Speech By

Tim Nicholls

MEMBER FOR CLAYFIELD

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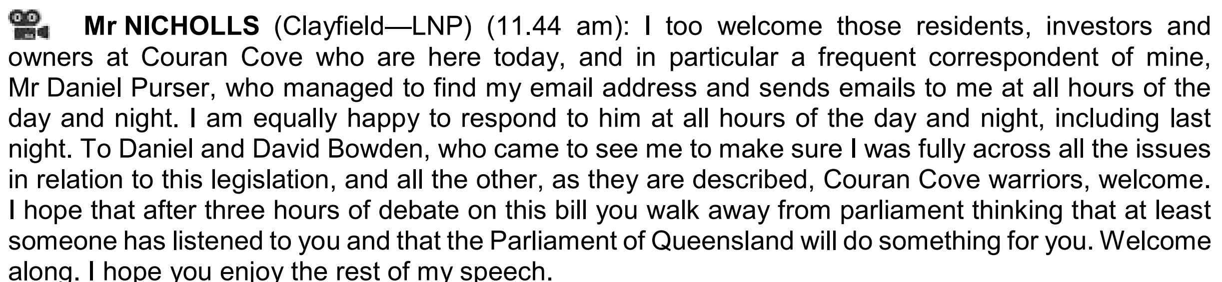
BUILDING UNITS AND GROUP TITLES AND OTHER LEGISLATION AMENDMENT BILL



Mr NICHOLLS (Clayfield—LNP) (11.44 am): I too welcome those residents, investors and owners at Couran Cove who are here today, and in particular a frequent correspondent of mine, Mr Daniel Purser, who managed to find my email address and sends emails to me at all hours of the day and night. I am equally happy to respond to him at all hours of the day and night, including last night. To Daniel and David Bowden, who came to see me to make sure I was fully across all the issues in relation to this legislation, and all the other, as they are described, Couran Cove warriors, welcome. I hope that after three hours of debate on this bill you walk away from parliament thinking that at least someone has listened to you and that the Parliament of Queensland will do something for you. Welcome along. I hope you enjoy the rest of my speech.

Honourable members interjected.

Mr NICHOLLS: In doing so, you will join my many colleagues in this place who will enjoy it as well.

The LNP will be supporting this bill, of course. As we consider the bill, we might reflect on the words of Sir Peter Delamothe, the Liberal member for Bowen—and that is saying something—and minister for justice and attorney-general, who, in 1964, when introducing the very first Building Units Titles Bill, said—

It is not within human power to make neighbours live together in harmony.

I think that is as true today as it was 58 years ago. Because of that we find ourselves delving into the arcane depths of body corporate law. It is vital we recognise the importance of effective community title legislation for the many hundreds of thousands of owners of lots in community title schemes as well as the owners of lots in complex schemes covered by various pieces of special purpose legislation.

In its 2017 options paper, the Commercial and Property Law Research Centre at QUT said—

Bodies corporate are often referred to as the 'fourth tier of government'. Like a government, bodies corporate provide services and create laws (in the form of by-laws). Unlike a government, however, bodies corporate are made up of private individuals who voluntarily enter into agreement with other private individuals to share the costs of owning and maintaining private property. The mixture of individual ownership of lots and collective ownership of common property creates unique challenges for balancing individual and collective rights. If some individuals fail to follow the rules or pay their share of the expenses, this can have dramatic consequences for the other individuals in the community.

I am sure there are many members in this place who have had representations from constituents who live in community title schemes dealing with the conflicts that inevitably arise and the obligations and consequences when people do not do what they are obliged to do.

This bill is important as it addresses longstanding shortfalls in the way in which bodies corporate in mixed use developments that rely on provisions in the Building Units and Group Titles Act, BUGTA, are managed. The recent history of community title legislation helps explain why this bill—and hopefully the others that the Attorney-General has mentioned to follow—is needed. Some considerable detail is

provided in the explanatory notes. For those who want to really go into the depths of it, I recommend those. Perhaps I can save people the agony of reading those and they just have to have the agony of listening to me.

I say recent history because it is a history that I clearly remember. When I first started having an involvement with bodies corporate as a very young and enthusiastic articled clerk, BUGTA was only three years old. When the BCCM Act came into being in 1997, a large part of the legal work I was involved with was strata titling. I was involved in one of the earliest CBD strata title office developments at 344 Queen Street—which is where the first Merlo coffee shop was located. As similar types of development and more complex plans emerged, the limitation of BUGTA became more obvious. As acceptance of the provisions of the 1994 Land Title Act grew, including the establishment of an electronic register and the virtual abolition of paper titles, the reality of the need for new community titles legislation grew.

As the explanatory notes helpfully point out, most of those early developments were simple subdivisions of land or buildings with a single body corporate, so they were quite straightforward. You either had lots that were divided along a line and they were group titles lots, or you had units created by the walls, ceilings and floors going up in a building and they were building unit lots.

Complex developments could be created but they relied on special planning acts to provide for the establishment and governance of an overarching hierarchical structure for development subdivisions and associated bodies corporate, combined with the BUGT Act to provide for the establishment and governance of individual subsidiary layer subdivisions and their associated bodies corporate. The special acts created the overarching planning regime and then they incorporated the BUGT Act, which dealt with the management issues for each of the subsidiary schemes in those larger more complex developments. In effect, the special acts set out the planning and high-level structural matters and the BUGT Act covered governance matters and had to work hand in hand. They had to work in conjunction. One of those special acts is one we are dealing with here today which is the Mixed Use Development Act, which was originally passed in 1993.

After the BCCM Act commenced in 1997—which was the replacement, if you like, for the BUGT Act—most developments under the old BUGT Act transitioned to it. For a variety of reasons, complex schemes did not and they remained under the old structure. There were good reasons for that at the time. There was a fear that, in transitioning, some of those matters would not be covered by the new legislation. There was a good and proper understanding for those in complex schemes, particularly the developers of those complex schemes, about what they were going to be entitled to do in further stages of development.

Since then, as the BCCM Act and its regulations have been amended and updated, there has been only limited reform to the BUGT Act and the MUD Act. Having been set, if you like, back in 1993 and 1980, it was sort of left alone. There was no real attention paid to advancing the cause of complexes under both of those acts. This means that while those BUGT Act developments that transitioned to the BCCM Act have benefited from enhancements to that act since its commencement, schemes in complex developments that remain regulated under a mix of the BUGT Act and the MUD Act have not. Time has taken its toll on those complex scheme developments. It has been apparent for many years that the provisions in BUGTA required significant changes to bring it into line with modern community title living needs and expectations. This is in fact recognised on page 2 of the explanatory notes to this bill under the heading 'Deficiencies of the BUGT Act and MUD Act are increasingly apparent'.

The former LNP government recognised this problem almost a decade ago and, as a result, in August 2013 commissioned the QUT Commercial and Property Law Research Centre to conduct an independent review of Queensland's property laws. The review explored a range of issues involving community titles schemes and, after extensive and lengthy consultation and options papers issued over three years, it resulted in three reports being delivered to this government in 2017 and 2018.

The first report dealt with body corporate governance issues including by-laws and debt recovery. It was released in 2017. The second report dealt with procedural issues including voting procedures and meeting procedures for bodies corporate. It was released in 2017. The third and final report provided recommendations for consistency between the Body Corporate and Community Management Act—that is the current act—and BUGTA. It was delivered to government in 2018. That final report contained seven recommendations. The question is: why has it taken so long—four years—for this Labor government to act? That is also the question that I think many long-suffering residents and owners in mixed-use development schemes have been asking and it is a question that is unanswered.

While this is not directed to any one community scheme, the example of Couran Cove sets out the problems that this delay has caused most starkly. Mr Purser will be referred to a number of times in my speeches but he is a victim of his own activity by turning up and speaking at the committee hearings.

Mr Purser, an owner at Couran Cove, gave evidence to the committee and is a very strong supporter of the changes in this legislation. He finds it difficult to believe that these changes have taken so long to be brought on. In fact, he was so frustrated that in the last sitting week of this parliament he re-sent a letter outlining the issues at Couran Cove that he originally sent to the member for Redcliffe as then attorney-general on 4 June 2019. This was his plea to the Leader of the House back then—

Please push the BUGTA bill to the top of the list for final debate! This has been dragging on way too long! It was already a problem in 2019 when I wrote to you then and it certainly hasn't got any better!

What is the problem? Here is an outline of the problem as one owner of a unit at Couran Cove told me. They said—

One company owes our body corporate over $14M. That debt has been accumulating over many, many years. That is $14M of budgeted expenses including daily repairs and maintenance and long-term sinking fund projects on buildings, water systems, sewer treatment facilities and generators, which is money that obviously isn't available to be spent. Due to a critical shortage of funds, the island is falling apart around our ears. Regular power outages, substandard water quality and sewer overflows have become the norm. At the same time as owing money, the same people behind the unfinancial entities are getting themselves and their friends and business associates onto the island body corporates and controlling the big decisions, even though they are hopelessly unfinancial due to unpaid levies. Some of these decisions include offering themselves discounts not available to other owners, preventing debt collection processes to be taken against themselves to collect unpaid levies and also blocking the appointment of legal practitioners to defend the regular onslaught of legal actions brought about by the same parties.

This is a foul witch's cauldron of problems all brought about because the legislation was not properly updated when it ought to have been—people owing large amounts of money, restricting others from being able to get on to bodies corporate but using their positions themselves to be able to block those very same bodies corporate from recovering the debts that they owe! The owner goes on to say—

The new Act changes will hopefully make these conflicted people ineligible to hold body corporate positions and put the power back in the hands of the mums and dads to who have to pay their levies.

In evidence to the committee Mr Purser said—

It has been a long time coming since the 2018 property law review regarding the inconsistency between BUGTA and BCCM was released.

It has been a long time indeed for the many ordinary mum-and-dad owners and investors who have paid their way.

Other evidence to the committee reinforces the difficulties unit owners at Couran Cove have faced over that time. Indeed submitters were thankful to the Attorney-General and the working group for bringing this bill forward and for finally acting. I acknowledge that there is a great degree of relief amongst those unit owners and I am sure others in similar circumstances. There are about a dozen other complex schemes covered by this type of legislation. This bill is certainly welcome, but equally it is abundantly clear the problems the bill hopefully addresses have been ongoing for 'many, many years'. It has been an ongoing concern for the LNP and it is why I questioned the Attorney-General in estimates in 2020 about progress on the implementation of reforms to property law and body corporate legislation. At that stage—that is now nearly two years ago—we were advised that a new community titles working group headed up by the deputy director-general of liquor, gaming and fair trading would be leading the process of bringing about change.

Unfortunately, while all this has been going on, the residents of those mixed-use development schemes have continued to pay the price. As any review of the media shows, residents at Couran Cove have certainly borne the brunt of those delays. In June 2020, a service provider—this is someone who provides electricity to the island—associated with the resort manager—that is, the person who manages the resort—bought a $15 million claim against the body corporate. This is despite the fact that associated entities of that very same service provider—the person suing for $15 million—owed the body corporate millions in unpaid levies. It effectively denied the body corporate the capacity to pay the service provider, and the service provider then chose to sue the body corporate! The situation was so farcical that the utility supplier to the island cut off gas supplies because maintenance had slipped so badly the gas lines had become unsafe. The result was residents had no gas for hot water or for cooking, and the residents were advised to go out and buy butane camping cookers!

Amid a plethora of claims and counterclaims, residents also could not rely on the body corporate manager and were told to get their own legal advice at the cost of thousands of dollars—again, obligations that a properly run body corporate should have accepted and taken on themselves. Regrettably, the situation has deteriorated. Originally I had written 'in the last five weeks' since this bill was set to come on for debate. Two weeks ago I changed it to 'seven weeks'. Now it is nine weeks!

Only six weeks ago on Wednesday, 28 September electricity was cut off to many of the ecocabins lived in by residents. Distressing scenes of elderly residents sitting on top of electrical boxes to stop contractors disconnecting the power were reported in the *Gold Coast Bulletin*. I table a copy of that report.

Tabled paper: Media article, undated, titled 'Police called to Couran unrest' 1848.

Only five weeks ago there were reports of water being cut to residents' homes without warning. I table a copy of that report from the *Gold Coast Bulletin* as well.

Tabled paper: Media article, undated, titled 'Power axed, water cut and Couran Cove residents scared to speak' 1849.

It is not the purpose of this legislation to determine the rights and wrongs of any one development or dispute. The dispute at Couran Cove is complex, difficult, difficult to follow and, quite frankly, a lawyer's picnic. It is the purpose of this place to pass fair, proper, and modern laws that enable such disputes to be resolved and, to the greatest extent, resolved quickly and economically. Realistically, ordinarily residents cannot afford the costs of lengthy disputes, nor should they be expected to bear the costs of such a large burden simply to live in their own homes in a community titles scheme.

I do say that, despite this legislation being welcome, it is to this government's shame that it has taken so long to get this bill brought forward. I note there is still more to come that has been delayed for far too long as well. I also note clause 2 of the bill provides that parts 2, 4 and 5 and schedule 1 commence on a day to be fixed by proclamation. These are the operative parts. These are the parts of the legislation that the residents who are in the gallery today and others in bodies corporate need to have in place in order to resolve their circumstances. I ask the Attorney in her response to the debate to shed some light on when she expects royal assent to be given by the Governor to this legislation because this bill needs to be brought on before the Executive Council for royal assent as a matter of urgency after it passes this place. Many people are waiting anxiously for these parts of the bill to come into effect. As we have seen, even a delay of nine weeks since the bill was first expected to be debated has led to further grief and trouble in some of these developments.

I also ask whether the Attorney can confirm that all necessary procedures, forms and practices are in place to facilitate these changes. It is important that the process and system is in place so that we do not just have a piece of legislation that says, 'This is what is to happen,' but that the forms and processes and staff are in place so that when an applicant turns up on day one there is an answer and they are not told to 'come back in 10 days time when we have the form ready' or 'We don't have someone trained to deal with this matter.' It needs to be in place and ready to go once the bill receives assent and comes into effect.

I also want to urge on the Attorney that sufficient funds be made available to ensure the body corporate commissioner can deal with complaints and disputes when they inevitably arise following the proclamation of the new laws. I have already noted there is $2.5 million—but it is important to note that is over three years—allocated to the office of the body corporate commissioner. Will that $2.5 million, just over $700,000 a year, be sufficient to address the issues and make sure there are sufficient resources in place to deal with the matters that are contemplated by this legislation? Is it a sufficient amount? Someone at a scheme said to me—

We know that the conflicted people have already started transferring properties to 3rd parties in anticipation of the new Bill—

so those people who have been doing the wrong thing have already started taking action because they know this bill is coming through—

and we know there will be more fights coming up and cutting through red tape when they start crying and filing to the Body Corporate referee. Something you could agitate possibly is to lean on the AG and demand that they have dedicated resources available to deal with the conflicted people as a result of the changes. We would really hate to see these new applications put on the end of the queue as we are already seeing blow out of over 6 months in current referee applications.

I ask the Attorney-General on behalf of those people to please make sure there are adequate funds and resources made available so that disputes are not left languishing at the end of a long line.

Laws with no real prospect of speedy application or power of enforcement and resolution would be a cruel hoax on owners who have waited so long for help. In this respect I note the comments in the explanatory notes about the cost of implementation, including the provision of information and education services and a period of implementation and adjustment by referees. We know that is going to have to happen, but we want to make sure it happens in the fastest time possible. It may well be the case—and perhaps the Attorney can answer this—that steps have already been taken, training is already underway and that referees are aware of the changes brought about by this bill. The explanatory notes also note that it is expected there be will be a modest, but not insignificant, rise in dispute resolution applications, so there will be an increase and there needs to be resources to deal with that.

There is much in this bill that will hopefully go a long way to resolving disputes more promptly and fairly, and provisions of the bill that address a number of the most common complaints about the existing situations are peppered throughout. There are obligations on bodies corporate to act reasonably and new definitions are inserted in both BUGTA and the MUD Act provisions covering a plethora of defined terms such as 'associates', 'electable persons', 'service provider' and 'relevant body corporate debt', amongst others. These are new terms that need to be worked out and decided by referees in matters of dispute.

Importantly, new section 32A inserted by clause 8 of the bill provides that the body corporate may recover as a debt any levy contribution that is not paid within 30 days. A body corporate can take action after 30 days to recover a debt, but subsection 2, more importantly, says the body corporate must start proceedings to recover any contribution levy that has been outstanding for two years and 30 days. They must start taking action after two years and 30 days. This is an important change that goes some way to ensuring bodies corporate are maintained on a sound financial footing and that defaulting owners do not get a free ride from those owners who are doing the right thing. Again, this is exactly the situation that has been occurring at Couran Cove.

Another clause I want to highlight is clause 35 of the bill, which amends section 172 by inserting provisions that protect small lot owners from the capricious actions of a substantial undeveloped lot owner who fails to pay levies and therefore renders a subsidiary body corporate unfinancial and hence unable to participate in body corporate meetings of the scheme. Again, this is what is happening at Couran Cove. Clause 35 amends section 172 by providing provisions to protect those small lot owners in certain circumstances.

I also want to briefly acknowledge changes to the Fair Trading Act to give the Office of Fair Trading infringement notice powers consistent with powers already able to be exercised by the Commonwealth in relation to the use of gift cards issued in Queensland. Those changes are uncontroversial and bring Queensland law into line with the rest of the country.

While this bill may not be the final word and there are hopefully further steps in reforming the community titles sector to come, we do not want to let the pursuit of the perfect be the enemy of the good. While not perfect, as many submitters have said—and I acknowledge the very many submitters including organisations, solicitors and others involved in the administration of bodies corporate—this bill will go a long way to fixing some of the immediate and most pressing problems that are being experienced by owners as well as some of the longer term issues that have been festering for far too long.

As I said at the beginning, I want to thank everyone who made contributions, those who contacted me and those who have carried on the fight for a long time against sometimes seemingly impossible odds to provide safe homes, accommodation and the provision of basic services to people. Congratulations! Hopefully, today part of that battle will have been resolved in your favour and you will see a far better outcome and experience a far better outcome than you have to date. We will be supporting the bill.