

COMMUNITY TITLES SCHEMES

*BODY CORPORATE AND COMMUNITY
MANGEMENT AND OTHER
LEGISLATION AMENDMENT BILL
2012*

SUBMISSION

BY

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SUMMARY:

My submission is simple.

Allow owners in body corporates to run and manage their own affairs with as little interference from governments, QCAT or the BCCM Commissioner's office.

Allow Body Corporates to make legally binding decisions that cannot be overturned by any other party.

Allow Body Corporates to have the benefit of the democratic process without fear that someone who does not like the decision of the majority being able to have the opportunity to apply to a government authority to change the legal decision on which the majority of owners have legally voted and agreed.

Provide Body Corporates the same benefit of a vigorous democratic process that the general community enjoys.

SUBMISSION:

Other than the fact that the BCCM and Other Legislation Amendment Bill 2012 is almost incomprehensible this appears to be another knee jerk reaction from an inexperienced government minister who does not have the full story and did not have the foresight or consideration to engage the apartment living community in any discussion before presentation of the bill.

It would appear that this bill has been rushed into being to appease a small number of vocal apartment owners so that this government can be seen to be proactive without any consideration as to the effect that it might have on a large number of apartment residents.

I live in, and am the owner in, a high rise residential apartment building in the city, the building has almost 200 apartments many of which are small 2 bedroom apartments that retired owners occupy.

These people are not wealthy but have made a considered decision to downsize in their later years and live a life style that has less impact on the environment and provides them with a degree of security.

The developer for this building set the Lot Contributions in accordance with the thinking at the time and most of the owners of penthouses, sub penthouses and larger 3 bedroom apartments purchased their apartment knowing what the lot contribution schedule was and what levies were associated with those lot contributions.

In 2007 nine (9) of those penthouse, sub penthouse and large 3 bedroom owners decided that they would take advantage of the loop hole in the BCCM Act 1997 and change the lot contributions to benefit themselves.

After presenting a motion to the Body Corporate at a General Meeting, which was soundly rejected, they then made an application to the BCCM Commissioner's office and with influence and personal acquaintance the lot contributions were changed. In making this change the adjudicator took no notice of the expert's recommendations that were presented but changed the lot contributions to massively advantage the nine applicants.

Eighteen owners, strangely enough all of them penthouse, sub penthouse and large three bedroom apartment owners, had their levies **reduced** by up to **62%** while **131** owners had their levies **increased** by up to **48%**. Forty Four other owners had decreases ranging from \$23.00 to \$1,000.00. The owners who experienced large increases were owners who had the smallest apartments and due to their size used less of the body corporate resources.

There is a patent inequity in the system when a minority of lot owners can use the system and their contacts to advantage themselves and disadvantage most of the other owners in the community. Especially after the body corporate has voted against the change.

The owners of the larger apartments knew what the lot contributions were when they purchased and still they purchased knowing that. The change to the BCCM Act in 1997 then allowed them to go against the majority decision of the Body Corporate and impose much higher levies on owners who have considerably smaller apartments, less call on the body corporate resources and less wealth than they do.

A penthouse in this building takes up half a floor while a small two bedroom apartment takes up less than one sixth of a floor. A penthouse has several terraces that are the responsibility of the body corporate to repair and maintain. A two bedroom apartment has 6m of balustrade on their balcony, a penthouse and sub penthouse has between 60 and 80 meters of balustrade on several balconies and so it goes on.

The changes that were brought about by the successful application to the Commissioner's office made the small 2 bedroom apartment owners lot contribution points just 2 less than a penthouse owner.

Based on the fact that owners on levels 23 to 36, penthouse, sub penthouse, large three bedroom and large two bedroom owners have access to **ALL** of the common property in the building including both recreational areas, swimming pools, spas, saunas and gyms, as well as exclusive access to two large outdoor entertaining spaces that that owners on levels 1 to 22 **do not**, have these owners should be paying more for the upkeep of the common property.

It is against the fairness principle that owners be made to pay for the upkeep of that common property to which they have no access and only fair that those owners who do have full access make larger contributions.

The effect of this type of rorting of the Act resulted in larger higher value apartments increasing in value due the lower body corporate levies and the smaller lower value apartments decreasing in value due to the higher body corporate levies. This was not just a blow to the smaller apartment owner's daily costs but to their investment in what may be their only asset.

The 2010 amendment that allowed the lot contributions to be reverted to the schedule set by the developer righted the wrongs that came about by a small number of owners using the Acts loop hole, their wealth and influence to stiff their neighbours.

This government now wants to reimpose those wrongs and once again, due to a complete lack of understanding and experience, will be complicit with wealthy, influential property owners in increasing costs and reducing the asset value of owners of smaller apartments.

If the government wants to change the BCCM Act to make it more equitable, the BCCM Act 1997 loop hole that allows wealthy, influential penthouse and sub penthouse owners to have the lot contributions changed so that they do not pay their fair share, should be closed.

Lot contributions should only be changed when the majority of owners agree and there should be no recourse to the commissioner or QCAT offices for a small group of owners to impose changes on the whole of the body corporate when that body corporate has legally, and within the bounds set out by the BCCM Act, voted not to make those changes.

The government should respect the will of the people, in this case the owners in a strata scheme, and allow them to make their own decisions without the constant interference of the government of the day, the BCCM Commissioner, QCAT or any other government authority.

Owner's in Strata schemes are not stupid and do not need regressive and abusive legislation that disadvantages many of them, what they need is legislation that supports them in a legal environment when they need assistance.

The BCCM Act should be a set of guidelines to allow body corporates to manage their affairs with certainty and dignity without the ever present Sword of Damocles hanging over their heads that either a wealthy influential individual who does not want to pay their way or a government department is going to keep changing the rules and turning their world upside down.

This amendment, if it is passed, will contribute to small apartment owners being considerably disadvantaged and in a lot of cases mean that these apartment owners will be forced out of their homes and have to relocate away from family, friends and support systems.

If the minister is serious about righting wrongs he should be more mindful of the effects that knee jerk reactions have on a considerable number of voters than on pleasing a very small group of vocal apartment owners and stop trying to fix something that is inherently unbroken but that has a vehicle whereby a small number of owners can take advantage of it to reduce their obligation to the community in which they live.

If the minister wants to fix anything, fix it so that the will of the body corporate when it has voted on a legally presented motion cannot be overturned by a small number of owners who do not like the way the democratic system works and a QCAT or Commissioners office that is influenced by owners who move in the same business and social circles.

RECOMMENDATION:

Do not rescind the 2010 Amendments. This amendment went some way to closing the loop hole in the BCCM Act 1997 that allowed a democratic vote by the majority of owners to be overturned.

Provide in the legislation for the vote from a legally presented motion at a general meeting to be unassailable. This will give the owners in strata schemes confidence that their vote will have meaning and that decisions that are made will be able to take place.

These two actions will gain this government more respect from the strata community than anything else that they could do in relation to the BCCM Act.

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