

~~area by guests of residents or persons with a permit for camping, recreational fishing or scientific research.~~

~~The Local Government (Aboriginal Lands) Act will be renamed as the Aurukun and Mornington Shire Leases Act 1978 and be administered by the Minister for Natural Resources, Mines and Energy and the Minister for Trade. The Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships wrote to the Aurukun and Mornington shire councils advising them of the review of the Local Government (Aboriginal Lands) Act and invited them to identify any issues of concern.~~

~~The Department of Infrastructure and Planning consulted directly with each of the Aurukun and Mornington shire councils on the issues under review and proposed changes to the legislation, including the removal of their power to summarily evict persons from their area. Both local governments advised their support in principle for the proposed amendments. As a result, I commend the bill to the House.~~

~~Debate, on motion of Mr Stevens, adjourned.~~

020

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

First Reading

Hon. PJ LAWLOR (Southport—ALP) (Minister for Tourism and Fair Trading) (12.39 pm): I present a bill for an act to amend the Body Corporate and Community Management Act 1997, the Queensland Civil and Administrative Tribunal Regulation 2009 and the Queensland Civil and Administrative Tribunal Rules 2009 for particular purposes. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Tabled paper: Body Corporate and Community Management and Other Legislation Amendment Bill.

Tabled paper: Body Corporate and Community Management and Other Legislation Amendment Bill, explanatory notes.

Second Reading

Hon. PJ LAWLOR (Southport—ALP) (Minister for Tourism and Fair Trading) (12.39 pm): I move—

That the bill be now read a second time.

The objective of the bill is to amend the Body Corporate and Community Management Act 1997 to do two things. Firstly, it provides a new lot entitlements system for community titles schemes across Queensland. Secondly, the bill provides for a new regulation module designed to meet the needs of people living in schemes with only two lots. There are more than 39,000 community titles schemes across Queensland comprising more than 364,000 lots.

The BCCM Act requires there to be two types of lot entitlement schedules for each scheme—a contribution schedule and an interest schedule. Most community interest has been about contribution schedules, as most costs associated with living in a community titles scheme are proportioned by a lot owner's allocated contribution schedule lot entitlement.

To date, there have been about 120 applications to the Queensland Civil and Administrative Tribunal and its predecessors seeking contribution schedule adjustment orders for schemes right across Queensland. These decisions have affected thousands of lot owners and many more applications are pending. There are thousands of schemes potentially subject to contribution schedule adjustment orders which could impact upon tens of thousands of lot owners.

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 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 predecessor to the current body corporate legislation, the Building Units and Group Titles Act 1980, provided a single schedule of lot entitlements for community titles schemes. Lot entitlements for lots in standard format plans, typically townhouse type developments, were to be set in proportion to the unimproved value of the lots, and lot entitlements for building format lots, typically units in multistorey developments, were to be set at the developer's discretion.

Then in 1997, the BCCM Act introduced two types of lot entitlement schedules—a contribution schedule and an interest schedule—and provided the ability for lot owners in all schemes to apply for an adjustment of a scheme's contribution schedule and interest schedule lot entitlements. The current principle for setting and adjusting contribution schedule lot entitlements is that they should be equal, except to the extent it is just and equitable in the circumstances for them to not be equal. Interest schedule lot entitlements are not required to be set according to any principle at the establishment of a scheme, but they can be adjusted to reflect the respective market values of the lots included in the scheme, except to the extent to which it is just and equitable in the circumstances for them to reflect other than the respective market values of the lots.

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.

The bill also recognises that the existing regulation modules do not cater to the needs of residential schemes which only have two lots. People who live in duplexes do not want to be burdened by formal processes such as calling a meeting to make a decision or setting an annual budget. The bill makes it easier for people living in residential schemes with only two lots by removing the formal processes and substituting much simpler arrangements.

The new module is currently being progressed and I expect it to be operational in 2011. Once operational, the new module will potentially affect 12,000 community titles schemes in Queensland, which represents almost one-third of community titles schemes in Queensland.

The bill will introduce a new and more flexible system of contribution schedule lot entitlements, including a new relativity principle aimed at promoting more affordable housing solutions in a difficult housing market. The bill enhances the disclosure requirements by requiring developers: to explain the deciding principle for contribution and interest schedule lot entitlements; to have the explanation form part of the community management statement; and to attach the community management statement to contracts of sale.

The bill limits adjustments of contribution schedule lot entitlements to very particular circumstances and provides for reversions for those schemes which have been the subject of contribution schedule adjustment orders. Lastly, the bill establishes a new regulation module tailored to the specific needs of residential schemes consisting of only two lots.

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. I commend the bill to the House.

Debate, on motion of Mr Stevens, adjourned.

~~LIQUOR AND OTHER LEGISLATION AMENDMENT BILL~~

~~Second Reading~~

~~Resumed from 28 October (see p. 4020), on motion of Mr Lawlor~~

~~That the bill be now read a second time.~~