Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 097

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Research Director

Legal Affairs and Community Safety Committee

Parliament House

George St.

BRISBANE QLD. 4000

SUBMISSION: BCCM Amendment Bill 2012

RE: Modification for amalgamated lots

Firstly, allow me to compliment the Government on overturning the iniquitous legislation of 2011. While I wholeheartedly support the amendment I have concerns regarding section S411 dealing with amalgamated lots. To me it is ambiguous and impossible to decipher correctly.

'411 Modification for amalgamated lot

'(1) This section applies if 2 or more lots (the ***pre-amalgamated lots***) included in a scheme were amalgamated into 1 lot (the ***amalgamated lot***) after the last adjustment order was made for the scheme.

Exactly what is meant by last adjustment order? Is it 2011?

No explanation has been offered as to why this section has been introduced in the 2012 amendments.

One can only assume that it is a political response to complaints raised by some in the community at amalgamation of lots, without proper understanding or consideration as to why an owner would amalgamate.

Amalgamation of land or lots, is permitted by right.

When my wife and I purchased our apartment in 1991 it was as a single dwelling on two titles, lots [redacted]. The original owner had the two lots joined and acquired a small area of common property with the approval of the Body Corporate to install a single entry. The previous two owners

did not amalgamate the titles as there was no pressing reason to do so, as previous to the 2003 legislation there was no impact on lot entitlements.

There were other similar apartments that were amalgamated, either by the developer or purchasers. Some had their lots amalgamated i.e. lots 169 & 170 were amalgamated to create lot 191 in 1991; Unit 90 lots 90 & 91 were amalgamated to create lot 192 in 1992. There were numerous other lots that fell into the same category.

Apparently the lots mentioned above would not be affected by S411 as the amalgamations of those lots took place prior to amendments to the BCCM act introduced in 2003.

Following the legislation of 2003 and the subsequent adjustment carried out in 2006, the writer and at least other three other owners found themselves with almost double Contribution Lot Entitlements and consequently double Body Corporate levies, as compared with units whose titles were previously amalgamated.

It should be pointed out that Units 145 and 165 are of equivalent size to sub-penthouses and amalgamated unit 190.

Table below illustrates how grossly unfair the allocation was following the 2006 adjustment:

CONTRIBUTION LOT ENTITLEMENTS TABLE - ATLANTIS WEST						
Unit	**Lot**	**Pre 2003**	**Adjusted 2006**	**Adjusted 2008**	**Readjusted 2011**	Post 212 S411 ?
181 Penthouse	181	678	69	70	678	69
180 Penthouse	180	688	69	70	688	69
179 Sub-penthouse	179	455	65	67	455	65
177 Sub-penthouse	177	475	65	67	475	65
176 Sub-penthouse	176	436	65	67	436	65
174 Sub-penthouse	174	456	65	67	456	65
170 Amalgamated	169/170	464	65	66	464	65
90 Amalgamated	90/91	395	65	66	395	65
Lots below amalgamated by adjudicator's order issued 5/2 2008						
165	216+246	462	118	66	462	118
145	212+242	454	118	66	454	118
118	207+215	422	119	66	422	119
103	207+192	399	118	66	399	118

On 5 February 2008 following application by the owners of Units 103, 118, 145 & 165 the specialist adjudicator Mr. Warren Fischer ruled the owners be permitted to amalgamate their lots and ordered

that Contribution Lot Entitlements be readjusted accordingly to make the scheme fair and equitable. (Refer Adjudicator's Order 0307-2007 'Atlantis West' dated 5/2/2008).
The result was a reallocation of Contribution Lot Entitlements from that in 2006 to 2008, as illustrated by table above.

The purpose of the amalgamation in my case was to access equal contribution lot entitlements, to owners of similar lots to mine, or similar lots that had previously (prior to 2003) been amalgamated.
The law permitted that an owner having amalgamated would be required to seek specialist adjudication to determine a revised schedule contribution lot entitlements.
The law determines that any review of lot entitlements can only be made by QCAT or specialist adjudicator, and has provided jurisdiction accordingly.

To impose S411 is to compromise that jurisdiction by restricting QCAT or a specialist adjudicator in reviewing the lot entitlements of lots that have been amalgamated, and to deny the owner of that amalgamated lot, access to equal lot entitlements unless it was just and equitable that they not be equal, in accordance with the amendments to the BCCM Act introduced in 2003.
As such S 411 is discriminatory and unfair.

In a letter to the President of Unit Owners Association of Queensland received on 2 October 2012 the Hon. Jarrod Bleije MP, Attorney General & Minister for Justice stated:
'Where a scheme's contribution schedule lot entitlements have been adjusted under the reversion process, the Bill provides a new process enabling the lot entitlements to be changed back to the entitlements as set by the last adjustment order of a court, tribunal or specialist adjudicator that was made before commencement of the 2011 amendments'.

I am hopeful that as per the above statement, the proposed 2012 amendment will simply overturn the 2011 legislation and return to the conditions that existed prior to 2011.

I respectfully submit that it would be grossly unfair and prejudicial if S411 allowed the overturn of a judicial process that permitted a small number of owners to amalgamate their titles simply to obtain a fair and equitable Contribution Lots Entitlement allocation.

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