




Speech By
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MEMBER FOR CURRUMBIN

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BUILDING UNITS AND GROUP TITLES AND OTHER LEGISLATION AMENDMENT BILL

 **Mrs GERBER** (Currumbin—LNP) (2.59 pm): The Building Units and Group Titles and Other Legislation Amendment Bill goes some way to deal with the many, many complex issues that have been raised, predominantly dealing with body corporate governance arrangements, transparency and dispute resolution. This bill goes some way to addressing the problems many bodies corporate and owners have around non-payment of levies, exclusion of subsidiary bodies corporate, non-representation of owners, failure to deliver essential services, conflicts of interest and recovery of costs.

However, it is clear that there is more that needs to be done in this area. It is good that the government has indicated there are further stages of amendments to come in tranche 3. However, like all things with this Palaszczuk Labor government, the devil is in the detail. The state government has not provided a time frame for these further amendments. Considering how long residents and bodies corporate have waited for the amendments in the bill before the House today, I am very concerned that, without a time line, the government will again drag its heels on these very important further amendments.

One only has to look at the poor residents of Couran Cove to see the devastating impacts that the state government's delay in putting forward these changes has imposed on them. For them, their body corporate issues have become a complete and utter nightmare. Recent photos show that the once bustling resort is now home to piles of broken wood and dead tree branches, taped off communal areas and broken boardwalk bridges. Dozens of residents, including some who are sick and elderly and others who have young children, have experienced devastating conditions as a result of the island's complicated body corporate structure and this government's inability to fix the system when they called for it. They have five bodies corporate involved on the island. One 89-year-old woman who is legally blind in one eye had her electricity shut off. Ms Pitt told the *Gold Coast Bulletin* that she had been unable to wash her clothes, take a shower or charge any devices in her home. Ms Pitt said—

All I'm able to do really is just sit. It's like living through some sort of bad nightmare. I'm very much near the end of my life—it's a miserable way to be spending it. I have a gas stove but with my poor vision, I'm likely to burn myself as the kitchen is dark. We pay nearly \$500 a week in body corporate fees here, which includes electricity, but we haven't got any electricity.

Just last month, it was reported that conditions worsened, with some island villas and eco cabins losing their water supply. The living conditions which residents of Couran Cove have had to deal with are completely unacceptable. The experiences at Couran Cove speak to substantial discrepancies between the Building Units and Group Titles Act and the body corporate act in terms of body corporate governance arrangements and the protections in place for proprietors.

In my view, the fact that Couran Cove has deteriorated to this point—to the point where Couran Cove residents had to resort to standing on the beach with the words 'Help No Gas' dug into the sand—demonstrates just how slow the state government has been to move on this issue. It highlights that the

government has failed to keep pace with the developments in modern bodies corporate. Residents at Couran Cove are not alone in dealing with major body corporate issues. Queenslanders in apartments and complexes are also feeling the effects of a government that has taken far too long to act on legislation to ensure equity and fairness in this area of property law.

In 2013, it was an LNP government that commissioned the Commercial and Property Law Research Centre at QUT to conduct an independent and broad-ranging review of Queensland's property laws. After five years of research, the review was completed in 2018. There were 232 recommendations. However, since then, the government has shown a clear lack of progress in improving the complex developments that remain regulated under a mix of the Building Units and Group Titles Act and the Mixed Use Development Act. It has been four years since the QUT Commercial and Property Law Research Centre review was completed. It recommended greater harmonisation between the Building Units and Group Titles Act, the Mixed Use Development Act and the Body Corporate and Community Management Act.

Mr Power interjected.

Mrs GERBER: Member for Logan, I am not taking your interjections. While simple or single layer developments subject to the BUGTA that automatically transitioned to the BCCMA have benefited from that and the incremental reforms, counterpart schemes in complex developments, like Couran Cove, Sanctuary Cove and Hope Island, still regulated by a mix of all three acts, sadly have not benefited from these amendments. In fact, during the public hearing, we encountered one submitter who had been waiting so long for these changes that he was hesitant to suggest improvements. This witness is a long-term owner and also a committee member of a body corporate in an extremely troubled development. When I reassured the witness that it is the committee's job to scrutinise and if necessary recommend improvements, he said—

I will stop talking because the more I talk the more you are going to scrutinise and maybe potentially hold this up. That is definitely what I do not want to do!

We of course reassured him that anything constructive he had to say would benefit the committee and certainly not hold the process up. He did make some helpful points for the committee to consider, but I think this illustrates just how desperate people are for reform and just how slow the government has been to take on recommendations and enact reforms in this area.

Whilst most stakeholders were broadly in favour of the amendments, many stakeholders did suggest further changes were needed. The Australian College of Strata Lawyers submitted to the committee that BUGTA and MUDA should be brought in line with the Body Corporate and Community Management Act with respect to the limitations for by-laws. They submitted the 'missing' limitations, from section 180 of the Body Corporate and Community Management Act, should be introduced into BUGTA and MUDA and that there should not be any further delays.

Further, the Strata Community Association submitted that one important change that ought be made in this bill is to allow a body corporate constituted under the BUGTA to recover all costs reasonably incurred in the recovery of unpaid contributions. We heard from many submitters that the recovery of costs is a significant issue when it comes to levy recovery. The Strata Community Association relevantly pointed out that, as a body corporate cannot turn a profit, bodies corporate are unable to set aside a rainy day fund or contingency fund and that the current mechanism for cost recovery is litigation, which is very expensive. The association noted—

... one recalcitrant owner can be a significant disruption to the finances of a given body corporate. If bodies corporate under the BUGTA are to be obliged to pursue debtors as this Bill seeks to legislate, then it is only fair given the abovementioned factors that they are not out of pocket on a net basis for pursuing them.

The Strata Community Association also raised that the clauses in the bill altering requirements around voting at committee meetings could have significant unintended consequences. Specifically, the section recognises that a debtor member of the committee cannot vote at the meeting. However, when read in context with other amendments, the association submitted—

... there appears to be a drafting oversight which ought to be rectified.

Upon examination, these provisions allow an unfinancial committee to make decisions outside of meeting. This is a significant loophole which will allow for continued mischief. Ostensibly, unfinancial committees will be able to use votes outside committee meetings to continue to make decisions whilst failing to pay their contributions.

I would urge the minister to look at this and ensure this will not be an unintended consequence of the bill. Just on strengthening of the conflict of interest provisions, the Strata Community Association would also like to see the amendments in the bill to the conflict of interest provision make improvements,

because at present the deficiencies in the Body Corporate and Community Management Act are carried over in this bill. The deficiency is that a conflicted member can remain a participant in discussion. In this regard the association noted—

Allowing people to silently “eyeball” others whilst making a delicate body corporate decision isn’t appropriate.

Allowing people who have a conflict of interest to remain in the decision-making space is not best practice.

The association would like to see the amendments in this bill improve the conflict of interest provisions by ensuring conflicted persons excuse themselves from the decision-making space—that is, the meeting room. Overall, the Strata Community Association, and indeed most of the submitters, are supportive of the bill. There are some discrete amendments that stakeholders would like to see, as I have outlined.

This bill will go some way to help with the issues at Couran Cove. It is a long time coming and Couran Cove residents and bodies corporate are very pleased this is finally happening. However, much more still needs to be done. Greater harmonisation between the Building Units and Group Titles Act, the Mixed Use Development Act and the Body Corporate and Community Management Act needs to happen.

The government has indicated that there are further stages of amendments to come in tranche 3. However, as I have already said, the government has failed to provide a time frame for these amendments. To ensure owners and stakeholders do not have to wait years and years for the state government to act on these issues, I encourage the government to set a time frame, set some KPIs and set some measurements around this so the review can happen sooner rather than later and these reforms can happen as the community expects them to—in a timely fashion.