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LEGAL AFFAIRS AND COMMUNITY
SAFETY COMMITTEE

RE: Bill to undo those parts of the April 2011 amendment to
the **Body Corporate & Community Management Act**

Body Corporate & Community
Management & Other
Legislation Amendment Bill 2012
Submission 215

SUBMISSION – INDIGO BLUE BEACHSIDE RESIDENCES

I, Cheryl Ellen Hawken, as owner and resident of Unit ■ 186 The Esplanade, Burleigh Heads, request that you accept my submission to oppose the application to undo those parts of the April 2011 amendment to the Body Corporate & Community Management Act that relate to the contribution entitlements for the existing Community Titles Schemes of Indigo Blue.

As an owner who signed a Contract to buy a Unit 'off the plan' in 2002, our Solicitor made us understand the fees we would have to pay in regard to the Body Corporate. Attached to our contract was the Body Corporate and Community Management Act 1997 Contract Warning that stated, "It is important that you look at both the Entitlement value of the lot you are purchasing and that of the other lots so you can compare any differences in the owners' Contributions." Hence, all purchasers made statutory declarations that they had read the required information and so were fully aware their body corporate fees.

In 2006, one of the owners applied and had our contribution entitlements changed to what he felt was fair and equitable. It increased our fees by 30% and decreased his by the same amount so I cannot agree that this is fair. I cannot understand how a Contract can be changed when it was signed and witnessed by a Solicitor.

If we were to do this in our Business, we would have the ASIC, the ACCC and the Franchise Association chasing us out of business. We certainly could not change our franchisees contracts.

The 2011 Act corrected an injustice that was forced upon the majority of owners within Indigo Blue Beachside Residences when the Adjudication. Order for the adjustment of CSLE, QBCCMCmr 222 (4 May 2006) led to a drastic increase in the majority of lot owners annual Body Corporate fees. We were compelled to outlay thousands of dollars more than for what we had budgeted.

Some of the owners of Units in Indigo Blue try to present an argument for a fair and equitable CSLE. However, a building such as Indigo Blue has many variables and what might be considered fair to one owner would be thought to be grossly unfair to other owners.

There are some units, which are sole units on the upper levels with 360-degree views; one has a total area of 364 square metres that includes 200 square metres of balcony space. The penthouses above, Units 42 and Unit 43 on Levels 18 and 19 each have a total area of 237 square metres. The sub-penthouses, Units 33, 34, 35, 36, 37, 38, 39 and 40 below, from Levels 13 to 16 each have a total area of 168/169 square metres. However, Levels 3 to 9 and Level 11 are made up of three units per floor. The outer units, 5, 7, 8, 10, 11, 13, 14, 16, 17, 19, 20, 22, 23, 25, 28 and 30 on these floors each have a total area of 139 square metres and the centre units on these floors each have a total area of 119 square metres.

If we are to return to the CSLE as ordered by the Adjudicator (QBCCMC, 4 MAY 2006) I, as owner of Unit █ on Level █, consider that the Order was very unfair. Under this Order the CSLE for our unit of 139 square metre and the others in the building of the same size pay higher Body Corporate Fees or CSLE than the sub-pent houses that have a total area of 168/169 square metres. In fact our CSLE under that Order was equal to that of the penthouses Units 42 & 43 which each unit consists of a total area of 237 square metres. How can that be considered just and equitable?

The owners of Unit 41 were recently marketing their unit for sale at \$3.7 million dollars. Previous to that their asking price was \$4.1 million dollars. An examination of Property Prices Australia online data shows the recent sales of units in our building. Unit 8, which has a total area 139 square metres, sold in April, 2011 for only \$800,000 and Unit 10 of the same size also sold for \$800,000 in September 2010. According to the vendors at the time, prospective buyers all complained that the Body Corporate fees (CSLE) were too high for the size and position of the units. It is worth noting that data also shows that Unit 39, with a total area of 169 square metres on Level 16, sold in 2010 for \$1,700,000. At the time of its sale the CSLE for that unit, as discussed above was lower than the units of 139 square metres. Consequently, as owner of Unit █ with a total area of 139 square metres argue that to undo the April 2011 changes would be extremely unjust for all of us on the lower levels.

Please also note that Units 42 & Units 43 each consist of 65 square metres of glazing, representing 9.08% of total glazing for each unit. In comparison, my unit and those of the same size on the lower levels have a glazing area of 13 square metres each, representing only 1.82% of total glazing. Unit 41 is reported as having 24 square metres of glazing, whilst the sub-penthouses, Unit 33 through to Unit 40 have 27 square metres of glazing each. As the owners of a unit of only 13 square metres of glazing I raise the query about equity and justice, where the sub-penthouses have lower Body Corporate fees than the smaller units on the lower levels.

Through the Body Corporate and Community Management and Other Legislation Amendment Act 2011 owners in Indigo Blue Beachside Residences were justly able to revert to the settings of our original community title scheme. That decision, as demonstrated in the results of previous submissions and the result of the AGM motion, is supported overwhelmingly by the majority of owners. A total of seventeen (17) submissions were received, of which thirteen (13) were received requesting to revert to the pre-adjusted (original) CSLE, and four (4) submissions requested that the CSLE remain unchanged (Committee Minutes, 20 September, 2011).

Thank you,



Cheryl Ellen Hawken
17.10.2012