



Speech by


**Jann Stuckey**

**MEMBER FOR CURRUMBIN**

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## **BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL**

 **Mrs STUCKEY** (Currumbin—LNP) (5.57 pm): I rise to speak in my capacity as shadow minister for fair trading to the Body Corporate and Community Management and Other Legislation Amendment Bill 2010, which was introduced into the House on 23 November 2010 by the then Minister for Tourism and Fair Trading, the honourable member for Southport.

This bill amends 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. The bill's main objectives are to amend the Body Corporate and Community Management Act 1997 to provide a new lot entitlements system to limit the ability to adjust contribution schedule lot entitlements and give owners in existing community titles schemes a right to reverse previously adjusted contribution schedule lot entitlements to their original position; and to simplify the management of residential community titles schemes which are comprised of only two lots. A specified two-lot-scheme module is being developed providing that a body corporate for a two-lot scheme will not have a body corporate committee, hold general meetings or be required to conduct polling or voting.

As the former minister mentioned in his second reading speech, the two-lot model is being progressed and is expected to be operational in mid-2011. This is projected to potentially affect 12,000 community titles schemes, which is almost one-third of schemes in Queensland—a significant proportion indeed. This follows a review in 2006-07 of the existing regulations under the BCCM Act, which identified a need for a new module to simplify management arrangements for two-lot residential community titles schemes. Further provisions in this bill are designed to enhance the disclosure requirements for the sale of a lot and provide for more content to be included in the community management statement, the CMS, for a community titles scheme. All of those provisions are purportedly designed to enhance consumer protection and transparency and add certainty to lot owners. However, concerns have been raised about the ability of this bill to effectively achieve those aims. I will canvass those in detail later.

Before going any further, I thank the former minister for providing me with a briefing from departmental staff: Mr Ivan Catlin, the executive manager of Marketplace Strategy; Mr Chris Irons, director of Fair Trading Policy; Ms Julie Clayton, the principal policy and legislation officer; and Mrs Wendy Bourne, policy adviser from the minister's office. No doubt, like me, they are somewhat frustrated at the lack of accurate data available. I asked Mr Catlin for some information regarding two-lot schemes. He gave a commitment to send me the information, but the then minister avoided giving me an answer in his correspondence dated 17 February of this year. All I wanted to know was how the new two-lot scheme differed from the small schemes introduced in 1997 by then Minister Hobbs. Surely that was not too difficult. Perhaps the new minister, who I see is in the House now, will be more obliging. I was also unsatisfied with the reply to my questions as to how many applications were in progress and how many of the 216 submissions were in support of this bill and how many were against. It is this reluctance or inability to supply requested information that causes me disquiet with aspects of this bill.

As I have stated in debate on previous legislation relating to matters body corporate, my husband and I own property in a complex that falls under the provisions contained within the Body Corporate and Community Management and Other Legislation Amendment Bill 2010. To avoid any accusations from members opposite, I add that the unit complex has not applied for an adjustment. Of course, honourable members do not know if the former minister has a property that underwent an adjustment or if the current minister is in that situation.

Over the past decade or so the BCCM Act has undergone several reviews and amendments and attracted an inordinate amount of comment from individuals, lawyers and industry stakeholders. It has been described as complex, confusing, biased, unbalanced and more. Community titles schemes take many forms, including duplexes, home unit blocks, townhouse complexes, high-rise apartment buildings and some commercial premises. The very nature of community living, which is being chosen by an ever-increasing number of people for reasons ranging from lifestyle changes and security to affordability, means that governments have an obligation to review legislation on a regular basis to make sure it is pertinent to current needs. Local, national and international financial scenarios aside, a reduction in the size of individual footprints is the direction in which the future is heading. Smaller allotments in city precincts reflect a global trend in order to accommodate growing populations. Let us look at the Gold Coast for an example. It is a leader in high-rise developments, but exactly how best to manage population sustainability is a debate for another date.

According to a library brief I requested, community titles legislation was first introduced into Queensland in 1965—over 45 years ago—to deal with the collective ownership of property and assets. A body corporate was created for each community titles scheme and lot owners automatically become members. Lot entitlements are used to determine how costs and interests in a community titles scheme are divided between owners and the voting rights of owners in certain circumstances. This act was followed by BUGTA, the Building Units and Group Titles Act 1980, which introduced a single schedule of lot entitlements for community titles schemes. The original BCCM Act was introduced in 1997 by a coalition government. The minister at that time, the honourable member for Warrego, who I am pleased to say is still a member of the parliament, introduced a bill that gained positive world recognition. Ivan Catlin, the executive manager of Marketplace Strategy, said that the bill was very cleverly drafted and agreed that it was landmark legislation. I might add that Labor did not oppose the 1997 legislation.

Importantly, the 1997 act introduced two types of lot entitlement schedules, an interest schedule and a contribution schedule. In order to provide honourable members with a brief explanation about this undeniably confusing and complicated landscape, I will run through the definitions of those terms as per the explanatory notes of the 2003 BCCM amendment bill. The 'interest schedule' defines the relative ownership of common property in the scheme and is used to determine contributions for those matters that are generally related to the value of the individual lots, such as rates and insurance. The 'contribution schedule' is used to determine contributions for those matters that relate to the day-to-day operation of the scheme and generally should be shared equally amongst all lots.

Currently, contribution schedule lot entitlements must be set equal, except to the extent to which it is just inequitable in the circumstances for them not to be equal. Most body corporate expenses are proportioned by each lot's contribution schedule lot entitlement, which is used to pay for common and shared expenses drawn from the body corporate administration fund and sinking fund. Moneys used by the body corporate to pay for the long-term expenses of running or improving the complex, for example to repaint the building, are referred to as a sinking fund.

In the example of a typical complex, the cost distribution of utilities is as follows. Each unit is usually metered for electricity consumption and hot water. Common property is metered for electricity, cold water consumption and swimming pool heating gas consumption. The body corporate expenses typically come from the administrative fund and the owners receive equal benefit. These are management fees for caretaking of the common property, body corporate management fees, legal fees, pest control, garden and grounds maintenance, pool and spa maintenance, lift maintenance and security, to name a few. The following common property contingent expenses are paid by the body corporate from its sinking fund and owners receive equal benefit: examples include roof membrane replacement, electrical fittings, carpet to passageways, reception area furniture, water pumps, garage and driveway door replacement and so on.

In Brisbane, residents in unit complexes affected by flooding are finding out that they may be paying substantial costs to rectify flood damage as it is almost impossible for bodies corporate to secure flood insurance. Considering the pressure placed on households from rising water and electricity costs under successive Labor governments, it is no wonder the contribution schedule lot entitlement has been an issue loaded with contention in recent years. Rather than admitting that the Labor Party now thinks it got it wrong, in his second reading speech the former minister mischievously tried to incriminate the coalition for its 1997 legislation by stating—

There has been no single cause of the problem. A chain of events and decisions over time, including a failure in 1997 to fully appreciate the transitional implications arising from the enactment of the BCCM Act, have combined to give rise to the current problem.

More to the point, it was the result of the 2004 Court of Appeal decision known as the Centrepoint or Fischer case—

**Mr Lawlor:** Which interpreted that legislation.

**Mrs STUCKEY:**—that upset the apple cart, so to speak. The former minister should know better than to distort the facts. Bewilderingly, the 2003 BCCM debate, which the former minister and honourable member for Southport actually spoke to, was not mentioned in his second reading speech and was not referred to in the explanatory notes. Therefore, it is a bit rich to try to buck-pass to the 1997 legislation, which was brought in by the conservatives. Members on the other side are good at gilding the lily for their own advantage. In the 2003 debate, the former minister contained his short comments to provisions pertaining to the statutory easements, but he still voted in support of it, saying—

I congratulate the minister and his staff on this important bill, which I commend to the House.

In 2003, not one member of parliament opposed the bill. In 2003, 66 of the 89 members were ALP members. Now we have a new minister. In 2003, the Deputy Premier was a member of this House when the legislation was passed. The former minister's complete lack of ownership of Labor's 2003 amendments reveals that he is either too embarrassed to acknowledge Labor's efforts in 2003 or he has chosen to adopt Bligh's attitude of denial, preferring to pass the buck to the opposition. In his second reading speech, the then minister stated—

We have a problem in the marketplace. It needs to be fixed.

Does that not take the cake? The minister is declaring that there is a problem in the marketplace that needs fixing, but he fails to tell the truth and say that, if indeed there is a problem, his government created it and he voted for it. The former minister has been caught welching on his own word. But then only in the last month we have seen our Prime Minister backflip on an election promise that there would be no carbon tax. There is a name for people who do that but I cannot use it in this place. Let us just say that it is not very flattering.

In 2004 the BCCM Act underwent review and the regulations to the act were also reviewed by the strategic policy section of the Department of Justice and Attorney-General—

**Mr Lucas** interjected.

**Mr DEPUTY SPEAKER** (Mr O'Brien): Order! Minister, your language is unparliamentary and I ask you to withdraw.

**Mr LUCAS:** I withdraw.

**Mrs STUCKEY:** In 2004 the BCCM Act underwent review and in 2006-07 the regulations to the act were also reviewed by the strategic policy section of the Department of Justice and Attorney-General culminating in the introduction of the current regulations in 2008. Significant amendments were made to the act in 2007 as a result of the 2004 review, which the library kindly found for me. Specifically, these were amendments related to improving dispute resolution functions of the BCCM Act to focus on self-resolution, expanding the jurisdiction of the then Commercial and Consumer Tribunal and introducing a code of conduct for body corporate committee members. A discussion paper released in December 2008 by the then Attorney-General called *Sharing expenses in community titles schemes: a discussion paper on lot entitlements under the Body Corporate and Community Management Act 1997* was released because, as is stated in the introduction—

Concerns have been raised about the current system for setting and adjusting contribution schedule lot entitlements ...

No doubt it was at the behest of the honourable member for Southport while he was a humble backbencher. An article in the *Gold Coast Bulletin* on 19 May 2008 expressed the honourable member's concerns and the fact that he was meeting with the Attorney to seek a review of what was labelled a controversial law, one brought in by his own government.

A more recent article in the *Gold Coast Bulletin* on 27 September 2010 reported that the then minister was exceptionally keen to have the new laws introduced as quickly as possible. What the article did not spell out was that the honourable member for Southport intended throwing out the very legislation he had praised as important in 2003 in order to achieve the changes. Honourable members really have to wonder about the reason behind this legislation. It was put to me by one local Southport resident that the honourable member is worried about losing his seat at the next election and he is trying to appease voters with this legislation.

The Body Corporate and Community Management Act has always included the ability to apply for lot entitlement adjustments. I will repeat that: the Body Corporate and Community Management Act has

always included the ability to apply for lot entitlement adjustments. It is the way they are permitted to occur that varies with new amendments that come before the House.

Adjustment methods were introduced in the original 1997 act and the options were that two or more owners could agree to adjust their own entitlements between themselves, a body corporate could adjust the lot entitlements through a resolution without consent or a lot owner could apply to the District Court for an order for the adjustment of lot entitlements. Amendments by the Labor government in 2003 introduced the ability for lot owners to apply to a specialist adjudicator as an alternative to the District Court for lot entitlement adjustment orders. This was considered to be fair for all. Furthermore, the 2003 amendments enshrined that the equality principle, which courts were obliged to consider for adjustment orders, also had to be adopted by developers in the first instance when they set contribution schedule lot entitlements.

Labor's 2003 amendments extended and simplified existing processes so that lot owners unhappy with their lot entitlement distribution had a more accessible option to have their lot entitlement adjusted. This exercise came at significant personal cost to those who took this course of action—anywhere between \$10,000 and \$20,000 I am told—as the process was very thorough. Currently, if one owner in a community titles scheme is successful in having their contribution to shared costs revised down, others in the scheme have their share increased or balanced to compensate. Undoubtedly, there have been some cases where people have been negatively affected by the flow-on from adjusted lot entitlements and have been encumbered by the changes. However, in other cases all parties are happy with the result.

Since 1997 we are told that approximately 120 applications of such a nature affecting between 5,000 and 10,000 lots, which equates to many thousands of people, have been made to the tribunal now called the Queensland Civil and Administrative Tribunal—QCAT—with many more in the pipeline. According to Mr Catlin, there are in the vicinity of 30 to 40 applications at various stages of progress awaiting decisions. These people will not be able to proceed under the provisions before honourable members and their applications will cease upon commencement of this bill.

How can this be deemed fair? How many applications are in process? Why is that information not publicly available? Does the minister not care about those people? Are they somehow less important, less deserving of fairness? A lack of accurate data is inexcusable and is highlighted by the Community Titles Institute of Queensland, the peak industry body for body corporate and community title management in Queensland, originally founded in 1984 as the Body Corporate Managers Institute of Queensland. This respected body argued that it conducted a much more detailed search than the minister and the number of schemes that have undergone a contested review process or adjustment is over 350—a far cry from the government's figure of 120. Consequently, these proposed amendments may have a substantially greater impact than the minister is implying, with CTIQ saying that a reasonable estimate of affected lots is 21,500, or approximately six per cent of all lots in Queensland. CTIQ's detailed look below the surface from which the minister arguably skimmed this rough figure included cases where parties initiated an adjustment application and did not fight all the way to the end result of a court ordered adjustment, asked the tribunal member to consent to what is called consent orders or were adjustments forced upon a lot owner through duress by another lot owner. The circumstances under which adjustments have been made are numerous and varied, and the CTIQ considered the minister's figure to be laughable given its extensive search to determine the true impact of this legislation. Let us take a closer look at the changes that are proposed by this bill.

Firstly, the bill will provide a new lot entitlement system for new community titles schemes established after this bill's passage and commencement. It is proposed that contribution schedule lot entitlements may be determined by applying either of the following principles: the equality principle or the relatively principle. I will quickly explain these terms for honourable members. The equality principle, which is the current method used, requires all contribution lot entitlements to be set equal except where it is just and equitable that they not be equal. The relativity principle will be a new alternative means by which developers can set unequal contribution schedules between different lots with regard to the following: how the community titles scheme is structured; the nature, features and characteristics of the lots; the purposes for which the lots are used; the impact the lots may have on the cost of maintaining the common property; and the market values of the respective lots. It is worth noting here that developers still have the right to allocate contribution schedules.

The Queensland Law Society, one of many entities to send a submission to my office, had a raft of concerns with many areas of this legislation, one being in relation to this proposed new method. QLS believes that reflecting on the market value in the relativity principle is unfair and problematic, particularly considering the term is not defined anywhere in the legislation. While QLS is reasonably happy with the first four considerations that sit under the relativity principle which, when considered together, promote fairness, it strongly opposed giving developers the option to consider market value for the setting of contribution schedule lot entitlements. The society has proposed its own methodology named the 'fairness principle' to be the single principle for setting contribution schedules. The Australian College of Community Association Lawyers also commented on the market value inclusion and stated that market value should not be a relevant factor in the calculation of contribution schedule lot entitlements. It says—

It is absurd and inequitable to suggest the owner of a three bedroom apartment on the sixth floor causes three times as many meeting notices to be sent as the owner of a ground floor single bedroom unit.

The methodology for setting interest schedule lot entitlements is also proposed under proposed new section 46B for new community titles schemes created after the passage of this bill. Adopting the market value principle, interest schedule lot entitlements must reflect the respective market values of each of the lots in comparison to each other lot except where it is just and equitable not to do so.

The second objective of this bill will limit the ability to adjust contribution schedule lot entitlements and give owners in existing community titles schemes a right to reverse previously adjusted contribution schedule lot entitlements to their original position. In relation to community titles schemes established after the commencement of this bill, where a lot owner believes the contribution schedule lot entitlements are not set in accordance with the contribution schedule principle applying to the contribution schedule lot entitlements, they may seek an order of a specialist adjudicator or QCAT to adjust the contribution schedule lot entitlements. The order must only be in accordance with the contribution schedule principle which already applies to the contribution schedule lot entitlements.

In addition, provisions in this bill remove the ability of lot owners in a community titles scheme established prior to the commencement of this bill to apply to a specialist adjudicator or QCAT to have their contribution schedule lot entitlements adjusted. These lot owners will only be able to adjust contribution schedule lot entitlements if it is unanimously agreed to by all lot owners through a resolution without dissent of the body corporate, as established by new section 47A. This provision presents a possible breach of fundamental legislative principles. The Unit Owners Association of Queensland, the UOAQ, a peak industry body with 800 members, believes a unanimous agreement will never be reached, stating that this outcome is virtually impossible to achieve. The QLS further believes that this provision could have an undesirable outcome, as in cases where the original lot entitlements may have been set with errors, omissions or unfairness, in that it prevents a body corporate where a single lot owner disagrees from ever making contributions fair between the lot owners.

This bill also proposes to enhance content and disclosure requirements of community management statements, CMSs. After commencement, a CMS will be required to state the relevant principle for deciding the contribution schedule; if the equality principle is used and lots are not set equal, the reason they are not set equal; if the relativity principle is used, how the principle was applied to decide individual contribution schedule lot entitlements. Additional requirements are also proposed for the disclosure statement given to a potential buyer of a lot by the current owner to include: the amount of the owner's current annual body corporate rate payments, the extent to which this fee is based on contribution schedule lot entitlements and interest schedule lot entitlements, and that contribution and interest schedule lot entitlements are stated in the CMS. A copy of the CMS must also be provided to the buyer with a contract upon sale. If, however, a new CMS is recorded before settlement, a copy of the new CMS must be provided to the buyer within 14 days. The onus for these provisions is on the seller or owner of the lot, and the potential buyer may have the right to terminate the contract if these requirements are not met.

I turn now to the provisions of this legislation that have caused enormous controversy. This bill proposes that community titles schemes established prior to the commencement of this bill that have been subject to adjustment orders will have the ability to revert their lot entitlements to their original settings prior to any and all adjustment orders. To facilitate a reversion of contribution schedule lot entitlements the bill provides that, if a lot owner submits a motion to be considered at a general meeting of the body corporate requesting the contribution schedule lot entitlements for all the lots in the scheme to be reverted to the original contribution schedule lot entitlements in place before any and all adjustment orders were made, it is deemed that the body corporate passed the motion. The body corporate will then be required to give effect to the motion by reverting the contribution schedule lot entitlements to their original settings, subject to any subdivisions, amalgamations, boundary changes or material changes.

It is of concern that the same procedures that created the supposed problem in the marketplace, according to the former minister and described by him as having devastating consequences, are being endorsed by this bill but in reverse. Provisions in this bill indicate that all it will take is one person to move a motion and the reversion must occur. Where is the fairness in that? Where is the balance here? Surely this is bound to create further animosity amongst unit dwellers. Furthermore, it is an insult to people who have taken the time, the effort and considerable costs to go to such lengths to apply through proper legal channels to get adjustments made. Industry stakeholders are appalled at the ease with which this bill allows all this effort to be reversed. All it takes is a stroke of the minister's pen. Is this what the minister means when he says he is simplifying the legislation?

In their submission the Queensland Law Society also expressed their significant concern and dismay at the proposed provisions stating—

Permitting one affected owner to undo the careful assessment of what is 'just and equitable' in terms of apportionment is itself visiting unfairness on lot owners.

Additionally, the power of a single lot owner to compel the body corporate to pass a resolution winding back adjustments will likely seek to isolate and stigmatise that owner amongst their co-owners.

Doesn't that sound like a recipe for a convivial community-living atmosphere! Rather it is a recipe for heated disputes and unrest. Similarly, the Queensland Law Society argues that 'merely because a change has occurred to the contribution schedule does not necessarily mean that the result of the change did not bring fairness between the owners'.

The Australian College of Community Association Lawyers stated a parallel view in their submission. They state—

... the Amendment Bill does not achieve the stated objective and, indeed, provides more uncertainty and unfairness by allowing 13 years of settled law to be 'undone' at the behest of just one affected lot owner.

Granted, this bill as it stands cannot satisfy all different types of situations. It is doubtful that any bill would, given the variety of circumstances, the size and make-up of complexes—high-rise versus freestanding units and villas—but it could do a whole lot better than this offering, especially given the length of time for review and ongoing issues raised about body corporate matters.

Owners who have bought into a scheme after an adjustment of lot entitlements could face an increase in fees from the provisions contained within this legislation, much the same as original owners were following adjustment orders. Where is the justice here? The former minister's argument—and it sounds like the current minister's argument—is also flawed. One legal commentator gave an example of this which I wish to share. He says—

Take for example an owner who bought in 2006 a large unit in a building which a couple of years before had changed its lot entitlements to reduce the lot entitlements, and therefore the levies, for that particular unit. That owner would have seen the lot entitlements and the levies for the unit at the time of purchase and probably relied on them at the time of purchasing. Yet now, these lot entitlements are likely to be changed so that the owner's levies will increase by a huge proportion, there being nothing that the owner can do about it.

That puts a new spin on 'buyer beware'. Labelling the government's argument fanciful, the same legal eagle said—

What the Government seem to ignore is that over the past 13 years or so, dozens, if not hundreds of buildings have changed their lot entitlements under what the Government considered then, and seems to still, given that the principals to be adopted for new buildings have barely changed, a fairer methodology.

Then there are also the people who purchased in, say, 2005 or 2006 who were not aware the lot entitlements had ever been adjusted who are in for a nasty shock when they realise they may well have to fork out more than they bargained for, more than what was listed as legally binding on their community management statement. Surely a fairer system than the one before us could be drafted.

The CTIQ has gathered data on the number of lots in affected schemes that have changed hands after a contested review process has occurred. Approximately 13.5 per cent of lots, or 2,900, have changed hands since a contested adjustment. I would like to commend industry bodies and individuals for their detailed input via letters and copies of submissions. I have read them all. That meant countless hours of reading that gave me a firm grasp of the issues as well as the pros and cons of both sides of the argument. It is very clear that it will be impossible to bring about an outcome that will please everyone, as the former minister has mentioned.

The Queensland Law Society do not believe that these proposed amendments achieve the balance between fairness and certainty for all lot owners that the government is striving for. Comments from their submission, dated 23 September 2010, state—

As a statement of general principle we support the proposition that body corporate contribution schedule lot entitlements should be as far as possible fair and certain for lot owners. This does not mean, however, that


- it is unfair for lot entitlements to be adjusted; or
- merely because lot entitlements have changed for any particular lot owner it is unfair

It also does not mean that lot owners should be locked into unfair results merely to provide certainty. We propose that there should be fairness between lot owners.

And it is important to remember that residents who have changed their lot entitlements already have the right to change again.

The Australian College of Community Association Lawyers have stated they cannot support this legislation because 'the amendment bill does not add to or improve certainty and fairness, and multiple options does not create—

Sitting suspended from 6.30 pm to 7.30 pm.

 **Mrs STUCKEY** (Currumbin—LNP) (7.30 pm): The Australian College of Community Association Lawyers have stated they cannot support this legislation because 'the amendment bill does not add to or improve certainty and fairness, and multiple options does not create flexibility, but rather it adds to the

complexity and cost of scheme establishment'. The Unit Owners Association of Queensland president made the following point regarding reversion to original lot entitlements—

That is to assume that the original settings were fair, just and equitable ... There can be no reliance that the schedules prepared by the developer were fair and reasonable in the interest of future owners of the scheme.

He raises an interesting angle, and nothing in this bill addresses whether original settings were ever fair. Colin Lamont, a former member of this House, as the spokesperson for the Unit Owners Alliance, said in 2009—

The Act as it stands is fair. It states that unless there are special reasons each lot shall pay the same.

I believe it is important to share with the House the views of Leary & Partners, quantity surveyors with nearly 30 years experience providing services to the strata industry including expert contribution adjustment advice for both applicants and bodies corporate since 2002. In its submission to the 2008 discussion paper on lot entitlements, Leary & Partners said—

We broadly support the current system for setting and adjusting contribution entitlements.

It is clear in its message to the government: leave the law as it is. It goes on to say—

... we do not believe that the number of schemes or lots disadvantaged by the current system is demonstrably greater than the number that would, for other reasons, be disadvantaged by an alternative system.

Since the publication of the Court of Appeal decision for Centrepoint, there has been a high degree of consistency and as a result certainty, in the interpretation of the intent of the law by parties dealing with the contribution entitlement system on a regular basis.

The Queensland division of the Property Council of Australia, which lobbied the government for these amendments, calls this bill a major win for the Queensland property industry and unit owners alike as it will enable developers to include affordable housing products in their development schemes. In its covering letter to the minister this group advocated for the user-pays approach to policy and proposed that the 2003 amendments, followed by the successful Centrepoint court challenge in 2004, created a lot of hardship for lower level unit owners, who were faced with steep increases in body corporate fees. The Property Council, in its submission to the draft consultation bill, had the following recommendations—

That the bill preserves the option for developers and bodies corporate to continue with the existing 'equality principle'.

That the new option for setting contribution schedule lot entitlements referred to as the 'relativity principle' allows developers and bodies corporate sufficient flexibility to take into account a whole range of matters in setting up a community title scheme. In particular, the relativity principle allows developers to take into account the market value of the lots in setting body corporate levies. This key initiative will encourage developers to include affordable product in upmarket community title schemes.

These comments further raise the issue of who should be the person or the body responsible for making decisions on community titles schemes and lot entitlements. There is a raft of competing interests here—from owners to developers, body corporate managers and building managers—that make this an ongoing quandary. It was very disappointing that the Property Council chose to attack penthouse owners as the cause of all this perceived evil when it said—

It should be remembered that under the existing law, a large number of 'penthouse' owners have an almost unfettered ability similar to that contained in section 380 to force a re-writing of levies in their favour.

It is the Property Council's view that new section 380 and its associated provisions provides the greater good for the greater number of unit owners as opposed to the existing legislation which provided windfall benefits for a small number of wealthy penthouse owners.

Not all penthouse owners are wealthy. Some bought under favourable developer conditions. Not all have cash on hand. Some are on tight budgets and need to live frugally. It is unfair and improper of the Property Council to make discriminatory judgements such as these. It is comments like these that could be accused of typecasting and creating a social divide. Mrs Boland from Mermaid Waters argued—

Penthouse owners weren't the only ones to benefit from changed entitlements, a considerable number of other unit owners did also. Not all penthouses are mansions and have very wealthy owners as we are led to believe.

Liat Walker and Ros Janes, directors of Success Law Pty Ltd, said with regard to the following: 'Any application before a specialist adjudicator or QCAT that has not been decided or has not been given effect by the time of the commencement of the amendment bill will cease to have the effect at commencement'—

We consider the objectives of the amendment Bill have not been met. Indeed, there will be less certainty for those bodies corporate who have been the subject of an order adjusting the contribution schedule lot entitlements, as they could be subject to a reversal of the order.

Christina L Schoenbaechler from Palm Beach was grossly unimpressed with former minister Lawlor's proposed amendments to the BCCM Act, suggesting it should be recycled as toilet paper. She said—

The legislation achieves an unfair, confusing and communistic piece of legislation that could not be further from its objectives. I have lived many years in Europe and seen this type of legislation depriving human rights.

Recent water price hikes have hit hard, especially singles living in complexes where units are not connected to a separate meter.

**Mr Lucas** interjected.

**Mrs STUCKEY:** The minister may like to listen to this. A suggestion was put forward that if the government really wanted to make unit living a more level playing field, the authorities should install separate water meters to every unit at no or very little cost to owners. The reason given was that it is not fair or reasonable for a single person in a unit to be made to contribute to water usage by units with three or more inhabitants.

Another resident reported that some unit blocks with separate meters are accepting a bulk bill from Allconnex and then billing each unit on their consumption. The UOAQ are of the view that bulk water supply should be discounted due to reduced meter-reading and billing costs.

The committee of a high-rise building in Main Beach on the Gold Coast comprising 124 units are most distressed as they changed their lot contribution schedule by consensus and had it ratified by the court. The history of this facility, I am told, is that the developer presold the penthouse and all subpenthouses—37 of them—to Japanese investors before the lot contribution schedule had been determined. The developer then loaded all the top units' contribution schedules so that he could reduce the lower floor contribution schedules to make them easier to sell on the local market.

This action was considered so blatantly wrong that the lot owners, by consensus, agreed to a more equitable schedule. It is now their view that they will be reverted to the unjust contribution schedule with no opportunity to have the matter reviewed. If this behaviour was going on at this one block then there is every chance it has occurred at others.

A number of people have told me that in the early days of high-rise development developers offered some buyers very good deals to assist in quicker sales but others did not fare so well, as I have indicated with the above-mentioned case. The committee of this building want to know if this legislation is unconstitutional in that it deprives building owners of their democratic right to vote on the future of their building. 'How can this legislation satisfy the primary and secondary objectives of the BCCM Act?' they ask. Mrs Boland says—

The passing of this bill would be a travesty of justice, unthinkable in a democracy ... By reverting to the original unfair entitlements will not make the issue go away—it will continue to simmer and cause disharmony in various Body Corporates.

Martin Clark, who owns a large unit in the Q1 building on the Gold Coast, said—

I have always voted Labor and was disappointed to hear you suggest that unit owners such as myself should be subsidising Body Corp levies for the smaller units ... The majority of wear and tear in the building is caused by the major traffic through these rental units.

He continues—

Why is there no provision for units that are rented out to holiday makers to pay higher Body Corp levies? These are the units that have the biggest impact on common property or maintenance. During the Schoolies festival for example, Q1 has about 100 units rented out to schoolies. At the end of the festival, we had approximately \$100,000 of damage caused by schoolies. However the unit owners who reaped massive rents (approx \$4,000 per week) contribute nil extra.

That is a quote from Mr Clark. Wallace and Robyn Kienzle, in supporting the bill, described the developer's system for allocating lot entitlements as—

... very well thought out and took into account the size of the unit, the floor level and the stack—

that is, whether it was north-east, east or south-east facing—

all of which affected its value.

The Kienzles were submitted to an unfair situation in which a number of body corporate committee members banded together to seek an adjustment which they believe had a detrimental result for a number of owners in the scheme.

**Mr Lucas:** There is nothing erudite in reading out letter after letter after letter. Your colleague the shadow Attorney-General doesn't make that sort of contribution.

**Mr DEPUTY SPEAKER** (Mr Wendt): Order! Deputy Premier!

**Mrs STUCKEY:** It is a real pity that the minister is interrupting me while I am actually telling him about someone who is supporting his legislation. Atlantis West on the Gold Coast went through an adjustment which saw the contributions of the penthouse and subpenthouse owners reduced substantially. A number of residents from Atlantis West expressed their support for these amendments. Reg Warr of Robina said, 'If it ain't broke, don't fix it!' He underwent personal costs of thousands of dollars to go through an adjustment to have a fair and equitable entitlement system put in place. He said—

This is grossly unfair and makes a nonsense of an existing order and a total waste of those monies expended to reach that decision. That there is no room for appeal against such a reversal of procedure adds to the blatant unfairness of the proposal.

Graeme Muller from Labrador in opposing the legislation said—

Why should one section of the community have to unfairly subsidise another, there is no justice in this. We cannot agree that some lot owners have an obligation to provide affordable housing (for others). That is the responsibility of Governments. It is a disgraceful piece of legislation that is contemplated.

The UOAQ wrote—

The Bill as presented fails to provide any improvement over the consultation draft. The Minister has not considered—or if considered, rejected—stakeholder concerns. The Minister has failed to make any appropriate changes to present more democratic and objective achievement of the stated objectives of the legislation. Moreover, the Explanatory Notes admit that the Bill fails to achieve compliance with the Legislative Standards Act 1992. The Unit Owners Association Queensland philosophically rejects 'resolutions without dissent' as a device to circumvent democratic voting rights and disenfranchise owners.

If anything is achieved, it is to add to the confusion and expense surrounding contribution schedule adjustment.

It goes on to mention that the explanatory notes admit that—

Existing schemes will not be able to adjust their contribution schedules except by resolution without dissent, or reversion to the pre-1997 developer imposed schedules. Resolutions without dissent are an impossibility; therefore, all existing schemes will be reverted, on the opinion of one owner, to the unfair and unjust developer imposed contribution schedule. Effectively reverting Bodies Corporate 14 years to where they were before the 2003 contribution schedule legislation, and creating two classes of buildings, pre and post the Bill.

It continues—

The current principle for setting and adjusting contribution schedule lot entitlements is—

as is quoted in this bill—

'that they should be equal except to the extent it is not just and equitable in the circumstances for them not to be equal'.

This, according to the UOAQ, is one clear and easily understood principle.

The Summervilles from Runaway Bay wrote to me and explained that they and other owners put in a combined request for their lots to become just and equitable. They engaged solicitors, as did the body corporate. Both parties negotiated the lot entitlements to adjust an equitable number for everyone. It was submitted to QCAT. A judgement was passed on 6 April 2010 and body corporate fees were adjusted on 1 July. Now they are very concerned that the minister is taking away their equality and their rights to appeal. These folk paid a significant amount of money to go through the processes brought in by this same Labor government that is now trying to toss out its own legislation, harming innocent unit owners along the way.

Les Armstrong, President of the Association of Residents of Queensland Retirement Villages—the largest advocacy organisation in Queensland that represents 7,500 members across the state's 326 villages—has expressed his concern at not being consulted by the government on this legislation despite 135 of Queensland's retirement villages established as community title schemes under the BCCM Act. A submission from ARQRV stated—

In preparing the bill, the Government does not appear to have considered the unique nature of retirement village schemes as compared to ordinary community titles schemes.

In particular, Mr Armstrong raised issues regarding unit sale prices and exit fees. He states—

In light of these matters, the ARQRV opposes the Bill to the extent that it could cause an increase in ongoing costs for residents in villages who had entered the village (and committed to exit fees) in the belief that the equality principle would continue to be applied to their contribution schedule lot entitlements.

So any argument from the government that this is to support people on lower incomes is absolutely lame according to Mr Armstrong's submission.

Notably, unlike many other bills that come before the parliament, the Body Corporate and Community Management and Other Legislation Amendment Bill 2010 does not list in the explanatory notes what organisations, government departments or key bodies were consulted on the drafting of this legislation. This omission is perplexing and would suggest a degree of secrecy on the part of the government. According to reports in the newspaper, the former minister stated they had received about 150 submissions to the draft consultation bill, largely from affected individual lot owners. But those figures were in contrast to those provided by Mr Catlin during our briefing, who said there were 216 submissions in total. Unfortunately it would appear the government did not ask for a waiver from those who sent in submissions, using the excuse of cabinet confidentiality, so honourable members are prevented from knowing details of submitters. In order to provide genuine transparency in this debate, I ask if the minister will give honourable members an explanation as to why this is so and provide a catalogue of these groups to the House. After all, they are included sometimes in other bills.

On 6 December 2010 a Gold Coast resident received a letter from the then minister stating—

There were 216 submissions received and departmental officers from the Office of Regulatory Policy within the Department of Employment, Economic Development and Innovation reviewed all submissions and provided an analysis of submissions to government for consideration. Submissions were received from owners in community titles schemes, advocacy groups, law firms and professional organisations as well as Government agencies.

I can understand why private individuals desire privacy over their submissions, but I fail to see why all of the other groups mentioned are not disclosed and made available as important material to assist with this debate. The opposition requests that the minister table for the House a list of the groups and the government agencies he mentions in the correspondence he sent to this resident and I ask that the minister give a breakdown of percentages for each group and for these individuals. Without this information the members of this parliament are denied knowledge of the degree of support or the degree of dissension in these submissions. It struck me that 216 submissions was a relatively small response when one considers the size of the pool of affected people, estimated to be over 364,000 lots. A sceptic might accuse the former minister of pushing his own barrow on this one, determined to proceed regardless of responses. Then there is the fact that this review has been going for so long and only now appearing in the parliament for debate. I wonder how many people with lot entitlements living under these schemes realise what the government is planning here. How many submissions from residents were for this legislation and how many were against? Surely we have a right to know.

Another point of concern was raised by a respected firm that deals with issues relating to this act. It told me that the 2008 discussion paper resulted in such negative reactions to this bill that the former minister at that time shelved the results, hoping the more recent one would provide more support for the bill. Sue Ekert, a long-serving committee member of UOAQ, commented—

The submissions procedure was a complete debacle in my view. Minister Lawlor is looking after the complaining people in his electorate.

Another submission from Mrs Sue Potts from the Sunshine Coast said she actually met with the former minister to address the inefficiencies of this bill in relation to layered schemes and said of the former minister—

... he listened but did not help. He appeared to already be set on his particular course of action—to overturn the current legislation.

In the Scrutiny of Legislation Committee's *Legislation Alert No. 1 of 2011* a number of sections of this bill were highlighted as potentially affecting the rights and liberties of individuals. In particular, the committee found new section 46A, which defines the relativity principle for setting contribution schedule lot entitlements, may be inconsistent with the principles of natural justice as it may allow a decision to be made based on an irrelevant consideration, that being that contribution lot entitlements could be solely based on the market value of lots, placing a larger portion of body corporate costs on owners of lots with higher market values irrespective of the size of their lots or any other relevant considerations. This is an exceptionally important point, which was also raised by the Queensland Law Society as a considerable flaw in the way in which this legislation has been drafted.

The *Legislation Alert* of this parliament echoed numerous concerns from the Law Society, highlighting sections of the bill that adversely affect the rights and liberties of individuals, unclear and vague drafting that will leave concepts open to broad interpretation by the courts and strong concerns about the retrospective application of this bill. I say again: these serious issues were raised by the parliament's own committee.

Also worth noting is the number of offences that this bill creates, the majority of which relate to penalising bodies corporate for failing to adhere to time frames and procedures for updating the CMS. Like many other honourable members in this House, I am not in favour of the practice of retrospective legislation. This bill before us would enable retrospectivity to apply many years back. In March 2008 in this House I said—

Retrospective legislation is contrary to fundamental legislative principles.

**Mr Ryan:** They whack those poor pensioners that own units in your electorate. Whack them hard.

**Mrs STUCKEY:** My position has not changed but, very clearly, those interjecting do not really care about fundamental legislative principles. Aspects of this proposed legislation will have retrospective impact on some community title schemes, with the ability to revert contribution schedule lot entitlements to their original settings prior to any and all adjustment orders. Reverting contribution schedule lot entitlement adjustments may be seen as a breach of fundamental legislative principles as orders from a specialist adjudicator, tribunal and court will be overturned even though they were made in accordance with the law at that time.

The Australian College of Community Association Lawyers said—

A retrospective reversion and/or to permit unilateral action on the part of a single owner is inconsistent with good policy and legislative practice and creates discriminatory outcomes rather than a balanced and equitable basis for the rights of all stakeholders involved in community title schemes.

On the subject of retrospectivity, I ask honourable members to cast their minds back to the debate on the 2003 bill. This debate attracted a stack of Labor speakers—some 26 of them—who spoke in glowing terms about the provisions in the bill. They raised numerous unaddressed issues relating to management rights, an area omitted from this bill before us despite the government having almost eight years to review the legislation. Here is what some of them had to say about this legislation that they now want to reverse. The honourable member for Stretton—the minister at the time—said—

The guiding principle for both setting and adjusting the contributions schedule is that it involves the equitable sharing of the costs of operating and maintaining the common property. These costs should be borne in proportion to the benefit, not in proportion to the unit's value. It is not a contribution linked to an ability to pay, but as a payment for services.

The minister went on to say—

However, if there are reasons why an equal contribution schedule would not be fair or equitable, it can be changed through application to the courts or to a specialist adjudicator.

...

But when we are talking about those parts of a property where the benefits are shared more or less equally, we cannot apply the same formula.

Now Labor is introducing this as part of one of the formulas developers may use when setting contribution schedules—included in relativity principles established under this bill. The Queensland Law Society and other respected bodies have grave concerns about the inclusion of market value of the lots as an attributing factor to be considered when allocating lot entitlements. The minister went on to say—

At the end of the day, this bill is about two things: It is about our economy and it is about our people. That is why the central tenet of this bill is to make things simpler and fairer for all Queenslanders... the bill before the House today, has meant that the legislation before members is the best tool for fixing the little cracks in Queensland's community titles industry.

The honourable member for Callide is not one who is known to often praise Labor policies. He must have been feeling in a generous mood, because he said—

I think the minister can be commended for the fact that the legislation that comes before the House today is the result of a compromise in terms of what was, at the start of this process, a divergent range of opinions. That compromise has been able to satisfy unit owners as well as residential managers and the rest of the stakeholders. As far as I am aware, no group within that stakeholder community opposes this legislation.

The honourable member for Mackay—now a minister—spoke in glowing terms about this bill. He said—

This bill is a model of how government, business and the wider community can work together to develop workable, practical and beneficial legislation that delivers positive outcomes for all Queenslanders.

...

The involvement of industry stakeholders in developing this bill has been exemplary and instrumental to its success.

Sadly, this involvement was not continued in the consultation process leading to this bill. You could not silence the member for Mackay. He was so full of praise. He went on to say—

This bill does not favour one group over another. This bill delivers a fair outcome for every Queenslanders it affects.

I wonder what the honourable member has to say about this bill, as it undoes the fair and balanced stakeholder approved model of 2003. By its very nature, this bill establishes a two-tiered system of bodies corporate, differing for schemes established prior to the commencement of the bill and those established after the commencement of the bill. The explanatory notes to the bill state—

This proposal does present a possible breach of fundamental legislative principles in that lot owners in schemes established prior to the commencement of the Bill will have a different set of rights to lot owners in schemes established after the commencement of the Bill.

The government's response to this matter is—

The distinction between the community titles schemes established pre- and post-commencement of the Bill is considered necessary.

By whom? How was this deduction made that it was necessary? This statement does not offer any explanation, either measured or otherwise. Those schemes developed after this bill will be governed by an entirely new set of principles and arrangements. Legal opinions state that buyers may be discouraged from purchasing lots in older buildings where bodies corporate have entrenched arrangements that are deemed unfair. The minister needs to satisfy the argument. Where are the statistics and figures to say that that will not be the case?

The former minister could not provide a list of those who supplied submissions and has now managed to avoid all responsibility for providing a breakdown of the findings. Additionally, there are no accurate figures of people who are tied up in the middle of applications for adjustments. As I said earlier, in 2003 not one member of parliament opposed the bill. Let us see what the Labor members will do now. Will

they go back on their word? Will they say that they told untruths in 2003? No, they lack the intestinal fortitude to do that, especially as their own minister could not bring himself to acknowledge the 2003 legislation in his second reading speech.

It is important to look at what was said in the debate on that bill, as it is the provisions therein that the minister and the Bligh government now want to repeal. The minister may think that Labor's own legislation in 2003 was wrong, even though he cannot admit it. But what he has presented before us today is abominable and the LNP cannot support it. I shall be moving a number of amendments and I foreshadow that now.