

CONTRIBUTION SCHEDULE REVIEW - 2014

“Whatever is complicated fails in producing good results. The promoters of systems forget always that the object of progress ought to be to obtain the greatest possible effect with the least possible effort and expense.”

Napoleon III
Emperor of France, 1852

SUBMISSION:

The Unit Owners Association of Queensland (UOAQ) is the principal stakeholder group representing the interests of unit owners and is the only ‘not for profit’ organisation in the entire stakeholder group. Thus the input provided by UOAQ is unbiased by any vested interests and is provided to promote the quality of and, reduce the cost of, unit living for all Queensland unit owners.

The matter of contribution schedules is one area where the members of UOAQ, have not been able to reach consensus. The majority sector is in favour of the original 2003 policy that requires all contribution schedules to be equal unless there are reasons why they should not be equal; however, the minority, but very vocal group, considers that unit size, unit value, unit position in the building and ability to pay should be considerations. Therefore, the UOAQ executive committee resorted to guidance from the principal legislation governing the objective of community living, the BCCM Act 1997.

The executive committee noted the ‘Primary object’:

“The primary object of this Act is to provide for flexible and contemporary communally based arrangements for the use of freehold land, having regard to the secondary objects.”

The committee noted that both the ‘primary object’ and the ‘secondary objects’ are silent on any concept of creating a socialist or nanny state community.

The principles of normal Australian community living were then examined, considering single lot dwellings, semi-detached dwellings and duplex living, outside the application of the BCCM Act. None of these situations applied, or envisaged any concept of neighbours subsidising neighbours because of building size, building value, building position or ability of the owners to pay.

Based on normal Australian standards:

- Owners pay the market value of their dwelling plus stamp duty at the time of acquisition. Market value is derived from quality, size, position, services and affordability (both for acquisition and ongoing maintenance and expenses).
- The unimproved capital value (UCV) of the property is used for local council rates.
- Services are billed on provision and usage.

- All insurances of both building and contents are the responsibility of the owner.
- Maintenance of the dwelling is the responsibility of the owner.

Applying these circumstances to units (lots) under the BCCM Act:

- Owners pay the market value of their unit based on quality, size, position, services and affordability (both for acquisition and ongoing maintenance expenses).
- The UCV is used for local council rates.
- Services are billed on provision and usage; the exception being for unmetered consumable services that are assessed as per the Contribution Schedule.
- Building insurance is paid by the body corporate and applied to owners on the Interest Schedule that reflects the size (and value) of each unit.
- Contents insurance is the responsibility of each unit owner.
- Maintenance of the common property is shared under the equality principle by all owners.
- Maintenance and renovation to the lot is the responsibility of the owner.

Comparing the principles applying to single dwelling and unit dwelling reveals that the two situations are parallel excepting for unmetered consumable services. In new buildings the concession granted to developers, not to measure water at each unit, has now been removed.

The conclusion of the UOAQ executive committee therefore supported the majority of members who considered that the 2003 legislation was fair, balanced and reflected normal Australian values and practice of the wider community.

Since 1997 the equality principle was established and in 2003 that principle was clarified by a court decision. The equality principle at the time seemed fair and was supported by both sides of parliament.

The problem was how Bodies Corporate were to achieve adoption of the principle by the process of applying to an adjudicator or court without the process being seen as discriminately or unfair. During a number of years since 2003, argument was presented that the process led to a penthouse owner paying the same levies as a one bedroom apartment owner. Unfortunately the Minister of the day grasped this argument and unfairly amplified that misinformed opinion. In reality adjudicators engaged quantity surveyors to apply reasonable sharing of lot entitlements, but this overview was not fairly or adequately brought forward in the debate.

To support the introduction of the 2011 legislation the Minister distorted the unfairness of the Equality principle, which became well reported in the media to the degree that the greater community became totally confused.

The current Minister fairly introduced legislation in 2012 that reversed the 2011 legislation, but that action did not ease the community's confusion.

With this background it is imperative that any legislation that comes forward from the current review be provided with the clarity and explanation to ensure a full and proper understanding of all of the issues and why any variation to legislation is fair.

Having reviewed the Issues paper, the UOAQ would like to comment on issues that have been raised.

The Association has support for the 3 principles that have evolved in BCCM legislation and believes that there has been an issue as to how those principles should be applied. The experience of the Association has been that the issue of the quantity surveyors supporting specialist adjudicators seems to determine a fair outcome. Arrival at that outcome may be enhanced if each expense item were identified to the principle that was applied to it.

It is further believed that additional schedules could be considered to address issues relating to residential and commercial or retail lots in a mixed use development.

The UOAQ believes that each principle currently in use has a useful value and that greater fairness would be determined if lot entitlements/ body corporate levies were a distillation of all values of the principles.

Lot entitlements are used to amortize the costs of the common property, but trying to establish a single formula (lot entitlements) to amortize all costs seems to have led to the current system which many consider unfair. Utilizing all principles and applying each expense item to a principle would provide a fairer outcome.

Three principles currently used:

- Equality (equally shared)
- Relativity (shared on the basis of area of a unit)
- Market value (shared on the basis of market value, improvements/renovations adjusted) Insurance premium cost best example.

This could lead to 3 basic schedules of lot entitlements.

Interest schedule would remain as Market value.

Two guiding budgets:

- Administrative Budget.
- Sinking Fund Budget including the Sinking Fund Analysis.

Administrative budget represents costs that are generally considered to be shared equally with the exception of some items to be considered alternatively. These items include Insurance (currently generally apportioned on a market value basis), Window cleaning (should be apportioned on a relativity basis) and Pest control (relativity).

The Sinking Fund has been suggested to be a fund of a capital nature. In effect it is a fund to up-grade or replace the capital items that were initially installed in the building during

development. Over time the life of the items ends and the items will need to be replaced in many cases more than once in the life of the building. Access to and use of these capital items is available equally to all owners throughout the life of the item. The deterioration costs should reasonably be shared on the basis of the items being made available to owners. In this regard the greater proportion of replacement/upgrade of capital assets should fairly be amortized on an equality basis.

There are items that can be clearly allocated direct to a lot and the size of the lot will have a direct bearing on the share of cost to be applied to the lot. These items can be identified because of their proximity to the lot.

Balustrade replacement maintenance (relativity); Window replacement (relativity);

Balcony door replacement should be considered in this discussion even though it is a direct cost to the owner. The Body Corporate needs to have authority over this item as the item reaches its used by date, and the decision to replace is not left in the hands of individual owners (relativity). Painting (relativity).

Currently Sinking funds are required to be prepared to cover a 10 year period. This period should be increased to more reasonably represent the life of the building to 20 or 25 years and possibly up to 50 years in order that many more expense items are collated into the sinking fund analysis more reasonably reflecting the full or total cost of the deterioration of those capital assets.

The UOAQ suggests that a more sophisticated approach to identify a cost and a method in how that cost should be shared is necessary to provide the community with a renewed confidence in the process. The recommendation of the use of additional schedules would be indicative of that increased sophistication.

The remaining question then is how to help those unit owners disadvantaged by the Government's belated enforcement of the long existing policy of equal contribution to expenses. As examined and concluded above, equal contribution is the standard Australian practice. This practice holds true for all but the most disadvantaged in our society where the welfare burden falls on Government for direct assistance or subsidies.

The UOAQ therefore recommends that, as the contribution schedule fiasco resulted from actions, or inactions, from both sides of Government, the Government implements a contribution schedule subsidy scheme to compensate those owners who have been disadvantaged. This subsidy should be strictly and tightly targeted to existing unit owners who own or are buying their principal place of residence not subject to any letting or sharing arrangements. Also recommended is that a means test be applied, and that the subsidy be available only to pensioners or those currently entitled to the age or disability pensions, who have been disadvantaged by the contribution schedule changes.

A round table review of some principal participants to this discussion, as has taken place under previous governments is recommended as it demonstrates that stakeholder consultancy could be of benefit.

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