Strata Schemes Management Amendment Bill.

STRATA SCHEMES MANAGEMENT AMENDMENT BILL

Page: 6089

Bill introduced and read a first time.

Second Reading

Ms REBA MEAGHER (Cabramatta—Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [5.20 p.m.]: I move:

That this bill be now read a second time.

I have great pleasure in introducing the Strata Schemes Management Amendment Bill. The bill further demonstrates the Carr Government's commitment to ongoing review and refinement of legislation that affects so many in our community: those who live in, own, or operate commercial activities in strata complexes. There are nearly 70,000 strata schemes in New South Wales, ranging from simple two-lot suburban developments to massive 700-lot high-rise complexes. Medium-density and high-density living is becoming more and more a part of urban life, and strata title is by far the preferred choice for those who develop and market these buildings. The operation of strata buildings and the handling of the associated administrative tasks by owners' corporations has in many instances become more complex since the first strata management legislation commenced in 1974 via the Strata Titles Act 1973.

Due to the sophistication and variety of modern developments, there are many more issues that owners' corporations or their managing agents now have to deal with. Some strata schemes are now so large that they have more people living in them than entire villages and towns. Their annual budgets may be millions of dollars. This bill deals with a number of necessary improvements to strata legislation. The original idea of strata title came about as a New South Wales invention in 1961. Although there is no doubt that the concept of strata ownership, where individuals have title to their own space but share the responsibility for common areas, has weathered the 42 years of operation in New South Wales very well, some fundamental improvements to the management provisions of the law are needed.

The refinements in this bill include matters identified during the national competition policy review of the Strata Schemes Management Act 1996 carried out during 2001. The first round of amendments arising from the national competition policy review were passed by this Parliament in November 2002. Dealing mainly with caretaker contracts, proxy voting, and priority voting rights of mortgagees, these amendments commenced operation on 10 February this year. These matters were identified as matters of some priority and were brought in ahead of the broader package of necessary reforms that arose during the national competition policy review process.

However, it is now time to address the other matters, a brief summary of which I will give shortly. In June this year the Government released an issues paper entitled "Living in Strata Developments in 2003". This cross-agency paper covered a wide range of issues connected to strata schemes, including the special concerns affecting very large high-rise developments, building quality and fire safety issues, and the mechanism for terminating schemes when their practical life comes to an end. Submissions from 113 interested parties were received, including strata lot owners, executive committee office bearers, developers, managers, lawyers and government agencies. The issues paper included the national competition policy recommendations and provided a further opportunity for people to comment on them. As a result of the national competition policy review, the "Living in Strata Developments in 2003" issues paper, and the Government's awareness of current aspects of the law needing to be overhauled, a package of refinements is provided by the bill.

I will now outline the more important details of the proposals included in the bill. The first initiative is one of the most significant. The bill provides a mechanism for large schemes to be treated differently from smaller schemes. Since the commencement of the first strata management laws in 1974 under the Strata Titles Act 1973, all schemes irrespective of size and type have fundamentally been subject to the same legislative regime. All strata schemes, whether a six-lot double-storey block at Merrylands, a townhouse development at Nambucca Heads or a 20-story building in the heart of Sydney, have largely been subject to the same rules and requirements in regard to administration.

It has become plainly evident that running a large high-rise building is different to running an average size scheme, and the bill takes account of this. As a first step, any scheme with 100 or more lots will be defined as a large scheme; this will enable the tailoring of special provisions that will streamline the operation of their owner's corporations. In calculating the 100-lot figure, parking lots and utility lots such as storage rooms will not be counted. It is estimated that less than 5 per cent of all the strata schemes in New South Wales comprise buildings of over 100 lots, although many of the developments of recent years, particularly in inner-city areas, are in the large category.

The new provision will provide the necessary flexibility to adjust the administrative requirements for these large schemes, to ensure both a smoother and more workable management process and to recognise the level of accountability that needs to be included. Also, allowances need to be made for the sheer volume of tasks that have to be carried out on a day-to-day basis in such a large enterprise. The regulations will be able to prescribe differing processes and requirements for such matters as the conduct of meetings, the functions of office-bearers, the management of finances, and the operational powers of the executive committee. The development of the regulations, in which the variations will be included, will be subject to consultation with relevant groups. Indeed, representatives from some of the largest schemes have already made their views known to the Government on these issues and there will be ample material to use in commencing the consultation process.

With the passage of time it may become necessary to come back to Parliament with further adjustments to the legislation on some of the matters affecting the operation of large schemes. The aim is to remove administrative burdens wherever possible while retaining the essential objectives and benefits of the strata management legislation. In some instances, new obligations will be placed on owners" corporations of large schemes in the interests of individual unit owners and in recognition of the corporate nature of such large enterprises. While much of the detail of the variations to apply to the administration of large schemes will be provided through the regulations, some matters associated with large schemes will be addressed directly through the bill. Some current concerns have been identified as being in need of immediate rectification, and the bill includes some specific provisions in this area.

These changes are as follows. Financial accounts will have to be audited annually by suitably qualified persons; at least two quotations will have to be obtained for larger items of expenditure; the executive committee will be limited to spending no more than 10 percent above any approved budget item; personal notice to all unit owners will be required for upcoming executive committee meetings, as will notification of the decisions of the executive committee, and notification of meetings and decisions made will no longer be permitted to be conveyed simply by placing a notice on a noticeboard; and proxy votes to be used at an owners' corporation meeting will have to be submitted to the secretary at least 24 hours before the meeting takes place.

The bill also makes a number of legislative amendments that will apply to all schemes. Notwithstanding what I have already said about the need to make specific adjustments for large schemes, there are many aspects of the strata legislative framework that have relevance and value for all schemes. The bill contains a package of improvements that will tighten up areas where shortcomings have become evident. I would like now to give a brief overview of the remaining provisions of the bill. Changes are to be made to the way in which sinking funds are required to be managed by owners' corporations. This bill will require that owners' corporations have a structured approach to sinking fund reserves. It will be mandatory for all new schemes to implement 10-year sinking fund plans, and they will have to be reviewed at least each five years. They will be required to have a 10-year maintenance and expenditure plan and associated budgeting.

In other words, owners' corporations will have to turn their minds to capital expenditure that will arise over the following 10 years and plan their sinking fund budget accordingly. The revised sinking fund provisions received overwhelming public support during the recent consultation on the "Living in Strata Developments in 2003" issues paper. It is clearly preferable for adequate financial reserves to be built up over the passage of time so that regular planned maintenance can be carried out. This bill will provide sensible support to such an approach. Owners' corporations will be free to use expert outside assistance in formulating their 10-year sinking fund plans if they wish, but this will be optional. They may have experts within the scheme who can help with devising the plans, and, if so, little or no additional costs will arise for the owners' corporation in putting their plan together. I am sure that members will support the Government's endeavours in this area as they will provide benefits to strata unit owners and the wider community for generations to come.

While the bill provides that these new sinking fund provisions will apply only to schemes that come into existence after the revised legislation commences, a regulation-making power has been provided to extend them to existing schemes where appropriate. Where insufficient funds are put aside and inadequate maintenance is provided, major building expense may arise. This requires a large one-off levy on all unit owners, placing a heavy burden on people with limited sources of income. The level of public support for the sinking fund reforms indicates that the extension of the provisions to existing schemes would be appropriate. However, this will not occur until adequate consultation has been carried out.

Another new initiative will be in relation to the commencement of any form of legal action by executive committees. Concern has been expressed that prior to commencing action individual owners should be made aware of the cost of legal action and the likelihood of success. Most strata schemes will include individuals from a broad cross-section of the community with a variety of personal expectations, attitudes and level of involvement. It is impossible to expect that there will always be perfect harmony. The commencement of legal action on matters concerning the scheme is one area where it is certain that a divergence of views will exist. The Government proposes to minimise the level of internal dispute arising in this area by taking some simple but effective measures. Firstly, if legal action of any type is being contemplated, the estimated cost of the action is to be provided in writing to all owners in accordance with the Legal Profession Act.

A meeting of the owners' corporation must be called before the action can actually commence, to ensure that everyone can have a say if they wish. These new provisions will not only include the initiation of legal proceedings but also the obtaining of legal advice. Executive committees will effectively be prevented from undertaking legal action under their own initiative, thus removing the possibility that claims will be made that a committee has not acted in the interests of all owners and added to existing conflict rather than dissipated it. A new mandatory item will be added to the agenda of the annual general meeting of each owners' corporation. The owners' corporation will have to consider whether any restrictions are to be placed on the decision-making powers of their executive committee for the ensuing year. This will remove the likelihood that owners suggest that their executive has acted beyond its mandate and leave the executive free to carry on with its tasks without undue hindrance.

An associated amendment will make it clear that the owners' corporation is the superior body and has the final say in the event of any dispute between the two levels of management. Another clarifying amendment will confirm that the owners' corporation can dismiss its entire executive committee by special resolution should extreme circumstances arise that would lead to such an action being necessary. I want to make it clear that there is no intention to unnecessarily muzzle executive committees. Most owners' corporations could not operate effectively without a diligent executive committee to carry out the essential day-to-day tasks. These measures should minimise the possibility of disputes arising in this area in the future. We are all aware of the critical importance of fire safety in any building, especially those that accommodate large numbers of people. It is very important that local government and fire authorities have adequate access to strata buildings to inspect and confirm that necessary fire safety measures are in place.

To remove uncertainty over who is responsible for providing access, the bill includes a provision making it clear that this is the duty of the owners' corporations. To reflect the seriousness of the issue, owners' corporations will be subject to a significant penalty for not complying with the new obligation. To ensure owners' corporations are not unfairly penalised when residents fail to give access inside individual units for the purposes of a fire safety inspection, they will be given a defence to a prosecution in these circumstances. Another new initiative taken through this bill is to provide that a strata managing agent appointed by the owners' corporation cannot transfer the management responsibilities to another agent without the consent of the owners' corporation concerned. This will be an equivalent provision to the one already in place dealing with the transfer of caretaker management responsibilities.

An important amendment in the bill relates to the extent of documentation required to be handed over by the original owner, usually a developer, at the first annual general meeting of the owners' corporation. It is essential that the owners' corporation has all the necessary plans, warranties, and other documents to enable it to take over the running of the scheme, and the new provisions adds to the list of material that developers will have to provide. To ensure compliance with the new obligations, the associated penalties will be increased tenfold.

The bill contains a package of amendments that have arisen from the national competition policy [NCP] review during 2001 and 2002. As I have said, some of the recommendations from the NCP report have already been implemented. This bill includes the remainder of the recommendations already adopted by the Government. I will not go into detail as the amendments cover a wide range of quite different issues. They have been in the public domain since the NCP report was released and there is no secret about them.

I will just give a broad overview of these provisions of the bill. The bill makes it clear that the owners' corporation has the necessary power to add to, alter, or erect new structures on common property or allow others to do so. This previously uncertain area has often resulted in by-laws being devised to overcome the doubtfulness of the situation. The powers of the owners' corporation and the responsibility for ongoing maintenance of common property affected in this aspect of strata life will now be made clear to all concerned. The inconsistencies over the period for which the various owners' corporations records have to be retained is removed and a five-year period will apply to all records. The bill will make clear that office-bearers cannot simply issue notices to comply with by-laws on residents of a strata scheme without a verification of the action by the owners' corporation or its executive committee at a formal meeting.

Consent to conveyancing searches of owners' corporation records will be able to be given orally by the lot owner concerned. All types of insurance taken out by owners' corporations, whether optional or not, will have to

be with approved insurers. An exemption will be provided for two-lot strata schemes on the standard of discretionary audit used for their annual accounts, which will effectively allow them to utilise any form of audit deemed appropriate. The bill includes provisions that assist in overcoming some past difficulties in relation to dealing with the delegation of functions by owners' corporations. Under the Strata Schemes Management Act, owners' corporations can only delegate their functions to licensed strata managing agents. In other words, only strata managing agents can be appointed to stand in the place of the owners' corporation, making decisions and taking actions as if they were the owners' corporation.

Other people can help the owners' corporation in carrying out tasks and duties, but only strata managing agents can be given the power to make decisions for, and undertake the full role of, the owners' corporation. Despite refinements to the law in 1996 there has still been some uncertainty in this area in recent times. The bill therefore seeks to clarify this issue a little further. It does so by specifically listing the types of matters that can only be given to a strata managing agent to carry out under delegation should an owners' corporation elect not to do so itself. These are the critical operational functions of the owners' corporation in the areas of budgeting, fixing of levies, managing the finances, insurance, conduct of meetings, handling of correspondence and other documentation, and keeping the necessary records.

Other less important tasks could be carried out by other persons. It is intended that, once and for all, time-consuming and unnecessary arguments that a person who sweeps the common property hallways and staircases or who rakes the leaves on the lawn must be a licensed strata managing agent to be able to do so on behalf of an owners' corporation be resolved. The process for appointment of strata managing agents by strata schemes adjudicators or the Consumer, Trader and Tenancy Tribunal is to be streamlined, giving a wider range of circumstances when such appointments can be made. It will also be put beyond doubt that a managing agent could be appointed compulsorily on the basis of circumstances revealed when an adjudicator or the tribunal is considering an application about an unrelated issue.

Important changes are to be made to the mediation provisions of the legislation. Mediation has been one of the real success stories of the revised strata management laws that commenced in July 1997. The success rate is very high and the New South Wales mediation mechanism is the envy of other Australian jurisdictions. However, we aim to improve it even further. We will achieve the improvements by widening the discretion of the registrar to waive the need for mediation. This will give added flexibility to ensure that in those circumstances where mediation would obviously be fruitless or counterproductive, the registrar could shortcut the dispute resolution process by sending the parties directly to adjudication. Some types of disputes, such as the reallocation of unit entitlements will be specifically listed as being exempt from the mediation requirement. The other major reform to the mediation provisions will be to provide for a ratification order by an adjudicator once parties have come to a mediated settlement.

If there has been one weakness in the mediation mechanism, it is in the area of making mediated settlements stick. The Office of Fair Trading has received information on a number of experiences where parties have left mediation sessions in apparent full agreement with the terms of settlement, only to have a change of heart at a later time, thus resulting in the matter going on to formal adjudication. The Government believes that the process would be streamlined if the mediation settlement achieved could, wherever possible, be ratified by a confirmation order by an adjudicator. This would mean that the settlement would be binding and the avenues already provided in the legislation for parties to have orders enforced would be available. However, in recognition that the inherent effectiveness of mediation could be jeopardised by too stringent a process, ratification will arise only when the parties agree to it at the conclusion of the mediation session.

The bill also deals with some essential by-law issues. Many owners' corporations use by-laws to deal with matters specific to their own complexes. By-laws are intended to enhance and utilise the laws that are already in place so that the circumstances of a particular scheme can be accommodated. They are not able to change fundamentally what the general law already provides. It is recognised that some owners' corporations may attempt to stretch by-laws further than their intended limit, and the bill contains a provision that will stress that by-laws cannot be used in an endeavour to go beyond the provisions of the Strata Schemes Management Act or any other relevant law. It is also made clear that by-laws that conflict with any existing law are invalid.

A secondary amendment to the by-laws provisions will have a substantial and fully intended impact. "Exclusive use by-laws" are sometimes registered to give individual owners' sole access to, or use of, a portion of the common property. It takes a substantial vote of the owners' corporation—effectively a 75 per cent vote in favour—to pass an exclusive use by-law. The laws already provide that, as a consumer protection, during the early life of an owners' corporation when a developer is likely to still have substantial voting control, exclusive use by-laws that would benefit some but not all owners cannot be passed. However, there is no restriction in such by-laws being registered with the plan by the developer. To ensure that incoming purchasers are not disadvantaged by not being aware of exclusive use by-laws already in place, disclosure will be required by the vendor. Perhaps a developer may have exclusive use by-laws in place with regard to common property parking spaces. Those who did not have access to the spaces by virtue of by-laws already in place should obviously know about this in advance. Purchasers can then receive advice on whether to go ahead with the acquisition.

There are more than 700 retirement villages operating in New South Wales, and between 40 and 50 of them are strata schemes. The Retirement Villages Act and the Strata Schemes Management Act operate in tandem in respect of these villages. The overlap of the two sets of laws can sometimes require some careful consideration by older members of the community who are moving out of their family home. For instance, both village fees and strata levies are usually payable by residents. There are two separate annual budget processes and individual annual meetings.

Sometimes both village rules and strata by-laws apply. At present, prospective residents of retirement villages must be given a package of information by the village operator to help them decide whether to move into a particular village. The amendments in the bill will ensure that those contemplating entry to a strata retirement village will also be provided with the necessary information about strata levies payable and other relevant strata information to assist in making their choice.

The last substantial reform provided in this bill's package of amendments relates to a regulation-making power to exclude certain strata schemes from the dispute resolution mechanisms should it ever be found to be desirable. This provision is merely to provide sufficient flexibility should it be found appropriate to move certain schemes from the dispute resolution processes available under the Act to other more conventional mechanisms. It could be argued that large commercial strata schemes should not be utilising a dispute resolution process fundamentally designed for issues arising in residential buildings.

It could be held that it is a misuse of resources to have a relatively inexpensive, quick and informal process designed for residential matters to be accessed by wealthy commercial interests. While there are no specific plans for any schemes to be excluded at this stage, the new provision will provide the necessary flexibility to deal with any valid concerns that arise in this area. The Government concedes that quite extensive regulation-making powers are included in this bill, which might draw some interest from the Legislation Review Committee. However, it is considered that none will lead to unreasonable restrictions on personal rights. They are largely supported by the community and none will be finalised without adequate consultation with relevant interest groups.

In conclusion, as well as the matters that I have outlined, there are some minor amendments dealing with consequential changes arising from the February 2003 amendments. Matters relating to accountants carrying out the functions of treasurer of an owners' corporation and the granting of a licence over common property by an owners' corporation are also included in this very extensive package of amendments. Further refinements to the strata schemes and related laws are likely, and to this end the Government intends to release a further issues paper shortly, which will invite comment on a number of areas where a final position has not yet been reached and where a diversity of views has been encountered.

The paper will include coverage of matters such as the most desirable mechanism for the termination of schemes, the extension of the new sinking fund provisions to schemes already in existence, a special category of manager for large schemes, further issues affecting the operation of large schemes, further restrictions on the use of proxy votes, building and performance standards, fire safety assessment, the maximum number of persons permitted to occupy residential units, the modernisation of model by-laws, the delineation of common property and private property, access to strata buildings by emergency services, and the relevance of the most recent strata reforms to community schemes. I am sure that the refinements and improvements outlined in the bill will prove to be beneficial to that substantial proportion of our community associated with strata scheme life and will assist in the better operation of the laws. I commend the bill to the House.