved to respond to the solicitors who had lodged the submission on behalf of an owner informing them that the committee had considered their submission and provided reasons for the BCC's conclusions that the matters raised by that submission did not necessitate any change to the pre-adjustment order entitlements as proposed to be reinstated. The BCC also resolved that if no further submissions were received within the stipulated 28 days that a letter be sent to all owners informing them that in the absence of any valid submissions the BCC had agreed to lodge a request to record a new community management statement reverting to the pre-adjustment order entitlements. The notification to owners issued on 22 June 2011.

57. The solicitors who had lodged the submission wrote again on 30 June 2011 and in that correspondence the BCC was put on notice that the owner had 28 days to make an application to QCAT. On 27 July 2011 a copy of the owner's application to QCAT was received.

58. When the BCC met again on 6 August 2011 it was agreed to respond to the solicitors of the applicant owner addressing the points raised by that correspondence but also to inform that it was the intention of the BCC to defer lodgement of the request to record a new community management statement pending any order from QCAT in resolution of the issues raised on behalf of their client.

59. A QCAT directions hearing was held on 30 August 2011. Resulting from that hearing the BCC was to provide its response to the Applicant's submissions and both the Applicant and BCC were to provide submissions regarding the application of section 385. All submissions were to be lodged by 6 September 2011 and the matter of section 385 was to be decided by a Member of the Tribunal post 7 September 2011. All submissions were lodged on time.

60. Another directions hearing was held on 4 October 2011. The Applicant sought and was granted an opportunity to lodge further submissions by 15 November 2011 and, in response to concerns raised by the BCC regarding delays in the process, the next directions hearing was set for 22 November 2011 and a hearing date was set for 1 February 2012.

61. On 11 October 2011 QCAT released a decision on the section 378(b) aspects of the application instead of the section 385 matter.

62. Solicitors for the Applicant raised their concern over the section 378(b) decision in correspondence to QCAT dated 20 October 2011. On even date a copy of a Complaint Form prepared for the Queensland Ombudsman was received by the BCC. Also on 20 October 2011, the Applicant's solicitor forwarded correspondence to the Title Registry seeking registration of a caveat over the Community Titles Scheme to prevent the BCC registering a new community management statement should it attempt to do so based on the QCAT decision of 11 October 2011.

63. On 24 October 2011 the QCAT decision of 11 October 2011 was vacated (withdrawn).

64. On 3 November 2011 QCAT handed down a decision on the section 385 matter confirming that the time for lodging a request to record a new community management statement would be extended for 3 months after the date on which the Tribunal makes final orders in the proceeding.

65. On 9 November 2011 the Applicant sought and obtained an extension to lodge further submissions by 21 November 2011. These submissions are those that were originally directed on 4 October 2011 to be lodged by 15 November 2011.

66. On 21 November 2011 the BCC received a copy of an email from the Applicant's solicitor to QCAT seeking an extension for lodgement of additional submissions until 24 November 2011. The BCC on the same day forwarded an email to QCAT expressing concern about delays in the process. It was now 4 months since the Applicant's application was first lodged. The email response from QCAT advised that the BCC email had been addressed with the Tribunal and would be dealt with at the hearing scheduled for the next day.

67. At the directions hearing on 22 November 2011 the Tribunal granted the further extension to 24 November 2011 for submissions by the Applicant. The BCC was directed to lodge a response to the Applicant's submissions by 1 December 2011.

68. On 24 November 2011, the Applicant's submissions were lodged and the BCC submissions in response were lodged prior to 1 December 2011.

69. The hearing of the matter was held on 1 February 2012. The Applicant was represented by a barrister accompanied by a solicitor.

70. The Tribunal issued further directions to the parties in this matter on 22 February 2012. Those directions sought further submissions addressing the decision in *Pearce and Anor v Body Corporate for Riparian Plaza Apartments CTS 34663 [2012] QCAT* with the Applicant to lodge any submissions by 9 March 2012 and the BCC to lodge any response to those submissions by 23 March 2012.

71. Not having received a copy of the Applicant's submissions an email was forwarded by BCC to QCAT on 14 March 2012 seeking a copy if same had been lodged. The QCAT response on 16 March 2012 advised that the Applicant had sought an extension on two occasions and that the Applicant had been asked to forward a copy of submissions to the BCC. At that stage QCAT did not have a copy.

72. On 20 March 2012 the BCC emailed QCAT again to advise that the Applicant's submissions still had not been received and asked whether an extension of the BCC date for lodgement of its submissions in response might be granted since there was now only 3 days remaining. The BCC received no response from QCAT but a copy of the Applicant's final submissions (dated 16 March 2012) was emailed to the BCC by the Applicant's solicitor that same day. In the absence of a response from QCAT concerning an extension, the BCC submissions were lodged on 23 March 2012.

73. On 9 May 2012, more than three months after the hearing, an email was sent by the BCC to QCAT asking for a progress report on the matter. As no response was received a follow-up email was sent on 11 May 2012. A response that day advised that the request had been forwarded to the relevant Registrar. A further response on 14 May 2012 advised that a decision was expected within the next 14 days.

74. The QCAT decision in the matter was handed down on 23 May 2012. The application was dismissed, seven months after it was initiated.

75. Cost of legal representation of the Applicant is unknown. Costs to the BCC were avoided as the BCC chairman prepared submissions and attended all hearings. The saving to owners may have been in the vicinity of $ 20,000.00.

76. But that was not the end of the process. The Applicant in the matter chose not to formally advise the BCC that no appeal would be lodged so a further 28 days passed before the BCC could lodge a request with the Titles Registry for registration of a new Community Management Statement. After that request was lodged numerous calls to the Titles Registry by the Body Corporate Manager failed to discover any reasons for the delay. A solicitor was engaged by the BCC to review the documents lodged with the Titles Registry and they identified what they believed may have been the problem. They recommended the insertion of additional information and the papers were re-lodged. Registration occurred about ten days later on 10 August 2012.

77. The whole process took sixteen months. One has to question whether the burden placed upon committee members was reasonable when one considers the time involved on the part on honorary committee members.

LEGISLATION IN OTHER STATES

78. I have not had as much time as I would have liked to research the legislation of other States but I believe I have gathered enough to demonstrate that the path Queensland is on will place us as the only State that determines some portion of the levies on an "equal" basis rather than totally on the basis of the value of each lot as a portion of the aggregate of lots.

79. Under the NSW *Strata Schemes Management Act 1996* section 183 provides for orders for reallocation of unit entitlements and at section 183(3) and (4) it provides:

> *"(3) Matters to be taken into consideration*
>
> *In making a determination under this section, the Tribunal is to* ***have regard to the respective values of the lots*** *and (if a strata development contract is in force in relation to the strata scheme) to such other matters as the Tribunal considers relevant.*
>
> *(4) Application to be accompanied by valuation*
>
> *An application for an order must be accompanied by a certificate specifying the* ***valuation, at the relevant time of registration*** *or immediately after the change in the permitted land use, of each of the lots to which the application relates."*

80. Clearly, the determination of the unit entitlement is based on value of the lot, preferably referenced back to the time that the relevant plan was registered. This position has been confirmed by telephone contact with Fair Trading NSW. This equates with the methodology adopted in the BUGT Act.

81. In Victoria the relevant legislation is the *Subdivision Act 1988*. According to section 27F:

> *"27F. Plan must specify lot entitlement and lot liability*
>
> *(1) A plan providing for the creation of an owners corporation or for the merger of owners corporations must specify details of lot entitlement and lot liability.*
>
> *(2) A plan referred to in sub-section (1) must be accompanied by a document—*
>
> *(a) specifying the basis for the allocation of lot entitlement and lot liability; and*
>
> *(b) containing the prescribed information.*
>
> *(3) The prescribed information that a document must contain under sub-section (2) is not limited to information about the owners corporation or lot entitlement or lot liability."*

82. The definitions of lot entitlement and lot liability are as follows:

> *"lot entitlement" in relation to a lot affected by an owners corporation, means a number specified in the plan as the lot entitlement for that lot, expressing the extent of the lot owner's interest in any common property affected by the owners corporation;*

"lot liability" in relation to a lot affected by an owners corporation, means a number specified in the plan as the lot liability for that lot, expressing the proportion of the administrative and general expenses of the owners corporation which the lot owner is obliged to pay;"

83. Consumer Affairs Victoria explain these terms as follows:

"Lot entitlements and lot liabilities

These are set out in the plan of subdivision.

• Lot entitlement refers to a lot owner's share of ownership of the common property and determines voting rights.

• Lot liability represents the share of owners corporation expenses that each lot owner is required to pay.

*These **entitlements and liabilities are determined by the developer at the time of subdivision**."*

84. Section 33 of the Victorian *Subdivision Act 1988* deals with alterations to lot entitlements:

"33 How can lot entitlement and liability be altered?

(1) If there is a unanimous resolution of the members, the owners corporation may apply to the Registrar in the prescribed form to alter the lot entitlement or lot liability.

*(2) In making any change to the lot entitlement, the owners corporation **must have regard to the value of the lot and the proportion that value bears to the total value of the lots** affected by the owners corporation.*

(3) In making any change to the lot liability, the owners corporation must consider the amount that it would be just and equitable for the owner of the lot to contribute towards the administrative and general expenses of the owners corporation."

85. In speaking with Consumer Affairs Victoria that have confirmed that in 99% of schemes the lot entitlement and the lot liability numbers are identical so both are effectively determined based on market value at the time the developer lodges the scheme plan for registration. This too equates with the methodology applied under the BUGT Act.

86. The *Strata Titles Act 1988* South Australia provides at section 6:

"6—Unit entitlement

*(1) The unit entitlement of a unit is a number assigned to the unit that bears in relation to the aggregate unit entitlements of all of the units defined on the relevant strata plan (within a tolerance of ±10 per cent) the **same proportion that the capital value of the unit bears to the aggregate capital value of all of the units.***

(2) The unit entitlement of a unit must be expressed as a whole number.

(3) The aggregate unit entitlements of all units defined on a strata plan must, if the regulations so provide, be a number fixed in the regulations."

87. And at section 10 provides that:

"10—Common property

(1) The common property is held by the strata corporation in trust for the unit holders.

(2) An equitable share in the common property attaches to each unit and cannot be alienated or dealt with separately from the unit.

(3) The extent of the share is proportioned to the unit entitlement of the unit."

88. These provisions also deliver the same result for owners as did the provisions of the BUGT Act 1980.

89. In Western Australia the relevant legislation is the *Strata Titles Act 1985.* Section 14 provides:

"14. Unit entitlement of lots

(1) The unit entitlement of a lot, as stated in the schedule referred to in section 5, determines —

(a) the voting rights of a proprietor;

(b) the quantum of the undivided share of each proprietor in the common property; and

(c) subject to subsection (1)(c)(ii) of section 36, the proportion payable by each proprietor of contributions levied under that section.

(2) The certificate of a licensed valuer which is required by sections 5B(1)(b), 8A(h), 21T(1)(d) and 31E(1)(d) to accompany a strata/survey-strata plan and a plan of re-subdivision lodged for registration shall be in the prescribed form and shall certify that, or to the effect that, the unit entitlement of each lot, as stated in the schedule referred to in those sections, bears in relation to the aggregate unit entitlement of all lots delineated on the strata/survey-strata plan a proportion not greater than 5% more or 5% less than the proportion that ***the value of that lot bears to the aggregate value of all the lots delineated on the plan****.*

(2a) In subsection (2) —

value means *—*

(a) in the case of a strata scheme, the ***capital value*** *within the meaning of the Valuation of Land Act 1978; and*

(b) in the case of a survey-strata scheme, the site value within the meaning of that Act.

(3) A certificate given by a licensed valuer for the purposes of this Act shall be valid for such period as is prescribed."

90. Again, the structure here very much resembles the intent of the BUGT Act 1980 such that the lot entitlements are determined on value of the lot as a proportion of the aggregate of lots and then levy contributions and proprietary interests are determined from the lot entitlement.

OBSERVATIONS

In making the observations below I remind the Committee that this submission was and is intended to only address the aspect of lot entitlements.

a) There are many owners in our body corporate who purchased their lots when the BUGT Act was operative and before the changes to lot entitlements brought about by the BCCM Act '97.

b) It was reasonable for those owners to expect that the basis for determining levies would remain constant with that which was in place when they purchased their lot.

c) If the new principles legislated for in 1997 had applied when units pre-dating the new legislation were originally marketed it is very likely that the market values of those units would have varied quite significantly, some being more difficult to sell while those with reduced contribution entitlements may have achieved a higher market value.

d) The BCCM Act '97 made a radical change to the method of determining lot entitlements but there was no fanfare, the changes to this aspect received little attention from members who participated in the Parliamentary debate and the Explanatory Notes did little but to repeat the provisions in the bill. Section 46(1) of the bill provided that *"It is not a requirement for a community management statement for a community titles scheme that the contribution scheme lot entitlements be equal…"* So was it the intent of the legislators to minimise the likelihood of change to lot entitlements for existing schemes as the process to achieve that change was narrow and costly; by application to the District Court. One has to wonder what the catalyst for this change actually was. Considering that the change was all designed to bring down the costs for one group of owners, was the intent to limit change for pre-existing schemes a way of providing some balance?

e) The BCCM Act '97 received the broad endorsement of all Parliamentary members but was this because the implications of the lot entitlement changes were not made explicit and so the potential consequences were overlooked. Even the Minister responsible for introducing the bill said *"some developers have been less than honest by way of the use of the single schedule whereby the owner of a unit or lot which is three times the size of another lot may be obliged to pay only the same contribution."* It seems that there may have been some confusion over what the new provisions were designed to achieve.

f) Under section 182 of the Standard Module owners' contributions to cover the cost of insurance must be determined relying on the interest schedule entitlements. Why is that? Is it because this will mean they have to contribute a "market value" share as their interest in the common property and the body corporate assets is also determined based on their interest lot entitlements? Taking this a step further, aren't the costs of cleaning, maintaining, repairing and restoring the common property assets all expenditures that lead to maintaining the "market value" of those common property assets? Of course they are for without spending the money to do those things the property would deteriorate and the "market value" would decline markedly. It seems to me that it is not only the insurance contribution that should be determined based on the interest lot entitlements. All these other costs that the BCCM Act '97 was designed to have shared equally should be met in the same manner. Otherwise, how does one justify the rights to the common property and the body corporate assets being determined based on the interest lot entitlements? How would the "market

value" of all lots vary if the rights to common property and body corporate assets were determined based on the contribution lot entitlements?

g) The Amendment Act 2003 made it easier for owners to bring an application as one could make an application to a special adjudicator. Again, what was the motivation for this change and were the future implications truly envisaged? It seems to me one group of owners have constantly been pushing their cause and it has been listened to. This may also explain why the other aspects of the proprietary rights discussed in f) above have not been addressed to provide some balance; the change has all been to the advantage of one group of owners.

h) I think more attention needs to be given to the words of Mr Bell (Surfers Paradise—Ind) who said in the second reading debate on the Amendment Act 2003:

> *"I am a little unhappy with the provisions relating to lot entitlements, but I think that **I should have been here in 1997** when the previous act made such provisions, because I see a lot of feeling in the community that **there should be a differential in unit entitlements and in levies when one considers that one person may have a five bedroom penthouse and one person might have a one bedroom unit on the second floor**. Parallel, you see in local government a person with a very large house on the river paying a lot more through council towards the upkeep of parks and streets compared with someone who has a very modest cottage elsewhere. Nonetheless, **1997 has basically shut the door on the principles and I do not think there is very much I can do about that here. But I have a lot of people who do feel that the penthouse owner should be paying a whole lot more** and should continue to do so for all of the services rendered."*

He was the only one to recognise the future potential conflicts and that they stemmed from the changes in the BCCM Act '97. Let me also make the point that when it comes to personal water and electricity usage then certainly these costs should be met in proportion to actual usage if that is possible. But electricity, gardening, cleaning, capital repairs and replacements, etc. costs of the common property are separate, are billed as a whole by utility suppliers or contracted for by the BCC to maintain and grow the "market value" of the scheme and these costs should be met by owners in the same proportions as the legislation provides for their interest in the common property and their interest in the body corporate assets. It would be illogical for these rights and burdens to be shared differently to one another.

i) The one-sidedness of the representations being heeded is also demonstrated in the contribution to the second reading debate on the Amendment Act 2003 by was Mrs Lavarch (Kurwongbah—ALP) who said:

*" We then have all of those bodies corporate that are presently unequal, unless an owner brings an application to the District Court if they cannot get a vote without dissent from the body corporate or the extra provision in this bill with the special adjudicator. They still ask: **as an owner why should they be paying the costs to go to the special adjudicator**—which I appreciate would be much cheaper than going to the District Court—to have an equal contributions schedule?*

*At the meeting they were saying that, **if the body corporate was required to pay**—so that they have the same presumption as we are now putting in the legislation—that would be a far more equitable*

situation for the bodies corporate than having those who are presently unequal having the class of the owners paying to go to the adjudicator and for everyone else the starting point will be just that the body corporate will be paying for it. I hope that I have been able to articulate their argument here this afternoon."

So it seems that this group of owners also wanted someone else to meet the cost of seeking a change to the lot entitlements.

j) *Fisher v. Body Corporate for Centrepoint Community Titles Scheme 7799 (2004) QCA214* as determined before the Court of Appeal set the precedent on interpretation of the Amendment Act 2003 lot entitlement provisions and in turn, once the implications of the legislation were better understood, provided the encouragement for a multitude of applications to special adjudicators.

k) Owners negatively impacted by the decisions of special adjudicators made their voice heard and that ultimately resulted in the Amendment Act 2011.

l) Owners negatively impacted or fearing being negatively impacted by the Amendment Act 2011 in turn made their voice heard and this has led to the Amendment Bill 2012.

m) Most of the representations to members are being organised or driven by parties with a vested interest in the outcomes. There is even a push for a class action to overturn the Amendment Act 2011. For some the financial cost to get their voice heard will pay significant dividends into the future. Members might be well advised to look closely at the source of representations to identify the source of any manipulated campaigns to impact on the outcomes.

n) The financial cost to owners is not just the change in levy contributions; it is also the impact on the market value of their capital asset.

o) Neither side of politics can claim the high ground on this issue as there has been confusion every step of the way for owners impacted by the legislative changes.

p) The processes imposed on body corporates and body corporate committees to meet their legislative obligations under the Amendment Act 2011 once an owner formally lodged a motion to revert to the pre-adjustment lot entitlements were a significant imposition and in some cases may have cost owners sums of $ 20,000 to $30,000 or otherwise placed a significant burden on persons performing an honorary role.

q) The processes now proposed under the Amendment Bill 2012 effectively are a repeat of the Amendment Act 2011 obligations but to achieve the opposite outcome even though the earlier processes were criticised very strongly because of the methodology utilised. It would be manifestly unreasonable to expect body corporates that have already been through the process provided for in the Amendment Act 2011 to now submit to another round of like provisions so that the results may be reversed particularly when the result would be one that is unfair.

r) Why is it that when the BCCM Act '97 was drafted and the provisions changing the lot entitlement schedules were included that the rights attaching to voting rights also changed but the rights concerning the lot owner's share of common property and the lot owner's interest on termination of

the scheme, including their share of body corporate assets on termination of the scheme remained constant?

s) On reviewing the legislation of the mainland States it is clear that none have taken the path that started in Queensland under the BCCM Act 1997 and one must presume that they determined that course would lead to unjustifiable and inequitable consequences which it has. I believe the changes to lot entitlements in 1997 were ill-conceived. Although that legislation did not make it easy to achieve change to lot entitlements of existing bodies corporate, it provided a catalyst for those who saw the prospect of reducing their levy outlays to push at subsequent opportunities to make that path easier. That push in evident in the amending provisions to lot entitlements in the Amendment Act 2003. With an overwhelming reaction from unit owners when levy alterations sped up, the resultant Amending Act 2011 was designed to reinstate what had been in existence. What is now proposed in the Amendment Bill 2012 would again move Queensland away from what all the other mainland States have retained.

CONCLUSIONS

Based on the observations aforementioned regarding the lot entitlements, I ask that the committee consider the following in reporting to the Parliament as regards the Amendment Act 2012:

- Removal of the clauses of the Amending Bill 2012 that relate to lot entitlements in so much as they propose to reverse the lot entitlement provisions of the Amendment Act 2011.

Alternatively:

Pre-BCCM Act '97 -

A) The implications of the 1997 changes to the structure of lot entitlements were never sufficiently considered and understood and should not now be applied in a manner that will disadvantage those who purchased their lots prior to the BCCM Act '97.
B) It will be virtually impossible to have different lot entitlement schedules operating in conjunction with each other such that some lot owners in a building have their levies determined under one structure while others have their levies determined under an alternative structure.
C) Consequently, all schemes approved prior to the BCCM Act '97 should remain under their original lot entitlement structure.
D) In the alternative, if the Committee is unable to agree with the above conclusions , that there be legislative change to the proprietary rights of those lot owners so that all lot owners share more equally in the common property and the assets of the body corporate.

Post-BCCM Act '97-

E) For those schemes post the BCCM Act '97, consideration be given to permitting those lot owners a right to seek an adjustment to their lot entitlements such that all future levies are determined based on their interest lot entitlements or, in the alternative, that there be legislative change to the proprietary rights of those lot owners so that all lot owners share more equally in the common property and the assets of the body corporate.

Yours sincerely,

John Sutherland
[redacted]