Body Corporate & Community Management & Other Legislation Amendment Bill 2012
Submission 235

19 October 2012

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 Amendment Bill 2012

The question of what is a fair and equitable allocation of body corporate expenditure lies at the heart of this legislation. Although the notion that all unit holders should contribute equally would on face value appear fair, it can also be argued that the proposed changes are divisive and inequitable not just for individuals but for large numbers of members of a community title scheme. The purpose of this letter is to outline the perils of decoupling equity and expenditure, as this legislation seeks to do.

For years a unit holder's contribution towards expenditure was proportionate to their equity allocation and voting rights (in the majority of cases). This system is also used throughout other states in Australia. The basis for this scheme is the fact that the value of a unit is largely determined by the amount of expenditure by a body corporate. For example, in a group of 6 homogeneous $100,000 units it would make no equitable sense for the body corporate to spend $50,000 on gardening per year as this would not result in a profitable increase to the value of each unit, indeed the exorbitant expenditure on gardens may decrease the value of all properties. Conversely, the same expenditure of $50,000 on gardening may be completely suitable for maintaining the capital value of 6 homogeneous $2,000,000 units. In each case the level of expenditure should be in keeping with the capital value of the units. In homogeneous schemes, unit holders can usually agree on what are suitable levels of expenditure to maximise the equity of their units.

Of course in heterogeneous schemes things become more complex, but the fundamental principle of linking the proportion of expenditure to unit holders equity allows bodies corporate to make decisions that will benefit all unit holders. That is increases to the capital value of individual properties are funded in proportion to the benefits derived.

So what happens if we decouple equity and expenditure?

It has been suggested that there will inevitably be winners and losers from the introduction of the proposed legislative changes. It is not so obvious however at face value to identify who will benefit. For arguments sake I would like to propose two examples:

Case 1

Lets consider a complex of 4 units being 3 cheap units and 1 vastly more expensive unit. The body corporate fees for the owner of the expensive unit will now be much less than under the old scheme. In this scheme however, it would make economic sense for those with cheaper units, each paying higher than their proportionate equitable share of expenditure, to reduce the overall level of expenditure. As a consequence of reducing services (maintenance, security, ducted air-conditioning, lifts, etc.) the capital value of the expensive unit may actually fall, as fewer buyers would want an expensive unit without these services. Under the old scheme the owner of the expensive unit would have had greater control over expenditure and thus the capital value of their unit (as voting rights, equity, and expenditure were all linked), under the proposed scheme they will have minimal control over their equity.

A similar problem exists where a mix of commercial and residential exists, those with the greater number will act in there own self-interest, and in many cases to the detriment of those who may hold a greater share of equity.

Case 2

Consider a high-rise tower with over one hundred units, consisting of 1, 2, 3 and 5 bedroom units all of varying values. So who wins and loses from the proposed legislation? The units with less value will have to pay more than their equitable proportion, and as a consequence the capital value of these units will likely decrease. Higher value units will pay less, and midrange units will only be affected marginally if at all. So war will ensue between those with expensive units and those with cheaper units. This is the divisive nature of this legislation.

But what will happen to the long-term capital values of units as a result of the changes to expenditure that will occur. Well, you would need to know the mix of cheaper to expensive units and importantly the constituency of the body corporate.

Of course who sits on the body corporate will change over time, and thus the spending prerogatives will also change. Will expenditure cuts cripple the value of expensive and midrange units, or will expenditure blow-outs occur thus driving up the fees of cheap and midrange units and thus crippling their value?

One thing is for certain; predicting who wins and loses will become less certain, the greater the heterogeneous mix of units within a complex becomes. This uncertainty will diminish the attractiveness of buying into a community title scheme thus diminishing the equity of all units.

The only people to truly benefit from the proposed legislation are developers with short-term objectives for the property. The only economically and socially sustainable solution is to maintain a system where equity, expenditure and voting rights are intrinsically linked. This may be established upon construction and initial sale or by valuation for existing units.

Regards
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