




Speech by

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MEMBER FOR SURFERS PARADISE

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CIVIL PROCEEDINGS BILL

 **Mr LANGBROEK** (Surfers Paradise—LNP) (3.21 pm): It is my pleasure to rise to speak to the Civil Proceedings Bill. I note the very comprehensive report No. 8 that has been provided by the Legal Affairs, Police, Corrective Services and Emergency Services Committee. I thank the secretariat.

The chairman of the committee, the honourable member for Murrumba, is here. In his foreword he made some comments about the bill itself. The bulk of the bill is about civil proceedings, which involves some significant changes. We received two submissions, one from the Hon. Paul de Jersey, the Chief Justice, and one from the Queensland Law Society. I note that the honourable member for Murrumba, who will be speaking next, noted that the correspondence from the Chief Justice recommended adoption of these provisions without amendment and that as a courtesy to the judiciary, and as recognition of practical realities, the committee recommends just that to the parliament. As I say, I know the honourable member for Murrumba will refer to some of those matters. The Queensland Law Society, in its submission from President Mr Bruce Doyle, said of the Civil Proceedings provisions—

It is wholeheartedly supported by the Queensland Law Society. It is good law. There has been good consultation. We know the courts fully support it. It is logical and it is a good ordering of the law that is perhaps overdue. We commend the Rules Committee on its work and the consultation with the legal profession and other stakeholders.

The report states—

It is rare for draft law to be described in such glowing terms. The committee is unaware of any countervailing views on the civil proceedings provisions, or of any need for amendment of this aspect of the Bill, and endorses the work of the Rules Committee. The committee commends the civil proceedings provisions to the House.

I note that the first 31 parts of this bill are to do with civil proceedings and their objectives are to implement the recommendations of the Rules Committee for the repeal, reform or relocation of the provisions of the 1995 act; modernise and simplify provisions governing civil proceedings; repeal the 1995 act and repeal obsolete provisions of the 1991 act; amend the 1991 act so that it only contains provisions specific to the Supreme Court; amend the District Court of Queensland Act 1967 and the relevant magistrates courts legislation to harmonise the provisions common to all three courts; assist in the integration, consistency and effectiveness of the court registries; and make consequential amendments to references to the 1995 act and repealed provisions of the 1991 act.

There are a number of other acts that are also amended. I know that other members have referred to those. I want to thank the honourable member for Kawana, the shadow Attorney, for his contribution which was quite comprehensive, especially with regard to the most contentious issue—really the only contentious issue we faced on the committee—of retirement village exit fees. I will come to that. I note the honourable member for Mount Isa, who is also in the House, had some issues about some of the changes to the Justices of the Peace and Commissioners for Declarations Act 1991 and she may well make some reference to those in her contribution.

Overall the committee process worked very well again, as it has on a number of occasions since the new committee system has been set up. There are concerns though, as we have expressed in our report, about the fact that the bill was referred to the committee on 24 August and we were originally required to report to the Legislative Assembly by 19 December, but we then received a letter on 28 September from

the honourable Attorney-General and Minister for Local Government and Special Minister of State noting that there were a number of time critical and facilitative amendments that it would be desirable to pass in 2011. Some of those, of course, are in the Associations Incorporation Act, which will allow incorporated associations to transition to the Commonwealth legal regimes for corporations and Aboriginal and Torres Strait Islander corporations and changes to the Births, Deaths and Marriages Registration Act 2003 to require the person in charge of the disposal of a body to electronically lodge a cremation or burial notice. I note that the member for Lytton has made some significant media statements about the necessity for registration of people who dispose of bodies. These changes come under the Cremations Act which will prescribe requirements for crematoriums when labelling ashes.

The bill also contains some changes to the Electoral Act to clarify the provision that allows electoral enrolment on the day before polling. It changes the notice deadline to 6 pm whereas previously it was 5 pm. It contains changes to the Information Privacy Act 2009 to allow electoral roll information to be provided to state departments and authorities on a discretionary basis. I have already mentioned changes to the Justices of the Peace and Commissioners for Declarations Act 1991 to allow justices of the peace and commissioners for declarations to record details of proof-of-identity documents—this, of course, not being mandatory but allowing them to do so if they so wish. I know that is something that could be a significant issue in regional areas where justices of the peace are not that easy to come upon. There were issues about privacy that the honourable member for Mount Isa raised in our committee hearing.

The honourable member for Kawana has also mentioned some of the changes to the Queensland Civil and Administrative Tribunal Act 2009. I heard the interplay between the honourable the Attorney-General and the member for Kawana about the practical applications of this, where it will allow a member of the Queensland Civil and Administrative Tribunal to continue to sit after their term has expired in order to finalise a proceeding. It also contains amendments to the Right to Information Act 2009, which will allow Queensland government agencies to provide personal information to agencies of the Commonwealth and other states and territories for law enforcement purposes and, of course, the Retirement Villages Act 1999. This was the most significant issue that did come before the committee in our public hearing. It is a change that will require particular exit fees to be calculated on a daily basis when a resident leaves a retirement village.

In practical terms this is an omnibus bill. The inclusion of the unrelated amendments, notwithstanding that the majority of the bill's content is directed towards the objective of advising the statutory provisions on civil proceedings, makes the bill an omnibus bill. I know the Attorney-General made some reference to the title. I will come to that in a moment, but I did want to spend some time speaking about this issue. Omnibus bills are typically used as a legislative vehicle to facilitate the convenient passage of a number of small, disparate amendments, none of which would justify a stand-alone bill in their own right. Omnibus bills can give rise to a number of concerns. Scrutiny of the policy issues is difficult, especially if time lines are truncated. I have already explained that in this case the time lines were truncated with a public hearing and a reporting date some three months prior to what the original reporting date was going to be.

There is a chance that substantive and important issues will be buried in the size and complexity of the bill and, therefore, overlooked by stakeholders and members of parliament. Debate is truncated, with unrelated policy issues that would have been the subject of separate debate in the House being compressed into one debate. Members are not able to support or reject different parts of the bill on the readings of the bill, despite the fact that they may do so during the consideration in detail stage. Miscellaneous provisions bills containing only minor, technical or inconsequential amendments have generally been considered acceptable. However, the former Scrutiny of Legislation Committee expressed concern at the move towards bills containing provisions of a more substantial nature.

Whilst most of the miscellaneous amendments in the bill are of a minor, technical or inconsequential nature, the amendment to the Retirement Villages Act is highly contentious. The honourable member for Kawana has just dealt in great detail with the amendment to the Retirement Villages Act and I will speak about it now. In its discussion paper dated August 2011, the Department of Justice and Attorney-General quoted the statistic that there are 311 retirement village schemes registered in Queensland, 28,000 residents and 8,000 people employed in the villages. Page 9 of our committee's report states that the submission from the Association of Residents of Queensland Retirement Villages represents 9,000 of the 42,500 residents living in retirement villages in Queensland. That is a significant difference: 28,000 to 42,500. Could the minister give clarification on that point, because those are the sorts of statistics that may well provide different outcomes for both the people who operate the retirement villages and the people who live within the retirement villages following the changes to the Retirement Villages Act and the issue of exit fees?

The member for Kawana has spoken in great detail about the *Saunders v Paragon Property Investments Pty Ltd* case, where Judge Robin QC found in favour of the resident. The judgement is also referred to in appendix E, on page 37 of the committee's report. It was obiter that His Honour suggested that 'fairness is regarded as promoted by apportionment' of exit fees. One of the objects of the Retirement

Villages Act 1999 is to promote fair-trading practices in operating retirement villages. At paragraph 14, His Honour did not consider a resident to be unduly advantaged if a daily calculation method was employed but rather referred to the alternative yearly calculation method as providing a windfall to operators.

Mr Lucas: That is why we are fixing it. That is why we are making it clear.

Mr LANGBROEK: I take the interjection from the Attorney-General. His Honour Judge Robin said that he 'could not imagine any prudent operator designing a project whose profitability or viability depended upon windfalls'.

The committee received three submissions about the proposed amendments in the bill about retirement village exit fees. The Queensland Law Society raised concerns. They said that the amendments breached fundamental legislative principles requiring that legislation be clear and unambiguous and not have retrospective effect. A joint submission was made by Aged Care Queensland Inc. and the Retirement Villages Association Ltd on behalf of the Queensland Retirement Villages Scheme Operators. The third submission was received from the Association of Residents of Queensland Retirement Villages, which, as I said, represents 9,000 of the 42,500 residents living in retirement villages in Queensland.

As recently as yesterday at my office I received a query from someone in the retirement village management industry who was concerned about what the committee's recommendation has been. Of course, via email I referred that particular body to our report. As the shadow Attorney-General pointed out, the opposition supports the principles that the Attorney-General and the government are enacting. The department has advised us that one of the objectives of the amendment is to clarify any doubts raised as to how the Paragon judgement should be interpreted as applying to existing contracts. The department considered that most contracts already have an exit fee calculation mechanism on the face of the contract and therefore would not be affected and that therefore it is not retrospective.

It was interesting to look at the numbers. We asked the Retirement Villages Association to provide us with some sort of statistical detail about how many people exit and, therefore, what sort of effect this would have on their valuations. They said it would affect their ability to attract finance. Our report states—

The RVA stated that, in Queensland, typically around ten percent of residents leave a retirement village in any one year. The RVA has 15,000 residents, meaning 1,500 people leave its villages each year. The RVA explained that it is commonly presumed (wrongly) that residents remain in retirement villages until they die. The vast majority (70 percent) leave for other reasons to move into a nursing home, another village, back with family or into the community.

The average length of stay in RVA villages as at 2010 was seven years, however, 40 percent leave in five years or less. This means that on average approximately 600 residents leave RVA's Queensland villages within this period. In serviced apartments, the length of stay is lower (3.5 years), and higher in independent living units (8 years).

The RVA estimates that 60 percent of contracts in Queensland retirement villages have exit fee percentages that take longer than five years to maximise, and they are not calculated on a daily basis. This means that the proposed amendment would apply to an estimated 360 (that is, 60 percent of 600) contracts. The RVA estimates that, if these contracts are not changed in other ways so as to compensate for the lower exit fee, RVA operators' annual exit fee income will reduce by approximately \$2 million (\$5,500 per contract), and the village valuations will suffer a reduction of at least 2 percent.

On the basis of the information provided by the RVA, the amendment would potentially apply to 2.4 percent of RVA residents, being 360 out of a total of 15,000 residents. By way of a hypothetical exercise—

given that we were unable to get exact details of how many people exit—

if that figure were to be applied evenly to the rest of the industry, in broad terms that may represent 1000 of the 42,500 people current living in retirement villages.

In answer to a concern about the impact on the retirement village scheme business model, the department advised that the proposed amendment will only affect the calculation of the exit fee in the marginal final year to which the exit fee applies. Operators have no idea when a particular resident will leave the village and, therefore, can never accurately predict the exit fee. Also, the financial impact of the proposed change will be different depending on when a resident leaves the village. The department advised that the amendment will only affect one aspect of the overall retirement village scheme and is therefore unlikely to reduce the many and varied types of schemes available. The department argued that the amendment merely removes the uncertainty in the situation where a residence contract provides that the exit fee is to be calculated by reference to the resident's length of stay in their unit but does not specify whether the basis of the calculation is daily, weekly, monthly or some other interval.

As the member for Kawana has already said, the committee encourages the department to keep under review the implementation of the proposed changes and any disputes over interpretation that may arise. However, it seemed fairly clear to us at the hearing and from the departmental advice received that, if there is a method within existing contracts that people have signed that is clear about what the exit fee will be, that is exactly how it will be applied. It is only if there is a contract in which there is no clear indication of how the exit fee will be worked out that the daily apportionment rate will be applied. We have all said that we think that is a fair thing—

Mr Lucas: For current and past; for the future—

Mr LANGBROEK: That is right: it is for current and past contracts. Any future contracts will have to be determined using the pro rata daily method. In conclusion, again I thank the secretariat. I will finish by

speaking about the aspect that I started with, which is the omnibus aspect of this bill. We asked the department about the title. We asked about the fact that there were a number of other provisions for other acts that were going to be amended. The Office of the Queensland Parliamentary Counsel did not agree with the Queensland Law Society's contention that the bill does not have sufficient regard to the institution of parliament and they gave us a number of different points of advice. I know that the Attorney-General has already referred to the fact that if we amended the long title there would be some issues later. It would need to be amended on assent; otherwise the new principal act would be inappropriately named.

I would like to point out that, when I spoke before about omnibus bills not containing anything contentious, the history of the retirement village exit fee amendments and other items, as the member for Kawana has said, is that they originated in a draft Fair Trading and Other Legislation Amendment Bill that was publicly consulted on in 2010 by the Department of Employment, Economic Development and Innovation, which had responsibility for fair trading policy before that function was subsumed into the Department of Justice and Attorney-General. The department explained that the 2010 draft bill has now been broken into three pieces with some amendments in this bill, others in the Criminal and Other Legislation Amendment Bill, which is also currently before the committee, and other amendments that have not yet been introduced.

The department told the committee that the retirement village amendments and other amendments were attached to the Civil Proceedings Bill for expediency and to progress them quickly because this bill was the one with a reasonable chance of being passed in 2011. The department described the miscellaneous amendments as being of a facilitative nature aimed at providing greater consumer protection or improved effectiveness of existing legislative schemes. The department stated that the amendments are not substantial enough to each constitute a stand-alone bill but, due to their beneficial impacts, are considered desirable and in some cases urgent to be passed at this time.

That is how we began in the committee. That is why members of the committee, whilst we had some debate about whether we were prepared to get the work done—but we did—are not satisfied with the explanation provided about the short title of the bill. We believe people should be able to tell quickly from the short title that a bill contains a number of miscellaneous amendments. We are concerned that an omnibus bill contains such a highly contentious amendment. We are supporting it. It is going against the convention that miscellaneous amendments grouped in a single legislative vehicle should be confined to minor, technical and inconsequential matters.