



9 July 2014

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au

Dear Sir

Thank you for the invitation to make this submission in respect of the *Land Sales and Other Legislation Amendment Bill 2014*. We do not propose commenting on every aspect of the changes which the Bill will effect.

Amendment of *Body Corporate and Community Management Act 1997*

1. *Clause 9* inserts new ss 205C and 205D into the Act, which, in our view, are appropriate.
 - (a) Proposed s 205C properly clarifies that a reference to a disclosure statement is a reference to a disclosure plan and any other documents required under s 213(2)(a)(ii) and 213(2)(f) to accompany the disclosure statement.
 - (b) Proposed s 205D enables the efficiency of a duly authorised agent to act on behalf of a buyer or seller under a provision of part 1 or 2.
2. *Clause 12* inserts s 212B which removes unnecessary duplication so that a seller will not have to give the buyer the disclosure statement prescribed under s 213 twice if the seller and buyer are the same parties to the sale contract arising from the option. This is practical and sensible in circumstances where the buyer is the ultimate party to the contract. If the buyer who was granted the option by the seller is not a party to the contract arising from the option, the amendment properly ensures that the seller must comply with s 213 before entering into the contract.
3. *Clause 15* amends s 214 to ensure that the seller must give the buyer a further statement rectifying inaccuracies in the disclosure statement at least 21 days before the contract is settled. The amendments recognise the need that the further statement is certified by a cadastral surveyor if rectifying inaccuracies in the building or volumetric format lot particulars or standard format lot particulars mentioned in the disclosure statement.

BAR ASSOCIATION
OF QUEENSLAND
ABN 78 009 717 739

Ground Floor
Inns of Court
107 North Quay
Brisbane Qld 4000

Tel: 07 3238 5100
Fax: 07 3236 1180
DX: 905

chiefexec@qldbar.asn.au

Constituent Member of the
Australian Bar Association

4. *Clause 17* inserts new s 217B which removes the requirement for a developer to apply to the relevant Government department to make a regulation to extend arbitrary time limits for the seller to give the registrable transfer to the buyer. The amendment allows the parties to determine the time for giving the registrable transfer up to a maximum of five and a half years after contract. Where no time is agreed in the contract, a default period of three and a half years will then apply. The proposed amendment will provide a buyer with a right to terminate the contract if the seller does not unconditionally give the buyer a registrable transfer by the required time, other than because of the buyer's default. The new approach ideally permits delivery of the transfer having regard to the parties' particular circumstances.

Amendment of *Breakwater Island Casino Agreement Act 1984*

5. These proposed amendments are procedural in nature, and properly reflect the proposed sale by Jupiters, Breakwater to CLG. This is not a matter for the Association to comment upon.

Amendment of *Building Units and Group Titles Act 1980*

6. The proposed amendments ensure that the way that a disclosure statement must be given under this Act will align with the *Body Corporate and Community Management Act*. The amendments are unremarkable and appropriate.

Amendment of *Fair Trading Inspector Act 2014*

7. Clause 36 inserts new subsections (1)(aa), (1)(ab) and (1)(la) into s 4 to ensure that the *Fair Trading Inspectors Act* continues to enact common provisions in relation to part 3 of the *Land Sales Act*. In the Association's view they are appropriate.

Amendment of *Land Sales Act 1984*

8. The proposed amendment replaces the term 'allotment' in the *Land Sales Act 1984* with the term 'lot'. This will modernise and remove an unnecessary distinction in the terms. Similarly, the Association supports the modernisation of other terminology to plain and ordinary terms commonly used in the community, for example: replacing 'vendor' and 'purchaser' with 'seller' and 'buyer', and replacing 'enters upon purchase' with 'enters into a contract'.
9. Proposed division 2 (Disclosure requirements) consists of proposed new ss 9 to 13, to avoid unnecessary duplication where a sale is preceded by exercise of option, which also ensures consistency with the amended disclosure requirements under the *Body Corporate and Community Management Act 1997*.

10. The amendment will maintain appropriate consumer protection by the continuation of the requirement for the seller to notify the buyer of any changes in the disclosure documentation before settlement occurs.
11. Proposed s 14 provides for timely delivery of significant documents at least 14 days before the contract is settled, namely:
 - the registered plan of survey; and
 - a statement prepared by a cadastral surveyor to the effect that there are no differences between the information contained in the registered plan and the disclosure plan.
12. If there are differences between the information contained in the registered plan and the disclosure plan, then the seller must give the buyer a further statement prescribed under s 13 rectifying the inaccuracies in the disclosure plan. In that event the buyer will be given a further statement, the timing of which will place a significant but tolerable time pressure on the buyer to consider its right to terminate the contract for the sale of the proposed lot before settlement date.
13. Proposed division 4 provides for particular amounts paid towards the purchase of a proposed lot to be kept in a trust account and provides for dealing with the amount, including disposing of the amount and investing the amount. These provisions are appropriate.
14. Similarly, proposed division 5 (Other Provisions) comprises of sections 20 and 21, which in their terms are unremarkable. They ensure that in a failed transaction the buyer is repaid any amount paid to the seller towards the purchase of the lot, together with any interest accrued on the amount while it was held by the seller, within 14 days after the termination of the contract.

Amendment of *Property Law Act 1974*

15. The *Property Law Act 1974* regulates the maximum amount of deposit payable in respect of the sale of land before specific instalment contract provisions apply. Currently, this maximum deposit level is 10% of the purchase price.
16. Proposed s 68A increases the maximum deposit allowable for the sale of proposed lots and proposed allotments, from the current 10% to 20% of the purchase price before the instalment contract provisions of the *Property Law Act* apply. In that regard proposed s 68A provides that the deposit may be forfeited or retained by the vendor if a breach of contract results in the termination of the contract. It expressly declares that a deposit of not more than 20% paid under the contract is not, at law or in equity, a contractual penalty.

17. Further, the proposed amendment to section 71 made by Clause 62 provides that a contract for the sale of a proposed lot which provides for a deposit of not more than 20% of the purchase price, and does not include terms under which the purchaser is bound to make a payment or payments (other than a deposit) without becoming entitled to receive a conveyance in exchange for the payment or payments, is excluded from the application of part 6, division 4 of the *Property Law Act 1974*.
18. This change is an aspect of concern to the Association where a significant sum paid by deposit will be liable to forfeiture in certain circumstances, and otherwise excluded from the protection afforded to instalment contracts. It is not at all clear what economic or commercial case demonstrates or justifies the need to increase a minimum deposit up to 20%. It is not clear how this measure could reduce red tape or otherwise facilitate improved financial viability for large off the plan development. Larger deposits properly secured in a trust account would not ordinarily affect these matters. It is not a great burden for the vendor to have to give a notice (as required by the application of the instalment provisions) before terminating a contract and it is not clear why it is necessary to remove this requirement for deposits less than 20% (and above the present threshold).
19. It is respectfully submitted that changes to the deposit maximum and instalment contract provisions ought to be reconsidered.

Amendment of *Property Occupations Act 2014*

20. Clause 65 inserts into s 157(2), reference to subsection (1)(e) and the terms 'fee' or 'charge'. The insertion of the terms 'fee' or 'charge' is consistent with the policy to relieve agents from disclosing to a buyer what they are being paid by the seller for their services whether by payment of a fee, charge or commission.

Amendment of *South Bank Corporation Act 1989*

21. The Bill will effectively remove unnecessary duplication and provide a more streamlined approach to the regulation of the sale of proposed lots, by combining the separate disclosure regimes and replicating it (with necessary amendments) in the *Body Corporate and Community Management Act 1997*, the *Building Units and Group Titles Act 1984* or the *South Bank Corporation Act 1989*.
22. It is appropriate that the disclosure requirements in the *South Bank Corporation Act* will be amended to align, as much as possible, with the more contemporary disclosure regime in the *Body Corporate and Community Management Act*.

23. This will modernise the seller disclosure frameworks in the *South Bank Corporation Act* and provide for greater consistency across the seller disclosure frameworks in the three community titles laws.

Minor and consequential amendments of Acts

24. *Clause 75* inserts schedule 1, which makes minor and consequential amendments to ss 206(3) and 210 of the *Body Corporate and Community Management Act* and s 122(3) of the *Land Title Act 1994*.
25. The amendments to the *Body Corporate and Community Management Act* are a consequence of the insertion of new s 205D, as inserted by Clause 9. The amendment to the *Land Title Act* is a consequence of the replacement of the term 'proposed allotment' with 'proposed lot' in the *Land Sales Act*.
26. The Association submits that the minor and consequential amendments, savings and transitional provisions will facilitate the transition for efficient implementation.

Conclusion

27. The Association commends these submissions to you and thank you again for the opportunity to make submissions regarding the *Land Sales and Other Legislation Amendment Bill 2014*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Shane Doyle', with a stylized flourish at the end.

Shane Doyle QC
President