



Speech by

**Hon. Peter Lawlor**

**MEMBER FOR SOUTHPORT**

Hansard Friday, 19 June 2009

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

**Hon. PJ LAWLOR** (Southport—ALP) (Minister for Tourism and Fair Trading) (7.45 pm), in reply: Firstly, I thank the opposition for its cooperation in this matter. As has been set out by the member for Mermaid Beach, this is a difficult question but the opposition has cooperated. It has understood the significance of what was being done here. It understood the urgency of what was being done. So I do thank the opposition, particularly the member for Mermaid Beach for his cooperation.

No-one likes retrospective legislation, but the simple fact of the matter is that in some circumstances more harm can be done by doing nothing than by introducing retrospective legislation. Certainly this was one of those examples. The decision in *Bossichix Pty Ltd v Martinek Holdings* provided a technical basis to terminate a contract of sale that was currently on foot. That decision of the Court of Appeal was handed down on 5 June—two weeks ago today. So we have moved quite quickly, and there is always a danger in moving quickly that you do not get to consult with as many people or as many bodies as you would like. Nevertheless, it was critical, given the length of time between now and the next sittings, that this bill be passed tonight.

We are talking about off-the-plan contracts, so we are talking about units. Section 212 of the Body Corporate and Community Management Act requires that the seller advises the buyer that the 'scheme has been established' and settlement cannot occur earlier than 14 days from that advice. Many Queensland contracts provided 'settlement will occur 14 days after the seller notifies to the buyer that the building format plan is registered'. The manual of land title practice kept by the Registrar of Titles provides that the building plan is lodged at the same time as the scheme is established. The practical effect is that the building format plan and the scheme are inextricably linked. You cannot register a building format plan without a scheme, and you cannot have a scheme without the lodgement of a building format plan.

Off-the-plan contracts are the basis for developers obtaining finance for residential projects. Settlement of these contracts is essential to ensure the financial success of any residential project and the continued solvency of most developers and the continued employment of contractors and subcontractors. As has already been mentioned, it is estimated that up to 14,000 contracts could be adversely affected if this legislation is not passed tonight.

It is difficult to cover all situations in such a short time, as I have already mentioned. However, I believe that most of the scenarios will be covered by this bill. By amending the legislation to affirm existing contracts, buyers and sellers are in no different a position than when they executed the contract. It is important to understand that. The honourable member for Mermaid Beach mentioned the fact that what has been taken away here is simply a right to avoid a contract which the buyers were unaware of at the time that they executed the contract. So they are essentially losing nothing.

*Bossichix Pty Ltd v Martinek Holdings* gives buyers a technical right of rescission. As I said, they were unaware that they even possessed that right when they executed the contract. It is interesting to note some of the comments of Justice Philip McMurdo in the lead judgement in this case. He said—

The purpose of s. 212 is not to inform the buyer of its legal rights. Rather the purpose is to inform the buyer that the scheme has been established and to allow a sufficient time prior to settlement for the buyer to make any necessary searches and enquiries.

So it is not a matter of consumer protection at all. It must be said that those purposes could have been just as well served by a provision which simply deemed every relevant contract to contain such a term rather than providing a right of cancellation when the relevant term is not drafted according to the statute, and that is what has been done with this amending legislation. Justice McMurdo went on—

In the present case, for example, there would be no prospect that the buyer could have been prejudiced by the non-compliance with the statute such that it should be necessary to make the contract voidable ...

So there was no prejudice suffered by the buyer in that case, which the amending legislation is designed to cover. I commend the bill to the House.