
From: [REDACTED]
Sent: Wednesday, 6 July 2022 7:43 AM
To: Legal Affairs and Safety Committee
Subject: Building units and group titles amendment bill 2022

Categories: Submission

From Ray Harvey [REDACTED] email; [REDACTED] Ph [REDACTED]

The current Act was introduced in 1997 and with a process of getting new 5 year options every 5 years, commonly called "top ups" we now have in existence 50 year contracts, unchanged from the original wording in 1997.

Now if the legislation that allows this to continue still exists then ultimately we will have **100 year contracts** unchanged from the original wording in 1997.

The first thing that needs to be understood is the imbalance of power.

In 1997 we had expensive lawyers representing the Management Rights industry.

In 1997 we had a very powerful lobby from the banking sector, whose security became exponentially more secure when dealing with 25 year contracts rather than the remnants of a 3 year plus 3 year option. Now normal practice is they won't lend unless the contract has 15 years life. They get to lend a lot more money which is where the profits lie, with exponentially greater security.

Then we have another powerful lobby, the developers who are able to sell the Management Rights for a lot more money, especially if the contract is weak on detail and heavily biased in favour of the Caretaker/Letting agent.

Now of the 500,000 unit owners in Qld virtually none would have read the contracts for Caretaking & Letting let alone reading the Act. A typical unit owner has one unit in a complex of say 100. A 1% interest in their own complex is weak enough, but one unit out of 500,000 leaves a unit owner, who has no legal clue, like me, hardly able to compete with the above powerful organisations and their more powerful lawyers. So whilst unit owners have the numbers they are impotent.

David and Goliath springs to mind. I'm not sure my slingshot can repeat David's success.

Now I can only outline the shortcomings in complexes with which I'm associated. There is probably a lot more.

Firstly I did the Management rights course in 1997 so it has hopefully changed but I could sit for the exam and if I failed, I would sit again and again until I passed. The course didn't really prepare me for the tasks ahead. When I looked at the books of various complexes my sense of honour/decency was severely compromised.

Why?

Well the price of a complex is based on profits. So the argument is that if they get more units to manage allegedly by service, get higher occupancies, get higher rents. lower their own costs, do things themselves rather than via hiring staff then higher profits are made. However the main avenue for increasing profits is to take a bigger share of the pie shared with owners and to have the Body Corporate pay contractors etc for work they should be doing.

The argument for longer contracts was that it rewarded caretaker/letting agents for building the business for the benefit of unit owners. In fact it has had the opposite effect and with 25 or 50 year contracts or longer caretaker/letting agents can effectively steal from unit owners with impunity.

When a person buys a unit they assume that the law protects them, the courts protect them, the Office of Fair Trading protects them, the Ombudsman protects them, maybe even the Police protects them or that the Caretaker/letting agent acts in a mutually beneficial way or that the Body Corporate committee protects them.

The Govt was convinced in 1997 that these 25 year contracts would add to revenue because the cost would increase, and so would transfer duty. Without looking at the books this is a fallacy. In 1997 the average tenure of Management Rights was 18 months. Yes the price of Management Rights escalated dramatically, but the couples who bought Management Rights back in 1997 can no longer afford them and so they are bought by Corporations, usually a conglomeration of investors, one of whom does the work or who hires staff. The average tenure of staff might be short but the Management Rights are not sold. So the on-site Caretaker/letting agent changes but the Govt gets no transfer duty.

Does the committee offer protection?

Well sometimes. But committees are not paid, often the most qualified have better things to do, so mostly committees are composed of owners easily exploited. They take the path of least resistance. They rely on the onsite letting agent. Some deliberately to ensure they get the best of letting and hence rent, roll over & give the Caretaker/ letting agent whatever they want. This can cost owners thousands in extra levies. In one complex I am involved in, levies were reduced by 75% or @\$13,000 pa. simply by changing the committee to one who stood up to the caretaker/letting agent.

Sometimes a committee will oppose the caretaker/letting agent particularly in granting extensions to the contractor. However 20 to 25 years is a long time for a committee to be donating free time in opposition to the caretaker/letting agent. Before this 20 to 25 years is up, they might have died or given up. Often the tactic is to waste as much of the unpaid time of up to seven committee members as possible. 25 years of this is plenty of time for the caretaker/letting agent to get a friendly committee to their interests.

Most owners won't take a case to police where theft or fraud has occurred involving the caretaker/letting agent for two reasons. Firstly the police will wind you up in red take & do nothing and secondly few owners will fight the caretaker/letting agent for whom they rely on for letting their property. Basically they are free to steal, because there is no penalty. If an owner comes up from Melbourne and finds that he's paid \$1,000 for a new fridge 12 months ago because the old one stopped working and the old one is still there, the caretaker letting agent just says "oops I made a mistake"

There is no incentive for Caretaker/letting agents to act in a mutually beneficial way.. Their profits and the value of the business is paramount and the easiest way to maximise profits is to take a bigger share from owners. One complex I am involved in, the Caretaker/letting agent takes roughly \$10,000 pa or a third of the nett rent more than is taken by a real estate agent. They are protected by the remnants of a 35 year contract.

A 35 or 50 year contract which is getting longer every five years, shouldn't be called a 25 year contract. It is inevitable as owners have virtually no control over who buys the Management Rights that they finish up with a contractor who is lazy, incompetent or dishonest or maybe all three. Yes, notionally owners can

reject an applicant but the cost is a massive amount of FREE time for the committee and an expensive lawsuit basically impossible to win.

Unless the law gives the Body Corporate the indisputable right to reject a potential purchaser, owners have no protection.

The Office of Fair Trading lost a case 7 years ago and is under instructions not to get involved. The organisation that theoretically offers protection is hamstrung by budgetary constraints and orders from above.

Body Corporates have about one chance in 100 in winning in the courts.

The cost of Management Rights is so expensive, thanks largely to these iniquitous 25 to 50 year contracts, that the courts protect the owners thereof. It seems to matter not that owners collectively have a much larger investment. So Body Corporates are now told by their lawyers "you can't win, no matter what your contractor does"

So if owners of units are not protected by the Courts, Office of Fair Trading, the Ombudsman, their committee and exploited by the caretaker/letting agent then their only protection is the law where the laws are heavily influenced by donors to political parties by powerful lobby groups.

The evidence of the imbalance of power is very clear as a five year extension is given for free when it is worth sometimes millions, mostly with few if any voting against it. Now if owners could charge then the value of a business built up by unfair charges on owners would be compensated to some degree.

Another interesting twist is rare but some caretaker/letting agents by running a complex down, acquire units cheaply for themselves. Now if a caretaker/letting agent acquires enough units/villas in a complex then they control the voting outcome. If they get around 50% the value of units can become negative. After all who wants a unit where a loss is guaranteed in perpetuity. The ownership of lots by the contractor is a conflict of interest.

Now I suggest the following need to be included in any new legislation.

1. Contracts are limited to 3 years with only one option for another 3 years.
2. All contracts must include a clause stating that a caretaker/letting agent cannot have more than one vote despite how many units of entitlement they own.
3. Before an option can be exercised any changes to laws that reduce the obligation of the caretaker/letting agent to perform a function that would have been part of their duties when the contract was entered into to be recognised in adjusting the salary paid.
4. The committee or owners have the right to refuse a purchaser of the Management Rights without being taken to Court.
5. Existing contracts to run their course but a new extension option to be limited to 3 years and only after the time left on the existing contract including all options is no more than 3 years.
6. In granting an extension, via an option owners have the responsibility to renegotiate the terms of the contract and to seek remuneration for giving something of value rather than being forced by current legislation to give it for free.
7. Contracts need to be more specific with regard to duties.
8. Caretaking & letting arrangements should not be mandatorily tied.. They are very different skill sets.

Yes the value of existing Caretaker/letting agent agreements will decline with time left on the agreement. That's no different to milk runs, taxi licences, non digital cameras or making petrol driven cars. The contract was purchased based on time on the contract, not an implied contract for infinity.