Speech by

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BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (6.05 pm): It is with pleasure that I rise to speak to the Body Corporate and Community Management and Other Legislation Amendment Bill 2006. This bill seeks to make a number of important changes to legislation regarding body corporate and community management groups in Queensland. As the chamber has already heard from my coalition colleagues, the honourable member for Clayfield and shadow minister for fair trading, I will be supporting this bill before the parliament with amendments that I commend the shadow minister for bringing to the House.

I want to begin my contribution by quoting from an email that I received last week from a constituent Jeff Suskova. He wrote to me, and he sent it to the minister as well. He said—

I understand Body Corporate matters will be raised in Parliament in the next few weeks and would like to bring to your attention that there are considerable problems in this industry that need urgent attention to protect unit owners.

The current government for some reason does not appear to want to protect unit owners while appearing to have sympathy for corrupt Body Corporate Managers and Caretakers ...

As someone who has spent the last 18 months battling with scurrilous body corporate managers who thumb their noses at Codes of Conduct—

This seems to be a recurring theme, Mr Deputy Speaker—

and a CTIQ that does not nothing to enforce the code on its members, I can ensure you that there are major problems within the industry, with some of the largest body corporate companies the worst offenders.

From my observations most Body Corporate Managers are appearing to be favouring Caretakers over owners. I have personally spent at least 400-500 hours researching, investigating and inspecting Body Corporate Records. What I have found is disturbing to say the least. There are many examples of covert fraud, dishonesty and improper conduct from BCM's and Caretakers, these are currently being addressed, however due to the lack of knowledge—

I acknowledge that many owners obviously are not aware of all the things that are going on—

most owners do not bother pursuing any matters like this further. Also owners have no confidence in the Commissioners office to deliver a fair and just order to an owner in dispute. Many owners believe the commissioner's office is for the benefit of BCM's and caretakers not owners, some go further and suggest outright corruption within the commissioner's office, as these owners have seen continual stupid decisions that certainly are not fair to owners but very fair to BCM's and Caretakers always at owners expense.

You do not have to be a rocket scientist to work out if BCM's and Caretakers are not properly licensed why would they worry about the worthless code of conduct provisions in the Act, when if brought before the equally worthless Body Corporate Commission for any misconduct actions, they will most probably get off without penalty. They know—

Ms KEECH: Mr Deputy Speaker, I find the words of the honourable member offensive. If he does have allegations of corruption in the body corporate office he should provide those to the appropriate channels immediately. I ask him to withdraw his comments and to temper his comments. I know he is reporting on behalf of a constituent, but I believe he should temper the comments he is making. Otherwise he should report them immediately to the appropriate channels.

Mr LANGBROEK: Your ruling, Mr Deputy Speaker.

Mr DEPUTY SPEAKER (Mr Hoolihan): In terms of your language, it has been said that it is offensive, and you have been asked to withdraw your comments.

Mr LANGBROEK: I will withdraw whatever it is that you ask me to withdraw, Mr Deputy Speaker. I just want to point out that I am quoting from an email about matters that are the subject of this legislation, but I am happy to withdraw.

Mr DEPUTY SPEAKER: Very well.

Mr LANGBROEK: I continue to quote from this email. It says—

Mr DEPUTY SPEAKER: Order! I draw your attention to the request of the minister in relation to any specific allegations which may be disclosed in the email.

Mr LANGBROEK: Thank you, Mr Deputy Speaker, I will keep that in mind as I continue to read from this email. It reads—

They cannot lose their licence because they don't have one to lose. Why is it that every other business in Queensland has to be licensed yet BCMs and caretakers are exempt? How hard would it be to licence them? Then they may step into line as they have their businesses at risk. At the moment there is no deterrent to make them act honestly.

As my investigations at my own body corporate, where there has been a dishonest BCM who was in league with an equally dishonest caretaker, I found what appears to be at least $20,000 a year of misappropriated funds. With 300,000 units obviously if this is endemic then it could be over $60 million of owners' funds that are being misappropriated. At what point does this become a major crime forcing a government to take some serious action?

This industry needs major changes to the BCCM Act to protect owners against dishonest BCMs and corrupt caretakers. The 300,000 unit owners in Queensland need to be the people who have a voice to these changes as they are the major stakeholders and not the leaches that feed off them.

They are certainly emotive words. He is a constituent of mine. He has sent that email to me and the minister. I am happy to quote what he has had to say. When anecdotal evidence comes from enough people it certainly carries some weight. He has concerns about QRAMA, CTIQ and other affiliated bodies which, as he points out, are for the benefit of BCMs and caretakers only. He concludes by saying—

It will probably take a large media campaign close to an election to force action to fix these problems. One would hope owners will not have to wait that long for action. If owners are forced to wait that long for relief I am sure the evidence will be substantially multiplied with many owners suffering greatly. The problems are there for anyone to see, but I guess it is the same old story: there is none so blind as those that do not want to see.

He has raised some very serious issues. They are ones that I think have a lot of merit. I now want to deal with some of the specifics of what he had to say. I point out that the Gold Coast has the largest number of community title schemes in Queensland. Many of these are based in my Surfers Paradise electorate. The coastal part of Surfers Paradise largely comprises high-density living, with high-rise hotel and apartment buildings lining the coastline. Since being elected I have had dealings with many of my constituents who are dissatisfied with the current body corporate law and procedures. I have heard many appalling stories of allegedly corrupt body corporate managers and caretakers.

Just like the honourable member for Currumbin before me, I do not want to denounce the entire body corporate industry because the majority of community title schemes operate effectively and with integrity. However, the law as it currently stands does not offer those residing or trading under community title schemes adequate recourse to challenge body corporate managers, caretakers and committees and in fact tends to favour the institution rather than the some half a million individuals that it affects.

As my colleagues have mentioned previously, this legislation will affect about 300,000 lots or units as well as some commercial premises. These legislative changes come at a time when medium- and high-density living is growing at an exponential rate spurred on by retiring baby boomers joining the sea change trend. One only has to flick through the pages of the voluminous *Gold Coast Bulletin* real estate liftout to see that the face of suburbia is changing.

As the stock of medium- to high-density housing increases under the South East Queensland Regional Plan more and more unit owners will come to rely on the Office of the Commissioner for Body Corporate and Community Management, the BCCM, for information and consumer protection against the minority of rogue body corporates operating in the community. The state government has a duty to ensure that unit owners' rights and interests are protected whilst balancing these with the needs of administrators for certain powers and responsibilities to effectively manage a community title scheme.

The bill currently before parliament partly achieves this but nonetheless I believe this legislation falls short of effecting real change within the troubled industry. Firstly, the enhanced dispute resolution process should be commended as it goes a long way to improving the procedure for settling disputes between residents and bodies corporate. However, having consulted with many of my constituents and having attended a public meeting of the Unit Owners Body Corporate Alliance in my electorate at which 300 people turned up, I saw that a lack of confidence in the body corporate commission is rife among stakeholders who see little value in the process which they hold to favour body corporate managers and caretakers.

Unit owners feel there is little consumer protection and believe that adjudicators are underresourced and unqualified to deal with the wide range of problems which come before them leading to a lack of common sense in decisions. Appropriate investigations and examinations of the issues are unable to be undertaken due to a lack of resources and powers to seek justice. The commission's terms of reference are so narrow and restrictive that often adjudication results in impractical legalistic decisions which defy common logic. A common criticism is that adjudicators do not have the expertise or legal know-how to rule in matters when they only have written submissions to base these judgements upon. Some of the matters need investigation and police, not adjudicators.

This legislation will promote informal dispute resolution, a process which must be satisfied before any further action can result. The bill requires that a person make a reasonable attempt to resolve the issue within the body corporate before an application is made to the commissioner. The bill sets out what reasonable measures of internal informal dispute are. They include communication, writing to the committee for the body corporate and presenting a motion for consideration at a general meeting of the body corporate. It also defines who may seek action from the commissioner.

Promoting enhanced communication between unit owners and body corporates when problems arise is beneficial as it is expected that some non-complex disputes can be dealt with at this level rather than seeking further adjudication. Whilst it sounds like a good provision, and overall I believe it is, many of those with whom I have consulted are concerned that the self-resolution process will be unfruitful and in some ways counterproductive to their cause. But in the majority of cases I believe this process will have a positive effect on reducing the number of complaints that are heard for adjudication.

After self-resolution has been tried—and obviously in some cases self-resolution will fail—the next stage is departmental conciliation through the BCCM office. The conciliation process will again attempt to resolve conflicts via informal means and by encouraging parties to resolve the issue by increasing communication between the parties and improving their understanding of rights and responsibilities. If a matter is still unable to be resolved, the next stage is taking the complaint to the Commercial and Consumer Tribunal which will have its powers extended under the act to sufficiently adjudicate non-complex disputes as defined by the legislation. Only complex disputes may finally be dealt with at the District Court level. While this will have the effect of alleviating the workload of the courts, it is important that judicial settlement of disputes is not replaced with a watered-down version which will not allow arguments to be properly heard.

Hence I suggest an amendment to the bill which provides for appeals of BCCM conciliation and CCT rulings to be heard by the court regardless of whether they are complex or non-complex disputes. In my view, this will not jeopardise the efficacy of the informal adjudication processes but rather give people with a genuine case the opportunity to have their day in court, thus instilling added confidence in the BCCM and CCT processes. Appealing to the courts will also ensure that rulings are conclusive.

As an aside, I understand that the commissioner attends and speaks at education seminars that are often blatant marketing exercises for body corporate management companies. This is completely inappropriate. The commissioner is not accountable to anyone.

Ms KEECH: Mr Deputy Speaker, on a point of order. On behalf of the department I find that absolutely outrageous and offensive. I ask you to withdraw.

Mr LANGBROEK: Mr Deputy Speaker, I seek your ruling as to whether I have to withdraw when I am speaking about a third person.

Mr DEPUTY SPEAKER: There is no point of order, Minister.

Mr LANGBROEK: The bill currently before parliament also introduces a code of conduct which must be observed by body corporate committee members. This is a positive move in instilling added professionalism in bodies corporate and leaves committee members and unit owners with no uncertainty as to the rights and the responsibilities of their body corporate. It is important, however, that this code of conduct is seen to be enforceable rather than there being voluntary guidelines with no consequence in instances where the code is breached. To this end, the bill amends regulation modules to empower the BCCM and CCT to remove a committee member from office where they have been found to be carrying out conduct contrary to that which is expected of a voting committee member. It should be noted here that the coalition proposes that the code of conduct include a provision requiring the compulsory exclusion of a committee member from voting on an issue where a conflict of interest is seen to exist. This will ensure that the unit owners' interests rather than the commercial interests of body corporate managers and caretakers are always observed.

Perhaps the greatest shortfall of this legislation is that it does not go far enough in regulating the troubled body corporate industry. There are two elements to this—licensing and auditing. I will deal with the latter first. As I mentioned earlier, many of my constituents who are fighting unjust body corporates and who have had dealings with the BCCM body corporate managers and who have had dealings with the BCCM feel disenfranchised because of the current law's tendency to favour the institution over individuals. In bringing this legislation forward we must not forget who we are seeking to protect. Body corporates are a powerful entity. There is no form of quality control over who can buy management rights. Once in body

corporate, managers and caretakers have unrestricted access to group bank accounts which are often administered under their own name. Furthermore, body corporate managements are not required to be audited by law. As a result, the opportunity for mismanagement is rife.

Body corporates need to be held to account. Requiring body corporates to undergo semiregular audits, or at least body corporates that are bigger than sixpacks or duplexes, would enhance the professionalism of the organisation and deter misuse of body corporate power. The other important point to note here is the fact that body corporate managers are not required to be registered. Body corporate managers do not need a minimum education qualification and they are not required to pass a probity check. Anyone can purchase management rights over a community title scheme without any kind of input by the residents affected. Once they have taken rights, residents have few options for action against managers and caretakers. Because most body corporate managers have invested financial interest in the community title, it is extremely difficult to remove them from office, even where they have been found to have acted against the interests of unit owners.

It seems passing strange that the only penalty attached to the codes of conduct is against owners, and that was pointed out by my colleague the honourable member for Clayfield. What is needed is a licensing scheme whereby body corporate managers and caretakers must obtain registration before buying into a community title scheme. A controlled licensing system could lay down certain requirements of body corporate managers and caretakers which would be particularly beneficial where it pertains to financial arrangements. A body corporate manager licensing scheme could involve education and training as a necessity for holding a licence and could provide a forum where bad body corporates can be reported and investigated.

One of my constituents made a good point about licensing with regard to the code of conduct that this legislation constructs. If body corporate managers are not required to be licensed, what incentive will they have to uphold a code of conduct when they cannot be excluded from the organisation due to their vested financial interest in the body corporate? It seems bizarre that the persons involved in aiding managers in purchasing a community title scheme, such as lawyers and real estate agents, must be licensed yet managers do not. Given that the number of community title schemes and therefore the number of body corporate managers and caretakers is only going to increase, I believe we need to implement tougher controls on managers, and now is the opportunity to do it. The Unit Owners and Body Corporate Alliance has been advocating for a licensing system and would like to see all current body corporate managers and caretakers registered immediately. Whilst this would prevent current managers from having to undergo the same processes and scrutiny—new managers would—it is preferable to the situation where there is no licensing and therefore no checks and balances at all.

While some of these measures seem excessive, as the Unit Owners and Body Corporate Alliance pointed out, good managers have nothing to fear from these reforms. Reforms to this effect would instil a sense of professionalism in the body corporate industry and might go some of the way to restoring people's faith in a system which for far too long has been underregulated and unaccountable. I support the Body Corporate and Community Management and Other Legislation Amendment Bill, with amendments, and I call on the minister to enact these necessary enhancements to dispute resolution procedures. I would ask that the minister give credence to the coalition's call for a licensing scheme and consider it in her reply, as it is widely supported within the industry and will only enhance the industry in the long term.