Speech By

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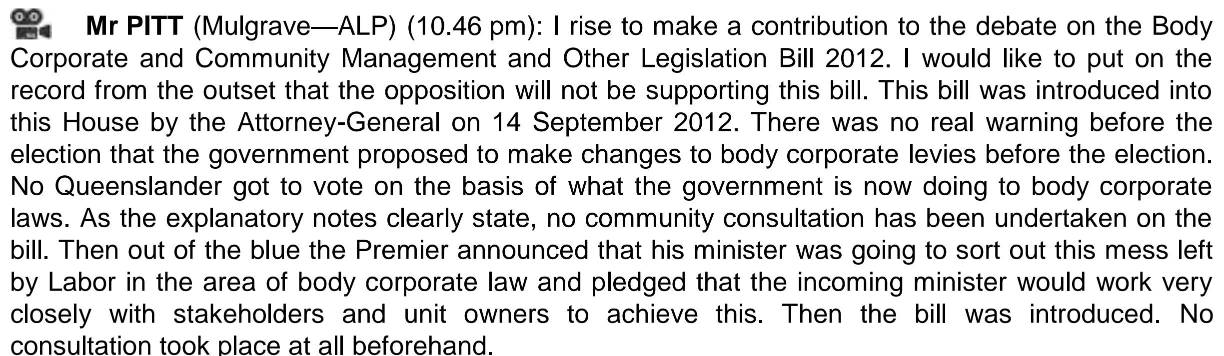
MEMBER FOR MULGRAVE

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL



Mr PITT (Mulgrave—ALP) (10.46 pm): I rise to make a contribution to the debate on the Body Corporate and Community Management and Other Legislation Bill 2012. I would like to put on the record from the outset that the opposition will not be supporting this bill. This bill was introduced into this House by the Attorney-General on 14 September 2012. There was no real warning before the election that the government proposed to make changes to body corporate levies before the election. No Queenslander got to vote on the basis of what the government is now doing to body corporate laws. As the explanatory notes clearly state, no community consultation has been undertaken on the bill. Then out of the blue the Premier announced that his minister was going to sort out this mess left by Labor in the area of body corporate law and pledged that the incoming minister would work very closely with stakeholders and unit owners to achieve this. Then the bill was introduced. No consultation took place at all beforehand.

Submissions were invited on the bill, which closed on 19 October. The amount of community concern over the bill was evidenced by the fact that there were 274 submissions received by the committee. I would like to take this opportunity to thank the committee and its staff for their hard work and diligence in tackling this inquiry into what is a complex question.

There are a number of issues with the bill that I intend to canvass. The first is the question of the uncertainty created by the bill. This bill's aim is to overturn the amendments made by then minister Lawlor in relation to body corporate lot entitlements. These amendments were made after extensive consultation with the public and all stakeholders. The then government released a discussion paper in December 2008, entitled *Sharing expenses in community titles schemes: A discussion paper on lot entitlements under the Body Corporate and Community Management Act 1997*, for public discussion and comment. Submissions to the discussion paper closed in late February 2009. Then on 12 August 2010 the former minister released public consultation drafts of the Body Corporate and Community Management Amendment Bill 2010 and the accompanying explanatory notes. Submissions were again invited on the draft bill, which closed on 23 September 2010. Minister Lawlor's approach was in stark contrast to the approach of this government. As the committee pointed out in its report—

The Committee accepts the Department's statement that the issue of contribution schedule lot entitlements has been considered on numerous occasions in the past. However, given the short timeframe since the commencement of the 2011 amendments and the fact that those amendments had sunset provisions, the Committee understands that many stakeholders would not have expected another change to the legislation so soon.

Given the Premier's earlier comments that he expected the Attorney-General to work closely with stakeholders and unit owners to fix the perceived problems, the Committee accepts that many stakeholders have considered the current Bill and its specific policy objectives to be a surprise when it was introduced.

As the committee later commented—

The strata title property market cannot continue to be subjected to what is now seemingly regular change and upheaval.

When he introduced the bill, the Attorney said in his explanatory speech—

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.

Exactly what are these situations with manifestly unequal lot entitlements? The Attorney chose not to elaborate on those, the ones that now he is seeking to undo, but I am more than happy to elaborate. This is a situation where a unit owner might live in a small unit on a lower floor. A smaller unit means potential for fewer residents using body corporate facilities. A smaller unit also means less windows to clean, less walls to paint, less areas that might need repairs, less area potential to claim on insurance. In fact, it is a lesser burden as a whole. Contrast this with a penthouse owner who has the reverse situation: a much larger area and, therefore, a much larger drain on the resources of the body corporate for the converse reasons I have just outlined. Could it possibly be considered fair that their contributions to body corporate levies be equal? Yet the penthouse owner could have applied under the act to make this so and their levies could be reduced from around $40,000 per year to $10,000, and the smaller unit owner's levy be increased from $5,000 to $10,00 per annum. This could well be the difference between being able to live in the unit and not being able to afford to do so. Housing affordability is an important issue for Queenslanders. This includes not only the purchase price of housing, but also the associated costs that accompany it. It is particularly important when a government is encouraging people to live in higher density housing in highly populated urban areas.

On another example, a penthouse owner purchases the unit next to them or beneath them and then applies to have the lots amalgamated. Once they may have been paying two lots of a $40,000 levy. They amalgamate their lots to be one lot and then apply for a readjustment of lot entitlements to ensure they are equal. Then they pay the same levies as a smaller unit owner. People have tried to denounce these examples as being too emotive and setting penthouse owners as the bad guys in the scenario. That is not what we have been trying to do. These are examples of how the inequality can affect people and make very real changes to their lives. Can members imagine being an elderly resident of a home unit who has to move because they are on a fixed income and cannot afford the changes to the levies?

However, if people do not like those examples, there are many more. What about a plan that has mixed use, such as residential and commercial, in one complex? Should their levies be identical? What about the situation where a lot has been changed from commercial to residential use without the resulting cost impact on the body corporate having been recognised? What about the opposite of that, where a lot is changed from residential to commercial use and the levy remained the same, even though the call on body corporate expenses would have increased significantly? What about a scheme that has mixed town house and unit developments on the one plan? Should the unit owners in high-rise buildings pay the same levy as the owners of the town houses where the owners of the town houses are responsible for their maintenance and the unit owners are the ones making the lion's share of the call on body corporate expenses?

I question the logic of the approach of this government. If the government believes there is a problem that requires extensive community discussion and also acknowledges that there are many schemes that have manifestly unequal lot entitlements, why make these changes now? All this will do is create uncertainty in the market. The sale of units will be affected because people will be reluctant to buy a unit if they have no idea into the future how their levies will be calculated. The amendments by former minister Lawlor simply reinstated owners to the position they were in previously when they knew what their obligation would be when they purchased the unit or, if they had carried out due diligence, would have been aware of the original scheme for determining levies. The opposition cannot see the need to make these changes now. If the government is intent on conducting yet another inquiry into body corporate levies that is one thing, but to make changes that could possibly be undone as a result of the review is a recipe for chaos in the industry.

The real question to be asked here is, does the bill fix whatever the government perceives to be a problem with the law relating to body corporate levies? The answer is a resounding and emphatic no! In the closing of his introductory speech, the Attorney-General stated—

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.

Unfortunately, the committee considered the effect of the bill is exactly the opposite of the situation described by the Attorney-General. In the committee's view, the bill does not fix the mess and, to take the analogy used by the Attorney further, the effect it does have is that of shifting the goalposts once again. What is the effect of this bill in relation to body corporate levies? The effect on the 2011 amendments is twofold: firstly, to stop further reversions from occurring and, secondly to allow for the reversal of reversions that have occurred. I will start with the second.

The effect of this second limb is to provide that, as the Attorney-General said in his explanatory speech, a lot owner can submit a request to undo a reversion and the body corporate or committee for the body corporate must undertake a process to undo the reversion. The government has undertaken to conduct a wider review of body corporate lot entitlements. Many of the organisations that made submissions to the committee, including the Queensland Law Society, are opposed to this part of the bill. As the Queensland Law Society submission states—

These provisions restrict the outcome of a reversion application and in effect make it an offence for a body corporate or committee to decide to reject the application. These provisions do not have sufficient regard to the rights and liabilities of individuals, are inconsistent with the principles of natural justice and are an inappropriate use of criminal sanction.

As the Australian College of Community Lawyers Incorporated submitted.

... the College is of the view that to 'reverse the reversal' process is not good law and urges the Government to put a moratorium on the reversal process until a just and equitable system for the setting and adjustment of contribution schedule lot entitlements can be determined.

It seems to the opposition to be a preposterous situation when a reversal process under the 2011 amendments can be undone before the government has decided how it will approach the broader issue of body corporate lot entitlements, and we are not alone in this view. We stand in the company of the Queensland Law Society and the Australian College of Community Lawyers Incorporated, as I have already pointed out. We also stand in the company of the Legal Affairs and Community Safety Committee. The committee stated—

... the Committee has had difficulty in accepting the need to enable the unwinding of the current reversion processes and allow for further adjustments to lot entitlements to occur as an *interim* measure prior to the Government's broader review.

It therefore recommended the removal from the bill of the process that will reverse current 2011 reversions. I urge the government to support this recommendation for, at least if nothing else, the stability of the industry.

I now turn to the first limb. At first glance, this is simple. It will stop people from applying to have lot entitlement changes made under the 1997 act reversed. However, what about applications already on foot? If passed, the relevant part of the bill in its current form will be deemed to have commenced on the day it was introduced. The reversion processes under the 2011 amendments can still take place, but if the bill is passed in its current form these processes will be deemed to be incomplete. All current reversion processes are therefore effectively in limbo until the outcome of the bill is known.

The Registrar of Titles told the committee it will continue to accept requests to lodge a new CMS, but not effect registration until the bill progresses through the parliament. The committee held concerns about the cost-effectiveness of throwing away the steps taken up until now in the process that will be deemed invalid, despite complying with all aspects of the law as it currently stands. Recommendation 4 of the committee states—

The Committee recommends that the Bill be amended to include provisions to reimburse any Government fee or charge imposed in relation to a reversion process that is deemed to be an incomplete reversion process under this Bill.

Better still, just do not amend the act until the review process has been completed. That way, money will not be wasted in making applications and paying for registration fees in the likes of a process that will retrospectively be negative.

The bill also removes the requirement introduced by the 2011 amendments for sellers of units to provide purchasers with a copy of the scheme's community management statement and the disclosure statement. The stated purpose of this is to reduce the regulatory burden. When these amendments were introduced, the stated purpose was to enable lot owners to make an informed decision when purchasing a lot in the scheme and to reduce the need for adjustments of contribution schedule lot entitlements.

When speaking of the merit of the disclosure requirements in his submission to the committee, Mr John McDonald of Robinson & Robinson Lawyers stated—

The principal merit is that the standard contract does not provide for the nature of the property to be described eg. Home unit-2 car spaces, 2 storage spaces, etc. Because of this the buyer does not know what he is contracting to buy (as opposed to the property he has seen) until searches are carried out.

If for example a unit is shown with two car spaces and the CMS only gives one to the buyer, then the buyer is out in the cold.

I do not think anyone on the government side of the House would argue that this is a fair situation.

The Queensland Law Society advocated for full disclosure to owners, but proposed requiring the CMS to be available online on a government register so prospective purchasers could inspect them prior to purchase. The committee recommends this proposal should be considered as part of the broader review. If that is so, why would we remove a measure designed to protect purchasers without having some alternatives in place? If the requirements are removed pending this broader review, there will be no such protection. Therefore, the opposition is of the view that the status quo should be maintained at least until the broader review is conducted and the Queensland Law Society proposal and other options that are raised could be looked at in that context. This is not an area that has received much attention from stakeholders and the committee itself commented on the fact that few submissions referred to this aspect of the amendments.

The final aspect of the bill that I wish to comment on is the changes to give greater consistency in the resolution of disputes. The jurisdictional changes largely reflect the other changes in the bill, and are consequential on many of them. As I have indicated, we do not support many of the changes, and therefore will not be supporting the ones that relate to those. However, there are also some amendments to dispute provisions in relation to lot entitlement adjustments by resolution without dissent. Because these disputes can be of a complex nature, the QCAT may well be the most appropriate venue to hear those disputes.

As the explanatory notes provide, the 2011 amendments made specific provision for a body corporate to adjust the contribution schedule lot entitlements for the scheme by resolution without dissent. However, the 2011 amendments did not specifically provide for resolution of disputes about these adjustments by a specialist adjudicator or QCAT. It is inappropriate for these disputes to be resolved by a department adjudicator because of the complex nature of these disputes.

To ensure appropriate and consistent dispute resolution about contribution schedule lot entitlement adjustments under the act, the bill provides for disputes about adjustments of contribution schedule lot entitlements by resolution without dissent to be resolved by a specialist adjudicator or QCAT. In contrast, disputes about procedural aspects of a general meeting called to consider a motion to adjust the contribution schedule lot entitlements may continue to be resolved by any dispute resolution process under chapter 6 of the act, including department adjudication. The opposition would support this aspect of the amendments.

As I said we will not be supporting this bill. We look forward to hearing the contribution of government members. We have made our position very clear. We thought the bill that was put forward to the House under the previous government by then minister Lawlor was the basis of where people should be going into the future. We think this is going to cause unnecessary upheaval at a time when people require stability in this market. We will not be supporting the bill.