

The 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 Committee

**Submission by David Bowers (Solicitor) - Body Corporate and Community Management and Other Legislation Amendment Bill 2012**

1. We do not support the 2012 Bill in its current form as it poses significant risks to the development industry.

These include:

- (a) developers of buildings completed between 2003 and 2011 being exposed to multi-million dollar class actions by the many unit buyers who have suffered financial loss through the dismantling of developer set levies as a result of the Centrepoint decision. These claims will not be limited to the allegedly small number of schemes that have taken advantage of the 2011 reversion process;
  - (b) a complete loss of faith by potential buyers in new high rise developments as the Bill enshrines the principle that buyers cannot rely on the levies set by the developer and disclosed and agreed to by all buyers. Those disclosed levies can be dismantled by opportunistic owners at any time by passing on those costs onto other owners; and
  - (c) reputable developers (including listed companies) acting on what was believed to be sound legal advice have seen their recently completed community title developments and legal structures overturned by flawed legislation (i.e. the 2003 amendments ["2003 amendments"] to the *Body Corporate and Community Management Act 1997*.) ("BCCM Act"). This has created class warfare in those community title schemes which is causing major reputational damage to the developers who built those buildings; this situation was not experienced under the previous legislation, the *Building Units and Group Titles Act 1980* ("BUGTA") which required owners to accept and live with what they had agreed to when they bought.
2. The main premise for the amendment to the lot entitlement provisions in the 2012 Bill is that levies should be equal regardless of unit size or value - however, the relativity

principle introduced in the *Body Corporate and Community Management and other Legislation Amendment Act 2011* ("the 2011 amendments") is completely at odds with the equality principle. Clearly, the major premise on which the amending legislation is based is no longer sustainable as the Government now accepts that levies and lot entitlements do not have to be equal.

3. The 2012 Bill offends the *Legislative Standards Act 2002* in a number of respects, namely:
  - (a) the 2012 Bill does not have sufficient regard to the legal rights and privileges of those owners who acquired title to their units with an important attaching right; namely the unit's contribution schedule lot entitlement ("CSLE"). The CSLE is a proprietary right attaching to each unit and is a legal right conferred by the Community Management Statement registered at the Titles Office and which is a publicly searchable document. The BCCM Act confirms that unit owners have a legal right to only contribute to body corporate costs in the same proportion that their CSLE bears to the aggregate CSLE for the whole scheme. The 2012 Bill fails to give due regard to that legal right and the privileges attaching to the registered CMS by allowing that right to be taken away; and
  - (b) the 2012 Bill allows certain owners to compulsorily acquire the property rights referred to in paragraph (a) without paying fair compensation.
4. The 2012 Bill re-activates the flawed 2003 amendments which placed "blinkers" on the Courts in that it directed the Court to ignore a buyer's knowledge at the time of purchase (see section 49(5) and (6) of the BCCM Act) - **on the contrary, we believe that this is the most critical factor**. The 2012 Bill should be amended to direct the Court to place significant weight on what was disclosed as to do otherwise makes a mockery of a whole range of official Government warning statements and disclosure laws and also makes the engagement of solicitors to conduct searches a largely worthless exercise when levies can so drastically change.
5. We accept that the 2011 amendments were significantly flawed in totally removing judicial oversight to the lot entitlement adjustment process and allowing a single lot owner to overturn a Court decision. The Bill should be amended to allow the Courts to determine what is just and equitable **without restriction**, including the ability to overturn both previous Court decisions and reversions pursuant to the 2011 amendments. In our submission, many of the Court decisions after the Centrepont case (Fisher and others v the Body Corporate for Centrepont Community Titles Scheme 7779 [2004] QLA 214) are flawed due to the Court's inability to take into account disclosure and acceptance by buyers of lot entitlements and levies at the time of purchase.
6. We believe that having received proper disclosure, all buyers had the option of walking away and buying something with lower levies something not in a community title scheme. By accepting the disclosed levies and proceeding to buy into the body corporate community, the buyer has in effect, entered into a binding social contract with all other owners in the scheme to the effect that the buyer would bear his/her agreed portion of the body corporate costs. That buyer shouldn't be able to tear up that social contract and demand that others pay instead.

7. We believe that there are still many bodies corporate which have yet to take advantage of the Centrepoint decision. In addition, there are also signs that opportunistic large lot owners in mixed use, commercial and industrial schemes will also start taking advantage of the dismantling of the 2011 amendments.

We have had only limited time to consider this Bill due to the extremely short review period allowed for by the Government and our comments are therefore brief.

We note that:

- (a) the Government chose not to consult with anyone prior to presenting this important Bill to Parliament; and
- (b) that the proposed legislative reform with respect to lot entitlements was not part of any policy platform issued prior to the most recent state election.

This lack of consultation is extremely disappointing.

In conclusion, we would support the 2012 Bill if it were amended to give effect to the following:

- (a) Any completed 2011 reversions should remain in place for the time being (to ensure that there aren't anymore unnecessary changes to lot entitlements unless they have Court approval).
- (b) Jurisdiction over lot entitlement adjustments to be returned to the Courts in all cases (this overcomes the objection that single lot owners can overturn Court decisions).
- (c) The offending 2011 provision (Section 379) which allowed for single owners to dismantle Court orders to be removed or cease to apply.
- (d) The appropriate adjudication body be given the ability to look at all factors in determining what is just and equitable; in particular, the knowledge of, and acceptance by, the lot owner of the particular levy structure at the time of acquisition should be classified as a "significant determining factor" in determining what is just and equitable.
- (e) The Courts should be granted the power to overcome any abuses by developers (e.g. where the developer has set significantly reduced levies for a lot that the developer has retained).
- (f) The proposed Bill should include a provision recognising that the original owner (i.e. the developer) was not obliged to set levies on an equal basis (this was the law under the original BCCM Act 1997 until 2003) and that in the absence of manifestly inequitable or unjust levies being set by the developer, the guiding principle should be that the levies set by the original owner should remain unchanged.
- (g) The Court in determining what is just and equitable, should be required to look at the equity and fairness of shifting levies from one lot owner or group of lot owners to other lot owners.

We support the other amendments to the *BCCM Act* relating to reducing unnecessary contract disclosure and establishing a more consistent approach to the adjudication of complex body corporate disputes by qualified adjudicators.

Yours sincerely

A handwritten signature in black ink, appearing to be 'David Bowers', enclosed within a hand-drawn circle.

David Bowers

**Solicitor**