unit owners association
of queensland inc

Body Corporate & Community Management & Other Legislation Amendment Bill 2012
Submission 246

19th October, 2012

Chairman
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD. 4000

Dear Mr Hopper,

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2012

Your Reference: 11.1.7.c of 19 September 2012

The Unit Owners Association of Queensland Inc. (UOAQ) is pleased to have received your invitation to comment on the Body Corporate and Community Management and Other Legislation Bill 2012 (Bill) and welcomes the opportunity to comment on behalf of our members and unit owners throughout Queensland.

Firstly the UOAQ congratulates the Attorney General and his Departmental Officers on the rapid and timely release of the Bill. The UOAQ fully appreciates the complexity of the lot contribution problems and the difficulty of retrospectively undoing the ill conceived problems introduced by the 2011 amendments. As stated by the Hon. J.P. Bleijie in his Explanatory Speech: *"These amendments were a complete denial of natural justice and abhorrent in the extreme."*

The power of one individual in a community to effectively over-rule orders of a specialist adjudicator, an administrative tribunal or court is offensive to basic Australian democracy. When coupled with a restricted ability to appeal to the rule of law by persons adversely impacted, the situation is certainly 'abhorrent'. The expenditure of some $1.5 million by 120 bodies corporate trying to achieve the 'fair and equitable' status of their contribution schedules and then complying with legislative requirements to defend that status is also 'abhorrent'.

The basic problem with the 2011 amendment is that it abandoned the long established principles of legal rights under common law. The Scrutiny of Legislation Committee was highly critical of many provisions of the 2011 Bill, but the Government of the day ignored the advice of the committee and rammed the legislation through the House. The consequences of the actions of the then Attorney General is the chaotic situation that has now necessitated the 2012 Bill with further expense to bodies corporate.

In recognition of Australian democratic principles, the UOAQ is philosophically opposed to any legislation that requires a 'resolution without dissent' as is contained in the Bill Section 47AA (2). In reality such a resolution is almost impossible to achieve and the UOAQ believes

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that all legislation should be realistic and achievable. Otherwise the outcome is that voters are denied their right to control their situation under democratic principles. Furthermore, such a legislative requirement is offensive to the BCCM Act 1997 Section 4 (a), (e) and (f).

Lot Contributions

The normal situation in Australian society is that each individual is responsible for their own actions and own living expenses. This situation is modified to account for, and assist, those individuals who are disadvantaged and require assistance from a compassionate society. In any suburban street, each house resident is responsible for their own cost of living and maintaining their house. The UOAQ position is that unit living is little different from living in a house. Each individual should be responsible for their own cost of living and home maintenance. Unit living cost accounting is somewhat more complicated because of common property maintenance and some degree of overlapping of property boundaries and maintenance responsibilities but the same basic principle of self support applies. There is nothing in the Australian ethic or legislation that suggests that one neighbour should be responsible for the living costs of another neighbour.

Prior to the 2011 amendment the Body Corporate and Community Management Act 1997 (BCCMA) clearly enunciated the basic principle for deciding contribution lot entitlements:

"*For the contribution schedule, the respective lot entitlements should be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.*"

Post the 2011 amendments this remained the predominant deciding principle – except that pre-amendment buildings were excluded by legislation from ever achieving the stated principle. The 2012 Bill restores this principle to all buildings and therefore is seen as being consistent with the pre and post legislative intent – and the basic Australian ethic of self support and self responsibility. The UOAQ supports this principle.

Prior to the pre 2011 amendment, any proposal to adjust contribution schedules could be disputed by any member of the body corporate who disagreed with the proposal, and their objection could be tested before an adjudicator or court. Unfortunately many of those now vocally objecting to reversion of contribution schedules to the 'fair and equitable' pre 2011 amendment status, did not avail themselves of the opportunity to have their objections tested before an impartial arbiter when the first adjustment application was made.

The UOAQ is of the opinion that the root cause of the contribution schedule fiasco is the manipulation of the schedule to enhance sales prospects of certain units. If this is found to be the cause of contribution schedules that have not been set in accordance with the stated principles then developers and their strata title managers should be heavily penalised, and be made to compensate all lot owners if the allocation has not been done correctly.

Time Frames for Reversion

The UOAQ is concerned that the reversion time frames allowed in the Bill may be used by recalcitrant committees to delay reversion to pre 2011 amendment schedules.
Section 403 (3) allows 60 days for the committee to action two simple items of identifying the last adjustment order entitlements for the scheme, and issuing a notice to owners. Even the most inefficient Body Corporate Manager should be able to achieve this task within 30 days.

Section 403 (4) allows 28 days for the submission period. The Bill is not clear if this is the minimum or maximum period for submissions. The UOAQ submits that 28 days should be the maximum time for receipt of submissions.

Section 404 (2) fails to include any time frame. The UOAQ recommends inclusion of a time frame of 14 days for the committee decision and then 7 days in accordance with section 404(3).

Section 404 (4) allows 90 days for the recording of a new community management statement. As this is a simple reversion to a previous statement and the only change is the contribution schedule, the UOAQ submits that 30 days is adequate time to lodge the new statement. 30 days is consistent with BCCM Act 1997 section 57 (8) that allows the developer 30 days to lodge the statement.

Using the above recommended time frames the minimum time for processing a reversion from request to lodgement is 109 days.

Simplification of Legislation

Clause 6, Clause 7 and Clause 9 of the Bill proposed reduced onus on sellers of lots in community titles schemes. The UOAQ supports these Clauses of the Bill. As a general principle the UOAQ maintains that there should be minimal difference between legislation applicable to sale of private residential units and sale of private residential houses.

Two Lot Schemes

The administration of two lot schemes is, or should be, simpler than multiple unit schemes. The simplification of procedures for two lot schemes is supported by the UOAQ. The administration of unit living should be simplified where ever possible.

Incomplete Adjustment Orders

The termination of incomplete adjustment orders is also seen by the UOAQ as a logical requirement in light of the reversion provisions of the Bill. The UOAQ supports this section of the Bill as simplification of the reversion process.

Cancellation or Termination of Particular Contracts

Division 4 of the Bill is a logical and clear transitional provision. Division 4 of the Bill is supported by the UOAQ.

Ministers Explanatory Speech - Closing Remarks

The Minister stated:

> *"We want to be a government that gets the balance right and fixes this mess once and for all."*

The UOAQ holds the same sentiment as the Minister and sincerely hopes that the Minister continues to review the defective and corrupt sections of the BCCM Act 1997 for the benefit of all unit owners. Failure in this mission will surely result in disaster for the Government's high density living policy.

Yours sincerely,

Wayne Stevens
President
Unit Owners Association of Queensland Incorporated.