



Speech by

**Hon. Peter Lawlor**

**MEMBER FOR SOUTHPORT**

Hansard Thursday, 18 June 2009

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## **BODY CORPORATE AND COMMUNITY MANAGEMENT AMENDMENT BILL**

**Hon. PJ LAWLOR** (Southport—ALP) (Minister for Tourism and Fair Trading) (2.30 pm): I move—  
That the bill be now read a second time.

This bill makes an amendment to the Body Corporate and Community Management Act 1997 as a result of recent decisions of the Supreme Court and the Court of Appeal. The purpose of the bill is to clarify the intention of section 212 of the act.

On 12 November 2008 the Supreme Court gave judgement in *Bossichix Pty Ltd v Martinek Holdings Pty Ltd*, finding that the applicant had validly cancelled, pursuant to section 212 of the Body Corporate and Community Management Act, the contract between the applicant and the respondent. The respondent, Martinek Holdings Pty Ltd, appealed the Supreme Court decision and on 5 June 2009 the Court of Appeal ordered the appeal dismissed. Section 212 provides that a buyer can cancel a contract for the purchase of a proposed lot in a community titles scheme if the contract does not provide that settlement must not take place earlier than 14 days after the seller gives notice to the buyer that the scheme has been established or changed.

The Supreme Court and Court of Appeal decisions found that the contract between Bossichix Pty Ltd and Martinek Holdings Pty Ltd was deficient because a key clause omits any reference to the community management statement, the recording of which is an essential element of establishing a new community titles scheme. A community titles scheme is established by the registration under the Land Title Act 1994 of a plan of subdivision for identifying the land for the scheme and, secondly, the recording by the Registrar of Titles of the first community management statement for the scheme. Typically this occurs simultaneously, although a scheme is not established until the community management statement is recorded. It is not possible to record a first community management statement in the absence of a survey plan that creates or identifies at least two lots and common property.

However, the Supreme Court and the Court of Appeal stated that the registration of a plan and the establishment of a community titles scheme are not the same thing and that the contract did not adequately convey to the buyer that more than registering a survey plan is necessary to establish the scheme. The respective decisions of the Supreme Court and the Court of Appeal revealed that the wording of section 212 of the Body Corporate and Community Management Act does not clarify the policy intent which seeks to balance the interests of consumers and developers/vendors. Consequently, these decisions have highlighted the potential for hundreds, if not thousands, of off-the-plan contracts to be at risk. This is because the provisions of the contract subject to legal action have potentially been replicated in contracts industry-wide.

It is estimated that up to 14,000 contracts on foot will be affected by the court decisions and, as off-the-plan contracts of sale provide a basis for property developers to obtain financing for many residential developments, the recent decisions could have serious implications for the property development sector and the wider Queensland economy if not remedied. Therefore, the Body Corporate and Community Management Act 1997 will be amended to provide clarification to the requirements of a contract subject to section 212 of the act.

Contracts entered into before or after 5 June 2009, excluding contracts already settled, will be deemed to contain the term 'providing that settlement must not take place earlier than 14 days after the seller gives advice to the buyer that the scheme has been established or changed', even if the contract does not do so. This provision will ensure contracts cannot be cancelled based on a mere omission of a reference to the establishment of the community titles scheme on the condition that the building plan and community management statement have been lodged with the Register of Titles and settlement does not take place earlier than 14 days after the seller notifies the buyer that this process has been completed.

This amendment will clarify the intent of the legislation and ensure that there is no diminution of consumer protection. In effect, it will return both buyer and seller to the position they believed they were in—and both accepted—at the time of the signing of the contract. I commend the bill to the House.