Speech by

CHRIS CUMMINS

MEMBER FOR KAWANA

Hansard 27 February 2003

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Mr CUMMINS (Kawana—ALP) (5.25 p.m.): I rise to speak on the Body Corporate and Community Management and Other Legislation Amendment Bill 2002. In speaking to the bill I shall touch on the enforcement of the by-laws and raise issues to do with some provisions that will be addressed under this legislation. By-laws relating to the governance of the scheme generally and to the common property in particular can be put in place by the body corporate. The concept of the body corporate giving a contravention notice was introduced when the act commenced in 1997 and included a provision that if the notice was not complied with proceedings could be started in the Magistrates Court. Only the body corporate may commence such proceedings as the intent is to prevent individuals in the scheme from being able to take such actions. However, bodies corporate have been reluctant to give a contravention notice to an owner or occupier and have simply made an application under the dispute resolution provisions of the act.

Amendments are to be made, firstly, to make bodies corporate assume more responsibility for the enforcement of their by-laws and, secondly, to strengthen the enforcement proceedings in the event that proceedings are to be taken in the Magistrates Court. We will see provisions where bodies corporate will now be required to attempt to resolve by-law matters before seeking the intervention of a dispute resolution process.

These amendments—clause 58, section 144—ensure that a body corporate assumes responsibility for carrying out its functions by undertaking actions to enforce its by-laws and encourages a body corporate to attempt to resolve a by-law dispute itself. The body corporate may make an application under chapter 6 of the dispute resolution provisions only after it has given a contravention notice to an owner or occupier of a lot and that person has not complied with the notice. The owner or occupier of a lot may make an application under the chapter 6 dispute resolution provisions only after that person has asked the body corporate to give a contravention notice to an owner or occupier of a lot and the body corporate does not within 14 days of receiving the request advise the person that a contravention notice has been given.

The amendments recognise that there are circumstances when it may not be appropriate either for the body corporate or a concerned owner or occupier of a lot to comply with the preliminary procedures for the enforcement of by-laws before making an application under the dispute resolution provisions of the act. The special circumstances are identified in the amendments and relate, firstly, to urgent situations where an application for the resolution of the dispute is warranted without compliance with the preliminary procedures and, secondly, to disputes which may incidentally involve a breach of the by-law. Disputes involving reimbursement for carrying out repairs to property under section 227 of the act have been specifically identified as the initial damage may have occurred due to a contravention of a by-law and it would be unreasonable for the preliminary procedures to be followed before an application could be made. The amendments will also give the lot owner a right to be advised if a contravention notice is given to a person who is not the owner of that lot, such as the lessee of the lot. This amendment informs the lot owner of by-laws affecting the lot.

At this point, I compliment the minister and his very competent staff. It has been a huge issue in various areas, including the Sunshine Coast. During the consultation process, issues were raised with me and I was lobbied. I have consulted with people from Marcoola, Mooloolaba, Palm Beach on the

Gold Coast, Caloundra, Noosa Heads, Noosaville and Tin Can Bay. I know that a lot of other members have also received similar representations, and I know that the member for Noosa mentioned this issue. I have spoken to her and to various members from the Gold Coast as well. When I spoke to the minister about this issue, it was highlighted that the process has taken a long time.

A lot of people have had numerous concerns. Many of the people involved, such as QRAMA and others, have told me they are very pleased that some leeway was given and some issues changed, that the minister and his department listened during the consultation phase, and both sides gave ground. That was very positive, and I commend the minister and his advisers.

One of the challenges of the BCCM Act is continuing to provide an appropriate balance between the legitimate interests of all parties involved in the establishment and operation of community title schemes, including resident and investment owners, developers, service contractors, authorised letting agents and body corporate managers. The review process was designed to allow input from all of these sectors without creating a bias towards any particular group. That was very positive. This took a long time, and the minister must be proud to have it almost completed. I think that Queensland and the issues this bill relates to will be improved.

I believe the proposed changes will enhance the act's capability to provide an effective framework for existing community title schemes as well as accommodating trends in a popular and rapidly developing industry. Everyone should acknowledge that the Sunshine Coast real estate and property market has again boomed in recent years. Hundreds of units are going in on the Sunshine Coast. Prices have risen. There are some extraordinarily high-quality developments going up. I trust that the developers set up a good body corporate system. As we know, many developers establish management rights agreements when they create a new scheme— agreements that are not always appropriate. These amendments will force developers to act in the interests of a future body corporate when entering into agreements and also give bodies corporate and contractors a chance to review the contractor's duties and remuneration within three years of the establishment of the agreement. This review will be by negotiation and will not afford an opportunity to either terminate the agreement or change its length.

In conclusion, I wish to address the subject of local government approval of community management statements. Some local governments have as part of the development approval process required changes to the community management statement on matters that are not relevant to the local government's jurisdiction. I am very glad that the minister has introduced this provision to make sure that local governments will not be permitted to require such changes.

The purpose of this bill is to implement changes that were independently assessed as necessary to balance the competing interests of lot owners, the development industry and the management rights industry. In my opinion, this legislation is recognised both interstate and internationally as a strong model for establishing and administering community title schemes. These amendments build on a strong foundation and I am very pleased to commend this bill to the House.