

19 October 2012

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Sir/Madam

Submission on the *Body Corporate and Community Management and Other Legislation Amendment Bill 2012*

I am writing to object in the strongest possible terms to a number of the provisions of the *Body Corporate and Community Management and Other Legislation Amendment Bill 2012* which is currently before your Committee for consideration.

I am the Chair of a body corporate comprising a total of 53 lots, made up of 42 residential and 11 commercial lots. I am making this submission on behalf of, and with the authority of my body corporate committee and I believe that the positions I put forward in the submission have the full support of the vast majority of the lot owners in the scheme I represent.

My objection is specifically to those provisions which remove the requirement for bodies corporate to undertake a process prescribed in Chapter 8, Part 9, Division 4 of the Act (the 2011 reversion process) which currently allows bodies corporate to revert to their original allocated contribution schedule lot entitlements (CLSE) where these have been previously changed.

The current provisions of Chapter 8, Part 9, Division 4 provide a straightforward and cost effective way for bodies corporate to address inequities resulting from previous changes to their original CLSE, as is the case with the body corporate which I represent, and as such, should be retained.

One amendment which should be considered in any new Bill would be to clarify the wording of the relevant clauses of this part of the Act, some parts of which are currently ambiguous and open to interpretation.

I also object to the provisions of the proposed amendments that will prevent applications for revocation currently before the approving authorities from being allowed to proceed to determination. This appears to me to be an abuse of due process and potentially represents gross conflict in relation to the separation of powers between the executive arm of government and the judiciary.

In the case of the body corporate which I represent, we made application for reversion in June 2011 in accordance with the provisions of the April 2011 amendment, with that application endorsed at the 2011 annual general meeting of the body corporate. Only one objection to the application was received from the 53 lot owners, namely from one of the 11 commercial lot owners in the scheme. This objection, which I believe was based on spurious grounds, has resulted in the application being referred to the Queensland Civil and Administrative Tribunal (QCAT) for determination in early 2012. QCAT is yet to consider this matter.

To now introduce legislation which has the effect of preventing the Tribunal from making a determination on an application made in accordance with the legislation in place at the time of its lodgement clearly represents a curtailment of due process.

This reversion process has already cost the body corporate some thousands of dollars and now, by virtue of these proposed amendments, the majority of members of the body corporate will not only be denied the opportunity to have their application determined by the duly appointed authority, but will also suffer the loss of their considerable investment in the process to date. Furthermore, the majority (42) of the 53 lot owners in the scheme will continue to have to carry the inordinate levy burden they have had to carry since the inequitable changes to the original CLSE were put in place in 2006. This, I contend, is against all the principles of natural justice and a travesty of the principles of democratic government.

With the loss of the reversion provisions, I am advised that the costs involved in any subsequent rectification of the currently anomalous CLSE would be many times the costs we have incurred to date and would be well beyond the capacity of the majority of the residential lot owners to fund.

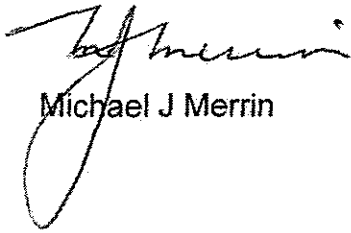
While I recognise the right of the duly elected government to amend legislation for the future governance of the State, I don't believe that this should extend to the denial of natural justice or to the curtailment of judicial processes currently in place under existing legislation.

I therefore request that you give favourable consideration to amending the Bill to:

1. retain and improve the relevant provisions of the existing reversion process as outlined above; and

2. allow for those applications for reversion duly made and in process to be determined by the relevant authorities.

Yours Faithfully

A handwritten signature in black ink, appearing to read "Michael J Merrin". The signature is fluid and cursive, with a large loop at the end of the last name.

Michael J Merrin