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16th October 2012

The Research Director
Legal Affairs & Community Safety Committee
Parliament House
George Street
Brisbane. Q4000

Dear Sir,

Re: Submission – Body Corporate & Community Management and Other Legislation Bill 2012.

We would like to congratulate and thank the LNP Government, especially the Attorney General, the Hon. Jarad Bleijie, for having the political will to introduce the above Bill to reverse the Labor 2011 amendment which the then Shadow Minister Jann Stuckey, correctly described as "abominable"

Whilst we acknowledge that the whole matter of Lot Entitlements in a Body Corporate is a contentious issue, Labor's 2011 amendment not only reversed many unit owners right to "fair and equitable" distribution of their levies as had been determined by a Court, tribunal or specialist adjudicator in line with the Act of 1997, **it also denied them the right of appeal**. All this was able to be done by a single owner in a building making an application, not to all members of the Body Corporate, but to the Committee only.

No wonder the Queensland Law Society said such reversion "would seem to have insufficient regard to the rights and liberties of individuals".

This new LNP Bill seeks to restore owners' rights to those in place before Labor's ill conceived Legislation.

We are the owners of Lot [redacted] in a 30 story building "The Surfers Manhattan" which was built 25 years ago in 1987. The original lot entitlements were set by the developer. This was the same in all developments at that time and each developer, with no regulation, simply allocated the Lot Entitlements to suit his own agenda. Many decisions were made for financial gain (with no regard to the fact that the cost of running the building should be fair and equal) or to quickly sell less attractive units and then move on to the next development.

Our building is a residential only one with each unit consisting of three bedrooms with complementary living, kitchen and bathroom areas. The only difference is in the height and size of the units and therefore each unit is capable of accommodating the same number of occupants which in turn generates the same usage of all services and amenities. However the CLEs by the original developer were set at 5 entitlements for the lower floors with the higher floors at twice that number, i.e. 10 entitlements, and the top floor at 13 entitlements. This determined the levies to be paid by each owner for the following services enjoyed by all:

- the cleaning and maintenance of the pools, gardens, gymnasium, tennis court,
- the cost of lighting the common areas,
- maintenance to common equipment, car parks, lifts, club rooms, BBQ area,
- remuneration paid to the building manager, Body Corporate Manager and night security guards, and for Fire Service requirements,
- and all the other day to day costs of running a building together with the Special Levies for any improvements carried out to the Common Areas.

In other words the top floors were subsidizing the lifestyle enjoyed by all owners.

To correct these anomalies the 1997 Act gave owners the ability to apply to a specialist adjudicator for an order that the Contribution Lot Entitlements were to be *"equal, except to the extent that it is just and equitable for them not to be equal".*

In 2007, an owner in Surfers Manhattan made such an application. Two separate reports were prepared by qualified Quantity Surveyors – one commissioned by the owner and the other by the Body Corporate itself – the Linkhorn report and the K & G Strata Consultants Pty Ltd report. There was very little difference in the resultant Lot Entitlements reached in the two surveys.

An independent Adjudicator ruled that the Lot Entitlements in the Linkhorn report be adopted as this gave a just and equitable distribution of costs – something that the report noted the "previous Lot Entitlements did not". The CLE's were adjusted so that most costs were shared equally, except that the larger units paid more for those services from which they benefited to a greater degree.

The amendment brought in by Labor in 2011 overturned this equality and allowed the CLE to be reversed to that determined by the original developer in 1987 with no means of appeal available to affected owners.

This new LNP Bill seeks to restore owners rights and entitlements before Labor's ill conceived reversion and we submit should be passed into law by Parliament as soon as practicable. It would be incomprehensible not to pass this bill which would restore the position of owners already effected by a reversion in 2011, as the Bill already provides for an immediate (from the 14.9.2012) cease to any new reversions taking place.

However may we respectfully suggest that the following small amendments to the timeframe be inserted in the draft bill so that the desired outcome can be achieved without undue delay by any committee adverse to the changes. (In our building 5 of the 7 committee members would be adversely affected.)

Section 403 (3) - the time for the committee to give written notice to each Lot owner upon receipt of a request from a Lot owner Section 403 (2) be reduced from the present 60 days to 30 days.

Section 403 (4) - allows at least 28 days for submissions with no maximum time set. Might we suggest that a maximum of 35 days be set so that inordinate delays can be avoided.

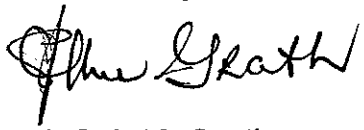
Section 404 (2) - gives no time for the committee to decide if any modification is required. To avoid unnecessary delays we suggest a period of 7 to 14 days should be inserted as sufficient time for the committee to make their decision.

Section 404 (4) - the present period of 90 days seems inordinately long for a lodgment of a new Community Management Statement. 30 to 45 days should be more than sufficient time for such lodgment.

No doubt your Committee will receive submissions from owners who will be affected by the proposed new legislation and feel aggrieved that their levies will be increased. However, they should realize that the owners who may benefit paid a premium for views or position when they purchased and should not be expected to continue paying more for the ongoing cost of services, the benefits of which are shared by all regardless of the value of the unit.

We fully support the passing of the new legislation to restore "fair and equal" distribution of costs according to the 1997 Body Corporate & Community Management Act.

Yours faithfully



R.F & C.J. McGrath

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