



14 October 2012

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

SUBMISSIONS TO THE COMMITTEE

Looking at possible changes to the Body Corporate & Community Management Act 1997

Submission 1 Why should a Government intervene at any time after a legally binding contract has been settled and significantly alter the legal obligations arising from that contract which had been entered into voluntarily and with full information of the legal ramifications (including how the Body Corporate levies were calculated) available at the time the contract was signed?

If prospective buyers thought that the Body Corporate levies attached to their units were unfair or unreasonable they should NOT have signed legally binding contracts to purchase them. Caveat Emptor applies. And the appropriate time to make those decisions was at the time of purchase and before they signed their contracts. But once they chose to proceed and signed a written agreement they should NOT be given any later opportunities (made possible solely by government intervention) to alter any of their legal obligations pursuant to the contracts they had voluntarily entered into. And they certainly should NOT be given the right later, by legislation, to reduce the

ongoing maintenance contributions which they were legally required to pay and pass the shortfall this would obviously cause onto a third party who was not legally required to pay any part of someone else's levies.

For the Government to apply new laws altering the contribution schedule levies to contracts that were signed and settled years before with different schedules is reprehensible and it unfairly alters the intended outcome of the original purchase contracts. It also seriously undermines the certainty and long-term validity of all previously signed contracts. What other alterations might they want to make at a later date? And what time limits for alterations (if any) would apply? How could anyone know when a contract was in its "final" form, and enforceable, if the Government chooses at any time in the future to change the law and back date it to overrule previously signed and perfectly legal existing contracts? The whole idea of getting contracts in writing is to make certain that the terms and conditions are fully understood by all parties and binding on them once they have been signed and Governments should not interfere with this process, especially not after the contracts have been settled on agreed terms.

Submission 2 Should the Government's later intervention which significantly changes the outcome of the original written contracts favour one group of owners by decreasing their financial liability under their contracts (what an ongoing financial windfall!) and disadvantage another group of owners by increasing theirs? (what an ongoing financial burden!): It is not possible to decrease one without increasing the other and obviously the ONLY group adversely affected by the Government changing the rules after units have been purchased is the one whose levies are to be increased. This forced increase was NOT foreseeable when they bought their units and was NOT a condition in the written contracts they signed. It will make their units harder to sell and probably lower their price and compel them to pay ongoing increased levies which they probably cannot afford and never agreed to pay when they purchased units with clearly defined Body Corporate charges which they could then afford to pay.

WHAT IS FAIR ABOUT THAT?

Conclusion

To hold all groups of owners to the contracts they all originally freely signed is NOT unreasonable. It is normal commercial practice worldwide. (Later back-dated Government intervention is NOT). But to change an extremely important component of both group's of owners written contracts afterwards and to favour one group over the other IS unreasonable and is clearly contrary to the intention of their original contracts. It also rewards the group who want to break the terms of their written contracts and punishes the group who want to comply with the terms of theirs.

I respectfully submit that no further alterations should be made to the law regarding existing body corporates (everyone gets what they signed up for) and if any alterations are to be made they apply only to future developments and do NOT invalidate or alter past contracts in any way.



Peter Fegan

PS: Please acknowledge receipt of these submissions and let me know if it is possible to attend your hearings and/or receive a copy of the Committee's findings.