

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

Submission No: 60
Submitted by: Housing Industry Association Limited
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:



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2 September 2023

Committee Secretary
Legal Affairs and Safety Committee
Via email: lasc@parliament.qld.gov.au

Body Corporate and Community Management and Other Legislation Amendment Bill 2023

HIA takes this opportunity to provide submissions to the Legal Affairs and Safety Committee regarding the Body Corporate and Community Management and Other Legislation Amendment Bill 2023 ('the Bill').

HIA's comments are confined to the provisions of the Bill that deal with sunset clauses in off the plan contracts and to that effect, our primary concern is that the measures set out in the Bill are heavily based on recent, unprecedented market conditions, where a more holistic and long-term approach is desirable.

HIA strongly recommends that Government not consider examples of sunset clauses, or circumstances arising from the use of sunset clauses over the past two years as being 'business as usual'. Examples within this period reflect the extreme and extenuating circumstances experienced by industry in respect of significant labour and material shortages, and resultant increases in the cost of construction.

Existing protections are appropriate

Any review of 'off-the-plan' contractual arrangements should be conducted within the context of the current regulatory environment and in parallel with a broader review of the current barriers to finance for property development.

It is also important to recognise and consider the current substantial protections that exist for buyers via breach of contract and under the unfair contract provisions of the Australian Consumer Law (ACL) that apply to standard form contracts, including 'off-the-plan' contracts. It must be kept in mind that in the vast majority of cases, 'off-the-plan' projects are completed without incident.

Sunset clause amendments

While we believe the Bill is admirably targeted to eliminate unreasonable and unjust reasons to rescind a contract, such measures must be balanced against a range of factors.

HIA contends that there are already significant consumer protection measures embedded in the various legislation and regulations that apply to the residential construction industry, and to that end, does not support the proposed amendments in their current form.

The changes suggested by the Bill fail to fully contemplate the complexity of off the plan purchases, the basic principles of fairness, the basic principles of contractual risk allocation, and existing legal protections.

HIA provides that property developers should maintain their right to rely on a sunset clause to rescind a contract, without the imposition of buyer consent or Supreme Court approval.

Sunset clauses are often inserted at the insistence of the buyer, as without such they could wait for years while a property developer tries to get a project started which could be delayed by planning, financial, or as we have seen in recent years, a chronic shortage of labour and materials.

While there are risks associated with either party invoking a sunset clause, the risks carried by property developers for these types of projects is significant and despite their best efforts, matters outside their contract can affect the progress of the project. Additionally, where development approval, construction, and the Certificate of Title has not yet been issued, contractual measures are required to protect the interests of both parties. Most 'off-the-plan' contracts include clauses covering a variety of circumstances with the potential to affect timings of performance, cost variations, and other matters which can all be appropriately dealt with in this manner.

While the proposed amendment regarding Supreme Court approval exists in other jurisdictions, HIA does not necessarily agree that Supreme Court proceedings are the most efficient or best manner to determine matters in the first instance and therefore does not support Queensland adopting this approach.

HIA would question why alternative dispute resolution forums or contemplation of an independent body considering issues of whether the property developer gave the buyer sufficient details and reason why they were unable to complete construction or obtain registration on time have not been examined.

General comments

Additionally, there are two key aspects of the proposed legislation that HIA do not agree with: should be reviewed:

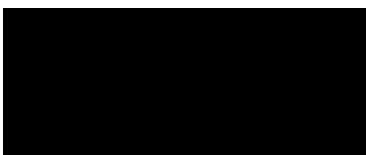
Firstly, the proposed definition of 'off the plan contract'. HIA does not support any amendment that relates to an option to purchase a proposed lot. An option should not be contemplated by legislation as it is not a part of any valid, binding contract. The definition of off the plan contract should only capture traditional off the plan contracts and there has been no discussion or justification for anything more than this.

Secondly, section 19C(2) implicates some retrospectivity in relation to the commencement of the proposed amendments. HIA wholeheartedly disagree to there being any retrospective effect of the legislation as it is not fair to the market at large to change the goal posts once a contract has been signed.

While HIA supports the principle that buyers should be able to contract with confidence and certainty, there are many measures currently in place that offer protection for buyers involved in 'off-the-plan' transactions. We urge Government to adopt a cautious approach when considering legislative changes that will, without doubt, impact longstanding contractual provisions. Any proposed amendment should only be progressed once a clear market failure has been identified over a long period.

Thank you for the opportunity to provide feedback.

Yours sincerely



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