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Body Corporate and Community Management and Other Legislation Amendment Bill 2012

Report No. 16

Legal Affairs and Community Safety Committee

November 2012

Legal Affairs and Community Safety Committee

Chair	Mr Ray Hopper MP, Member for Condamine
Deputy Chair	Mr Peter Wellington MP, Member for Nicklin
Members	Miss Verity Barton MP, Member for Broadwater
	Mr Bill Byrne MP, Member for Rockhampton
	Mr Sean Choat MP, Member for Ipswich West
	Mr Carl Judge MP, Member for Yeerongpilly
	Mr Trevor Watts MP, Member for Toowoomba North
	Mr Jason Woodforth MP, Member for Nudgee
Staff	Mr Brook Hastie, Research Director
	Mrs Sharon Hunter, Principal Research Officer
	Mrs Alison Jarro, Principal Research Officer
	Ms Kelli Longworth, Principal Research Officer
	Mrs Gail Easton, Executive Assistant
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director
	Ms Marissa Ker, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact details	Legal Affairs and Community Safety Committee Parliament Legislative Assembly George Street Brisbane Qld 4000
Telephone	+61 7 3406 7307
Fax	+61 7 3406 7070
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

Acknowledgements

The Committee acknowledges the assistance provided by the Department of Justice and Attorney-General and the Queensland Parliamentary Library.

Contents

Abbreviations

Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
BCCM Act	*Body Corporate and Community Management Act 1997*
Bill	Body Corporate and Community Management and Other Legislation Amendment Bill 2012
Centrepoint case	*Fischer & Ors v Body Corporate for Centrepoint Community Title Scheme 7779* [2004] QCA 214
CMS	Community management statement
Committee	Legal Affairs and Community Safety Committee
CSLE	Contribution schedule lot entitlements
CTS	Community Titles Scheme
Department	Department of Justice and Attorney-General
QCAT	Queensland Civil and Administrative Tribunal
1965 Act	*Building Units Titles Act 1965*
1973 Act	*Group Titles Act 1973*
1980 Act	*Building Units and Group Titles Act 1980*
2003 Act	*Body Corporate and Community Management and Other Legislation Amendment Act 2003*
2007 Act	*Body Corporate and Community Management and Other Legislation Amendment Act 2007*
2010 Bill	Body Corporate and Community Management and Other Legislation Amendment Bill 2010
2011 Act	*Body Corporate and Community Management and Other Legislation Amendment Act 2011*
2011 amendments	means the amendments contained in the 2011 Act.
2011 reversion process	means the process established by the 2011 amendments which allowed a reversion to the original developer set contributions by motion of a single unit owner.

Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Body Corporate and Community Management and Other Legislation Amendment Bill 2012.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

As part of undertaking this inquiry, the Committee received a considerable number of submissions from individuals and interested organisations who will be personally affected either if the Bill is passed or if it does not pass through the Legislative Assembly. The Committee acknowledges that the issue of contribution schedule lot entitlements is a complex issue and there is no 'simple fix' to the problem.

On behalf of the Committee, I thank all those who lodged written submissions on this Bill. By taking the time to lodge a submission with the Committee, they have been able to get involved in the legislative process and have had a direct input into the Committee's considerations and shaping the recommendations of the Committee contained in this Report.

On behalf of the Committee, I would like to thank the Committee staff for their efforts throughout the conduct of this inquiry, and also the staff of the Department of Justice and Attorney-General. The Departmental staff went to extraordinary lengths to provide assistance to the Committee and ensure Members obtained a thorough understanding of the very complex issues being dealt with by this Bill and I praise those Departmental staff involved for their efforts.

I commend this Report to the House.

Mr Ray Hopper MP

Chair

November 2012

Recommendations

Recommendation 1 **5**

That the Attorney-General and Minister for Justice:
(a) report to Parliament in the first sitting week of 2013 with a detailed plan for addressing the broader issues of lot entitlements in Queensland including an options paper and a proposal for public consultation; and
(b) introduce further legislation into Parliament before 30 June 2013 to implement the Government's preferred solution to the setting and adjustment of lot entitlements.

Recommendation 2 **6**

The Bill be passed with significant amendments.

Recommendation 3 **18**

The Committee recommends that the Bill retain the relevant provisions which will discontinue the 2011 reversion process with effect from 14 September 2012.

Recommendation 4 **19**

The Committee recommends that the Bill be amended to include provisions to reimburse any Government fee or charge imposed in relation to a reversion process that is deemed to be an incomplete reversion process under this Bill.

Recommendation 5 **23**

The Bill be amended to remove from clause 13, the whole of '*Division 3 – Reinstatement of last adjustment order entitlements*'. That is, the removal from the Bill of the process which will reverse current 2011 reversions.

Alternate Recommendation 6 **25**

Should the Bill retain the reinstatement process, the Bill should be amended to ensure adjustment orders deemed to be pre-commencement orders under the 2011 amendments be given effect under the Bill to allow them to be brought within the scope of the reinstatement process.

Recommendation 7 **30**

The Bill retain the amendments to remove the disclosure requirements introduced by the *Body Corporate and Community Management and Other Legislation Amendment Act 2011*.

Recommendation 8 **31**

The Bill retain the amendments to provide jurisdictional consistency for the resolution of disputes about contribution schedule lot entitlement adjustments in so far as they do not relate to the proposed *Division 3 – Reinstatement of Last Adjustment Entitlements.*

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Body Corporate and Community Management and Other Legislation Amendment Bill 2012 (Bill) was introduced into the Legislative Assembly and referred to the Committee on 14 September 2012. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 22 November 2012.

1.2 Policy objectives of the Body Corporate and Community Management and Other Legislation Amendment Bill 2012

The principal policy objectives of the Bill as set out in the Explanatory Notes are four fold. The proposed Bill, if passed, will amend the *Body Corporate and Community Management Act 1997* (BCCM Act) to:

- *remove the requirement for bodies corporate to undertake a process prescribed in Chapter 8, Part 9, Division 4 of the [BCCM] Act (the 2011 reversion process) to adjust contribution schedule lot entitlements to reflect the original entitlements prior to any, and all, relevant orders of a court, tribunal or specialist adjudicator if a lot owner submits a motion requesting such a change;*
- *establish 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;*
- *remove unnecessary disclosure requirements imposed on sellers of lots in community titles schemes; and*
- *provide jurisdictional consistency for the resolution of disputes about contribution schedule lot entitlement adjustments.*[2]

The Committee will address each of these four objectives in further detail in Section 3 of this Report.

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1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 1.

1.3 Inquiry process

On 19 September 2012, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions and issued a media release announcing its inquiry.

The Committee advertised in the *The Courier Mail* setting out the timeframes for submissions and due to the high density of community titles schemes in the Gold Coast area, also advertised in the *Gold Coast Bulletin*. Over 270 submissions were received (see **Appendix A**).

To assist the Committee in its understanding of the policy objectives of the Bill, the Department provided the following detailed documents to the Committee:

- a written briefing on the Bill;
- comparative table of schemes in other jurisdictions;
- summary of submissions by issue;
- summary of submissions by stakeholder; and
- a detailed history of community titles legislation in Queensland.[3]

The Committee held a public hearing on 31 October 2012, hearing first from representatives from the Department, followed by groups of invited witnesses representing a cross section of submitters. A list of witnesses who appeared at the hearing is set out in **Appendix B**. The Committee received evidence from members of the general public who were both in favour of and against the Bill and also heard from representatives of professional bodies which also provided valuable input on the merits or otherwise of the Bill.

The transcript of the public hearing can be accessed on the Committee's website.

1.4 Consultation on the Bill

The Explanatory Notes state explicitly that '*no community consultation has been undertaken on the Bill' and that 'consultation has occurred with central government agencies*'.[4]

The Committee notes, that while consultation was not specifically undertaken by the Government in relation to the matters being addressed in the Bill, the issues being dealt with i.e. contribution schedule lot entitlements - have long been the subject of consideration by successive governments.

As detailed by the Department in its response to issues raised in submissions:

> *… issues and stakeholder views on contribution schedule lot entitlements have been widely canvassed in a number of previous consultation processes (including a 2008 discussion paper, and release of an exposure draft of the legislation leading up to the 2011 amendments, which the current Government publicly opposed).*[5]

[3] These documents can are available on the Committee's website: http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/BCCMOLAB.

[4] Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, pages 8-9.

[5] Letter from the Department of Justice and Attorney-General, Summary of Submissions (by Issue), 26 October 2012, page 1.

The Department also stated:

> *… the [Attorney-General] has received significant correspondence from stakeholders articulating the diverse views on lot entitlement issues since becoming Minister responsible for the [BCCM Act] following the March 2012 election.*[6]

While it was no secret that the LNP opposed the 2010 Bill when it was introduced, the matter of body corporate levies did not come up in detail in the lead up to the 2012 election. In relation to the Government policy on lot entitlements, The Honourable Campbell Newman MP, Premier of Queensland was reported shortly after the election, as saying:

> *The Government understands the inequity in the current body corporate lot entitlement scheme and this is something the incoming minister will need to work very closely with stakeholders and unit owners to fix.*
>
> *Sorting out the mess left by Labor in the area of body corporate law is going to take some time, but I expect my minister to sort it out.*[7]

The Committee accepts the Department's statement that the issue of contribution schedule lot entitlements has been considered on numerous occasions in the past. However, given the short timeframe since the commencement of the 2011 amendments and the fact that those amendments had sunset provisions, the Committee understands that many stakeholders would not have expected another change to the legislation so soon.

Given the Premier's earlier comments that he expected the Attorney-General to work closely with stakeholders and unit owners to fix the perceived problems, the Committee accepts that many stakeholders have considered the current Bill and its specific policy objectives to be a surprise when it was introduced.

While the Committee has endeavoured, in the short time available to it, to involve stakeholders in its consideration of the issues at hand, the Committee notes that the policy to be achieved by the Bill is only an interim measure. The Committee considers that the steps on the path forward to deal with the issue of lot entitlements must be open and consultative and involve those people who will be most be affected, Queensland unit owners. What has become starkly clear to the Committee throughout its inquiry, is that regardless of whether this Bill is passed or not, the lives of thousands of Queenslanders will be directly and significantly impacted, both socially and financially.

The Committee considers the Government could have engaged more closely with industry stakeholders and unit owners in the preparation of this Bill, as envisaged by the Premier earlier this year.

1.5 Does the Bill 'fix' the problem of contribution schedule lot entitlements?

As stated in part 1.1 of this Report, the Committee is charged under the *Parliament of Queensland Act 2001* to consider the policy to be given effect by proposed legislation that is referred to it.

In relation to this Bill, while it has very specific policy objectives, the Committee considers that it was really not possible to examine the effect of the Bill without having regard to the broader policy issue of contribution schedule lot entitlements in general.

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6 Letter from the Department of Justice and Attorney-General, Summary of Submissions (by Issue), 26 October 2012, page 1.

7 High shot hits home - Unit owners fight huge increases in body corporate charges, *The Courier Mail*, 3 April 2012.

Therefore a very important question to be asked in considering whether or not to recommend that this Bill be passed in such a short timeframe after the recent amendments is – *does this Bill 'fix' the problem of contribution schedule lot entitlements in Queensland?*

The short answer is no, it does not. The Committee recognises this is not a failing of the Bill in itself and accepts that the Bill was never intended to address the greater issue of contribution schedule lot entitlements in the long term. But as it is generally recognised by all stakeholders that further work is required in this area, the Committee considered what work was taking place in relation to reform to lot entitlements.

What is happening to address the broader policy of lot entitlements?

Toward the end of his introductory speech for the Bill, the Attorney-General stated:

> *… I would like to announce that the government will now look at the broader issues around contribution schedule lot entitlements. We will look to the future. This bill does not deal with that matter—it relates to the immediate problem that we have been left by the former Labor government to deal with—but the government is only too conscious that there are many schemes out there with manifestly unequal lot entitlements. We need a mechanism to provide for adjustments into the future for those schemes with unfairly set contribution schedule lot entitlements. We will now work to look at options with a view to reintroducing an appropriate mechanism for adjustments, but there is some complexity around this issue. Therefore, it is important to take our time to ensure that, whatever mechanism is provided, it attempts to get the balance right and is fair to lot owners.*[8]

At the public hearing, in response to a question from the Chair of the Committee on whether there has been any time-line set for the review, Mr David Ford, Deputy Director-General of the Department of Justice and Attorney-General stated:

> *My understanding is that that review will probably commence early in 2013, but there has been no time frame agreed with the Attorney-General yet for the conclusion of the review. It will, without doubt, be a very complex review.*
>
> *…*
>
> *It could take some time. I would not like to guess how long it will take. As I am sure the committee will see by the end of this morning, there are some fairly diverse views on how these very complex matters need to be dealt with. I think the review will need to canvass a range of those options with a lot of the stakeholders involved.*[9]

In relation to the Department progressing its review, the Member for Rockhampton, Mr Byrne MP asked:

> *... You are going into a review process, as you have flagged. I would have thought the issues were not invisible. There are not going to be any revelations coming in this review process that are going to be a shining light of new information. Surely the issues are known. The department must have a view about the way to proceed with this issue.*[10]

8 *Transcript of Proceedings*, 14 September, page 2074.

9 Examination of the Body Corporate and Community Management and Other Legislation Amendment Bill 2012, Transcript of Proceedings, 31 October 2012, page 3.

10 Examination of the Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Transcript of Proceedings*, 31 October 2012, page 3.

Mr David Ford, Deputy Director-General of the Department of Justice and Attorney-General responded:

> *… Yes, I think the issues are well canvassed, but the focus, as I understand it, of the exercise will be about providing a just and equitable mechanism for determining how contribution schedule lot entitlements should be adjusted, or should be able to be adjusted going forward. The notion of how those lot entitlement contributions ought to be calculated, while there are different views about the overall principles involved, is actually subject to quite a lot of complexity. I think there are a range of options for doing that, which will need to be canvassed, and a range of criteria on which those sorts of changes could be made that will need to be canvassed. So I think there is plenty of scope there for some new work to be done, even though a lot of the issues are fairly clearly on the table, as you say.*[11]

In the written submissions and also in the evidence presented at the public hearing, many proposals for a way forward for dealing with lot entitlements were set out. These ranged from using lot area or value of the unit as a basis for calculating the lot entitlement contributions to the mandatory use of quantity surveyors in determining who pays what fees. Another proposal sought to totally recast the use of contribution and interest schedule lot entitlements splitting them up in line with the administrative fund and sinking funds, that is - on the basis of revenue and capital expenditures.

While the Committee has had regard to these matters, it has not been the task of the Committee to determine what should be the ongoing policy for the setting of and adjustment of lot entitlements. But the Committee does consider that regardless of whether the subject Bill is passed or not, the Attorney-General must, as a priority, advance the Government's consideration of the broader policy issue of lot entitlements in Queensland.

The Committee accepts the Department's response that this area is complex and there are a range of options that need to be canvassed. This was evident from the submissions received. But the Committee considers, as Mr Byrne MP has put it – the issues *are* known and it is unlikely there will be any new revelations in developing a final policy. There will be winners and there will be losers, but the options in determining the policy settings moving forward are finite and must be settled quickly to ensure unit owners, bodies corporate and other stakeholders have certainty in what fees are payable and how they are calculated. The strata title property market cannot continue to be subjected to what is now seemingly regular change and upheaval.

The Committee considers the policy development must not be done in isolation of the public. Given the very personal nature of the policy matters that are being addressed in this area, and the direct impact it has on unit owners, the Committee considers that unlike what has occurred with this Bill, the Government must actively consult with unit owners and develop a fair and equitable solution to address this ongoing issue.

Recommendation 1

That the Attorney-General and Minister for Justice:

(a) report to Parliament in the first sitting week of 2013 with a detailed plan for addressing the broader issues of lot entitlements in Queensland including an options paper and a proposal for public consultation; and

(b) introduce further legislation into Parliament before 30 June 2013 to implement the Government's preferred solution to the setting and adjustment of lot entitlements.

[11] Examination of the Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Transcript of Proceedings*, 31 October 2012, page 3.

1.6 Should the Bill be passed?

Taking into account that the Bill does not attempt to address the broader issues around contribution schedule lot entitlements, and further work in this area is urgently required - in order to determine whether to recommend that the Bill be passed or not, the Committee was required to turn its attention to the individual principal policy objectives being implemented by the Bill and consider whether, in the interim, these amendments are necessary.

The additional difficulty for the Committee is that it has no knowledge of the Government's preferred solution on the broader issues nor how any transition to a final policy position might occur. Similar to the situation after the ongoing policy is settled, there will be winners and there will be losers created out of this Bill as there has been out of the *Body Corporate and Community Management and Other Legislation Amendment Act 2011* (2011 Act) and the earlier amendment Acts.

Each of the principal policy objectives of the Bill and the Committee's recommendations in relation to those objectives are set out in section 3 of this Report. However ultimately the Committee determined that what could be provided for unit owners and the strata titles industry, in the interim, until the further consideration of the policy is settled – is stability.

The Attorney-General stated in the closing of his introductory speech:

> *Body corporate legislation has long been used as a political football … but we will not be a government that does that. We want to be a government that gets the balance right and fixes this mess once and for all.*[12]

Unfortunately, the Committee considers the effect of this Bill is exactly the opposite of the situation described by the Attorney-General. As set out above, this Bill does not fix the mess, and to take the analogy used by the Attorney further, the effect it does have is that of shifting the goal posts once again.

While the Bill does include some positive initiatives, the Committee considers that it also includes some matters which ought not to proceed which are addressed later in this report.

Recommendation 2

The Bill be passed with significant amendments.

[12] *Transcript of Proceedings*, 14 September, page 2074.

2. Background

It is without doubt, this Bill will impact the Queensland community titles sector, currently estimated to comprise '*around 41,000 community titles schemes … which include approximately 385,000 lots*.'[13] Further, it is also acknowledged that '*issues around the setting and adjustment of lot entitlements, and the consequential impacts on lot owners' liability to contribute to body corporate expenses, are contentious and emotive.'*[14] This has also been evidenced through the submissions made to the Committee.

With this context in mind, and in order to understand the policy outcomes to be achieved by this Bill, the Committee reviewed the history of Queensland's legislation relating to lot entitlements to see how the sector has arrived at where it is today. This section does not attempt to deal with all the significant changes, and readers are directed to the publications referred to in the next paragraph for further information.

The Committee was assisted by various publications,[15] and was grateful to the assistance provided by the Department, in particular Mr Anthony Lim from the Office of Regulatory Policy. The Committee also thanks those individuals and stakeholders who made detailed submissions in this area.

2.1 Community titles legislation

As already noted, a detailed history of community titles legislation in Queensland was included in the document provided by the Department. A copy of this paper, authored by Mr Lim and titled *History of Community Titles Legislation in Queensland*,[16] is available on the Committee's website.

As is explained by Mr Lim, community titles legislation was introduced across Australia from the 1960s, and in Queensland through the *Building Units Titles Act 1965* (1965 Act). The 1965 Act included the concept of 'unit entitlements' which enabled a body corporate to levy contributions on lot owners in proportion to the unit entitlement of their respective units. [17]

The concept of 'lot entitlements' was first introduced in Queensland under the *Group Titles Act 1973* (1973 Act) - although this concept was similar to 'unit entitlements' under the 1965 Act.[18] Whereas the 1965 Act dealt with the sub-division of land in strata, i.e. multi-storey buildings, the 1973 Act dealt with group title (or horizontal) housing such as townhouse or cluster housing.[19] However, unlike the 1965 Act, the 1973 Act provided a method for determining lot entitlements which was based on unimproved value.

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13 Letter from the Department of Justice and Attorney-General, 27 September 2012, page 1.

14 Letter from the Department of Justice and Attorney-General, 27 September 2012, page 8.

15 Including: Department of Justice and Attorney-General, Sharing Expenses in Community Title Schemes, Discussion Paper, December 2008; R Gastaldon, A 'New and More Flexible' System for Deciding Shared Costs in Community Titles Schemes: the Body Corporate and Community Management and Other Legislation Amendment Bill 2010 (Qld), Queensland Parliamentary Library, e-Research Brief 2011/03, March 2011; A Lim, History of Community Titles Legislation in Queensland, Department of Justice and Attorney-General, 24 October 2012.

16 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012.

17 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012, page 3.

18 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012, page 5.

19 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012, pages 4-5.

The 1965 Act and the 1973 Act were later repealed and replaced with the *Building Units and Group Titles Act 1980* (1980 Act). Under the 1980 Act, '*lot entitlements were determined in proportion to the unimproved values of all the lots contained in the plan*.'[20] Similar to its predecessors, the 1980 Act did not provide for an express method of adjusting lot entitlements. The 1980 Act did however provide for new types of resolutions (unanimous, without dissent and special), introduced new disclosure requirements and provided a dispute resolution process.[21]

The 1980 Act was in force until it was replaced by the BCCM Act, the current law.

2.2 Lot entitlements under the BCCM Act

The BCCM Act received Royal assent on 22 May 1997. At the time, the BCCM Act was considered to have '*introduced significant reforms to community titles legislation to accommodate emerging trends in community titling*.'[22] The BCCM Act comprises an umbrella act and separate regulation modules which provide detailed rules for the administration and operation of the different types of schemes. There are currently five regulation modules.[23]

Similar to its predecessors, the BCCM Act uses the concept of lot entitlements. However, unlike the 1980 Act which used a single schedule of lot entitlements,[24] the BCCM Act provides for two schedules of lot entitlements; the 'contribution schedule' and the 'interest schedule'.[25] The contribution schedule lot entitlement is used to determine a lot owner's levy contributions and the value of the lot owner's vote in the conduct of a poll. The interest schedule lot entitlement determines a lot owner's share of common property, their interest on the termination of the scheme and the unimproved value of the lot for the purposes of a charge, levy, rate or tax paid to a local government or the Commissioner of Land Tax.[26]

The BCCM Act also introduced an ability to adjust lot entitlements. This could be achieved by agreement between two or more lot owners (provided that the total lot entitlements of the lots subject to the change were not affected),[27] on the consent of the body corporate by passing a resolution without dissent,[28] or on application by a lot owner to the District Court for an order to adjust a lot entitlement schedule.[29]

For applications to the District Court to adjust the contribution schedule, the court was required to be consistent with the principle that the 'respective lot entitlements should be equal, except to the extent to which it is just and equitable in the circumstance for them not to be equal' (the equality

20 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012, page 6.

21 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012, pages 6-7.

22 Department of Justice and Attorney-General, *Sharing Expenses in Community Title Schemes*, Discussion Paper, December 2008, page 6.

23 The five modules are: Standard Module (predominantly residential schemes), Accommodation Module (holiday letting, serviced apartments), Commercial Module (commercial schemes), Small Schemes Module (no more than six lots) and Specified Two-Lot Module (duplexes).

24 Department of Justice and Attorney-General, *Sharing Expenses in Community Title Schemes*, Discussion Paper, December 2008, page 6.

25 *Body Corporate and Community Management Act 1997*, Part 5.

26 *Body Corporate and Community Management Act 1997*, Section 47; A Lim, History of Community Titles Legislation in Queensland, Department of Justice and Attorney-General, 24 October 2012, page 11.

27 *Body Corporate and Community Management Act 1997*, Section 47.

28 *Body Corporate and Community Management Act 1997*, Sections 50 and 55.

29 *Body Corporate and Community Management Act 1997*, Section 46.

principle).[30] If the application to the District Court was about the interest schedule, the court order was required to be consistent with the principle that the 'respective lot entitlements should reflect the respective market values of the lots included in the scheme when the court makes the order, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements to reflect other than the respective market values of the lots' (the market value principle).[31]

It is important to understand that, at this point, contribution schedule lot entitlements were not required to be equal for each lot included in the scheme and interest schedule lot entitlements were not required to be directly proportional to the market values of the respective lots.[32] This remained the case until the 2003 amendments.

2.3 2003 amendments

In 2003, there were significant changes to the BCCM Act. Of particular relevance was that for future developments (i.e. developments which received approval after the commencement of the section), lot entitlements were required to be '*equal, except to the extent to which it is just and equitable for them not to be equal*'.[33] Further, in deciding both the contribution and interest schedule lot entitlements for these new developments, regard was to be had to how the scheme was structured, the nature, features and characteristics of the lots and the purposes for which the lots were used.[34]

The 2003 amendments also expanded how adjustments to lot entitlements could be obtained. As well as applying to the District Court, a lot owner could now apply to a 'specialist adjudicator'.[35]The Court and any specialist adjudicator were required to apply the stated principle in deciding an application to adjust contribution and interest schedule lot entitlements, that is, the equality principle and the market value principle. [36] The amendments also included criteria which the Court or specialist adjudicator may and may not have regard to. Criteria which the Court and specialist adjudicator were required to consider included how the scheme was structured, the nature, features and characteristics of the lots and the purposes for which the lots were used.[37] However, the Court or specialist adjudicator could not have regard to '*any knowledge or understanding the applicant had, or any lack of knowledge or misunderstanding on the part of the applicant, at the relevant time about the lot entitlement for the subject lot or other lots included in the community titles scheme or the purpose for which a lot entitlement is used*.'[38]

These amendments were examined in a Court of Appeal decision known as the Centrepoint case.[39]

2.4 The Centrepoint Case

The 2004 Centrepoint case concerned an application to the Court to adjust lot entitlements and the criteria to be considered. Centrepoint was a residential building with 51 apartments of varying sizes. The complex also included common use facilities, for example, sauna, swimming pool and games

30 *Body Corporate and Community Management Act 1997*, Section 46(4).
31 *Body Corporate and Community Management Act 1997*, Section 46(5).
32 *Body Corporate and Community Management Act 1997*, Section 46(1).
33 *Body Corporate and Community Management Act 1997*, Section 46(7).
34 *Body Corporate and Community Management Act 1997*, Section 46(8).
35 *Body Corporate and Community Management Act 1997,* Section 48. This is in addition to other existing rights; see footnotes 27-29.
36 *Body Corporate and Community Management Act 1997*, Section 48(4).
37 *Body Corporate and Community Management Act 1997*, Section 49(4).
38 *Body Corporate and Community Management Act 1997*, Section 49(5).
39 Fischer & Ors v Body Corporate for Centre Point Community Title Scheme 7779 [2004] QDC 017; Fischer v Body Corporate for Centrepoint Community Title Scheme 7779 [2004] QCA 214.

room. At the time the application was made, the lot entitlements were not equal and there was a '*degree of arbitrariness between the allocation of lot entitlements to the various apartments*'.[40]

Initially, the application to adjust the existing contribution schedule lot entitlement was refused.[41] In refusing the application, District Court Judge Samios rejected the expert reports on the basis that they did not sufficiently consider a lot's size, number of bedrooms and location. Judge Samios also considered that the basis upon which lot owners had purchased their particular lots and the potential for a reduction in the value of lots impacted by any increase in contributions, could not be ignored. It was also noted that a majority of lot owners did not support the application for an adjustment.[42]

On appeal, the Court held that in considering the nature, features and characteristics of the lots included in the scheme, it is only proper to look at matters which affect the cost of operating the scheme. This meant that matters such as amenity and location were irrelevant.

Justice Chesterman stated:

> *… the preferable view is that a contribution schedule should provide for equal contributions by apartment owners, except insofar as some apartments can be shown to give rise to particular costs to the body corporate which other apartments do not. That question, whether a schedule should be adjusted, is to be answered with regard to the demand made on the services and amenities provided by a body corporate to the respective apartments, or their contribution to the costs incurred by the body corporate. More general considerations of amenity, value or history are to be disregarded. What is at issue is the 'equitable' distribution of the costs.* [43]

The result of this case was that the original lot entitlements (in existence since the scheme's inception) were adjusted so that some lot owners were required to contribute more, while other lot owners – including the applicants in the Centrepoint case - paid less.

As noted by Mr Lim, the Centrepoint Case created a precedent for future challenges to lot entitlements which often resulted in owners of larger apartments and penthouses paying lower levies at the expense of owners of smaller apartments.[44] This led to a great deal of community discussion.[45]

2.5 2007 amendments

In 2007, further amendments were made to the BCCM Act. Of particular note was that the jurisdiction of the District Court to hear and determine applications to adjust lot entitlements was replaced by the Commercial and Consumer Tribunal.[46]

Other changes are highlighted in the paper by Mr Lim.[47]

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40 Fischer v Body Corporate for Centrepoint Community Title Scheme 7779 [2004] QCA 214, paragraph 15.

41 Fischer & Ors v Body Corporate for Centre Point Community Title Scheme 7779 [2004] QDC 017.

42 Fischer & Ors v Body Corporate for Centre Point Community Title Scheme 7779 [2004] QDC 017, paragraph 54.

43 Fischer & Ors v Body Corporate for Centre Point Community Title Scheme 7779 [2004] QDC 017, paragraph 26.

44 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012, page 19.

45 R Gastaldon, A 'New and More Flexible' System for Deciding Shared Costs in Community Titles Schemes: the Body Corporate and Community Management and Other Legislation Amendment Bill 2010 (Qld), Queensland Parliamentary Library, e-Research Brief 2011/03, March 2011, pages 17-18.

46 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012, pages 16-17.

2.6 2009 amendments

In 2009, the Queensland Civil and Administrative Tribunal (QCAT) was established. This tribunal replaced the jurisdiction of a number of existing tribunals (including the Commercial and Consumer Tribunal), almost all of the administrative review jurisdiction of the courts and the minor debt claims jurisdiction of the Magistrates Court.[48]

The BCCM Act was therefore amended to replace the jurisdiction of the Commercial and Consumer Tribunal with QCAT.

2.7 2011 amendments

As noted above, the Centrepoint case created a precedent for challenges to lot entitlements, which typically resulted in reductions for owners of larger, better located and more expensive lots, such as penthouses.

As a result of this case, community discussion and a review initiated by the then government in 2008, *Sharing Expenses in Community Titles Scheme,*[49] the BCCM Act was amended and introduced, amongst other things, a second principle for setting contribution schedule lot entitlements (relativity principle) and the 2011 reversion process.

The 2011 reversion process is discussed in greater length in the next section of this Report.

47 A Lim, *History of Community Titles Legislation in Queensland*, Department of Justice and Attorney-General, 24 October 2012, pages 16-17.

48 Queensland Civil and Administrative Tribunal Bill 2009, *Explanatory Notes*, page 3.

49 Department of Justice and Attorney-General, *Sharing Expenses in Community Titles Schemes – A Discussion Paper on Lot Entitlements under the* Body Corporate and Community Management Act 1997, December 2008.

3. Examination of the Body Corporate and Community Management and Other Legislation Amendment Bill 2012

This section discusses the issues raised during the Committee's examination of the Bill and examines each of the four principal policy objectives which the Bill is trying to achieve.

3.1 Discontinuing the 2011 Reversion Process

The first objective of the Bill is to remove the requirement for bodies corporate to undertake a process prescribed in Chapter 8, Part 9, Division 4 of the BCCM Act (2011 reversion process) to adjust contribution schedule lot entitlements to reflect the original entitlements prior to any, and all, relevant orders of a court, tribunal or specialist adjudicator if a lot owner submits a motion requesting such a change.

Stating it simply – the Bill will draw a line in the sand and stop further reversions from occurring.

In considering the amendments to discontinue the 2011 reversion process, the rationale for, and issues around the earlier process itself must be understood.

2011 reversion process

The Explanatory Notes for the 2010 Bill provided:

> *The [2010] Bill also provides that community titles schemes established prior to the commencement of the Bill, which have been subject to one or more orders to adjust contribution schedule lot entitlements, will have the ability to revert their lot entitlements to their original settings prior to any, and all adjustment orders.*
>
> *To facilitate a reversion of contribution schedule lot entitlements, the Bill provides that a lot owner may submit a motion to the body corporate committee or the body corporate requesting the contribution schedule lot entitlements for all the lots in the scheme to be reverted to the original contribution schedule lot entitlements in place before any, and all, adjustment orders were made. The body corporate will then be required to revert the contribution schedule lot entitlements to their original settings, subject to any subdivisions, amalgamations, boundary changes or material changes.*[50]

The reasons for the 2010 Bill were outlined by the then Minister for Tourism and Fair Trading, the Honourable Peter Lawlor MP in his second reading speech as follows:

> *We have a problem in the marketplace. It needs to be fixed. That is what this bill is about. The problem is that a lot owner can make an application to QCAT or a specialist adjudicator to seek adjustment of a scheme's contribution schedule. If successful, an adjustment order can significantly change the relativities between the contribution schedule lot entitlements and drastically increase the amount a lot owner must pay for their annual body corporate fees. This can then have a negative flow on effect, reducing the capital value of a lot.*
>
> *A lot owner can then find himself or herself locked into an untenable situation. They cannot afford the increased fees but cannot afford to sell at fire sale rates. Regrettably and typically, contribution schedule adjustment orders tend to have the most adverse consequences for the many lot owners on low and fixed incomes. There has been no single cause of the problem. A chain of events and decisions over time, including a failure*

[50] Body Corporate and Community Management and Other Legislation Amendment Bill 2010, *Explanatory Notes*, page 3

in 1997 to fully appreciate the transitional implications arising from the enactment of the BCCM Act, have combined to give rise to the current problem.

…

The now well-known Court of Appeal decision, sometimes known as the Centrepoint or Fischer case, which was handed down on 25 June 2004, has subsequently led to cases of contribution schedule adjustment orders being towards equal which, while equitable, have sometimes had devastating consequences for lot owners who may have had the same contribution schedule lot entitlements for up to or exceeding 20 years and did not expect their contribution schedule lot entitlements to change. The bill will address this inequity.

Those lot owners who owned a lot at the time a scheme was subject to an adjustment order and who were adversely affected by that adjustment order will be able to submit a motion to the scheme's body corporate or body corporate committee to revert a scheme's contribution schedule lot entitlements to their preadjustment lot entitlements. The body corporate is then required to revert the contribution schedule lot entitlements to their original settings, subject to any subdivisions, amalgamations, boundary changes or material changes.

…

At the outset, I acknowledge some of the proposed amendments will not receive universal acclaim. There are many who will decry the rationale and policy intent behind this bill. I am not entirely unsympathetic to those views, but difficult problems sometimes require difficult solutions. If we do nothing, then the community titles sector will become increasingly unstable. This bill provides certainty for the marketplace which will ensure that medium- and high-density living remains an attractive and affordable option for many Queenslanders. [51]

The 2010 Bill received wide criticism from stakeholders, in particular relating to the treatment of fundamental legislative principles. The then Shadow Minister for Fair Trading, Mrs Jan Stuckey MP gave a very detailed speech on the 2010 Bill, addressing many of the problems with the 2010 Bill.

The Committee considers the speech by Mrs Stuckey MP to be one of the best analyses of the 2011 reversion process and related issues on public record, and sets out relevant excerpts below:

I turn now to the provisions of this legislation that have caused enormous controversy. This bill proposes that community titles schemes established prior to the commencement of this bill that have been subject to adjustment orders will have the ability to revert their lot entitlements to their original settings prior to any and all adjustment orders. To facilitate a reversion of contribution schedule lot entitlements the bill provides that, if a lot owner submits a motion to be considered at a general meeting of the body corporate requesting the contribution schedule lot entitlements for all the lots in the scheme to be reverted to the original contribution schedule lot entitlements in place before any and all adjustment orders were made, it is deemed that the body corporate passed the motion. The body corporate will then be required to give effect to the motion by reverting the contribution schedule lot entitlements to their original settings, subject to any subdivisions, amalgamations, boundary changes or material changes.

It is of concern that the same procedures that created the supposed problem in the marketplace, according to the former minister and described by him as having

[51] *Record of Proceedings*, 23 November 2010, pages 4129-4130.

devastating consequences, are being endorsed by this bill but in reverse. Provisions in this bill indicate that all it will take is one person to move a motion and the reversion must occur. Where is the fairness in that? Where is the balance here? Surely this is bound to create further animosity amongst unit dwellers. Furthermore, it is an insult to people who have taken the time, the effort and considerable costs to go to such lengths to apply through proper legal channels to get adjustments made. Industry stakeholders are appalled at the ease with which this bill allows all this effort to be reversed. All it takes is a stroke of the minister's pen. Is this what the minister means when he says he is simplifying the legislation?[52]

The 2010 Bill was not examined by a portfolio committee as the current Bill has been, however Mrs Stuckey MP referred to many submissions received by the then Scrutiny of Legislation Committee or to the then Opposition themselves.

In their submission the Queensland Law Society also expressed their significant concern and dismay at the proposed provisions stating—

> *Permitting one affected owner to undo the careful assessment of what is 'just and equitable' in terms of apportionment is itself visiting unfairness on lot owners.*
>
> *Additionally, the power of a single lot owner to compel the body corporate to pass a resolution winding back adjustments will likely seek to isolate and stigmatise that owner amongst their co-owners.*

Doesn't that sound like a recipe for a convivial community-living atmosphere! Rather it is a recipe for heated disputes and unrest. Similarly, the Queensland Law Society argues that 'merely because a change has occurred to the contribution schedule does not necessarily mean that the result of the change did not bring fairness between the owners'.

The Australian College of Community Association Lawyers stated a parallel view in their submission. They state—

> *... the Amendment Bill does not achieve the stated objective and, indeed, provides more uncertainty and unfairness by allowing 13 years of settled law to be 'undone' at the behest of just one affected lot owner.*

Granted, this bill as it stands cannot satisfy all different types of situations. It is doubtful that any bill would, given the variety of circumstances, the size and make-up of complexes—high-rise versus freestanding units and villas—but it could do a whole lot better than this offering, especially given the length of time for review and ongoing issues raised about body corporate matters.

Owners who have bought into a scheme after an adjustment of lot entitlements could face an increase in fees from the provisions contained within this legislation, much the same as original owners were following adjustment orders. Where is the justice here? The former minister's argument—and it sounds like the current minister's argument—is also flawed. One legal commentator gave an example of this which I wish to share. He says—

> *Take for example an owner who bought in 2006 a large unit in a building which a couple of years before had changed its lot entitlements to reduce the lot entitlements, and therefore the levies, for that particular unit. That owner would have seen the lot entitlements and the levies for the unit at the time of purchase and probably relied on them at the time of purchasing. Yet now, these lot*

[52] *Record of Proceedings*, 5 April 2011, page 965.

> *entitlements are likely to be changed so that the owner's levies will increase by a huge proportion, there being nothing that the owner can do about it.*

That puts a new spin on 'buyer beware'. Labelling the government's argument fanciful, the same legal eagle said—

> *What the Government seem to ignore is that over the past 13 years or so, dozens, if not hundreds of buildings have changed their lot entitlements under what the Government considered then, and seems to still, given that the principals to be adopted for new buildings have barely changed, a fairer methodology.*

Then there are also the people who purchased in, say, 2005 or 2006 who were not aware the lot entitlements had ever been adjusted who are in for a nasty shock when they realise they may well have to fork out more than they bargained for, more than what was listed as legally binding on their community management statement. Surely a fairer system than the one before us could be drafted.

…

The Australian College of Community Association Lawyers have stated they cannot support this legislation because 'the amendment bill does not add to or improve certainty and fairness, and multiple options does not create flexibility, but rather it adds to the complexity and cost of scheme establishment'.

…

I believe it is important to share with the House the views of Leary & Partners, quantity surveyors with nearly 30 years experience providing services to the strata industry including expert contribution adjustment advice for both applicants and bodies corporate since 2002. In its submission to the 2008 discussion paper on lot entitlements, Leary & Partners said—

> *We broadly support the current system for setting and adjusting contribution entitlements.*

It is clear in its message to the government: leave the law as it is. It goes on to say—

> *... we do not believe that the number of schemes or lots disadvantaged by the current system is demonstrably greater than the number that would, for other reasons, be disadvantaged by an alternative system.*
>
> *Since the publication of the Court of Appeal decision for Centrepoint, there has been a high degree of consistency and as a result certainty, in the interpretation of the intent of the law by parties dealing with the contribution entitlement system on a regular basis.* [53]

In relation to retrospective nature of the 2011 amendments, the then Shadow Minister stated:

The Legislation Alert of this parliament echoed numerous concerns from the Law Society, highlighting sections of the bill that adversely affect the rights and liberties of individuals, unclear and vague drafting that will leave concepts open to broad interpretation by the courts and strong concerns about the retrospective application of this bill. I say again: these serious issues were raised by the parliament's own committee.

Also worth noting is the number of offences that this bill creates, the majority of which relate to penalising bodies corporate for failing to adhere to time frames and procedures for updating the CMS. Like many other honourable members in this House, I am not in

[53] *Record of Proceedings*, 5 April 2011, pages 965-967.

> *favour of the practice of retrospective legislation. This bill before us would enable retrospectivity to apply many years back. In March 2008 in this House I said—*
>
> > *Retrospective legislation is contrary to fundamental legislative principles.*
>
> *…*
>
> *My position has not changed but, very clearly, those interjecting do not really care about fundamental legislative principles. Aspects of this proposed legislation will have retrospective impact on some community title schemes, with the ability to revert contribution schedule lot entitlements to their original settings prior to any and all adjustment orders. Reverting contribution schedule lot entitlement adjustments may be seen as a breach of fundamental legislative principles as orders from a specialist adjudicator, tribunal and court will be overturned even though they were made in accordance with the law at that time.*[54]

Was the 2011 reversion process good policy?

The Committee considers the overwhelming evidence suggests that the 2011 reversion process was not good policy. While there may have been good intentions by the then Minister to fix the perceived problems in the marketplace, the manner in which the policy objective was implemented is hard to describe as anything other than poor.

The 2011 reversion process has divided communities by the way in which it allowed the process to take place by motion of a single owner. As set out by Mr Ian Leslie OAM, in his submission on the current Bill:

> *Decisions of Courts, legal argument, the work of independent adjudicators, the principle of fairness swept aside.*
>
> *CMS's were reverted on the request of just a **SINGLE OWNER** without any requirement to provide factual estimates of cost impact. A **single owner** empowered to wield disproportionate power over the majority.*
>
> *Adversely affected owners could appeal only on narrow legal grounds, namely the definition of "an adjustment order". The right to seek a fair or realistic adjustment of Lot entitlements by way of independent assessment was arbitrarily apportioned on a time frame basis. Pre-2011 CMS's were denied this right. Post-2011 CMS's allowed this right.*
>
> *This created two classes of owners. One with the right to appeal to achieve fairness….the other with no such right.*
>
> *The 2011 Amendments denied owners the natural rights and liberties of individuals.*[55]

The Committee considers that the policy objective in the Bill of discontinuing any further reversions is sound and ought to be implemented to stop any further reversions from taking place.

When should the line be drawn?

The Attorney-General stated in his introductory speech:

> *In introducing the bill, I want to make particular emphasis that the provisions stopping the reversion process will take effect from today. If the administrative and legal steps associated with a reversion have not been completed before today, no further action will be able to be taken to give the reversion effect. Regrettably, that does introduce a*

54 *Record of Proceedings*, 5 April 2011, page 970.

55 Mr Ian Leslie OAM, Submission 53, page 5.

> *degree of retrospectivity but, again, the public interest is best served by certainty from today.*[56]

The Committee notes the comments by Mrs Stuckey MP in 2011 on the retrospective nature and acknowledges that those comments could equally apply in this situation. The Explanatory Notes provide:

> *It is arguable that this amendment adversely affects some individuals by discontinuing an existing statutory right for lot owners in certain community titles scheme to require their body corporate to return to earlier contribution schedule lot entitlements, notwithstanding that the lot entitlements have been lawfully adjusted by a judicial or quasi-judicial process.*
>
> *However, it is considered the possible breach of fundamental legislative principles in ending the reversion process introduced in 2011 is justified and necessary on the basis that it removes the mechanism whereby independent and lawful decisions of specialist adjudicators, tribunals and courts are effectively over-ridden not by superior judicial bodies, but by simple motions presented to a body corporate by an individual aggrieved lot owner.*
>
> *Under the Bill, amendments to end the reversion process introduced in 2011 will be deemed to commence upon introduction of the Bill into the Legislative Assembly. Moreover, 'incomplete adjustment matters' (as defined in the Bill) will also be deemed to be ineffective as of the date of introduction.*[57]

The Committee agrees it is not preferable for any law to have retrospective effect as in a general sense, such provisions pre-suppose the outcome of the Parliamentary process and this shows little regard to the institution of Parliament.

As set out by the Attorney-General, these specific provisions go further than simply stopping any future reversion processes from commencing. In giving effect to the policy objective, the amendments deem any reversion process that is not complete to cease having any effect from the date of introduction of the Bill into the Legislative Assembly, i.e. 14 September 2012.

This has created uncertainty within the industry. From the day the Bill was referred to the Committee for consideration, Committee staff have received queries from members of the public about the 'new laws that had already commenced' stopping any further reversions. Members of the public were directed to the Department for further information and it is likely the Department received many calls in their own right. This highlights the problem with laws of this nature.

At the time of writing, it is almost two months after the Bill was introduced. The timing for the debate of the Bill is unknown. However, it was reported in *The Courier Mail* on Saturday 10 November 2012 that a spokeswoman for the Attorney-General said: "*the legislation*, *which was introduced to State Parliament in September, would not go through this year".*[58] It is therefore likely that the Bill will not be debated until February or March 2013.

This means that for almost 6 months the law as it currently stands still applies – that is allowing the 2011 reversion processes to take place - but hanging over the top like the sword of Damocles are retrospective provisions of a Bill yet to become law which will deem such processes as invalid.

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56 *Record of Proceedings*, 14 September, page 2073.

57 Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, pages 6-7.

58 Owners made to wait on fees*, The Courier Mail*, 10 November 2012, page 33.

All current reversion processes are effectively in limbo until the outcome of the Bill is known. The Committee notes the Registrar of Titles will continue to accept requests to *lodge* a new CMS but will not affect *registration* until the Bill progresses through the Parliament.

This is clearly not satisfactory. Retrospective provisions such as these inherently affect the rights and liberties of people and the Committee notes albeit that it was poor policy, those persons currently going through a reversion process would have had a legitimate expectation under the BCCM Act that the process would go through to completion.

The Explanatory Notes justify the retrospective nature of the Bill as:

> *...a means of avoiding unnecessary costs and disruption in community titles schemes which are currently subject to a reversion process, or which otherwise could be subject to a reversion process prior to the passage of the Bill. This is particularly important given that the Bill will facilitate a process (discussed below) to enable bodies corporate to change their contribution schedule lot entitlements back to the lot entitlements that applied to the scheme, prior to the intervention of the reversion process introduced in 2011.*[59]

While this justification may be compelling it is on the assumption that (a) the Bill will be passed without amendment; and (b) the parties to the reversion process will undergo a reinstatement to the reversion process in accordance with the provisions of the Bill. But it does not take into account the costs effectively thrown away in the steps taken up until now in the process that will be deemed invalid, despite complying with all aspects of the law as it currently stands.

Further, there is still no decision by Government as to what further reform is to occur in the area of lot entitlements that may ultimately affect owners when such further reforms are implemented.

In determining when the ability to undertake the reversion processes should cease, the Committee has attempted to once again return to the concept of stability for unit owners and body corporate operators. To change the date for when the line should be drawn may benefit some parties who currently thought they had missed out, but then will also be to the detriment of others.

To change the effective date that has now been publicly discussed in so much detail, will simply create another smaller interim class of winners and losers.

The Committee considers that while it is not preferable, the line must be drawn somewhere and in absence of any more fairer proposal the Committee accepts that the date for discontinuance should remain as the date the Attorney-General introduced the Bill, that is 14 September 2012.

Recommendation 3

The Committee recommends that the Bill retain the relevant provisions which will discontinue the 2011 reversion process with effect from 14 September 2012.

In relation to those processes that are deemed to be incomplete by the passage of the Bill, the Committee notes that disaffected persons may attempt to seek compensation from the Government for their costs thrown away on processes enshrined in law that have been removed from under them. The Government will no doubt consider any claim for compensation on a case by case basis.

However the Committee considers that it would be unconscionable for any Government fee charged under the 2011 reversion process, such as lodgement of a CMS with the Titles Office, to be retained if the applicant is prohibited from obtaining any benefit associated with the payment of the fee as a consequence of the provisions in the Bill deeming the process to be invalid.

[59] Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 7.

Recommendation 4

The Committee recommends that the Bill be amended to include provisions to reimburse any Government fee or charge imposed in relation to a reversion process that is deemed to be an incomplete reversion process under this Bill.

3.2 Reversing the 2011 Reversion Process

The second objective of the Bill is to establish 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 reason provided for the objective is to re-instate the effect of independent judicial and quasi-judicial decisions lawfully sought by lot owners, and made, prior to commencement of the 2011 reversion process.[60]

This objective stated simply – is to allow for reversal of the reversions.

How will this process affect unit owners?

With respect to the creation of winners and losers by the various changes to the BCCM Act, Leary & Partners Pty Ltd, Quantity Surveyors, submitted:

> *Unfortunately, there is no policy position regarding the setting, adjustment, reversion or the changing back of reverted entitlements (for the purposes of this submission described as 'adjustment reinstatement') of contribution entitlements that does not adversely affect certain lot owners while benefiting others. It is both understandable and reasonable that lot owners disadvantaged by either an initial adjustment order, a subsequent reversion, or an adjustment reinstatement will argue that legislators are acting unfairly and unjustly when they enabling such changes to occur.*
>
> *There is no doubt that both adjustments and reversions have created genuine pain and hardship for particular individuals. The same will be true if the adjustment reinstatement process in the Body Corporate and Community Management and Other Legislation Amendments Bill 2012 (2012 Bill) is enacted. However, we cannot avoid the observation that with each proposed amendment to the Act we have heard the same hardship based arguments, just from a different group of people.*[61]

The Committee has received a large number of submissions from a broad section of lot owners who will either stand to gain or lose from these amendments. As stated above, the Committee recognises there will be winners and losers regardless of whether the Bill is passed and in some instances it cannot be denied that there will be real cases of severe hardship.

The Committee has considered all the submissions provided and notes that submitters from both sides of the fence have put forth compelling reasons as to why the Bill should, or should not, be passed. As foreshadowed by the Department in its initial briefing to the Committee:

> *Issues around the setting and adjustment of contribution schedule lot entitlements in community titles schemes are emotive and contentious, particularly because they directly relate to the costs borne by individual lot owners in contributing to body corporate expenses.*[62]

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60 Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 8.

61 Leary & Partners, Submission 240, pages 1-2.

62 Letter from the Department of Justice and Attorney-General, 27 September 2012, page 3.

The Committee considers the matter being addressed by this part of the Bill is not a simple case as purported by some submitters as deciding between wealthy penthouse owners versus poorer small unit owners. To pigeon hole this issue along those lines is plainly incorrect on many different levels. In considering the validity or otherwise of the policy objectives being pursued, the Committee considers that it is not appropriate to consider the financial circumstances of any individual lot owner and compare it to any other. The Committee is not in a position to make any judgment on those grounds.

Further, while many submissions set out instances of CTS which have vastly different levels of unit size within them i.e. 2 bedroom units through to penthouses, Leary & Partners highlights in its submission, that this debate is not limited to only those circumstances. Leary & Partners submitted:

> *We note that much of the public debate, articles and submissions appear to be very Gold Coast tower centric. This demographic comprises a significant proportion of the adjustment orders but it is by no means representative of the total pool of adjustment effected schemes or the full range of adjustment experiences. For example, there appears to be little reference to the canal style land developments where entitlements were adjusted so that lots on the water facing side of the road did not pay twice the cost of body corporate management or access road maintenance merely because they had a water view. I have seen no reference to schemes where lots had been changed from commercial to residential use without the resulting cost impact on the body corporate having been recognized. I have seen no reference to the townhouse schemes that were registered with a mix of GTP and BFP lots and in which all the lots paid identical levies but only BFP lots were maintained by the body corporate. In many of these schemes the majority of the lot owners were actively seeking to obtain an adjustment order because the inequity was obvious and the community disruption it was causing otherwise insolvable. The need for a (sic) adjustment order was normally because people were disputing exactly what the entitlements should change to, not if a change was required.*[63]

The Committee has therefore been careful not to refer to any specific submission of a single lot owner in this part so as not to be perceived as giving any unit owner's plight more weight than any other owner.

That being said, the Committee recognises that regardless of what recommendation the Committee makes on this issue, there will be a large group of dissatisfied submitters.

What does the proposed reversal process do?

The Attorney-General stated in his introductory speech:

> *The bill will also provide a process to enable reversions of contribution schedule lot entitlements which have taken place since the April 2011 amendments to be 'undone'. That is, a lot owner can submit a request to 'undo' the reversion and the body corporate or committee for the body corporate must undertake a process to 'undo' the reversion, subject to considerations around boundary changes, subdivision of lots, amalgamations of lots or material changes which may have relevance in the period since the adjustment order was handed down.*[64]

The Bill will therefore insert into the BCCM Act as part of further transitional arrangements, a new 'Division 3 – Reinstatement of last adjustment order entitlements' to give effect to this objective.

63 Leary & Partners, Submission 240, page 2.

64 *Record of Proceedings*, 14 September 2012, page 2073.

The Queensland Law Society submitted that:

> *The Society notes that ss 403 and 404 [contained in Division 3] proposed by the Bill operate in effectively the same way as the provisions of concern in the 2011 Act, but in reverse.*
>
> *The Society is therefore opposed to this aspect of the Bill. In the Society's view, this will simply lead to unnecessary costs being incurred and angst within community titles schemes. A better approach, we submit, would be for the government to determine its final approach to the vexed issue of lot entitlement adjustment before allowing any further changes to be made.*[65]

The Australian College of Community Association Lawyers Inc, similarly submitted:

> *… the College objects to Item 3 to 'undo' any reversion process already undertaken. To simply 'undo the wrong' does not make it right. Whilst an adjustment of the contribution schedule lot entitlements affected many owners, likewise the reversion process also affected many owners.*
>
> *The College suggests that a moratorium be put on the 'reversal of the reversal' process until such time as the Government looks at the broader issue of the setting of and adjustment of the contribution schedule lot entitlements.*
>
> *A survey of the College's members reveals that they have been involved In over one hundred reversions. In many instances, there have been 'big winners' and 'big losers', both in relation to an order or the reversal process.*
>
> *In addition, some bodies corporate have had their lot entitlements adjusted and reversed two or three times in as many years, including overturning the reversion process as a result of a dispute as to whether the original order was an 'adjustment order' or a 'consent order'.*
>
> *This has lead to both widespread uncertainty for any one purchasing a lot in a community titles scheme and also distress to owners who have had to sell or are unable to sell their lot because of increased levies. The College can provide many examples where the adjustment or reversion of the contribution schedule lot entitlements has had a detrimental effect on owners.*
>
> *...*
>
> *….In conclusion, the College congratulations the Government on recognising that the 2011 Amendments to the BCCM Act were unjust and inequitable, however the College is of the view that to 'reverse the reversal' process is not good law and urges the Government to put a moratorium on the reversal process until a just and equitable system for the setting and adjustment of contribution schedule lot entitlements can be determined.*[66]

The Department responded:

> *Submission 243, from the Queensland Law Society (QLS), opposes the reinstatement process proposed by the Bill and notes that the reinstatement process operates effectively the same way as the 2011 reversion process, but in reverse. The QLS states that it opposes the reinstatement process for the same reasons that it opposed the 2011 reversion process, that is:*

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65 Queensland Law Society, Submission 243, page 5.

66 Australian College of Community Association Lawyers Inc, Submission 268, pages 3 and 5.

> *These provisions restrict the outcome of a reversion application and in effect make it an offence for a body corporate or committee to decide to reject the application. These provisions do not have sufficient regard to the rights and liabilities of individuals, are inconsistent with the principles of natural justice and are an inappropriate use of criminal sanction.*

In regards to fundamental legislative principles, the reinstatement process may adversely impact on lot owners who benefited from the 2011 reversion process; does not provide the body corporate or owners with the ability to influence or challenge the reinstatement of lot entitlements (other than in relation to limited grounds relating to modifications to the scheme); and creates new offence provisions.

The explanatory notes for the Bill state that the potential breaches of fundamental legislative principles by the Bill are considered justified and necessary as a means of achieving the policy objective of reinstating the effect of independent judicial and quasi-judicial decisions lawfully sought by lot owners, and made, prior to the commencement of the 2011 reversion process.

Significantly, and in contrast to the 2011 reversion process, the reinstatement process will put in place lot entitlements that have been ruled to be fair and equitable by a judicial or quasi-judicial body and are consistent with a principle for setting lot entitlements in the BCCM Act.[67]

As stated above, it is difficult for the Committee when objectively considering policy proposals to remain critical of the 2011 amendments without expressing concern over the proposed reinstatement process to be established under this Bill.

The reinstatement process under the Bill allows, similar to the 2011 reversion process, for a single lot owner to submit a request to the body corporate committee to adjust the contribution schedule lot entitlements to reflect the entitlements as they applied prior to the 2011 reversion process (subject to certain adjustments to reflect boundary changes, amalgamations and or subdivisions that occurred since the last adjustment order).

The Explanatory Notes acknowledge:

> *It is arguable that the new process for dealing with changes to contribution schedule lot entitlements contravenes fundamental legislative principles by adversely impacting on lot owners who benefited from the reversion process introduced in 2011 (for example, lot owners whose contribution schedule lot entitlements were proportionally lowered as a result of the reversion process resulting in proportionally lower body corporate contributions).*[68]

The key policy objective set out by the Attorney-General under this part is to reinstate the effect of independent judicial and quasi-judicial decisions lawfully sought by lot owners, and made, prior to the commencement of the 2011 reversion process and this is used for the justification of the breach of fundamental legislative principles.

The Committee accepts that this policy objective may *ultimately* be a sound policy which is worth pursuing, but the Committee has had difficulty in accepting the need to enable the unwinding of the current reversion processes and allow for further adjustments to lot entitlements to occur as an *interim* measure prior to the Government's broader review.

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67 Letter from the Department of Justice and Attorney-General, Summary of Submissions (By Issue), 26 October 2012, page 10.

68 Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 8.

The issue of providing certainty and stability comes back to the Committee again when considering this aspect of the Bill and the Committee considers that no further legislative mechanisms for adjustment should be put in place prior to the Government's broader review of lot entitlements.

As noted by the Committee in section 3.1 of this Report, it may be another 3-4 months until this Bill is passed. With the time taken for the proposed reinstatement process to proceed through to a new CMS being registered, it may be a further 3-4 months again (depending on which steps in the process are required to be undertaken) until any further adjustment of fees is seen. The Committee considers that throughout this period, further unnecessary costs will be incurred by owners in their own right and also through bodies corporate to participate in this process when the policy for the ongoing setting and adjustment of lot entitlements are not settled.

The Committee considers that the removal of the reinstatement process will assist in providing stability for unit owners and increase certainty for buyers until the final policy settings are put into place by the Government. In response to submissions[69] suggesting that the Bill, as drafted, will increase uncertainty, the Department stated:

> *... it is noted that while the Bill will result in the lot entitlements changing for some schemes, the number of schemes potentially impacted is a very small portion of the community titles sector (approximately 130 schemes of the 41,000). In fact it is arguable that the Bill increases certainty for potential purchasers of lots in schemes which could have had their lot entitlements changed under the 2011 reversion process until April 2014 (the legislated sunset date for the 2011 reversion process) by discontinuing that process from 14 September 2012.*[70]

The Committee heard a differing view at the public hearing on the number of schemes which could potentially be impacted. Ms Ros Janes, Council Member, Australian College of Community Association Lawyers stated:

> *The department assessed that there were only 130 schemes affected by adjustment orders. I would suggest that it is probably three or four times that number, the reason being that there were a lot of orders that were not published. After the Centrepoint decision and because there was a rule then many bodies corporate folded when applications were made and they simply negotiated on the numbers and they consented. I would say the number is a whole lot more.*[71]

While the Committee accepts that the Bill will improve certainty in stopping future reversions under the 2011 amendments, the Committee does not accept there will be any increased certainty for lot owners or potential buyers if the reinstatement process is retained in the Bill.

Recommendation 5

The Bill be amended to remove from clause 13, the whole of '*Division 3 – Reinstatement of last adjustment order entitlements*'. That is, the removal from the Bill of the process which will reverse current 2011 reversions.

The Committee considers that there have been a number of issues raised in submissions which the Department has stated should be considered as part of the Attorney-General's broader review of lot entitlements but would not be dealt with as part of the consideration for this Bill.

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69 Property Council of Australia (Qld Branch), Submission 226 and Mr David Bowers, Submission 256.

70 Department of Justice and Attorney-General, response to submissions (by issue), 26 October 2012, page 11.

71 Examination of the Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Transcript of Proceedings*, 31 October 2012, page 30.

These issues included:

- *examining compliance regime for developers;*[72]
- *the operation of section 47B of the BCCM Act;*[73] *and*
- *how to treat lot entitlement adjustments following amalgamations or subdivisions.*[74]

The Committee agrees that these issues among many others must be considered as part of the broader review, however the Committee also considers that issues like these highlight the need for the reinstatement process to be removed from the Bill and no further adjustment mechanisms being put in place until a final decision on the policy settings is made.

The Committee considers proceeding with another interim adjustment mechanism prior to these issues being resolved may simply lead to further inequities among unit owners. The Committee does not consider that trying to achieve the Attorney-General's interim policy position is justified at the expense of such possible further inequities.

The Committee acknowledges appropriate consequential amendments may also be required to give effect to **Recommendation 5**.

Recognition of pre-commencement adjustment actions

In the instance that **Recommendation 5** is not accepted by the Attorney-General and the Bill proceeds in its entirety, the Committee notes the Attorney-General's policy objective may not be achieved in all instances. In submissions from both Anthony Delaney and Hynes Lawyers, issues with the Bill's inconsistent approach in giving effect to the last judicial decision were pointed out.

Hynes Lawyers submitted:

> *The Bill as it currently stands only allows for the reinstatement of CSLEs made pursuant to an adjustment order that have been reverted by operation of the 2011 Amendments.*
>
> *The Bill does not provide for circumstances such as West End Central, where an adjustment order **had** been made but the 2011 Amendments prevented the recording of a new CMS to give effect to that adjustment order.*
>
> *In its current state, the Bill does not provide any recourse to allow owners of lots in schemes such as West End Central to correct the mischief caused by the 2011 Amendments, particularly where a tribunal has independently determined that the CSLEs are not just and equitable.*[75]

The Department confirmed in its response to submissions:

> *The 2011 amendments to the BCCM Act provided that any adjustment orders made prior to the commencement of the amendments (14 April 2011) which were not given effect, by the recording of a new community management statement, immediately before the amendments commenced were deemed to be pre-commencement adjustment actions that, from 14 April 2011, were taken never to have been made and no further action could be taken to give them effect (see sections 372 and 377 of the BCCM Act).*
>
> *Submissions 157 and 227 recommend that the Bill should provide for adjustment orders deemed to be pre-commencement adjustment actions by the 2011 amendments to be*

72 Property Council of Australia (Qld Branch), Submission 226 and Mr David Bowers, Submission 256.
73 Leary & Partners, Submission 240.
74 Audrey Jankowski and John Womersley, Submission 15.
75 Hynes Lawyers on behalf of Mango Property Pty Ltd, Submission 227, page 3.

given effect. Submission 157 suggests that such an amendment would align with the policy intent of the Bill to provide for last adjustment order entitlements to be reinstated.

The Department notes that, as currently drafted, the Bill does not provide for adjustment orders deemed to be pre-commencement adjustment actions by the 2011 amendments to be given effect. However, the Department agrees that providing for adjustment orders that were deemed pre-commencement actions by the 2011 amendments to be given effect would align with the policy intent of the Bill, which is to provide schemes with an opportunity to adopt the lot entitlements last decided (before 14 April 2011) by a court, tribunal or specialist adjudicator as fair and equitable. [76]

While the Committee does not consider the reinstatement process should remain in the Bill, the Committee highlights this matter for the attention of Members in considering whether the policy objective of the reinstatement process will be achieved under the Bill, as currently drafted.

Alternate Recommendation 6

Should the Bill retain the reinstatement process, the Bill should be amended to ensure adjustment orders deemed to be pre-commencement orders under the 2011 amendments be given effect under the Bill to allow them to be brought within the scope of the reinstatement process.

Timeframes for the Reinstatement process

Similarly, many submitters who were in favour of the reinstatement process proposed in the Bill have raised issues with the time limits set out for each of the various steps to be taken throughout that process.[77]

The issues raised included:

- **Reducing the 60 day timeframe prescribed in section 403(3) -** for a body corporate committee to perform certain duties after receiving a request from a lot owner to reinstate the last adjustment order entitlements;
- **Including a maximum timeframe in section 403(4) –** in which the body corporate committee is able to take submissions under **section** 403(3). The provision provides the submission period must be a minimum of 28 days but sets no maximum period;
- **Including a maximum timeframe in section 404(2) –** in which the committee must consider submissions made during the submission period. The provision gives no guidance for a time in which the committee must make a decision; and
- **Reducing the 90 day timeframe prescribed in section 404(4) –** for a body corporate to lodge the request to record a new community management statement.

The Department stated in response to these issues:

The Department considers it important to ensure that body corporate committees are provided with adequate timeframes for undertaking the requirements of the reinstatement process. It is important to note that committees are comprised of a maximum of 7 lot owners who may also have full-time or part-time occupations or other responsibilities in addition to their committee role and this may limit their ability to undertake the reinstatement process within short timeframes. Further, some schemes are comprised of hundreds of lots and it is important to ensure that a committee is

[76] Department of Justice and Attorney-General, response to submissions (by issue), 26 October 2012, page 19.

[77] Over 50 of the submissions received recommended the timeframes be reviewed.

> *provided with adequate time to consider submissions made by lot owners about any modifications necessary to the last adjustment order entitlements.*
>
> [Body Corporate] *Committees may also consider it necessary to seek legal or other professional advice in undertaking the reinstatement process which can sometimes take considerable time to obtain.*
>
> *The Committee may also wish to note that the Office of the Commissioner for Body Corporate and Community Management in the Department provides a low cost dispute resolution services for people who live, work and invest in community titles schemes. If a lot owner in a scheme believes the body corporate committee for their scheme is deliberately frustrating the reinstatement process, they may make an application for dispute resolution with the Office of the Commissioner to seek an order of an adjudicator requiring the committee to complete the reinstatement process.* [78]

The Committee considers that the process outlined as it currently stands includes very generous timeframes for bodies corporate to comply with the relative requirements and invites unit owners, and bodies corporate who are made up of owners that are not in favour of a proposed reinstatement process for their complex, to take advantage of the timelines and '*game*' the process to delay the process as long as possible. The Committee considers these issues again highlight the additional time and effort unit owners will go through when undertaking an adjustment process, the potential legal and other costs that will be incurred, and angst that will occur for owners in unit complexes. The Committee is not satisfied this is justified in furtherance of achieving the Attorney-General's interim policy objective of reverting to the previous adjustment order.

The Committee considers that if the Bill does proceed unamended, that the Attorney-General strongly consider the issues that have been raised in submissions relating to timeframes and ensures that the timeframes do not allow for gaming of the process to give unit owners a swift process that will not drag on and incur significant further costs.

The Committee sees merit in including maximum timeframes where suggested however makes no specific recommendations in this regard, as the Committee has not recommended that the process remain in the Bill.

3.3 Amendment of Disclosure Requirements

The third objective of the Bill is to remove unnecessary disclosure requirements imposed on sellers of lots in community titles schemes and therefore reduce the regulatory burden on sellers. This is given effect by proposed clauses 6-9 of the Bill.

These disclosure requirements which the Bill proposes to remove were those introduced in the 2011 Act.

In introducing the Bill, the Attorney-General stated:

> *The 2011 amendments also required sellers of lots to provide a copy of the scheme's community management statement with the disclosure statement. Many community management statements might be only six to eight pages long, but for large and progressively developed schemes the community management statements can be up to 100 pages or even longer. While they are important documents, they are also technical documents, and the government is not convinced that requiring them to be attached to the contracts of sale necessarily serves the interests of the buyer and clearly does add to*

[78] Department of Justice and Attorney-General, response to submissions (by issue), 26 October 2012, pages 18-19.

the complexity and cost of the process. They are as likely to confuse as to clarify in a sales environment. In any case, any prospective buyer can obtain a copy of the community management statement from the Registrar of Titles at any time in their normal due diligence processes. Therefore, the bill removes these unnecessary disclosure requirements.[79]

Further information was provided in the Explanatory Notes:

The [BCCM Act] *requires a seller of a lot in a community titles scheme to disclose particular information to a buyer. As part of the disclosure regime, the seller must give the buyer a disclosure statement.*

The 2011 amendments require a seller to state the following additional information in the disclosure statement:

- *the extent to which the annual contributions currently fixed by the body corporate as payable by the owner of the lot are based on the contribution schedule lot entitlements for the lots included in the scheme;*
- *the extent to which the annual contributions currently fixed by the body corporate as payable by the owner of the lot are based on the interest schedule lot entitlements for the lots included in the scheme; and*
- *that the contribution schedule lot entitlements, and interest schedule lot entitlements, for the lots included in the scheme are set out in the community management statement (CMS) for the scheme.*

Also, for the sale of an existing lot, the 2011 amendments required the disclosure statement to be accompanied by a copy of the scheme's CMS.

The additional requirements relating to disclosure statements introduced by the 2011 amendments are considered unnecessary red tape by sellers and the real estate sector. This is because the requirements to describe the extent to which the annual contributions are based on the different lot entitlement schedules are sometimes difficult to comply with and the requirement to provide a copy of the CMS adds to conveyancing costs. Moreover, an interested buyer of an existing lot may obtain a copy of the CMS for the scheme through a search of Land Registry records and can obtain additional financial information relating to the lot by requesting a body corporate information certificate and searching the body corporate records.

The Bill reduces the regulatory burden relating to the sale of lots by removing unnecessary additional requirements for disclosure statements introduced by the 2011 amendments.[80]

In relation to proposed lots, that is, a lot sold off-the-plan:

The Bill does not remove the requirement for disclosure statements … to be accompanied by the proposed CMS. The principle reason for retaining this requirements is that a proposed CMS may not otherwise be available for a proposed buyer to access (for example, the proposed CMS may not be held by, or accessible by searching the Land Registry).[81]

79 *Transcript of Proceedings*, 14 September, page 2074.

80 Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, pages 3-4.

81 Letter from the Department of Justice and Attorney-General, 27 September 2012, page 7.

The Committee notes that only a small number of the total number of submissions received addressed the removal of these disclosure requirements and of those, the majority supported the changes.[82]

Of those submissions, the following objected to the proposed changes.

Mr John McDonald of Robinson & Robinson, Lawyers, stated:

> *The requirement of the attachment of the CMS is one of the few recent changes that has merit. Particularly in relation to the other Disclosure Statements etc. The CMS should be retained.*
>
> *The principal merit is that the standard contract does not provide for the nature of the property to be described eg. home unit – 2 car spaces, 2 storage spaces, etc. Because of this the buyer does not know what he is contracting to buy (as opposed to the property he has seen) until searches are carried out.*
>
> *If for example a unit is shown with two car spaces and the CMS only gives one to the buyer, then the buyer is out in the cold.*[83]

Strata Community Australia (Queensland) suggests that an analysis of the impact, if any, that provision of a CMS has had on the prevalence of dispute resolution, be conducted before the CMS disclosure obligation is removed:

> *Since the 14 April 2011 amendments to the Act, experience has revealed that the provision of the Explanation by a seller, in large part based upon the provision of information by their Body Corporate Manager, represents at worst a minor inconvenience. This is to be contrasted to the benefits of drawing the attention of buyers to the importance of lot entitlements, and the manner in which their share of Body Corporate expenses are calculated. SCA (Qld) supports owner education, provided it does not significantly adversely impact the operation of the (strata) property market, including for example by increasing transaction costs.*
>
> *The provision of a current CMS has resulted in an increase in transaction costs, typically of approximately $100 per sale. Well represented buyers obtain a copy of the CMS from their solicitors during the purchase process. On this basis there are arguments that provision of a CMS is unnecessary.*
>
> *Experience however has revealed that provision of a CMS before a purchase has been entered upon has the effect of bringing to the attention of the potential buyer the by-laws of the community titles scheme.*
>
> *Potential owner-occupiers should be aware of the by-laws to ensure that the by-laws for the Scheme suit their lifestyle; for example as to the keeping of pets. Further, investor owners are obligated to provide a copy of the by-laws to tenants. Early provision of a CMS facilitates these outcomes.*
>
> *SCA (Qld) has not conducted an analysis of the impact, if any, that provision of the by-laws has had the prevalence of dispute resolution. lt is possible that there has been an effect, given the potential increase in awareness of buyers of the by-laws which affect them after they become lot owners. If there was such an effect it would take some time*

[82] See, for example, Property Council of Australia, Submission 226; Real Estate Institute of Queensland, Submission 228; Queensland Law Society, Submission 243; Unit Owners Association of Queensland, Submission 246; Urban Development Institute of Australia, Submission 253; David Bowers, Submission 256; and Australian College of Community Association Lawyers, Submission 268.

[83] John McDonald, Submission 195, page 5.

> *to become apparent; at least as long as the average current period of ownership of community title lots in Queensland. SCA (Qld) recommends that such an analysis be conducted before the CMS disclosure obligation is removed.*[84]
>
> *If the provision of a CMS before purchase has the effect of decreasing the rate of disputation in community titles schemes then the CMS disclosure obligation ought not, in the view of SCA (Qld) and having regard to the financial and emotional costs of disputation, be removed.*

In response, the Department stated:

> *It is clear that the community management statement for a community titles scheme includes important information that a buyer should be aware of prior to completing their purchase of a lot in the community titles scheme. However, buyers can obtain copies of a community management statement for an existing scheme through the Land Registry. By removing the requirement for sellers to provide the community management statement, the amendment will reduce the regulatory burden on sellers, while continuing to enable buyers to access information contained within the community management statement by searching Land Registry records.*[85]

On the issue of obtaining a copy of a CMS, it is noted that in a submission made by the QLS to the Department in September 2010 (replicated in its current submission), the QLS proposed that CMS should be easily and freely available to the public:

> *As a matter of general principle the Society supports the disclosure of relevant information to prospective buyers of real property. The QLS has previously stated its view that making the buyer aware of relevant information about the property they wish to purchase as well as their rights and obligations with respect to that property prior to entering into a contract for sale is the fundamental value that solicitors have to offer to consumers in the conveyancing process.*
>
> *However, the requirement to disclose the current CMS with a contract for the sale of an existing lot will have a significant practical impact on the safe process and conveyancing practice. Many owners of lots may have difficulty accessing the current appropriate version of the CMS prior to sale except by payment of a fee and search of the land title register. This imposes an additional cost on sellers of units and the provision of such a large document with the sale contract will mean that the use of facsimile will become impractical for contract delivery.*
>
> *We propose that a similar awareness may be created through requiring all CMS to be easily and freely available to the public on a Government register accessible through a website and for there to be a clear statement within the disclosure documentation directing a prospective buyer to the location of the register to investigate the CMS. This approach would facilitate the delivery of contract documentation for the sale of existing lots and would also assist motivated purchasers of property to access relevant information prior to receiving a contract for sale.*[86]

84 Strata Community Australia (Qld), Submission 261, pages 2-3.

85 Department of Justice and Attorney-General, response to submissions (by issue), 26 October 2012, page 22.

86 Queensland Law Society, Submission 243, page 5.

It is also noted that the QLS supports the proposed changes 'at this time', while advocating for '*a full and co-ordinated seller disclosure regime similar to that operating in other Australian States*.'[87] This temporal endorsement appears to relate to what it considers to be 'a *considerable lack of knowledge and non-compliance amongst real estate agents (who generally control the contract formation process without the involvement of a lawyer).*'[88]

The Committee has considered the policy objective of the amendments and is satisfied that the proposed changes will assist in reducing regulatory burden. This is supported by the majority of submissions received by the Committee. In addition, the Committee considers the proposal by the QLS to make this information more freely available has merit, and notes that it does not appear to be inconsistent with the Government's policy objective. The Committee considers this should be investigated further by the Attorney-General in his broader review of lot entitlements in 2013.

Recommendation 7

The Bill retain the amendments to remove the disclosure requirements introduced by the *Body Corporate and Community Management and Other Legislation Amendment Act 2011*.

3.4 Providing consistency with resolution of disputes

The final objective of the Bill is to provide jurisdictional consistency for the resolution of disputes about contribution schedule lot entitlement adjustments.

Parts 3 and 4 (clauses 17-20) of the Bill propose amendments to the regulations and rules of the Queensland Civil and Administrative Tribunal (QCAT) to support the changes to the BCCM Act, specifically the new sections 47AA, 406 and 408.

Clauses 17 and 18 amend Schedule 1, part 1 of the Queensland Civil and Administrative Tribunal Regulation 2009. This Schedule identifies specific provisions of the BCCM Act that confer jurisdiction on QCAT. In addition to existing provisions, new sections 47AA, 406 and 408 will confer jurisdiction on QCAT.

In extending QCAT's jurisdiction, the Bill also attempts to achieve consistency by recognising that '*most disputes about contribution schedule lot entitlement adjustments are identified as* '*complex disputes' that fall within the jurisdiction of a specialist adjudicator under Chapter 6 of the* [BCCM] *Act or* [QCAT].'[89] This was further explained in the Explanatory Notes:

> *The 2011 amendments made specific provision for a body corporate to adjust the contribution schedule lot entitlements for the scheme by resolution without dissent. However, the 2011 amendments did not specifically provide for resolution of disputes about these adjustments by a specialist adjudicator or QCAT. It is inappropriate for these disputes to be resolved by a department adjudicator because of the complex nature of these disputes.*
>
> *To ensure appropriate and consistent dispute resolution about contribution schedule lot entitlement adjustments under the Act, the Bill provides for disputes about adjustments of contribution schedule lot entitlements by resolution without dissent to be resolved by a specialist adjudicator or QCAT.*

87 Queensland Law Society, Submission 243, page 6.

88 Queensland Law Society, Submission 243, page 6.

89 Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 4.

> *In contrast, disputes about procedural aspects of a general meeting called to consider a motion to adjust the contribution schedule lot entitlements may continue to be resolved by any dispute resolution process under Chapter 6 of the Act, including department adjudication.*[90]

Clauses 19 and 20 amend the Queensland Civil and Administrative Tribunal Rules 2009 and extend the timeframes already provided for in the BCCM Act to new sections 47AA, 406 and 408.

The Committee is not aware of any issue associated with this aspect of the Bill and supports these amendments - however notes that the application of this part to sections 406 and 408 will not be necessary if **Recommendation 5** is accepted.

Recommendation 8

The Bill retain the amendments to provide jurisdictional consistency for the resolution of disputes about contribution schedule lot entitlement adjustments in so far as they do not relate to the proposed *Division 3 – Reinstatement of Last Adjustment Entitlements.*

Should **Recommendation 5** not be accepted, the Committee considers that Parts 3 & 4 of the Bill, should be retained as drafted to ensure consistency for disputes that may arise under the process outlined in Division 3.

90 Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 4.

4. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. In addition to those issues which have been raised in parts 3.1 and 3.2 of this Report, the Committee draws the following to the attention of the Legislative Assembly.

4.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

New offences

The Explanatory Notes provide the following in relation to new offence provisions contained in the Bill:

> *The Bill includes new offence provisions, 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, specialist adjudicator or QCAT under the Act that the contribution schedule lot entitlements be adjusted.*
>
> *The new offence provisions are considered necessary to ensure lawful decisions to adjust contribution schedule lot entitlements are given effect through a new community management statement.*
>
> *The new offences and maximum penalties are consistent with 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.*[91]

A summary of the proposed new office provisions are set out below:

Clause	Proposed offence	Proposed maximum penalty
4, inserts section 47AC	Failure by the body corporate to lodge, as quickly as practicable after a specialist adjudicator or QCAT makes an order, a request to record a new community management statement.	100 penalty units ($11,000)
13, inserts section 404	Failure by the body corporate committee to lodge, within 90 days after making its decision, a request to record a new community management statement.	100 penalty units ($11,000)

[91] Body Corporate and Community Management and Other Legislation Amendment Bill 2012, *Explanatory Notes*, page 8.

Clause	Proposed offence	Proposed maximum penalty
13, inserts section 405	Failure by the body corporate to lodge, within 90 days after making its decision, a request to record a new community management statement for a specified two-lot scheme.	100 penalty units ($11,000)
13, inserts new section 407	Failure by the body corporate to lodge, within 90 days after a specialist adjudicator or QCAT makes an order, a request to record a new community management statement.	100 penalty units ($11,000)

The Committee notes these new offence provisions are consistent with existing provisions.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
001	Stephen & Dorothea Baker
002	Ericka Dickinson
003	Dennis Atkinson
004	Michael Corr
005	Peter & Ena Bell
006	Lynton Rose
007	Janet Heaton
008	GJ Muller
009	John & Uthaiwan Hamilton
010	Peter Curtis
011	Ken McCarthy
012	George Friend OAM
013	Dawn Beveridge
014	Valerie Bristow
015	Audrey Jankowski and John Womersley
016	David & Margaret Nonamaker
017	Mathilde Kingsley
018	Noel & Beth Thompson
019	Gunter Berhart
020	Rodney Spooner
021	Murray Goodman
022	James Catterall
023	Jan Borradale

Sub #	Submitter
024	Phillip & Patricia Ratcliff
025	Herb Mandel
026	Terence Schroder
027	Marilyn Davis
028	Anna Bronshtein
029	Donald Taylor
030	Aaron Aldenton
031	Phyllis Hudson
032	Angelo & Mary Gissara
033	Bryan Paddy
034	Martin Clark
035	Lesley & Jim Vasiliou
036	Melanie Robertson
037	Julanne Enright
038	Pauline Ravaillion
039	Rocco & Rosa Mileto
040	Philip Long
041	Peter Harford
042	Aloisia Mangan
043	Alan & Catherine Gill
044	Leo Kalokerinos
045	Odile Guiller
046	RB & NJ Armstrong
047	Ian Hansen
048	Ginette Thomas

Sub #	Submitter
049	Wayne Stevens
050	Debby Ryan
051	James Higgins
052	Nigel Neaves
053	Ian Leslie OAM & Fellow Unit Owners from Magic Mountain Apartments
054	Frank & Anna Melit
055	Michael McCallum
056	IS Wilkey
057	Fred Sorensen & Lyn Weight
058	John Lewis
059	Judith Hamilton
060	Denis & Shirley Croft
061	John Rohrs
062	Selena Pearce
063	RV & AM Hanson
064	John & Margaret Bayles
065	RJ Stewart
066	DJ Keating
067	Jonathon Noonan
068	John & Mary Nolan
069	Les & Sandra St. Ledger
070	June Basset
071	Ron Mclean
072	Will & Lucy Lin
073	Neville & Helen Newnes

Sub #	Submitter
074	Greg Carroll
075	Glynn & Jeanette Dougherty
076	Helen Klaassen
077	Graeme & Robyn Armstrong
078	Sidney Hunt
079	Anthony Luck
080	Patrick Needham
081	Jan Briggs
082	Walter & Margaret McLaren
083	George Francis & Barbara Ann McVeagh
084	David & Dixie Waite
085	Robert Christie
086	Brett Atkinson
087	Natwarang Clark
088	Anne Kelly
089	Edgar & Judith Gold
090	Mike Harris
091	Mabel Hall
092	Audrey Elliott
093	Michael & Helen Morgan
094	Michael Beeston
095	Jeff & Noela Yates
096	Peter & Patricia Pickup
097	Z Leonard Krawczyk
098	Peter Rau

Sub #	Submitter
099	Queensland Association of Body Corporates
100	Penelope Reid
101	Donald Avery
102	Garry & Kathryn Sugrue
103	Ross Stevenson
104	Geoff & Pam Cullen
105	Sam & Deborah Terranova
106	Premysl & Eva Vanicek
107	Camillio & Jeanette Manricks
108	Peter & Sandra Cooper
109	Wolfgang Schroeter
110	Daphne Tunbridge
111	John & Maria La Motta
112	Margaret Park
113	John Pearce
114	Jeff Maclean
115	D & M Summerville
116	Peter Holland
117	William & Barbara Lea
118	John Evans
119	Tony Woolaston
120	Lynh Du
121	KP & PJ Yarwood
122	Concerned Owners Group, The Pinnacle Apartments
123	John Sutherland

Sub #	Submitter
124	Ruth Bonnett
125	Paul & Lyn Skews
126	John & Alison Armstrong
127	Jim & Mavis Boland
128	Clare Ramsey
129	Michael Lowry & Peter Rule
130	Marcia Bounds
131	Ian McColl
132	EA Irwin
133	Voice of Unit Battlers
134	John Huthwaite
135	Robert & Eileen Craig
136	Peter Fegan
137	M Dare
138	DE Hall
139	TF Been
140	V Rose
141	Alma Warren
142	Marilyn MacGregor-Davies
143	CR Gibbins
144	KG & D Marland
145	John Webber
146	Maliana Bernast
147	Jill Kidd
148	Mike & Rita Shawcross

Sub #	Submitter
149	Don Worner
150	Ian & Sarah Dreverman
151	Gyliane Carver
152	Brenda Friend
153	Ailsa Higham
154	Wendy Gao
155	Doug Brennan
156	Mark Holmes
157	Anthony Delaney Lawyers
158	Jan Van Zandwijk
159	Peter & Jennifer Smith
160	Shari Dempsey
161	Mr & Mrs Todd
162	David Warren
163	Christina Schoenbaechler
164	Richard Phillips
165	Ellen Claire Asher
166	Natalie & Noela King
167	Mr & Mrs McGrath
168	Ian & Carol Clark
169	Alan Watson
170	Alan & Noela Harker
171	Jillian Brown
172	P Monari
173	Francis John Page

Sub #	Submitter
174	JD Hutchinson
175	Suguneswari Sathananthan
176	Dean & Christine Prangley
177	Stephen & Susan Hill
178	Daryl Bell
179	Leo & Helen Dimos
180	Patrica Savage
181	Ken Daiken
182	John Burge
183	Damian & Mirella Kelly
184	JL & D Harvey
185	John Nicholson
186	Craig Chapman
187	Body Corporate Committee of 181 The Esplanade
188	Ian McGregor
189	Alexandra Stellas
190	Chris Murphy
191	Patricia Tankey
192	Pam Briggs, Gail Christensen, Mr Denis & Lynn Wilss
193	David & Jean Barry
194	NR Barbi Solicitor Pty Ltd
195	Robinson & Robinson Lawyers
196	Wayne Davis
197	Bill Owen
198	Confidential

Sub #	Submitter
199	Eleanor Woodforth
200	Veer Charan
201	David & Margaret Kelly
202	Judith Stephens
203	Joe & Debra Deffner
204	Vince Fitzsimons
205	Peter Rowell
206	Elizabeth De Martini
207	John Higginson
208	Edward Eadeh
209	Dorothy Fletcher
210	David & Bernadette Van Hoof
211	Eugene & Doris Jaa
212	Sue Bale
213	LM Albert
214	Robert Kidd
215	Cheryl Ellen Hawken
216	Betty Desmond
217	Mario & Lucy Nucifora
218	Mara Kovacevic
219	Greg van Zeeland
220	Giuseppe Natoli
221	Atef Mousa
222	John Learmonth
223	Colorose Pty Ltd

Sub #	Submitter
224	Lisa Tauber
225	Justin and Monika Mistry
226	Property Council of Australia
227	Mango Property Pty Ltd
228	Real Estate Institute of Queensland
229	William & Jeanette Dale
230	William Butson
231	Ray Asher
232	I & HB Zimmermann
233	Peter Brooks
234	Name Withheld
235	Brad White
236	Norm Locke
237	Bob & Judith Pidcock
238	Rolf Boe
239	Margaret White
240	Leary & Partners Pty Ltd
241	HJ Greville
242	Don & Lorraine McGrath
243	Queensland Law Society
244	May Scott
245	Barry Knight Holdings Pty Ltd
246	Unit Owners Association of Queensland Inc.
247	Acapulco Body Corporate
248	Ann Corbett

Sub #	Submitter
249	David Armenores
250	Carla Lack
251	Aaron & Leann Webb
252	Desley Lynette Free
253	Urban Development Institute of Australia, Queensland
254	Anne-Maree Sexton
255	Belinda Sexton
256	David Bowers
257	Body Corporate Assistance
258	Michael Merrin
259	Evan Morrison
260	Franco Vicario
261	Strata Community Australia (Qld)
262	Robert & Jacquie Adamson
263	Mr Mills
264	Gray Tovey
265	Grant James
266	Body Corporate for Sun City Resort
267	Confidential
268	Australian College of Community Association Lawyers Inc.
269	Nanette Blair
270	Stephen Moore
271	GR Muller
272	Gordon & Trish Henry
273	A Watford

Sub #	Submitter
274	Conor Dwyer and Fellow Lot Owners

Appendix B - List of public hearing witnesses – 31 October 2012

Witnesses are listed in the order of appearance at the public hearing.

Department of Justice and Attorney-General Mr David Ford – Deputy Director-General, Liquor Gaming and Fair Trading Mr Robert Walker – Commissioner, Office of the Commissioner for Body Corporate and Community Management Ms Linda Woo – Executive Director, Office of Regulatory Policy, Liquor Gaming and Fair Trading Mr Ivan Catlin – Executive Manager, Office of Regulatory Policy, Liquor Gaming and Fair Trading Mr David Reardon, Key Policy Officer, Office of Regulatory Policy, Liquor Gaming and Fair Trading Ms Leah Whitting, Key Policy Officer, Office of Regulatory Policy, Liquor Gaming and Fair Trading
Mr John Sutherland - Unit Owner and Body Corporate Committee Chairman
Mr Wayne Stevens - Unit Owner and President of the Unit Owners Association of Queensland
Mr Sam Terranova – Commercial Unit Owner
Mr Ian Leslie OAM - Unit Owner
Dr Glen & Mrs Helen McBride, Unit Owner
Mr Aaron Webb – Unit Owner
Mr Alan Gill – On behalf of Catherine Gill, Unit Owner
Mr Ken McCarthy – Unit Owner
Mr Grant James – Property Manager and Unit Owner
Mr Chris Mountford – Deputy Executive Director, Property Council of Australia
Ms Kaylene Arkcoll – Associate, Leary and Partners
Ms Ros Janes – Council Member, Australian College of Community Association Lawyers
Queensland Law Society Mr Matthew Raven – Chair, Property and Development Law Committee Mr Matt Dunn – Principal Policy Solicitor