



Speech by

Dr LESLEY CLARK

MEMBER FOR BARRON RIVER

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**BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT
BILL**

Dr LESLEY CLARK (Barron River—ALP) (6.00 p.m.): I am pleased to rise and speak in support of the Body Corporate and Community Management and Other Legislation Amendment Bill 2002 because it is very important to my electorate and indeed the Cairns area generally. The Cairns branch of the Queensland Resident Accommodation Managers Association, which wrote to me on this issue, indicated the significance of the legislation for its members. Its letter states—

Our membership in Cairns and Port Douglas manage approximately 1500 one, two and three bedroom self contained apartments. We estimate an equivalent number of apartments are under the control of managers not currently members of our organisation. By any measure 3000 apartments represents a significant percentage of the accommodation servicing the tourism industry in Tropical North Queensland. We provide a style of accommodation increasingly appreciated for its space, facilities, value for money and personalised services. Overwhelmingly our businesses are operated by 'mums and dads' who have invested their life's savings in the purchase of their management rights.

The Government has embarked on a number of their proposed changes to the Act in response to problems which may or may not exist in a small number of owner occupied complexes in the south-east of the state. Our complexes by comparison almost exclusively comprise investment units servicing the tourism sector.

That is absolutely right. Trinity Beach in my electorate has probably the greatest concentration of such units. This has been a controversial issue for them also. Jeanne Bartell, the general manager of Coral Sands at Trinity Beach, has written to me about this legislation.

The major issue with respect to this legislation in my electorate has been, overwhelmingly, the rights of body corporate managers—where a resident manager provides caretaking services and acts as a letting agent for owners who wish to use that service. A scheme's success and the success of related investment relies on a strong working relationship between the resident manager, the body corporate and individual owners. As we know, and as we have heard from other members in this debate this afternoon, this does not always happen.

With two distinct owner types—those who live in their properties and those who use them as investments—tensions can arise because of their different priorities, especially if one group feels that the resident manager is concentrating on the needs of the other. The investor owners can feel disillusioned if their returns do not meet their expectations, especially if they are paying an increasing amount for resident management services. Bodies corporate can feel trapped in long-term agreements that fail to meet their needs. Coral Sands' general manager Jeanne Bartell has recognised this dilemma. She states—

I have seen situations where resident owners become resentful of noisy holiday makers and in so doing, their relationship with the resident manager becomes tense. This situation can result in vexatious complaints and could certainly put the resident manager's business in jeopardy should they choose to use the current legislation.

Maybe the legislation would require, for schemes with a majority of letting owners in the scheme, that a valid vote must have a majority of owners in the scheme vote to remove the manager. This provision would be closer to the Managed Investments Act requirement and would still recognise the role of the body corporate in all decisions.

As a businessperson, with a significant investment in your business, you need all possible protection from malicious activities. However, should there be unresolvable conflict, then the opportunity for all parties to arrange an exit program,

which does not destroy the wealth created in the resident manager's business or the reputation and therefore value of the building and its units is equally important.

I am pleased to say that we have listened to people such as Ms Bartell. We recognise that there is a need to find a balance in this particular situation between the rights of the managers and the rights of the owners of the units. This will be achieved by proposing new codes of conduct to govern the activities of letting agents and service contractors such as resident managers. Where there is a breach of this code of conduct, bodies corporate will have the power to require the transfer of the management rights business within a maximum period of 11 months.

To prevent undue influence being exerted over owners when a body corporate is considering using those powers, this decision must be made by a majority resolution by secret ballot with an independent returning officer—exactly as the Coral Sands manager indicated to me was her preference. The time frame for the sale allows the rights to be sold at market rates, meaning that the management operators will not be unfairly disadvantaged.

Another aspect of this legislation did not entirely find favour with members of the RAMA. That is, the effectiveness of these transfer provisions relies on them also being applied to existing schemes. As far as we are concerned—it does make sense—it is essential that no-one has to wait for up to 25 years for a management right term to expire before these situations can be addressed. Whilst that was something that not all of the people who spoke to me wished to see, they did recognise that, if this legislation was going to mean anything, that was going to be essential and was part of the compromises that all parties to the issue were prepared to make.

I do want to recognise, as have others, that this bill is a product of a consensus reached through cooperation and negotiation with stakeholder groups in the community titles industry. I commend their commitment to acknowledging the needs of other groups and their willingness to compromise in the interests of developing practical, workable legislation.

This bill will achieve a number of things. It will balance the competing interests of unit owners, the development industry and the management rights industry. It will improve the dispute resolution service underpinning this legislation. It recognises and supports the changing nature of the community titles industry with its increasing number of investment and multiple use projects.

I congratulate the minister on the extensive consultation that has meant this legislation before the parliament is supported by all parties. It is something that does not always happen, and I commend the minister and his staff, both in the ministerial office—I mention Kay Pearce—and in the department, who have contributed over many years to making this a successful piece of legislation. I commend it to the House.