

D. R. & J. M. Barry



16 October 2012

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au
By fax: 34067070

RE: *Body Corporate and Community Management and Other Legislation Amendment Bill 2012*

The Honourable Ray Hooper MP

We refer to your request for submissions in respect of the above Bill. We write as effected lot owners, in more than one scheme, which have been subject to Adjustment under the 2003 Amendments, Reversion under the 2011 Amendments and now, potentially, Reinstatement under the currently proposed amendments.

We are delighted that the present government has seen fit to take early steps to rectify the abhorrent amendments to the *Body Corporate and Community Management Act 1997* enacted by the previous government, which provided that a single owner could undo the carefully considered deliberations of a specialist adjudicator, the Court, or the Queensland Civil and Administrative Tribunal in determining entitlements for a scheme that were just and equitable. Those amendments effectively reverted the community living industry to dual rules in respect of the determination of lot entitlements for pre-2003 and post-2003 schemes. Such a proposition made it a particularly confusing marketplace for property buyers.

For us, the vacillation has been an ongoing cause of distress and uncertainty; as retirees that is something that we particularly prefer to avoid. Over the years we have contributed very significant funds in unjust and inequitable body corporate levies. In reliance upon the previous legislative provisions we also contributed significant funds to have that injustice and inequity corrected, only then to have those contributions which had been determined to be just and equitable revert to those that were unjust and inequitable at the apparent whim of a single lot owner.

We are also aware of very significant impacts on purchasers that have bought into adjusted schemes only then to almost immediately suffer a Reversion and the associated significant increase in contributions along with a drop in property value.

In regard to the proposed amendments we make the following specific observations / submissions:

Section 403(3) (p16, line 12) – the 60 days appears an extraordinarily long period to identify the last adjustment order entitlements and give notice to owners of the Reinstatement request along with a copy of the last adjustment order entitlements and an invitation to make a submission (which may only be on limited grounds). We would anticipate that 30 days is a sufficiently conservative period for this step, such that the provision should read “*As quickly as practicable and in any event within 30 days ...*”.

Section 403(4) (p17, line 1) – the submission period should not be left open ended as presently drafted. We would suggest that the submission period be set at 28 days, as opposed to at least 28 days, which should be ample time given the limited areas in respect of which submission may be made.

Section 404(2) (p17, line 6) – a period for making a decision should be specified, such as “*Within 14 days after the expiry of the **submission period**, the committee must decide ...*”. 14 days ought be ample time given the limited areas in respect of which submission may be made and the straightforward nature of some of the modifications that may be made.

Section 404(4) (p17, line 13) – the request for the new community management statement should be lodged as quickly as possible. Accordingly, the provision should be amended to “*As quickly as practicable and in any event within 90 days ...*”.

Section 410(1) (p23, line 24) – this section should only apply if the last adjustment order made for the scheme did not already reflect the subdivision of the lots. As the subdivision is only registered in conjunction with the registration of a new community management statement and as an order of a specialist adjudicator or QCAT which may address the subdivision precedes the request for registration of a new community management statement it may be that the new community management statement registered already reflects the subdivision change. Accordingly, the provision should be amended to conclude “*... after the last adjustment order was made for the scheme if the subdivision adjustment is not incorporated in that last adjustment order*”.

Section 411(1) (p24, line 8) – this section should only apply if the last adjustment order made for the scheme did not already reflect the amalgamation of the lots. As the amalgamation is only registered in conjunction with the registration of a new community management statement; and, as an order of a specialist adjudicator or QCAT which may address the amalgamation precedes the request for registration of a new community management statement, it may be that the new community management statement registered already reflects the amalgamation change. Accordingly, the provision should be amended to conclude “*... after the last adjustment order was made for the scheme if the amalgamation adjustment is not incorporated in that last adjustment order*”.

Section 412(1)(a) (p24, line 22) – this section should only apply if the last adjustment order made for the scheme did not already reflect the boundary change of the lots. As the boundary change is only registered in conjunction with the registration of a new community management statement and as an order of a specialist adjudicator or QCAT which may address the boundary change precedes the request for registration of a new community management statement it may be that the new community management statement registered already reflects the boundary change. Accordingly, the provision should be amended to conclude “... *after the last adjustment order was made for the scheme if the boundary change adjustment is not incorporated in that last adjustment order*”.

Section 413 (p25, lines 1 to 12) – this section should be deleted in its entirety as the body corporate committee will not be appropriately qualified to determine entitlements “*consistent with the deciding principle that was used as the basis for the last adjustment order entitlements for the scheme*”. That is clearly the domain of a specialist adjudicator or QCAT and accordingly if such an adjustment is required then application should be made in accordance with the standing provisions for adjustment (Section 47B) following the Reinstatement of the last adjustment order entitlements for the scheme.


As a general observation, we petition avoiding the proposed provisions for the modification of the last adjustment order entitlements in their entirety (Sections 410 to 413 incl) because:

- There can be no reassurance that the body corporate committee will be appropriately qualified or equipped to properly determine the appropriate entitlements in accordance with the relevant principles, it would be a rarity indeed.
- Typically, the determination of entitlement adjustments is based on a highly technical and sophisticated expert reports prepared by quantity surveyors or the like and based upon past and forecasts expenditures for the many numerous elements of costs associated with body corporate schemes.
- There already exist provisions in the Act for an application to be made for a specialist adjudicator or to QCAT to make such adjustments which ensure that the proper rigour and expertise is applied to the consideration of any adjustment.
- Deletion of those provisions would significantly streamline the process as it would preclude any necessity for owners to be invited to make submissions and for the body corporate committee to make a decision(s).
- The potential for the application of the modification provisions must be extremely limited (very few schemes already subject to Reversion with such limited circumstances existing) and yet all schemes would suffer the significant delay in Reinstatement caused by compliance with the provisions for lot owner submissions, body corporate committee decisions and potential appeals of such decisions.

Yours faithfully


.....
Mr D. R. Barry

and


.....
Mrs J. M. Barry