Body Corporate & Community Management & Other Legislation Amendment Bill 2012 Submission 263

From: John Mills
To: Legal Affairs and Community Safety Committee
Subject: BCCMOLAB 2012 - Personal Submission
Date: Friday, 19 October 2012 11:47:21 PM
Attachments: IMG_0002.pdf

To The Research Director.

Dear Director,

The opportunity now provided by your Committee to submit comments on this eagerly awaited portion of the Legislation is greatly appreciated.

My Wife and I have taken a keen interest in these proceedings ever since the previous Legislation was first rumoured back in 2010 and in September of that year we lodged a Submission in regard to the original Discussion Paper. A copy of the views we expressed at that time are attached.

Activation in mid 2011 of the "one size fits all" ACT was hard to believe and only served to highlight the failings of such unbalanced compulsory changes which sought to overcome the problem of one vocal group by financially penalising another mainly for political advantage and what appeared to be part of a personal crusade.

Although living away from the Gold Coast at present we have tried to keep up with the multitude of public comments on the effects of the change both positive and negative. However,in no case we saw was emphasis placed on the root cause of the problem. This was the apparent allowance under earlier systems for Developers to arbitrarily allocate Lot Entitlements directed almost exclusively at ensuring the success of their sales process rather than providing for later equitable division between Owners of future maintenance and improvement expenses.

There will never be general harmony within a complex until the vast majority of Owners can be shown that financially they are being treated in a fair and equitable manner.

We understand that the Body Corporate of our Building intend to lodge a submission which will stress the overall points of contention between Owners in our complex. However we would mention that, personally, we strongly resent now having to pay 50% more for each and every service provided by the Body Corporate than that charged to the two adjoining Units, which although just slightly smaller enjoy exactly the same location,views,services and facilities as we do. This same disparity then carries over to other outside charges such as rates, water, etc. Lot Entitlements are used as a basis for their split of charges.

We acknowledge that in recent times it appears that some Buildings have experienced Owners who have used regulatory weaknesses to gain an unfair financial advantage. This will never be overcome by all encompassing Legislation.

We would suggest that the reversal of 2011 changes now be given priority and be implemented from the earliest possible date. However, provision should be made for Owners, who believe they have a valid case for adjustment of pre 2011 entitlements to better reflect the reasonable equality principles stressed in the Act, to be encouraged to pursue their claim by way of an expanded but simplified Adjudication process. Temporary increased facilities would have to be made available and basic judgment guidelines would have to be established to ensure consistency in decision making.

To discourage frivolous appeals an application charge could be imposed to be wholly or partially refunded if the application results in significant change. This would appear fair as those who obtained earlier adjustments had to fund their own research and presentation. It would also provide a case by case result rather than an enforced blanket change.

Such a course would probably prove far less expensive to administer in the long term and produce less electoral

backlash than having to address continuing agitation by dissatisfied Owners from one group or the other.

I would appreciate being advised if further public consultation on these issues is planned and if so is it possible to attend.

Thank you again for allowing us to express our objections to any moves to not allow reversion of those schemes already implemented to proceed as planned.

Yours Faithfully,

John D Mills.

John Mills

From: "John and Gwen MILLS" [redacted]
To: <bccm.policy@deedi.qld.gov.au>
Sent: Friday, 24 September 2010 12:52 AM
Subject: Body Corporate and Community Management Amendment Bill 2010

Submission by John D Mills at [redacted]

I am a Retiree who with my Wife have Jointly owned a Unit for 28 years in a High-rise complex for which the Lot Entitlements were arbitrarily set by the Developer in 1982. These Entitlements had no clear connection to any of the principles that now provide the basis of these Amendments.

In 2007 a group of 9 Owners (8 remaining), supported by many others who also considered themselves disadvantaged, utilised the provisions of BCCM Act 1997 to seek and obtain an Adjudicator's Order providing a far greater equality of contribution. Although 6 Owners (4 remaining) originally objected to the change it has since operated successfully with no problems and as a result of which almost all of the previous bickering has ceased.

The Adjudicator's Order was obtained with a considerable expenditure of money, time and effort by the participating and supporting Owners and this use of a Government legislated facility would now appear to be a complete waste.

I understand and support the general thrust of these Amendments but I most strongly object to the provisions being introduced in Division 4.

From my reading and understanding they are **Unjust** for the following reasons.

Unlike the target of these changes our results did not significantly favour one Owner at the expense of others and all became almost equal contributors. Our Penthouse share reduced by only .046%

.

You provide that one Owner alone by submitting a motion can override the wishes of the majority and destroy the equality of a smoothly running scheme.

They overrule the Order of a Governments own appointed Adjudicator who, working to nominated guidelines, produced an equitable scheme.

In making a retrospective adjustment it penalises not only long term owners but many who have bought into the Building after adjudication on the basis of one set of contributions only to suddenly find themselves facing a significant increase in levies as well as having the sale value of their property reduced for the same reason. Others will receive a sudden windfall purely because of this legislation.

There is no provision for a Body Corporate to seek a ruling on whether reversion would be completely contrary to the spirit of the main provision of the Amendments.

If enacted as it stands this Division will certainly face legal challenges.

I also believe that while providing for consultation is excellent the changes have only been highlighted to major stakeholders and little if any publicity has reached those who will ultimately be effected by the changes. Certainly, I have only heard of the process through a friend in the business and I am sure many other Owners would have commented if they had been made aware of the opportunity to do so.

I trust that greater consideration will be given to the full implications of Division 4 and the fact that for every anomaly corrected more injustice will be created where Owners who put their faith in a Government provided service now find themselves unjustly penalised financially because of a Developers careless allocation of Lot Entitlements all those years ago.

Yours Faithfully.

John D Mills.