Speech by

John-Paul Langbroek

MEMBER FOR SURFERS PARADISE

Hansard Wednesday, 6 April 2011

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—LNP) (12.22 pm): In rising to speak to the Body Corporate and Community Management and Other Legislation Amendment Bill 2010, I also want to commend the member for Currumbin—the shadow minister for small business, job creation, fair trading and industrial relations—on a very comprehensive review of the bill before the House which I was pleased to read this morning in the *Hansard*. I note also the contribution of other members on this side about the fact that this really does highlight that Labor members cannot do two things: they cannot be trusted to deliver when it comes to fixing a problem and they do not understand that this is also a cost of living issue, and I will come to that in my contribution later.

I acknowledge the contribution of the shadow health minister, the member for Caloundra, that this does not fix the problem. It clearly does not fix the problem that has been identified as the first objective of the bill, which is—

... to amend the Body Corporate and Community Management Act 1997 ... to provide a new lot entitlements system.

That is the problem—that it is another new lot entitlements system. The objective continues—

The new lot entitlements system provides two principles for the setting of contribution schedule lot entitlements and a limited ability to adjust contribution schedule lot entitlements.

The real problem is that this bill was supposed to deliver much but in reality it delivers little. It is a bill that was intended to satisfy many but will, if passed, satisfy few. It is a bill which was supposed to deliver certainty to unit residents and investors alike but which delivers only more uncertainty. That is the point that has been made by the shadow minister, the honourable member for Currumbin. We know that because we come from the Gold Coast and it is on the Gold Coast that we have one-third of the total units throughout Queensland, and owners have contacted us with their frustrations with lot entitlements issues over the last couple of years.

Given the Bligh government's dismal record, should we be surprised that it cannot deliver on its promise with this bill and end the uncertainty? Of course we should not be surprised because it is obvious that the Bligh government cannot be trusted to deliver on promises it made about solving problems. Government members clearly do not understand those cost of living issues, and this is just one of them. For people who have bought units and have then had their lot entitlements changed, this is just adding to the pain they are already feeling from increases in water, a 119 per cent increase in electricity over the last five years as well as the other increased costs, such as car registration. Add that to the uncertainty they will now have with lot entitlements. The system under this bill does not end the uncertainty.

I note the second policy objective of the bill, which is—

... to establish simplified management arrangements for residential community titles schemes containing only two lots and facilitate a new regulation module designed to make the day-to-day management of residential two-lot schemes less onerous and less complex for lot owners.

My main focus in my contribution today is to deal with the first objective of the bill. The shadow minister has indicated that we will not be supporting the bill because it does not meet the objective as declared.

Whilst the former minister and member for Southport does not have carriage of the bill now, I acknowledge his determination originally to get this problem fixed. We now have the Deputy Premier, the member for Lytton, as the minister and we obviously know that he has been a failure in Health. He wasted $210 million on a Health payroll system. Why would we have any confidence that the member for Lytton, the Deputy Premier, would have any knowledge of whether this bill actually achieves what it set out to do when it is obvious that he does not answer his emails and he does not read his briefing notes? He would have no knowledge of what this bill actually contains, given it was handballed to him from the former minister, the member for Southport.

I want to go to the history of the legislation. It was originally introduced by the member for Warrego in 1997. Following concerns about the fairness of developer set entitlements, the act was amended in 2003. I note that members in last night's debate talked about the fact that it was an interpretation of the 1997 bill that was at the heart of the Centrepoint case. I want to acknowledge that I am referring to the Queensland Parliamentary Library research brief by Renee Gastaldon from March 2011 titled *A 'New and More Flexible' System for Deciding Shared Costs in Community Titles Schemes*. That brief has a review of the Centrepoint case. Members might say that it was an interpretation of the 1997 bill, but when Justice Chesterman said that the evidence showed there was a degree of arbitrariness in the original allocation of lot entitlements, the question is why it has taken another eight years for us to resolve this issue of arbitrariness of lot entitlements—and, even then, this system still does not give certainty to the people who are facing changes to their lot entitlements.

Mr Shine: How many times did you bring it up?

Mr LANGBROEK: So now we have the unedifying spectacle of yet another Bligh Labor government backflip. I take the interjection from the member for Toowoomba North, because I have correspondence here that was written to me about those very issues when the member for Toowoomba North was the Attorney-General. I will refer to those issues from letters later in my contribution.

It is obvious that we have another Bligh Labor government backflip. Labor members are so sensitive to it that the minister and those opposite cannot even bring themselves to mention the 2003 amendments. Whilst we had the Centrepoint case in 2004 and we are now having unit owners all over the state changing their lot entitlements under the specialist adjudication that was brought in by the 2003 amendments, it is obvious that there are more on the way, and the easiest way they have seen to change this legislation is just to go back to what we had in the 1997 legislation. The original intent of the bill was to limit the ability for body corporate entitlement adjustments.

Queenslanders living in these body corporate arrangements want lot entitlements schedules to be just and equitable, to be predictable and for them to know, when they go into these body corporate arrangements, what their costs are going to be, because they are already wearing so many increases in terms of fuel and rego and water and electricity. Many of these people are on fixed incomes and many of them are self-funded retirees and many of them rely on the certainty that, when they go into these arrangements, they are going to be okay for the future. That does not happen with arrangements under the 2003 amendments which mean that unit owners have been able to change the lot entitlements program, and just throwing out the 2003 amendments does not fix the problem.

It should not be decided in an arbitrary way, which is what Justice Chesterman found in the Court of Appeal decision with regard to the Centrepoint case. In simple terms, the intention of this legislation is to stop developers and premium unit owners from cutting their body corporate fees and passing these costs on to other unit owners in the same complex. As I have already said, this bill gives them no certainty that this situation will not continue. As the member for Mermaid Beach has pointed out in this House before, some body corporate managers have manipulated ballots to achieve outcomes that favour the powerful few or, in the worst cases, themselves. The people who usually suffer are not from the big end of town; it is invariably the small investors, the frail, the elderly, those on fixed incomes, pensioners and those without the power to make their voices heard.

Mr Lawlor: And who you're ditching now!

Mr LANGBROEK: The reason we are not supporting this bill is that this does not give them any more certainty than they had before. There is nothing in this legislation to end the tactics used by some body corporate managers, unit owners and developers to line their own pockets at the expense of their fellow owners and tenants—legislative changes which the member for Mermaid Beach has passionately argued for before. No-one is denying that body corporate contribution schedule lot entitlements should be fair and certain for lot owners as much as possible, but, as I have already said, these proposed changes do not achieve that objective. That is the view expressed by the Queensland Law Society in its submission.

Unit owners simply want fairness, simplicity and certainty in the laws which control these matters. These amendments we are debating will allow for two sets of rules for those seeking adjustments to their body corporate contribution schedules—one set for pre commencement of the 2010 legislation and

another set for post commencement. I would have thought that it would be patently obvious that the fundamental principle in any legislation should be that for any deliberative process there should be a single set of rules for the sake of fairness and clarity, if not simplicity. Where is the certainty in these dual rules for unit owners and investors who have been waiting in vain for this government to give them certainty? There is none.

My electorate of Surfers Paradise has amongst the highest concentration of unit complexes in Queensland, and there are other electorates where the numbers of unit complexes are increasing as well. The member for Brisbane Central is in the chamber and I know that there are an increasing number of bodies corporate in her electorate, as there are in the electorates of the member for Mermaid Beach and the honourable member for Southport. Many other areas throughout the state are experiencing an increased number of these unit type developments, and it is a trend that will only increase as we try to get more people into the finite space in those areas of Queensland where people want to live for access to employment, for services, for lifestyle and for the infill that is needed because we cannot just keep providing the services further and further from the main parts of cities.

As I talk to people in my electorate, I am constantly reminded that for many people the dream of unit living has turned into a nightmare. From constant representations made to my electorate office and the fact that my filing cabinets are overflowing with such complaints, the nightmare includes complaints of unethical practices by body corporate managers, manipulations of elections, failures to respond to reasonable requests by owners for financial accountability, and lack of cooperation from the body corporate commission. There are also complaints about the unfairness of body corporate charges, often for the cost of individual and shared use of water which, under Allconnex on the Gold Coast, has become a luxury rather than a basic necessity, and that is another very important aspect of this debate—that is, the individual and shared use of water. Because many of these people in these units are on fixed incomes or are pensioners, water has become an issue. A letter from my constituent Joy Schoenheimer says that the water bill was always split amongst the 32 units in her high-rise building at Main Beach. She is concerned about the cost of water rising. The reason she is concerned about it is that, whilst she may be frugal with water, her body corporate lot entitlements changing means that she has to find extra money to deal with the increased cost of water. That is where this is also a cost-of-living charge—a cost-of-living element that this Labor government just does not understand. None of those issues are adequately addressed by this legislation.

People bought into units with a clear understanding of what their future body corporate costs would be and they budgeted accordingly. Indeed, the price they paid for a particular unit was often related to where in the building the unit was situated and what the body corporate costs attached to that unit were. They are now fearful that this legislation could potentially increase their costs above what they have budgeted if their contribution lot entitlements revert to former higher settings. They are also concerned that the market value of their units will be affected by increased body corporate charges, meaning that it will be difficult to sell without taking a significant loss, making them economic prisoners of their original decision to buy.

Unit owners and particularly those who live in their units have been hurt financially by the economic incompetence of the Bligh Labor government. As I have said, many of them are retirees on fixed incomes who have been badly affected by the global financial crisis. After a lifetime of careful saving and investment to provide for their latter years, many are facing financial uncertainty. If that was not enough, they also have to deal with the cost-of-living increases forced on them by the Bligh Labor government with extra costs such as the fuel tax that the Premier said before the last election she would not introduce, increased registration and licence costs, increased costs for electricity and massive increases in the cost of water. They had not expected those. They had not budgeted for those, so now through no fault of their own many have had to make significant financial and often lifestyle adjustments. It is not just retirees who have been affected by these increases; retirees on fixed incomes have been particularly hard hit, with many of them struggling to survive.

Not only are they struggling to survive; they are struggling to have their views heard on this legislation. As we have heard already from the contributions from the shadow minister and the honourable member for Caloundra, when this bill went out for public consultation there were just 216 submissions received from a pool of more than 39,000 community titles schemes and 364,000 lots in Queensland. Queenslanders are used to the Bligh government's cover-ups, so it is not surprising the government will not reveal how many of those submissions were for and how many were against this legislation. The Unit Owners Association of Queensland, with a membership of 800 unit owners, says it was not consulted at all. Of those respondents who made their submissions public, all agreed that this bill does not meet its intent or expressed concerns. For example, the Queensland Law Society in its submission said—

There needs to be an appropriate balance struck between fairness for lot owners holistically and the comfort for individuals brought about by certainty.

In the Society's view the consultation amendment proposals do not achieve that balance.

I note that last night the minister, the Deputy Premier, was critical of the fact that reading letters was not seen as an appropriate way to provide some feedback to the government. I think it is important in this

case for me to point out that there are a number of unit owners in different buildings around the electorate of Surfers Paradise who have pointed out to me their concerns—

Mr Lucas: There is no problem with reading a letter. It doesn't replace, as your shadow minister did, making a meaningful contribution to the debate. I have no problem with you reading letters.

Mr LANGBROEK: I think it is part of a meaningful contribution. I am happy to provide some of the details from unit owners in Atlantis West, from unit owners in the Pinnacle building, from unit owners in the Main Beach Tower, from unit owners in Sonata and from unit owners in Q1.

Mr Ryan: What level are they on? Are they in the penthouse? Are they in the subpenthouse?

Mr LANGBROEK: There are a range of them, because I hear the member for Morayfield asking me whether they are all rich penthouse owners. They have a significant range of issues which this government just refuses to deal with in this legislation. I have a letter from a constituent concerned that four owners who each own two adjoining lots in the building would amalgamate their two respective lots into one lot with the consequential halving of their contribution schedule lot entitlements. What does that mean? It means that the person who is writing to me is concerned that their own lot entitlements would subsequently go up. That was not a penthouse owner. Someone from the Pinnacle has concerns that 76 apartments and one river house have the ability to have lot entitlements changed that will affect all owners within that building without seeking any approval by way of the body corporate or the building unit owners.

But we also have other issues raised by Chris Buist, who wrote to me about Sonata, where there were seven commercial lots on the ground floor of the building, all of which were operating as bars and restaurants and all of which were approximately the same size. His lot 1 was being unjustly forced to pay a far higher contribution than the other six commercial lots. He is also concerned that under the legislation there is not going to be any right of appeal and that, should the situation revert to the scheme that it was, he has no recourse, no way of appealing to QCAT.

I could go on and on with other contributions from people in Surfers Paradise who are concerned that they bought their units knowing what their entitlements were going to be. Under this legislation, the 2003 amendments are being thrown out and we are not going to have any more certainty for people. The most important issue is that it introduces the element that, even when a body corporate has been the subject of an order adjusting the contribution schedule lot entitlements, it could be subject to a reversal of that order by one of three methods: by way of agreement of two or more lot owners, by resolution without dissent from the body corporate or through application to the District Court. There is that uncertainty again, because we still have the issue of lot owners getting together and being able to make a change to the lot entitlements without considering the other people who are involved.

The legislation does not give certainty about how lot entitlements are calculated. We need to have certainty about how lot entitlements are calculated, whether that be on equality or relativity principles. All it takes is for two unit owners in agreement, who feel aggrieved by an entitlement adjustment, to begin the process all over again. In practice, the simplest way for an aggrieved owner to force a reversal of adjustments to lot entitlements is to move a motion to the body corporate. An application for such a process can cost between $10,000 to $20,000, and we heard the member for Caloundra say that there may be 30 or 40 that are currently going through now. This is a sum that owners who are already struggling financially will find difficult to pay, even more so if they have previously had their entitlements adjusted. So the dilemma is: do they return to body corporate entitlements that they consider to be unfair or do they risk spending more money applying for an adjustment when they cannot confidently predict the outcome?

This legislation at its heart shows that Labor does not understand. This is a cost-of-living issue as well for Queenslanders who have been bearing the pain and it is coming to a zenith right now. It is a cost-of-living issue for many Queenslanders on fixed incomes, many people who want some certainty. This legislation does not provide confidence for people to have certainty about the issues raised within it. That is why we are opposing the bill.