Parliamentary Committees

Land Sales and Other Legislation Amendment Bill 2014

Report No. 71

Legal Affairs and Community Safety Committee

August 2014

Legal Affairs and Community Safety Committee

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Acknowledgements

The Committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

Contents

Abbreviations

AFAA	*Agents Financial Administration Act 2014*
Attorney-General	Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
BAQ	Bar Association of Queensland
Bill	Land Sales and Other Legislation Amendment Bill 2014
BCCMA	*Body Corporate and Community Management Act 1997*
CMS	Community Management Statement
Committee	Legal Affairs and Community Safety Committee
Community Titles Legislation	*Body Corporate and Community Management Act 1997, Building Units and Group Titles Act 1980* and *South Bank Corporation Act 1989*, collectively.
Consultation Paper	Policy proposals consultation paper entitled, 'Proposed amendments to the *Land Sales Act 1984*' issued by the Department of Justice and Attorney-General's Office of Regulatory Policy in October 2012.
CTS	Community Titles Scheme
Department	Department of Justice and Attorney-General
LPA	*Legal Profession Act 2007*
LSA	*Land Sales Act 1984*
OQPC	Office of the Queensland Parliamentary Counsel
PAMD Act	*Property Agents and Motor Dealers Act 2000*
PCA	Property Council of Australia
PLA	*Property Law Act 1974*
QLS	Queensland Law Society
QUT Review	The Government initiated review of Queensland property laws, currently being conducted in partnership with Queensland University of Technology.
REIQ	Real Estate Institute of Queensland
SLC	former Scrutiny of Legislation Committee
SPOLA Act	*Sustainable Planning and Other Legislation Amendment Act 2012*
UDIA	Urban Development Institute of Australia (Queensland)

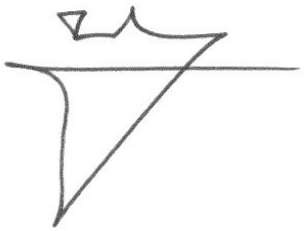
Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Land Sales and Other Legislation Amendment Bill 2014.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, and the Department of Justice and Attorney-General.

I commend this report to the House.



Ian Berry MP

Chair

Recommendations

The Committee recommends the Land Sales and Other Legislation Amendment Bill 2014 be passed.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Justice and Attorney-General;
- Police Service; and
- Fire and Emergency Services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Land Sales and Other Legislation Amendment Bill 2014 (Bill) was introduced into the House and referred to the Committee on 3 June 2014. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 29 August 2014.

1.2 Inquiry process

On 6 June 2014, the Committee wrote to the Department of Justice and Attorney-General (the Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions.

The Committee received written advice from the Department on 13 June 2014 and received five submissions (see **Appendix A**).

On 11 July 2014, the Committee received written advice from the Department in response to matters raised in submissions. The Committee's Secretariat inquired into aspects of this response, and the Department responded in writing on 7 August 2014.

1.3 Policy objectives of the Land Sales and Other Legislation Amendment Bill 2014

As explained by the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice (Attorney-General) in his Introductory Speech, the Bill relates to two of the five election pledges made by the Queensland Government.[2] The first, being the growth of a four-pillar economy based on tourism, agriculture, resources and construction, and the second, being the revitalisation of front-line services for families by cutting waste resulting from unnecessary and cumbersome red tape and regulation.

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1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 *Record of Proceedings (Hansard)*, 3 June 2014, page 1940.

The Bill aspires to continue *'…the government's record on delivering real reforms that support and promote Queensland's property and construction sector'*, including *'…eliminating unnecessary red tape that is suffocating individuals and businesses working in the property sector, which inevitably adds costs and other burdens for Queenslanders buying and selling property'*.[3]

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 Limited to CLG Properties Pty Ltd as trustee for CLG Property Trust.[4]

To achieve these objectives, the Bill proposes to amend the following Acts:

- *Agents Financial Administration Act 2014;*
- *Body Corporate and Community Management Act 1997;*
- *Breakwater Island Casino Agreement Act 1984;*
- *Building Units and Group Titles Act 1980;*
- *Land Sales Act 1984;*
- *Legal Profession Act 2007;*
- *Property Law Act 1974;*
- *Property Occupations Act 2014;* and
- *South Bank Corporation Act 1989.*

The Bill also repeals the Land Sales Regulation 2000 and makes necessary consequential amendments to the *Fair Trading Inspectors Act 2014* and the *Land Title Act 1994*.

1.4 Context

The Bill constitutes another element in the Government's continuing reform of Queensland's property and construction sector. As part of its reform agenda, the Government has '*…delivered legislation to repeal and replace the* Property Agents and Motor Dealers Act 2000 *with contemporary, streamlined legislation that has been widely embraced by industry*'.[5]

[3] *Record of Proceedings (Hansard)*, 3 June 2014, page 1940.
[4] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 1.
[5] *Record of Proceedings (Hansard)*, 3 June 2014, page 1940.

Additionally, it has:

> *…commenced, in partnership with the Queensland University of Technology, an extensive review of Queensland property laws, including community titles legislation. This review is being informed by consultation with peak industry representatives and the broader community.*[6]

The review will be referred to in this report as the 'QUT Review'.

On 23 July, 2014, the Committee sought further details from the Department in relation to the QUT Review. The Department advised:

> *…the Government has engaged QUT to undertake a broad ranging, independent review of Queensland property laws, examining core legislation governing ownership, use and dealings in real property in Queensland, including the* Property Law Act 1974*, the* Body Corporate and Community Management Act 1997 *(BCCM Act) and* Land Sales Act 1984*. It is anticipated that QUT's analysis of issues concerning the Land Sales Act being considered as part of the property law review will complement the reforms contained in the Bill.*
>
> *The review is being conducted through QUT's Commercial and Property Law Research Centre, and is headed by highly respected property law experts, Professor Bill Duncan, Professor Sharon Christensen and Dr Bill Dixon.*
>
> *Due to the breadth and complexity of Queensland's property laws the review is being conducted in stages. The first stage of the review will consider two key topics:*
>
> - *the current seller disclosure regime in Queensland including its effectiveness for the purposes of the sale and conveyancing process; and*
> - *issues concerning the setting and adjustment of lot entitlements in community titles schemes under the BCCM Act.*[7]

The Department provided a status update on the QUT Review:

> *The first stage of the review is well underway. As part of the first stage, QUT has released separate consultation papers about both topics to seek community feedback on the issues. QUT is scheduled to report its findings and recommendations on these issues later in 2014.*
>
> *The second stage of the review, will examine the* Property Law Act 1974 *and options for improving body corporate governance matters under the BCCM Act and other community titles laws. Issues papers on these matters are scheduled to be released for community consultation in the near future.*[8]

The Bill, itself, is the result of an extensive review of the *Land Sales Act 1984* which is outlined in sections 1.5 and 1.6 of this report.

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6 *Record of Proceedings (Hansard)*, 3 June 2014, page 1940.

7 Letter from the Department of Justice and Attorney-General, 7 August 2014, page 1.

8 Letter from the Department of Justice and Attorney-General, 7 August 2014, page 2.

1.5 Background

1.5.1 *Land Sales Act 1984* and other legislative regulation

The *Land Sales Act 1984* (LSA) establishes a regulatory framework to facilitate property development in Queensland while ensuring appropriate consumer protections are provided. It was introduced in response to '*…a number of significant incidents of consumer detriment in the 1960s and 1970s caused by the sale of misdescribed land*'.[9]

The LSA regulates the sale of non-strata and strata[10] land that is 'off the plan', that is, land that does not currently have a registered title. The LSA categorises such land as either a 'proposed allotment' or 'proposed lot'. Part 2 of the LSA provides for the sale of proposed allotments. Part 3 of the LSA provides for the sale of proposed lots.

An 'allotment' is a single parcel of land, other than a lot. It is a 'proposed' allotment when title to the allotment is yet to be created. Title is created through registration of a survey plan which identifies the boundaries of the proposed allotment. The survey plan is registered under the *Land Act 1994* or *Land Title Act 1994*.

A 'lot' includes apartments or units in a Community Titles Scheme (CTS). Under the LSA, a 'lot' includes a 'registered lot' and a 'proposed lot'. A 'proposed lot' becomes a 'registered lot' upon registration of a plan or, if being created in accordance with the *Body Corporate and Community Management Act 1997* (BCCMA), upon registration of a plan *and* recording of a Community Management Statement for a CTS. A 'registered lot' means a lot shown on a plan registered under the *Building Units and Group Titles Act 1980* or *South Bank Corporation Act 1989*; or included in a CTS under the BCCMA.

Further to the provisions of the LSA which apply to both proposed allotments and proposed lots, additional regulatory requirements for proposed lots (specifically seller disclosure obligations) are included in the relevant Queensland Community Titles Legislation, being the BCCMA, *Building Units and Group Titles Act 1980* and *South Bank Corporation Act 1989*.[11]

1.5.2 Review of *Land Sales Act 1984*

As stated in the Explanatory Notes, over the years, the LSA has been reviewed and amended on a piecemeal basis in response to specific marketplace changes, but has not been comprehensively reviewed in over a decade:

> *It is crucial that the Act remains current so it can continue to foster an environment in which property development in Queensland is encouraged. Accordingly, a complete review of the Act was undertaken between 2010 and 2013 to identify opportunities to modernise and improve the legislation, including by reducing unnecessary red tape and regulation. The outcomes of the review led to the amendments contained in the Bill for achieving the first and second policy objectives listed above.*[12]

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9 Department of Justice and Attorney-General, *Proposed amendments to the* Land Sales Act 1984, Policy proposals Consultation Paper, October 2012, page 1.

10 Strata title is a system for handling the legal ownership of a portion of a building or structure – that is, a 'lot'- and can be applied to different property styles, including units, townhouses, commercial offices and retail shops.

11 Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 1.

12 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 1.

The first stage of the LSA review occurred in 2010, involving the release of a Government issues discussion paper by the previous Labor Government. Consultation on the discussion paper closed on 24 December 2010. Development of the changes included in the Bill commenced in 2012, with the Department's Office of Regulatory Policy issuing a policy proposals consultation paper entitled, 'Proposed amendments to the *Land Sales Act 1984*', in October of that year (Consultation Paper). Public feedback on the Consultation Paper was sought by 30 November 2012.

1.6 Consultation on the Bill

The Bill is the result of the outcomes of the comprehensive review of the LSA undertaken between 2010 and 2013 as outlined in section 1.5 of this report. The review involved '*considerable public consultation*', including through the 2010 discussion paper - to seek feedback on the operation of the LSA; and the 2012 Consultation Paper - to seek feedback on the policy proposals being implemented through the proposed amendments in the Bill.[13]

In addition to the broad public consultation process, a Reference Committee was established for the purpose of targeted consultation:

> *The Reference Committee is comprised of property law experts from academia; representatives of the peak bodies for the property industry and legal sector; and representatives from relevant Government agencies. The Reference Committee provided expert advice and input into key stages of the review, including the development of the two consultation papers and also provided input into the Bill.*[14]

The members of the Reference Committee were:

- Property Council of Australia (Qld Division);
- Queensland Law Society;
- Urban Development Institute of Australia (Qld);
- Allens Linklaters;
- Commercial and Property Law Research Centre, Queensland University of Technology;
- Office of the Registrar of Titles, Department of Natural Resources and Mines;
- Department of State Development, Infrastructure and Planning;
- Office of the Commissioner for Body Corporate and Community Management, Department of Justice and Attorney-General;
- Strata Community Australia (Qld); and
- Spatial Industries Business Association.

According to the Explanatory Notes, Strata Community Australia (Qld) and Spatial Industries Business Association were included in the Reference Committee at the point of consultation on the draft Bill, but also provided submissions to the Consultation Paper as stakeholders.[15]

Additionally, Echo Entertainment Limited (the owners of Jupiters Limited) and CLG Properties Pty Ltd as trustee for CLG Property Trust were consulted regarding the amendments to the *Breakwater Island Casino Agreement Act 1984*.[16]

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13 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 14.
14 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 14.
15 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 14.

In its written briefing to the Committee, the Department commented on the results of the consultation process, advising: *'On the whole, the amendments in the Bill relating to the regulation of the sale of proposed strata lots and proposed allotments enjoy strong support from stakeholders'*.[17]

However, the Department identified the following proposals in the Bill as lacking the full support of some representatives of the legal industry:

- providing buyers and sellers an automatic exemption from requirements of the LSA in relation to the sale of land in small, non-community title developments of five allotments or less; and
- increasing the maximum deposit payable for the sale of proposed strata lots and proposed allotments from 10% to 20% of the purchase price, before triggering the instalment contract provisions of the *Property Law Act 1974*.[18]

Details of the Department's comments on these matters are included in the relevant areas of section 2 of this report.

Committee Comment

The Committee notes extensive consultation has occurred, including broad public consultation, and targeted consultation through the Reference Committee. In the Committee's view, the success of the consultation process, which enabled the Reference Committee to provide guidance in the Bill drafting process, is reflected in the largely supportive submissions received by the Committee.

1.7 Terminology

The Explanatory Notes state:

> *The Bill replaces the term 'allotment' in the* Land Sales Act 1984 *with the term 'lot'. This means that an unregistered reconfigured parcel of land is referred to in the Bill as a proposed lot instead of a proposed allotment and a lot (such as a unit, apartment or townhouse) in a new community titles scheme sold 'off the plan' is also referred to as a proposed lot. However, to assist in identifying the application of the legislative changes in the Bill to the two different types of proposed lots, these explanatory notes use the term 'proposed allotment' when referring to unregistered reconfigured land and the term 'proposed lot' when referring to a lot in a community titles scheme to be sold off the plan.*[19]

For the sake of consistency, this report adopts the same approach.

1.8 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

On balance, the Committee considers the Bill achieves the policy objectives set out in the Explanatory Notes. Additionally, the Committee notes strong overall support for the Bill in submissions. The issues raised in submissions are generally technical in nature, and where appropriate, the Department has supported suggested amendments to the Bill or advised that certain issues will be included in the current QUT Review.

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16 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 14.

17 Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 13.

18 Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 13.

19 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 2.

After examination of the Bill, consideration of submissions, and receipt of information provided by the Department, the Committee is satisfied the Bill should be passed.

Recommendation 1

The Committee recommends the Land Sales and Other Legislation Amendment Bill 2014 be passed.

2. Examination of the Land Sales and Other Legislation Amendment Bill 2014

This section discusses issues raised during the Committee's examination of the Bill. It is structured so as to mirror the Bill's policy objectives, as set out in the Explanatory Notes.

Please refer to section 1.7 of this report for guidance on the meaning of the terms 'proposed lots' and 'proposed allotments' as they are applied in the Bill, the Explanatory Notes and this report.

2.1 Regulation of the sale of proposed lots and proposed allotments – reducing red tape and regulation

2.1.1 Restriction on selling unregistered reconfigured land

Current law

As mentioned earlier, Part 2 of the LSA provides for the sale of proposed allotments. Section 8 of the LSA restricts the point at which a person may sell a proposed allotment: '*Such land may only be sold if there is an effective development or compliance permit for reconfiguring the land or, if there is operational work associated with reconfiguring the land, development approval for the operational works*.'[20]

Proposed changes

Clause 43 of the Bill proposes to replace Part 2 of the LSA with new provisions relating to proposed allotments.[21] As a result, the Bill removes the existing restriction and unregistered reconfigured parcels of land may be sold prior to receiving the relevant permits for developing the land: '*This will bring the regulation for the sale of proposed allotments in line with the regulation of the sale of proposed lots, for which there is no requirement for prior development approval*'.[22]

According to the Explanatory Notes, the proposed amendment reduces red tape for developers, allowing them to obtain pre-sales which contribute to securing finance and ensuring the viability of projects:

> *While there are risks that development approval may not be granted, or the actual allotment may vary significantly from the proposed allotment contracted upon, these are mitigated by the consumer protection measures contained in the Act.*
>
> *For example, the Act provides a buyer with a right to terminate the sale contract if there is a variation in the allotment that would materially prejudice the buyer, or if title for the allotment has not been given to the buyer within 18 months of* [the] *buyer entering into the contract.*[23]

Issues raised in submissions

In its submission to the Committee, the Urban Development Institute of Australia (Queensland) (UDIA) supported the Bill's removal of the restriction on selling proposed allotments, asserting that

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20 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 2.

21 In accordance with the aforementioned explanation of the Bill's proposed changes to terminology, the use of the term 'proposed allotments' in the Explanatory Notes and this report refers to 'proposed allotments' as currently contemplated by the *Land Sales Act 1984*, that is, to unregistered, reconfigured, non-Community Titles Scheme land.

22 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 2.

23 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, pages 2-3.

Queensland is currently at odds with interstate practice as regards the selling of proposed allotments:

> *Given the extensive planning controls that are now in place under the* Sustainable Planning Act 2009 *(SPA), the reality is that it is unlikely that any developer would seek to achieve pre-sales for lots without having had extensive discussion and consultation with the relevant local authority and referral agencies.*
>
> *The Institute is strongly of the view that there is no rational reason for developers in Queensland of proposed allotments to be prohibited from selling land prior to receiving an effective development permit, compliance permit or PDA development permit for reconfiguring a lot for the allotment (regardless of whether or not there are operational works for the proposed allotment).*[24]

The UDIA continued, claiming the proposed amendment would shorten the development time frame and bring significant benefits to consumers:

> *Given pre-sales could commence earlier, the timing would then run simultaneously with finalisation of development approvals and projects should be able to be completed within shorter time frames. Addressing the enormous burden both on the industry and consumers of prolonged development time frames has for a long time been a goal of the Institute.*[25]

The UDIA echoed sentiments expressed in the Explanatory Notes, that consumers are adequately protected by the LSA's existing termination provisions.

Committee Comment

The Bill proposes to align the legislative treatment of the point at which a person may sell proposed lots and proposed allotments. The Committee supports this uncontroversial amendment, viewing it as a simplification of the law and an effective red tape reduction measure. In removing the existing restriction, the Committee considers the Bill will promote growth in the construction industry and aid developers in obtaining finance approval from lenders. In the Committee's view, the proposed change is appropriately balanced by relevant consumer protection provisions.

2.1.2 Exemption from the *Land Sales Act 1984* for reconfiguring land into not more than five proposed allotments

Current law and practice

Part 2 of the LSA does not apply to the sale or purchase of a proposed allotment if the transaction is a 'large transaction'.[26] One of the criteria for this automatic exemption is for the transaction to involve '*6 or more proposed allotments*'.[27] Other criteria exist, including that the vendor and purchaser of each proposed allotment is the same person.

Section 19 of the LSA allows a buyer or seller to make an application to the chief executive for an exemption from all, or some, of Part 2 in relation to a proposed allotment relating to land that is to be subdivided into *not more than five allotments*.

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.

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24 Urban Development Institute of Australia (Queensland), Submission No. 2, page 2.

25 Urban Development Institute of Australia (Queensland), Submission No. 2, page 2.

26 Section 7A(1) of the *Land Sales Act 1984*.

27 Section 7A(2) of the *Land Sales Act 1984*.

According to the Explanatory Notes, approximately 50 applications are made to the chief executive per month for exemption from Part 2 of the LSA, and it is very rare for such applications to be refused:

> *…they are only refused if the objective criteria for the exemption are not met (for example, the proposed allotment subject to the application does not relate to land that is to be subdivided into not more than five allotments; or, if the buyer is making the application, the buyer does not have the seller's consent).*[28]

Proposed changes

Whilst retaining the automatic exemption for 'large transactions', clause 39 of the Bill proposes to remove the existing provision allowing for applications to be made for exemption for land that is to be subdivided into not more than five allotments and replace it with an automatic exemption.[29]

Accordingly, the disclosure and trust account provisions of the LSA will not apply to the sale of proposed allotments relating to land that is to be subdivided into not more than five allotments.[30]

The Explanatory Notes assert the proposed changes will *'…reduce red tape for buyers and sellers…'* of relevant proposed allotments and *'…clarify that the exemption also applies to a proposed allotment relating to an amalgamation of land into not more than five allotments (not just a subdivision), further reducing red tape for industry, consumers and the Government'*.[31]

Issues raised in Departmental consultation

As mentioned in section 1.6 of this Report, the Department determined through its 2012 consultation process, this proposed change was one of two which lacked the full support of some representatives of the legal industry.

In its initial briefing to the Committee, the Department advised, while there is basic support amongst legal sector stakeholders for an automatic exemption, some recommended: *'…it should be limited to boundary realignments and transactions between sophisticated parties (that is, dealings between government departments and/or public companies, or large scale commercial transactions)'*.[32]

Other legal sector stakeholders recommended: *'…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'*.[33] The Department responded to this recommendation, noting:

> *…if the seller of the proposed allotment has engaged a real estate agent or law practice to deal with the sale and the agent or law practice receives money towards the purchase of the proposed allotment from a buyer, the agent or law practice is required, under the* Property Agents and Motor Dealers Act 2000 *or* Legal Profession Act 1997 *respectively, to hold the money in a trust account.*[34]

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28 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 3.

29 Clause 39 of the Bill replaces existing section 5 of the *Land Sales Act 1984* with new sections 3 and 4. New section 3 inserts the proposed automatic exemption for land that is to be subdivided into not more than five allotments.

30 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 3.

31 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 3.

32 Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 14.

33 Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 14.

34 Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 14.

Issues raised in submissions

In its submission, the Property Council of Australia (PCA) supported the Bill's proposed extension of the automatic exemption.[35] Similarly, the UDIA welcomed the proposed changes, referring to its 2012 submission on the Consultation Paper which commented on '…*the red tape and wasted resources associated with applications for exemptions under section 19 of the Act*'.[36] The UDIA could not identify a single instance of a situation where an application for exemption was refused:

> *As such, we formed the view that Section 19 of the Act was a classic example of unnecessary regulatory burden that wastes both the resources and time of Industry and the Department. This ultimately increases costs to home buyers. Clearly, the fact that applications are rarely refused indicates that the Registrar deems the risk to the consumer to be insignificant.*[37]

Echoing issues raised with the Department during the 2012 consultation process, the UDIA's submission did not limit itself to commentary on the proposed changes. Whilst it noted, and supported, the existing exemption of 'large transactions' and the proposed extension of that exemption to transactions involving the reconfiguration of land into not more than five lots, it also recommended the further extension of the exemption to a third category of transaction, namely where the buyer is a corporation or where the transaction is valued at more than $2million:

> *It is the Institute's view that buyers entering into transactions of over $2m or corporations can safely be assumed to be sophisticated buyers with access to good legal advice and not in need of the protections in the Act. Further, in high value and more complex transactions, the legislative requirement to settle within 18 months can be difficult to meet in practice.*[38]

The UDIA provided further detail of its suggestion, offering the example of a larger scale residential subdivision that contains a commercial component that is to be utilised for a shopping centre or a tavern:

> *The exemption provisions may not apply because the base parcel of land from which the commercial lot is to be sold will be subdivided into more than 5 lots. Given that a shopping centre or tavern site is commonly optioned for more than 6 months in order to set up the Special Purpose Vehicle, the eventual timeframe from contract through to satisfying conditions such as relevant approvals and permits can take some time. This makes meeting the legislative requirement for settlement within 18 months extremely difficult. Parties entering contracts of this type could be safely assumed to be sophisticated parties and not in need of protections from provisions in the Act.*[39]

Whilst acknowledging in its response to submissions received by the Committee that one objective of the LSA is to protect the interests of consumers in relation to property development, the Department claimed it was arguable whether sophisticated parties do not require the same protections as non-sophisticated consumers.[40]

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35 Property Council of Australia, Submission No. 1, page 2.

36 Urban Development Institute of Australia (Queensland), Submission No. 2, page 2.

37 Urban Development Institute of Australia (Queensland), Submission No. 2, pages 2-3.

38 Urban Development Institute of Australia (Queensland), Submission No. 2, page 5; Section 10A(1) of the *Land Sales Act 1984* requires the vendor of a proposed allotment to give the purchaser the registrable instrument of transfer not later than 18 months after the purchaser enters upon the purchase of the allotment; Clause 43 of the Bill retains the essence of the existing provision in proposed new section 14(1) of the *Land Sales Act 1984.*

39 Urban Development Institute of Australia (Queensland), Submission No. 2, page 5.

40 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 8.

On the other hand, the Department noted:

> *…a national regulatory impact assessment for the National Occupational Licensing System assessed a similar exemption for sophisticated parties from holding a property agent licence and being subject to trust account requirements and seller disclosure requirements and recommended that the exemption should be for property transactions of greater than $10M, which is much higher than the $2M proposed by the UDIA. To ensure the costs and benefits of the proposal on all stakeholders can be given full consideration, it may be appropriate for the proposal to be considered as part of the review of Queensland property laws by the Queensland University Technology.*[41]

Committee Comment

The Committee supports the extension of the LSA automatic exemption for land that is to be subdivided into not more than five allotments. The proposed change is uncontroversial and will clearly reduce red tape and unnecessary regulatory burden. In the Committee's view, the amendment poses no risk to consumers. Rather, it likely will lead to monetary savings for home buyers. At the very least, it will support industry and government by removing time wasting practices which involve the expenditure of financial resources for no tangible benefit.

The Committee acknowledges the UDIA's proposal for an extension of the LSA exemption to cover a third category of transaction, involving sophisticated consumers. Given the subject matter of the proposal is external to the Bill's proposed changes, the Committee will not form a view, or comment, on the proposal.

However, the Committee notes the Department's suggestion it may be appropriate for QUT to consider the proposal as part of the QUT Review. In light of this, the Committee approached the Department on 23 July 2014 and inquired whether the proposal is to indeed be incorporated in the review. The Department acknowledged this issue relates to the seller disclosure regime in Queensland property laws and therefore falls within the scope of the QUT Review.[42] The Department advised it would bring the issue to the attention of the review team for its consideration as part of the review.[43]

The Committee is satisfied with the Department's comments in this regard. The Committee notes this review will allow for due consideration of the costs and benefits of the proposed increase in regulation for all effected stakeholders.

2.1.3 Disclosure requirements

Current law

The LSA requires the seller of a proposed allotment or proposed lot to disclose particular information about the proposed lot/allotment to a prospective buyer before the prospective buyer enters into the sale contract. For a proposed allotment, the buyer[44] must be given a 'disclosure plan' and 'disclosure statement', or an approved survey plan.[45] For a proposed lot, the buyer[46] must be given a

[41] Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 8.
[42] Letter from the Department of Justice and Attorney-General, 7 August 2014, page 2.
[43] Letter from the Department of Justice and Attorney-General, 7 August 2014, page 2.
[44] Identified in the *Land Sales Act 1984* as the 'purchaser'.
[45] Section 9(1) of the *Land Sales Act 1984*.
[46] Identified in the *Land Sales Act 1984* as the 'person (or …the person's agent)' in relation to a person who is to enter upon a purchase of a proposed lot.

statement in writing.[47] As part of this disclosure material, the LSA requires the seller to state the names and addresses of the seller and the buyer.[48]

Additionally, the LSA contains provisions[49] where its disclosure requirements are met through dual compliance with the disclosure requirements under the LSA and other legislation.[50]

General observations on proposed changes

In his Introductory Speech, the Attorney-General asserted the Bill will make finding the relevant law on off-the-plan sales significantly easier:

> *Currently, there is significant overlap in legislation dealing with off-the-plan sales, particularly when it comes to the sale of proposed lots in community titles schemes. For example, both the Land Sales Act and the* Body Corporate and Community Management Act 1997 *contain separate disclosure obligations that apply to a person selling an apartment or unit that is proposed to be included in a planned community titles scheme.*[51]

The Attorney-General continued, explaining the Bill's proposal of a more logical, streamlined approach to this issue:

> *Specifically, provisions contained in the Land Sales Act applying to the sale of lots to be included in community title developments will be removed from the Land Sales Act and relocated to the relevant community titles legislation—those acts being, the Body Corporate and Community Management Act, the* Building Units and Group Titles Act 1980 *and the* South Bank Corporation Act 1989*. As a result, the Land Sales Act itself will only deal with the sale of proposed allotments of land that will not form part of a community titles style development.*[52]

From a technical perspective, the Bill achieves the Attorney-General's streamlining goals, including in relation to the LSA's disclosure requirements, by amending the existing provisions relating to the sale of proposed allotments (included in Part 2), and removing the existing provisions relating to the sale of proposed lots (included in Part 3) and moving them (as amended) into the BCCMA, *Building Units and Group Titles Act 1980* and *South Bank Corporation Act 1989* (Community Titles Legislation).

Proposed changes

According to the Explanatory Notes, the requirement for the seller to disclose the names and addresses of the buyer and seller is '*…unnecessary red tape as this is information that would otherwise be communicated to the buyer and seller in the contract*'.[53] Accordingly, clauses 43 and 44 of the Bill remove the requirement for the seller of a proposed allotment or proposed lot to include the names and addresses of the seller and buyer in the disclosure material.[54]

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47 Section 21(1) of the *Land Sales Act 1984*.

48 Sections 9(3)(a) and (b); and 21(1)(b) of the *Land Sales Act 1984.*

49 Section 21(4)-(6) of the *Land Sales Act 1984*.

50 Namely, the requirement for a statement in writing under section 49 of the *Building Units and Group Titles Act 1980* and a first statement under section 213 of the *Body Corporate and Community Management Act 1997*.

51 *Record of Proceedings (Hansard)*, 3 June 2014, pages 1940-1941.

52 *Record of Proceedings (Hansard)*, 3 June 2014, pages 1941.

53 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 3.

54 For proposed allotments, clause 43 of the Bill removes this requirement by inserting new Part 2 into the *Land Sales Act 1984*, including new section 12, which omits the names and addresses of the buyer and seller as details required to be included in a disclosure statement; For proposed lots, clause 44 removes this requirement by removing Part 3 of the *Land Sales Act 1984.*

Additionally, clause 43 of the Bill removes the requirement for 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.[55] The Explanatory Notes outline two reasons this requirement is unnecessary:

> *First, the Bill provides that a proposed allotment can now be sold prior to receiving development approval which means the plan for reconfiguring the lot forming part of a development or compliance permit/approval would not necessarily be available. Second, the Act already requires the seller to give the buyer a 'disclosure plan' which contains information about the proposed allotment, and is more detailed and of greater benefit to the buyer than the plan for reconfiguring the lot.*[56]

Clause 43 of the Bill also clarifies that where a seller grants a prospective buyer an option to buy a proposed lot/allotment and a contract for sale is subsequently entered into by the same parties for the proposed lot/allotment, the prescribed disclosure documentation does not need to be given to the buyer twice.[57]

The Explanatory Notes criticise the current law, where a seller of a proposed lot/allotment who chooses to provide the prescribed disclosure material to a prospective buyer when they enter into an option, is: '*…potentially (and unnecessarily) burdened by having to give the disclosure material a second time if the same parties subsequently enter into a sale contract because the legislation is not clear in these circumstances*'.[58]

Accordingly, the Bill provides that if the disclosure documents are given to the buyer before the buyer enters into the option then the seller does not need to give the buyer the disclosure material again at the subsequent sale contract stage. The Explanatory Notes contend '*…this proposal will result in red tape reduction…*' and '*…consumer protections will be maintained by the continuation of the requirement for the seller to notify the buyer of any changes in the disclosure documentation before settlement occurs*'.[59]

Furthermore, the Bill requires that: *'…if the buyer who is to enter into the sale contract is not the same buyer who the option was granted to by the seller, the seller must ensure the buyer is given the disclosure material before the buyer enters into the sale contract'*.[60]

Issues raised in submissions

In its submission, the PCA conveyed its general support for *'…the move towards modernised legislation that reduces disclosure requirements and time and cost impost on a seller, while maintaining buyer protection and a streamlined sale process'*.[61]

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55 Clause 43 of the Bill removes this requirement by replacing the existing Part 2 of the *Land Sales Act 1984* (which includes section 9(2)(a)) with a new Part 2, including new section 11, which omits a copy of any plan for reconfiguring land from the requirements of a disclosure plan.

56 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 4.

57 Clause 43 of the Bill inserts new section 9(4); Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 12 inserts new section 212B(4) into the *Body Corporate and Community Management Act 1997*; Clause 28 inserts new section 48G(4) into the *Building Units and Group Titles Act 1980*; Clause 69 inserts new section 97E(4) into the *South Bank Corporation Act 1989.*

58 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 4.

59 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 4.

60 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 4; Clause 43 of the Bill inserts new section 9(5); Clause 44 of the Bill removes Part 3 of the *Land Sales Act 1984*; Clause 12 inserts new section 212B(5) into the *Body Corporate and Community Management Act 1997*; Clause 28 inserts new section 48G(5) into the *Building Units and Group Titles Act 1980*; Clause 69 inserts new section 97E(5) into the *South Bank Corporation Act 1989.*

It noted its previous and continuing support for the alignment of disclosure requirements (with respect to signatures, dates and timeframes for giving notices) between the LSA and the provisions within the BCCMA.[62] Accordingly, the PCA conveyed its support for the transfer of disclosure requirements relating to the sale of strata lots from the LSA to the BCCMA.[63]

Similar to the PCA, the UDIA supported the Bill's alignment of disclosure requirements between proposed allotments and proposed lots and identified the removal of proposed lots from the LSA as *'…a beneficial simplification'*.[64]

In noting the integrity of contracts as essential to land transactions and markets, the UDIA commented:

> *The efficiency and efficacy of the processes for the formation of binding contracts in respect of land has a significant impact on the viability of transactions and investment in development of land. Ultimately the efficiency of these regulations impacts on the affordability of residential product by adding to the cost and risks.*[65]

By way of example, the UDIA strongly supported the Bill's proposed removal of the requirement for a seller to provide further notice to update buyer and seller names and addresses:

> *The removal of such requirements will reduce transaction costs and lower risks associated with contract enforceability. It is unacceptable that contract validity can currently be determined by matters that add nothing in terms of consumer protection.*[66]

Issues raised in submissions - options

In addition to the consolidation of disclosure requirements, the PCA supported the proposed amendments to the BCCMA to clarify that a seller is not required to re-issue disclosure material when an option is exercised by a buyer.[67]

Continuing the support for the Bill, the Bar Association of Queensland (BAQ) drew attention to proposed Part 2 Division 2 'Disclosure requirements', consisting of proposed new sections 9 to 13 of the LSA, claiming the new division will '*…avoid unnecessary duplication where a sale is preceded by exercise of option, which also ensures consistency with the amended disclosure requirements under the* Body Corporate and Community Management Act 1997'.[68]

However, the Queensland Law Society (QLS) identified a drafting issue with proposed section 212B of the BCCMA and its corresponding provision in new section 9 of the LSA. It expressed concern that the drafting creates a loophole, which enables a seller to avoid the disclosure requirements to a prospective buyer:

> *It is generally thought by practitioners, although not entirely settled by the courts, that a put and call option is a contract of sale which is conditional upon exercise by one party. This would mean a disclosure statement must be given before an option, as well as a contract, is entered into.*

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61 Property Council of Australia, Submission No. 1, page 1.
62 Property Council of Australia, Submission No. 1, page 2.
63 Property Council of Australia, Submission No. 1, page 2.
64 Urban Development Institute of Australia (Queensland), Submission No. 2, page 3.
65 Urban Development Institute of Australia (Queensland), Submission No. 2, page 3.
66 Urban Development Institute of Australia (Queensland), Submission No. 2, page 4.
67 Property Council of Australia, Submission No. 1, page 2.
68 Bar Association of Queensland, Submission No. 5, page 2.

> *Proposed s212B makes it clear an option is not a contract because it says a seller may give a disclosure statement before the option is entered into.*
>
> *An option may be a call option (which means the buyer can exercise the option to proceed with a contract) or a put option (which means the seller can exercise the option to require the buyer to proceed with the contract) or a put and call option.*
>
> *The loophole created by s212B is that it enables a seller to enter into a put and call option without complying with s213. It can then give the buyer the required disclosure statement and plan. This is a first statement for the purposes of the BCCMA, not a further statement, so the grantee would have no rights if (for example) the levies were very high or the by-laws or proposed service contracts were onerous or otherwise adversely impacted on the buyer.*
>
> *Having circumvented s213, the seller could then exercise the put option and compel the buyer to complete. Clearly this is not what was intended.*[69]

In light of these observations, the QLS proposed the relevant sections should model the treatment of options in the *Property Occupations Act 2014*, and include drafting to the effect that:

> *a) the seller must comply with s213 before entering into the option to purchase the proposed lot, and*
>
> *b) the seller does not need to comply with s213 before entering into a contract (a later contract) formed because of the exercise of an option granted under an earlier contract, if the parties to the later contract are the same as the parties to the earlier contract.*[70]

In light of the QLS assertion that an option to purchase is regarded by practitioners as a sale contract, the Department clarified it is not intended that section 212B of the BCCMA effectively provide that the seller disclosure requirement is optional:

> *Accordingly, the Department supports the QLS's suggestion to amend the provision in line with relevant sections of the* Property Occupations Act 2014 *to provide that a seller must comply with the seller disclosure requirements before entering into the option to purchase and the seller does not need to comply with the seller disclosure requirements again before entering into a later contract arising from the option to purchase (if the parties to the later contract are the same as the parties to the option to purchase).*[71]

Committee Comment

The Committee supports the Bill's streamlining of the existing LSA disclosure provisions. In the Committee's view, the amendments, including those moving provisions from the LSA into the Community Titles Legislation, succeed in simplifying and clarifying the legislation.

Removing the requirement for sellers to include the names and addresses of the contractual parties in the disclosure material is a useful measure which will streamline existing processes and remove duplication and red tape. The Committee is similarly in favour of the Bill's removal of the requirement the seller of a proposed allotment provide a buyer with a copy of any plan for reconfiguring land in the currently mandated instances. Again, it is considered the Bill removes unnecessary duplication.

Clarifying disclosure requirements in relation to relevant option arrangements will also remove duplication, result in less expense, and reduce the time spent on disclosure compliance. The

[69] Queensland Law Society, Submission No. 3, page 2.
[70] Queensland Law Society, Submission No. 3, page 2.
[71] Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 6.

Committee does not think the rights of buyers will be compromised by the proposed changes and is satisfied with the relevant consumer protections.

The Committee acknowledges the QLS's assertion regarding a drafting issue with proposed section 212B of the BCCMA and its corresponding new provision in the LSA. It notes the Department's support for the QLS's suggested amendment to align these parts of the Bill with the relevant sections of the *Property Occupations Act 2014*. The Committee is satisfied with the Department's comments in this regard.

2.1.4 Allowing buyer and seller to authorise other person to act on their behalf

Current law

The LSA and Community Titles Legislation provide for an agent of a buyer or seller of a proposed lot/allotment to act on the buyer's or seller's behalf for particular prescribed matters.[72]

The Explanatory Notes claim the current drafting of the relevant law *'…makes it unclear as to whether a buyer or seller could also authorise a person to act on their behalf for other matters relating to the sale or purchase of a proposed lot/allotment'*, which *'…potentially, and unnecessarily, restricts buyers and sellers'*.[73]

Proposed changes

The Bill clarifies that a seller or buyer of a proposed lot/allotment 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 LSA or Community Titles Legislation for the sale or purchase of the proposed lot/allotment.[74]

Given the Community Titles Legislation deals with the sale of *existing* lots and is not limited to proposed lots, the Explanatory Notes observe the proposed provision is also intended to apply to the sale of existing lots.[75]

Issues raised in submissions

The PCA strongly supported the ability for a buyer and seller to authorise a third party to act on their behalf with respect to signatures, dates and timeframes for giving notices.[76]

Committee Comment

The Committee considers the proposed amendments provide clarity where there is existing ambiguity. It supports this uncontroversial aspect of the Bill.

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72 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 4.

73 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 4.

74 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 4; Clause 43 of the Bill inserts new section 7 into the *Land Sales Act 1984*; Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 9 inserts new section 205D into the *Body Corporate and Community Management Act 1997*; Clause 28 inserts new section 48F into the *Building Units and Group Titles Act 1980*; Clause 69 inserts new section 97D into the *South Bank Corporation Act 1989.*

75 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 4.

76 Property Council of Australia, Submission No. 1, page 2.

2.1.5 Requirement for regulation to prescribe extension to timeframe for giving of registrable transfer

Current law

Under the LSA, if a seller of a proposed lot fails to provide the buyer with a registrable instrument of transfer (registrable transfer) within three and a half years of the buyer entering into the contract, the buyer is afforded termination rights.[77]

Additionally, the LSA allows the making of a regulation to prescribe an extension to this three and half year period for up to a further two years, extending the time for settlement of the transaction to a maximum of five and half years.[78] According, to the Explanatory Notes: *'This typically requires the developer to make a written application to the responsible Government department to seek an amendment to the Land Sales Regulation 2000 to prescribe the extension*'.[79]

Proposed changes

The Bill removes the requirement for a regulation to be made to extend the time for giving the registrable transfer to the buyer of a proposed lot, and provides that sellers and buyers of proposed lots will be able to specify the time for giving the registrable transfer in the contract.[80]

The Explanatory Notes observe:

> *The time specified in the contract can be up to a maximum of five and a half years after the buyer enters into the contract. Where no time is specified in the contract, a default period of three and a half years will apply in relation to the seller giving the buyer the registrable transfer. A termination right will still accrue for the buyer if the registrable transfer is not supplied to the buyer within the required time.*[81]

Issues raised in submissions

The BAQ supported the proposed amendment of the BCCMA, commenting: *'The new approach ideally permits delivery of the transfer having regard to the parties' particular circumstances'*.[82]

The QLS referred specifically to the definition of 'sunset date' proposed to be inserted into the BCCMA, claiming it:

> *…arguably allows the sunset date to be a fixed date capable of being extended by the seller for delay events beyond its control (up to 5½ years). This creates uncertainty for buyers and the committee suggest the definition should be amended to make it clear that the sunset date must be a fixed date not capable of unilateral extension by a party.*[83]

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77 Section 27 of the *Land Sales Act 1984.*

78 Section 28 of the *Land Sales Act 1984.*

79 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 5.

80 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 19; Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 17 of the Bill inserts new section 217B into the *Body Corporate and Community Management Act 1997*; Clause 30 of the Bill inserts new section 49B in the *Building Units and Group Titles Act 1980*; Clause 69 of the Bill inserts new section 97J into the *South Bank Corporation Act 1989.*

81 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 5.

82 Bar Association of Queensland, Submission No. 5, page 2.

83 Queensland Law Society, Submission No. 3, page 4.

The Department responded favourably to this suggestion: *'The Department supports the QLS's recommendation to amend the Bill to make it clear that the sunset date is a fixed date not capable of unilateral extension by a party to the contract'*.[84]

In light of the Department's support of various submitter suggestions for improvement or refinement of the Bill, including this suggestion of the QLS, the Committee wrote to the Department on 23 July 2014 seeking details on how and when the accepted suggestions are proposed to be implemented. The Department advised:

> *…an option for progressing these particular proposals is for amendments to be made during the Parliament's consideration in detail of the Bill. Of course, whether Government amendments are moved to the Bill during debate is principally a matter for the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice to decide. DJAG anticipates the Attorney-General will give consideration to these issues, along with any recommendations the Committee may wish to make, before deciding whether to move amendments to the Bill.*[85]

Committee Comment

The Committee considers it appropriate that, within limits, parties should possess the freedom to negotiate the terms of contractual arrangements as they see fit. The proposed amendments reflect this notion, providing sellers and buyers of proposed lots the freedom to specify the time for giving the registrable transfer in the contract. Sensibly, this freedom is restricted by a prescribed sunset date. The Committee notes the Bill also prescribes a sunset date in instances where the parties have not included such a date in the contract.

The Committee supports the suggestion made by the QLS that the drafting of the Bill could be amended to enhance certainty and avoid a potential scenario where a sunset date is capable of unilateral extension by a party. It notes the Department's acceptance of the suggestion and is satisfied with the Department's subsequent advice relating to potential implementation of the suggestion.

2.1.6 Restriction on amount of deposit for purchase of unregistered reconfigured land

Current law

Section 11A of the LSA provides for a buyer to terminate a contract for the sale of a proposed allotment if the deposit under the contract is more than 10% of the purchase price. Although, there is no such limit under the LSA for the sale of proposed lots, the *Property Law Act 1974* (PLA) regulates the maximum amount of deposit payable in respect of the sale of land before specific instalment contract provisions apply.[86] Currently, this threshold mirrors that of the LSA, being 10% of the purchase price.[87]

The PLA 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'*.[88] The

[84] Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 12.

[85] Letter from the Department of Justice and Attorney-General, 7 August 2014, page 2.

[86] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 5.

[87] Section 71 of the *Property Law Act 1974* defines 'deposit' for the purposes of 'Division 4 Instalment sales of land' in 'Part 6 Deeds covenants, instruments and contracts'.

[88] Section 71 of the *Property Law Act 1974* defines 'instalment contract' for the purposes of 'Division 4 Instalment sales of land' in 'Part 6 Deeds covenants, instruments and contracts'.

instalment contract provisions of the PLA include a restriction on a vendor's right to rescind an instalment contract and rights of both purchaser and vendor to require conveyance of land under an instalment contract.[89]

Proposed changes

The Bill proposes to remove the maximum deposit restriction in the LSA for the sale of proposed allotments.[90] The Explanatory Notes claim this change '*…provides consistency in the regulation of deposits payable for proposed allotments and proposed lots*'.[91]

Additionally, clause 61 of the Bill amends the PLA by increasing the maximum deposit allowable for the sale of proposed lots and proposed allotments, from 10% to 20% of the purchase price, before the existing instalment contract provisions apply.[92] These amendments are expected to: '*…significantly reduce red tape for property developers associated with instalment contracts, and facilitate improved financial viability for large off the plan developments*'.[93]

The Explanatory Notes provide further comment:

> *Importantly, buyers will continue to be protected by the existing consumer protections, including the seller disclosure regime, the requirement for any amounts paid towards the purchase of a proposed lot/allotment to be held in trust, and buyer termination rights if the seller does not settle within the prescribed timeframes. In addition, the* Agents Financial Administration Act 2014 *and* Legal Profession Act 2007 *will regulate how agents and practitioners may deal with amounts held in trust that are in dispute.*[94]

Issues raised in Departmental consultation

As mentioned in section 1.6 of this report, the Department determined through its 2012 consultation process, the proposed increase of the maximum deposit trigger for an instalment contract under the PLA was one of two proposed changes which lacked the full support of some representatives of the legal industry.

In its initial briefing, the Department advised the Committee some representatives of the legal sector did not support the proposal to increase the deposit cap for the sale of proposed allotments:

> *They consider the increased deposit cap should only apply to proposed strata lots. Furthermore, some legal sector representatives also consider that the increased deposit cap should be further limited so that it only applies to proposed strata lots in large high-rise community titles schemes. Their rationale for recommending restricting the increased deposit cap to proposed strata lots is that the financial risks to the seller associated with these types of developments are not typically present for smaller community titles schemes or flat land developments and therefore the existing 10 per cent deposit cap is sufficient.*[95]

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89 Sections 72 and 75 of the *Property Law Act 1974*.

90 Clause 43 of the Bill removes the maximum deposit restriction by inserting new Part 2 into the *Land Sales Act 1984*, which omits the restriction.

91 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 5.

92 Clause 61 of the Bill inserts new section 68A into the *Property Law Act 1978*; Clause 62 amends relevant definitions in section 71 of the *Property Law Act 1978.*

93 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 5.

94 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 5.

95 Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 14.

The Department continued, noting: *'On the other hand, the stakeholders representing the property industry support a consistent deposit cap for all types of 'off the plan' developments, whether they are in a community titles scheme or not and regardless of the size of the development'*.[96]

Issues raised in submissions

In its submission, the PCA supported the proposed changes, categorising the prevalence of off-the-plan contracts becoming instalment contracts when the deposit exceeds 10 per cent of the total price as a '*…ongoing concern for the property industry*'.[97] It claimed instalment contracts are particularly problematic for developers, as they give rise to a range of statutory protections for buyers, including:

- *Prohibiting the developer from mortgaging the property without the buyer's consent; section 73 of the* Property Law Act 1974.
- *Allowing a buyer to lodge a non-lapsing caveat over the property; section 74 of the* Property Law Act 1974. *This can complicate the development process, as developers may need to use the land as security to fund the project*.[98]

Accordingly, the PCA strongly supported the increase in the level of deposit allowable for the sale of proposed lots, along with the 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*'.[99]

The UDIA strongly supported the raising of the maximum deposit level for proposed allotments to 20%, without triggering onerous instalment contract provisions, identifying the proposed change as '*…an important means of de-risking projects, making them more attractive to financiers and providing consumers with an opportunity to commit to a development at an early stage and provide the funding for it on a staged basis*'.[100]

The PCA referred to the Global Financial Crisis, commenting that since the crisis financiers have adopted a more conservative approach to lending:

> *…it is a widely held view that this more conservative approach to lending will remain for the foreseeable future. Allowing for larger deposits will provide added comfort to financiers.*[101]

It continued its discussion of the financial crisis, observing property values can fall to such a degree that buyers, especially overseas investors, will attempt to walk away from a deposit of 10%:

> *This is particularly so for overseas investors due to the costs and difficulties in enforcing a sale. Overseas investors can represent a significant proportion of sales in a development, however some financiers disqualify (or at least 'discount') sales to foreign investors when making lending decisions. Higher deposits will increase the prospect that foreign sales will be treated as a presale by financiers thereby increasing the prospect that a project can proceed.*[102]

96 Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 14.
97 Property Council of Australia, Submission No. 1, page 1.
98 Property Council of Australia, Submission No. 1, page 1.
99 Property Council of Australia, Submission No. 1, page 1.
100 Urban Development Institute of Australia (Queensland), Submission No. 2, page 3.
101 Urban Development Institute of Australia (Queensland), Submission No. 2, page 3.
102 Urban Development Institute of Australia (Queensland), Submission No. 2, page 3.

In addition to supporting the proposed amendments, the PCA agitated for a review and reform of the instalment contract provisions of the PLA as part of the QUT Review.[103] In response, the Department confirmed the QUT Review will include a comprehensive review of the PLA, which is understood will examine the PLA's instalment contract provisions.[104]

The QLS noted its previously conveyed support for allowing 20% deposits for large high rise developments, in light of the inadequacy of 10% deposits, in many instances, to compensate developers where buyers failed to settle.[105] However, it also referenced its previous 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. Whilst acknowledging that market forces will probably prevent sellers from demanding such high deposits, the Committee [the QLS Property Development and Law Committee] did not think there was the same level of risk to developers in small apartment and housing estate developments.*[106]

In conclusion, the QLS understood this to be something that could be addressed by further amendment if it proves to have this effect in practice.[107]

The BAQ expressed concern about the Bill's proposed changes, where a significant 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%. 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).*[108]

It submitted that changes to the deposit maximum and instalment contract provisions ought to be reconsidered.[109]

In its response to submissions, the Department argued:

> *The proposed increase in the deposit cap for off the plan sales is not a mandatory increase. Buyers and sellers would be able to continue to negotiate the level of deposit. The increase in the deposit cap provides flexibility for developers to request higher deposits for particular lots of developments to improve the financial viability of the development.*[110]

Committee Comment

The Committee agrees with the Government's assertion that removing the maximum deposit restriction in the LSA for the sale of proposed allotments, will provide consistency in the regulation of deposits payable for proposed allotments and proposed lots.

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103 Urban Development Institute of Australia (Queensland), Submission No. 2, page 3.
104 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 1.
105 Queensland Law Society, Submission No. 3, page 1.
106 Queensland Law Society, Submission No. 3, pages 1-2.
107 Queensland Law Society, Submission No. 3, page 2.
108 Bar Association of Queensland, Submission No. 5, page 4.
109 Bar Association of Queensland, Submission No. 5, page 4.
110 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 11.

It acknowledges the second aspect of the Bill's proposed amendments in this area as one of the more controversial aspects of the Bill. This being, the proposed amendment of the PLA to increase the maximum deposit allowable for the sale of proposed lots and proposed allotments, from 10 per cent to 20 per cent of the purchase price, before the existing instalment contract provisions apply.

Despite conceding a wider range of views exists with respect to this proposal, the Committee notes considerable support from the property industry and only one submission, by the BAQ, calling for the amendment to be reconsidered. Whilst outlining certain specific concerns, the QLS has expressed support for aspects of the proposal and is willing to see how the amendments work in practice.

In the Committee's opinion, the increase in the maximum deposit payable before the triggering of the PLA's instalment contract provisions, will promote growth and certainty in the property industry. The Committee is persuaded by claims financers will elicit greater comfort and buyers, including foreign investors, will less likely forfeit deposits in order to shed themselves of contractual obligations to settle transactions.

The Committee notes the amendments are expected to significantly reduce red tape for property developers, and buyers will retain existing consumer protections.

In consideration of the BAQ's concerns, the Committee notes a sale contract is a negotiated arrangement, where a party may elect not to proceed to contract stage in circumstances where it is unhappy with the proposed terms of the contract, including the quantum of the deposit.

On balance, the Committee expects the proposed amendments to stimulate economic growth and development, without unduly infringing on the existing rights of consumers. It, therefore, supports the proposals included in the Bill.

2.1.7 Removal of particular offences

Current law

The LSA contains offences for a contravention of the seller disclosure requirements and requirement for a seller to give a registrable transfer to a buyer: '*The offences are rarely prosecuted and are considered unnecessary given that for these particular requirements there are also associated contract termination rights for buyers where the seller does not comply with the requirements*'.[111]

Proposed changes

Accordingly, the Bill removes the offences, but retains the termination rights for buyers. The Department summarised the offences omitted from the LSA, which relate to proposed allotments:

- Section 9(1) – 'Identification of land';
- Section 10(2) and (3) – 'Vendor must tell purchaser about significant variations between disclosure plan and later plans'; and
- Section 10A(5) – 'Purchaser must be given registrable instrument of transfer and other documents'.[112]

[111] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 6.

[112] Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 7; Clause 43 of the Bill removes these offences by inserting new Part 2 into the *Land Sales Act 1984*, which omits the offences.

Additionally, section 21(1) of the LSA includes an offence in relation to giving a disclosure statement to a buyer of a proposed lot: '*Consistent with the removal of the offences relating to disclosure for proposed allotments, the offence relating to disclosure for proposed strata lots has not been transferred to the relevant community titles legislation*'.[113]

Committee Comment

Given the rare nature of prosecutions under the omitted offences and the rights of termination afforded by existing consumer protection provisions, the Committee is satisfied the uncontroversial proposed amendments are appropriate and will simplify the legislation.

2.1.8 Moving Part 3 of the *Land Title Act 1984* into the relevant Community Titles Scheme legislation

As foreshadowed, Part 3 of the LSA deals with the sale of proposed lots in a CTS, which are in turn, by and large, regulated by the Community Titles Legislation. 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 Community Titles Legislation.

The Explanatory Notes state: *'To remove unnecessary duplication and provide a more streamlined approach to the regulation of the sale of proposed lots, the Bill combines the separate disclosure regimes in the relevant community titles scheme legislation'*.[114] Specifically, the Bill removes Part 3 from the LSA and replicates it (with necessary amendments) in the Community Titles Legislation.

Further, the disclosure requirements in the *Building Units and Group Titles Act 1980* and the *South Bank Corporation Act 1989* will be amended by the Bill to align, as much as possible, with the more contemporary disclosure regime in the BCCMA: '*This will modernise the seller disclosure frameworks in the Building Units and Group Titles Act and the South Bank Corporation Act and provide for greater consistency across the seller disclosure frameworks in the three community titles laws*'.[115]

Committee Comment

In the Committee's view, the proposed amendments are an effective way to simplify and streamline the existing legislative disclosure provisions. Accordingly, the Committee supports the proposed changes.

2.2 Regulation of the sale of proposed lots and proposed allotments – modernising and improving the legislation

2.2.1 Modernising terminology

The Bill modernises the terminology used throughout the LSA to align it with terminology used by the community, industry and in other Queensland property laws. By way of example, the Explanatory Notes advise the terms 'vendor' and 'purchaser' are being replaced with 'seller' and 'buyer' respectively, and the phrase 'enters upon a purchase' is being replaced with 'enters into a contract'.[116] See also, section 1.7 of this report.

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113 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 8.

114 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 6.

115 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 6.

116 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 6.

Issues raised in submissions

The PCA submitted *'…the modernisation and clarification of terminology throughout the Bill will assure greater comprehension by all parties'*.[117] In the BAQ's view, the proposed replacement of the term 'allotment' in the LSA with the term 'lot' will '*…modernise and remove an unnecessary distinction in the terms*'.[118] Similarly, it supported the '*…modernisation of other terminology to plain and ordinary terms commonly used in the community*…' citing, as examples, the same terms detailed by the Explanatory Notes and set out above.[119]

Committee Comment

The Committee supports the Bill's proposed modernisation and clarification of terminology. In its view, the changes will aid comprehension and interpretation of legislative provisions.

2.2.2 Clarifying and improving the operation of the legislation, including boosting consumer protection

The Bill makes a number of amendments to clarify and improve the trust account provisions and the seller disclosure framework, including the associated buyers' termination rights. These amendments are detailed below, in the same order as they appear in the Explanatory Notes.

Requirement for information about registrable transfer for proposed strata lots

Current law

Section 27 of the LSA places time restrictions on the seller of a proposed lot to give the prospective buyer a registrable transfer, and provides the buyer may terminate the contract if the seller does not meet this timeframe.[120] According to the Explanatory Notes, information relating to when the seller is required to give a person intending to buy a proposed lot a registrable transfer '*…is not normally required to be disclosed to the seller in the disclosure material given to a prospective buyer before they enter into a sale contract for the proposed lot*'.[121]

Proposed changes

The Bill provides for the proposed buyer to be informed about this information upfront. It amends the Community Titles Legislation to require the seller to state the period within which the seller must give the buyer a registrable transfer for the proposed lot in favour of the buyer, by including that information in the disclosure statement.[122]

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117 Property Council of Australia, Submission No. 1, page 2.

118 Bar Association of Queensland, Submission No. 5, page 2.

119 Bar Association of Queensland, Submission No. 5, page 2.

120 Namely, a timeframe of 3½ years after the day the instrument (such as a sale contract) was made, other than as a result of the purchaser's default.

121 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 7; It appears the Explanatory Notes contain an error and that 'disclosed *to* the seller' should read 'disclosed *by* the seller'.

122 Clause 44 of the Bill removes Part 3 of the *Land Sales Act 1984*; Clause 13(2) of the Bill amends section 213(2) of the *Body Corporate and Community Management Act 1997* to insert new section 213(2)(aa)(iii); Clause 29(3) of the Bill amends section 49(2)(b) of the *Building Units and Group Titles Act 1980* (rather than 'seller' and 'buyer', it uses the terms 'original proprietor' and 'purchaser'); Clause 69 of the Bill inserts new section 97F(2)(d) into the *South Bank Corporation Act 1989.*

This requirement is already included in the disclosure requirements of the LSA for the sale of proposed allotments.[123]

Committee Comment

The Committee considers these proposed amendments enhance consumer protection by ensuring important information is disclosed to a proposed buyer of a proposed lot at the beginning of the transaction. It appears to the Committee these changes are to be implemented consistently throughout the Community Titles Legislation. The Committee supports the proposed amendments.

Details for disclosure requirements for proposed strata lots

Current law

Section 21(1)(a) of the LSA requires the seller to clearly identify the proposed lot in the disclosure material, but does not describe exactly what is meant by 'identify'. According, to the Explanatory Notes: '*This can result in inconsistent and inadequate information being disclosed to buyers about proposed lots*'.[124]

Proposed changes

The Bill prescribes exactly what information must be disclosed by the seller in identifying the proposed lot: '*This information must be given to the buyer in a disclosure plan, which forms part of the disclosure statement*'.[125]

The Explanatory Notes present an example of the proposed disclosure requirements by listing the details required to be disclosed by the seller for a proposed lot that is to be a proposed building format lot:

- *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 lot is proposed 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*
- *identification of the proposed orientation of the lot by reference to north*.[126]

[123] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 7.

[124] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 7.

[125] Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 8; Clause 44 of the Bill removes Part 3 of the *Land Sales Act 1984*; Clause 13(2) of the Bill amends section 213(2) of the *Body Corporate and Community Management Act 1997* to insert new section 213(2)(aa)(i); Clause 14 of the Bill inserts new section 213AA into the *Body Corporate and Community Management Act 1997*; Clause 30 of the Bill replaces section 49A of the *Building Units and Group Titles Act 1980*; Clause 69 of the Bill inserts new sections 97F(2)(a) and 97G into the *South Bank Corporation Act 1989.*

[126] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 7.

The LSA already requires the seller of a proposed allotment to give the buyer a disclosure plan which describes the proposed allotment: '*For example, the disclosure plan for a proposed allotment must include a description of the dimensions of the proposed allotment and contour maps detailing the contour levels of the proposed allotment before and after proposed operational works*'.[127]

Committee Comment

In the Committee's view, these proposed amendments enhance consumer protection by ensuring important information is disclosed to a proposed buyer of a proposed lot at the beginning of the transaction. It appears to the Committee these changes are to be implemented consistently throughout the Community Titles Legislation. Therefore, the Committee supports the amendments.

Improving information disclosed about proposed operational works for proposed allotments and proposed strata lots

Current law

Section 9(2)(c)(i) of the LSA requires the seller to disclose to the buyer the contour levels of proposed allotments as they exist before operational works are undertaken.

Proposed changes

According to the Explanatory Notes, the Bill will ensure only relevant information will be required to be disclosed by a seller of a proposed allotment or proposed lot to a buyer where operational earthworks are to be carried out:

> *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 seller is also required to provide contour maps of the lot showing what the surface contours will be at the completion of the operational work.*
>
> *This means that instead of providing the buyer with unnecessary information about the land before any operational works occur, the buyer will be better informed of relevant information in advance about the proposed final product, including what is intended to happen as part of the operational works.*[128]

Committee Comment

In the Committee's opinion, these proposed amendments remove unnecessary red tape by ensuring only relevant information will be required to be disclosed by a seller of a proposed allotment or proposed lot where operational earthworks are to be undertaken. The Committee agrees with the government's claim the buyer will be better informed of relevant information in advance about the

[127] Letter from the Department of Justice and Attorney-General, Attachment, 13 June 2014, page 9.

[128] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 7; Clause 43 of the Bill inserts new section 11 into the *Land Sales Act 1984* (which includes the term 'relevant lot particulars', specifing required details where there is operational work for the lot); Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 14 of the Bill inserts new section 213AA into the *Body Corporate and Community Management Act 1997* (which includes the term 'standard format lot particulars', specifing required details where there is operational work for the lot intended to be a standard format lot); Clause 30 of the Bill replaces section 49A of the *Building Units and Group Titles Act 1980* (with the new section including the term 'group titles particulars', specifing required details where there is operational work for the proposed lot intended to be shown on a group titles plan).

proposed final product, including what is intended to happen as part of the operational works. Accordingly, the Committee supports the proposed changes.

Disclosure plan to be prepared by registered cadastral surveyor

Proposed changes

The Bill clarifies the disclosure plan, which identifies the proposed allotment or proposed lot, and must be prepared by a registered cadastral surveyor[129] 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% of disclosure plans are currently prepared by registered cadastral surveyors. Accordingly, for the majority of the property development sector, this new requirement in the legislation will not, in practice, be an increase in regulation.*[130]

Committee Comment

The Committee considers these proposed amendments enhance consumer protection by ensuring the accuracy of important information required to be disclosed to a proposed buyer of a proposed allotment or proposed lot at the beginning of the transaction.

It appears to the Committee these changes are to be implemented consistently throughout the LSA and Community Titles Legislation.

Further, the Committee notes the changes are not expected to increase compliance requirements for the majority of the property development and surveying industries. In that regard, the Committee views the amendments as merely formalising existing industry practice. For these reasons, the Committee supports the proposed amendments.

Plain English rectification of inaccuracies in disclosure plan

Current law

Section 2.1 of this report detailed disclosure requirements under the sub-heading, 'Disclosure requirements'. Further to these initial disclosure requirements, the LSA also provides for further disclosure.

Accordingly, the LSA includes provisions to accommodate instances were disclosure material is incorrect or inaccurate, or becomes that way after it is provided to the buyer. For a proposed allotment, the LSA[131] triggers a variation process if:

1. the buyer is yet to receive a registrable transfer for the allotment; and

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129 Cadastral Surveyor means a surveyor who holds a registration endorsement for carrying out cadastral surveys, *Surveyors Act 2003*, Schedule 3, page 90.

130 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 8; Clause 43 of the Bill inserts new section 11(2) into the *Land Sales Act 1984*; Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 14 of the Bill inserts new section 213AA(2) into the *Body Corporate and Community Management Act 1997*; Clause 30 of the Bill replaces section 49A of the *Building Units and Group Titles Act 1980* with the new section, including section 49A(2); Clause 69 of the Bill inserts new section 97G(2) into the *South Bank Corporation Act 1989.*

131 Section 10 of the *Land Sales Act 1984*.

2. there is a 'significant variation' (not attributable to the buyer) between the details contained in the disclosure plan and:
   a. an approved survey plan[132] the seller proposes to register;[133] or
   b. an 'as constructed plan'.[134]

Proposed changes

Clause 43 of the Bill proposes to insert new section 13 'Variation of disclosure plan by further statement' into the LSA. The section applies where the sale contract for a proposed allotment is yet to settle, and the seller becomes aware information in the disclosure plan was inaccurate as at the contract date or would not be accurate if now given as a disclosure plan.[135] In this case, the seller must provide the further statement rectifying the disclosure plan and explaining in plain English the inaccuracy being corrected in the further statement. [136]

The Explanatory Notes advise: *'This amendment is necessary because of the technical nature of the information contained in a disclosure plan, which means a buyer may not be able to identify the inaccuracy being rectified or understand its impact on the proposed allotment'*.[137]

Committee Comment

In the Committee's view, the proposed amendments enhance consumer protection by ensuring the accuracy of important information required to be disclosed to a proposed buyer of a proposed allotment.

The Committee anticipates the change will increase the usefulness of the disclosure process, particularly given the technical nature of the information contained in a disclosure plan and the proposed requirement that plain English be used when the seller corrects inaccuracies through the provision of the further statement.

As a result, the Committee supports the proposed amendments.[138]

Protections for security instruments used for deposits

Proposed changes

The Bill 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 proposed lot.[139] The Bill

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132 That is, approved by the local government under the *Sustainable Planning Act 2009* or by the Minister of Economic Development Queensland (a corporation sole) under the *Economic Development Act 2012*.

133 That is, register under the *Land Act 1994* or *Land Title Act 1994*.

134 Identified in section 10(1)(b)(ii) of the *Land Sales Act 1984* as a plan mentioned in section 10A(3)(b).

135 Proposed section 13(1) of the *Land Sales Act 1984*.

136 Proposed section 13(2) of the *Land Sales Act 1984*.

137 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 8.

138 This section of the report (2.2) also addresses other aspects of the proposed amendment to further disclosure requirements, as well as other disclosure related amendments. In order to mirror the layout of the Explanatory Notes, this material is presented later in this section, under the sub-headings 'Alignment of further disclosure statement and disclosure plan timeframes' and 'Alignment of buyer termination rights relating to the sale of proposed lots and proposed allotments'.

139 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 8.

prescribes how a law practice, real estate agent or the public trustee, who receives the instrument on behalf of the seller (a 'registered entity'), must deal with the security instrument.[140]

The proposed provisions of the LSA 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 which held the instrument in its trust account, in accordance with the provisions set out in the Bill.

Issues raised in submissions

In its submission, the QLS commented on the proposed changes, as they apply to the BCCMA, referring to proposed sections 218A (dealing with amounts paid as deposit funds for the sale of a proposed lot), 218B (prescribing that amounts paid under section 218A are to be held in a prescribed trust account) and 218E (dealing with the situation where a recognised entity receives an instrument of security, instead of a deposit):

> *The Committee [the QLS Property Development and Law Committee] is concerned that the process in s218A and s218B would not apply to instruments of security and that s218E would not prohibit a seller from holding a bank guarantee and cashing it at will. Clearly this is not what was intended.*
>
> *The Committee proposes that s218E be amended to provide an obligation for a person who receives an instrument from the buyer as security for the payment of an amount under a contract for sale of a proposed lot must provide it directly to a recognised entity.*
>
> *The Committee also notes that the same issue exists with the corresponding proposed s21 of the LSA.*[141]

In response, the Department advised:

> *The Department agrees that the drafting of new section 218E (and section 21 of the Land Sales Act) may mean that it only applies to a recognised entity that receives a security instrument and therefore if a 'seller' receives the instrument the seller would not be required to comply with section 218E. The Department supports amending the Bill to make it clear that if a seller receives the security instrument from the buyer, the seller must give the instrument to a recognised entity, who would be required to comply with section 218E of the Body Corporate and Community Management Act or section 21 of the Land Sales Act.*[142]

On 23 July 2014, the Committee queried the Department's reference in its response to a 'seller' who receives a security instrument, in a context where the QLS suggested amendment referred to a 'person' who receives a security instrument. In reply, the Department confirmed its support for the QLS proposal and clarified it did not intend to vary the proposal:

> *In practice, it is likely that if a recognised entity does not receive the bank guarantee on behalf of the seller, that the seller would be the person receiving the bank guarantee. However, DJAG has no concern with broadening the provisions to apply to any person who*

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140 Clause 43 of the Bill inserts new section 21 into the *Land Sales Act 1984*; Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 19 of the Bill inserts new section 218E into the *Body Corporate and Community Management Act 1997*; Clause 30 of the Bill replaces section 49A of the *Building Units and Group Titles Act 1980*, with the new section including section 49H; Clause 69 of the Bill inserts new section 97P into the *South Bank Corporation Act 1989.*

141 Queensland Law Society, Submission No. 3, pages 2-3.

142 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 7.

> *receives the bank guarantee, including the seller or another person on behalf of the seller that is not a recognised entity.*[143]

Additionally, the Committee queried the treatment of monies sourced as a result of the application of proposed section 218E(2)(b) of the BCCMA, where trust monies are sourced from the issuer of a security instrument and deposited into a registered entity's prescribed trust account. The Department clarified the matter:

> *DJAG agrees that section 218A and 218B will not apply to instruments of security until the instruments of security are exchanged for the amount it secures.*
>
> *However, DJAG does not consider that this is a matter for concern because section 218E(1) and (2) provide for how instruments of security must be dealt with until they are exchanged for the amount they secure. The reason for the different requirements for security instruments is because until such time as an instrument is exchanged for the amount it secures, it would not be practical to hold the instrument in a trust account.*
>
> *Section 218E(3) and (4) then provides that once the instrument is exchanged for the amount it secures, it must be held in a recognised entity's trust account and be dealt with by the recognised entity in accordance with the division (the division includes sections 218A, 218B, 218C, and 218D). Accordingly, DJAG considers that sections 218A to 218D would apply to the amount in question.*[144]

Committee Comment

The Committee supports the Bill's inclusion of 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 proposed lot. Clear and effective rules are necessary to ensure the appropriate treatment of deposit funds and security interests. In the Committee's view, the Bill achieves this purpose.

The Committee supports the QLS suggestion that proposed section 218E of the BCCMA and proposed section 21 of the LSA be amended to oblige a person who receives an instrument from the buyer, as security for the payment of an amount under a sale contract for the sale of a proposed lot/allotment, to provide it directly to a recognised entity.

It notes the Department's acceptance of the suggestion and is satisfied with the Department's subsequent advice relating to potential implementation of the suggestion.

Additionally, the Committee notes similar proposed provisions exist, in the form of proposed section 49H of the *Building Units and Group Titles Act 1980* and proposed section 97P into the *South Bank Corporation Act 1989*. It seems appropriate to the Committee for these proposed sections to be amended in a similar fashion.

Consumer protections for amounts held in trust accounts

Proposed changes

According to the Explanatory Notes, the LSA's existing consumer protections relating to amounts paid towards the purchase of a proposed lot or proposed allotment will:

> *…be improved by clarifying that the obligations for holding an amount paid towards the sale of a proposed lot/allotment in a trust account apply to not only amounts paid under a sale*

[143] Letter from the Department of Justice and Attorney-General, 7 August 2014, page 3.
[144] Letter from the Department of Justice and Attorney-General, 7 August 2014, page 3.

contract, but also to amounts paid under other instruments (whether legally binding or not) such as an option to purchase or an expression of interest.[145]

Issues raised in submissions

Whilst not objecting to the proposed amendments, the PCA expressed concern regarding their application to expressions of interest: '*While the amendment is reasonable, and accepted, this is a provision that industry must be made aware of due to the significant penalties that apply should it be contravened*'.[146]

By way of reply, the Department stated it will work with peak industry stakeholders to ensure property developers, real estate agents and law practitioners are aware of the changes proposed in the Bill.[147] It noted, if the Bill is passed, the Act will commence by proclamation: '*This is to provide industry with early notice of the commencement date of the new legislation so that they can prepare for the changes in advance*'.[148]

Committee Comment

In the Committee's opinion, the proposed amendments improve existing consumer protections relating to amounts paid under instruments other than sale contracts, such as options and expressions of interest. The Bill makes it clear trust account obligations extend to these instruments.

The Committee is satisfied the Department's comments adequately address concerns raised by the PCA relating to the need for the changes to be brought to the attention of industry.

Accordingly, the Committee supports the proposed amendments.

Alignment of further disclosure statement and disclosure plan timeframes

Current law – proposed allotments

Under the sub-heading, 'Disclosure requirements', section 2.1 of this report detailed disclosure requirements relating to proposed allotments and proposed lots. Earlier in this section, under the sub-heading, 'Plain English rectification of inaccuracies in disclosure plan', this report outlined aspects of the current law and proposed changes relating to further disclosure requirements for proposed allotments.

The current law relating to further disclosure requirements for proposed allotments, includes sections 10(2) and (3) of the LSA, which provide:

- as soon as practicable, but not later than 14 days, after the vendor is given the survey plan that is intended to be registered on title, the vendor must give the purchaser a written notice (significant variation notice);

145 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 8; Clause 43 of the Bill inserts new section 16 into the *Land Sales Act 1984*; Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 19 of the Bill inserts new section 218A into the *Body Corporate and Community Management Act 1997*; Clause 30 of the Bill replaces section 49A of the *Building Units and Group Titles Act 1980* with the new section, including section 49D; Clause 69 of the Bill inserts new section 97L into the *South Bank Corporation Act 1989.*

146 Property Council of Australia, Submission No. 1, page 2.

147 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 14.

148 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 14.

- the significant variation notice must detail the nature and extent of the significant variation, and advise the purchaser of the purchaser's termination rights (being, a right to terminate within the period of 30 days after the giving of the significant variation notice, or within the period otherwise agreed by the parties); and
- the vendor must not (until the end of the 30 day period) ask the purchaser to pay the balance of the purchase price or give the purchaser a registrable transfer for the allotment.

Current law – proposed lots

Further to the initial disclosure requirements for proposed lots,[149] the LSA also provides for further disclosure. Accordingly, section 22 of the LSA requires a further statement (rectifying a variation or inaccuracy in the statement in writing initially given to the buyer) be given to the buyer as soon as is reasonably practicable after the proposed lot is registered.[150]

If materially prejudiced by the variation included in the further statement, the buyer has a right to terminate the contract within 30 days of receiving the further statement or before the seller gives the buyer the registrable transfer (whichever is sooner).[151] If materially prejudiced by a failure to provide a compliant statement or further statement, the buyer has a right to terminate the contract before the seller gives the buyer the registrable transfer.[152]

Additionally, the BCCMA requires other information to be disclosed by a seller to a buyer about the proposed lot (in a disclosure statement)[153] and the buyer must be notified of any variations or inaccuracies in the disclosure material (in a further statement) within 14 days of the seller becoming aware of the variation/inaccuracy (or any longer period agreed by the parties).[154]

Under the BCCMA, the buyer is given 14 days to terminate the sale contract, if the contract is yet to settle, and the buyer would be materially prejudiced by the variation/inaccuracy detailed in the further statement if compelled to complete the contract.[155]

The Explanatory Notes observe: *'In large development projects that take years to complete, there can be multiple variations to the development and so this could result in the seller having to give a buyer multiple variation notices'*.[156]

Proposed changes – proposed allotments and proposed lots

As mentioned earlier in this section, under the sub-heading, 'Plain English rectification of inaccuracies in disclosure plan', clause 43 of the Bill proposes to insert new section 13 'Variation of disclosure plan by further statement' into the LSA. Additionally, the Bill proposes to amend the Community Titles Legislation.[157]

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149 See section 2.1 of this report, under the sub-heading, 'Disclosure requirements'.

150 See section 22(1) of the *Land Sales Act 1984*, which relates to a statement in writing referred to in section 21(1) given in accordance with, or pursuant to, section 21(4) or (6); references to the vendor and purchaser in the section refer also to the vendor's agent and the purchaser's agent.

151 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 8; Section 25 of the *Land Sales Act 1984*.

152 Section 25 of the *Land Sales Act 1984*.

153 Section 213 of the *Body Corporate and Community Management Act 1997*.

154 Section 214(1) and (2) of the *Body Corporate and Community Management Act 1997*.

155 Section 214(4) of the *Body Corporate and Community Management Act 1997*.

156 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, pages 8-9.

157 Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 15 of the Bill amends section 214 of the *Body Corporate and Community Management Act 1997*; Clause 29 of the Bill amends section 49 of the *Building*

According to the Explanatory Notes, the Bill changes and streamlines the timeframe in which a seller must give the buyer a statement, referred to in the Bill as a 'further statement', correcting an inaccuracy in the disclosure statement (for a proposed lot) or the disclosure plan (for a proposed allotment):

> *The Bill proposes to align the further statement timeframes for proposed lots and proposed allotments and provide a single timeframe for the different notices given for proposed lots. Specifically, the Bill provides that the seller (of either a proposed lot or proposed allotment) must give the further statement to the buyer at least 21 days before settlement occurs and provides the buyer with 21 days to terminate the contract if the buyer is materially prejudiced by the variation.*[158]

This new approach is said to provide:

> *…maximum flexibility for sellers in terms of when an inaccuracy or change needs to be disclosed and also protects the buyer by ensuring any disclosure of a variation must not be made within 21 days before settlement and giving the buyer an appropriate timeframe to consider their position and exercise the termination right.*[159]

Issues raised in submissions

The BAQ commented on proposed section 13 of the LSA and circumstances where differences between the information contained in the registered plan and the disclosure plan require the seller to give the buyer of a proposed allotment a further statement rectifying the inaccuracies in the disclosure plan:

> *In that event the buyer will be given a further statement, the timing of which will place a significant but tolerable time pressure on the buyer to consider its right to terminate the contract for the sale of the proposed lot before settlement date.*[160]

In relation to the proposed amendment to the BCCMA, to ensure the seller must give the buyer a further statement rectifying inaccuracies in the disclosure statement at least 21 days before the contract is settled, the BAQ submitted:

> *The amendments recognise the need that the further statement is certified by a cadastral surveyor if rectifying inaccuracies in the building or volumetric format lot particulars or standard format lot particulars mentioned in the disclosure statement.*[161]

The PCA also supported this proposed amendment.[162]

Committee Comment

The Committee supports the Bill's proposed changing and streamlining of the timeframe in which a seller must give the buyer a further statement to correct an inaccuracy in the disclosure plan (for a proposed allotment) or the disclosure statement (for a proposed lot). By aligning the timeframes in relevant legislation, including the Community Titles Legislation, the Bill simplifies the existing legislative arrangements.

Units and Group Titles Act 1980, including amending section 49(4) and 49(4A)-(6); Clause 69 of the Bill inserts new section 97I into the *South Bank Corporation Act 1989.*

158 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 9.

159 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 9.

160 Bar Association of Queensland, Submission No. 5, page 3.

161 Bar Association of Queensland, Submission No. 5, page 1.

162 Property Council of Australia, Submission No. 1, page 2.

The Committee notes the Bill changes the timeframe for the giving of a further statement, such that it will now be calculated as a fixed date, that is, 21 days prior to settlement. In the Committee's view, the new timeframe is more practical and reasonable than the existing timeframe, which is related to when a seller becomes aware of an inaccuracy. The Committee considers the proposed amendments will benefit the seller, without prejudicing the buyer. It appears to the Committee that, potentially, sellers will enjoy a greater period of time in which to prepare and give the further statement, and the compulsion for a seller to provide further disclosure on multiple occasions will be removed.

The Committee believes the changes will reduce red tape and retain important consumer protections. In line with the BAQ's submission, the Committee's view is a buyer who receives a further statement will have appropriate time in which to consider its position and exercise any termination rights.[163]

Improved processes for law practices and real estate agents dealing with trust monies

Proposed changes

The *Legal Profession Act 2007* (LPA) and the *Agents Financial Administration Act 2014* (AFAA) are amended by the Bill to improve the process for how a law practice or real estate agent may deal with amounts relating to the sale of property, including proposed allotments and proposed lots, held in the law practice's or real estate agent's trust account, where entitlement to the amount is in dispute or is likely to be disputed.[164]

The Explanatory Notes detail the effect of the new LPA and AFAA provisions, advising the provisions will:

> *…allow the law practice or real estate agent (whomever holds the amount in trust) to more efficiently account to the party that they consider is entitled to the amount. This will be balanced with a requirement for the real estate agent or law practice to provide written notice to all parties to the amount of their intention to account to a particular party unless the other party, within a stated period of at least 60 days, commences legal proceedings to claim entitlement to the amount.*
>
> *The law practice or real estate agent will be able to pay the amount the party stated in the written notice after 60 days (or a longer period stated in the notice), or pay the amount to the party before the 60 day period if, before the 60 days, all parties consent in writing to the amount being paid to the party stated in the written notice. If the law practice or real estate agent receives written consent from all parties authorising payment of the amount to the stated party before the 60 days, the law practice or real estate agent may pay the amount to the stated party once the consent is received.*[165]

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163 This section of the report (2.2) also addresses other aspects of the proposed amendment to further disclosure requirements, as well as related disclosure amendments. In order to mirror the layout of the Explanatory Notes, this material is presented under the sub-headings *'Alignment of further disclosure statement and disclosure plan timeframes'* (earlier in this section) and *'Alignment of buyer termination rights relating to the sale of proposed lots and proposed allotments'* (later in this section). The existing meaning of 'significant variation', and proposed changes to it, are outlined in the later section.

164 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 9; Clause 59 of the Bill amends the *Legal Profession Act 2007* to insert new Division 2A 'Disputes about trust money for sales of lots and proposed lots', including proposed sections 262A and 262B; Clause 5 of the Bill amends the *Agents Financial Administration Act 2014* to remove existing Part 2, division 5 and insert new Division 5 'Payments from trust accounts if dispute arises or is likely to arise', including proposed sections 25-28.

165 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 9.

The amendments to the AFAA will also apply to other licensed persons for which the AFAA applies, *'…to ensure that the other licensed industries (and their clients) and consumers will also benefit from the changes'*.[166]

Issues raised in submissions

The Real Estate Institute of Queensland (REIQ) welcomed the proposed amendments to the AFAA, which it considered *'…simplify the process for real estate practitioners dealing with disputed trust account funds'*.[167]

In its submission, the REIQ referred to the current provisions contained in the P*roperty Agents and Motor Dealers Act 2000* (PAMD Act), which it claimed limited the ability of a licensee to pay out disputed amounts:

> *Currently, licensees may only pay trust funds in dispute where:*
>
> 1. *a written notice from all parties to the transaction is provided to the licensee stating the person who is entitled to the amount in dispute;*
> 2. *legal proceedings have been commenced to determine who is entitled to the amount in dispute;*
> 3. *the licensee pays the amount under section 390(3); this process can only be triggered where the agent has received a written notice from a party to the transaction that ownership of the fund or funds is in dispute.*[168]

It noted the current provisions of the PAMD Act require a party to the transaction to take some form of positive action to trigger the real estate agent's ability to transfer trust account funds to the relevant party where a dispute has arisen:

> *This is problematic in circumstances where the parties to a transaction are unwilling or unable to come to a mutual written agreement and/or are not prepared to issue legal proceedings. Similarly, in order for the agent to utilise the process under section 390(3) of the PAMD Act, a written notice section 387(1)(b) must first be received. Again, this requires a party to the transaction to take some form of positive action before the funds can be dealt with.*
>
> *Where the parties to a transaction are in dispute and one of the requirements outlined in paragraphs 1, 2 or 3 are not met, the real estate agent is not entitled to transfer the funds from their trust account and must continue to hold those disputed funds for a potentially indefinite period. For a real estate agent, this causes considerable inconvenience, expense and administrative nuisance.*[169]

Continuing in its criticism of existing PAMD Act provisions, the REIQ expressed concern that: *'…real estate agents face serious penalties of up to $22,000 or 3 years imprisonment in circumstances where they do not strictly comply with the requirements of the Act in relation to disputed trust account funds'*.[170]

In light of its concerns, the REIQ particularly welcomed certain proposed amendments included in the Bill.

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166 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 9.
167 Real Estate Institute of Queensland, Submission No. 4, page 1.
168 Real Estate Institute of Queensland, Submission No. 4, page 1.
169 Real Estate Institute of Queensland, Submission No. 4, page 1.
170 Real Estate Institute of Queensland, Submission No. 4, page 2.

It supported proposed section 25 of the AFAA, which provides new Division 5 applies if, amongst other things, an agent becomes aware of a dispute, or considers a dispute may arise, between the parties to the transaction about entitlement to the transaction fund, or part of the fund: *'This allows the agent to take action without the need for a party to a transaction to explicitly state in writing that a dispute has arisen'*.[171]

The REIQ also welcomed proposed section 26 of the AAFA, which it claimed *'…provides real estate agents with a clear and simple process to follow where a dispute arises'*.[172] The section applies if the agent considers a party to a transaction is entitled to the amount in dispute.[173] It enables a real estate agent to issue a written notice to the parties stating who the agent considers is entitled to the disputed funds.[174] The outcome of the proposed process allows a real estate agent to pay the disputed funds to the stated person (no earlier than 60 days after the notice), unless:

- legal proceedings are issued by a party disputing the stated party's entitlement to the disputed funds; or
- the parties come to a mutual agreement as to who should be paid the monies.[175]

The REIQ supported the proposed process, identifying it as straightforward and relatively simple: *'Importantly, it allows agents to take independent action without having to rely on and wait for the parties to the transaction to take action'*.[176]

Further, the REIQ supported the amendments proposing to remove liability from the real estate agent in relation to the payment of disputed trust account funds:

> *Although a real estate agent has the ability to determine who they consider is entitled to the funds, they will not be held liable where it is subsequently determined that that party was not actually entitled to those monies. This protection is of critical importance for real estate agents who should not be held liable in circumstances where the parties have had an ability to act in response to the agent's written notice.*[177]

With respect to proposed section 26(5) of the AFAA, the REIQ supported *'…the preservation of an affected party's right to pursue their legal rights and to take action to recover the funds if and when the funds have been paid to the incorrect party'*.[178]

Despite supporting the new processes for dealing with trust funds in dispute, the REIQ noted the importance that real estate agents retain the right to hold disputed trust funds if they wish to do so:

> *In some instances, real estate agents may determine they prefer to hold the funds until such time as legal proceedings are commenced and/or the parties reach a mutual agreement. We are pleased the real estate agents ability to retain the funds has been preserved.*[179]

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171 Real Estate Institute of Queensland, Submission No. 4, page 2.

172 Real Estate Institute of Queensland, Submission No. 4, page 2.

173 Clause 5 of the Bill inserts proposed section 26(1) into the *Agents Financial Administration Act 2014*.

174 Clause 5 of the Bill inserts proposed section 26(2)(a) into the *Agents Financial Administration Act 2014*.

175 Clause 5 of the Bill inserts proposed section 26(2) and (3) into the *Agents Financial Administration Act 2014*.

176 Real Estate Institute of Queensland, Submission No. 4, page 2.

177 Real Estate Institute of Queensland, Submission No. 4, page 2; Clause 5 of the Bill inserts proposed section 26(4) into the *Agents Financial Administration Act 2014*.

178 Real Estate Institute of Queensland, Submission No. 4, page 2.

179 Real Estate Institute of Queensland, Submission No. 4, page 2; Clause 5 of the Bill inserts proposed section 26(6) into the *Agents Financial Administration Act 2014*.

In its submission, the QLS considered whether the drafting of proposed s262A(1)(b) of the LPA is broad enough to cover the circumstance where a buyer of a proposed lot has apparently abandoned the contract prior to settlement:

> *The Committee [the QLS Property Development and Law Committee] noted that Division 2A only applies where there is a dispute or the practitioner 'considers a dispute may arise'. There were some differing views amongst our Committee members about whether a law practice could reasonably apprehend that a dispute may arise where a party had appeared to abandon a contract for sale at the point of settlement.*[180]

The QLS referred to the Explanatory Notes, which state:

> *The reason new section 262A provides that division 2A applies if an agent* [sic] *considers a dispute may arise is to provide for situations where, for example, a person who is party to a contract for the sale of a lot does not take the required action to complete the contract and does not make contact with the other party or law practice to explicitly state a dispute has arisen. Depending on the circumstances, this type of situation may lead a law practice to believe a dispute may arise about entitlement to the amount held in the practice's trust account.*[181]

While the Explanatory Notes set out the intent of the drafting of the section, the QLS submitted it is arguable that a dispute is unlikely to arise where a party has abandoned the contract and will not take any action to give effect to settlement:

> *The qualification that there must be a dispute or likelihood of a dispute before the procedure can be followed seems unnecessary. The Division merely allows a process to notify a party that the stakeholder intends making a payment to the other party so they can have the opportunity to object (by commencing proceedings). This is beneficial to the affected party whether or not the stakeholder is aware of a dispute or facts which might give rise to one.*[182]

The Department responded to the concerns raised by the QLS:

> *The Explanatory Notes for the Bill make it clear that the policy intent of section 262A is to provide law practices with a means for disbursing an amount held in their trust account for the sale of a lot in situations where, for example, a party to a contract for the sale of a lot does not take the required action to complete the contract. An option for dealing with the QLS's concern may be to include an example in the provision to make the intent clearer in the Act.*[183]

Committee Comment

The Committee supports the proposed amendments to the LPA and the AFAA. In the Committee's view, the changes will improve the process for how a law practice or real estate agent may deal with amounts relating to the sale of property held in the law practice's or real estate agent's trust account, where entitlement to the amount is in dispute or is likely to be disputed.

The REIQ's various comments of support are duly noted by the Committee. The freedoms granted to real estate agents to deal with disputed funds, without requiring an external trigger, will provide

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180 Queensland Law Society, Submission No. 3, page 4.

181 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 35; The Explanatory Notes appear to include an error on the first line by referring to 'an agent', rather than ' a law practice'.

182 Queensland Law Society, Submission No. 3, page 5.

183 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 14.

agents with appropriate independence and flexibility to act as they deem fit in the circumstances. The Committee notes this power is sensibly limited, such as when the disputing parties reach agreement on the treatment of the monies or entitlement to the amount is decided by a court.

The Committee notes the concerns raised by the QLS relating to whether a law practice could reasonably apprehend that a dispute may arise where a party had appeared to abandon a sale contract at the point of settlement. The Committee is satisfied the Explanatory Notes make the policy intent clear, however encourage the Department to pursue its suggestion that an example may be included in the provision to make the intent clearer in the legislation.

Alignment of buyer termination rights relating to the sale of proposed lots and proposed allotments

Existing buyer termination rights relating to a seller's further disclosure requirements were outlined earlier in this section of the report, under the sub-heading, 'Alignment of further disclosure statement and disclosure plan timeframes'.

Current law – proposed allotments

As outlined under that sub-heading, section 10 of the LSA provides that a buyer may terminate a contract for the sale of a proposed allotment, before the contract settles, if there is a 'significant variation' in what is contained in the disclosure plan given to the buyer and the final product.

The term 'significant variation' is defined in the LSA to mean:

1. in relation to details between a disclosure plan and a survey plan –
    a. a variation of more than 2% in details of area; or
    b. a variation of more than 1% in details of linear dimensions; or
2. in relation to details between a disclosure plan and an as constructed plan – a variation of more than 500mm in height in details of surface contours or fill levels.[184]

The Explanatory Notes view the LSA's existing provisions as:

> *…a very limited and black and white approach that does not take into account whether a buyer is materially disadvantaged by the variation in any way. This technical approach, arguably, does not provide an appropriate balance between the rights of buyers to avoid a contract for a variation in what was disclosed to the buyer and the rights of sellers to have a contract completed.*[185]

Current law – proposed lots

As detailed earlier in this report, the LSA[186] and Community Titles Legislation, including the BCCMA,[187] provide a buyer with termination rights relating to a seller's further disclosure if the buyer is materially prejudiced.

Referring specifically to the BCCMA and noting its different approach to that of the LSA, the Explanatory Notes make the following statements on material prejudice:

> *…the seller is obliged to notify the buyer of any variation between the disclosure material relating to the proposed lot and the proposed final product and the onus is placed on the*

[184] Section 10(5) of the *Land Sales Act 1984*.
[185] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 10.
[186] Section 25 of the *Land Sales Act 1984*.
[187] Section 214 of the *Body Corporate and Community Management Act 1997*.

> *buyer to demonstrate that the variation materially prejudices the buyer in order to exercise the termination right.*[188]

In support for this approach, the Explanatory Notes refer to a body of judicial opinion with respect to the meaning of the term 'material prejudice' and assert:

> *This provides a more balanced approach because it ensures that all variations or inaccuracies are disclosed but only those matters that materially disadvantage buyers are avenues for termination, rather than technical matters that may not have any negative impact on a buyer.*[189]

Proposed changes – proposed allotments

The Bill adopts the 'material prejudice' approach used in the BCCMA for a buyer's termination right in relation to a proposed allotment: *'This will align buyers' termination rights for proposed allotments and proposed lots in relation to the disclosure requirements*'.[190]

Issues raised in submissions

The UDIA supported aligning buyer termination rights with the 'material prejudice' approach of the BCCMA: *'The significant variation test currently in the Act is unnecessarily stringent. For instance, in a typical 600m2 house allotment with dimensions 20m x 30m, a change of just 21cm width with no change in depth would be deemed a significant variation'*.[191]

It continued, presenting further criticisms of the LSA's concept of 'significant variation', arguing the test is too black and white:

> *In some cases a 1 per cent change in a linear dimension of a lot could have a significant impact on the buyer and in others it will not. It therefore seems logical that termination rights are based on whether a buyer is in fact materially prejudiced by any variation. Whilst the material prejudice test is not as black and white as the significant variation test, the Institute is of the view that case law will quickly be established in relation to the interpretation of material prejudice in a flat land context.*

Committee Comment

The Committee agrees with the assertion in the Explanatory Notes that the LSA's existing test of a 'significant variation' is limited, and does not take into account whether a buyer is materially disadvantaged by such a variation. In the Committee's opinion, the existing law is inflexible and impractical.

The Committee favours the BCCMA's approach, where a buyer must demonstrate a variation's material prejudice, in order to exercise the termination right. This is a more balanced approach that will exclude technical matters that may not negatively impact a buyer, as a basis for termination.

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188 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 10.

189 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 10.

190 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 10; Clause 43 of the Bill inserts new section 13 into the *Land Sales Act 1984*; Clause 44 removes Part 3 of the *Land Sales Act 1984*; Clause 15 of the Bill amends section 214 of the *Body Corporate and Community Management Act 1997*; Clause 29 of the Bill amends section 49 of the *Building Units and Group Titles Act 1980*; Clause 69 of the Bill inserts new section 97I into the *South Bank Corporation Act 1989.*

191 Urban Development Institute of Australia (Queensland), Submission No. 2, page 3.

As such, the Committee considers the proposed amendment strikes the appropriate balance between a buyer's right to terminate as a result of further disclosure, and a seller's right to settlement of a contract where a buyer is not materially disadvantaged due to further disclosure.

Additionally, aligning termination rights simplifies the relevant legislation.

Therefore, the Committee supports the proposed amendments.

Ensuring consistency in buyer termination rights for proposed strata lots and proposed allotments regarding giving a registrable transfer

Current law

As outlined earlier in this section of the report, clause 27 of the LSA requires a seller of a proposed lot to provide the buyer with a registrable transfer by a specified time, failing which the buyer accrues a statutory right to terminate the contract for the sale of the proposed lot.

In February 2012, the Parliament passed the *Sustainable Planning and Other Legislation Amendment Act 2012* (SPOLA Act) which clarified the intention of section 27 of the LSA: *'The SPOLA Act clarified that a buyer, who purposely does not settle the contract within the required time when the seller is in a position to give a title transfer form, cannot take advantage of the statutory termination right'*.[192]

Proposed changes

According to the Explanatory Notes, the Bill makes the equivalent amendment for proposed allotments that was made in the SPOLA Act for proposed lots:

> *That is, the Bill clarifies that the termination right for a seller's contravention of the requirement to provide the registrable transfer to the buyer accrues only if the buyer is not at fault. This will ensure consistency in buyer termination rights for proposed allotments and proposed lots in relation to the giving of the registrable transfer.*[193]

Committee Comment

In the Committee's view, the proposed amendment brings consistency to the treatment of termination rights for both proposed lots and proposed allotments in relation to the giving of a registrable transfer to the buyer. The Committee supports this change.

2.3 Regulation of the sale of proposed lots and proposed allotments - other provisions of the Bill raised by submissions

In addition to those provisions of the Bill specifically detailed in the Explanatory Notes under the heading, 'Achievement of policy objectives', submitters commented on other aspects of the Bill dedicated to the regulation of the sale of proposed lots and proposed allotments.

This section of the report sets out these other matters. Much of the material in this section is related to material covered in sections 2.1 and 2.2 of this report, however separating the content allows the earlier sections to strictly mirror the structure of the Explanatory Notes. This approach is intended to aid comprehension of the technical content of this report, by facilitating referencing of comparable material in the Explanatory Notes.

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192 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 10.

193 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 10, Clause 43 of the Bill inserts new section 14(4) into the *Land Sales Act 1984*.

2.3.1 Relevant allotment particulars

Proposed changes

Clause 43 of the Bill proposes new section 11 of the LSA, which provides for new disclosure plan requirements for proposed allotments. Under the new section, a disclosure plan must include the 'relevant allotment particulars' for the proposed allotment.[194] The definition of relevant allotment particulars includes, if there is operational work for the allotment, '*the location and height of any retaining walls forming part of the work*'.[195]

Issues raised in submissions

The UDIA asserted:

> *…it is unclear as to what specificity is required for the height of any retaining wall given that a retaining wall changes over the length of a boundary. Is it just a cross section that is required to comply with this? The nature of any disclosures need to be made clear in the amendments to remove uncertainty. Similarly, the compaction rates referred to in that definition also need to be clarified. The Institute recommends that clarification of compaction rate disclosures be achieved by referencing an appropriate Australian Standard.*[196]

The Department supported amending the Bill to make the seller disclosure provisions about retaining walls and compaction rates clearer.[197]

Committee Comment

The Committee acknowledges the UDIA's suggestion for amendment of the Bill's proposed disclosure provisions about retaining walls and compaction rates. It notes the Department's support for such an amendment and is satisfied with the Department's response. The Committee supports amendments to the Bill which result in enhanced clarity.

2.3.2 Standard format lot particulars

Proposed changes

Clause 14 of the Bill proposes new section 213AA of the BCCMA, which provides for new disclosure plan requirements for proposed lots. Under the new section, a disclosure plan may comprise one or more documents that contain, for a proposed lot intended to be a standard format lot, the 'standard format lot particulars'.[198] The new section's definition of standard format lot particulars includes, amongst other particulars, specific particulars '*if the* seller *of the lot intends that a building be constructed on the lot*'.[199]

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194 Proposed section 11(1) of the *Land Sales Act 1984*; As explained earlier, for the sake of consistency with the language adopted in the *Explanatory Notes*, this report refers to an 'allotment', although the proposed amendments to the *Land Sales Act 1984* amend the term to 'lot. Therefore, references in this report to 'relevant allotment particulars' are, in fact, references to the new defined term 'relevant lot particulars'.

195 Proposed section 11(4) of the *Land Sales Act 1984.*

196 Urban Development Institute of Australia (Queensland), Submission No. 2, page 4.

197 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, pages 1-2.

198 Proposed section 213AA(1)(b) of the *Body Corporate and Community Management Act 1997*.

199 Proposed section 213AA(3) of the *Body Corporate and Community Management Act 1997*.

Issues raised in submissions

In the UDIA's view: *'This should be clarified to only apply if there is to be a dwelling constructed on the lot by the seller prior to the completion of the sale or where the contract prescribes the design and location of the building that can be constructed on the lot after completion'*.[200]

The Department provided relevant detail on the issue:

> *Standard format plans are subdivisions of land (in community titles schemes) with references to marks on the ground or a structural element (for example, survey pegs in the ground or the corner of a building). As an example, a standard format plan may include a townhouse complex, where the individual lots would comprise a building and land (front and/or back courtyards). This is different to a building format plan which is typically a subdivision of a building (such as a suburban six pack or a multi-storey block of residential units).*[201]

In reply to the UDIA's request for clarity, the Department supported:

> *…amending the application of the particular disclosure requirements for standard format lots to "if the seller intends to construct a dwelling on the lot prior to settlement".*[202]

However, the Department considered it:

> *…unnecessary to also apply the disclosure requirements about buildings on standard format lots where the contract prescribes the design and location of a building that can be constructed on the lot after settlement, as that information would be provided in the contract.*[203]

The QLS raised a different issue in relation to the Bill's proposed definition of standard format lot particulars. It noted the definition omits the area of the proposed lot as a particular: '*It appears that this is an oversight given the area of the proposed lot is 'building or volumetric format lot particulars' in the same section and the 'relevant lot particulars' under proposed s11 of the LSA*'.[204]

The Department explained the Bill intentionally provides slightly different disclosure requirements for lots in different plans of subdivision (i.e. standard format plans, building format plans and volumetric format plans) to reflect the differences in the nature and features of the various plans of subdivision:

> *For this reason, the disclosure requirements for a proposed lot in a standard format plan require the seller to disclose the dimensions of the lot and, if a building is to be constructed on the lot, the area of the building and the number of levels of the building. Therefore, it is not considered necessary or appropriate to impose another requirement on the seller of a standard format lot to disclose the area of the lot.*[205]

Committee Comment

The Committee acknowledges the UDIA's request for clarity in relation to the proposed definition of the term 'standard format lot particulars'. The Department's support is noted, and the Committee considers it appropriate for the Bill to be amended accordingly.

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200 Urban Development Institute of Australia (Queensland), Submission No. 2, page 4.
201 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, pages 2-3.
202 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 3.
203 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 3.
204 Queensland Law Society, Submission No. 3, page 4.
205 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, pages 3-4.

The Committee notes the QLS suggestion the Bill may contain an oversight, however it is satisfied with the Department's explanation as to why the area of a proposed lot is not included as a standard format lot particular.

2.3.3 Volumetric lots

Issues raised in submissions

In its submission, the UDIA observed the disclosure provisions of the BCCMA will only apply to volumetric lots in a CTS (or those that will be in a CTS).[206] It concluded the sale of non-CTS volumetric lots will attract regulation under the LSA:

> *Sections 11 and 12 of the Act [LSA] as proposed would not be able to be met where, for example, the volumetric lot had no surface footprint or was in a building. This would mean that every transaction for the sale of a volumetric lot that was not part of a scheme would have to either involve a 5 lot or less subdivision or involve provision of a disclosure plan that could not potentially be prepared as required. The Institute sees no reason for volumetric subdivisions to be curtailed such that they can only be done as part of a scheme or a 5 lot or less subdivision from a disclosure viewpoint.*[207]

As a result, the UDIA doubted whether this was the intention of the amendments and recommended further amendments that give due consideration for volumetric lots.[208]

In relation to the disclosure plan regime for volumetric format plans, the UDIA claimed:

> *It is becoming increasingly common for projects to be delivered with VFP lots and no body corporate (using a Building Management Statement for example instead of a Community Titles Scheme) and also for that to be done in large numbers such as an entire building or rows of town houses. The disclosure plan regime for VFP lots outside a Community Titles Scheme should not involve a plan requiring contours to be provided if there is no surface footprint but rather a draft survey plan – in similar format to the disclosure plan for a VFP lot in a scheme.*[209]

The Department advised the LSA does not currently provide specific disclosure requirements for lots in volumetric format plans that are not intended to be part of a CTS.[210] The Bill provides specific disclosure requirements for lots in volumetric format plans that are part of the CTS because the Community Titles Legislation already contemplates this type of subdivision.[211]

The Department supported improving the disclosure requirements under the LSA *'…to ensure they are appropriate for all types of plans of subdivision that are not intended to be part of a community titles scheme'*.[212]

Referring to the UDIA's observation of the increasingly common nature for developments to be delivered with volumetric format lots, the Department, in response to the Committee's inquiry, explained:

> *However, if property developers wish to do this, the projects must be small developments comprising of no more than five lots (for which the Bill provides an automatic exemption*

206 Urban Development Institute of Australia (Queensland), Submission No. 2, page 4.
207 Urban Development Institute of Australia (Queensland), Submission No. 2, page 4.
208 Urban Development Institute of Australia (Queensland), Submission No. 2, page 4.
209 Urban Development Institute of Australia (Queensland), Submission No. 2, page 4.
210 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 4.
211 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 4.
212 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 4.

from the Land Sales Act) or established as community titles schemes. Otherwise, they risk not being able to comply with the disclosure regime under the Bill for the Land Sales Act (i.e. proposed new sections 11 and 12 of the Land Sales Act).[213]

In providing further comment on the UDIA's suggestion, the Department stated the UDIA appeared to recommend that a disclosure regime be included in the LSA for volumetric format lots not intended to be part of a CTS that is similar to the disclosure regime in the Bill under the BCCMA for volumetric format lots:

…there is no intention to force developers to set up their developments as community titles schemes or small developments comprising of five or less lots if they intend the lots in the development to be volumetric format lots. Accordingly, the Department is supportive of providing a disclosure regime tailored for volumetric format lots that are not intended to be part of a community titles scheme. This could be achieved by amending proposed new section 11 of the Land Sales Act to include specific disclosure requirements for volumetric format lots, instead of requiring the developer to comply with the relevant lot particulars in section 11.[214]

Committee Comment

The Committee is satisfied with the Department's comments supporting the improvement of the disclosure requirements under the LSA to ensure they are appropriate for all types of plans of subdivision that are not intended to be part of a CTS. Specifically, the Committee notes the Department's support for the provision of a disclosure regime tailored for volumetric format lots that are not intended to be part of a CTS.

2.3.4 Surveyors certificate on sale of proposed allotments

Proposed changes

Proposed section 14(3) of the LSA requires the seller of a proposed allotment to give the buyer a surveyor's certificate stating that the registered survey plan is consistent with the original disclosure plan *if this is the case.*

Issues raised in submissions

The QLS argued the proposed section *'…does not give the protection which it appears was intended to buyers where there are changes to the lot'*.[215] It submitted it is assumed, if there is a discrepancy between the registered survey plan and the original disclosure plan, the seller will provide a further statement as required under proposed section 13 of the LSA:

However if the seller fails to do so:

- *the buyer has no entitlement to refuse to settle merely because a further statement is not given;*
- *the buyer is left to ascertain for itself what the differences are and whether it is materially prejudiced by them.*

A potentially greater issue arises if the seller makes changes after giving a further statement. In these circumstances the buyer would not be expecting a surveyors certificate

[213] Letter from the Department of Justice and Attorney-General, 7 August 2014, page 4.
[214] Letter from the Department of Justice and Attorney-General, 7 August 2014, page 4.
[215] Queensland Law Society, Submission No. 3, page 3.

> *and may not even be aware of the need to carefully check the registered plan for any discrepancy between it and the plan disclosed in the further statement.*[216]

In light of this, the QLS proposed the following amendment to new section 14(3)(b) of the LSA, providing, in addition to a copy of the registered survey plan, the seller must give the buyer, at least 14 days before the contract is settled:

> *a statement prepared by a cadastral surveyor stating that there are no discrepancies between the registered plan and the disclosure plan for the lot given to the buyer under section 10 as varied by any further statement given to the buyer under section 13.*[217]

The QLS asserted its amendment would *'…give the buyer certainty as to what it was receiving without imposing any real burden on the seller (as the surveyor who prepared the disclosure plan would invariably be the surveyor who prepared the survey plan and would readily be able to identify any changes)'*.[218]

In order to continue the theme of standardisation, the QLS suggested a similar certification should be required under the BCCMA for CTS lots.[219]

Although, supporting the QLS recommendation to amend the drafting of section 14(3), the Department noted:

> *…the QLS's recommendation to require a surveyor's certificate to be provided to a buyer of a proposed lot in a community titles scheme would be an increase in regulation for sellers of those types of lots. In a large community titles scheme, this could impose a significant cost on developers. The Department understands that this issue will be considered under the review of Queensland property laws, being carried out by the Queensland University of Technology. This review will allow for due consideration of the costs and benefits of the proposed increase in regulation for all effected stakeholders.*[220]

Committee Comment

In the Committee's view, the QLS's suggestion has merit and is certainly worthy of further consideration. The legislation should strike the appropriate balance between protection of consumers via the disclosure process and reduction in red tape and regulation, including in the associated costs to be borne by developers. The Committee is satisfied with the Department's comments indicating this issue will be considered as part of the QUT Review. The Committee notes this review will allow for due consideration of the costs and benefits of the proposed increase in regulation for all effected stakeholders.

2.3.5 Compaction certificates

Issues raised in submissions

The QLS observed the common practice of developers obtaining compaction certificates in the process of conducting a sub-division of land.[221] In that context, and as a consumer protection measure, the QLS supported an amendment to the Bill requiring a copy of a compaction certificate to

[216] Queensland Law Society, Submission No. 3, page 3.
[217] Queensland Law Society, Submission No. 3, page 3.
[218] Queensland Law Society, Submission No. 3, page 3.
[219] Queensland Law Society, Submission No. 3, page 3.
[220] Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 5.
[221] Queensland Law Society, Submission No. 3, page 4.

be provided to a buyer at the same time as the items in proposed section 14 of the LSA are provided.[222]

In response, the Department cited a key objective of the Bill as the reduction of red tape and regulation relating to off the plan sales of subdivisions of land and strata lots: '*Implementing the QLS proposal for compaction certificates would result in an additional disclosure requirement for sellers*'.[223]

Despite this, the Department noted:

> *…the QLS considers that it is already common practice for a developer to obtain a compaction certificate in the process of conducting a subdivision of land. To ensure the costs and benefits of the proposal on all stakeholders can be given full consideration it may be appropriate for the proposal to be considered as part of the review of Queensland property laws.*[224]

Committee Comment

The Committee acknowledges the QLS's proposal for an amendment to the Bill requiring a copy of a compaction certificate to be provided to a buyer at the same time as the items in proposed section 14 of the LSA are provided.

It notes the Department's suggestion it may be appropriate for the QUT to consider the proposal as part of the QUT Review. In light of this, the Committee approached the Department on 23 July 2014 and inquired whether the proposal is to indeed be incorporated in the QUT Review. The Department acknowledged this issue relates to the seller disclosure regime in Queensland property laws and therefore falls within the scope of the QUT Review.[225] The Department advised it would bring the issue to the attention of the QUT Review team for its consideration as part of the review.[226]

The Committee is satisfied with the Department's comments indicating this issue will be considered as part of the QUT Review. The Committee notes this review will allow for due consideration of the costs and benefits of the proposed increase in regulation for all effected stakeholders.

2.3.6 'Give the buyer a registrable transfer'

Issues raised in submissions

The QLS noted proposed sections 217B of the BCCMA and 14 of the LSA refer to giving 'the buyer a registrable transfer' to describe a conveyancing property settlement:

> *The use of this term is problematic in the context of electronic conveyancing, which is due to commence in Queensland next February. In the electronic system, parties do not give documents to others in the way that occurs in traditional paper-based settlements, rather the system lodges electronically signed data that forms a registrable transfer with the Titles Registry upon completion of financial settlement.*[227]

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222 Queensland Law Society, Submission No. 3, page 4.
223 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 2.
224 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 2.
225 Letter from the Department of Justice and Attorney-General, 7 August 2014, page 2.
226 Letter from the Department of Justice and Attorney-General, 7 August 2014, page 2.
227 Queensland Law Society, Submission No. 3, page 4.

Given these observations, the QLS conveyed concern the current drafting of these proposed sections will prove significantly uncertain in the context of electronic conveyancing:

> *On this basis, the Committee [the QLS Property Development and Law Committee] proposes that the more regular term 'settlement' is referenced to operate in the proposed sections in a technology-neutral way, by stating that "settlement must occur no later than..." or similar.*[228]

The Department provided background on the *Electronic Conveyancing National Law (Queensland) Act 2013* which commenced on 23 April 2013 and provides for the Electronic Conveyancing National Law to be a law of Queensland:

> *The ECNL establishes the legal framework for national electronic conveyancing which is the new digital environment for completing real property transactions and lodging land title dealings throughout Australia. This system will allow parties to a conveyancing transaction to prepare land title instruments, settle transactions and lodge instruments for registration electronically.*[229]

In relation to the concerns of the QLS, it argued the matter is not an issue pertaining to the Bill, but a broader issue about ensuring the effective operation of the new national electronic conveyancing system:

> *The Department is aware that consequential amendments may need to be made to some Queensland property laws, including the Land Sales Act, to provide for electronic conveyancing to work effectively. The Department is separately examining these matters.*[230]

Committee Comment

The Committee is satisfied with the Department's response to the issue raised by the QLS.

2.3.7 Transitional provisions – *Land Sales Act 1984*

Current law

Section 19 of the LSA provides for applications for exemption from all or any of the provisions of Part 2 'Sale of proposed allotments' in relation to land that is to be subdivided into not more than five allotments.

Proposed changes

Clause 54 of the Bill includes transitional provisions to be included in the LSA. Proposed section 37 of the LSA is a transitional provision providing that an undecided application under the current section 19 of the LSA lapses at commencement.

Issues raised in submissions

The UDIA contended this transitional provision is problematic, because contracts that were subject to that exemption being granted will no longer be able to have their condition satisfied: '*Accordingly this condition prejudices existing contracts and necessary saving provisions to those contractual instruments will be required to be inserted*'.[231]

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228 Queensland Law Society, Submission No. 3, page 4.

229 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 12.

230 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 13.

231 Urban Development Institute of Australia (Queensland), Submission No. 2, page 5.

The QLS made similar observations, asserting that under the proposed amendments the LSA will no longer apply to sales of land where the sale arises from the reconfiguration of land into not more than five lots under new section 3(3) LSA, and no application will be required:

> *Members of the Society have advised that there are contracts on foot for the sale of subdivided lots which are conditional on an LSA exemption being granted. The new provisions will no longer trigger that condition and the contract may sit in limbo if a buyer will not agree to waive that requirement.*
>
> *In light of this, new s37 LSA should also deem that at commencement any contractual conditions relating to obtaining an LSA exemption under s 19 are satisfied.*[232]

The Department provided clarification:

> *It is not the intention of proposed new section 37 to interfere with contracts on foot. Accordingly, the Department supports the QLS's recommendation to amend the transitional provision to deem that at commencement any contractual conditions relating to obtaining an exemption are satisfied.*[233]

Committee Comment

The Committee notes the Department's support for the QLS recommendation to amend the proposed transitional provision. The Committee agrees with this course of action, as it considers the proposed amendments should not interfere with existing sale contracts.

2.4 Amendments to address editorial errors in the *Property Occupations Act 2014*

Proposed changes

The Explanatory Notes outline amendments to the *Property Occupations Act 2014*, which address minor editorial errors identified in section 157 'Disclosures to prospective buyer' of that legislation:

> *First, the amendments ensure the example that is provided in subsection (1) is provided in relation to subsections (d) and (e) and is provided in relation to entities, not persons, as entities are referred to in these subsections.*
>
> *Second, the amendments replace the cross reference to subsection (1)(c) in section 157(2), with reference to subsections (1)(d) and (1)(e).*[234]

The proposed amendment to section 157(2) of the *Property Occupations Act 2014* is to ensure:

> *…the provision is operating as intended and that agents are no longer required to disclose to a prospective buyer any commissions, fees or charges they will be receiving from the seller. The inclusion of the terms 'fee or charge' in this section are necessary because in some instances, a client may agree to pay an agent a fee or charge for the services performed by the agent instead of a commission.*
>
> *This amendment ensures the removal of the requirement to disclose to buyers the payment arrangements agreed to between a seller and agent apply consistently regardless of whether or not an agent will be paid a commission, fee or charge by the seller.*[235]

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232 Queensland Law Society, Submission No. 3, page 5.

233 Letter from the Department of Justice and Attorney-General, Attachment 2, 11 July 2014, page 9.

234 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, pages 10-11; Clause 65 of the Bill amends section 157 of the *Property Occupations Act 2014.*

235 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 11.

Issues raised in submissions

The BAQ supported the insertion of the terms 'fee' or 'charge' into section 157(2) of the *Property Occupations Act 2014*, citing it as *'…consistent with the policy to relieve agents from disclosing to a buyer what they are being paid by the seller for their services whether by payment of a fee, charge or commission'*.[236]

Committee Comment

The Committee supports this uncontroversial amendment, which proposes to correct minor editorial errors.

2.5 Amendments to the *Breakwater Island Casino Agreement Act 1984*

Proposed changes

The Explanatory Notes detail the following procedural amendments:

> *In accordance with the* Casino Control Act 1982 *(Casino Control Act) the casino licensee and the State of Queensland are parties to a casino agreement, the Breakwater Island Casino Agreement (casino agreement). The casino agreement is ratified by Parliament and has the force of law, through its inclusion in the* Breakwater Island Casino Agreement Act 1984 *(casino agreement Act).*
>
> *The licensee of Jupiters Townsville Hotel and Casino (Jupiters Townsville) is Breakwater Island Limited (Breakwater) as the responsible entity of the Breakwater Island Trust (Breakwater Trust). Jupiters Limited (Jupiters) currently owns all of the shares and units in Breakwater and the Breakwater Trust, respectively. As the owner of the shares and units in Breakwater and the Breakwater Trust, Jupiters is a party to the casino agreement.*
>
> *Jupiters Townsville is being sold to CLG Properties Pty Ltd as trustee for CLG Property Trust (CLG). Under the sale these shares and units will be transferred to CLG. With the sale of these shares and units it will be necessary for Jupiters to cease being a party to the casino agreement and for the obligations of Jupiters to be imposed on CLG. Therefore Schedule 2 of the casino agreement Act needs to be amended to reflect the changes to the agreement itself.*[237]

These procedural amendments are said to execute an existing function of the *Breakwater Island Casino Agreement Act 1984*:

> *The amendments are reflective of an amendment deed to the casino agreement that Jupiters, Breakwater and CLG propose to enter into with the State of Queensland. In essence the amendments replace references to Jupiters with references to CLG.*[238]

Issues raised in submissions

The BAQ noted the proposed amendments *'…are procedural in nature, and properly reflect the proposed sale by Jupiters, Breakwater to CLG'*.[239]

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236 Bar Association of Queensland, Submission No. 5, page 4.

237 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 11; Clauses 24 and 25 of the Bill.

238 *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 11.

239 Bar Association of Queensland, Submission No. 5, page 2.

Committee Comment

The Committee supports this uncontroversial amendment, which is procedural in nature.

2.6 Repeal of the Land Sales Regulation 2000 and minor and consequential amendments to the *Fair Trading Inspectors Act 2014* and *Land Title Act 1994*

Proposed changes

Clause 74 of the Bill repeals the Land Sales Regulation 2000.

Clause 75 of the Bill makes the following minor and consequential amendments to legislation, by way of Schedule 1:

> *Clause 75 inserts schedule 1, which makes minor and consequential amendments to sections 206(3) and 210 of the Body Corporate and Community Management Act and section 122(3) of the* Land Title Act 1994*.*
>
> *The amendments to the Body Corporate and Community Management Act are a consequence of the insertion of new section 205D, as inserted by Clause 9. The amendment to the Land Title Act is a consequence of the replacement of the term 'proposed allotment' with 'proposed lot' in the Land Sales Act.*[240]

Issues raised in submissions

The BAQ supported the minor and consequential changes included in clause 75 of the Bill, stating the '*…savings and transitional provisions will facilitate the transition for efficient implementation*'.[241]

Committee Comment

The Committee supports these uncontroversial and minor amendments.

[240] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 42.

[241] Bar Association of Queensland, Submission No. 5, page 5.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* provides that fundamental legislative principles require legislation to have sufficient regard to the rights and liberties of individuals.

3.1.1 Clauses 5, 19, 30, 43 and 69 – rights and liberties of individuals

New Offences

The existing laws amended by the Bill currently include requirements for how and when an amount paid by a buyer towards the purchase of a proposed allotment or proposed lot must be kept by a real estate agent, law practice or the public trustee in a trust account. To ensure consumers' money is protected, the Bill provides it is an offence to breach the trust account provisions. The penalty for these offences is 200 penalty units or one year's imprisonment.

As detailed in Section 2.2 of this report, the Bill inserts a new provision to regulate dealings with security instruments (such as deposit bonds or performance guarantees), if they are used by buyers of proposed lots/allotments to pay an amount towards the purchase of the proposed lot/allotment.

Specifically, the new provision prescribes requirements about the keeping of security instruments by a law practice, real estate agent or the public trustee (see for example, new section 21 of the LSA, inserted by clause 43 of the Bill). The Explanatory Notes state this provision has been inserted to provide consumer protection, and it includes an offence for a contravention of the provision.[242]

Relocated offences

As set out in Section 2.1.8 of this report, the Bill omits Part 3 of the LSA, which regulates the sale of proposed lots in a CTS, and relocates it to the Community Titles Legislation. Accordingly, the existing offences and associated penalties in Part 3 of the LSA have also been relocated to the Community Titles Legislation. The offences are for the trust account provisions, which regulate how and when an amount paid by a buyer for a proposed lot must be kept by a real estate agent, law practice or the public trustee. According to the Explanatory Notes, it is appropriate to retain the offences to ensure consumer protections are maintained.[243]

Potential issues

Proportion and relevance

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The Office of the Queensland Parliamentary

[242] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 13.
[243] *Explanatory Notes*, Land Sales and Other Legislation Amendment Bill 2014, page 14.

Counsel (OQPC) Notebook states '…*the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy*'.[244]

Penalties

A penalty should be proportionate to the offence. The OQPC Notebook states: *'Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other'*.[245]

Committee Comment

The Committee is satisfied that, on balance, the offences and associated penalties in the Bill are proportionate and relevant to the objective of deterring undesirable practices and enhancing consumer protection.

3.1.2 Clause 70 – reversal of onus of proof in criminal proceedings without justification

Clause 70 of the Bill inserts new section 98A into the *South Bank Corporation Act 1989*, which provides for the responsibility of a person for the acts or omissions of a representative of the person in a proceeding for an offence against the *South Bank Corporation Act 1989*.

Given the Bill proposes to omit Part 3 of the LSA and relocate it to the *South Bank Corporation Act 1989*, existing section 32A of the LSA will be deleted and relocated to the *South Bank Corporation Act 1989*. However, new section 98A is not limited in its application to the existing provisions of Part 3 of the LSA that have been replicated in the *South Bank Corporation Act 1989*.

Potential issues

Reverse onus of proof

Proposed section 98A(3) of the *South Bank Corporation Act 1989* states:

> *An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.*

The former Scrutiny of Legislation Committee (SLC) expressed reservations about provisions stating a thing to be sufficient evidence of a matter, or presuming a state of affairs to exist, unless a party provided proof of the thing or state of affairs or the evidence proved that the state of affairs was not as presumed or that the thing was not sufficient evidence.[246]

Provisions concerning a presumption or providing that circumstances are taken to exist are often sought to be justified on the basis that the accused is likely to be better placed than others to rebut the presumption or prove the circumstances did not exist.[247]

The Explanatory Notes are silent as to the justification for the presumption in this circumstance.

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[244] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 120.

[245] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 120.

[246] Office of the Queensland Parliamentary Counsel, Principles of good legislation: OQPC guide to FLPs, Chapter – Reversal of onus of proof, page 14; see for example, AD 2008 No 13, page 47, para 36.

[247] Office of the Queensland Parliamentary Counsel, Principles of good legislation: OQPC guide to FLPs, Chapter – Reversal of onus of proof, page 18.

Imposition of presumed responsibility must be justified

Legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control. Unilateral imposition of responsibility on a person for a matter is an interference with the rights and liberties of the person and requires sufficient justification.[248]

Committee Comment

The Committee notes the responsibility attributed to the person from the act or omission of their representative is limited in the Bill to acts or omissions within the scope of the representative's actual or apparent authority.

However, the Committee also notes the Explanatory Notes fail to provide justification for the Bill's inclusion of the aforementioned rebuttable presumption.

On balance, however, the Committee is satisfied there is justification for the presumption contained in clause 70 and the justification is appropriate in the circumstances.

3.1.3 Clauses 43 and 54 – rights and liberties and retrospective imposition of obligations

As mentioned earlier, Clause 43 of the Bill inserts new section 14 into the LSA. This new section is intended to apply retrospectively. Clause 54 of the Bill inserts a transitional provision (new section 32(3) of the LSA) which provides for the retrospective application to new section 14.

In effect, all sale contracts for proposed allotments that have not settled when the section commences, will be subject to a right of termination *only if the buyer is not at fault.*

Potential issues

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively, and strong argument is necessary to justify a contrary outcome.

The Explanatory Notes state:

> *Section 10A of the* Land Sales Act 1984 *(the Act) provides a buyer of a proposed allotment with a right to avoid completing a sale if the seller fails to give the buyer a registrable transfer within the prescribed time. A similar right was previously provided for the sale of proposed lots under section 27 of the Act until the provision was amended in February 2012 by the S*ustainable Planning and Other Legislation Amendment Act 2012 *(the SPOLA Act). The SPOLA Act clarified that the buyer's termination right under section 27 of the Land Sales Act was only available if the buyer was not at fault. This amendment was made to ensure that a buyer could not disingenuously take advantage of the statutory termination right.*
>
> *Through new section 14 of the Act (inserted by Clause 43 of the Bill) the buyer's termination right provided under section 10A of the Act is retained. However, like the amendment made to section 27 of the Act in February 2012, new section 14 of the Act makes it clear that the right of termination is only available when the buyer is not at fault.*
>
> *The retrospective application … is considered justified on the grounds that if a defaulting buyer terminates a contract under the existing interpretation of section 10A, the seller must return the deposit to the buyer. In such circumstances, the seller is left in a position of no return on their investment and also facing new marketing and selling costs for the now*

[248] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 117.

completed but unsold allotment, which is not a fair outcome for sellers that are able, and attempting, to comply with the requirements of the Act.

Committee Comment

On balance, the Committee considers the retrospective nature of the proposed clause is appropriate in the circumstances, given its restricted application to matters where the buyer is at fault, and the justification provided in the Explanatory Notes.

3.1.4 Clauses 12, 17, 19, 43 and 54 – unambiguous and sufficiently clear and precise

Clause 12

As detailed in Section 2.1.3 of this report, clause 12 of the Bill inserts new section 212B into the BCCMA, which provides for the application of Division 3 if an option is granted by a seller to a buyer of a proposed lot.

As addressed earlier, the drafting of new section 212B of the BCCMA (and the corresponding sections in the Community Titles Legislation) creates a loophole, which enables a seller to avoid the disclosure requirements to a prospective buyer. This is because an option to purchase is regarded by practitioners as a sale contract, which means the drafting of proposed section 212B effectively renders the seller disclosure requirements optional.

In its submission, the QLS suggested clause 12 be amended in line with relevant sections of the *Property Occupations Act 2014.* If amended, the clause would require a seller to comply with the seller disclosure requirements before entering into the option to purchase. Further, it would provide the seller need not comply with the seller disclosure requirements again, before entering into a later contract arising from the option to purchase, if parties to the later contract are the same as the parties to the option to purchase.

Clause 17

As discussed in section 2.1.5 of this report, clause 17 of the Bill inserts new section 217B of the BCCMA. This new section includes a definition of 'sunset date', which arguably allows the sunset date to be a fixed date capable of being extended by the seller for delay events beyond its control (up to 5 ½ years).

The QLS suggested clause 17 of the Bill be amended to clarify the sunset date is a fixed date, which is not capable of unilateral extension by a party to the contract.

Clauses 19 and 43

As explained in section 2.2.2 of this report, clause 19 of the Bill inserts new section 218E into the BCCMA, and clause 43 inserts new section 21 into the LSA.

These new sections include 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 proposed lot. The Bill prescribes how a law practice, real estate agent or the public trustee, who receives the instrument on behalf of the seller (a 'registered entity'), must deal with the security instrument.

The proposed provisions of the LSA 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 which held the instrument in its trust account, in accordance with the provisions set out in the Bill.

As addressed earlier, the drafting of the new sections may be interpreted such that the new provisions apply only to a recognised entity that receives a security instrument. Therefore, if a seller receives the instrument, the seller would not be required to comply with the new sections.

The QLS recommended amending the Bill to clarify that a seller who receives the security instrument from the buyer, must give the instrument to a recognised entity, who would then be required to comply with the new sections.

Clause 54

As detailed in section 2.3 of this report, clause 54 of the Bill inserts new section 37 into the LSA, which provides that an application for exemption under section 19 of the LSA, that has not been decided at the commencement of new Part 4, Division 2, lapses at the commencement. The outcome for existing sale contracts is unclear from the current drafting.

The QLS expressed concern that contracts subject to the granting of the exemption will be adversely affected. It suggested amending the transitional provision to deem that, at commencement, any contractual conditions subject to the granting of an exemption are satisfied.

Potential issues

Legislation should be unambiguous and drafted in a sufficiently clear and precise way.[249] Legislative provisions must be drafted in a way that clearly express their purpose and intended operation.[250] Plain English is recognised as the best approach to the use of language in legislation, with the objective to produce a law that is both easily understood and legally effective to achieve the desired policy objectives.[251]

Committee Comment

The Committee notes the Department has supported the suggested amendments to the aforementioned clauses in the Bill. As mentioned in the 'Committee Comment' sections of this report, the Committee is satisfied with the Department's comments in relation to the suggested amendments.

3.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* provides that fundamental legislative principles requires legislation to have sufficient regard to the institution of Parliament.

3.2.1 Clause 39 - Amendment of an Act only by another Act

Clause 39 of the Bill inserts new section 4 in the LSA, which authorises the use of a regulation to exclude the operation of the LSA with respect to certain leases under the *Land Act 1994*.

Potential issues

A Bill should only authorise the amendment of an Act by another Act.[252] A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action,

[249] *Legislative Standards Act 1992*, section 4(3)(k).

[250] Office of the Queensland Parliamentary Counsel, Principles of good legislation: OQPC guide to FLPs, Chapter – Reversal of onus of proof, page 8.

[251] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, pages 87-88.

[252] *Legislative Standards Act 1992*, section 4(4)(c).

is defined as a Henry VIII clause. If an Act was unjustifiably purported to be amended by a statutory instrument (other than an Act), the SLC would request that Parliament disallow the part of the instrument that breaches the fundamental legislative principle requiring legislation to have sufficient regard for the institution of Parliament.[253] The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:

- to facilitate immediate executive action;
- to facilitate the effective application of innovative legislation;
- to facilitate transitional arrangements;
- to facilitate the application of national scheme legislation.[254]

The OQPC Notebook explains the existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause does not fall within any of the above situations, the SLC classified the clause as 'generally objectionable'.[255]

The Explanatory Notes state:

> *Section 4 is not a new provision in the Act and replicates existing section 18 of the Act. However, it has been moved as part of the Bill to be new section 4. Existing section 18 was inserted in the Act by the* Land Sales Act 1984 Amendment Act (No 2) 1985 *(No 105) (the Amendment Act). As explained in the relevant second reading speech for the Amendment Act, the provision was introduced for the following reasons:*
>
> > *"In order that the special position of lessees under development leases and special leases held pursuant to the Land Act are not unnecessarily disturbed, it is proposed to grant to the Governor in Council power to exempt a proposed subdivision of leasehold land from the provisions of the relevant provisions of Part II of the Act."*
> >
> > *(Hansard, 27 November 1985 at pages 2920-2922)*
>
> *The operation of section 18 was not raised by stakeholders as an issue during the review of the Land Sales Act. Accordingly, it is proposed to retain the provision to provide flexibility for leases under the Land Act, albeit the provision has been rarely used since its inclusion in the Act in 1985.*

Committee Comment

Despite the SLC's objections to the use of Henry VIII clauses, the Committee considers the Parliament's power to disallow a regulation provides sufficient regard for the institution of Parliament.

3.3 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

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[253] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 159.

[254] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 159.

[255] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 159; Alert Digest 2006/10, page 6, paras 21-24; Alert Digest 2001/8, page 28, para 31.

Committee Comment

Explanatory Notes were tabled with the introduction of the Bill. In the Committee's opinion, the notes are fairly detailed and contain the information required by Part 4. The Committee considers the Explanatory Notes include a reasonable level of background information and commentary to facilitate an understanding of the Bill's aims and origins.

Appendix A – List of Submissions

Sub #	Submitter
001	Property Council of Australia
002	Urban Development Institute of Australia (Queensland)
003	Queensland Law Society
004	Real Estate Institute of Queensland
005	Bar Association of Queensland

Statement of Reservation

YVETTE D'ATH MP
SHADOW ATTORNEY GENERAL AND SHADOW MINISTER FOR JUSTICE
SHADOW MINISTER FOR TRAINING
SHADOW MINISTER FOR DISABILITY SERVICES
SHADOW MINISTER FOR HOUSING
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28 August 2014

Mr Ian Berry MP
Member for Ipswich
Chairperson
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Berry

Statement of Reservation – *Land Sales and Other Legislation Amendment Bill 2014*

I wish to notify the committee that I have reservations about aspects of Report No. 71 of the Legal Affairs and Community Safety Committee into the *Land Sales and Other Legislation Amendment Bill 2014.*

I will detail the reasons for my concern during the parliamentary debate of the Bill.

Yours sincerely

Yvette D'Ath MP
Member for Redcliffe