Body Corporate & Community Management & Other Legislation Amendment Bill 2012
Submission 052

NJ & HE Neaves
[redacted]

9th October 2012

Brook Hastie
Research Director
Legal Affairs and Community Safety Committee

Dear Brook,
Re: Submissions for the Reinstatement of Previous CMS for CTS 31781

I wish to make a submission to LACSC requesting the expedient reversion of the current CTS 31781 and reinstatement of the previous CTS that was legally in force prior to the previous Government reversion in 2011 for the following reasons

1. **A reinstatement of last Adjustment Order is crucial**
   - The 2011 reversion by the former government was inconsistent and deeply flawed. It was against our constitutional law and our right to challenge or to make any appeal. It enabled a single owner in our CTS to overturn a lawful order executed by a specialist government tribunal and an adjudicators that deemed our previous the lot entitlements to be grossly unfair and unjust.
   - In modifying any future CMS legislation I believe consideration must be given to make it impossible for a 'single owner' to compel a body corporate to overturn or revert an order that has been imposed by an independent court or tribunal or adjudicator
   - Our particular scheme at Pinnacle CTS 31781 was originally determined by the developer at the outset. It was blatantly structured in favour of smaller size units to make them attractive to buyers and expedite sales off the plan. The smaller size unit lot entitlements did not reflect a fair or equitable financial contribution to the administration costs of the scheme, which, until a subsequent QCAT order to change our CTS to fair and equitable contributions, it was substantially subsidised by the owners of larger size units.

2. **Reinstatement Time Periods**
   - Whilst the recent BCCM amendment took effect immediately from 14th September 2012 there was no maximum time frame given for a body corporate committee to expedite the reversion process. In the particular case of the Pinnacle body corporate committee, the committee members are clearly not proactive towards the reversion. With the exception of one owner the Pinnacle committee is made up entirely of owners who are clearly against the legislation change of Sept 2012.
   - The reversion process is essentially at the mercy of inactive committees who could effectively draw out the reversion process and reinstatement of the previous CTS in excess of six months.
   - The reinstatement process of the new legislation should be ruled with a maximum time frame for committees to comply with.
   - Many owners who had their CTS modified to a more fair and just scheme by a tribunal or adjudicator have been robbed of their rights and unfairly forced by a flawed legislation that impose financial hardship by the inequitable subsidisation of other owners not paying their 'fair' share

Section 403(3)

- The time period for committees to give written notice to individual lot owners, following a request from lot owners under Section 403(2) is far too long.
- I submit that a maximum of 30 days is adequate. Particularly considering that there are further delays entitled for a committee decision and then lodgement for a new CTS

Section 403(4)

- Under this section the submission period must be at least 28 days, but no maximum submission timeframe in place or enforced
- Where committees are adverse to reinstatement to previous adjustment orders they have the prospect to submit unreasonable submission periods that will effectively delay the reinstatement of previous CTS adjustment orders
- I submit that a maximum period of 30 to 45 days is given to committees who are adverse to reinstating previous adjustment orders to prevent them from unwarranted and unreasonable delays to the reinstatement process that exacerbates the financial burden and ongoing costs to lot owners effected by deliberate delays to the process

Section 404(2)

- The Bill does not provide a maximum timeframe for committees to decide on what modifications, (if at all any are applicable) are required to be submitted under subdivision (3) to the previous adjustment order entitlements
- Because no timeframe has been applied in the Bill for committees to expeditiously process reinstatement of a previous order entitlement scheme, adverse committees will and can unduly delay the decision process
- I submit that a change be applied to Section 404(2) that enforces that the decision of a committee is made within a maximum timeframe of 14 days

Section 404(4)

- I submit that the current timeframe of 90 days for committees to lodge a request to record a new community management scheme following the committee making their decision is too prolonged
- Committees that are adverse to the reinstatement of a previous adjustment order will take advantage of the 90-days timeframe to further delay the reinstatement process
- I submit that a maximum 60-day timeframe for a committee to lodge a new community management statement is adequate.

Generally

The 2012 Amendment.

This has put a stop to the reversion process that was created by the April 2011 amendment and it has allowed for those CMS's that were changed by the Court or Specialist Adjudicator as a result of the 1997 BCCM legislation, to be restored to their former position. **However**, **the timing and procedure provided for in the 2012 amendment needs to be tightened up, simplified and given a defined and shortened time frame with emphasis on the necessity of a Body Corp Committee to act with the minimum of delay to restore the provisions of the previous CMS. Furthermore, I submit that the 2012 amendment legislation provisions need to remove the Relativity Principle entirely and restore appeal provisions for Lot owners with CMS's created both prior to and after the April 2011 amendments. The 1997 legislation was good legislation as it treated everyone equally and equitably and had provisions for appeal if the developer got it wrong in allocating equitable and fair Lot entitlements.**

Other Information (Pinnacle Apartments CTS 31781)

The Pinnacle Apartments Surfers Paradise is a perfect example of where the developer 'got it wrong' in allocating Lot entitlements. So wrong in fact, two professional and independent consulting firms were appointed;

a) **One by an owner to support his application to QCAT to have the developer's scheme for Pinnacle Lot entitlements adjusted to a fair and equitable scheme (at his own cost)**

and

b) **One by an subjective group of owners at the Pinnacle (but at the cost of the body corporate)**

The reports from both consulting surveyor firms virtually resulted with the exact same conclusion; that the developer's original Pinnacle CTS Lot entitlements was unjust and inequitable and that the owners of larger units were substantially subsidising the owners of smaller units. The survey conducted on behalf of the owner group was accepted by the applicant and QCAT which ironically, was more in favour for the applicant than in favour the minority of objecting owners.

The fact is, the 1997 BCCM legislation proved to be good and should not have been altered the way it was in the April 2011 amendments. Many commentators, including The Queensland Law Society and other law bodies, recognised this fact in their responding submissions in April 2011. The 2011 amendment should have reinforced the Regulation by stipulating what expenditure items were to be shared equally and what were to be shared equitably.

Example.

Expense Distribution Calculation

Manager Fees:	Should be Equally shared
Pool R&M:	Should be Equally shared
External Paint:	Equitable to Areas of external wall per apartment / common areas
Water usage:	Equitable to the Number of bedrooms
Garden R&M:	Should be Equally shared

The amendments of the 1997 BCCM legislation not only justified applications for adjustments to increase in body corp fees to some owners but it also corrected developers special rates and reduced lot entitlements for their cronies. Above all, it introduced fairness and equity for all owners. Despite some owners that got justified increases, that still today, fail to appreciate why. Whilst some penthouses have their own BBQ area and/or swimming pool, penthouse owners get no relief from paying a share (in most cases far greater) of the common BBQ and pool areas maintenance, and nor should they. But it is equally not fair that simply because you own a penthouse or a larger unit that you should pay more for the cost associated with building managers, or the garden or pool maintenance cost or the like.

Personal Example – Pinnacle CTS 31781

As a personal example, our own **Lot [redacted] is 475 sqm** and allocated with **29 Lot entitlements** that equates to approximately **$20,000** p/a for body corporate levies (plus, on top of this cost, is water rates calculated on 29 lot entitlements and council rates) These levies vary at the whim of the body corporate committee subject to their budget and have averaged in recent years between 24,000 and 28,000 p/a.

Lot 1 in our scheme has **600sqm.** It was originally setup as part of a 'management rights' deal by the developer. It is allocated with **only 7 lot entitlements** despite being the largest lot on the scheme. And equates to **$4,827** p/a for levies. **Lot 1** was specifically identified by two independent surveyors mentioned in the above as being the individual lot in the scheme with the highest potential costs for repairs and maintenance to our body corporate.

Lot owners of 2 and 3 bedroom properties are allocated with 9 and 10 lot entitlements and **pay 50% more in levies than Lot 1!**

There are 13 Sub-Penthouses in our scheme. Eleven (11) of these are **280sqm** and each have **14 Lot entitlements allocated each. They are less than half the size of Lot 1 yet pay double the cost of levies that Lot 1 pay.**

The second largest Sub Penthouse **is Lot 64** it has **320sqm.** It was sold to the original Building Manager with a reduced Lot entitlements of 14 lot entitlements. It is equal in lot entitlements to the smaller penthouses despite being 40sqm bigger. This again is another example of the developer's inconsistency.

The largest sub-penthouse in our complex **Lot 63** has just under **600sqm** and is allocated with 16 Lot entitlements which equate to $11,000 p/a. This lot is around the same size as Lot 1 yet it pays more than double the levies of Lot 1

Our scheme was clearly identified as being unfair and unjust and was adjusted by a lawful process under the 1997 legislation to overcome the very obvious inequities demonstrated in the above. When legislation reversed this adjustment in 2011 by the previous government it caused unnecessary and unwarranted financial hardship on many owners. Where the CTS has previously been granted an adjustment through a proper and lawful process it should be reverted to the previous scheme to reflect the 2012 amendment and it should be done at the minimum of delay. The 2012 amendment omits a crucial and critical component necessary to overcome the timeframe and imminent delays that will be taken advantage of by adverse body corporate committees and I submit that the Bill be modified to correct this omission accordingly.

Yours truly
Nigel Neaves
[redacted]