

Body Corporate & Community
Management & Other
Legislation Amendment Bill 2012
Submission 233

From: [REDACTED]
To: [Legal Affairs and Community Safety Committee](#)
Subject: Re: body corporate proposed changes
Date: Friday, 19 October 2012 1:39:24 PM
Attachments: [Document_30.pdf](#)
[ATT00001.txt](#)

Dear Sir

with reference to the proposed changes to the body corporate legislation and with reference to the attached letter outlining the situation in detail, I would like to lodge my disapproval of any changes to the current situation.

It would be a tragedy for all small lot owners and small commercial lot owners in mixed use situations such as myself if this change were to occur. As a small commercial lot owner with a shop of just 23m2 in Anzac Square building, Brisbane, I was greatly adversely affected during the changes in 2010-2011. The sudden and massive increase in levies necessitated the reduction of one staff member. Not withstanding the current economic climate another massive increase in levies would bring into question the viability of my small business.

It seems completely illogical to me that as a small shop owner I should pay the same as a 3 bedroom, 3 bathroom penthouse owner. I should not be paying for items in the building which I do not use, I do not live there, it is not my home.

I sincerely hope there will be more and thorough community consultation before this or any other changes to the current situation are considered.

Yours faithfully,

Peter Brooks.

SG & DL Terranova

14th October 2012

Mr Campbell Newman MP
Premier of Queensland
PO Box 15185
City East
Queensland 4002

Dear Mr Newman

Re: *Body Corporate & Community Management Amendment Bill 2012*

We refer to the above Bill introduced to Parliament on 14th September 2012 by the Minister for Justice, Mr Jarrod Bleijie MP, which effectively removes and eradicates legislation passed in 2011 by the previous government.

As long-time LNP voters, we believe we must alert you to the complexity of this legislation and the negative impact it will have on a wide range of lot owners across Queensland, in particular in the high-density regions of Brisbane and the Gold Coast.

We believe the government has been unduly influenced by a small number of penthouse and large-lot owners who stand to gain significant financial advantage if the Amendment is passed, at the expense of many smaller lot owners (eg one-bedroom units occupied by retirees on fixed incomes and small business operators).

This matter is very complex and will not be resolved by a simple broad-brush approach. What is in the 2012 Amendment will do nothing to resolve the problem and much to inflame it.

We are the owners of a shop in a mixed-use heritage development, which consists of 2 small lots on the plan that operates as a single business. The total floor area is 50 square metres (2 X 25m²). We pay body corporate levies, in accordance with the schedule, for both lots.

In 2010 two penthouse-owners forced the Body Corporate into a QCAT adjudication. The decision by QCAT made all contribution lot entitlements equal throughout the building. As a result the body corporate levies per shop increased from \$2,447 per annum to \$13,632 per annum, **an increase of 457%**. This was imposed over-night.

The quantum of the increase from one year to the next was a massive \$22,370. The amount equates to **\$545.28 per square metre** in body corporate levies alone (not including rates, water, or other outgoings), which is not sustainable for any small business.

QCAT based its decision on the legislation (as it applied in 2010) and on the widely-quoted Centrepoint case, which found that *there should be an equality of entitlements*. The Centrepoint precedent is not valid in all cases because it is based on flawed legislation (introduced in 2003) and does not attempt to address the differing needs of commercial versus residential lots, large versus small lots, similar uses versus mixed uses within the same development. In particular it does not address the differing requirements for and access to recreational facilities, lifts, security, maintenance, and common areas such as lobbies and roof gardens.

After the QCAT adjudication the penthouse owners' levies were reduced by 33% or \$7,333 per annum. One of the instigators immediately sold his apartment, and relations between the various lot owners in the building degenerated.

The 2011 Amendment to the legislation provided a remedy, whereby those affected could request the body corporate to revert to the original schedule of contribution lot entitlements. The process described in the 2011 Amendment was duly followed and in April 2011, the original schedule was reinstated.

Now it appears the 2011 Amendment, which was drafted after extensive community consultation by the previous government, will be thrown out in its entirety. It seems this will be done **without one iota of public consultation by your government**, on the assumption that all past adjudications have resulted in fairness. They have not, because the underpinning legislation is flawed.

We believe that **the initial body corporate construct for a development must be sacrosanct**. It should be able to be amended only by the Body Corporate through a resolution without dissent. How else can owners and occupiers have any certainty about the continuing affordability of their homes, or the viability of their business investments?

In the last three years we have had three different body corporate contribution schedules, with variations of \$22,370. How can anyone budget for variations of such magnitude?

In our Body Corporate, which was established in 1999, the construct for contribution lot entitlements was based on the area of the lot, such that larger units and penthouses paid a higher proportion of body corporate expenses than one-bedroom units and small commercial lots. This arrangement served the building equitably and harmoniously for nearly ten years.

We believe that a return to the original body corporate construct is the only workable solution, and the only means of adjustment should be that the Body Corporate passes a resolution without dissent.

The *Body Corporate Act* must not disregard when and how the original body corporate contribution lot entitlements were established. This was the basis on which owners and investors purchased their lots, and it is the basis on which commercial and residential tenancy agreements and leases have been documented.

Surely consumption and maintenance of services and facilities such as ducted air conditioning, owner car parking, lobbies and foyers, swimming pools, billiard rooms, gyms, saunas, swipe-card security, lift usage is in direct proportion to floor size, number of bedrooms and usage class. In a mixed-use building, which incorporates commercial lots, studio apartments, 2-bedroom apartments, and luxury penthouses, the original system worked.

Social planners recommend the inclusion of all socio-economic groups in developments, and good planning promotes the value of high-density urban settlement patterns and mixed-use developments that utilise existing infrastructure. Legislation, which demands that units of all sizes, shapes, and forms make equal contributions to their Body Corporate, does not allow for such developments.

We trust you appreciate the quantum of unfairness and the level of opportunism that will be generated by the proposed changes to the Act.

While the Amendments passed in 2011 were not ideal, a return to the previous situation is untenable and unaffordable for smaller lot owners. **Please do not throw out the baby with the bathwater by reversing every aspect of the 2011 Amendment with retrospectivity.**

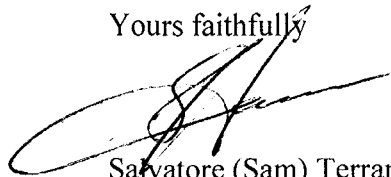
By doing so, you will be responsible for forcing elderly residents to relocate; creating even more financial uncertainty for owner-occupiers and tenants; driving away potential purchasers; and fuelling antagonism between owners within building communities.

This directly conflicts with a key promise you made to the people who elected you: to 'lower the cost of living for all Queenslanders'.

We strongly urge you to immediately declare the status quo and a moratorium on any further changes.

We implore you to ensure that Parliament puts party politics aside, obtains full and proper public consultation, and considers the consequences for all affected - in particular the many owners and tenants on low and fixed incomes – before passing amendments to legislation which will favour the powerful and influential few.

Yours faithfully



Salvatore (Sam) Terranova



Deborah Terranova