

12 April 2013

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

VIA EMAIL: lacsc@parliament.qld.gov.au

Dear Sir / Madam

RESPONSE TO THE PROPOSED AMENDMENTS TO THE BCCM ACT AS PART OF THE LIQUOR AND GAMING (RED TAPE REDUCTION) AND OTHER LEGISLATION AMENDMENT BILL

We refer to the *Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013*. Strata Community Australia (Qld) (SCA (Qld)) makes the following submissions on the proposed amendments to the *Body Corporate and Community Management Act 1997 (BCCMA)* set out in Part 2 of this Bill.

SCA (Qld) thanks the Legal Affairs and Community Safety Committee Chair The Hon Ian Berry MP for inviting submissions in relation to the proposed amendments to the BCCMA.

INTRODUCTION

SCA (Qld) is a non-profit, professional organisation for bodies corporate, community managers and suppliers of services to the body corporate industry in Queensland. SCA (Qld), through its predecessor CTIQ, was established in 1984 and currently has more than 500 members.

The core objectives of SCA (Qld) include

- representation on body corporate and community title issues to Government
- educating the general community on strata management and lifting the profile of the profession
- provision of on-going professional educational development to its members
- facilitating relationships between members, government, sponsors and suppliers of services; and
- the establishment and maintenance of professional standards of practice for SCA (Qld) members.

1 Amendment of section 47B of the BCCMA

1.1 Section 47B of the BCCMA allows a specialist adjudicator or the Queensland Civil and Administrative Tribunal (QCAT) to review whether the contribution schedule lot entitlements are consistent with the deciding principle or just and equitable if:

- (a) a material change has happened since the last time the contribution schedule lot entitlements were decided; or

- (b) a new community titles scheme is established after the commencement of this section, which was on 14 April 2011.
- 1.2 Clause 4 of the Bill proposes to widen the ambit of a section 47B review to where a new community management statement (**CMS**) is recorded to reflect a formal acquisition. The ambit of this particular review is whether a lot owner believes that the contribution schedule lot entitlements:
- (a) are not consistent with the deciding principle, or are not just and equitable to the extent the deciding principle allows; or
 - (b) if there is no apparent deciding principle, are not just and equitable.
- 1.3 The concern of the SCA (Qld) is that, by the wording of this proposed amendment:
- (a) recording a new CMS due to a formal acquisition could trigger an entitlement by any lot owner to have the entire contribution schedule lot entitlements reviewed to whether they are just and equitable;
 - (b) whereas the review should be limited to any required changes to the contribution schedule lot entitlements to take account of the formal acquisition.
- 1.4 Section 47B(1) of the BCCMA provides a similar trigger where a material change occurs. However, subsection 1(b) limits the review to an adjustment of lot entitlements that is “*necessary because of the material change*”. By that limitation, the review is only focused on required changes to take account of the material change, rather than a wider review of whether the contribution schedule lot entitlements are just and equitable.
- 1.5 There is no such limitation in the wording of proposed section 47B(2A)(b). On a literal reading of this subsection, it would permit a review of whether the contribution schedule lot entitlements are just and equitable provided that a new CMS is recorded to reflect a formal acquisition.
- 1.6 The ability to review whether contribution schedule lot entitlements are just and equitable was removed from the BCCMA by the *Body Corporate and Community Management and Other Legislation Amendment Act 2011*. A replacement review mechanism has not been introduced¹, and we suspect that this Bill does not intend to put such a mechanism in place.
- 1.7 The SCA (Qld) suggests that section 47B(2A)(b) should be revised so that the review is only of those required changes to the contribution schedule lot entitlements to take account of the boundary change shown in the new plan of subdivision to reflect a formal acquisition.

2 Amendment of section 51 of the BCCMA

- 2.1 These submissions also apply in respect of the amendments proposed to section 51A, but we only refer to those subsections in section 51 for ease of reference.

Sufficiency of the notice

- 2.2 The notice given by the constructing authority under subsection (1) should be required to advise of the body corporate’s:
- (a) right to seek its own independent professional advice about any required changes to the lot entitlement schedules; and

¹ Although in recent statements concerning the *Body Corporate and Community Management and Other Legislation Amendment Act 2013* the Attorney-General has indicated that a new review mechanism is being explored.

(b) ability to recover the costs of obtaining that advice under part 4 of the *Acquisition of Land Act 1967*.

2.3 The day-to-day governance of bodies corporate is managed, for the most part, by committee members assisted by body corporate managers. Committee members are often laypersons that may find the prescriptive nature of this legislation difficult to understand.

2.4 Ensuring that committee members are informed of these rights in the notice would provide greater transparency in the process.

Sufficiency of the timeframes

2.5 The Bill will put in place the following timeframes that a body corporate must comply with:

- (a) within 3 months after receiving the constructing authority’s notice, the body corporate must call and hold a general meeting to decide any changes to the proposed new CMS to take account of the boundary change; and
- (b) within 4 months after receiving the constructing authority’s notice, the body corporate must endorse the proposed new CMS or give notice of the changes it wants made or that it does not consent to the new CMS.

2.6 The *Body Corporate and Community Management (Standard Module) Regulation 2008 (Standard Module)* applies to approximately 80% of community titles schemes in Queensland. Having regard to the strict requirements about calling meetings in the regulation module, we set out the following timeline of the steps a body corporate is likely to take if given notice by a constructing authority under section 51(1):

Action	Timing	Cumulative
Call and hold a committee meeting to consider the notice	2 weeks ²	2 weeks
Prepare and circulate minutes of the committee meeting to all owners	3 weeks ³	5 weeks
The minimum period the committee must wait after the minutes are circulated before it can implement its resolution/s	1 week ⁴	6 weeks
Assuming it is a very well organised and efficient committee that arranges quotes from professional advisors to assist in the process in time for the above meeting - briefing the professional advisors	1 week	7 weeks
The professional advisors must: <ul style="list-style-type: none"> • review the constructing authority’s notice and lot entitlement adjustment advice; and • provide advice to the body corporate on the required changes 	2 weeks	9 weeks

² At least 7 days notice of a committee meeting must be given to all owners: section 45(2)(a) of the Standard Module. Allowing two days for delivery in ordinary post and excluding the day of the meeting (section 38 of the *Acts Interpretation Act 1954*) - 10 days. Allow a further four days for the notice to be drafted and for the secretary to authorise the meeting being called.

³ Section 55(4) of the Standard Module.

⁴ Sections 56 and 57 of the Standard Module prohibit a committee from putting into effect its resolutions until the time for owners to give a notice of opposition passes (7 days).

Call and hold a committee meeting to consider the professional advice and decide to call a general meeting	2 weeks	11 weeks
Prepare and circulate minutes of the committee meeting to all owners	3 weeks	14 weeks
The minimum period the committee must wait after the minutes are circulated before it can implement its resolution/s	1 week	15 weeks
Drafting and compiling the general meeting notice (mindful that the body corporate may be obliged to deal with additional matters at the extraordinary general meeting it calls)	1 week	16 weeks
Notice period for calling and holding the extraordinary general meeting to decide on any required changes to the proposed new CMS	4 weeks ⁵	20 weeks

- 2.7 The above timetable demonstrates the actions a body corporate and its committee would have to take in order to make a decision on required changes to the lot entitlements. It is a body corporate that provides the minimum notice for its meetings and acts efficiently in everything it does. It makes no allowance for administrative oversights, added complexity to the resumption and only provides the professional advisors 2 weeks to complete their brief.
- 2.8 This timetable shows that it would take a body corporate about 4.5 months to do everything necessary to hold the general meeting, whereas only 3 months is allowed in section 51(2). If the periods for preparing and circulating the minutes of the committee meetings were reduced to 1 week each, it would still take just under 4 months to do this.
- 2.9 By this timetable, the body corporate simply cannot comply with the timeframe set in section 51(2) if it is to conduct its business transparently and in accordance with the regulation module.
- 2.10 While we appreciate that the timeframe set in section 51(2) mirrors what is in the existing legislation, putting in place an ‘*enforcement mechanism*’ requires greater focus on whether the timeframe is achievable or appropriate.
- 2.11 Either that timeframe should be extended in the Bill or provision should be made for a body corporate to cause an extension if its circumstances require it.
- If a body corporate requests changes
- 2.12 Subsection (5)(b) gives a body corporate the ability to notify the constructing authority of changes to the CMS. Subsection (7) then gives the constructing authority the option of recording the new CMS it gave or one that incorporates the body corporate’s requested changes.
- 2.13 Provided the body corporate’s requested changes are simply to take account of a boundary change consistent with its own lot entitlement adjustment advice, the constructing authority should be compelled to record a new CMS that includes these requested changes.

⁵ At least 21 days notice of a general meeting must be given: section 74 of the Standard Module. Allowing 2 days for delivery in ordinary post and excluding the day of the meeting.

2.14 If the constructing authority was not compelled in this way, its act of recording a new CMS would be contrary to a body corporate's wishes⁶ and would:

- (a) encourage reviews under section 47B and 48 of the BCCMA; or
- (b) add a greater administrative burden to a body corporate in having to make a further request to record a new CMS that reflects its required changes.

If a body corporate requests changes or withholds consent

2.15 Subsection (5)(c) recognises that a body corporate may expressly withhold its consent to the recording of a new CMS. However, the constructing authority would still have the power to lodge a request to record the new CMS under subsection (7) despite the objection.

2.16 This is a significant imposition on a body corporate that may have legitimate reasons for withholding consent.

2.17 The presumed intention of the Bill is to balance this with the ability of a body corporate or lot owner to claim their costs of obtaining an order from a specialist adjudicator or QCAT under section 47B or 48 of the BCCMA under part 4 of the *Acquisition of Land Act 1967* – see subsection (10)(c) of the Bill.

2.18 We respectfully suggest that there are two deficiencies with this:

- (a) a body corporate does not have standing to make an application under section 47B and 48 of the BCCMA; and
- (b) a lot owner may suffer loss if their contributions are inappropriately increased due to a new CMS recorded by a constructing authority.

2.19 Firstly, a body corporate does not have the ability to bring a review under section 47B or 48 of the BCCMA; only a lot owner does.

2.20 While a body corporate may request changes to a new CMS proposed by the constructing authority or object to it, the burden falls on a lot owner⁷ to make the application and conduct the proceedings before a specialist adjudicator or QCAT.

2.21 Conceivably, a lot owner could make the application and the body corporate could fund its substantial conduct as a respondent. However, the body corporate's costs would not fall under the ambit of subsection (11)(c) of the Bill because, as the respondent, they would not be the party obtaining the order.

2.22 Secondly, if an order is made under section 47B or 48 of the BCCMA, it may be on account of the specialist adjudicator or QCAT finding deficiencies in the lot entitlement adjustment advice obtained by the constructing authority that informed the changes (if any) made to the new CMS.

2.23 In that instance, a lot owner may have been put to undue expense by having to make greater contributions to the body corporate until such time as a specialist adjudicator or QCAT made the order.

2.24 The Bill should balance this by making provision in subsection (10) for an aggrieved lot owner to seek compensation for any loss suffered as a result of the recording of a new CMS if an order is made under section 47B or 48 of the BCCMA.

⁶ Which would be inconsistent with section 64 of the BCCMA.

⁷ With disparate access to resources as compared to a body corporate.

3 Transitional provisions

- 3.1 Many community titles schemes may fall under proposed section 432. While the bodies corporate for these schemes have the ability to request lot entitlement adjustment advice, under proposed section 433, we have two concerns with these proposed amendments:
- (a) many of these bodies corporate would be unaware of the amending bill (if enacted) or its implications, particularly given the (with respect) protracted way in which these transitional provisions have been drafted. Any layperson would have difficulty comprehending them; and
 - (b) there is no obligation for the constructing authority to take account of any lot entitlement adjustment advice prior to lodging the request to record a new CMS.
- 3.2 We suggest that a body corporate should be given at least one month notice of the constructing authority's intention to lodge the new CMS and of the body corporate's right to request lot entitlement adjustment advice.
- 3.3 The proposed amendments to section 51 and 51A recognise the need for the constructing authority to be guided by lot entitlement adjustment advice when preparing a new CMS. While bodies corporate caught under these transitional provisions may not have complied with the timeframes in the current legislation, it would be sound policy to extend the same principle to these schemes: a new CMS to take account of a formal acquisition should be informed by lot entitlement adjustment advice.

FURTHER INFORMATION

SCA (Qld) is happy to send a representative to discuss this submission and the proposed reforms with an appropriate Government representative. In this regard, the Government may contact:

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CONCLUSION

SCA (Qld) appreciates the opportunity to provide this submission.

Sincerely



Simon Barnard
President