

Body Corporate and Community Management and Other Legislation Amendment Bill 2006

Explanatory Notes for Amendments to be moved during consideration in detail by The Honourable Margaret Keech MP

Title of the Bill

Body Corporate and Community Management and Other Legislation
Amendment Bill 2006

Objectives of the Amendments

Amendments 1 and 2 relate to the *Body Corporate and Community Management Act 1997* (the BCCM Act) and are intended to:

- clarify the application of the immunity from liability in the new section 101A proposed to be inserted in the BCCM Act by clause 10 of the Bill and the existing immunity from liability for defamation in the body corporate legislation; and
- extend the immunity from liability for defamation to bodies corporate and committees for all community titles schemes under the BCCM Act.

In Alert Digest No. 9 of 2006, the Scrutiny of Legislation Committee noted the new section 101A proposed to be inserted in the BCCM Act may have implications for section 45(4) of the *Body Corporate and Community Management (Standard Module) Regulation 1997* (the Standard Module). The new section 101A proposes to provide a committee member with immunity for an act done or omission made in good faith and without negligence in performing the person's role as a committee member. Section 45(4) of the Standard Module and section 43(4) of the *Body Corporate and Community Management (Accommodation Module) Regulation 1997* (the Accommodation Module) provide the body corporate and committee for community titles schemes to which the module applies with an absolute immunity for defamation in the limited context of the committee's statutory

duty to circulate certain material submitted by lot owners for consideration by the body corporate at a general meeting.

There is potential for uncertainty in the application of the conditional immunity in the proposed new section 101A of the BCCM Act and the absolute immunity in the Standard Module and Accommodation Module that could result in a body corporate and committee being held liable for defamation in circumstances never intended by the legislation. This is because liability for defamation can arise even though a person has acted in good faith and without negligence.

Consequently, amendments are required to ensure the existing immunity from liability for defamation is unaffected by the immunity in the new section 101A.

The immunity from liability for defamation currently only applies to the body corporate and committee for community titles schemes to which the Standard or Accommodation Module applies. The BCCM Act has four associated regulation modules which cater to the different types of schemes that can be established under the Act. A body corporate for a scheme may adopt the module that best suits its needs, subject to the scheme meeting the criteria for the module. While each module contains slightly different provisions in order to accommodate the requirements of different types of community titles schemes, all the modules impose a statutory duty on committees to circulate certain material provided by lot owners for a general meeting. It is therefore appropriate for the immunity from liability for defamation to apply to the body corporate and committee for a scheme under any of the four regulation modules.

Amendment 3 relates to the *Liquor Act 1992* (the Liquor Act) and allows the submission of new evidence in liquor licensing matters before the Commercial and Consumer Tribunal (CCT).

The amendment addresses perceived shortcomings in the appeal process that currently prevent the submission of new evidence during an appeal. A new section 35 to the Liquor Act will be added to specify the special circumstances allowing the submission of new evidence during CCT hearings. Only evidence that was not known and could not have been expected to be known by a party at the time of the Chief Executive's decision is allowed to be considered and then only in circumstances where it would be unfair not to allow the evidence to be submitted.

The provisions will also allow the CCT to refer the matter back to the Chief Executive for reconsideration and if warranted, require a new application to be lodged.

The amendment will allow the CCT greater flexibility in considering special circumstances relevant to an appeal that might otherwise have disadvantaged a party through no fault of their own. However, the provisions relating to the circumstances allowing the submission of new evidence have been tightened to ensure that matters before the CCT do not allow a wholesale rehearing or determination of appeals based on new evidence and to ensure the new evidence provisions would only be used infrequently and in extraordinary cases. This has warranted the removal of the existing section 35(2)(b) provision.

Achievement of the Objectives

The objectives will be achieved by amending the Bill to:

- provide that the body corporate, the committee and members of the committee are not liable for defamation if the committee publishes certain material for a general meeting that is required to be published under the regulation module applying to the community titles scheme and the material contains defamatory matter. This immunity will not apply to material submitted by the committee. An amendment regulation will also be prepared to remove the immunity from liability for defamation in the Standard Module and the Accommodation Module.
- provide that the immunity offered to committee members under section 101A does not apply if the committee publishes certain material for a general meeting that is required to be published under the regulation module applying to the scheme and the material contains defamatory matter.
- maintain the intent of the amendments to the Liquor Act in the Bill to allow for new evidence to be submitted on appeal in the CCT. An amendment to the proposed new section will tighten the provision relating to the submission of new evidence to ensure the integrity of the appeals process.

Consistency with Fundamental Legislative Principles

Under the BCCM Act regulation modules, the committee is required to circulate to members of the body corporate certain material submitted by

lot owners for a general meeting. There is no power for the committee to amend this material. If the material contains defamatory matter, the committee could be held liable for defamation by circulating it to members of the body corporate. The amendments provide that the body corporate, committee and committee members are not liable for defamation if the committee publishes certain material for a general meeting that is required to be published under the regulation module applying to the scheme and the material contains defamatory matter.

This immunity may be contrary to fundamental legislative principles. However, it is not reasonable for the body corporate, the committee and committee members to be liable for defamation where the committee has a statutory obligation to publish material provided to it. The immunity will not prevent defamation action against the body corporate and committee where the defamatory material was submitted by the committee. It will also not prevent action against a lot owner who submits defamatory material to the committee.

Consultation

The Office of the Queensland Parliamentary Counsel and the Department of the Premier and Cabinet have been consulted in preparing the amendments.

Notes on Provisions

Amendment 1 amends the new section 101A inserted by clause 10 of the Bill to clarify that the section does not apply to the publication of defamatory matter mentioned in the new section 111A(1). New section 111A protects the body corporate, the committee and members of the committee from liability for defamation where the committee publishes required material for a general meeting of the body corporate and the material contains defamatory matter. The amendment will ensure that the immunity in new section 101A does not affect the immunity in new section 111A.

Amendment 2 inserts new section 111A to provide that the body corporate, the committee and committee members are not liable for defamation if the

committee publishes required material for a general meeting of the body corporate and the material contains defamatory matter. Required material for a general meeting of the body corporate is defined as any of the following required under the regulation module applying to the community titles scheme to be published for the general meeting:

- (a) a motion submitted other than by or for the committee for the general meeting
- (b) the substance of a motion mentioned in paragraph (a)
- (c) an explanatory note for a motion mentioned in paragraph (a) prepared by the submitter of the motion.

The immunity also applies to a body corporate manager engaged to carry out the functions of a committee for a body corporate and each of its executive members because the body corporate manager is under the same statutory duty as a committee to publish the required material. The immunity does not apply to a member of the committee if that member submitted the motion or explanatory note containing the defamatory matter.

Amendment 3 sees the deletion of subsection (2)(b) in the current Bill, as the criteria set out in subsection (2)(a) and (c) sufficiently ensure equitable standards are met by all parties. The removal of subsection (2)(b) will still mean that when presenting new evidence appellants will be required to meet a threshold test demonstrating that they did not know, and could not reasonably be expected to have known, of the evidence, prior to the decision.