



Body Corporate & Community
Management & Other
Legislation Amendment Bill 2012
Submission 138

Ms D E Hall


12 October 2012

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

Dear Sir

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

I am the owner of a Lot in "The Residences" in Brisbane. This building is a combination of commercial and residential lots.

Our contribution schedule was originally made in the late 1990's then adjusted in 2010 (due to Tribunal orders from a cursory "equalisation" desk exercise) and reversed back to the original 1990's contribution schedule in 2011.

I would like to make a submission for consideration by the Committee.
I believe the Bill should NOT be made law.

I believe this on the following bases :

1. This law is unfair to longstanding owners who relied upon contract law to protect them with their purchase. This law seeks to undo the basic principles of contract law by changing the terms of their contribution schedule commitment.
2. The role of the Tribunal in any consideration of Contribution Schedules for existing bodies corporate should ensure it is free to consider ALL matters which may be relevant to their considerations as to the lot entitlements.
3. The original lot entitlements should be taken into consideration by the Tribunal in its consideration of "just and equitable".
4. The original lot entitlements take into account the complexities of the building, including the commercial and residential lots and their practical usage, the varying "nature, features and characteristics" of the commercial and residential lots including their variable usage of common assets and services.
5. The original lot entitlements were accepted by each potential purchaser (excluding the applicants) when they purchased in the building and this fact needs to be taken into consideration in any of the Tribunal's considerations.
6. Retrospective changes to the lot entitlements will have an unfair and unreasonable increase in body corporate fees on some lot owners.

Reasoning

1. The Tribunal should be free to consider ALL matters which may be relevant to their considerations as to the lot entitlements.

Section 49 of the Act refers to the criteria for deciding just and equitable circumstances.

The wording of this section is not specifically "prescriptive" as to what matters the CCT "MAY" have regard to. Other sections of the Act are very directive as to the intentions of the Act. Examples include :

- Section 29 (2) – "...The developer MUST give written notice of the change ..."
- Section 41 – "...If the body corporate acquires a lot under section 40, the body corporate MUST ..."
- Section 48 (10) – "... the body corporate MUST, as quickly as practicable ..."

The issues for consideration by the Tribunal are therefore as wide as need be to achieve the objective of being "just and equitable". Specifically, Section 49 (3) states that :

- "the matters the specialist adjudicator or the CCT may have regard to for deciding a matter mentioned in subsection (2) are not limited to the matters stated in this section."

I urge the government to make it clear that the Tribunal is to consider ALL matters in relation to the lot entitlements.

2. The original lot entitlements should be taken into consideration by the Tribunal in its consideration of "just and equitable".

I urge the government to allow the Tribunal to take into consideration the reasons the existing lot entitlements were implemented originally, and agreed by each lot owner when they purchased (by their free will) in the building.

These reasons were not just "made up" in the original body corporate lot entitlements, nor were they based on a desk exercise. They were, and are, real.

I suggest they had a basis in the mind of the original developer to reflect a vast combination of issues including the anticipated usage of the common property, the nature, features and characteristics of each lot, and a multitude of other issues.

The building in which "The Residences" lies is one of the oldest buildings in Brisbane with very strict heritage requirements. The building changed its use from an office building to a residential/commercial building in the mid-1990's. A major renovation was undertaken by the developer and the resultant development meant that each lot was not comparable to any other in the building as each has its separate configuration, separate usage of common assets and services, separate good and bad points, separate usage of access points (some in lift and some via stairs), some have access to differing size car spaces on different levels, and some have access to patios. In some regards, this "individualistic heritage" is one of the attractions to the lots within the building.

Even such apparently trivial issues as the size of the car parking spaces - In the building some car parking spaces are less than 14 square metres, and others are in excess of 26 square metres – How can these be treated equally for their share of common cost allocation purposes ?

To perform a cursory analysis is surely impossible to take into account all the relevant issues necessary to substantiate an amendment to the current lot entitlements. Surely there is more to a true allocation of the "nature, features and characteristics" of a lot than a desk exercise. I suggest that they need to live in the building to understand the intricacies of each lot and have a true appreciation of the "nature, features and characteristics" of each lot.

I submit that the original developer considered all matters in the original calculation of the lot entitlements and this calculation remains current to date.

3. The original lot entitlements take into account the complexities of the building, including the commercial and residential lots and their practical usage, the varying "nature, features and characteristics" of the residential lots and their variable usage of common assets and services.

The 2010 "equalisation" contributions do NOT take into account the intricacies of this building. There is insufficient detail available to justify with precision the changing of the contribution schedule lot entitlements from the original lot entitlements.

As practical examples :

- Why should the "commercial" lots contribute to the upkeep of the swimming pool ? If they are expected to contribute, does this mean they can offer a "free swim" to their customers and friends ?
- Some lots have minimal natural light from very small windows. Why should they contribute to the cost of window cleaning the same as a large lot with dozens of windows ?
- Why should a spacious 3 bedroom apartment have the same notional cost allocation of the lift maintenance cost, or pool maintenance cost, or rooftop maintenance costs, or entry maintenance cost as a small one bedroom apartment ?
- Why should a lot without a car parking space contribute to the carpark security and maintenance costs ?
- Why should a lot with 3 car spaces contribute the same as a lot with one car space ?

This building is of such a nature, that each lot is substantially different, and while the starting point for consideration by the Tribunal is that all lots are equal, there is a substantial shortfall of accurate information to substantiate any amendment to the original lot entitlements.

4. The original lot entitlements were accepted by each potential purchaser (excluding the applicants) when they purchased in the building and this fact needs to be taken into consideration in any of the Tribunal's considerations.

Buying a lot within "The Residences" is not cheap.

It is generally considered one of the most prestigious residential buildings within the Brisbane CBD due to its location, standard of finish and its individuality and has attracted a range of professionals and senior business identities as owners. These owners are not "uninformed" and I believe that all of them knew of their lot entitlement liability at the time of each of their purchases.

I do not understand why, under Section 49 (5), the Tribunal is prevented from considering :

- “.... may not have regard to any knowledge or understanding the applicant had, or any lack of knowledge or misunderstanding on the part of the applicant, at the relevant time, about”

Also, this law is unfair to longstanding owners who relied upon contract law to protect them with their purchase. This law seeks to undo the basic principles of contract law by changing the terms of their contribution schedule commitment.

Also, section 49(5) refers to the knowledge of the applicant ONLY and not the knowledge of the remaining lot owners. I submit that the remaining lot owners all knew, or should reasonably have known, of their respective lot entitlement liabilities at their time of purchase. To increase the lot entitlement liabilities of some of these other lot owners would be unfair and unreasonable to them.

This section refers also that the “ ...Tribunal may not have regard ...”. Why Not ?

If “inequities” existed in our contribution schedule, how could the body corporate justify such historic inequities ? As the building was strata'ed in 1999, how have such inequities existed for over 20 years without challenge from the apparently aggrieved lot owners? And indeed, were the original lot entitlements evidence themselves of a calculation on a basis which represents much, much, more than a simple desk allocation of costs.

I suggest that each lot owner accepted the original lot entitlements were a reasonable allocation of costs and have paid up in the past without protest. To amend these lot entitlements now would be unfair and unreasonable.

In general, I believe that, while the 2011 amendments were not ideal, they at least corrected the erroneous previous legislation and restored the original contribution percentages.

If the government wishes to consider legislative change, I believe they should seriously consider all stakeholders and the hierarchy of legal principles starting with the continuation of supporting the principles of contract law – “What was originally bought was bought ... and cannot be changed”. Retrospectivity is death.

Yours faithfully



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