

Body Corporate & Community
Management & Other
Legislation Amendment Bill 2012
Submission 071



The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Re : Body Corporate and Community Management and Other Legislation
Amendment Bill .

Dear Sir/Madam,

The following submission is in support of the Bill introduced by The Hon .JP BLEIJIE [Attorney General and Minister for Justice].

As an owner who has been significantly impacted by the 2011 reversion process that was introduced by the previous government I respectfully make the following points and suggestions.

The April 2011 Amendments reverted the Community Management Statements [CMS 's] to the flawed calculations of Lot Entitlements prior to the 1997 BCCM Legislation .

The change in CMS's that some were unhappy with ,was a result of those CMS's brought into compliance ,via the courts or Specialist Adjudicators ,with the 1997 legislation ,whereby all lot owners had to be treated equally ,unless it was inequitable to do so .It was these actions that became the catalyst for the April 2011 amendments .

1. Reinstatement of the last Adjustment Order issued for our Scheme is imperative. A new CMS was ordered for our scheme several years ago after going through a proper adjudication process which was self funded by a group of residents.

.The 2011 reversion process introduced by the previous govt was particularly flawed for the following reasons.

. It allowed one single owner the ability to effectively overturn a lawful order of an independent court or specialist adjudicator deeming the previous contribution entitlements to be unfair and iniquitous.

.It disregards the Equity Principle [ie CLSE's ought to be allocated equally ,except to the extent that it is just and equitable for them to be not equal .

The new Bill rightly addresses this flaw by:

[a] removing the ability of a single owner to compel the body corporate to undertake the revision process.

[b]The new Bill has put a stop to the reversion process that was created by the 2011 amendment and it has allowed for those CMS's that were changed by the Court or Special Adjudicator as a result of the 1997 BCCM legislation to be restored to their former position .,though the timing and procedure provided for in the 2012 amendment needs to be tightened up and simplified with a short time frame and emphasis on the necessity of a Body Corp committee to act with the minimum of delay to restore the provisions of the previous CMS..

The amendment provisions need to go further by removing the Relativity Principle entirely and to restore appeal provisions for Lot owners with CMS's created prior to and after the April 2011 amendments.

2. Suggested Amendments –Reinstatement time periods.

Although the current Government must be complemented for moving quickly on introducing this important Bill ,there are several aspects of the Bill that need to be considered that need to focus on ensuring that owners that have already been penalized by the previous governments legislation are given the relief as speedily as possible .

As it stands at the moment the previous governments changes have been implemented by many schemes .The new Bill allows any scheme that is commencing revision to cease immediately unfortunately it does not repeal the legislation immediately for the majority of us that are being hit severely by the increased costs that we have had to incur since the previous government changes were made . If some consideration could be made to the timeframes this would assist the most effected owners had relief sooner rather than later.

In particular.

Section 403[3]

. The time period for which a committee must give written notice to each lot owner upon receipt of a request from a lot owner under Section 403[2] is too lengthy.

. It is submitted that a 30 day period is sufficient, particularly given the further timeframes entitled for submissions, the committees decision making, and the lodgement of a new CMS.

Section 404[4]

.Whilst the submission period must be for a period of at least 28 days ,there is no maximum submission period timeframe to be applied .

.Committees that are adverse to the reinstatement of previous adjustment orders have the opportunity to submit inordinate submission periods in order to further delay the reinstatement of the previous adjustment order.

.It is submitted that a maximum timeframe of 45 days should be included within the provisions as to prevent a committee from unduly delaying the reinstatement of a previous adjustment order.

Section 404[2]

The Bill provides no timeframe in which a committee must decide what modification, if any, is required to be made under subdivision [3]to the last adjustment order entitlements for a scheme.

. A committee that is adverse to the reinstatement of a previous adjustment order may intentionally delay this decision making process, as no time frame is applied.

.It is submitted that the decision of the committee ought to be made within a fixed time period ,and it is this respect that it is submitted that a period of 14 days ought to be applied to the provisions of Section 404[2]

Section 404[4]

.It is submitted that the period of 90 days in which a body corporate is to lodge a request to record a new community management statement [after the committee makes its decision] is too lengthy.

. Body Corporate committees that are adverse to the reinstatement of previous adjustment order will take advantage of this timeframe and delay the lodgment of the new community management statement.

.It is submitted that a 60 day time period in which the committee is to lodge a new community management system.

It is submitted that the Equity Principle that was introduced in the 1997 legislation is the valid option that allows each owner pay an equal share for cleaning of common areas ,fire detection services ,elevator maintenance ,garden maintenance ,security, ,on site management fees pool maintenance ,water usage and many other services that occur in most buildings .

Any other method of calculation is both unfair and inequitable.

The suggested amendments should in no way detract from the great effort that the current government has made to correct the unfair and iniquitous legislation that was forced on many owners. This new Bill [hopefully with some amendments] will

provide fairness and equality and the Attorney General should be congratulated on its introduction.

Yours Sincerely,

R. Mclean

Ron Mclean

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