

Lot entitlements - 2011 amendments

Amendments to the lot entitlement provisions of the *Body Corporate and Community Management Act 1997* (the BCCM Act) commenced on 14 April 2011.

The following guide deals with the effect the amendments will have on lot entitlements under the BCCM Act. It is not an exhaustive guide to lot entitlements and the legislation should be consulted as the primary reference. For general information on the application of lot entitlements please refer to the Lot entitlements fact sheet.

Objective of the 2011 amendments

The objective of the amendments is to provide a new system for setting and adjusting lot entitlements. The amendments will also give lot owners in existing schemes that have, prior to the amendments, been subject to a contribution schedule lot entitlement adjustment order of a specialist adjudicator, tribunal or court, the opportunity to revert the contribution schedule lot entitlements to their pre-adjustment settings.

New principles for new schemes

The original owner (the developer) will now be required to set lot entitlements for lots in a community titles scheme (CTS) established after the commencement of the amendments in accordance with a contribution schedule principle and an interest schedule principle. The original owner must disclose in the community management statement (CMS), which principle (the deciding principle) was used and if necessary explain why a particular principle was used. (See Changes to the CMS below)

The contribution schedule principle

The principles for deciding contribution schedule lot entitlements are:

- the *equality principle*, or
- the *relativity principle*.

The equality principle

The equality principle provides that the lot entitlements must be equal, except to the extent that it is just and equitable for them not to be equal. For example, a commercial CTS in which the owner of one lot uses a larger volume of water or conducts a more dangerous or higher risk industry than the owners of the other lots.

The relativity principle

The relativity principle provides that the lot entitlements must reflect the relationship between the lots by reference to one or more particular relevant factors. The relevant factors for the *relativity principle* are:

- how the scheme is structured
- the nature, features and characteristics of the lots
- the purposes for which the lots are used
- the impact the lots may have on costs of maintaining the common property
- the market values of the lots.

(Act section 46A)

The interest schedule principle

The principle for deciding interest schedule lot entitlements is the *market value principle*.

As the name suggests it must reflect the market value of the lots except to the extent that it is just and equitable not to reflect the market value.

(Act section 46B)

Adjusting the contribution schedule

The BCCM Act provides three means by which the contribution schedule lot entitlements may be adjusted.

1. At general meeting

A body corporate may, by resolution without dissent, change its contribution schedule lot entitlements. The notice of the general meeting at which the resolution is proposed must state, or be accompanied by a written notice stating the proposed changes to the contribution schedule and the reason for the changes. The changes must be consistent with either the principle on which the existing contribution schedule was decided or another contribution schedule principle.

The body corporate must, as quickly as practicable, lodge a request to record a new CMS incorporating the changed contribution schedule lot entitlements.

(Act section 47A)

2. Agreement of two or more lot owners

The owners of two or more lots can agree in writing to redistribute amongst themselves the lot entitlements for their lots.

3. Adjustment by specialist adjudicator or QCAT

Under limited circumstances, a lot owner may apply for an adjustment of the contribution schedule lot entitlements. Specifically:

- if the CTS is affected by a material change (e.g. addition or removal of 1 or more lots. See Schedule 6 Dictionary, BCCM Act) and a lot owner believes that an adjustment of the contribution schedule is necessary, or
- if the CTS is established after the commencement of the amendments and a lot owner believes that the contribution schedule is not consistent with the deciding principle used to set the lot entitlements.

If the above circumstances apply, a lot owner may either:

- apply under the dispute resolution provisions of the BCCM Act, for an order of a specialist adjudicator for the adjustment of the contribution schedule, or
- apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order for the adjustment of the contribution schedule.

(Act section 47B)

Criteria for deciding contribution schedule

If an application is made for an order of a specialist adjudicator or QCAT to determine whether the contribution schedule is consistent with the deciding principle, the BCCM Act provides that QCAT or the specialist adjudicator may only have regard to:

- the principle on which the contribution schedule was decided, and
- the information in the CMS about the application of the deciding principle, and
- if the contribution schedule lot entitlements were decided on the equality principle -- the basis of the applicant's belief that the lot entitlements do not reflect the equality principle with respect to section 49 of the BCCM Act, and
- the applicant's grounds for seeking an adjustment.

(Act section 48A)

Adjusting the interest schedule

Section 48 of the BCCM Act has been substantially amended. The section is now limited to an adjustment of the **interest schedule only**.

A lot owner may either apply to a specialist adjudicator or to QCAT for an order to adjust the interest schedule lot entitlements.

The order of the specialist adjudicator or QCAT must be consistent with the market value principle (see above).

(Act section 48)

The community management statement

The amendments to section 66 of the BCCM Act mean that for any new scheme established after the commencement of the amendments or an **adjusted scheme**, the CMS must state the deciding principle for the contribution schedule and either:

- if the equality principle is used but the entitlements are not equal, explain why they are not equal, or
- if the relativity principle is used, explain how the principle was applied.

For the interest schedule, the CMS must state whether the market value principle applies and if not, explain why the interest schedule lot entitlements do not reflect the market value of the lots.

What is an adjusted scheme?

An **adjusted scheme** mentioned previously is a scheme that was established before the commencement of these amendments and the scheme has adjusted the contribution schedule or interest schedule after the commencement.

(Act section 66)

Sale of lots

Existing lots

The following amendments apply to the sale of existing lots in a CTS.

The disclosure statement required to be given under section 206 must state:

- the amount of the annual contributions currently payable by the lot owner; and
- the extent to which the annual contributions are based on the contribution schedule lot entitlements and the interest schedule lot entitlements, and
- that the contribution and interest schedule lot entitlements are set out in the CMS.

If, after a contract of sale is entered into but before it settles, a new CMS is recorded, the seller must, within 14 days, give the buyer a copy of the new CMS. If a new CMS is recorded, the buyer may, under certain conditions, cancel the contract.

Section 209 has been amended and adds a third condition which provides that a buyer may cancel a contract if the buyer would be materially prejudiced if compelled to complete the contract given the difference between the CMS that was attached to the contract when it was entered into and the most recently advised CMS.

Section 209A is a new section which will only apply if the seller is the original owner of an existing lot. If this is the case and a buyer reasonably believes the contribution schedule lot entitlements do not accurately reflect the contribution schedule principle on which they were decided, and they would be materially prejudiced if compelled to complete the contract, the buyer may terminate the contract. The buyer has 30 days from the date the contract is received, or a longer period agreed between the buyer and the seller, to terminate the contract.

(Act sections 206, 206B, 209 and 209A)

Proposed lots

The following amendments apply to the sale of proposed lots in a CTS yet to be established.

The disclosure statement required to be given under section 213 must state:

- the amount of the annual contributions reasonably expected to be payable by the lot owner, and
- the extent to which the annual contributions are based on the contribution schedule lot entitlements and the interest schedule lot entitlements, and
- that the contribution and interest schedule lot entitlements are set out in the CMS.

Section 217 is amended and now includes three additional grounds under which a buyer may terminate a contract of sale for a proposed lot. The buyer may cancel the contract if:

- the CMS most recently advised to the buyer does not include the principle on which the contribution schedule lot entitlements have been decided
- the contribution schedule lot entitlements are set according to the equality principle but are not equal and the CMS most recently advised to the buyer does not explain why
- the contribution schedule lot entitlements are set according to the relativity principle and the CMS most recently advised to the buyer does not include sufficient details about how the individual contributions were decided using that principle.

Section 217A is a new section similar to section 209A which will apply if the seller is intended to be the original owner for the scheme when it is established. If this is the case and a buyer reasonably believes the proposed contribution schedule lot entitlements do not accurately reflect the contribution schedule principle on which they are proposed to be decided, and they would be materially prejudiced if compelled to complete the contract, the buyer may terminate the contract. The buyer has 30 days from the date the contract is received, or a longer period agreed between the buyer and the seller, to terminate the contract.

(Act sections 213, 217 and 217A)

Transitional provisions

Pre-commencement adjustment actions

Certain specific actions undertaken before the commencement of the lot entitlement amendments will cease to have effect after the commencement. These actions, listed below, are known as '**pre-commencement adjustment actions**'.

- A motion to adjust the contribution schedule proposed before the commencement but not passed by the body corporate at the commencement.
- A resolution to adjust the contribution schedule made before the commencement that has not been given effect at the commencement.
- An application for an order of a specialist adjudicator or QCAT to adjust the contribution schedule that has not been decided at the commencement.
- A decision of a specialist adjudicator or QCAT to adjust

the contribution schedule made before the commencement but not been given effect at the commencement.

- An appeal against a decision of a specialist adjudicator or QCAT relating to the adjustment of the contribution schedule that has not been decided at the commencement.
- A decision of an appeal entity to adjust the contribution schedule made before the commencement but not been given effect at the commencement.

The term 'not been given effect' means a new community management statement incorporating the adjustment has not been recorded.

(Act section 376)

No further effect of actions

As stated, each of the **pre-commencement adjustment actions** cease to have effect on the commencement of the amendments. The pre-commencement adjustment action is taken to have never been made and no further action can be taken in relation to the pre-commencement adjustment action.

(Act section 377)

Adjustment of contribution schedule for existing scheme to which an adjustment order applies

Previously, owners in existing schemes who believed that their lot entitlements were unfair or unreasonable could apply to a court, a tribunal or specialist adjudicator for an order to adjust the contribution schedule lot entitlements. If an order was made it is termed an **adjustment order**.

(Subject to Act section 378 Definitions for div 4)

The original lot entitlements are termed **pre-adjustment order entitlements** and are defined in the transitional provisions as:

Pre-adjustment order entitlements, for an existing scheme to which an adjustment order applies, means:

- a. if the adjustment order is the only adjustment order applying to the scheme -- the contribution schedule lot entitlements for lots included in the scheme as they were immediately before the order was made, or
- b. otherwise, the contribution schedule lot entitlements for lots included in the scheme as they were immediately before the first adjustment order applying to the scheme was made.

(Act section 378)

Lot owner's motion for adjustment of contribution schedule

If an **adjustment order** was made which increased the proportionate share of contribution schedule lot entitlements for a lot and a new CMS was subsequently recorded, the lot owner may submit a motion to, the committee for the body corporate (if there is one), or otherwise the body corporate, proposing to revert the contribution schedule lot entitlements to the **pre-adjustment order entitlements**. These provisions only apply to a person who was a lot owner when the adjustment order was made. A person who became the owner of the lot after the adjustment order was made cannot submit the motion.

Any reversion to the **pre-adjustment order entitlements** will

be subject to sections 381 to 384. Sections 381 to 384 explain how an adjustment of the **pre-adjustment order entitlements** may be affected if lots or the scheme have been the subject of a particular event. These are:

- Section 381: A lot has been subdivided.
Section 382: Two or more lots have been amalgamated.
Section 383: The boundary of a lot has changed.
Section 384: Scheme affected by material change.

(Act section 379)

Time limit for submitting the motion

The provisions to revert the lot entitlements to the **pre-adjustment order entitlements** will only apply for three years from the commencement of the amendments.

(Act section 379)

The committee's responsibility

If a lot owner submits a motion to the committee proposing to revert the contribution schedule lot entitlements to their pre-adjustment settings, the committee must, within two months identify the **pre-adjustment order entitlements** and give each lot owner written notice stating that a motion has been submitted to revert the contribution schedule lot entitlements to their original settings.

The notice must also state the committee's proposed adjustment of the contribution schedule and invite each lot owner to make a submission in relation to the proposed adjustment, within a stated period of at least 28 days after receiving the notice.

If section 381 applies, the committee must obtain a valuation by a registered valuer stating the market value of the subdivided lots and provide a copy of the valuation with the written notice.

The committee must have regard to submissions received within the submission period and decide what (if any) changes are to be made to the **pre-adjustment order entitlements** under sections 381 to 384. Within seven days of making its decision, the committee must give each lot owner written notice of the committee's decision.

The body corporate must, within three months of the committee making its decision, lodge a request to record a new CMS incorporating the changed contribution schedule lot entitlements.

A lot owner who disputes the committee's decision may, within 28 days after receiving the committee's decision, apply for an order of a specialist adjudicator or QCAT for an adjustment of the contribution schedule lot entitlements to reflect the pre-adjustment order entitlements subject to sections 381 to 384.

Note: the body corporate is responsible for the costs associated with dealing with the motion including the cost of obtaining a valuation. However, a lot owner who disputes the committee's decision is responsible for their own costs.

(Act section 385)

The body corporate's responsibility

If a lot owner submits a motion to the body corporate proposing to revert the contribution schedule lot entitlements to their pre-adjustment settings, the body corporate must, within two

months after receiving the motion, identify the **pre-adjustment order entitlements** and, if section 381 applies, obtain a valuation by a registered valuer stating the market value of the subdivided lots and call a general meeting to decide what (if any) changes are to be made to the **pre-adjustment order entitlements** under sections 381 to 384.

The notice of the general meeting must be accompanied by written evidence of the **pre-adjustment order entitlements** and a copy of the valuation.

The meeting must be held within 28 days after it is called.

At the meeting, the body corporate must decide whether any changes to the **pre-adjustment order entitlements** should be made and within seven days of making its decision, give each lot owner written notice of the decision.

The body corporate must, within three months of making its decision, lodge a request to record a new CMS incorporating the changed contribution schedule lot entitlements.

A lot owner who disagrees with the body corporate's decision may, within 28 days after receiving the body corporate's decision, apply for an order of a specialist adjudicator or QCAT for an adjustment of the contribution schedule lot entitlements to reflect the pre-adjustment order entitlements subject to sections 381 to 384.

Note: the body corporate is responsible for the costs associated with dealing with the motion including the cost of obtaining a valuation. However, a lot owner who disputes the body corporate's decision is responsible for their own costs.

(Act section 386)

In Summary

New schemes (Established after the commencement of the amendments)

The original owner (the developer) is required to set lot entitlements for a new CTS in accordance with the contribution schedule and the interest schedule principles.

- **For the contribution schedule**

- the *equality principle*, or
- the *relativity principle*.

- **For the interest schedule**

The *market value principle* will apply.

Adjusting the contribution schedule

- **At general meeting**

A body corporate may, by resolution without dissent, change its contribution schedule lot entitlements. The changes must be consistent with either the principle on which the existing contribution schedule was decided or another contribution schedule principle.

- **Agreement of two or more lot owners**

The owners of two or more lots can agree in writing to redistribute amongst themselves the lot entitlements for their lots.

- **Adjustment by specialist adjudicator or QCAT**

A lot owner may apply for an adjustment of the contribution schedule lot entitlements if the CTS is affected by a material change and a lot owner believes that an adjustment of the contribution schedule is necessary, or if the CTS is established after the commencement of the amendments and a lot owner believes that the contribution schedule is not consistent with the deciding principle used to set the lot entitlements.

Adjusting the interest schedule

A lot owner may either apply for an order of a specialist adjudicator or to QCAT for an order to adjust the interest schedule lot entitlements.

Sale of lots

- **Existing lots**

The disclosure statement given under section 206 must state the amount of the annual contributions currently payable by the lot owner and that the annual contributions are based on the contribution schedule lot entitlements as set out in the CMS.

Under certain conditions a buyer may cancel the contract. See BCCM Act sections 209 and 209A.

- **Proposed lots**

The disclosure statement under section 213 must state the amount of the annual contributions reasonably expected to be payable by the lot owner and that the annual contributions are based on the contribution schedule lot entitlements as set out in the proposed CMS for the scheme.

Under certain conditions a buyer may cancel the contract. See BCCM Act sections 217 and 217A.

Adjustment of contribution schedule for existing schemes

If a CTS has been subject to a contribution schedule lot entitlement adjustment order prior to the commencement of the amendments, a lot owner may submit a motion to the committee or if there is no committee, the body corporate, proposing to revert the contribution schedule lot entitlements to the **pre-adjustment order entitlements**. However, the lot owner must have been a lot owner at the time the order was made and the order must have increased the proportionate share of contribution schedule lot entitlements for the lot owner. A person who became the owner of the lot after the adjustment order was made cannot submit the motion.

The committee or the body corporate must follow a set process when making a decision about the motion. A lot owner who disagrees with the decision may apply for an order of a specialist adjudicator or QCAT for an adjustment of the contribution schedule lot entitlements to reflect the pre-adjustment order entitlements subject to sections 381 to 384.

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office)

Phone (freecall): 1800 060 119

Email: bccm@justice.qld.gov.au

Website: www.justice.qld.gov.au/bccm

Street address: Brisbane Magistrate's Court

Level 4, 363 George Street, Brisbane

Postal address: GPO Box 1049, Brisbane QLD 4001

Copies of the *Body Corporate and Community Management Act 1997*, the regulation modules, and any amendments can be accessed for free via the Office of the Parliamentary Council by visiting: www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm

Copies can be purchased online by visiting www.bookshop.qld.gov.au, or by contacting SDS Customer Service by phoning (07) 3883 8700 or 1800 801 123.

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