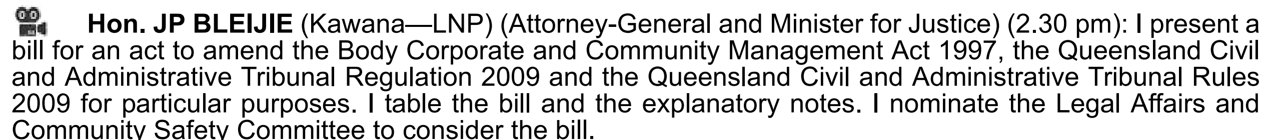
Speech by

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Hansard Friday, 14 September 2012

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL



Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (2.30 pm): I present a bill for an act to amend the Body Corporate and Community Management Act 1997, the Queensland Civil and Administrative Tribunal Regulation 2009 and the Queensland Civil and Administrative Tribunal Rules 2009 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Body Corporate and Community Management and Other Legislation Amendment Bill 2012 [1070].

Tabled paper: Body Corporate and Community Management and Other Legislation Amendment Bill 2012, explanatory notes [1071].

Today, I introduce the Body Corporate and Community Management and Other Legislation Amendment Bill 2012. The bill amends the Body Corporate and Community Management Act 1997 to do three things. First, it removes the requirement for bodies corporate to change their contribution schedule lot entitlements back to the original setting prior to any, and all, adjustment orders of a court, tribunal or specialist adjudicator following receipt of a motion from a single lot owner proposing the change. It also provides a process enabling any changes to lot entitlements made under this requirement to be reversed. Secondly, it removes unnecessary disclosure requirements imposed on sellers of lots in community titles schemes. Thirdly, it provides jurisdictional clarity and consistency for disputes about contribution schedule lot entitlement adjustments.

In 2011 the former Labor government passed amendments to the Body Corporate and Community Management Act that effectively gave the right of one lot owner to move a motion at a body corporate meeting, effectively overturning any adjustment order. This motion is moved and is passed upon the moving of the motion. Not a single vote is taken. Despite the matter previously going through an independent tribunal, it is automatically overturned upon the moving of that motion. These amendments were a complete denial of natural justice and abhorrent in the extreme.

When a body corporate scheme is established, lot entitlements are set by the developer. Previously, if lot owners were of the view that the lot entitlements should be adjusted, they were able to apply for an adjustment order to have the lot entitlements adjusted accordingly. The 2011 amendments did more than introduce a new contribution schedule lot entitlements system, which is the mechanism employed in community titles schemes to apportion most shared costs associated with the operation and maintenance of a scheme. It turned the system on its head. It allowed a single lot owner aggrieved by an order of a court, tribunal or specialist adjudicator for the adjustment of the scheme's contribution schedule lot entitlements to overturn that order simply via a motion to the body corporate or its committee. It further required the body corporate to lodge a new community management statement reflecting the pre-adjustment order contribution schedule lot entitlements for that scheme.

As contribution schedule lot entitlements determine the proportion a unit owner contributes towards shared body corporate expenses, any adjustment inevitably results in some owners contributing more, and others contributing less, to the body corporate expenses. While annual body corporate fees for many unit owners can be less than $500 a quarter, some are in the thousands of dollars and a few are in the tens of

thousands of dollars. The quantum of annual body corporate fees can also have a marked effect on the capital value of any given unit. So, the stakes are high, particularly for those on low and fixed incomes.

In discussing body corporate fees, it should also be appreciated that community titles schemes can be an excellent lifestyle and investment option with entry costs significantly less than comparable price points for detached housing. So it is important, too, not to overstate the issue of body corporate fees. Community titles schemes often allow young Queenslanders to enter the housing market. For many, it is a preferred long-term lifestyle choice. They also provide a great 'downsizing' option for retirees and other empty-nesters. However, there must be a workable and fair system for managing shared costs including the maintenance of common property, and that system also needs stability.

It is a matter of the public record that the 2011 amendments introduced by the former Labor government infringed fundamental legislative principles in a range of respects and, I refer members to the Scrutiny of Legislation Committee Legislation Alert No. 1 of 2011 should they wish to see what the committee and others said about the 2011 amendments. Although the then opposition appreciated the consequences of an adverse adjustment order on lot owners, it opposed the 2011 legislation for good reasons, and members may care to revisit the contribution to the debate in the parliament of the member for Currumbin on 5 April 2011. It was a cogent and comprehensive discussion with respect to those issues. In fact, most stakeholders opposed the legislation, including the Queensland Law Society, the Unit Owners Association of Queensland as well as many individual lot owners.

As members will appreciate, the 2011 amendments have not passed unnoticed. Since the election in March this year, I have received 110 letters from lot owners with many quoting the member for Currumbin's then extensive critique of the 2010 bill, particularly her observation that the bill was abominable, although, of course, the 2011 amendments also had its supporters. On 3 April this year, the fallout from those amendments featured as a front-page story in the *Courier-Mail* and again as the lead article in the *Qweekend* magazine of 4 and 5 August. Of course, the *Gold Coast Bulletin* has run a number of stories, which reflects the penetration of community titles schemes in that particular market. People who are well informed about these matters were universally complimentary of the journalist Trent Dalton. It was excellent research and better writing. The story nicely captured the issues and the challenges associated with unscrambling the egg. I particularly commend Mr Dalton's article to honourable members who may wish to contribute when this bill is debated. As he alludes, there are no easy answers.

The 2011 legislation effectively threw out the system of lot entitlements in place since 1997 and reintroduced many of the abuses of the past. The government has since given deep and serious consideration to repealing each and every provision in the bill that was introduced in 2010. Regrettably, that would add unfairness to unfairness and complexity to complexity. As a first immediate step, the most odious provision in the 2011 amendments must be stopped. I mean of course the ability of a single lot owner to compel a body corporate to effectively revert orders for the adjustment of contribution schedule lot entitlements obtained from a specialist adjudicator, court or tribunal prior to April 2011. The bill will ensure that provision no longer applies so that no more reversions can be undertaken. Reversions that are currently taking place will be stopped.

The bill will also provide a process to enable reversions of contribution schedule lot entitlements which have taken place since the April 2011 amendments to be 'undone'. That is, a lot owner can submit a request to 'undo' the reversion and the body corporate or committee for the body corporate must undertake a process to 'undo' the reversion, subject to considerations around boundary changes, subdivision of lots, amalgamations of lots or material changes which may have relevance in the period since the adjustment order was handed down. In introducing the bill, I want to make particular emphasis that the provisions stopping the reversion process will take effect from today. If the administrative and legal steps associated with a reversion have not been completed before today, no further action will be able to be taken to give the reversion effect. Regrettably, that does introduce a degree of retrospectivity but, again, the public interest is best served by certainty from today.

As members know, this is a government that is committed to reducing the regulatory burden on business. While perhaps well intentioned, the 2011 amendments also introduced additional disclosure requirements by requiring the seller of an existing lot to provide an explanation in the disclosure statement about the extent to which the annual body corporate fees are based on the lot entitlements. Feedback from the sector suggests that this requirement is proving to be problematic because sellers are rarely in a position to provide the additional information due to the varying standards and practices adopted by bodies corporate and body corporate managers in relation to the way in which they calculate body corporate fees.

The 2011 amendments also required sellers of lots to provide a copy of the scheme's community management statement with the disclosure statement. Many community management statements might be only six to eight pages long, but for large and progressively developed schemes the community management statements can be up to 100 pages or even longer. While they are important documents, they are also technical documents, and the government is not convinced that requiring them to be attached to the contracts of sale necessarily serves the interests of the buyer and clearly does add to the complexity

and cost of the process. They are as likely to confuse as to clarify in a sales environment. In any case, any prospective buyer can obtain a copy of the community management statement from the Registrar of Titles at any time in their normal due diligence processes. Therefore, the bill removes these unnecessary disclosure requirements. To ensure certainty of contracts, this will take effect at a date to be set by proclamation after the enactment of this bill.

The bill also addresses a technical issue around the jurisdiction for complex disputes. It gives the Queensland Civil and Administrative Tribunal or a specialist adjudicator jurisdiction for disputes about adjustments of contribution schedule lot entitlements sought by unanimous agreement of all lot owners. This amendment, which will take effect upon enactment of the bill, is being made to address a current inconsistency in the jurisdiction for disputes about contribution schedule lot entitlement adjustments under the act.

Finally, I would like to announce that the government will now look at the broader issues around contribution schedule lot entitlements. We will look to the future. This bill does not deal with that matter—it relates to the immediate problem that we have been left by the former Labor government to deal with—but the government is only too conscious that there are many schemes out there with manifestly unequal lot entitlements. We need a mechanism to provide for adjustments into the future for those schemes with unfairly set contribution schedule lot entitlements. We will now work to look at options with a view to reintroducing an appropriate mechanism for adjustments, but there is some complexity around this issue. Therefore, it is important to take our time to ensure that, whatever mechanism is provided, it attempts to get the balance right and is fair to lot owners.

Body corporate legislation has long been used as a political football, particularly by the Australian Labor Party, but we will not be a government that does that. We want to be a government that gets the balance right and fixes this mess once and for all. I commend the bill to the House.

First Reading

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (2.42 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Madam DEPUTY SPEAKER (Miss Barton): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.