Speech By

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MEMBER FOR REDCLIFFE

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LAND SALES AND OTHER LEGISLATION AMENDMENT BILL

Mrs D'ATH (Redcliffe—ALP) (12.40 pm): I rise to make a contribution to the debate on the Land Sales and Other Legislation Amendment Bill 2014. At the outset I wish to advise that the opposition will not be opposing this bill, but there are a number of matters included in the bill that we have concerns with and I will be raising them during the debate. This bill has been quite some time in the making. In December 2010 then Minister Lawlor released an issues discussion paper that sought the views of stakeholders in relation to a review of the laws relating to the proposed subdivision of land and the sale of lots in a proposed community titles scheme such as a unit in an apartment complex. Stakeholders made some quite valuable contributions to that process and the department collated and compiled the issues discussed into a policy proposals consultation paper which was released by the current Attorney-General in 2012. The consultation paper built on the previous work of the issues discussion paper, together with the input from the expert panel advising on the review. This bill is the culmination of that work and largely reflects the proposals from industry and other stakeholders. The aim of the bill, which was the aim of the previous government in commencing the process, is to reduce any unnecessary regulatory burden on developers without reducing consumer protection provided in the act.

At the time it was initially introduced in 1984, the bill was considered necessary as there had been a number of instances where consumers had lost substantial sums of money through misdescribed land. I think most people would be aware of the Russell Island land scams under the Bjelke-Petersen government where purchasers bought blocks that were not where they thought they were, some even being underwater at high tide. That scandal was mentioned during debate of this legislation in 1984. Therefore, it was necessary for there to be some consumer protection introduced for land sales off the plan and the act sought to do that. The explanatory notes state that the bill has four objectives: to reduce red tape and regulation relating to the sale and purchase of proposed allotments and proposed lots while ensuring important consumer protections are maintained; modernise, improve and streamline the legislation regulating the sale of proposed allotments and proposed lots; address minor editorial errors that have been identified in section 157 of the Property Occupations Act 2014; and amend the Breakwater Island Casino Agreement Act 1984 to provide for the transfer of ownership of the Jupiters Townsville Hotel and Casino from Jupiters Ltd to CLG Properties Pty Ltd as trustee for CLG Property Trust.

I will address a number of the matters raised during consideration of the bill. Currently, the act provides that a proposed allotment cannot be sold until such time as there is an effective development or compliance permit in place or, if there is operational work required to be done, development approval has been granted for the operational works. This bill removes that restriction. There is currently no similar restriction for proposed building units under the Body Corporate and Community Management Act and other jurisdictions do not have a similar requirement. This was included for discussion in the 2010 discussion paper. Stakeholders largely supported the proposal for the reasons I just stated. In addition, the change would allow sellers to make presales at an earlier stage, which is useful for securing finance for the project. It adds to financial viability. It also adds to the risks

associated with purchasing the property off the plan. There is a risk that the development approval may not be granted; there is a risk that there may be a substantial difference between the allotment delivered and what was contracted on. There are protections for consumers contained in the act and in the bill such as a right to terminate the contract if title is not provided within 18 months of the contract and a right to terminate the contract if a buyer is materially prejudiced by any change to the plan. There is a disclosure obligation on the part of the seller and, if a seller becomes aware of any information in the disclosure plan that was not accurate or is no longer accurate, they must provide further information at least 21 days before the contract is settled. The buyer then has a right to terminate the contract. Given the protections for consumers, there appears to be an adequate balance in relation to this proposal between the rights of consumers with the needs of business.

There is currently an automatic exemption from the act for contracts which meet the definition of 'large transactions'. This means that, where the sale involves six or more proposed lots and the buyer of the lots is the same, the seller of the lots is the same and the sale is contained in one contract or two or more contracts entered into within 24 hours, parties are not required to comply with part 2 of the act. There is also provision in the act for parties to make application to be exempted from part 2 of the act for developments of not more than five lots. This means that for small scale developments the parties make application for an exemption. This bill creates an automatic exemption for these small developments from part 2 of the act. Part 2 prescribes the seller disclosure and trust account requirements for the sale of proposed allotments. Therefore, an applicant receiving an exemption from part 2 is exempt from these provisions.

The department advises that around 50 such applications are made every month and that almost all applications are granted. The explanatory notes tell us that it is very rare for such applications to be refused and they are only refused if the objective criteria for the exemption are not met. However, the explanatory notes do not tell us how many applications are approved with conditions attached. It may be none, but that information has not been provided, so I ask the Attorney-General to please address that issue during his speech in reply. The concern is that currently if the chief executive has a concern about the security of a deposit—for example, if the developer has a history of defaulting on deposits or purchasers previously having had difficulty in recovering a deposit—the exemption could be granted subject to a condition that required the deposit to be paid into a trust account of a solicitor or a real estate agent or the Public Trustee. Now, under this amendment the exemption will be automatic and it will not be possible to impose such a condition. Even if those provisions were only used in extraordinary circumstances, it is still comforting to investors to know that they are there. The transitional provisions apply to all development applications that have been submitted but have not yet been determined before the bill commences. The provisions also mean that, for any exemptions which have been granted subject to conditions, those conditions will still apply.

This proposal does not have the full support of the legal stakeholders. Some suggested that the automatic exemption should be limited to boundary realignments and transactions between sophisticated parties. Other legal sector stakeholders recommended that if the automatic exemption applies to the sale of a proposed allotment then the seller should be required to put any amount received from a buyer towards the purchase in a trust account. If the seller is represented by a real estate agent or lawyer, there will be a requirement for the money to be paid into their trust account. However, for a developer who does not act through an agent or lawyer, there is no protection for the buyer. There are no rules on how or even if the seller who receives the deposit invests it. There is no-one else to make a claim on if the deposit is squandered and the developer is bankrupt. I am not comfortable with the nature of this amendment without some guidance from the Attorney-General about how an investor will recover their deposit in the case of a defalcation by a developer.

In relation to an increase in amount of deposit for purchase of unregistered reconfigured land, one of the more contentious amendments contained in the bill relates to the increase to the cap on the amount of deposit that can be imposed by a developer. At present, there is a cap of 10 per cent on the amount of deposit that can be charged by a developer for the purchase of a proposed allotment. There is no similar cap for building units bought off the plan, and this bill seeks to remove the cap for flat land purchases to bring it into line with other strata title developments. However, even without a cap, once the deposit is over 10 per cent at present the Property Law Act provides that the contract is an instalment contract. Section 71 of the Property Law Act defines an instalment contract to mean—

> ... an executory contract for the sale of land in terms of 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.

Under an instalment contract, the deposit is liable to be forfeited and retained by the vendor in the event of a breach of contract by the purchaser. The obligations change once a contract comes within this definition in terms of, for example, the rights of both sellers and buyers to require

conveyance of a property under an instalment contract; there is a restriction on a seller's right to rescind a contract; the developer is prohibited from mortgaging the property without the buyer's consent; and a buyer is permitted to lodge a non-lapsing caveat over the property.

Those changes in obligations provide protection for consumers because such a large proportion of their investment is being held pending successful completion of the project once the deposit is over 10 per cent. It is very telling that the UDIA said in its submission—

The Institute strongly supports the raising of the maximum deposit level to 20% (without triggering onerous instalment contract provisions).

There are two concerns about raising the limit on what can be charged as a deposit. The first is the question of entry into the market and housing affordability, particularly for first home buyers. The opposition is concerned about any move that makes it harder for Queenslanders to buy a home. The government has introduced the Great Start Grant, which increases the first home owner grant to $15,000 if you are building or purchasing a brand-new home. This includes homes off the plan. But conversely, this amendment will allow a developer to charge a maximum deposit of 20 per cent. I know that 20 per cent is not mandatory and that the QLS in its submission said—

... that market forces will probably prevent sellers from demanding such high deposits,

However, this is merely speculation on the part of the QLS. There was no similar view expressed by the UDIA or the Property Council. It will be very much more difficult for families to raise a 20 per cent deposit. This comes in an environment where university fees could increase substantially and HECS debts owed by young people entering the workforce would make saving for a deposit for property purchase almost impossible. The reasons given for the increase to the maximum deposit are that it is a means of derisking projects, making them more attractive to financiers; allowing for larger deposits will provide added comfort to financiers; property values can fall to such a degree that buyers will attempt to walk away from a deposit of 10 per cent; overseas investors are more likely to walk away due to the cost and difficulties in enforcing a sale; some financiers disqualify, or at least discount, sales to foreign investors when making lending decisions; significantly reduce red tape for property developers associated with instalment contracts; and facilitate improved financial viability for large off-the-plan developments. All of these benefits are benefits for developers. Nowhere is there identified any benefit to the purchasers.

Both the Queensland Law Society and the Bar Association of Queensland have expressed concerns about the blanket increase of 20 per cent to all property purchases. The Law Society said in its submission—

... the Society did have some concerns about extending this to all off the plan sales as it was felt it may have an adverse impact on first home buyers if it became common practice to require 20% deposits to buy land in housing estates.

That reflects the opposition's concerns. Housing affordability is becoming a matter of increasing concern to Queensland families. The Great Start Grant will help those purchasers when they come to settle on the property, but it will not be able to be put towards a deposit. Does the government intend to provide any financial assistance if developers charge over 10 per cent deposit? I am interested in knowing what economic modelling has been undertaken to ascertain the likely effect on first home buyers and whether there is any capacity for the government to help out.

The other concern about the possible lifting of the deposit cap to 20 per cent is that the amendments allow for the forfeiture of the full amount of the deposit. Increasing the amount of the deposit that may be forfeited under a contract poses a very significant risk to a purchaser. This amendment allows the full 20 per cent to be forfeited even if the loss to the seller is nowhere near that amount. As the Property Council said in its submission—

The Property Council also supports provisions under which a seller can retain this deposit of up to 20 per cent, rather than the 10 per cent (in cases wherein the seller cannot prove damages over that amount) that is common under case law.

It appears to the opposition that all the risk contained in these amendments shifts to the purchaser without any increased protection. As we made it clear in the debate on the Property Occupations Bill, the opposition supports any moves to remove unnecessary red tape. That is why the previous Labor government initiated this review of the laws. But we do not consider safeguards that have been inserted to protect consumers as being merely red tape. Any move that increases the risk for purchasers without any increased protections will not be acceptable to the opposition.

The Bar Association said in its submission—

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%.

On this point, the opposition agrees with the comments of the Bar Association. We are also unclear what economic or commercial case demonstrates this need. The industry has said that it would like it. I have no doubt about that. It has said that it will make it easier for developers. I also have no doubt about that. But there has been no clear evidence produced to show that there is a problem of such an extent that developments are becoming nonviable. I would like to see the evidence on which the government has based these amendments. Without that clear evidence and in the light of the increased burden that has shifted solely to purchasers, we cannot support the amendments.

The Bar Association went on to say—

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).

It is respectfully submitted that changes to the deposit maximum and instalment contract provisions ought to be reconsidered.

We agree. I now move to the other aspects of the bill that are less contentious. Currently, the Land Sales Act requires the seller of a proposed allotment or proposed lot to disclose particular information about the proposed lot or allotment to a prospective buyer before the prospective buyer enters into the sale contract. For a proposed allotment, the buyer must be given a disclosure plan and disclosure statement or an approved survey plan. Where the sale is of an approved lot, the seller must provide a statement in writing. There are then separate disclosure obligations contained in the Body Corporate and Community Management Act. Therefore, this bill moves the disclosure obligations for the sale of proposed strata title lots sold off the plan from the Land Sales Act to the community titles legislation. That means that the obligations will all be together in the same legislation, which is certainly a plus for everyone concerned—buyers and sellers alike. Stakeholders all appear to be supportive of this amendment.

A number of unnecessary disclosure obligations are removed, including the name and address of the buyer and seller and the requirement of the seller of a proposed allotment to provide a buyer with a copy of any plan for reconfiguring land for the allotment forming part of a development or compliance permit or approval. Stakeholders hold no concerns about those amendments. The names and addresses are contained elsewhere and providing the development plan may not be possible at the time of contract because the amendments that I referred to earlier allow sales before receiving development approval. In addition, the disclosure obligations already require a seller to give the buyer a disclosure plan that contains information about the proposed allotment and is more detailed and of greater benefit to the buyer than just the plan for reconfiguring the lot. Those requirements amount to unnecessary duplication and could correctly be described as unnecessary red tape.

The QLS identified a drafting concern in relation to exemptions for options, but the department has said in correspondence that it supported those amendments and has advised that amendments will be moved during consideration in detail to deal with that concern. I note that those amendments have been included in the amendments that have been circulated.

Another amendment that poses no problem—in fact, makes very good sense—is that of allowing the buyer and/or seller to authorise another person to act on their behalf. Currently, the LSA and the relevant community titles legislation provides for an agent of a buyer or seller of a proposed lot or allotment to act on the buyer's or seller's behalf for particular prescribed matters. This drafting means that, by prescribing what is permitted, it is unclear whether the parties can agree to allow agents to act in respect to other matters. The bill amendments the legislation to make it clear that the parties may authorise a person to act on their behalf in relation to anything that the buyer or seller is permitted or required to do under the Land Sales Act or community titles legislation for the sale or purchase of the proposed lot or allotment. The proposed amendments provide clarity where there is an existing ambiguity. They are entirely uncontroversial and are supported by stakeholders and by the opposition.

In relation to the requirement for regulation to prescribe the extension to the time frame for the giving of registrable transfer, originally, the act provided that if a seller of a proposed lot fails to provide the buyer with a registrable instrument of transfer, known as a registrable transfer, within 3½ years of the buyer entering into the contract, the buyer is afforded termination rights. If a developer was unable to complete in the 3½ years due to circumstances beyond their control, they could apply to the minister to extend the time for a further two years, but that required the making of a regulation. In 2011, then minister Lucas introduced the Criminal and Other Legislation Amendment Bill 2011, which included an amendment to the LSA to allow vendors to specify the time for giving the registrable instrument of transfer in the contract up to a maximum of 5½ years. If no longer period was

prescribed, a default period of 3½ years would apply. That amount was welcomed by the industry. However, the bill lapsed when parliament was prorogued. As developments have become more complex and as the time to presell, organise finance and build becomes longer, it has become increasingly clear that there are increasing instances where developments might not be completed within 3½ years. This bill reintroduces former minister Lucas's amendments. The intent of the amendment is that the 3½ years remain as the standard and any longer period should be agreed in the contract. If not, any later change would have to be with the consent of both parties.

The QLS has identified a drafting issue, which means that, as the bill stands currently, a seller could unilaterally extend a contract for up to 5½ years without the consent of the buyer. That was never the intention and the department has agreed. Their correspondence foreshadowed that amendments are likely to be introduced during consideration in detail. Again, I note that those amendments are included in the amendments that have been circulated by the Attorney-General.

The act as it stands currently contains offences for a contravention of the seller disclosure requirements and a requirement for a seller to give a registrable transfer to a buyer. We have been advised that the offences are rarely prosecuted. For these particular requirements, there are also associated contract termination rights for buyers where the seller does not comply with the requirements. The bill removes the offences but retains the termination rights for buyers.

Sitting suspended from 1.01 pm to 2.30 pm.

Mrs D'ATH: As I was stating just before the break, the Property Occupations Bill 2013 was debated earlier this year. That bill contained similar offence provisions for nondisclosure. Those offences were retained, although a termination right was removed for many of the provisions. No explanation has been provided for removing the offences other than that they are rarely prosecuted. This is inconsistent with the approach in the Property Occupations Bill 2013. We consider these are serious matters. There is, of course, a contractual remedy available to buyers. However, the offences should remain, with a discretion on the part of the prosecuting authorities, as there is now, on whether to act. No-one wants people prosecuted for unintentionally failing to provide a document where it does not affect the sale in any way, but it seems that in circumstances where a seller repeatedly fails to fulfil their obligations in respect of sellers, there should be a capacity for there to be prosecutorial action taken against them. The fact that the threat of prosecution exists might be enough to deter people from refusing to fulfil their obligations.

In relation to moving part 3 of the act into the relevant community titles scheme legislation, part 3 of the act currently deals with the sale of proposed lots in community titles schemes. Community titles schemes are, by and large, regulated by one of the following community titles laws: the Body Corporate and Community Management Act 1997; the Building Units and Group Titles Act 1980; and the South Bank Corporation Act 1989. Part 3 sets out the seller disclosure and trust account requirements for the sale of a proposed lot. However, there are also separate disclosure frameworks for the sale of proposed lots contained in the relevant Queensland community titles scheme laws. Moving part 3 to the relevant community titles legislation removes duplication and provides a more streamlined approach to the regulation of the sale of proposed lots by combining the separate disclosure regimes in the relevant community titles scheme legislation.

This was proposed in minister Lawlor's 2010 issues discussion paper and is supported by stakeholders. This amendment makes good sense and is beneficial for both buyers and sellers as it simplifies procedures. There are a number of amendments contained in the bill that provide greater clarity in respect of the trust account obligations. There are also further amendments that strengthen the seller disclosure framework. The better informed the buyer is at the time of signing the contract, the less likely they are to have reason to terminate the contract. This will provide greater certainty for the seller and greater comfort to financiers. The bill provides that a person intending to buy a proposed lot will be informed upfront about when the seller is required to give the person a registrable transfer for the proposed lot. This obligation already exists for proposed allotments and it is being extended to strata title lots. This is especially important as the sunset date is being extended to 5½ years.

In relation to clarification of what is required to be disclosed, at present the act simply requires that the seller must identify the proposed lot in the disclosure material but does not describe exactly what is meant by 'identify'. This means that buyers are unsure of exactly what information they have to provide and sellers are unsure of exactly what information they are entitled to. The bill prescribes exactly what information must be disclosed by the seller in identifying the proposed lot. For example, for a proposed lot that is to be a proposed building format lot, the following must be disclosed by the seller: the proposed number of the lot; the total area of the lot; identification of any parts of the lot proposed to be outside the proposed primary structure, for example, the apartment building in which

the lot is to be contained, including any proposed balcony, courtyard or carport; the floor level on which the proposed lot is to be located; identification of other lots and common property proposed to be on the same floor level in the proposed primary structure in which the lot is to be contained; and the identification of the proposed orientation of the lot by reference to north. This information will ensure that disclosure obligations are being met in a uniform and consistent manner and everyone is very clear about what is required.

A further amendment relates to disclosure of operational earthworks. At present the act requires the seller to disclose the contour levels as they exist before the operational works occur. This will be removed and instead the seller will be required to disclose prescribed information about the earthworks, including details about the areas of the land to be cut or filled, the depth of the fill and compaction rates and any retaining walls to be built. The Urban Development Institute of Australia submitted that the obligations relating to compaction rates and retaining walls were uncertain and the department supported amending these provisions. I note that those amendments have been circulated in the amendments to be discussed in consideration in detail by the Attorney. In addition, the Queensland Law Society recommended that a new seller disclosure requirement be included in section 14 of the Land Sales Act clause 43 to provide that a seller must give a buyer, at least 14 days before settlement, a compaction certificate. They are of the view that it is common practice for compaction certificates to be obtained by developers in the process of conducting a subdivision of land. This is a very good suggestion by the Queensland Law Society. Compaction rates provide very important information to buyers and if it is a common practice for compaction certificates to be obtained, there are very sound reasons for those certificates to be given to buyers. The department recommends considering this as part of the property law review being conducted at present. I support this proposal. I would like to ask the Attorney whether that issue has been referred to the property law review committee for its consideration.

In relation to survey plans required to be prepared by a cadastral surveyor, the bill will also clarify that the disclosure plan, which identifies the proposed allotment or proposed lot, must be prepared by a registered cadastral surveyor to provide greater protection and confidence for consumers. While this is technically a new requirement, the property development and surveying industries advise that over 95 per cent of disclosure plans are currently prepared by registered cadastral surveyors. This is a sensible measure and will impose very little burden on sellers, but will ensure buyers have a greater degree of security when signing contracts.

This bill also includes protections for security instruments, such as deposit bonds or bank guarantees, used by buyers to pay a deposit for the sale of a proposed allotment or a proposed lot. The bill prescribes how a law practice, real estate agent or the Public Trustee that receives the instrument on behalf of the seller, a registered entity, must deal with the security instrument. The proposed provisions of the Land Sales Act and community titles legislation require the recognised entity to keep the security interest at the prescribed place until the instrument is returnable to the buyer according to law or is given to the issuer of the security in exchange for the amount it secures. This amount is considered trust money and must be held by the recognised entity that held the instrument in its trust account in accordance with the provisions set out in the bill. The Queensland Law Society has pointed out that the proposed amendment does not apply where the seller retains the security deposit without giving to it a recognised entity. The Queensland Law Society suggests amending the bill to require that a seller who receives a bank guarantee from a buyer as security for a contract of sale must provide the bank guarantee directly to a recognised entity, for example, a law practice, the Public Trustee or a real estate agent. The department supported this amendment in its correspondence. I am pleased to see that this issue has been addressed in the Attorney-General's amendments.

Another significant part of the bill is the amendment to the Breakwater Island Casino Agreement Act 1984. In accordance with the Casino Control Act 1982, the casino licensee of the Breakwater Island Casino and the state of Queensland are parties to a casino agreement which is called the Breakwater Island Casino Agreement. The casino agreement is included in the Breakwater Island Casino Agreement Act 1984 and is a document that has statutory force. The licensee of Jupiters Townsville Hotel and Casino, which is what the Breakwater Island Casino is known as, is Breakwater Island Limited as the responsible entity of the Breakwater Island Trust.

For all intents and purposes, Jupiters Limited is the owner of the casino licence as it owns all of the shares and units in Breakwater and the Breakwater Trust respectively. Therefore, Jupiters is a party to the casino agreement. The casino is being sold to CLG Properties Pty Ltd as trustee for CLG Property Trust. Under the sale, those shares and units will be transferred to CLG. Once Jupiters is sold to CLG, Jupiters will no longer be a party to the casino agreement, so it is necessary to remove it from the agreement and replace it with CLG as the obligations under the agreement will be

transferred to CLG. Therefore, schedule 2 of the casino agreement act needs to be amended to reflect the changes to the agreement itself. The amendments are procedural in nature and they merely give effect to an amendment deed to the casino agreement that Jupiters, Breakwater and CLG propose to enter into with the state of Queensland. In practical terms, the amendments replace in the agreement references to Jupiters with references to CLG. These amendments are of a purely procedural nature and the opposition has no reason to oppose such amendments.

In conclusion, those are the only provisions in the bill that I intend to speak about today. Most of the matters contained in the bill are of a procedural nature or they are a genuine attempt to reduce unnecessary red tape and regulation. This project was commenced by the previous Labor government and it is pleasing to see that the Attorney-General continued where it left off. However, as I have already stated, we will be opposing the increase to the cap on deposits. In no way can they be described as red-tape reduction. In fact, those amendments are consumer protection reduction. They benefit developers exclusively at the expense of buyers and, even more importantly, they will place home ownership that bit further from the reach of Queensland families. The opposition supports the removal of those measures that unnecessarily impose extra burdens on parties. As Queensland continues to grow, the need for property development will also grow and we do not seek to place obstacles in the way of property development. However, it is unconscionable that, where the global financial crisis has shown that there is an increased risk to parties, that risk be transferred entirely to the families of Queensland who can least bear the burden.

I also take this opportunity to thank the stakeholders for their contributions to the development of this legislation. It has been a lengthy process and submissions, consultation and advice have been sought on a fairly regular basis. In particular, I thank the Bar Association for its consideration of the bill and the Law Society for its ongoing involvement in the entire project. Once again, the Law Society has shown the great value it provides in casting its collective eye over legislation and being able to identify potential problems with drafting that, when fixed at an early stage, will not cause problems for parties down the track.