Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 232

Mr I & Mrs HB Zimmermann
[redacted]

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

By Email: lacsc@parliament.qld.gov.au

Dear Sir/Madam

RE: SUBMISSIONS - BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2012

We are the owners of Unit [redacted], Windsong Apartments, and wish to make a submission with respect to the Body Corporate and Community Management and Other Legislation Amendment Bill. Our submissions are in **strong support of the introduction of the Bill**, and to reinstate lawful adjustment orders that were previously made. These reversion process introduced by the former Government has undermined the Queensland judicial system, and this must be corrected.

With respect to our particular scenario, in December 2008, Specialist Adjudicator Bernard McGowan ordered that the Contribution Schedule Lot Entitlements be adjusted so that they were fair and equitable. Three (3) separate reports were tabled by independent quantity surveyors, all of which came to almost identical determinations. Most importantly, all quantity surveyors, and the Specialist Adjudicator concluded that the Developer had incorrectly allocated the Contribution Lot Entitlements for reason that they had not been set in accordance with the requirements of the BCCM Act.

These quantity surveyor's reports were very thorough. They took into account all aspects of body corporate expenses, and in particular the maintenance required for each lot (e.g. window cleaning, painting, elevator usage, etc).

It was essentially determined that some owners within the scheme were paying more than their fair share, whilst others were not. It was therefore ordered that there be an adjustment to the Contribution Lot entitlements as so that they were allocated in a fair and equitable manner. They were not equal, but fair.

The BCCM act at that time rightly afforded an owner the right to seek an adjustment of the Contribution Lot Entitlements based on the principle of fairness and equity. This provided an avenue to correct an inappropriate, unfair and iniquitous allocation of the Contribution Lot Entitlements made by the developer.

We do not hide from the fact that we did benefit as a result of this adjustment order (due to a small decrease in our contribution entitlement), however it was relatively minor. It must be noted that under

the adjustment order we continued to pay more than the average owner, just not to the extent that we are paying more than our fair share. With that said, the predominate reason that we support the Bill and the reinstatement of the adjustment order is not for the fact that we will again receive a minor benefit, but rather for reason that it is only fair that **all** owners within the scheme will again pay their fair share.

As you are aware, the Amendments introduced by Mr Lawlor in 2011 allowed one single owner within our complex to effectively overturn the Specialist Adjudicator's order, and despite the order being supported by 3 very thorough and professional quantity surveyors reports. This single owner held no particular qualification or expertise relevant to body corporate legislation, however he was able to unilaterally change the allocations of the Contribution Lot Entitlements – and back to the levels that a Specialist Adjudicator and 3 quantity surveyors had deemed were unfair. And needless to say, this owner was to benefit – and the result was that he would pay less than his fair share.

This of course creates huge tension between owners and neighbours, but we do not blame the owner for doing this. We do however hold responsible the ridiculous process that was introduced within the 2011 amendments that gave this single owner the power to do this. How can it be that a lay person without any qualification or expertise can overturn an order of a Specialist Adjudicator which was based on **expert** evidence and reports?? The legislation of the former Government clearly undermined these orders of Judges and Specialist Adjudicators. It is simply illogical.

It is apparent from recent media publications and submissions by other owners that there is a strong opposition to the introduction of the Bill from those that will be adversely affected by it. The reasons stated in opposition of the introduction of the bill however seem to lack any real merit and justification.

It has been suggested that contribution Lot Entitlements should be based on the size or value of an apartment. But what connection does that have to the manner in which common body corporate expenses should be shared or are consumed by owners within a scheme. It is disingenuous to suggest that an owner of a larger or more valuable apartment incurs more costs to the pool cleaning, gardening maintenance, on-site manager's costs, common area lighting and power, etc. The truth is that there is simply no correlation between the size and/or value of an apartment, and the majority of body corporate common expenses, nor do those owners receive any greater benefit. We accept that there may be may be some expenses, such as window cleaning, painting, elevator usage, etc that a larger apartment may consume, **and those matters were taken into account when a Judge or Specialist Adjudicator determined an adjustment order.**

If an owner was required to pay more towards the costs and expenses associated with the common facilities or services within a complex due to the size or value of an apartment, then it would only be fair that those owners paying more would have priority or a superior right to those facilities and common areas. But I'm sure those opposing the Bill would not agree to that either! So it seems that they are happy to pay less, but demand the same access and service.

Another popular view is that those that can afford to pay more should. On that basis, wealthier people should pay more for fuel, groceries and other items – again that is simply ludicrous.

It is also apparent that many submit that the 2011 amendments and the reversion process is the correct process simply for reason that it benefits the majority of owners. On that mentality, why don't we have all left handed people (or any minority) pay all the taxes – that will benefit the majority too. But of course, that would be ridiculous as it would be **unfair** on left handed people.

What seems to be lost on those opposing the Bill is that the bulk of the costs and expenses incurred by a body corporate benefit each owner **equally**. On that basis, unless a unit or its owners receive the benefit of a superior right, or is otherwise responsible for incurring more expenses over and above other apartments, then all owners should pay towards those expenses equally – as they receive the same benefit.

In short, it is clear that those that oppose the Bill do so simply on the basis that they wish to pay less. The truth is that we would all wish to pay less, but surely it is appropriate that each owner pay their fair share towards the costs and expenses of which we all receive the same benefit.

We do appreciate that there are some that bought their unit prior to the introduction of the legislation in 1997, and maintain the position that they bought their unit on the belief that Contribution Lot Entitlements would remain the same. Whilst this view has some merit, for the last 14 years this has not been the case.

Since 1997 all owners have purchased units with the knowledge that levies ought to be allocated fairly, and if they are not, they could be adjusted. For the former Government to allow the automatic reversion to the unfair developer set levels 14 years later, and after tens of thousands had purchased apartments on a different premise, is just as unfair.

It is important to remember that those that purchased prior to 1997 and were adversely affected by an adjustment order were only affected to the extent that they were required to pay their fair share going forward. On the other hand, if the reversion process was to remain, all of those that purchased after 1997 and were adversely affected by a reversion, are affected to the extent that are permanently paying more than their fair share. Unfortunately, too much water has passed under the bridge to revert to the pre-1997 regime, and fairness for **all** must be the basis of the underlying principle moving forward.

In conclusion, we can only see that the appropriate method to allocate Contribution Lot Entitlements moving forward is under the equality principle (i.e. – each lot is to pay an equal amount, except to the extent that it is fair and equitable not to be equal). That was the basis of the adjustment orders. Therefore, we submit that it is appropriate that this legislation be enacted to reintroduce fairness to the allocation of Contribution Lot Entitlements, and we strongly support the Bill.

As a final submission, it has been brought to our attention that the Bill (in its current drafting) lacks certainty within the various timeframes in which a committee must act upon to reinstate the adjustment order. Our concern is that a committee may take advantage of these anomalies within the process and incur lengthy delays to the reinstatement of an adjustment order. The truth is that the purpose of the Bill is to reinstate the last adjustment order as to reintroduce fairness to owners that were unfairly penalised by the 2011 amendments, and expeditiously. Therefore, it is submitted that this reinstatement process ought to be as streamlined as possible, and the legislation drafted in such a manner that a committee cannot intentionally delay the process. We submit that the legislation should be amended to provide for this.

Yours Faithfully,

Mr I & Mrs HB Zimmermann