

18 October 2012

Research Director

Legal Affairs and Community Safety Committee

Parliament House

George Street

Brisbane Qld 4000

**BY Email:** [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sir/Madam

**RE: Submissions-Body Corporate and Community Management and Other Legislation Amendment  
Bill 2012**

My name is Edward Eadeh and my wife and I live at Unit [REDACTED], Burleigh Heads. We are both retirees and bought our unit "off the plan" in 2002. At the time, we knew our contribution schedule of lot entitlements (CSLE's) were not the same as other unit owners due to the larger size of our balcony etc. **What we did not know at the time was that these CSLE's were not allocated on a fair and equitable basis.**

### **Background**

1. In 2006, we sought to have our lot entitlements adjusted to a more fair and equitable level by applying to the specialist adjudicator for relief under the then applicable act. Subsequently, the lot entitlements were found to be "not just and equitable" by Specialist Adjudicator Gary Bugden and were adjusted in our favour in May, 2006. (Ref: Adjudicators Order #0015-2006). This was achieved over 9 months and after we spent over \$11000 in getting an experts opinion and consulting with lawyers etc.
2. After the Act was amended in 2011, a unit owner wrote to our committee and quoting provisions of section 385 of the amended act, the CSLE's were reverted back to their pre-adjustment level in December, 2011, **This was done despite the fact those CSLE's were proven to be unjust and inequitable.**
3. As the amended act allowed no right of appeal or any avenue for my wife and me to seek natural justice, we submitted a motion under section 47A of the amended act to the February 2012 AGM of our building to revoke the newly registered contribution lot entitlements, which were not just and equitable, back to the May 2006 schedule ordered by the specialist adjudicator. As expected, we did not get the pre-requisite unanimous vote necessary to reinstate the "just and equitable" CSLE.

4. As a consequence, we applied to the Commissioner (ref: application number 0339-2012) arguing that the Body Corporate acted unreasonably in reverting back to the pre-adjustment CSLE's and sought relief. Adjudicator D. Toohey dismissed our application, in part, on the following basis:

*“Mr and Mrs Eadeh have put forward a reasonable argument suggesting the entitlements they propose are a fair apportionment of expected costs based on expected use of body corporate property and services. This position is similar to a proposed sharing of expenses based on the current ‘equality principle’. **However, Mr and Mrs Eadeh have failed to show it is unreasonable to take the view that lot entitlements should not be shared on an equality principle ...**” (Ref: “ Indigo Blue Beachside Residences [2012] QBCCMComr 286 (19 June 2012)”)*

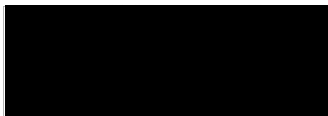
Such egregious conclusions are difficult to reconcile. The ruling essentially states that despite the entitlements being unfair, it is reasonable to have a CSLE that is unfair and unjust under the amended act as being unfair does not mean being unreasonable. This ruling is reminiscent of the Orwellian oxymoron **“Everyone is equal. Some are just more equal than others”**.

### **Summary**

We strongly urge the Government to throw out these incredible 2011 Amendments that allowed such patently unjust and iniquitous reversions to take place. Ill conceived laws generated by predominantly political motives does no one any good, least of all those charged with interpreting and ruling upon such laws. The maintenance of such legislation can only generate more tortuous rulings as shown in the example above. In conclusion, we ask the government to ensure that the redress intended in the new act is not drawn out beyond 30 days.

We respectfully submit the above for your consideration.

Sincerely yours,

A solid black rectangular box used to redact the signature of Edward M Eadeh.

Edward M Eadeh