



Speech by

Mark McArdle

MEMBER FOR CALOUNDRA

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BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Mr McARDLE (Caloundra—Lib) (3.14 pm): It gives me pleasure to rise today to support the comments made by the shadow minister and congratulate him on the content of his address. Primarily the Body Corporate and Community Management and Other Legislation Amendment Bill aims to enhance the dispute resolution process in body corporate disputes. Every member of this House has had numerous constituents come to them and complain about their body corporate, the committee structure, the levies and other matters undertaken by the body corporate which they cannot understand but perceive in many cases not to be in the interest of themselves or other unit holders.

Body corporate disputes are often the most difficult to resolve because they incorporate a large degree of emotional involvement by all parties for a lengthy period of time. The body corporate system has a positive principle—that is, individual unit holders dictate, as much as possible, the future of their complex and protect the rights of individual unit holders. In many cases, this does not occur as a consequence of power structures or power cliques developing within communities and those cliques in essence controlling the committee, the processes of that committee and ultimately determinations and decisions of that committee.

The review of the Body Corporate and Community Management Act 1997 actually commenced in 2004 with a discussion paper being released in July of that year. I note that 177 stakeholders expressed views on a wide range of body corporate issues. It cannot be ignored that it is now March 2007, a period just short of three years, and this bill is only now being debated in the House. Given the number of complaints that each member, their offices and those people who have fallen into the dispute resolution process have made, the delay highlights the deplorable attitude this minister has to the concerns and needs of many people right across south-east Queensland and, in fact, throughout the whole state who live under a body corporate structure.

Ms KEECH: I rise to a point of order. I find the comments of the member offensive and I ask him to withdraw them.

Mr McARDLE: I withdraw. More and more people, given we are living longer, move into structures in which a body corporate is required. The minister would have been painfully aware of the number of complaints and concerns with regard to body corporate disputes, yet it has taken a lengthy period for the bill to be debated. As the shadow minister pointed out, in 2004 there were 30,000 individual schemes and over 303,000 individual lot owners in Queensland. This is an industry that is expanding by necessity. As people get older they tend not to want to have large yards and be concerned with mowing and having to care for large gardens. They long for the simpler life with a smaller garden and the security of living in an area with people their own age. Against that background, it is difficult to comprehend why this bill was not introduced and debated in a more timely manner.

The bill is here now. The key elements of the bill are to alter the dispute resolution process for community title scheme disputes; introduce a code of conduct for committee-voting members; and allow

new evidence to be introduced in appeals to the Commercial and Consumer Tribunal in certain circumstances.

The Parliamentary Library produced a research brief in relation to these items. With regard to dispute resolution, the library highlights the following from the minister's second reading speech as improving the dispute resolution process: firstly, most people must make reasonable attempts to resolve their dispute internally before seeking formal government intervention; secondly, departmental conciliation will be able to be conducted by the Body Corporate and Community Management office; thirdly, the jurisdiction of the Commercial and Consumer Tribunal will be extended to determine complex body corporate and community management disputes; fourthly, the Commercial and Consumer Tribunal, rather than the District Court, will hear appeals and orders made by adjudicators; fifthly, definitions will be amended to clarify whom the parties to the dispute are and whether the dispute exists for the purposes of dispute resolution; sixthly, the parties to a dispute will be allowed to refer their dispute to a court or tribunal with appropriate jurisdiction; and, seventhly, an adjudicator will be able to award costs against a person who makes a frivolous or misconceived application or one without substance in favour of an affected person or body corporate who has incurred costs in the course of the application up to a maximum of \$2,000.

In relation to the Commercial and Consumer Tribunal, the bill clearly places the hearing of appeals from adjudicators in the Commercial and Consumer Tribunal rather than the District Court. There have been many people who have approached me, and I assume many members, concerned about taking matters to the District Court given the exorbitant cost and time involved in the process. In that regard, the bill certainly removes an impediment to many people taking the matter further due to the cost involved in the current process.

The bill goes on to extend the tribunal jurisdiction in a number of areas that have already been canvassed by the shadow minister. Interestingly, the bill introduces codes of conduct for body corporate managers and caretaking service contractors together with committee-voting members. It is with the latter that clause 68 deals and proposes a code of conduct comprising six guidelines, including an obligation to understand the act, to act honestly, to act in the best interests of the body corporate, to comply with the act and code, not to commit a nuisance, and to disclose any conflict of interest. The new section 101B provides that if a member breaches the code of conduct the member 'may be removed from office in the way prescribed under a regulation'. My concern with this clause is that the method of removal from office is left to a regulation. There is nothing in this bill—nothing as I understand it—which provides that mechanism. I would have thought that the process of removing a member from a committee should have been covered in the bill. It should have been dealt with in the legislation itself and not merely left to a regulation. I would ask the minister to explain why this is not covered in the bill, when it can expect to be regulated and what the terms of that regulation may well be.

Clause 10 also inserts a new section 101A that provides that a committee member is not civilly liable for an act done or an omission made in good faith and without negligence in performing the person's role as a committee member. I note the *Alert Digest's* comments in relation to proposed section 101A and the existing section 45(4) of the Body Corporate and Committee Management Standard Module Regulation 1997, and I ask the minister if she could in her reply canvass the question addressed in the *Alert Digest*.

Finally, the bill amends the Liquor Act by inserting a new section 35 allowing the tribunal when hearing an appeal against a decision of the chief executive to grant a party leave to present new evidence in certain circumstances being, firstly, the party did not know and could not reasonably have known of the existence of the new evidence before the decision; secondly, the new evidence is relevant and likely to have affected a decision; and, thirdly, it would be unfair not to allow it to be presented. The *Alert Digest* does state that the provision enhances the positions of appellants, enabling a much larger range of material to be considered by the tribunal and in fact allowing new material to be entered. My concern is that the appeal could in fact become an entirely new hearing, thus placing the respondent at serious disadvantage and has the potential to allow the floodgates to be opened. I ask the minister in her reply to turn her mind to the reasons why new evidence is to be placed before a tribunal on an appeal basis and the potential bias that gives an appellant in the appeal process. I commend the shadow minister for his efforts with regard to this bill.