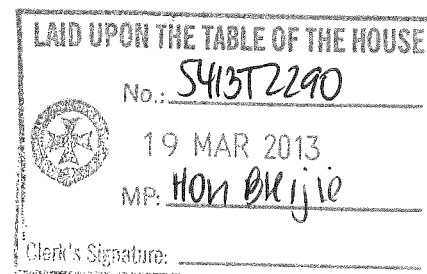


*L. C. L.*  
19.3.13

# Body Corporate and Community Management and Other Legislation Amendment Bill 2012

## Explanatory Notes

## FOR



## Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

### Title of the Bill

Body Corporate and Community Management and Other Legislation Amendment Bill 2012

### Objectives of the Amendments

The Bill, as introduced by the Attorney-General and Minister for Justice on 14 September 2012, is primarily aimed at dealing with changes to contribution schedule lot entitlements resulting from the *Body Corporate and Community Management Amendment Act 2011* (the 2011 Amendment Act).

Two of the principal objectives of the Bill are to amend the *Body Corporate and Community Management Act 1997* (the Act) for the purposes of:

- discontinuing the process established in Chapter 8, Part 9, Division 4 of the Act (the 2011 reversion process) which compelled bodies corporate to adjust their contribution schedule lot entitlements to reflect those that applied prior to any, and all, relevant orders of a court, tribunal or specialist adjudicator, if requested to do so by a lot owner; and
- establishing a process for contribution schedule lot entitlements that were adjusted pursuant to the 2011 reversion process to be changed to reflect the lot entitlements that applied to the scheme prior to the application of the reversion process.

The objectives of the amendments to the Bill are to improve its operation with respect to contribution schedule lot entitlements affected by the 2011 Amendment Act by:

- providing bodies corporate which were subject to judicial or quasi-judicial orders for the adjustment of contribution schedule lot entitlements, where those orders were deemed to

be 'pre-commencement adjustment actions' and discontinued under the 2011 Amendment Act, with an opportunity to give effect to those orders; and

- including clearer and stricter timeframes relating to actions required to be undertaken by body corporate committees or, in the case of specified two-lot schemes, bodies corporate to reinstate contribution schedule lot entitlements that were last determined, before 14 April 2011, by a court, tribunal or specialist adjudicator.

The amendments to the Bill were recommended by the Legal Affairs and Community Safety Committee following its inquiry.

*Reasons for amendments relating to 'pre-commencement adjustment actions'*

The 2011 Amendment Act substantially restricted the ability of lot owners in a community titles scheme to seek an adjustment of the contribution schedule lot entitlements applying to the scheme. It also established the 2011 reversion process which essentially enabled a lot owner in a scheme to compel their body corporate to disregard previous judicial and quasi-judicial decisions about the contribution schedule lot entitlements for the scheme and to lodge a request to record a new community management statement that included the contribution schedule lot entitlements that applied prior to any and all adjustment orders.

As part of its transitional provisions, the 2011 Amendment Act also provided that decisions of a court, appeal entity, tribunal or specialist adjudicator for the adjustment of a scheme's contribution schedule lot entitlements that had not been given effect by the recording of a new community management statement by 14 April 2011 were deemed 'pre-commencement adjustment actions'. From 14 April 2011, pre-commencement adjustment actions ceased to have effect and were taken never to have been made.

The Bill, as tabled, includes amendments to provide bodies corporate affected by a completed 2011 reversion process (that is, a community management statement had been recorded giving effect to the 2011 reversion process) with an opportunity to reinstate the lot entitlements that were last determined, before 14 April 2011, to be fair and equitable by a court, tribunal or specialist adjudicator (the last adjustment order entitlements).

The amendments to the Bill are necessary to also provide bodies corporate that were subject to adjustment orders that were deemed to be pre-commencement adjustment actions under the 2011 Amendment Act with an opportunity to give effect to the adjustment orders.

The amendments are consistent with the policy objectives of the Bill which include providing schemes that had adjustment orders affected by the 2011 Amendment Act with an opportunity to apply the contribution schedule lot entitlements that were last determined, before 14 April 2011, to be fair and equitable by a court, tribunal or specialist adjudicator.

*Reasons for amendments to timeframes for the reinstatement process*

Feedback from some stakeholders in submissions to the Legal Affairs and Community Safety Committee highlighted concerns that timeframes for particular aspects of the reinstatement process established by the Bill were too lengthy or facilitated undue delay by lot owners and body corporate committees wishing to frustrate the reinstatement process.

The amendments clarify and shorten the timeframes for some of the steps required to be undertaken in implementing the reinstatement process. The amendments are designed to ensure that bodies corporate have a sufficient and appropriate amount of time to complete the reinstatement of contribution schedule lot entitlements, while also ensuring the process is completed within a reasonable timeframe.

## **Achievement of the Objectives**

The first objective of the amendments (allowing bodies corporate to apply contribution schedule lot entitlement adjustment orders deemed to be pre-commencement adjustment actions under the 2011 Amendment Act) is proposed to be achieved by establishing a similar process to the one currently provided in the Bill for reinstating contribution schedule lot entitlements that were affected by a completed 2011 reversion process.

The second objective of the amendments is proposed to be achieved by introducing stricter and shorter timeframes for particular aspects of the reinstatement process.

Specifically, it is proposed to introduce a maximum timeframe for lot owners to make submissions to the body corporate or body corporate committee about what modification, if any, is required to be made to the last adjustment order entitlements (for example, to reflect the impact of lot subdivisions, amalgamations or other material changes that have taken place since the last adjustment order was made). The proposed amendments also contain a maximum timeframe for a body corporate or body corporate committee to make a decision about what modification, if any, is required to the last adjustment order entitlements. It is also proposed to reduce the maximum timeframe under the reinstatement process for a body corporate to lodge a request to record a new community management statement to give effect to the last adjustment order entitlements.

## **Alternative Ways of Achieving Policy Objectives**

Legislative amendment is the only means of achieving the policy objectives.

## **Estimated Cost for Government Implementation**

The State Government is not anticipated to incur additional costs in the implementation of the amendments to the Bill.

## **Consistency with Fundamental Legislative Principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

***Legislative Standards Act 1992, section 4(3)—Whether legislation has sufficient regard to the rights and liberties of individuals.***

*Amendment 4 – new Subdivision 1A (Decided entitlements)*

Amendment 4 (Subdivision 1A, Decided entitlements) introduces a mechanism to enable bodies corporate to give effect to adjustment orders that were deemed to be pre-commencement adjustment actions. It is arguable that this contravenes fundamental legislative principles by adversely impacting on the rights and liberties of some lot owners. This is because giving effect to an order for the adjustment of contribution schedule lot entitlements will result in a proportional increase to the lot entitlements for some lot owners in the affected community titles schemes, which consequently results in those lot owners paying proportionally higher body corporate contributions.

However, the potential breach of fundamental legislative principles is considered justified and necessary as a means of achieving the policy objective of reinstating the effect of independent judicial and quasi-judicial decisions for the adjustment of contribution schedule lot entitlements lawfully sought by lot owners, and made, prior to commencement of the 2011 Amendment Act.

*Amendment 4 – offences and penalties in new sections 401C, 401D and 401F*

Amendment 4, introduces offence provisions in new sections 401C, 401D and 401F which apply if a body corporate fails to lodge a request to record a new community management statement to implement a decision of the body corporate committee, body corporate, specialist adjudicator or Queensland Civil and Administrative Tribunal (QCAT) that the contribution schedule lot entitlements be adjusted.

The offences and penalties in these new sections are considered necessary to ensure lawful decisions to adjust contribution schedule lot entitlements are given effect through the recording of a new community management statement.

The new offences and maximum penalties are consistent with existing offence and maximum penalty provisions applying to other provisions of the Act requiring a body corporate to lodge a request to record a new community management statement.

## **Consultation**

The amendments to the Bill principally stem from accepted recommendations of the Legal Affairs and Community Safety Committee inquiry (Report No. 16) into the Body Corporate and Community Management and Other Legislation Amendment Bill 2012. The Parliamentary Committee sought comment on the Bill by inviting written submissions from all Queenslanders and holding a public hearing.

## NOTES ON PROVISIONS

### **Amendment 1**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 1 amends clause 13 of the Bill to change the title of Division 3 (of new Chapter 8, Part 10) to ‘Application of decided entitlements and reinstatement of last adjustment order entitlements’. This amendment is necessary to reflect the inclusion in the Bill of a new process to enable a body corporate to apply the contribution schedule lot entitlements decided for the scheme under an adjustment order that was deemed a pre-commencement adjustment action.

### **Amendment 2**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 2 amends clause 13 of the Bill to omit new section 400. New section 400 is reinserted by amendment 7. Moving section 400 is a consequential amendment resulting from the inclusion in the Bill, by amendment 4, of the new process which enables a body corporate to apply the contribution schedule lot entitlements decided for the scheme under an adjustment order that was deemed a pre-commencement adjustment action.

### **Amendment 3**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 3 amends clause 13 of the Bill to insert a definition for a new term, ‘decided entitlements’, in new section 401. The term ‘decided entitlements’ is used for the purpose of the new process established by the amendments to the Bill to enable a body corporate to apply the contribution schedule lot entitlements decided for the scheme under an adjustment order that was deemed a pre-commencement adjustment action.

### **Amendment 4**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 4 amends clause 13 of the Bill to insert a new definition for the term ‘relevant decision’ in new section 401. In Division 3 of the Bill, the term ‘relevant decision’ is used for the purpose of the new process established by the amendments to the Bill to enable a body corporate to apply the contribution schedule lot entitlements decided for the scheme under the adjustment order that was deemed a pre-commencement adjustment action.

Amendment 4 also inserts new Subdivision 1A (Decided entitlements) in clause 13 of the Bill. Subdivision 1A consists of new sections 401A to 401F, which provide for a body corporate to apply the contribution schedule lot entitlements decided for the scheme under a relevant decision, and describe the process that must be undertaken to do so.

New section 401A provides for the application of subdivision 1A.

New section 401B enables an owner of a lot included in a scheme (other than a specified two-lot scheme) that was subject to a relevant decision to submit a request to the committee for the body corporate proposing that the contribution schedule lot entitlements for the lots included in the scheme be adjusted to reflect the lot entitlements (the decided entitlements) decided under the relevant decision.

New section 401B also specifies the process the committee must follow when a request is received from a lot owner proposing an adjustment to the contribution schedule lot entitlements to reflect the decided entitlements.



inclusion in the Bill of the new process which enables a body corporate to apply the contribution schedule lot entitlements decided for the scheme under a relevant decision.

**Amendment 10**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 10 amends new section 403(2) in clause 13 of the Bill to clarify that the reference to 'last adjustment order entitlements' in this subsection means the last adjustment order entitlements for the scheme.

**Amendment 11**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 11 amends new section 403(3)(b) in clause 13 of the Bill to insert a requirement that the written notice under this subsection be dated.

**Amendment 12**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 12 amends new section 403(3)(b)(iv) in clause 13 of the Bill to change the requirements for the timeframe (the submission period) for lot owners in a scheme that is not a specified two-lot scheme to make a submission to the body corporate committee about any modification required to be made to the last adjustment order entitlements. Under the new submission period, a lot owner may make written submissions within 28 days after the date of the notice which is given by the committee to lot owners under this section.

**Amendment 13**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 13 omits new section 403(4) from clause 13 of the Bill to reflect the change to the timeframe for the submission period made by amendment 12.

**Amendment 14**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 14 amends new section 404(2) in clause 13 of the Bill to insert a maximum timeframe of 90 days, after the submission period ends, for a body corporate committee of a scheme that is not a specified two-lot scheme to make a decision under section 404 about any modification required to be made to the last adjustment order entitlements.

**Amendment 15**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 15 amends new section 404(4) in clause 13 of the Bill to change the maximum timeframe for a body corporate to lodge a request to record a new community management statement from 90 days to 30 days.

**Amendment 16**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 16 makes a consequential amendment to new section 404(5) in clause 13 of the Bill to reflect the change to the timeframe in section 404(4), made by amendment 15, for implementation of a body corporate committee decision under section 404(2).

**Amendment 17**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 17 amends new section 404(5)(b) in clause 13 of the Bill to make it clear that section 404(4) does not apply if, before the end of the prescribed period, the requirement of section 404(5)(a) is satisfied and the specialist adjudicator or QCAT makes an order provided for under section 407.

**Amendment 18**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 18 amends clause 13 of the Bill to clarify that the reference to 'scheme' in new section 405(1) is a community titles scheme.





**Amendment 26**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 26 makes a consequential amendment to reflect the change, made by amendment 24, to the maximum timeframe for a body corporate to lodge a request to record a new community management statement under the reinstatement process.

**Amendment 27**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 27 clarifies that a body corporate is not required to lodge a community management statement incorporating the last adjustment order entitlements, with any modifications decided by the committee, if before the end of the period for lodging the statement an owner makes an application for an order of a specialist adjudicator or QCAT under section 406 and the specialist adjudicator or QCAT makes an order provided for under section 407.

**Amendment 28**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 28 amends new section 406(1)(a) in clause 13 of the Bill to make it clear that the section applies if the committee for a body corporate or a body corporate makes a decision under new section 404 or 405.

**Amendment 29**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 29 amends new section 406(1)(b) in clause 13 of the Bill to make it clear that the reference to 'changed entitlements' in this subsection is a reference to changed entitlements defined under new sections 404 and 405, as decided by the committee or the body corporate under those sections.

**Amendment 30**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 30 amends new section 407(2)(a) in clause 13 of the Bill to make it clear that the reference to 'changed entitlements' in this subsection is a reference to changed entitlements defined under new sections 404 and 405, as decided by the committee or the body corporate under those sections.

**Amendment 31**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 31 amends new section 407(4)(a) in clause 13 of the Bill to make it clear that the reference to 'changed entitlements' in this subsection is a reference to changed entitlements defined under new sections 404 and 405, as decided by the committee or the body corporate under those sections.

**Amendment 32**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 32 makes a consequential amendment to new section 407(4)(b) in clause 13 of the Bill to reflect the renumbering of subsections under section 405.

**Amendment 33**                      **Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 33 amends new section 407(5) in clause 13 of the Bill to provide that it is an offence (with a maximum penalty of 100 penalty units) if a body corporate fails to lodge a request to record a new community management statement to implement the adjustment to the contribution schedule lot entitlements ordered by the specialist adjudicator or QCAT under section 407.

Amendment 33 also amends clause 13 of the Bill to provide that new sections 408 and 409 are a new subdivision under Division 3 of Chapter 8, Part 10, titled Subdivision 2A 'Body corporate responsible for particular matters under division 3'.

**Amendment 34**

**Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 34 amends new section 409 in clause 13 of the Bill to make it clear that new section 401E(4)(b) provides an exception for when the body corporate for a scheme is responsible for particular costs associated with dealing with a request for the scheme's contribution schedule lot entitlements to be adjusted to reflect the decided entitlements for the scheme.

**Amendment 35**

**Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 35 amends new section 409 in clause 13 of the Bill to make it clear that the body corporate for a scheme is responsible for particular costs associated with dealing with a request under new sections 401C and 401D.

**Amendment 36**

**Clause 13 (Insertion of new ch 8, pt 10)**

Amendment 36 amends the title of Subdivision 3 in clause 13 of the Bill as a consequence of establishing a process in the Bill for a body corporate to apply the contribution schedule lot entitlements decided for the scheme under a relevant decision.

**Amendments 37 to 48**

**Clause 13 (Insertion of new ch 8, pt 10)**

Amendments 37 to 48 amend new sections 410 to 413 in clause 13 of the Bill to provide how contribution schedule lot entitlements for lots which have been subject to a subdivision, amalgamation, boundary change or material change are to be dealt with if the contribution schedule lot entitlements are to be changed to reflect the decided entitlements for the scheme.

**Amendments 49 to 52**

**Clause 16 (Amendment of sch 6 (Dictionary))**

Amendments 49 to 52 amend clause 16 of the Bill to include new and amended terms in Schedule 6 (Dictionary) of the *Body Corporate and Community Management Act 1997* relating to the new process inserted in the Bill by amendment 4 for a body corporate to apply the contribution schedule lot entitlements decided for the scheme under a relevant decision.

**Amendment 53**

**Clause 18 (Amendment of sch 1 (Enabling Acts and provisions))**

Amendment 53 amends clause 18 of the Bill to identify new section 401E(2)(b) as a provision which confers jurisdiction on QCAT.

**Amendment 54**

**Clause 20 (Amendment of r 44 (General requirement for responses other than minor debt claim))**

Amendment 54 amends clause 20 of the Bill to include new section 401E under rule 44 of the *Queensland Civil and Administrative Tribunal Rules 2009*.