Speech by

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MEMBER FOR CURRUMBIN

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BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Mrs STUCKEY (Currumbin—Lib) (5.48 pm): I rise to speak on the Body Corporate and Community Management and Other Legislation Amendment Bill 2006, which seeks to amend the Body Corporate and Community Management Act 1997 and the Commercial and Consumer Tribunal Act 2003. Before I go any further I wish to declare to honourable members that I am a unit owner on the Gold Coast and therefore I am part of a body corporate and have firsthand experience of how they operate.

The bill aims to improve the dispute resolution functions of the BCCM Act by way of focusing on informal processes such as self-resolution and improving access to justice by expanding the jurisdiction of the CCT. Further, this bill seeks to introduce guidelines for body corporate committee members through the introduction of a code of conduct for voting members. In my former role of shadow minister for tourism, fair trading and wine industry development, I became abundantly aware of many issues which were being encountered in respect of body corporate matters.

As we have heard from other members, there are over 33,000 community title schemes in Queensland, with over 303,000 individual lots. It is important to recognise the necessity of detailed rules for the ongoing administration and operation of community title schemes. This relates to committees, general meetings and financial and property management, which includes duplexes, home unit blocks, townhouse complexes, high rise apartment buildings and some commercial premises.

I note that the key policy objective of the bill is to improve dispute resolution processes through the following steps: self-resolution, departmental conciliation, the Commercial and Consumer Tribunal, parties to a dispute, exclusivity of the dispute resolution process and adjudicator powers. The bill also enhances the statutory code of conduct for body corporate managers and introduces a code of conduct for voting members of a body corporate committee to provide guidelines for voting committee members without increasing their existing obligations.

The last two clauses of this bill introduce the opportunity for new evidence to be submitted in respect of liquor licence applications in particular circumstances. I note that these clauses replicate the intent of the Liquor (Evidence on Appeals) Amendment Bill 2006.

As we have already heard from the shadow minister, the honourable member for Clayfield, the coalition will be supporting the intent of this bill. The amendments foreshadowed by the member for Clayfield intend to further enhance the bill, particularly in the areas of code of conduct and registration of managers. Whilst I genuinely welcome these amendments to the BCCM act that have finally found their way before us and purport to balance the rights and responsibilities of individuals with the responsibility for self-management as an inherent aspect of community title schemes, it is appropriate to mention issues raised by unit owners in this regard.

The minister and both her predecessors, Stephen Robertson and Merri Rose, have maintained the myth that the Community Titles Institute of Queensland, which is the new name for the Body Corporate Managers Association, is able to impose self-regulation on its managers. They have also maintained some

comfort from the false assumption that because the number of appeals against judgments have been few, a general satisfaction exists regarding judgments. However, it was the enormous expense and time-consuming appeal process to the District Court that was the key to that result.

A few years ago, the then secretary of the Gold Coast unit owners association decided to appeal a flawed decision by adjudicator Richard Meek. She won, but it took almost a year and cost her in excess of $14,000 to overturn just 10 votes. At meetings of unit owners far and wide, this story is repeated and obviously is a deterrent to going to the District Court. It illustrates just how discouraging the former process was to the clients.

Notwithstanding that unit owners want a simpler and less expensive appeal process than they have at present and that, therefore, this move in the bill away from the District Court in the first instance is a step in the right direction, it is of little use to reform the appeal process if you do not reform that which will cause a flood of appeals, namely, the competence and bias of adjudicators or, to be fair, I should say the widespread perception of incompetence and bias of adjudicators.

The commission is meant to be a place where owners can go to obtain justice, yet it has been the subject of intense criticism by owners. The Gold Coast, which is a premier tourism destination and fast growing city, has a particularly high proportion of units and that equates to a high number of community title schemes. Last year on the Gold Coast at a meeting of 200 unit owners there was a unanimous vote of no confidence in the commission and a 100 per cent demand for the registration of body corporate managers. I understand that the shadow minister has outlined changes to this effect in his amendments.

When a previous minister, the Hon. Stephen Robertson, introduced amendments to the body corporate act in December, he promised that the review would be ongoing. Back then, he was aware that the two matters that most affected unit owners and which drew most criticism from unit owners were the failure of his government to register body corporate managers, which Mr Robertson himself threw into the too-hard basket, and the incompetence and perception of bias of the body corporate commission. Dissatisfaction extended even to the case management of the commissioner herself at the time. I note that despite massive dissatisfaction with her services and that of the commission under her leadership, the same person was promoted to the position of Acting Commissioner for Fair Trade.

I have read some of the unit owners' submissions to this government over the years and the majority condemn the failure to register managers and the failure to reform the commission, in which it seems most unit owners have little or no confidence at all. I understand that some whole bodies corporate have passed motions of no confidence in the commission after the commission has handled disputes in their resorts.

The primary focus of body corporate reform has to be transparency and guarantees of honest dealings with unit owners. This is where it all begins. Decent people buy home units, either to live in or for investment purposes. From the moment they consider this move, they are shelling out of their own pockets. They start with a real estate agent who takes a commission from the vendor for the sale. Then they have to employ a lawyer for conveyancing. Often they pay a valuer to ensure that they are paying the right price. Once they become an owner, they pay levies to the body corporate. Part of the levy may go to a building manager who acts as their caretaker and the rest goes to a body corporate manager who takes his or her fee to act as a secretariat and banker for the body corporate. If they are investors, they pay further for the building manager to rent their units for them. Banks usually have a piece of them, as well as insurance companies. In short, unit owners just keep paying.

One of the few areas where unit owners can control their spending is with the management of their body corporate, although they may have some control over their letting agreement also. However, it is in the body corporate management area that they are most vulnerable if they are not vigilant. For the benefit of members who are not aware of this, the body corporate manager is not the person who lives on site in the building manager's unit and who is usually the letting agent for investor owners as well. The body corporate manager provides a secretariat for the work of the elected committee of owners and also usually collects levies, manages the bank account and pays the bills.

Given that the large body corporate management companies have dozens of bodies corporate that they manage, it is easy to see that they have millions of other people's dollars under their control. This is why it is imperative that they be registered and that standards be set to protect unit owners against bad managers. Astonishingly, this was an area pigeon-holed by the minister during the review that began in 2001, took two years to see the light of day in this parliament and then, reprehensibly, omitted to regulate this most important area of money management. Here we are today with another minister and another set of amendments to this act, and we still have no indication of when the government will move to register these managers, whether they will set a bar that managers will have to reach or whether they intend to merely register all operators currently in business.

As I move around my electorate, which is one of the largest body corporate communities in Queensland along with that of the honourable member for Surfers Paradise, I hear appalling stories of mismanagement by some managers. I hasten to add that, as in all things, not all managers are bad and not all of them are rogues. I do not want to give the impression that I think so. However, it is a fact that, as

in all matters of corrupt and/or dishonest practice, there are a few who give the entire industry a bad name.

The managers' own association must be more diligent in disciplining the worst offenders amongst its own ranks, rather than avoiding this course of events when it is aware of the complaints raised by unit owners about certain of their members. Of particular concern are people who have been struck off professional rolls in other states, and who come to Queensland and can set up as body corporate managers because this government has failed to enact registration laws and set standards for registration. I ask the minister: where is the protection for unit owners in those circumstances? Why has the government done nothing about this disturbing anomaly?

The most common way managers can dishonestly draw money from accounts without the units owners' control is when they maintain the body corporate's bank accounts. Managers quote to handle the tasks of collecting and managing levies, finding the best insurance and often other services for the body corporate, and taking care of the secretarial work. Without strict controls by the committee, it is a simple matter for the manager to determine to send out information to all owners at whim and thus create an over service.

The Community Titles Institute of Queensland, which is the new name for the Body Corporate Managers Association, tells the minister that it has its own ethics committee which imposes standards upon members and that it can self-regulate if only it is given the chance. However, it has been alleged to me by more than one person that in this case the manager was a member of that very ethics committee. What chance of self-regulation is there if the association cannot even clean up a fiasco of that obvious dimension? I repeat: not all managers should be tarred with the same brush, but this is a very important point that I wish to raise. The government should have moved long before now to make registration compulsory and, in doing so, it should have set a standard that all managers have to reach.

Let me now address self-resolution. The bill requires that a person must take reasonable steps and make a demonstrated attempt to resolve the dispute with that person's body corporate prior to making an application to the commissioner. From the wide consultation I have undertaken, many individuals have explained that they have tried to attempt to resolve their issues directly with their body corporate. However, they often feel their concerns are not being acknowledged and have often complained of feeling manipulated by managers. I am disappointed to say that this is happening on a much more regular basis in my electorate. A lot of people come in on regular occasions to make these complaints.

With respect to departmental conciliation, I applaud the initiatives that improve the communication between parties to a dispute and bring about conciliation rather than forcing people through extensive legal processes that clog our court system. A regular complaint that I heard as shadow minister was that individuals felt that dispute resolution was a process that dragged on and on, often deliberately by one of the parties to a dispute, in order to wear down the other party. With these thoughts in mind, I ask the minister to confirm if she intends to revise the time line targets of the BCCM office from finalising 80 per cent of applications within 60 days from the close of time of applicant's reply to submissions. It would appear that this figure is unattainable.

Clause 37 establishes part 5A in chapter 6 which outlines the structure for departmental conciliation. Yet once again we do not have before us clear requirements of qualification criteria to be fulfilled by departmental conciliators. Clarification of parties to a dispute is welcome because this is what is needed to ensure explicit determination of who is in a position to enter into the dispute resolution process, and it will serve to eliminate misconceptions in this regard. The bill allows parties to a body corporate dispute to agree to not have the matter determined under the dispute resolution provisions of the BCCM Act but, rather, to refer the dispute to a court, tribunal or dispute resolution process with appropriate jurisdiction.

I must, in all conscience, raise my concerns over the changes proposed to extend the jurisdiction of the CCT to determine complex BCCM disputes through clauses 71 to 74 and to extend adjudicator powers. Of note is the intent of clauses 14 and 16 of the bill which insert new sections 149A, 149B and 178 that extends the jurisdiction of the CCT to determine complex BCCM disputes currently resolved compulsorily by specialist adjudication. I invite the minister in her summation to clarify how the same level of specialist level of determination can be provided by the CCT with the extension of its powers.

Adjudicator powers are also addressed in this bill. They will be extended to permit an order for costs in favour of an affected person or the body corporate who have incurred costs with respect to the application, access body corporate records in the investigation of disputes and have the power to consider an application for an interim order.

The minister will no doubt recall the concerns I raised in July 2006 during estimates hearings regarding the classification of positions of adjudicators within the BCCM office and the issues surrounding the enforceability of orders on managers. Clause 23 specifies appointment of appropriately qualified persons as departmental conciliators and adjudicators, yet confirmation of what appropriate qualifications are fails to be clearly defined. One of the most common complaints is that the commission ignores

commonsense and follows the letter of the law so literally that, even when utterly ridiculous outcomes portend, they continue along their way regardless.

Clause 53 of this bill neglects to address adequately the enforceability of orders in section 287. It is only when orders are complied with that thorough closure resolution of the process occurs.

Clause 10 introduces new sections 101A and 101B. It clarifies expectations and roles of body corporate committee members as well as initiating statutory protection from liability. I support the introduction of section 101B, which clearly defines the expectations on voting members of body corporates. Recognising that it is much easier to remove a volunteer for breach of a code of conduct than a body corporate manager, it is a shame that there is not more detail regarding the execution of this provision.

I note the concerns raised in the Scrutiny of Legislation *Alert Digest* in that there appears to be a potential for conflict between proposed section 101A, which confers a conditional immunity, and existing section 45(4) of the Body Corporate and Community Management (Standard Module) Regulation 1997, which purports to confer absolute immunity upon body corporate committee members. I would ask that the minister confirm if she intends to review this proposed section for the purpose of eliminating potential conflict.

Concerns were raised with me initially by stakeholders about possible civil liability that could deter unit owners from agreeing to be members of their body corporate committee at all. I note the minister's amendments to clarify immunity from liability in the new section 101A.

In closing, it should be noted, nevertheless, that in August the current minister told parliament of her concerns that unethical practices by managers were still rife. The minister acknowledged people's fears and flagged an intention to introduce legislation and probity checks during the ongoing review that is currently taking place. Considering the minister knows there are fears of manipulation, it can only be seen as remiss of her not to bring some change in with this act. It is not good having legislation that is continually playing catch-up and not keeping pace with a rapidly expanding Queensland. Legislation that responds slowly and reluctantly to pressure and legitimate arguments from stakeholders is not only insincere but also ineffectual and virtually out of date before it is in place.