

19 October 2012

Email: lacsc@parliament.qld.gov.au

Research Director
Legal Affairs & Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

Submissions regarding the Body Corporate & Community Management & Other Legislation Amendment Bill 2012

I am writing to you on behalf of myself and my wife, in response to the invitation on the Government website to make submissions to your committee in relation to the above bill.

I believe that the law should encourage outcomes that are fair and equitable for all and therefore I support the proposed bill and in particular returning the body corporate entitlement regime to the pre-April 2011 position where the contribution entitlements could be reviewed on principles of equality and equity.

Background

I and my wife own and live in a sub-penthouse of Riverplace, a large inner city high rise residential building with our two young boys.

I am also a solicitor who practices in property law and community titles schemes and have extensive experience in working with developers in establishing these schemes.

Whilst my wife and I do not live on the top floor of the building, we do live in a larger unit to accommodate our growing family which would be classified as a penthouse.

Our building had been through the process of having the contribution entitlements adjusted under an adjustment order of QCAT applying the equal and then equitable tests. The effect of that order was the generally "standard units" were allocated 30 entitlements and "penthouse units" were allocated 40 entitlements. This meant that a standard unit owner paid approximated 75% of the amount a penthouse owner paid.

The April 2011 changes changed the contribution entitlements to the original entitlements set by the developer that appear to be based on size or value. The result was that a standard unit owner pays 25% of the amount a penthouse owner pays to run the building. More critically the result was that the body corporate levies for penthouse units effectively doubled adding over \$10,000 year to our living costs, whilst saving standard unit owners less than \$300 a year.

Submissions

I support the proposed changes for the following reasons:

1. **The law should strive to be fair and equitable.**

As a lawyer I believe it is important that Parliament makes laws that are fair and equitable in order for the community to have faith in the legal system. Returning to the previous system where the guiding principle was equality and being fair and equitable is a positive step and one that should be adopted throughout our legal system.

2. **Inequity within high density communities creates unnecessary tension.**

With the need for higher density living increasing, it is critical for the community to have faith in community title scheme living and that residents all contribute an appropriate share. It is particularly destructive for there to be an inherent inequity in the allocation of costs to be locked into the body corporate system. It creates unnecessary tension if a minority is required to subsidise the living costs of others. If that system persists, people like my wife and I will simply choose not to live in community title schemes.

There are already enough compromises that need to be made by residents in order to live within a high density community titles scheme and adding inherent financial unfairness will put many people off from living in such arrangements.

3. **The assumption that the original contribution entitlements are fair apportionment is flawed.**

The assumption that the original contribution entitlements set by a developer are a fair apportionment of body corporate levies is incorrect. From my experience this is a flawed assumption as:

- the contribution entitlements are set before the building goes to market, which is well before construction commences and before the actual costs are known;
- in my experience as a lawyer acting for developers in establishing community titles schemes, developers give very little thought to the contribution entitlements. Generally they choose the simplest and quickest way of settling the contribution entitlements, which is to adopt either the size or price list, even where this has little bearing on each owner's contribution to the cost of operating the building; and
- the only way to accurately apportion body corporate entitlements is through a detailed quantity surveyor analysis of the operating cost of the building. This involves significant cost and is usually best undertaken once the building is in operating and the actual costs of running the building are known.

4. **Community Titles Schemes require flexibility.**

Adopting a fixed approach to contribution entitlements fails to recognise that a community titles scheme is a community which will evolve over time. Owners can agree to increase the level of services provided and to make improvements to the building. As these aspects of the community titles scheme change, the cost structure also changes. It is therefore critical that there is a mechanism for those changes to be considered and the relevant contributions of each owner adjusted accordingly. For example, a majority of owners in a body corporate could decide that it was appropriate to have security patrol the building every night for the benefit of all owners. This service was not considered when the entitlements were originally

set. Under the current regime, because a penthouse owner has a larger area they would contribute significantly more to the cost of that security, whilst they received the same benefit from it as all other owners. In effect, a minority of owners would be required to subsidise those cost of the service for the majority. Further, the penthouse owners as the minority would not have the numbers to vote against such a motion.

5. **Value is irrelevant.**

The value of a lot is irrelevant to the share of costs that lot contributes to the costs of running a building. Two units can be identical in size but have different levels of finishes or aspects. These units may have significantly different values but have the identical impact on the running costs of the building.

6. **Services and Size.**

Principally there are two types of costs associated with running a community titles scheme. There are costs associated with providing services and costs associated with the structure of the building.

The costs of providing services apply equally to all residents irrespective of the size or value of their apartment. All owners use, have access to or benefit equally from services such as the cleaning of the common areas, gardening, the caretaker, public liability insurance and the provision of facilities such as pools and gyms. There is no reason why any owner should be required to subsidise the costs of these services for another.

For example most buildings engage a body corporate manager to keep the roll, issue levy notices and call the meetings of owners. They generally charge the body corporate a fee of say \$150 per lot per year to undertake this administration. Under the April 2011 apportionment method based on size, in Riverplace a large apartment owner would contribute \$300 for this service whilst a small apartment owner would pay \$75. Each owner is receiving the same service but one owner is paying four times as much as another.

For buildings that offer a relatively high level of service and amenity as is common in large residential buildings, the provision of the services and maintenance of the recreational facilities makes up the most significant component of the costs of running the building. These costs include a caretaking team on duty six days a week, a swimming pool, gymnasium, sauna, barbecue areas and gardens that need to be maintained and security lighting. For our building there is also additional security for nights such as Riverfire and crown rent, insurance and maintenance costs for the river walk adjacent to our building.

The size of a lot has no bearing on any of these costs. They benefit all owners equally and should be paid for equally.

Some costs however are directly affected by the size of an apartment. Larger apartments have more walls and therefore require more painting and more windows that need cleaning. They also involve more structure and therefore should pay a higher share of the insurance for the structure of the building.

For smaller complexes that have a relatively lower level services and body corporate costs such as duplexes or townhouses, size may be an accurate means of allocating costs. However for more complex buildings size is often only a small component of the relevant factors.

7. **The Multiplication Effect.**

Large buildings with high levels of services have significant operating costs. Also the number of standard units to penthouses increase as buildings get larger. In our building there are 316 units, 9 of which are penthouses. That is roughly 34 standard units for every penthouse.

If the costs of operating the building are not allocated fairly (as under the current regime) the impact on penthouse owners is disproportionate and significant. For example in our building a redistribution of the operating cost by a change of the contribution entitlements that delivered a saving of \$400 per year for a standard unit and added \$13,600 of additional costs to each penthouse owner each year.

The larger higher the number of standard units to penthouse units and the high the overall level of body corporate costs due to the level of services and facilities the greater the impact.

Inaccurate contribution entitlement allocations have a significant and disproportionately impact on owners. The impact on individual owners is too important and significant to use an arbitrary basis such as size or value for allocating costs. Particularly in large buildings where any anomaly is magnified it is critical that the allocations correctly reflect each owner's contribution to the costs of operating the building.

8. **Social Policy**

I note the previous minister who championed the April 2011 amendments used the low income pensioner as justification for adopting those changes. He pitched the bill as protecting pensioners from exploitative penthouse owners. That failed to recognise that the majority of unit owners (particularly in the building in which we live) are in fact investors and it is those investors who benefit from the change at the expense of owner occupiers who live in the larger penthouses.

As a matter of social policy, people living in freehold properties are not required to subsidise their neighbour's living costs simply because they have larger houses. I note that the rates system differentiates between underlying land value but this same system also applies to strata title owners and in our case we pay an increased rate due to the Brisbane City Council's parity factor.

A system that is based on equality and fairness is a more appropriate method that avoids the resentment that comes from a minority of owners being required to subsidise the living costs of their neighbours simply because they have a larger apartment.

9. **A Fair and Flexible System**

Unless a community titles scheme is 100% homogenous, value or area is unlikely to ever result in a fair allocation of costs.

The only fair way for complex buildings is to have the costs analysed and allocated by an expert such as a quantity surveyor. This is a detailed and expensive process. The previous system, whilst not perfect, allowed an owner under the supervision of QCAT to have the allocation of the contribution entitlements reviewed to reflect the current allocation of costs of the building.

That system meant that:

- An owner always had the opportunity to have the basis of allocating costs reviewed by an independent person if the owner felt they did not accurately reflect the extend that each lot contributed to the costs of operating a building; and

- If there were changes to the level of services of the building or changes in the costs structure between services related costs and size related costs an owner could seek to have the allocations reviewed and adjusted if required to maintain equity.

The current system is unfair and destructive to harmonious high density living. Costs are allocated on a basis that has little bearing to actual contribution or benefit. There is no ability for the allocation to change as costs vary and there is no avenue for an owner to seek adjustment or review.

10. **An Alternative Fixed System.**

Whilst I do not advocate for a fixed system, if such a system was to be adopted value or size should not be the basis of it.

A fair fixed system should require that all costs and sinking funding contributions be allocated into various classes. Those costs are directly related to the size of the lot would be placed into one class and allocated on the basis of size. Those costs that relate to common areas, facilities and services that benefit all owners equally would be placed into another class and allocated to all owners equally. In effect this is what a quantity surveyor does when examining a building to determine the fair allocation of costs.

This process however would add a significant degree of complexity to the accounting process and create additional work for the volunteers serving on the body corporate committees.

In my view the most appropriate mechanism for allocating the costs of a body corporate is the method proposed by the current bill which is to return the BCCM Act to its longstanding position that all owners should contribute equally unless it is unequitable to do so. In that case they should contribute on a fair and equitable basis. This should be determined by expert evidence from qualified quantity surveyors after analysing the costs of the building and adjudicated on by an independent tribunal.

This is a balanced approach as it allows flexibility as well as fairness. It allows for adjustments over time as the nature of schemes and costs change.

To maintain the current unequitable system is plainly wrong and will simply:

- (a) create resentment and disharmony inside an already challenging high density living environment; and
- (b) discourage people from taking advantage of the benefits of community titles schemes given inequities in the levy contribution arrangements.

I wholeheartedly support the bill and would be prepared to speak to the Committee if it would be of assistance to it for me to elaborate on the inappropriateness of the current arrangements.

Yours faithfully



Aaron & Leann Webb

