



Speech by

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PROPERTY AGENTS AND MOTOR DEALERS AND OTHER LEGISLATION AMENDMENT BILL

Dr DOUGLAS (Gaven—LNP) (5.25 pm): Australians have an enduring love affair with property—Queenslanders even more so. Any new regulation or amendments to our existing property acts must build on the best parts of that which works well and remove or alter that which does not. As we all realise, the act is a massive tome that is almost unrecognisable compared to that from which it originated.

Despite that, Australians young and old are purchasing property that they simply cannot afford. Very quickly, their rental payments that were being made prior to their successful purchase of the property look very reasonable indeed. What has happened in the most recent downturn in the property market has in part led to the changes that are being made to the act. The public have in very large numbers sought legal avenues to escape binding property contracts. In the past, that has led to some escaping from contracts that would potentially financially ruin them. What does happen in some cases is that those from whom they are purchasing or failing to purchase, as the other party in these transactions, are being destroyed in the process. Such is the impact of the weaknesses in the act and such is the difficulty when dealing with personalities, property and contractual agreements involving the most important things in people's lives. Sadly, it is only when people reflect on the difficulties that they have either placed themselves in or have found themselves in and the stresses that follow that they discover that the property that they coveted or suddenly do not wish to own is not the most important thing in life after all.

The property industry continues on, despite huge mortgages with near impossible average payment schedules. The public continue to want to own their own slice of heaven. An article in the *Courier-Mail* of 13 May this year reported that payments are now routinely 150 per cent more than what was deemed previously acceptable. The impact of this increase, with rising interest rates and the greater demands for equity, leads to the potential for resumptions by banks and increasing rates in the forthcoming few years. The CEO of Westpac, Gail Kelly, has highlighted this in her CEO's report to the market. There is a greater disparity between the rationale of a 25-year oppressive mortgage and considerably lower rental costs for a similar property than there has ever been, but that has not deterred the market. The public have an insatiable desire to purchase their own home in the suburbs where they can establish their families and their lives. No wonder we are seeing family problems when the financial problems hit home, too. This is very much the driver behind the changes to PAMDA—so that people know what they are getting themselves into.

Rather than summarising the changes in list form, I thought I might follow the minister's lead from his second reading speech. The amendments will indeed clarify and simplify the process and delivery of rental property contracts when a real estate agent or seller gives the proposed contract to the buyer. Local agents in my electorate of Gaven have said almost in unison that the changes are long overdue. They support them. They believe that it will be easier and clearer for all parties. The previous act was choking the process. There was far too much emphasis on repetition of warnings, even after informing the buyer literally minutes earlier when a minor adjustment to the contract was to be made that was endorsed by both parties.

Correctly, the minister has highlighted the amendments to PAMDA that will do most to reassure those builders, developers and sales agents who are selling both off-the-plan and project-built homes. Unfortunately, the changes do not go quite far enough. There is still considerable leeway for buyers to renege on contracts very close to the point of delivery of the home or commercial structure. The ease with which this can occur will continue to cause grief to project development and is concerning, particularly in this market.

Queensland has and will continue to have significant new home construction because of the 1,800 new Queenslanders who are arriving weekly. The Property Council of Australia's figures estimate that, currently, we are 140,000 homes short in Australia. The vast bulk of these homes are needed in Queensland, then in Western Australia and then in New South Wales. These are telling statistics. Interestingly, the figure which represents the home shortage equals the current Australian national debt.

The minister has specifically cited for change those provisions relating to chapter 11 which have been recently used by considerable numbers of buyers who, for all sorts of reasons—mainly due to changes in economic circumstances—wish to avoid contracts. They have used the section related to technical breaches and the act of noncompliance with the requirements. The extraordinary situation of not faxing pages in the correct order has led to a technical breach and the contract subsequently falling over because of this. This has been corrected.

Similarly, chapter 11 has also been substantially redrafted by the government in its response to the former Service Delivery and Performance Commission, as it was called at the time. As the explanatory notes indicate, the SDPC recommended several changes to chapter 11, parts 1 to 3, requirements concerning the presentation and delivery of residential property contracts. It also recommended parallel amendments be made to the body corporate management act. The government did not support a complete repeal of the act. It has justified this because it appears to be overprotective of consumer protection provisions. These are specifically one-page warning statements and the issue of the cooling-off period. In all fairness, maybe both are reasonable. In summary, the government is attempting to balance certainty of contract with consumer rights. This is appropriate.

PAMDA is a massive act. This bill is adding quite a few more pages in other areas. In his second reading speech the minister went into the detail about the warning statement issue, the signing acknowledgement issue, the right of contract termination as it relates to the seller's or agent's responsibilities, and drawing the buyer's or purchaser's attention to the warning statement. It is all quite sensible. Also it seems clear and it does not provide the need for the seller or the agent to repeat themselves literally minutes after going through the contract. In general terms, there are negotiations over price and there are amendments to the price. Having to go through warning statements multiple times is unproductive and unnecessary.

As I have said, the agents are happy, the targeted consultations with key stakeholders appear to have delivered a good outcome and it will be interesting to see in practical terms how it works. In general terms, buyers need exits and sometimes sellers do, too. But as in all contracts, the reasons for doing so need to be balanced. Currently there does appear to be an unfair weighting in the purchaser's favour. The cooling-off period remains, as I have indicated from the government's response to the SDPC recommendations, as does the right of purchasers to include such terms as finance to be approved and building and pest inspections to be passed as additional waivers on contracts.

The transitional arrangements do not affect those existing rights. The government has set a 90-day maximum pre-amendment right to terminate for so-called technical breaches. For example, the prescriptive order of delivery of documents will cease on commencement of the act. Again this is a question of balance. The minister says that sellers are now provided with much certainty and buyers will have sufficient time for termination. It is hard to really have a fixed view of the 90-day contract maximum capping other than that there has to be a time limit. I suspect the choice of 90 days came about by someone saying it was about right. I am not sure who that someone was, nor do I think it was really thought through. I have concerns because currently the housing market in Queensland is flat, whereas Sydney had a 26 per cent price increase in the last 12 months and Melbourne had a 21 per cent increase. In both markets unemployment is falling whereas it is increasing in Queensland. The participation rate in Queensland in particular has fallen and it is unclear why.

Some Queensland contracts are known to be longer, with some buyers obviously speculating on the market, using the delayed settlement contract with smaller deposits. The actual numbers are hard to come by and the information is hazy but the banks say that it is increasing. Also, some sellers are considering the each-way bet to close out sales at lower prices with the hope of a later flow-on percentage increase, particularly in the Brisbane and coastal markets. Generally the trend is that the Brisbane market is six months behind the Sydney market when rising. It often flows to the Gold Coast first, then the Sunshine Coast then westwards. These trends have continued in Australia since the Second World War. There is no reason to suspect they will not continue in the same way. This then implies that the market remains volatile

and we will see uncertainty in the market at least for the next two years. Certainty is what the market needs, and a contract that is enforceable goes a long way to achieving that.

The difficulty is that this bill, as I have highlighted, has avoided that difficult area that is critical in Queensland of the new home market and the project home market. In Queensland there is massive population growth and movement—it is sea change primarily—and also satellite suburban movement to our major South-East Queensland cities. The new home market, both project builder for owner/occupier and investor, still has too many exit points for purchasers that exist right up to the end of the contract that can leave developers, builders and others completely at risk should the purchaser suddenly wish to exit. By virtue of this, the banks have increased the equity position of those project developers. By nature, when it occurs more frequently than it should it drives volatility and our builders can become severely affected. In a growing market this is a very dangerous problem that we do not want because it has an impact on our capacity to deliver truly affordable housing.

In my electorate of Gaven, which together with Coomera is the fastest growing electorate in Australia, new home and investor construction remains massive and shows no sign of abating. But the development of projects has been slowed significantly. The problem I am highlighting certainly occurs in this market, but what we see here should be giving all other areas a clear insight into what we need to avoid to make our communities stronger. In doing so we reduce problems for residents and builders alike.

There are changes to the Body Corporate and Community Management Act 1997. The changes are to ensure that potential buyers are provided with information sheets about bodies corporate where it is relevant to their purchasing situation. Bodies corporate have had a pretty awful time in Queensland for quite a while now. The problems they have faced have been driven from below and above. The critical case of penthouse owners who challenge the right of bodies corporate to charge a higher differential over smaller unit owners has led to changes which for many would seem unfair. There have also been complaints ranging from overcharging to ignoring legitimate requests for repairs, especially for investor owners in bodies corporate who rent their properties out. There are many problems in between. Those problems from above mainly relate to a distant government and its departments that cease to want to play a practical role in assisting resolutions. This needs correction.

We will no doubt be seeing problems again with investors, site amalgamators, nuisance tenants and, should I say, those who are land banking, being involved in bodies corporate on key sites over the issue of land utilisation and redevelopment as housing densities increase under SEQ planning statements and there are shrinking property sizes to house these greater densities. Land does increase in value slowly, but unpredictable massive price valuation adjustments can occur when greater densities are approved.

Primarily the amendments of the BCCM Act are to enable potential purchasers to be fully informed. The problem is that bodies corporate in practice range from being very transparent and relatively inexpensive to being very secretive and very expensive. One can only hope that a prospective purchaser buys a property where the body corporate is user-friendly.

In reality, bodies corporate rely on owners and occupiers to be fair to one another. On the Gold Coast, to allow for those who really feel afraid of bodies corporate, some new developments have prospered in the market because there was an avoidance of a body corporate. Interestingly, some good alternative strategies have been put in place to facilitate the same results for occupiers. It has worked better in closed estates for over-50s where no rentals are allowed. This eventually will restrict the market. Whilst this always limits the market, it does reduce problems in certain cases. We need to make sure there is a full range of methods and situations for the public so that they can choose the one that suits them best. The government needs to avoid being unduly prescriptive.

PAMDA is a mixture of necessary regulation, newer modern reactive regulation and overregulation. It is a bill that encompasses part of the critical, greatest lifetime investment Queenslanders and Australians ever make. The negotiations are usually the most stressful and either the most exciting or the most terrible times of one's life. Obviously the bill needs to reflect the kind of seriousness that such decisions involve. I think some of it is good, but I wonder whether consciously avoiding an area that occupies 50 per cent of the market was truly avoidance or whether it was ignorance. If it was ignorance, it is probably not too late to suggest that we need to build on the existing bill and the minister needs to address that in his concluding remarks. Either way, in our own Queensland market the new home market is going to remain very choppy indeed and PAMDA is still a long way from addressing that.