

PROOF

PARLIAMENT OF VICTORIA

LEGISLATIVE COUNCIL

DAILY HANSARD

Thursday, 7 February 2008

FAIR TRADING AND CONSUMER ACTS FURTHER AMENDMENT BILL

Second reading

Debate resumed from 6 December 2007; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Ms LOVELL (Northern Victoria) — I rise to speak on the Fair Trading and Consumer Acts Further Amendment Bill. In doing so I state that the Liberal Party will be supporting this piece of legislation.

...It will amend the Subdivision Act 1988 to allow lot owners to increase the area of the lot by 10 per cent of only the size of the lot rather than by 10 per cent of the size of the whole subdivision; it also clarifies governance provisions relating to owners corporations, which are bodies corporate. It also amends the Partnership Act 1958 to allow early stage venture capital limited partnerships.

One of the main areas of concern about this bill involves the very late amendments it has made to the Owners Corporation Act. I remember that act coming through this Parliament in late 2006, just prior to the election, and some 15 months later — today, 7 February, just a month and a week into 2008 or a month and a week after that legislation became law — we are making amendments to it.

The government had 15 months between when the bill was passed through this house and when it became law on 31 December last to make any necessary amendments to the flawed legislation that it had passed in the first place. The government did not do that, so the legislation came into law as an act on 31 December last. The government had amendments to it passed in the lower house last year but which were left for the upper house to pass this year.

A couple of the changes made to the Owners Corporation Act mean the government brought into being some of the things we raised as concerns when the bill was passed some 15 months earlier. A couple of those that I would like to mention are covered in clauses 15 and 17 of this bill. They deal with a manager of an owners corporation to chair meetings or act as

secretary of its committee. I have belonged to a couple of bodies corporate in my time, and certainly I like to know a body corporate is managed by a professional manager. I do not want to have to become involved in the management of it myself, and I do not want to have to get into a situation where there are disputes amongst neighbours who are managing them.

Of the two bodies corporate I have belonged to, one was managed by a group of residents, and it was an unusual situation. There was a lot of bickering amongst members of the body corporate, which was not a very pleasant situation. The second one I now belong to is managed by a professional manager and runs much more smoothly, and I am much happier being a part of that body corporate.

As I said, when this bill was brought in it restricted the ability for professional managers to chair meetings or act as secretary of the body corporate. These things will be amended by this bill amongst other amendments that were also raised as concerns at the time the original bill went through the house. The Institute of Body Corporate Managers, which changed its name to Owners Corporation Victoria on 1 January, put out a press release last November that criticised the government for its slowness to act to bring in these amendments.

It talks about the bill being passed 15 months before the commencement date to allow time for stakeholder and community consultation, but the corporation says that instead of using this time to engage with the 65 000 bodies corporate in Victoria and the one in four people living in or affected by these new owners corporation laws, the lack of consultation about these laws and regulations has been staggering.

It notes that all Victorians would be required to comply with the law by 31 December 2007, yet these amendments were being debated some five or six weeks after that date.

It also notes that the government finally accepted the views of the Institute of Body Corporate Managers Victoria (IBCMV) which were strenuously argued before the legislation was passed in September 2006, that many of the provisions of that bill were unworkable, and it says that among other amendments, important and necessary changes to the role of secretary and chairperson of owners corporations, currently known as bodies corporate, are being made.

It further notes that despite strong representations from the Institute of Body Corporate Managers, the Owners Corporations Act 2006 did not recognise the important roles of professional managers in the smooth and consistent running of owners corporations. As I said, I belong to an owners corporation that is managed by a professional manager; it runs far more smoothly than did the previous body corporate that I was involved

with, which was managed by a group of the residents of that body corporate.

The Institute of Body Corporate Managers also notes that the government was very slow to develop the regulations for that bill. As I said, the government had 15 months between when the bill was passed and when it became law, and during that time it was supposed to conduct consultation sessions and develop the regulations. The actual submissions stage for the regulations closed only on 8 November last year, yet the act became law on 31 December. So there was very little time and it became a bit of a shambles, with the regulations only just being finalised before 31 December 2007.

The IBCMV notes that the consultation process was not very wide and that the government failed even to put out a press release to notify those people who live in bodies corporate that these regulations were being developed. The regulations were on the Consumer Affairs Victoria website, but of course not many Victorians trawl the internet looking for new laws that are being put in place. With about 1 million Victorians, or one in four people, living in bodies corporate and being potentially affected by these regulations, it would have been nice had the government been more open about the process so that more people could have taken part in it.

The body corporations legislation was a shambles right from the beginning through to the end. We are amending it now, some five or six weeks after it became law, and I think the government could have done a far better job on this one. The Liberal Party, however, will be supporting this bill. Members will know that in Victoria, all parties support legislation that protects vulnerable Victorians, and the consumer legislation is legislation that protects Victorians from things such as inappropriate contract arrangements. We support this bill.

Mr SCHEFFER (Eastern Victoria) — I rise to speak in support of the Fair Trading and Consumer Acts Further Amendment Bill 2008 because the provisions detailed in it will go to better protecting Victorian consumers. ...

The bill also makes some changes to the Owners Corporations Act 2006 and, as members would be aware, that act came into effect on the last day of last year. The changes made under this provision give the right to members of what were called bodies corporate, now owners corporations, who have been elected as president or secretary to pass duties on to an employed manager of that owners corporation. I understand that consultation has indicated that members of owners corporations who are elected to these positions often prefer not to take them up but to give them to a professional whom they have engaged to carry out

those tasks, and the government has no objection to people making decisions in accordance with that preference.

Under changes made to the Subdivision Act and inserted into the Owners Corporations Act lot owners are permitted to increase the area of their lot by adding land from outside the plan equivalent to 10 per cent of the area of the plan. The amendment changes the threshold to 10 per cent of the lot rather than the subdivision so as to prevent lot owners adding significant areas of land to their own lot without the approval of the other lot owners. The legislation enables a subdivision or consolidation of lots provided this does not affect the rights of other lot owners, and the amendment puts this into effect...

Mr DALLA-RIVA (Eastern Metropolitan) — ...

firstly, I say on the record that the

Liberal Party, as indicated by Ms Lovell, will be supporting the bill. ..

I have mentioned the repealing and re-enacting of old acts, and I will not go on further. The Subdivision Act amendment is sensible. It makes sense to allow for an extension of a an individual lot rather than of a whole subdivision, thereby avoiding any unnecessary complications in terms of owners corporations and the like. The amendment clarifies that. The bill also clarifies the governance provisions relating to owners corporations.

...The only issue with the amendments to the Owners Corporations Act, which I have mentioned which was raised by Ms Lovell, is that in the second-reading speech the minister indicated that he expected the act would take effect from 31 December 2007. We know that today is 7 February 2008, which means that we are actually into the second month subsequent to the date proposed for these amendments to take effect. I do not know how that works, given that in the second-reading speech it was proposed that the legislation would have been passed by now. It is presumptuous of a government — any government — and an executive to say that it expects a bill to be passed. It is not for the executive to determine what bills may or may not be passed at the time they are presented. It is up to the two houses to determine whether they agree with the items of proposed legislation. We know there is other legislation coming before the house providing for changes which the government may not have the capacity to implement at the time and in the format it thinks appropriate....

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.