

**From:** [Denis Wilss](#)  
**To:** [Legal Affairs and Community Safety Committee](#)  
**Subject:** Body Corporate and Community Management and other Legislation Bill 2012 submission  
**Date:** Thursday, 18 October 2012 3:16:16 PM

---

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

**RE: Body Corporate and Community Management and other Legislation Bill 2012**

Dear Sir,

I commend you on the legislation Bill 2012 that removes the process that enables 1(one) lot owner to submit a motion and this one lot owner who could have no legal training to be able over ride the decision of a lawful order of a court, tribunal or specialist adjudicator. The 2011 reversal process had no regard to the legal system.

I also believe that the 2012 Bill should be an automatic reversal process for the unfair or illegal 2011 amendments when a request has been made by the original applicant to reinstate the original order that had been legally given by a court, tribunal or specialist adjudicator.

The bill should also contain a method where the Contribution Schedule or the deciding principal can be changed in a Community Management Scheme (CMS) that was adapted from a Group Titles Plan (Pre 1997). This is where a Group Titles Plan (1980 ACT) was converted to a CMS to reflect equality for lot owners as stated in the 1997 Body Corporate and Community Management Act (BCCM).

We live in a body corporate complex that has 52 units where the regulation module is a standard module. The complex has duplexes built on slabs, has paved driveways to each lot owner's unit, lawns and gardens and a body corporate garden/storage shed. There are no high-rise buildings, no swimming pools, and no community buildings. Each unit was built with 2 bedrooms, 1 bathroom and 1 garage. The Contribution Schedule has Lot entitlements that are in the order of 5, 6 or 7. The lot entitlement 7 owners pay 40% more for the same services provided by the Body Corporate than lot entitlement 5 owners pay. For Example: When rubbish is collected in the complex, owners on one side of the driveway (Lot 7 owners) pay 40% more for this service than the owners on the other side of the driveway (Lot 5 owners) as per the lot entitlement system. However, when the Body Corporate pays for the services provided there is no differentiation for one lot owner over another lot owner.

Further, in a recent valuation of the buildings, only 5 of the lot entitlement 7 owners were in the top 14 valuations however they all pay the 40% more through the Contribution Schedule Lot Entitlements method.

Prior to the commencement of the BCCM 1997, Lot Entitlements were listed as a single entity in a Group Title Plan. The BCCM 1997 then changed this single entity into two Lot Entitlement Schedules: The Contribution Schedule and the Interest Schedule.

The ACT enforced the two different schedules but gave no method for the Contribution schedule to be adjusted to follow the Equity Principal (46A) which is the basis of the informing principle of the ACT i.e. 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”*. The **starting point is that the entitlements should be equal** however a departure from the principle is allowable where it is just or fair to recognise inequality.

The equity principal was included in the 1997 BCCM ACT to make a fairer system for lot owners when there is no financial impact on one lot owner over another lot owner for the services and amenities provided by the body corporate. The change from the 1980 Group Titles Plan to the 1997 BCCM ACT made no provision for moving to equality as evidenced in Section 337 of the 1997 BCCM ACT.

### **Section 337 Community management statement**

(e) to include a contribution schedule showing, for each lot included in the new scheme, a contribution schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan;

### **Adjustment of the contribution schedule**

Adjustment of the contribution schedule can be decided by one of two options:

1. Vote without dissent: Section 47A
2. Adjustment by an order of a specialist adjudicator: Section 47B

### **Vote without dissent**

**Section 47A:** Adjustment of contribution schedule by resolution without dissent.

Adjustment by this method is almost an impossibility as no lot owner paying the lesser amount would vote for the adjustment.

### **Adjust by an order of a specialist adjudicator**

**Section 47B:** Adjustment of contribution schedule for particular schemes by order of specialist adjudicator or QCAT

(1) This section applies if—

- (a) a community titles scheme is affected by a **material change** that has happened since the last time the contribution schedule lot entitlements for the lots included in the scheme were decided; and
- (b) the owner of a lot included in the scheme believes an adjustment of the contribution schedule for the scheme is necessary because of the material change.

(7) If the specialist adjudicator or QCAT orders an adjustment of the contribution schedule, the adjusted contribution schedule lot entitlements for the lots included in the community titles scheme must—

- (a) be consistent with the deciding principle for the existing contribution schedule lot entitlements, and be just and equitable to the extent the deciding principle allows;
- or

(b) if there is no apparent deciding principle for the existing contribution schedule lot entitlements, be just and equitable.

(9) To remove any doubt, it is declared that, if there is a deciding principle for the existing contribution schedule lot entitlements, the specialist adjudicator or QCAT cannot change the deciding principle for the lot entitlements.

Therefore if there is no Material Change, the contribution schedule cannot be changed when a CMS is adapted from a Group Titles Plan.

If our Body Corporate involving 52 units was established after the commencement of the 1997 ACT then the Contribution Schedules would have been based on the Equity Principle and all Lot entitlements would have been equal. Therefore similar Body Corporates whether established before or after the 1997 BCCM ACT should be defined by the same principle otherwise the legislation is unfair to some lot owners.

There is a need for another clause in the 1997 BCCM ACT to enable a change to reflect the principle of the BCCM ACT 1997, i.e. follow the Equity Principal (46A) which is the basis of the contribution schedule that 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”*.

**An additional Clause is required: below is an example that could be added to Section 47B:**

*This section also applies if –*

- (a) a community titles scheme is established before the commencement of the 1997 BCCM ACT in a Group Titles Plan; and*
- (b) the owner of a lot included in the scheme believes that if the contribution schedule lot entitlements for the lots included in the scheme do not have any differing financial impact on the Body Corporate and if there is no statement in the CMS as to how these differing entitlements were determined then the equity principal must be used.*

Yours Sincerely,

Pam Briggs, [REDACTED]

Gail Christensen, [REDACTED]

Lynn & Denis Wilss, [REDACTED]