Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 051

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9 - 10 - 2012

Research Director
Legal Affairs and Community Safety Committee.
Parliament House
George St.,
Brisbane.

Dear Sir,

Submission Regarding,
Body Corporate and Community Management and Other Legislation Amendment Bill 2012.

I make the following submission to the Committee as a member of a Queensland Community Titles Scheme (CTS) affected by the proposed legislation.

The amendments to the Body Corporate and Community Management Act (BCCMA) enacted in 2011 retrospectively removed an owner right that had existed since 1997. That was the right owners had to seek an adjustment by an independent court or tribunal of the lot entitlements within their scheme if they considered that the existing lot entitlements didn't comply with the act. The transitional arrangements contained within part 9 of Chapter 8 of the2011 amendments granted a single owner the right to force a reversion of Contribution Lot Entitlements to a pre existing schedule with no consideration of the fairness of that schedule and no right for other owners to ever seek adjustment of that schedule unless there was a material change within the scheme.

Community Title Schemes registered before the enactment of the 1997 Body Corporate and Community Management act (BCCMA) were registered under the Building Units and Group Titles Act 1980 (BUGTA). That act only required a single

schedule of lot entitlements to determine each owner's share in the common property, the proportion of body corporate levies payable by each owner and the voting rights of owners. With the best of intentions this single schedule always had to be a compromise between reflecting the value of an owner's lot for interest purposes and levying a fair proportion of the Body Corporate costs to each lot. Additionally the BUGTA provided no guidelines or requirements for setting lot entitlements in a building units plan (typically used for high-rise developments). As a result lot entitlements were set quite arbitrarily by developers and at times set to benefit the developer by setting a low lot entitlement on lots that might be hard to sell or on lots the developer intended to keep.

In recognition of these deficiencies the BCCMA introduced fundamental reforms to the concept of lot entitlements when it commenced in 1997. One of those changes being the introduction of a dual system of lot entitlements, with each lot having a contribution schedule lot entitlement and an interest schedule lot entitlement:

- The contribution schedule lot entitlement being used for determining the owner's contribution to most body corporate expenses and the value of a lot's vote on a poll for an ordinary resolution.
- The interest schedule lot entitlement being used to calculate the owner's share of common property, the amount of any contribution to insurance premiums, any entitlements to property upon a termination of the scheme.

Another significant change introduced in the 1997 BCCMA was the introduction of the ability to adjust lot entitlements. Two or more owners could agree to adjust their own entitlements between themselves, a body corporate could adjust the lot entitlements through a resolution without dissent, or a lot owner could apply to the District Court for an order for the adjustment of lot entitlements. In 2007 this right of appeal was transferred to the Commercial and Consumer Tribunal (CCT) a low-cost, informal jurisdiction and finally the Queensland Civil Administrative Tribunal. The principles to be applied by the Court varied for the two schedules, reflecting their different purposes and applications. For contribution schedule lot entitlements, the order of the Court had to be consistent with the principle that the respective lot entitlements should be equal,

except to the extent to which it is just and equitable in the circumstances for them not to be equal.

The law relating to contribution schedule lot entitlements was further clarified by the Court of Appeal in June 2004 when it handed down its decision in *Fischer & Ors v Body Corporate for Centrepoint Community Title Scheme 7779* [2004] QCA 214 (the Centrepoint case).

Opponents to the right of review of a lot entitlement schedule frequently claim this Appeal Court Decision created a loophole in the law. When in fact in determining the meaning and intention of the BCCMA, the Court gave very close regard to the relevant Second Reading Speech and Parliamentary Explanatory notes for the 2003 Act. The Appeal Courts decision actually reflected what the Parliament was told the section of the act meant when it enacted the legislation.

The principle was clearly based on the concept that usually all lots equally cause and benefit from most body corporate expenses and therefore it is reasonable for each owner to equally contribute to these expenses. However, the principle recognises that the individual features of a lot may give rise to particular or additional costs to the body corporate that are not caused by other lots. In such cases, unequal lot entitlements could be set to allow a more equitable distribution of expenses amongst owners.

Following the transfer of the right of appeal to the CCT low cost jurisdiction in 2007 many Queensland bodies corporate had their lot entitlement schedule adjusted to reflect the equality principle. This resulted in many owners who had been paying more than their fair share of body corporate expenses having their levies reduced to an equitable amount. While owners who had previously had the benefit of paying lower levies because they had a developer set inequitable lot entitlement had their levies increased to an equitable proportion.

The amendments to the BCCMA in April 2011 the turned the clock back 14 years for owners in schemes that originated under the BUGTA. For a scheme that has had an adjustment to an equitable lot entitlement schedule it only required one owner to

demand a reversion to the original schedule and a reversion is then virtually an automatic process irrespective of the fairness of the schedule being reverted to.

The 2011 amendments of the BCCMA set principles for deciding lot entitlement schedules, but only requires schemes registered after the amendments came into force in 2011 to comply with these principles. Owners in pre existing schemes can be forced to revert to a schedule which does not comply with the principles and they have no right to seek amendment. Because the BCCMA allows the right of appeal for a change of schedule to an owner who believes his scheme's lot entitlements don't comply with the acts principals, but restricts this right to owners of schemes registered after the amendments came into force in 2011. Owners of pre existing schemes had the right of appeal that they have had since 1997 removed.

The proposed Body Corporate and Community Management and Other Legislation Amendment Bill 2012 will restore equality to Queensland CTS owners by ensuring all schemes comply with the same set of principles and that all owners have the same right of appeal if they consider their scheme doesn't comply.

Yours faithfully,
James Higgins
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