



Speech by


## Fiona Simpson

MEMBER FOR MAROOCHYDORE

Hansard Tuesday, 29 November 2011

---

### CIVIL PROCEEDINGS BILL

 **Ms SIMPSON** (Maroochydore—LNP) (4.52 pm): In rising to speak to the Civil Proceedings Bill I note that it proposes the enactment of the new Civil Proceedings Act and a number of amendments to several other acts. Colleagues of mine have made reference to fact that this is de facto SLUMP bill that has been rolled in with a new piece of legislation. The other pieces of legislation that are being amended in this bill include the Associations Incorporation Act 1981; the Births, Deaths and Marriages Registration Act 2003; the Cremations Act 2003; the Electoral Act 1992; the Information Privacy Act 2009; the Justices of the Peace and Commissioners for Declarations Act 1991; the Queensland Civil and Administrative Tribunal Act 2009; the Retirement Villages Act 1999; and the Right to Information Act 2009.

I think it is important to read into the record those other bills that are being amended as it is too easy for people to miss the fact that there have been quite important amendments made. Some will say that they are minor amendments, but in fact there are some quite significant amendments to the acts mentioned. This is a problem when we have a government that rushes in legislation for convenience rather than using good protocol and legislation that incorporates completely unrelated pieces of legislation. Of those acts just mentioned, I would particularly like to address the changes in respect of the Retirement Villages Act 1999, the Associations Incorporation 1981 and the Justices of the Peace and Commissioners for Declarations Act 1991.

With regard to the Retirement Villages Act, the amendments provide that in relation to particular exit fees paid to a scheme operator upon a resident leaving a retirement village the daily pro rata calculation will be (a) the default method for existing residence contracts where the contract does not provide an alternative method and (b) the mandatory method for all future contracts which cannot be contracted out of. I believe that this has been a necessary move because of unfortunate abuses of exit fees in a number of circumstances.

I appreciate that submissions have been made publicly by retirement village operators that they feel that this will disadvantage the way they configure their contracts. We note that where it is quite clear in existing contracts as to the methodology that is to be applied with regard to exit fees those contracts will stand. It will be future contracts that will have this methodology applied. This provision is due to a lack of clarity in some contracts and some abuses.

These issues can cause hardship and genuine distress, but it is unfortunately only when such matters face a legal challenge that they are highlighted. The example that has been highlighted is *Saunders v Paragon Property Investments*. In this case there was a challenge. As I understand it, it was determined that the exit fees would be calculated on a pro rata daily basis. That has informed some of the debate that we are having here and the way that this legislation has been drafted.

There have been previous discussion papers and consultation with industry and stakeholders on these issues. I understand that there are other changes still to come forward. The ones we are seeing incorporated in the Civil Proceedings Bill are the first tranche. We support these amendments. It has been noted that there were some concerns about retrospectivity. As has been outlined, in recent times there has been court action where these matters have been challenged and the court has made a determination.

Going forward, the situation will be quite clear with regard to contracts where previously it has not been clear.

In many cases our retirement villages provide a wonderful home for people. They provide security, fellowship and a type of accommodation product that is well sought after. We certainly want to see them continue to be a viable and fair option for those who operate them, but, most importantly, for those who seek to go into them. I would urge people before they enter into a contract to first seek legal advice. This is not to absolve the responsibility of any operator when it comes to any future contracts they draft, but it is really to ask people to be aware of the implications of any contract. I appreciate that often there will be a sense of heightened urgency. People see the opportunity and they might have to move in a hurry. It should never negate the opportunity for people to gain legal advice so they are fully informed as to their rights and can then make an informed choice in respect of the contract they are signing. That is not just with regard to retirement villages but with regard to any contract.

I also want to pay attention in particular to the change in respect of the Justices of the Peace and Commissioners for Declarations Act 1991. This is to allow justices of the peace and commissioners for declarations to record details of identification documentation sighted in the performance of their duties. This is a common-sense amendment. It is one that will assist them in carrying out what is a very important duty and one that I want to take the opportunity here in the parliament today to acknowledge is a valuable service to our community. What our justices of the peace and our commissioners for declarations undertake to do is a labour of service and love to the community and they are not able to be paid for that service. When I meet with JPs I am amazed at how passionate they are about performing their role, being well trained to undertake it, and the importance of what they do in our community. They deserve our full commendation for providing that voluntary service. We should provide any support that we can because, as I said, they are volunteers. They are doing it for the love of it; they do not get paid. This is a small change which will assist in a practical way to deliver their service. I welcome this particular change.

The other aspect in the legislation that I want to particularly put on the record is the change to the Associations Incorporation Act 1981 which will allow associations under the state act to transition to the Commonwealth Corporations Act 2001 if they so choose. There has not been a transitioning provision previously—or certainly not one that is clearly outlined in legislation—that provides such an opportunity. As has been outlined by the minister and certainly in the other contributions of members, there are circumstances where it can be more opportune for an organisation, particularly where they have grown and they have cross-jurisdictional responsibilities, to operate under the Commonwealth Corporations Act. I think that this is an important change and one that may not be relevant to all associations. However, it will certainly be welcomed by those that have a particular need to make that transition into the Commonwealth Corporations Act and to be able to make those structural changes with a practical approach. I certainly hope that this, in its implementation, proves to fulfil a simplification for those associations seeking to make such a change.

In closing, I want to thank the Legal Affairs, Police, Corrective Services and Emergency Services Committee for the very thorough report that it has undertaken. I commend its report to the House. Certainly it has provided a level of detail. Given that its members have had such an abbreviated time frame in which to consider the matters, I think they have done an excellent job.