Speech by

Peter Lawlor

MEMBER FOR SOUTHPORT

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BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Mr LAWLOR (Southport—ALP) (2.37 pm): I support this bill. It is quite logical and acceptable as far as its goes. However, I consider that it does not go far enough in its review of the Body Corporate and Community Management Act. I intend to refer in my contribution to a particular issue of concern to many in the community and also to several members of this parliament, and this is the issue of the process for the adjustment of body corporate entitlements. That is, the proportion which each lot owner must contribute to the cost of running a scheme. In other words, owners of a property which comprises a residential lot have an entitlement to lots which determine the proportionate share of the lot owner to the common property and, therefore, to the contribution to be paid for the costs of maintaining and providing services to the building and also for capital works. This is an important issue, because there are over 33,000 community titles schemes in Queensland, which account for over 300,000 individual lots.

The South East Queensland Regional Plan endeavours to concentrate higher-density housing where the infrastructure, such as water, sewerage and so on, is located to contain urban sprawl. Therefore, the community titles sector of the housing market assumes even greater importance for the future as effect is given to the objectives of the South East Queensland Regional Plan.

This bill misses that opportunity to rectify what I consider to be the unintended consequences of the Body Corporate and Community Management Act 1997. That act provides that there should be two sets of lot entitlements for each apartment in a community titles scheme: contribution schedule lots and interest schedule lots. The first is the means by which the respective contributions of the apartment owners to the maintenance and running costs of the building are determined and the interest schedule is the means by which the respective owners' interests in the common property are determined.

I have raised my concerns about what I considered to be an unfair system for adjusting body corporate lot entitlements over the past two years with both the minister's office and the department. I am grateful for the minister's undertaking to have her department review the issues relating to lot entitlements and adjustment thereof and also body corporate fees. However, other responses and comments I have received give me no confidence that the problem is understood, and I will refer to a few examples.

The case which established the present regime for adjusting body corporate lot entitlements is the Centrepoint case and the decision of the Court of Appeal, which was delivered in June 2004. I quote from the decision of Mr Justice Chesterman in this contribution. It is important to note that this is a Court of Appeal decision—that is the law on this particular issue. Anyone who says that the legislation must be working okay because there has been only one court case is completely missing the point. It is a complete non sequitur of a comment. This case did not go the further step to the High Court because the judgement correctly interpreted the provisions of the Body Corporate and Community Management Act. Anyone who took a further case to court would be a complete madman or madwoman or a multimillionaire with a sense of humour.

The fault is not with the judgement in the Centrepoint case; it is with the legislation, which gives rise to the present unfair situation which is set out in the Centrepoint case. In the Centrepoint case there was

an application pursuant to section 48 of the act to adjust the lot entitlement schedule. In the building there were 51 units. As a result of the decision, a lot entitlement for a one-bedroom unit went from 97 to 185, an increase of 90 per cent. Similarly, the penthouse or a three-bedroom unit—I refer to a penthouse because that is referred to in the judgement; I am not trying to be dramatic about it—went from 295 to 211, a reduction of 29 per cent.

One of the criticisms I get is that most unit lot entitlements do not change significantly. That is just a trite comment because of course most units in any building will be around the mean lot entitlement and they will not change greatly. Even in the Centrepoint case, of the 51 units I would guess that about 30 change very little. It is only at the extremes that it becomes significant and, in the case of, say, a one-bedroom ground floor unit, unfair. The penthouse or large unit comes down and the one-bedroom ground floor unit goes up.

Under previous legislation lot entitlements were set by the developer and essentially fixed in concrete when the plan was registered. Yes, they may have set the levies of the penthouse artificially high and cheaper units artificially low. But so what? A purchaser of either unit, when entering into a contract, gets details of the lot entitlements et cetera. Those details form part of the contract. The purchaser is fully informed and aware of the liability to pay an extent of the levies. What could be fairer? On the other hand, what could be more unfair than entering into a contract and thereby being informed what your liability for the body corporate levies were on completing the purchase only to find that six months, six years or 20 years down the track an application is made to vary the lot entitlements and your levies might double. It could be enough to force you to sell your unit and move out, as happened with a constituent from Burleigh Heads who appealed to their member, Christine Smith, about the situation.

I have heard an argument that lot entitlements 'should not be used as a marketing tool'. Why not? By that I presume it is meant that you should not use the higher entitlements of, say, a penthouse to subsidise the ground floor units lot entitlement and therefore make them more attractive to a purchaser. What is wrong with that? The entitlements differential cannot be too ridiculous as the developer still has to sell the penthouse. But if the developer's objectives—that is, to sell his units—coincide with the objectives and policies of various groups, including this government, to provide more affordable housing, what is wrong with that?

There are also some negative responses to the word 'marketing' and developers 'marketing their product'. Maybe it is associated with 'marketeering', which of course is illegal. But there is nothing illegal or negative about marketing. In fact, we all went through a marketing exercise fairly recently—it was called an election. The proper use of lot entitlements and the certainty provided under the old Building Units and Group Titles Act could contribute greatly to the provision of affordable housing, which is in greater demand today than it ever was.

Another comment I got was that 'in many cases lot entitlement adjustments result in lower costs for unit holders and result in more affordable housing not less'. That is just rubbish. It may result in more affordable housing for millionaires. I would be happy to be proved wrong on this point, and I could be proved wrong and would admit that I was wrong if I could be given just one example of the lot entitlements of a penthouse going up as a result of an application under section 48 of the act. The simple fact of the matter is that there is only 100 per cent of anything including lot entitlements in a building. If someone's lot entitlement is reduced then someone else's must be increased and, as a result, the proportion and amount of the levies which an owner is liable to pay is adjusted accordingly.

What am I to make of a comment that appears to confuse body corporate levies with lot entitlements, and I quote—

Inflexibly fixing body corporate levies at the rate set by developers deprives unit owners of any opportunity to review lot entitlements should the circumstances of their scheme change.

This is something out of a Monty Python sketch. Firstly, section 48 of the act—and indeed the courts are not concerned with body corporate levies; levies are set by the body corporate itself—relates to lot entitlements which determine the proportion of levies that each unit owner must pay—the proportion of the administrative fund and the sinking fund. Secondly, whilst the original developer sets the amount of the levies—and indeed the lot entitlements—they are not set in concrete and they are not inflexible. As units are sold off plan, so the control of the body corporate and responsibility for setting levies passes to the unit owners represented by the body corporate management committee. They then adjust the body corporate levies and set budgets on an annual basis. Unfortunately I know this. I am on the body corporate management committee of my own building. It is a bit of a chore, but it has to be done. They do not and cannot review lot entitlements which, as I have said before, determine the proportion of the total levy which each lot owner pays.

Again I hear people confusing body corporate levies with lot entitlements. I get told things like, 'The quantum of body corporate levies changes for a variety of reasons, particularly in response to the changing capital priorities of bodies corporate and not solely or primarily because of adjustments to lot entitlements.' Of course the quantum of the body corporate levies change and sometimes in response to changing

capital priorities. These are often addressed by special levies. For instance, a building might require repainting and there is not enough money in the sinking fund to cover the cost. Also, pools and lifts can be expensive and may require special levies for maintenance. But this is not an issue relating to quantum of body corporate levies. To relate it to the quantum of the levies shows a basic misunderstanding of the problem. It relates to the proportion of the levy that each lot owner must pay which is governed by the lot entitlement.

As I have said previously, I thank the minister for her undertaking to review the issue of the adjustment of body corporate lot entitlements, and I hope that this will be undertaken as a matter of urgency.