Speech by

Grace Grace

MEMBER FOR BRISBANE CENTRAL

Hansard Tuesday, 5 April 2011

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Ms GRACE (Brisbane Central—ALP) (9.39 pm): I rise in support of the Body Corporate and Community Management and Other Legislation Amendment Bill 2010. The Body Corporate and Community Management Act 1997 currently allows either the Queensland Civil and Administrative Tribunal or a specialist adjudicator upon application by a lot owner to adjust a community titles scheme's contribution schedule lot entitlement. Contribution schedule lot entitlements have sometimes had significant adjustments which have resulted in many lot owners being unable to pay their share of body corporate expenses. This has had significant impact on a lot of unit owners who live in my electorate.

Unfortunately, living in a unit, which many have chosen to do for a number of reasons—be it a change of lifestyle, be it for retirement, be it for the ease by which you can get around the city and avoid travel—is slowly becoming very expensive, particularly when combined with the recent increases that were introduced by the Brisbane City Council—may I say in a very sneaky manner—in the last budget which saw massive rate increases for unit owners in my electorate, sometimes up to 300, 400 and 500 per cent. It has been an incredible increase which is making living in a unit unviable and very expensive for unit owners.

I really cannot see the justification for these increases. These buildings sometimes contain 100 and 200 units. They are probably on a block of land the size of maybe two or three ordinary house blocks. You collect rates from 100 or 200 units, yet you have one place to go to collect bins, one input for water and one output for sewerage. Compare that to the services provided to 100 or 200 houses in a suburb where there is some distance between houses. That is quite different from a high-tower unit block, where there is no requirement for those services to be delivered along a lengthy road. There is a big difference between a unit dwelling and a house dwelling, and there are economies of scale of 100 or 200 units being built on a block compared to 100 or 200 houses in a suburb. There is a big difference in the amount of land that it takes.

Mr Sorensen interjected.

Ms GRACE: No. The member for Hervey Bay says you can fit 100 or 200 houses on the same block as 100 or 200 units! Lord help us. He was the mayor of Hervey Bay. Lord only knows what they were building up there.

I acknowledge the excellent e-research done by the Queensland Parliamentary Library on this bill. It is a good document. I refer members opposite to it. They should read it so they can understand what this bill is about. When I was elected back in 2007, this was one of the first issues raised with me. It was a concern shared by me and in particular by the member for Stafford, the current minister, and by the member for Southport. Clearly there was a problem in the marketplace that needed to be addressed—and I admit that this is a complex issue to address, because inevitably in addressing this issue there will be gains and there will be losses.

Importantly, there has been no single cause of the problem but a series of events and decisions over a long period of time dating back to 1997, when there was a clear failure to fully appreciate the transitional implications arising from the enactment of the BCCM Act, all combining to bring about a problem we are addressing via this bill. Problems also commenced following the well-known Court of Appeal decision in what is commonly known as the Centrepoint or Fischer case which was handed down on 25 June 2004.

Mr Lucas: Frequently discussed at the Wynnum IGA.

Ms GRACE: Frequently discussed at the Wynnum IGA. It was a decision of a block of units located at Spring Hill in my electorate. Following this and the issues that had been continually raised, the government released a discussion paper back in December 2008. That discussion paper was entitled *Sharing expenses in community titles schemes*. It included a number of scenarios and options, and there were many submissions covering many issues. There have been opposing views from those who have gained by the Centrepoint decision and of course from the many who have been severely disadvantaged by the use of the legal precedent. In this particular court case, there are no doubt winners and losers when it comes to lot entitlements.

Larger penthouses and one-level unit owners have had their annual body corporate fees reduced, and this has been at the cost of smaller unit owners, whose fees have often increased substantially. I know of one inner-city complex where a very large unit owner's body corporate fees reduced to a quarter of what they were paying when they bought the unit with their eyes open, knowing that that was their body corporate fee. Following a decision, their body corporate fee reduced to a quarter, and the smaller unit owners had their fees doubled or more. In some cases, the smaller unit owners were paying 50 per cent of the equivalent amount of body corporate fees paid by the larger penthouses or one-level unit. Clearly this has placed great financial stress on people who also did their due diligence and had their eyes open when they bought their unit. This decision is impacting upon their ability to remain living in a unit which they considered affordable when they purchased it.

Not only did they find they were up for these additional expenses through a court decision; it invariably affected the value of their property because body corporate fees are a major consideration when someone buys a unit. I want to place on the record my thanks to many of my constituents who have raised this issue from both sides of the argument—those who believe the Centrepoint decision is fair and those who are pleading to have this bill enacted as soon as possible. I acknowledge that this is a complex issue but it is one that needs addressing, and I believe we have found the best solution possible.

The amount raised necessary to meet body corporate expenses usually represents 100 per cent. Inevitably, when one amount is lowered then someone else picks up that amount. From the many examples of adjustments brought to my attention, I can honestly say that the majority of unit owners in a complex have been disadvantaged when compared to the minority few gaining greatly from a reduction in their fees. The bill provides the ability to revert to previous contribution schedule lot entitlements and will only apply to existing community titles schemes and in relation to an order of the court, tribunal or specialist adjudicator that was made before the commencement of this bill.

A lot owner adversely affected by an adjustment order—that is, the fees increased due to the order given by the tribunal or the court—may submit a motion to the body corporate or the body corporate committee proposing the adjustment of the contribution schedule for the scheme to reflect the contribution schedule before any and all adjustment orders. However, there are limitations on the ability to propose such a motion. It is not available to an owner of a lot after an adjustment order was made or who becomes the owner of a lot after the relevant provisions in this bill commence. Also, the ability to submit such a motion will cease three years after this bill is enacted. Therefore, there is a time frame that affected unit owners must act within and the right for this motion no longer exists after three years. So there is a window of opportunity here for people who believe they have been adversely affected by these decisions to move a motion in the body corporate or body corporate committee to revert.

The body corporate or the body corporate committee must then deal with any such motion, and there are provisions in the bill about the manner in which the decision is to apply in such circumstances. There is quite a comprehensive flow chart that has been put together by the department to assist in the process, and I am very eager to help people who live in units in my electorate who want to move a motion, to give them the tools to enable them to do exactly what is required by the legislation and also to give bodies corporate the tools they need to take the actions they must take.

The bill also proposes two important principles—the equality principle and the new relativity principle—to determine the setting of contribution schedule lot entitlements. This aims to set out a process for how these entitlements are going to be worked out by applying two principles which must be open, transparent and advised to people when they are buying units. The bill provides that contribution schedule lot entitlements must be set in accordance with the equality principle—that is, contribution schedule lot entitlements are set equal except to the extent to which it is just and equitable for them not to be equal—or

the relativity principle, where there must be a demonstrated relationship between the lots by reference to one or more prescribed relevant factors.

Lot owners in community titles schemes established prior to and after the commencement of this bill will be able to adjust contribution schedule lot entitlements if it is unanimously agreed by all lot owners through a resolution without dissent of the body corporate. I notice that the member for Currumbin actually brought to the attention of the House a situation where all the lot owners were in agreement that the lot entitlement should be amended in a particular way. This bill will enable them to do that. There is no hindrance, where there is agreement and no dissent, to the body corporate adjusting those lot entitlements to reflect the desire of members of that body corporate.

For a community titles scheme established after the commencement of the bill, where a lot owner believes the contribution schedule lot entitlements are not set in accordance with the contribution schedule principle applying to contribution schedule lot entitlements, they may seek an order of a specialist adjudicator or QCAT to adjust the contribution schedule lot entitlements. An application has to be made and they have to apply whatever principle was applied when the lot was established. The order must only be in accordance with the contribution schedule principle which already applies to the contribution schedule lot entitlements.

The bill also provides that interest schedule lot entitlements—that is different to contribution schedule lot entitlements; it appears to be a principle that those opposite do not understand—must reflect the respective market values of the lots, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements to not reflect the respective market value of the lots. I am sure that those opposite have no understanding of the difference between contribution and interest schedule lot entitlements. With an interest schedule lot entitlement the lot owner has a share of the common property. The lot owner's interest on termination of the scheme includes their share in the body corporate assets. There is a difference between contributing to the running costs and the interest schedule, where they actually have a share in common property and in the costs of the assets. That is a completely different kettle of fish.

The member for Currumbin is exactly right: they have absolutely no idea. They must apply the market value. I would like to hear the explanation of what the alternative would be. If members understood the extreme differences between the two they would understand why the legislation is written in this manner.

The current provisions of the act providing the ability to seek an adjustment of interest schedule lot entitlements will continue to be available for all schemes after the commencement of the bill. These changes to the bill will ensure that there is as much certainty around body corporate costs as possible, as well as providing more appropriate principles for setting contribution schedule lot entitlements.

I congratulate the current minister for bringing this bill to the House. I have many constituents out there waiting to hear that this bill is being debated and that it passes through this House. I also congratulate the previous minister, the member for Southport, Peter Lawlor, who did an excellent job in going through all of the complex issues in relation to this matter. The member for Southport has been a strong advocate for ensuring that this matter does not continue in the complex way it is at the moment, that the majority of unit owners who are being disadvantaged do not continue to be disadvantaged and that the legislation is brought before the House as soon as possible so it can address the issue that I have spoken about tonight.

The member for Southport has done a sterling job. I place on record my congratulations for the hard work that he has done in relation to ensuring that this bill brings about a solution which, although complex and may not suit everybody and may not necessarily address all of the complex issues that we have discussed tonight, goes a long way to reverting to what people had when they first bought units and therefore having the disadvantage removed.

If those opposite understood this bill, if those opposite spoke to those unit owners, if those opposite realised the number of people who have been disadvantaged not only by the decisions of the courts in increasing their expenses but also by the increases in rates that they have had to endure because of the previous Lord Mayor of Brisbane, the candidate for Ashgrove—this has affected people who live in the Brisbane Central electorate but also people in other electorates—we would not need to apply a lot of the changes that are proposed. I believe it is a necessary step. I commend the bill to the House.