



Speech by

# Hon. Margaret Keech

MEMBER FOR ALBERT

Hansard Wednesday, 11 October 2006

---

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

### Second Reading

**Hon. MM KEECH** (Albert—ALP) (Minister for Tourism, Fair Trading and Wine Industry Development) (12.00 pm): I move—

That the bill be now read a second time.

The key policy objective of the bill is to improve dispute resolution processes for community titles schemes. Importantly, the bill introduces two processes which will not only accelerate the resolution of disputes and minimise the likelihood of future problems but also improve communication between the persons in dispute, allowing them to reach agreeable outcomes rather than have decisions imposed on them. The bill achieves this in the following ways.

Firstly, most persons intending to seek formal government intervention in a body corporate dispute must initially make a reasonable attempt to resolve the problem internally within their body corporate. Internal dispute resolution may involve the disputing persons communicating, or the intending applicant making use of formal body corporate procedures by submitting matters to the committee, or presenting motions for consideration at a general meeting of their body corporate.

It is expected that proper use of internal dispute resolution processes will reduce disputation in a body corporate and limit the need for formal intervention. The importance of this process is emphasised as the Commissioner for Body Corporate and Community Management—the commissioner—will have the power to choose not to proceed with a dispute resolution application until the person undertakes reasonable steps to resolve the dispute, and ultimately to reject the application.

Secondly, the bill provides for departmental conciliation to be conducted by the BCCM Office. Departmental conciliation will facilitate prompt and informal resolution of disputes; encourage parties to disputes to arrive at their own resolutions and agreements in line with the 'self-management' focus of the BCCM Act; and improve communication between parties, their understanding of rights and responsibilities under legislation and, in turn, minimise future disputes. For most body corporate disputes, conciliation will be compulsory before an application is made for adjudication.

Given the concerns raised by stakeholders in the 2004 review of the community titles sector, a person's right to access justice has also been given serious consideration in the bill. Stakeholders were concerned that most complex body corporate disputes are only determined by a specialist adjudicator and that the associated costs are prohibitive. Stakeholders were particularly concerned that the only processes for the resolution of disputes about the adjustment of lot entitlements are either specialist adjudication or the District Court.

The bill extends the jurisdiction of the Commercial and Consumer Tribunal—the CCT—of my department to determine complex BCCM disputes currently resolved compulsorily by specialist adjudication or by the District Court. The CCT already deals with a range of complex commercial and consumer matters and is a viable and accessible means of resolving complex BCCM disputes. This

jurisdictional change will alleviate stakeholders' concerns regarding the current costs of specialist adjudication and the costs and formality of District Court proceedings.

Additionally, the jurisdiction for hearing appeals of orders made by adjudicators will be vested in the Commercial and Consumer Tribunal rather than the District Court. For some time, stakeholders have contended that the District Court is too formal and costly. Appeals will continue to be limited to those raising a question of law. Adjudicators' orders warrant a reasonable degree of certainty for those people who have the benefit of the order and questions of law are broad enough to ensure that unsuccessful parties have reasonable access to appeal if they consider the adjudicator has misapplied legal principles or failed to accord the party natural justice.

The bill also contains a number of enhancements to the procedures for managing disputes. On occasions, the definitions of 'parties to a dispute' cause confusion and obstruct dispute resolution. The bill clarifies the parties by clearly defining the parties as the applicant and the respondent. The respondent to an application is defined in the bill as the person against whom the application is made. Additionally, the bill classifies an affected person as a person who would be directly and materially affected by relief sought in an application. An affected person is not a party to a dispute.

The bill addresses the uncertainty about when a 'dispute' exists for the purpose of dispute resolution. The parties to a dispute must have standing under the BCCM Act when the application is received by the commissioner. The bill also provides for the continuation of an application even though a party may cease to have standing before the dispute is resolved—for example, by selling the person's unit.

To a large extent, the BCCM Office has exclusive jurisdiction to resolve body corporate disputes. This exclusivity has proven to be obstructive where the parties to a dispute would prefer to have the matter dealt with in another jurisdiction such as a court. The bill allows parties the flexibility to refer their dispute, by agreement, to a court or tribunal having jurisdiction or another process capable of dealing with the dispute and binding the parties. The flexibility to refer the dispute is subject to the agreement of the commissioner.

The power of an adjudicator to award costs against a person who makes an application that is dismissed on the basis that it is frivolous, misconceived or without substance is extended to permit an order for costs in favour of an affected person or the body corporate who have incurred costs regarding the application. While the persons able to claim costs have been extended, the total amount which may be ordered against an applicant has not been increased. Therefore, the bill clearly specifies that \$2,000 is the maximum amount which can be ordered for an application.

In addition to dispute resolution enhancements, the bill recognises the importance of community titles schemes to the tourism industry. The secondary objects of the BCCM Act are expanded to encourage the development of tourism potential in community titles schemes without diminishing the existing rights of unit owners.

Most bodies corporate are required to elect a committee with responsibility for the day-to-day administration of the body corporate. Clearly, a committee has a significant and important role in the ongoing management of a body corporate. Stakeholders have expressed concern about the conduct of committees. In particular, it is claimed that many committee members do not understand their roles and do not act in the best interests of the body corporate. Specific problems include committees exceeding the legislated spending limit and chairpersons making unilateral decisions. It is apparent that these issues contribute to the cause and escalation of body corporate disputes.

In response to these issues, the bill introduces a code of conduct for voting members of a body corporate committee. The code provides guidelines for voting committee members without increasing their existing obligations. It is proposed the regulation modules will be amended to empower bodies corporate to enforce the code against a voting committee member through the removal of the member from office.

A body corporate manager is a person engaged by a body corporate to provide administrative services, such as secretarial or financial management services. The BCCM legislation includes a number of consumer protection provisions regulating the relationship between body corporate managers and bodies corporate, including a code of conduct for body corporate managers.

Stakeholders have expressed concerns about the competence, performance and conduct of body corporate managers. At present, a body corporate manager is not subject to a specific regulatory or licensing regime. While my department is currently conducting a separate analysis of possible regulatory options, the bill enhances the existing statutory code of conduct for body corporate managers by including a requirement that body corporate managers must not attempt to unfairly influence the outcome of body corporate committee elections.

I turn now to the background to the BCCM Act. The Body Corporate and Community Management and Other Legislation Amendment Bill 2006 amends the Body Corporate and Community Management Act 1997. The Body Corporate and Community Management Act 1997 regulates some 33,000 community titles schemes containing over 303,000 lots or units.

It is estimated that well over 500,000 Queenslanders live in apartments or units. At the same time, a significant proportion of Queensland's estimated 18½ million annual visitors and tourists choose to stay in community title apartments and units for the duration of their stay in Queensland, in preference to hotels and motels.

As well as providing affordable accommodation and quality lifestyle options, the community titles sector also supports and underpins a number of associated industries. These include the development and construction industries, body corporate managers, on-site or resident managers and a whole host of other support industries ranging from travel agents through to tradesmen and subcontractors.

The BCCM Act is also very complex legislation. Getting the balance right between all the competing interests is vital. However, the facts are that in the community titles world sometimes interests, or perception of interests, can be diametrically opposed. While most schemes operate at an optimum level with residents enjoying the benefits of community ownership of common property which would never be available to owners as individuals, there are, sadly, some troubled schemes and some troubled owners.

The government is also aware that, increasingly, community titling rather than traditional flat land development is becoming the preferred option of developers for progressive development. There is a view that bodies corporate provide better governance outcomes for staged developments than traditional local government. We are also mindful that the South East Queensland Regional Plan will significantly increase the stock of medium- to high-density housing. This will place much greater pressure over the next five to 10 years on the dispute resolution and information services provided by the Office of the Commissioner for Body Corporate and Community Management, the BCCM Office, if the numbers of lots covered by the BCCM Act increase at their expected rate.

As a result of these factors, the Body Corporate and Community Management and Other Legislation Amendment Bill seeks to improve dispute resolution processes for community titles schemes without unduly adding to the already prescriptive nature of the BCCM Act. The fact is that the community titles sector is a rapidly developing sector. It is also a fact that the sector will need ongoing monitoring. There will never be a final legislative 'fix'. However, these current amendments will go a long way towards addressing some of the more pressing issues raised through the current review process.

I turn now to budget enhancements. These legislative amendments have been complemented by a \$1.6 million increase to the commissioner's and CCT budget to implement these enhancements. This process has already commenced with the recent launch of a range of improved information products, the most noticeable of which is the online training module for new and existing body corporate members and elected office-bearers.

In addition to these proposed amendments, as I have mentioned, my department is examining regulatory options with respect to body corporate managers. There is also ongoing research and consideration of the need for some new thinking about the governance of large and mega scheme developments. I am also aware that there are varying views about the management rights industry, and the government will continue to monitor that sector.

The Body Corporate and Community Management and Other Legislation Amendment Bill provides important immediate and constructive improvements to the BCCM Act. The amendments significantly improve dispute resolution services and continue to position Queensland as a world leader in flexible governance arrangements for community living.

I would like to thank the 177 respondents to the call for submissions made through the 2004 BCCM discussion paper. I would particularly like to thank the Community Titles Institute of Queensland, the Unit Owners Association of Queensland and the Queensland Resident Accommodation Managers Association, particularly Tim Carrigg, Gary Maynard and John Anderson, who have been a important source of authoritative and welcome advice. We have also listened to many individual unit owners and wherever possible sought to ensure that their best interests were represented and accommodated in these vital reforms.

I turn now to amendments to the Liquor Act 1992. I note the support of the member for Nicklin. The bill also addresses the concerns raised by a private member's bill introduced by the member for Nicklin, Mr Peter Wellington MP, by amending the Liquor Act 1992 to allow the Commercial and Consumer Tribunal to require the submission of fresh evidence in 'particular circumstances'.

At present, section 34(1) of the Liquor Act 1992 provides that an appeal to the Commercial and Consumer Tribunal against the decision of the chief executive is by the hearing on the evidence that was before the chief executive. The new provision will allow the Commercial and Consumer Tribunal to hear fresh evidence in circumstances where the party seeking to introduce new evidence did not know or could not reasonably be expected to have known of the evidence on or before the day of the chief executive's decision.

In addition to allowing the tribunal to hear new evidence, in circumstances where it is deemed necessary the tribunal will be empowered to direct an applicant to make a new application. It is envisaged that this will only occur where an applicant provides fresh evidence at a hearing and the tribunal decides

that the new material is sufficiently significant to require reconsideration by the chief executive. Fresh evidence may also be required where the tribunal considers that an applicant has failed in their responsibility to identify the potential impact on all sensitive sites in the locality as part of the public interest assessment process.

In addition, the proposed amendments will empower the Commercial and Consumer Tribunal to require an applicant who provides fresh evidence at hearings to make a new application to the chief executive. Fresh evidence may also be required where the tribunal considers that an applicant has failed in his or her responsibility to identify the potential impact on all sensitive sites in the locality as part of the public interest assessment process.

Additionally, my department is currently conducting a review of the Liquor Act 1992, with a focus on enhancing harm minimisation objectives and improving community consultation processes. In conjunction with the policy proposals being developed by my department's Liquor Act review team, the proposed amendments to the Liquor Act contained in this bill will establish a forum for improved consultation, more equitable processes and informed decision making.

I turn now to the background to the Liquor Act. The Liquor Licensing Division of my department administers the Liquor Act 1992, which regulates the sale and supply of liquor through the licensing of business operators and the approval of suitable premises. In addition to the regulation of the sale and supply of alcohol, a fundamental object of the Liquor Act 1992 is to regulate the liquor industry in a way compatible with minimising harm arising from alcohol abuse. To effectively meet these objectives, application and decision-making processes are governed by rigorous and meticulous principles to ensure full and frank disclosure of all matters relating to applications, the conduct of consultation, the handling of objections and the conduct of investigations.

The proposed reforms for a more flexible approach to the regulation of the sale and supply of liquor contained in this bill attest to my continued commitment to serve the interests of the community without compromising industry interests. I commend the bill to the House.