

From: [Maliana BERNAST](#)
To: [Legal Affairs and Community Safety Committee](#)
Subject: Submission in response to 2012 BCCM Amendment
Date: Wednesday, 17 October 2012 9:32:28 AM

[REDACTED]
[REDACTED]
[REDACTED]
17th October, 2012.

Brook Hastie,
Research Director,
Legal Affairs and Community Safety Committee.

RE: Submissions for 2012 BCCM Amendment –The Pinnacle Surfers
Paradise CTS31781

Dear Ms Hastie,

I wish to make the following submission to the LACSC with regard to the recent 2012 amendment.

- 1 A reinstatement of last Adjustment Order is crucial.
 - * The 2011 reversion by the former government was unconstitutional.
 - * It enabled a single owner to overturn a lawful order executed by a specialist government tribunal or adjudicator that deemed the lot entitlements of a particular CTS to be unfair, unjust and inequitable.
 - * In legislating future changes to 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.
2. Reinstatement Time Periods.
 - * The recent BCCM amendment took effect immediately from 14th September 2012 yet no maximum time frame was given for a body corporate committee to expedite the reversion process. In my particular case, the Pinnacle CTS body corporate committee members are clearly against the reversion. As such the reversion process is essentially at the mercy of inactive and adverse committees who could effectively draw out the reversion process and reinstatement of a previous CTS adjustment 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 have had their CTS modified to a more fair and just scheme by a tribunal or adjudicator have been robbed of their rights to appeal and forced by flawed legislation to accept financial hardship by inequitable subsidisation of other owners not paying their 'fair' and equal 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.

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 a 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 such as ours and I submit that the Bill be modified to correct this omission accordingly.

Yours truly,

Ms M. Bernast.