

Body Corporate Services Pty Limited  
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Body Corporate & Community  
Management & Other  
Legislation Amendment Bill 2012  
Submission 247

Email: helen.howard@bcsm.com.au

19 October 2012

Research Director  
Legal Affairs & Community Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000

Dear Director,

**RE: ACAPULCO CTS 10436  
2 THORNTON STREET SURFERS PARADISE QLD 4217  
SUBMISSION – BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER  
LEGISLATION AMENDMENT BILL 2012**

The Committee is pleased to have been provided with the opportunity to express its support for this Bill and in particular, for the reversion provisions for which an implementation date is yet to be proclaimed.

Immediately after the previous Legislation came into force last year, a request for change in contributions was received from a single Unit Owner. The Committee at that time commenced the required procedures but delayed final implementation, in order to assess continuing developments as the timing provisions of the Act appeared to allow such discretion. Our decision led to a formal request for Adjudication by the Commissioner. The Adjudicator upheld the then Legislation and ruled against our interpretation of its timing provisions. The result was that we were compelled to implement unfair changes against our better judgement and the wishes of the majority of Owners.

A copy of our Submission at that time is attached. The views expressed therein are just as relevant today. For clarification I would point out that the "existing contribution schedule" referred to in the final sentence of the letter, is the one that was in operation prior to the 2011 Legislation change.

For our building, the compulsory new levy contributions came into effect in late April 2012 and as predicted, resulted in and continues to produce many expressions of resentment against the forced inequity of Body Corporate fees. If our entitlements do not revert back to the 2007 Adjudicated levels, we foresee ongoing problems in ensuring adequate funds for other than essential maintenance of our building.

*Enhancing Community Living*

Corporate Lic No: 862864, (NSW) Memberships:  
National Community Titles Institute (NCTI), Institute of Strata Title Management Ltd. (NSW), Community Titles Institute QLD Ltd (CTIQ),  
Owners Corporations Victoria (VIC), Strata Community Australia (SCA)  
Branches: (NSW): Sydney, Central Coast, Forster-Tuncurry, Miranda, Mona Vale, Newcastle, Port Stephens, Tweed Heads, Willoughby, Wollongong  
(QLD): Brisbane, Cairns, Coolangatta, Gold Coast, Mackay, Noosa, Port Douglas, Townsville  
(VIC): Hawthorn, Melbourne

Whatever claims may be made regarding other buildings, particularly newer constructions or those where Owner activity may have produced debatable outcomes, we are firmly of the view that the long term interests of Acapulco and its Owners will best be served by a reversion to the Contribution Schedule already judged fair and equal under the Legislated Adjudication process in 2007.

Yours faithfully  
for and on behalf of the body corporate for  
**ACAPULCO CTS 10436**

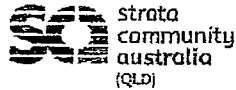
A handwritten signature in cursive script, appearing to read 'HJ Howard', written in black ink.

Helen Howard  
Body Corporate Manager

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**bcs**  
Body Corporate Services

Email: helen.howard@bcsm.com.au

10 February 2012

Ms Amy Ah Ben,  
Office of the Commissioner for Body Corporate and Community Management,  
GPO Box 1049,  
BRISBANE QLD 4001.

Dear Madam,

**RE: ACAPULCO CTS 10436 - DISPUTE RESOLUTION APPLICATION REF 1150-2011/KA  
2 THORNTON STREET SURFERS PARADISE QLD 4217  
ALSO REFER TO YOUR DISPUTE RESOLUTION FILE 0351A-2007/AT**

The Body Corporate Committee for Acapulco CTS 10436 requests that the following factors be taken into account in resolving this dispute and submit the following comments for your consideration in such resolution.

1. At its 15 November 2011 meeting, the Committee, in the absence of a specific action timeline being provided, took the opportunity to delay implementation of changes to the current contribution lot entitlements as specified in CTS 10436 for Acapulco in the profound belief that they contravened the equality and relativity principles stipulated in recent relevant legislation.
2. Committee voting supporting this delay was 5 for / 1 against, with the absentee member later fully agreeing with this decision in writing.  
Composition of the Committee at the time of this vote was B Units - 3, C/D Units - 3 and A Unit - 1.
3. While not specified in the minutes of that meeting, consideration was given to the fact that:
  - (a) The requirement for change appeared to be a "one size fits all approach" as a by-product of legislation to correct situations that had developed in recent times in a number of newer buildings.
  - (b) No consideration appears to have been given or provision made for a review of the contradictory affect the change will have on established communities where prior adjustments had been made in good faith utilising Government approved adjudication.

Cont../

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- (c) Only sketchy information was available as to the extent of dissatisfaction with the changes or the number of buildings significantly affected. Rumours existed of possible legal challenges by way of individual or class action, while extensive lobbying for reopening the issue could be expected if a change of Government resulted from the approaching election.
4. The conviction among members was that the original allocation of entitlements was seriously suspect and no reasonable justification could be found for the basis of their calculation. Unit size, aspect, position, floor level etc all seem to have been ignored and a marketing ploy of a description as "1 + 1" (popular at this time,) used by specifying that half the units were 2 bedroom/ 2 bathroom while the other half were sold as "1 + 1" and 2 bathrooms. Just who gained, and what was the benefit of a "1 + 1" configuration, is now unknown but it was heavily promoted by the Developer. It is interesting to note that we have advice that all, bar 1, of these C and D Units were soon converted to 2 bedroom as suggested by the sales personnel and now have the same permissible occupancy and same basic rental rate as A and B Units. It is also relevant that at launch the A Units with 5 entitlements were in fact smaller in size either the C or D Units which qualified for only 4 entitlements.
  5. The question has since been raised as to whether, if the compulsory change is implemented, would there be a requirement for C and D Units to revert to "1 + 1" status with all the practical and financial implications this would involve.
  6. In the time that the original entitlements were in operation considerable disharmony existed among owners and while basic maintenance was performed, little improvement occurred nor was provision made for the future due to the fact that 25% of owners were required to pay 50% more while another 25% of owners paid 25% more than the other half for exactly the same benefits and services. If reversion to the original formula is implemented these same ongoing divisions and resentments will re-emerge, to the detriment of the building and all owners.
  7. The positive result of Government sponsored adjudication in 2007 was largely based on 2 extensive, privately funded reports, obtained from reputable external Strata Consultant companies and submitted to you as part of that adjudication. After detailed research of body corporate expenditure over an extended period and with wide consultation, both concluded that the then Contribution Schedule was unfair and with minor differences in methodology, recommended a very simple *equal* form of contributions. This principle was later accepted by the adjudicator who further refined contributions to make provision for 4 additional special cases and a 5% differentiation between C and D Units. In our view a case can still be made for fully equal contributions other than for the penthouse.
  8. Over recent years the Committee's major expenditure on a window replacement programme has resulted in D Units with 9 windows benefiting far more than B and C Units each with 2 windows to be funded by the Body Corporate.
  9. While far from unanimous, it is illuminating to note that support for the Committee's stance has come from a number of C and D Unit owners who recognise the overall benefit to the building of equal contributions despite the lack of financial benefit to them if the change is not implemented.
  10. It seems unjust to the Committee that by what amounts to retrospective legislation, one single owner could bring about this potentially retrograde step without there being provision at any stage for a majority point of view to be heard.
  11. While supposed changes in C and D Unit values, as a result of the 2007 adjudication, have been advanced from time to time, no mention is made of the roughly 25 years of disproportionate lower contributions experienced by this half of our owners. Nor has any similar consideration been given to A and B Unit owners who have purchased since 2007. It can also be argued that the difference in the sale value between different unit types only reflect the variation in original purchase price paid long ago to the Developer.

12. Finally, the Committee sincerely believes that the future maintenance, development, advancement and wellbeing of our complex will be severely hindered by the reintroduction of an unequal system of contribution.

Further, that any change to the contribution calculation will significantly reward half our owners and severely penalise the remainder, not only in payments to Acapulco, but in the flow on effect in other *outside charges* using the same basis for calculation of dues such as council rates, water rates etc.

It is the strong recommendation of the majority of the Committee that the existing Contribution Schedule be retained for Acapulco. <sup>(PRE 2011)</sup>

Yours faithfully  
for and on behalf of the body corporate for  
**ACAPULCO CTS 10436**



Chairman  
Jack Mills

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