

I hereby certify that this PUBLIC BILL has finally passed the Legislative Assembly of Queensland.



*M. A. Rie*

Legislative Assembly Chamber,  
Brisbane,

The Clerk of the Parliament.

26 September 2014

In the name and on behalf of the Queen, I assent to this Bill.

*Paul de Jersey*

Government House,

Brisbane,

26 September 2014



Queensland

No. 46 of 2014  
A BILL for

An Act to amend the Agents Financial Administration Act 2014, the Body Corporate and Community Management Act 1997, the Breakwater Island Casino Agreement Act 1984, the Building Units and Group Titles Act 1980, the Fair Trading Inspectors Act 2014, the Land Sales Act 1984, the Legal Profession Act 2007, the Property Law Act 1974, the Property Occupations Act 2014 and the South Bank Corporation Act 1989 for particular purposes, to repeal the Land Sales Regulation 2000 and to make minor and consequential amendments of the Acts mentioned in schedule 1





## Queensland

# Land Sales and Other Legislation Amendment Bill 2014

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# 2014

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## A Bill

for

***An Act to amend the Agents Financial Administration Act 2014, the Body Corporate and Community Management Act 1997, the Breakwater Island Casino Agreement Act 1984, the Building Units and Group Titles Act 1980, the Fair Trading Inspectors Act 2014, the Land Sales Act 1984, the Legal Profession Act 2007, the Property Law Act 1974, the Property Occupations Act 2014 and the South Bank Corporation Act 1989 for particular purposes, to repeal the Land Sales Regulation 2000 and to make minor and consequential amendments of the Acts mentioned in schedule 1***

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[s 1]

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## The Parliament of Queensland enacts—

### **Part 1 Preliminary**

#### **1 Short title**

This Act may be cited as the *Land Sales and Other Legislation Amendment Act 2014*.

#### **2 Commencement**

This Act, other than parts 4 and 10 and sections 60A and 63A, commences on the commencement of the *Property Occupation Act 2014*, part 7.

### **Part 2 Amendment of Agents Financial Administration Act 2014**

#### **3 Act amended**

This part amends the *Agents Financial Administration Act 2014*.

#### **4 Amendment of s 22 (Permitted drawings from trust accounts)**

Section 22(4), ‘section 26’—

*omit, insert—*

division 5

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**5 Replacement of pt 2, div 5 (Disputes about trust money)**

Part 2, division 5—

*omit, insert—*

**Division 5                      Payments from trust  
accounts if dispute arises  
or is likely to arise**

**25 Application of div 5**

- (1) This division applies if—
  - (a) an agent holds a transaction fund for a transaction under section 22; and
  - (b) before the transaction fund is paid out under section 22, the 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 (the *amount in dispute*).
- (2) In this section—

*party*, to the transaction, does not include an entity acting for a party to the transaction.

**26 When amount in dispute may be paid**

- (1) This section applies if the agent considers that a party to the transaction is entitled to the amount in dispute.
- (2) The agent may give all parties to the transaction a written notice to the following effect—
  - (a) the agent considers that a stated party is entitled to the amount in dispute;
  - (b) the agent is authorised, under this Act, to pay the amount in dispute to the stated party

[s 5]

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on or after a stated date (at least 60 days after the notice is given), unless—

- (i) a proceeding disputing the stated party's entitlement to the amount in dispute is started and the agent is advised of the start of the proceeding; or
  - (ii) all parties to the transaction authorise payment of the amount to the stated party before the stated date.
- (3) The agent may pay the amount in dispute to the stated person if—
- (a) after the stated date, the agent is unaware of the start of a proceeding claiming an entitlement to the amount; or
  - (b) on or before the stated date, the agent receives written notice under subsection (2)(b)(ii) authorising payment of the amount to the stated party.
- (4) The agent is not liable civilly or under an administrative process in relation to the payment of the amount in dispute to the stated party as provided under this section if it is subsequently found that the stated party was not entitled to the amount.
- (5) To remove any doubt, it is declared that this section—
- (a) provides a process for the payment of an amount in dispute; and
  - (b) does not decide legal entitlement to the amount or prevent a person legally entitled to the amount recovering it from the person to whom it was paid.
- (6) Nothing in this section requires the agent to give notice under subsection (2) if the agent decides to

retain the amount in dispute until payment of the amount is authorised by all parties to the transaction or entitlement to the amount is decided by a court.

## **27 Dealing with amount in dispute if not dealt with under s 26**

- (1) This section applies if the amount in dispute is not dealt with under section 26.
- (2) The agent must not pay out the amount in dispute unless the agent receives written notice—
  - (a) from all parties to the transaction stating the person who is entitled to the amount; or
  - (b) a proceeding has been started to decide who is entitled to the amount.

Maximum penalty—200 penalty units or 2 years imprisonment.

## **28 Where amount in dispute must be paid if person is entitled under s 27 or proceeding is started**

- (1) This section applies if a person is entitled to the amount in dispute under section 27(2)(a) or a proceeding to decide entitlement to the amount is started.
- (2) The agent must pay the amount in dispute immediately—
  - (a) if notice under section 27(2)(a) is received—to the person stated to be entitled to the amount or in accordance with the person's direction; or
  - (b) if a proceeding disputing entitlement to the amount is started—to the court in which the proceeding was started.

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Maximum penalty—200 penalty units or 2 years imprisonment.

## **6 Amendment of s 82 (Claims)**

(1) Section 82(1)(g), last dot point—

*omit, insert—*

- section 212.

(2) Section 82(1)(h)—

*omit.*

# **Part 3 Amendment of Body Corporate and Community Management Act 1997**

## **7 Act amended**

This part amends the *Body Corporate and Community Management Act 1997*.

*Note—*

Also see the amendments in schedule 1.

## **8 Insertion of new s 205AA**

Chapter 5, part 1A, before section 205A—

*insert—*

### **205AA Application of ch 5 generally**

This chapter applies to the sale of a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed regardless of where the contract for the sale



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was entered into if, when the proposed lot becomes a lot, it will be situated in Queensland.

## 9 Insertion of new ss 205C and 205D

Chapter 5, part 1A, after section 205B—

*insert—*

### **205C References to disclosure statement**

- (1) This section applies if a lot is intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.
- (2) In this chapter, a reference to a disclosure statement for the lot includes a reference to the prescribed documents accompanying the statement for the lot.
- (3) In this section—  
*prescribed documents*, accompanying a disclosure statement, means the documents mentioned in section 213(2)(a)(ii) and (f).

### **205D References to things done by or in relation to buyer or seller**

- (1) This section applies in relation to a provision of part 1 or 2 that refers to—
  - (a) a thing required or permitted to be done by or in relation to a buyer or seller of a lot or proposed lot; or
  - (b) a thing having been done by or in relation to a buyer or seller of a lot or proposed lot.
- (2) The thing may be done, or the thing may have been done, by or in relation to the buyer or seller either—
  - (a) personally; or

[s 10]

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- (b) through an agent who is authorised to act for the buyer or seller in relation to the thing.

**10 Renumbering of ch 5, pt 2, divs 1 and 2**

Chapter 5, part 2, divisions 1 and 2—

*renumber* as chapter 5, part 2, divisions 2 and 3.

**11 Insertion of new ch 5, pt 2, div 1**

Chapter 5, part 2, before division 2 as renumbered by this Act—

*insert*—

**Division 1 Preliminary**

**211A Definitions for pt 2**

In this part—

*cadastral surveyor* see the *Surveyors Act 2003*, schedule 3.

*law practice* means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;
- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

*prescribed trust account*, for a recognised entity, means—

- (a) if the recognised entity is a law practice—a trust account kept by the practice under the *Legal Profession Act 2007*; or

- (b) if the recognised entity is the public trustee—a common fund held by the public trustee under the *Public Trustee Act 1978*; or
- (c) if the recognised entity is a real estate agent—a trust account kept by the agent under the *Agents Financial Administration Act 2014*.

***proposed lot*** means a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.

***public trustee*** means the public trustee under the *Public Trustee Act 1978*.

***real estate agent*** means a real estate agent carrying on business as a real estate agent under the *Property Occupations Act 2014*.

***recognised entity*** means any of the following—

- (a) a law practice;
- (b) the public trustee;
- (c) a real estate agent.

## 12 Insertion of new s 212B

Chapter 5, part 2, division 3 as renumbered by this Act—

*insert—*

### **212B Application of div 3 if option granted**

- (1) Section 213, as modified by this section, applies if a person grants an option (the ***option***) to another person—
  - (a) to purchase a proposed lot; or
  - (b) to sell a proposed lot.
- (2) For subsection (1)—

[s 13]

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- (a) section 213(1) requires the giving of a disclosure statement in relation to the option as if a reference to a contract for the sale of a proposed lot being entered into were a reference to an option to purchase or sell the proposed lot being granted; and
- (b) any right of termination under section 213 relating to the disclosure statement applies in relation to—
  - (i) the option; and
  - (ii) a contract entered into by the seller and buyer for the sale to the buyer of the proposed lot arising from the option.
- (3) If the seller and buyer enter into a contract for the sale to the buyer of the proposed lot arising from the option, section 213(1) does not require the giving of a disclosure statement in relation to the contract for the sale.
- (4) If the buyer is not a party to the contract for the sale of the proposed lot arising from the option, the seller must comply with section 213 before entering into the contract for the sale.
- (5) In this section—

*buyer* means the person who is granted an option to purchase, or grants an option to sell, the proposed lot.

*seller* means the person who grants an option to purchase, or is granted an option to sell, the proposed lot.

### 13 Amendment of s 213 (Information to be given by seller to buyer)

- (1) Section 213(1), from ‘a lot’ to ‘changed’—

*omit, insert—*

a proposed lot

(2) Section 213(2), before paragraph (a)—

*insert—*

(aa) must—

- (i) identify the proposed lot; and
- (ii) be accompanied by a disclosure plan, complying with section 213AA, for the proposed lot; and
- (iii) state the date by which the seller must settle the contract for the sale of the proposed lot as provided under section 217B; and

(3) Section 213(2)(aa) to (g)—

*renumber* as section 213(2)(a) to (h).

(4) Section 213(3), ‘or a person authorised by the seller’—

*omit.*

## 14 Insertion of new s 213AA

After section 213—

*insert—*

### **213AA Disclosure plan requirements**

- (1) A disclosure plan may comprise 1 or more documents that contain—
  - (a) for a proposed lot intended to be a building format lot—the building format lot particulars; or
  - (b) for a proposed lot intended to be a volumetric format lot—the volumetric format lot particulars; or

[s 14]

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- (c) for a proposed lot intended to be a standard format lot—the standard format lot particulars.

*Example of a document that may comprise or form part of a disclosure plan—*

a draft plan of survey

- (2) A disclosure plan must be prepared by a cadastral surveyor.
- (3) In this section—

***appropriate contour intervals*** means contour intervals of not more than—

- (a) for a proposed lot of not more than 2000m<sup>2</sup>—50cm in height; or
- (b) for a proposed lot of more than 2000m<sup>2</sup>—1m in height.

***building format lot particulars***, for a proposed lot intended to be a building format lot, means the following—

- (a) the proposed number of the lot;
- (b) the total area of the lot;
- (c) identification of any parts of the lot proposed to be outside the building in which the lot is proposed to be located, including any proposed balcony, courtyard or carport;
- (d) the floor level in the building in which the lot is proposed to be located;
- (e) identification of other lots and common property proposed to be on the same floor level in the building in which the lot is proposed to be located;
- (f) identification of the proposed orientation of the lot by reference to north.

*existing surface contours*, of a proposed lot intended to be a standard format lot, means the surface contours of the lot at the time the disclosure plan for the lot is prepared.

*standard format lot particulars*, for a proposed lot intended to be a standard format lot, means the following—

- (a) the proposed number of the lot;
- (b) a description of the dimensions of the lot as bearings and distances;
- (c) if the seller of the lot intends that before the contract is settled, a building be constructed on the lot by the seller, or by another person who is not the buyer under an arrangement procured by the seller—
  - (i) the location of the building on the lot; and
  - (ii) the total area, and number of levels, of the building; and
  - (iii) identification of any features proposed to be constructed on the lot, including, for example, any proposed driveway, carport, courtyard or pergola;
- (d) identification of the proposed orientation of the lot by reference to north;
- (e) if there is operational work for the lot—
  - (i) contour maps of the lot showing the surface contours, with appropriate contour intervals, as at the completion of the work; and
  - (ii) the location of any retaining walls that are part of the work; and
  - (iii) the height of any retaining walls that are part of the work or, if the height

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varies across the length of the wall, the height of the lowest and highest points of the wall and the average height of the wall; and

- (iv) the areas of the lot to be cut or filled as part of the work; and
- (v) the following information about any fill that is part of the work—
  - (A) the depth of the fill;
  - (B) whether the compaction of the fill will be done in accordance with Australian Standard AS 3798-2007, and the level of inspection and testing services carried out;
  - (C) if the compaction of the fill will not be done in accordance with that Australian Standard, the nature of the departure from the standard.
- (f) if there is no operational work for the lot—contour maps of the lot showing the existing surface contours, with appropriate contour intervals.

***volumetric format lot particulars***, for a proposed lot intended to be a volumetric format lot, means the following—

- (a) the proposed number of the lot;
- (b) an isometric representation of the lot;
- (c) the area of the projected footprint of the lot;
- (d) the level of the ground surface in approximate values for illustrating the location of the lot in relation to that level;



- (e) identification of the proposed orientation of the lot by reference to north;
- (f) if the lot is proposed to contain a building or be located in a building—
  - (i) the floor level on which the lot is proposed to be located; and
  - (ii) identification of other lots and common property proposed to be on the same floor level in the building.

**15 Amendment of s 214 (Variation of disclosure statement by further statement)**

- (1) Section 214(2), from ‘within 14 days’ to ‘apply’—  
*omit, insert—*  
at least 21 days before the contract is settled
- (2) Section 214(3)—  
*omit, insert—*
  - (3) The further statement must—
    - (a) be signed by the seller; and
    - (b) to the extent, if any, the statement rectifies inaccuracies in the building format lot particulars, volumetric format lot particulars or standard format lot particulars mentioned in the disclosure statement—be certified as accurate by a cadastral surveyor.
- (3) Section 214(4)(c), ‘14 days’—  
*omit, insert—*  
21 days
- (4) Section 214(5)—  
*omit, insert—*

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- (5) Subsections (1) to (4) continue to apply after the further statement is given on the basis that the disclosure statement is taken to be constituted by the disclosure statement and any further statement.
- (6) If the seller fails to comply with this section, the buyer may terminate the contract by written notice given to the seller if—
  - (a) the contract has not already been settled; and
  - (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate.

**16 Insertion of new ch 5, pt 2, div 4, hdg**

After section 217—

*insert—*

**Division 4                      Other grounds for  
terminating contract**

**17 Insertion of new s 217B and ch 5, pt 2, div 5, hdg and div 5, sdiv 1, hdg**

After section 217A—

*insert—*

**217B Terminating contract if not settled within  
particular period**

- (1) This section applies if, other than because of the buyer's default, the seller has not settled the contract for the sale of the proposed lot before—
  - (a) if the contract provides for a date by which it must be settled (the *sunset date*), the earlier of the following—

- (i) the sunset date or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date;
  - (ii) the end of 5 $\frac{1}{2}$  years after the day the contract was entered into by the buyer or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date; or
- (b) otherwise—the end of 3 $\frac{1}{2}$  years after the day the contract was entered into by the buyer or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date.

*Note—*

See section 441 for the particular circumstances in which the period prescribed in subsection (1)(b) is changed.

- (2) The buyer may terminate the contract for the sale of the proposed lot by a signed written notice of termination given to the seller before the contract is settled.

## **Division 5      Miscellaneous provisions**

### **Subdivision 1   Termination**

#### **18      Replacement of s 218 (Termination under this part)**

Section 218—

*omit, insert—*

#### **218 Termination under this part**

- (1) This section applies if a buyer terminates a contract under this part.
- (2) The seller must, within 14 days after the termination, repay to the buyer—

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- (a) any amount paid to the seller or the seller's agent towards the purchase of the lot; and
  - (b) any interest that accrued on the amount while it was held by the seller or the seller's agent.
- (3) However, if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under subsection (2) applies subject to compliance with the law governing the entity's trust account.
- (4) An amount repayable under subsection (2) may be recovered as a debt.

**19 Insertion of new ch 5, pt 2, div 5, sdiv 2 and ch 5, pt 2, div 5, sdiv 3, hdg and ss 218E and 218F**

After section 218—

*insert—*

**Subdivision 2 Amounts held in trust accounts**

**218A Payment of particular amounts**

This subdivision applies to the following amounts—

- (a) an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (other than an amount paid at settlement);
- (b) an amount paid under another instrument (whether legally binding or not) relating to the sale of a proposed lot.

*Examples of instruments for paragraph (b)—*

- an option to purchase
- an instrument providing for an expression of interest

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**218B Amounts paid under s 218A to be held in prescribed trust account**

- (1) The person to whom the amount is paid must pay the amount directly to—
- (a) if the contract or instrument states the amount is to be paid to either of the following recognised entities, the recognised entity—
    - (i) a law practice at its office in Queensland;
    - (ii) a real estate agent carrying on the business of a real estate agent; or
  - (b) if paragraph (a) does not apply, the public trustee.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) An amount paid to a recognised entity mentioned in subsection (1)(a) or (b) must be—
- (a) held by the entity in a prescribed trust account; and
  - (b) dealt with by the entity in accordance with this subdivision and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) An amount paid to a law practice under this section is taken to be trust money under the *Legal Profession Act 2007*, part 3.3.

**218C Disposal of amount held in prescribed trust account**

- (1) A recognised entity that is paid an amount under section 218B(1) must hold the amount in the

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entity's prescribed trust account until a party to the contract or instrument becomes entitled, under this part or otherwise according to law, to a repayment or payment of the amount.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) On a party becoming entitled to a repayment or payment of the amount, the recognised entity must dispose of the amount in accordance with the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) Subsections (1) and (2) apply despite anything in the contract or instrument under which the amount was paid to the recognised entity.

### **218D Investment of amount held in prescribed trust account**

- (1) A recognised entity that holds an amount paid under section 218B(1) in a prescribed trust account may invest the amount if—
- (a) either of the following applies—
- (i) the contract or instrument authorises the investment;
- (ii) the parties to the contract or instrument give the entity their consent to the investment by signed written notice; and
- (b) the investment is carried out in accordance with the law governing the operation of the prescribed trust account.

- (2) An amount invested as mentioned in subsection (1) is taken to be an amount in the prescribed trust account.
- (3) Any proceeds of an investment of an amount as mentioned in subsection (1) must be paid into the prescribed trust account, unless the proceeds are further invested as mentioned in subsection (1).

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

### **Subdivision 3 Other provisions**

#### **218E Security instruments**

- (1) This section applies if an instrument is received from the buyer of a proposed lot as security for the payment of an amount under the contract for the sale of the lot—
  - (a) by a recognised entity on behalf of the seller; or
  - (b) by any other person on behalf of the seller; or
  - (c) by the seller.

*Example of an instrument for subsection (1)—*

bank guarantee

- (2) For subsection (1)(a), the recognised entity must keep the instrument at the prescribed place until—
  - (a) the instrument is returnable to the buyer according to law; or
  - (b) the instrument is given to the issuer of the security in exchange for the amount it secures.

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Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) The amount given in exchange for the instrument under subsection (2)(b) is trust money.
- (4) The amount given must be—
  - (a) held by the recognised entity who held the instrument in the entity's prescribed trust account; and
  - (b) dealt with by the recognised entity in accordance with this division and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (5) For subsection (1)(b), the person must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (6) For subsection (1)(c), the seller must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (7) If the instrument is given to a recognised entity under subsection (5) or (6), subsections (2), (3) and (4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller as provided in subsection (1)(a).

- (8) In this section—

*prescribed place* means—

- (a) for a recognised entity that is a law practice—an office of the practice in Queensland; or



- (b) for a recognised entity that is the public trustee—an office of the public trustee in Queensland; or
- (c) for a recognised entity that is a real estate agent—the office of the real estate agency in which the agent carries on the business of a real estate agent.

### **218F Evidentiary provision**

In a proceeding for an offence against this part, a copy of a contract or other instrument purporting to relate to the sale or purchase of a proposed lot and produced on behalf of the complainant is admissible in evidence as if it were the original contract or instrument.

## **20 Insertion of new s 309A**

After section 309—

*insert—*

### **309A Responsibility for acts or omissions of representative**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) 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

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also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

*representative* means—

- (a) of an individual—an employee or agent of the individual; or
- (b) of an unincorporated body—a member of the body, or an employee or agent of the body; or
- (c) of a partnership—a partner, employee or agent of the partnership; or
- (d) of a corporation—an executive officer, employee or agent of the corporation.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

## 21 Insertion of new ch 8, pt 13

Chapter 8—

*insert—*

### **Part 13**                      **Transitional provisions for Land Sales and Other Legislation Amendment Act 2014**

#### **437 Definitions for pt 13**

In this part—

***amendment Act*** means the *Land Sales and Other Legislation Amendment Act 2014*.

***commencement*** means the commencement of this part.

***new***, in relation to a provision, means the provision as in force immediately after the commencement.

***old***, in relation to a provision, means the provision as in force at any relevant time before the commencement.

***proposed lot*** means a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.

#### **438 Application of s 212B**

Section 212B applies only in relation to a contract granting an option to purchase a proposed lot entered into after the commencement.

#### **439 Application of s 213**

New section 213(2)(a) applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.

#### **440 Application of s 214**

- (1) Old section 214 continues to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) New section 214 applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.

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#### **441 Application, and modified application, of s 217B**

- (1) Section 217B applies only in relation to a contract for the sale of a proposed lot entered into by a buyer after the commencement.
- (2) However, section 217B as modified under subsection (3) applies in relation to the contract for the sale of the proposed lot if—
  - (a) the proposed lot is a proposed lot mentioned in the *Land Sales Regulation 2000*, schedule 2 as in force immediately before the repeal of that regulation; and

*Note—*

Under old LSA, section 28, a period could be prescribed by regulation for giving a registrable instrument for a proposed lot.

- (b) the contract does not provide the date by which it must be settled.
- (3) Section 217B is modified by omitting subsection (1)(b) and inserting the following—
  - ‘(b) if the contract does not provide the date by which it must be settled—the end of the period prescribed in the repealed *Land Sales Regulation 2000*, schedule 2, worked out from the day the contract was entered into.’

- (4) In this section—

*old LSA, section 28* means section 28 of the *Land Sales Act 1984* as in force immediately before the commencement.

#### **442 Application of s 218**

- (1) Old section 218 continues to apply in relation to a contract for the sale of a proposed lot entered into

before the commencement as if the amendment Act had not been enacted.

- (2) New section 218 applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.

#### **443 Application of ch 5, pt 2, div 5, sdiv 2**

Chapter 5, part 2, division 5, subdivision 2 applies only in relation to amounts paid under a contract for the sale of a proposed lot entered into after the commencement.

#### **444 Continuing application of old LSA, part 3**

- (1) Old LSA, part 3 continues to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) However, if, at any time before the settlement of a contract to which the part applies, the parties to the contract agree to settle the sale using e-conveyancing, the part is to be read with the following changes—
  - (a) old LSA, section 22(4)(a)—  
*omit, insert—*  
'(a) the vendor or the vendor's agent can not require the purchaser to settle; and';
  - (b) old LSA, section 23(1), ' , without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor'—  
*omit, insert—*  
'(but excluding an amount payable at settlement)';

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- (c) old LSA, section 23(4)—  
*omit*;
  - (d) old LSA, section 25(2)(a)—  
*omit, insert*—  
'(a) before settlement of the sale of the proposed lot; or';
  - (e) old LSA, section 25(2)(b)(ii)—  
*omit, insert*—  
'(ii) before settlement of the sale of the proposed lot;';
  - (f) old LSA, section 27, heading—  
*omit, insert*—  
**'27 Purchaser's rights if purchase not settled within a certain period'**;
  - (g) old LSA, section 27(1)(b), 'the vendor has not given the purchaser a registrable instrument of transfer for the lot'—  
*omit, insert*—  
'the sale of the proposed lot has not been settled';
  - (h) old LSA, section 27(2), 'before the vendor gives the purchaser the registrable instrument of transfer for the proposed lot'—  
*omit, insert*—  
'before the sale of the proposed lot has been settled';
  - (i) old LSA, section 28, heading, 'for giving of registrable instrument'—  
*omit*.
- (3) In this section—

*e-conveyancing* see the *Property Law Act 1974*, section 58A.

*old LSA*, followed by a provision number, means the provision with that number in the *Land Sales Act 1984* as in force at any relevant time before the commencement.

## 22 Amendment of sch 6 (Dictionary)

Schedule 6—

*insert—*

*building format lot* see the *Land Title Act*, schedule 2.

*cadastral surveyor*, for chapter 5, part 2, see section 211A.

*law practice*, for chapter 5, part 2, see section 211A.

*prescribed trust account*, for chapter 5, part 2, see section 211A.

*proposed lot*, for chapter 5, part 2, see section 211A.

*public trustee*, for chapter 5, part 2, see section 211A.

*real estate agent*, for chapter 5, part 2, see section 211A.

*recognised entity*, for chapter 5, part 2, see section 211A.

*standard format lot* see the *Land Title Act*, schedule 2.

*volumetric format lot* see the *Land Title Act*, schedule 2.





**Breakwater Island Limited ACN 010 271 691** of Level 3, 159 William Street, Brisbane, Queensland (*Breakwater Island*)

**Jupiters Limited ACN 010 741 045** of Level 3, 159 William Street, Brisbane, Queensland (*Jupiters*)

**CLG Properties Pty Ltd as trustee for CLG Property Trust ACN 134 383 547** of 1/177 Salmon Street, Port Melbourne, Victoria (*CLG Properties*)

## RECITALS

- A. The State, ANZ Executors and Trustee Company Limited and Breakwater Island were parties to an agreement made on 27 November 1984 relating to the establishment and operation of a Hotel/Casino complex in Townsville, which was authorised by the *Breakwater Island Casino Agreement Act 1984* (Qld). That agreement has been varied under the *Breakwater Island Casino Agreement Act 1984* (Qld), including by way of an amendment agreement dated 14 June 2006 that varied the agreement in the form of a ‘replacement agreement’.
- B. Presently, Breakwater Island is the trustee of the Breakwater Island Trust and holds a casino licence in its capacity as trustee.
- C. Jupiters currently holds all the units in the Breakwater Island Trust and all of the shares in Breakwater Island.
- D. Jupiters proposes, subject to relevant consents and approvals, to transfer all of the units in the Breakwater Island Trust and all of the shares in Breakwater Island to CLG Properties pursuant to a sale and purchase agreement between Jupiters and CLG Properties dated 24 January 2014.
- E. The parties have agreed to amend the Breakwater Island Casino Agreement on the terms set out in this Deed.

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## OPERATIVE PROVISIONS

### 1 Definitions and Interpretation

In this Deed:

- (a) **Act** means the *Breakwater Island Casino Agreement Act 1984* (Qld), as amended from time to time.
- (b) **Breakwater Island Casino Agreement** means the agreement referred to in Recital A.
- (c) **Effective Date** means the date on which the last of the following conditions is satisfied:
  - (i) Jupiters and CLG Properties provide evidence to the Minister's satisfaction that all of the Shares and Units have been transferred to CLG Properties by Jupiters and CLG Properties has been registered as the legal owner of the Shares and Units;
  - (ii) all approvals required in order to permit, or that may be required as a result of or in connection with, any of the matters described in subclause (i) above, including under section 30 of the *Casino Control Act 1982* and under clauses 26(l), 26(m) and 26(n) of the Breakwater Island Casino Agreement, have been obtained; and
  - (iii) a deed, in a form acceptable to the Minister and dealing with:
    - (A) the legal or beneficial interests in, or control of, CLG Properties and the CLG Property Trust, including in relation to the matters in clauses 26(e), (i) and (j) of the Breakwater Island Casino Agreement;
    - (B) the present or future beneficiaries of the CLG Property Trust; and
    - (C) such other matters as the Minister may require,

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has been executed by all relevant parties, including CLG Properties, its parent entity and any persons that legally or beneficially own or control CLG Properties or its parent entity and the State.

- (d) Words which are defined in the Breakwater Island Casino Agreement and which are used in this Deed have the same meaning in this Deed as in the Breakwater Island Casino Agreement, unless the context requires otherwise.

## 2 Amendment of the Breakwater Island Casino Agreement

The parties agree that with effect from the Effective Date the Breakwater Island Casino Agreement is amended as follows—

- (a) deleting Jupiters from the “Parties” section and inserting the following in its place:

**“CLG Properties Pty Ltd as trustee for CLG Property Trust ACN 134 383 547 of 1/177 Salmon Street, Port Melbourne, Victoria (*CLG Properties*)”;**

- (b) amending Background paragraph D by deleting reference to “Jupiters” and inserting “CLG Properties” in its place;

- (c) inserting the following defined term into clause 1 after the definition of “Chief Executive”:

**“*CLG Properties* means CLG Properties Pty Ltd as the Trustee for CLG Property Trust ACN 134 383 547”;**

- (b) amending the definitions in clause 1 by deleting the definition “Management Agreement”;

- (c) amending the definitions of “Share” and “Shareholder” in clause 1 by deleting “Jupiters” and inserting “CLG Properties” in its place;

- (d) amending clauses 5, 9, 24, 25, 26, 28 and 46 by deleting references to “Jupiters” and inserting “CLG Properties” in its place; and

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- (e) amending clause 26(o) by the addition of “and the trust deed of the CLG Property Trust” before “shall not be altered or amended without the prior approval in writing of the Minister”.

### **3 Notification**

The Minister must notify the Effective Date by Gazette notice as soon as possible after the last of the conditions specified in the definition of “Effective Date” in clause 1(c) of this Deed is satisfied.

### **4 Remaining Provisions Unaffected**

Except as specifically amended by this Deed, all terms and conditions of the Breakwater Island Casino Agreement remain in full force and effect.

### **5 Accession**

On and with effect from the Effective Date, CLG Properties agrees to be bound by the terms of the Breakwater Island Casino Agreement (as amended by this Deed).

### **6 Governing Law and Jurisdiction**

This Deed is governed by the laws of Queensland. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed.

**Executed** as a Deed

**EXECUTED AS A DEED** by **THE**  
**ATTORNEY-GENERAL AND MINISTER**  
**FOR JUSTICE OF THE STATE OF**  
**QUEENSLAND** for and on behalf of **STATE**  
**OF QUEENSLAND**

**EXECUTED AS A DEED** in accordance with  
s 127 of the Corporations Act by  
**BREAKWATER ISLAND LIMITED**

**EXECUTED AS A DEED** in accordance with  
s 127 of the Corporations Act by **JUPITERS**  
**LIMITED**

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**EXECUTED AS A DEED** in accordance with  
s 127 of the Corporations Act by **CLG**  
**PROPERTIES PTY LTD AS TRUSTEE**  
**FOR CLG PROPERTY TRUST**

## **Part 5**                      **Amendment of Building Units and Group Titles Act 1980**

### **26**      **Act amended**

This part amends the *Building Units and Group Titles Act 1980*.

### **27**      **Amendment of s 7 (Interpretation)**

Section 7(1)—

*insert—*

*cadastral surveyor*, for part 4, division 3, see section 48D.

*law practice*, for part 4, division 3, subdivision 2, see section 49C.

*prescribed trust account*, for part 4, division 3, subdivision 2, see section 49C.

*real estate agent*, for part 4, division 3, subdivision 2, see section 49C.

*recognised entity*, for part 4, division 3, subdivision 2, see section 49C.

## **28 Replacement of pt 4, div 3, hdg (Original proprietors)**

Part 4, division 3, heading—

*omit, insert—*

### **Division 3 Sale of lots and proposed lots**

#### **Subdivision 1 General**

##### **48C Application of div 3 generally**

This division applies to the sale of a proposed lot regardless of where the contract for the sale was entered into if, when the proposed lot becomes a lot, it will be situated in Queensland.

##### **48D Definition for div 3**

In this division—

*cadastral surveyor* see the Surveyors Act 2003, schedule 3.

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### **48E References to disclosure statement**

In this division, a reference to a disclosure statement for a lot or proposed lot includes a reference to the documents required to be given with or to accompany the disclosure statement for the lot or proposed lot under section 49.

### **48F References to things done by or in relation to original proprietor or purchaser**

- (1) This section applies in relation to a provision of this division that refers to—
  - (a) a thing required or permitted to be done by or in relation to an original proprietor or purchaser of a lot or proposed lot; or
  - (b) a thing having been done by or in relation to an original proprietor or purchaser of a lot or proposed lot.
- (2) The thing may be done, or the thing may have been done, by or in relation to the original proprietor or purchaser either—
  - (a) personally; or
  - (b) through an agent who is authorised to act for the original proprietor or purchaser in relation to the thing.

### **48G Application of s 49 if option granted**

- (1) Section 49, as modified by this section, applies if a person grants an option (the *option*) to another person—
  - (a) to purchase a proposed lot; or
  - (b) to sell a proposed lot.
- (2) For subsection (1)—



- (a) section 49(1) requires the giving of a disclosure statement in relation to the option as if a reference to a contract for the sale of a proposed lot being entered into were a reference to an option to purchase or sell the proposed lot being granted; and
  - (b) any right of avoidance under section 49 relating to the disclosure statement applies in relation to—
    - (i) the option; and
    - (ii) a contract entered into by the original proprietor and purchaser for the sale to the purchaser of the proposed lot arising from the option.
- (3) If the original proprietor and purchaser enter into a contract for the sale to the purchaser of the proposed lot arising from the option, section 49(1) does not require the giving of a disclosure statement in relation to the contract for the sale.
- (4) If the purchaser is not a party to the contract for the sale of the proposed lot arising from the option, the original proprietor must comply with section 49 before entering into the contract for the sale.
- (5) In this section—
- original proprietor*** means the person who grants an option to purchase, or is granted an option to sell, the proposed lot.
- purchaser*** means the person who is granted an option to purchase, or grants an option to sell, the proposed lot.

## 29 Amendment of s 49 (Duties of original proprietor)

- (1) Section 49(1)—
-

[s 29]

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*omit, insert—*

- (1) Before a contract (the **contract**) is entered into by an original proprietor and another person (the **purchaser**) for the sale to the purchaser of a lot or proposed lot, the original proprietor must give the purchaser a disclosure statement complying with this section.
- (2) Section 49(2), from ‘A statement in writing’ to ‘shall’—  
*omit, insert—*  
The disclosure statement must
- (3) Section 49(2)(b)—  
*omit, insert—*
  - (b) for the purchase of a proposed lot—
    - (i) be accompanied by a disclosure plan, complying with section 49A, for the lot; and
    - (ii) state the date by which the original proprietor must settle the contract for the sale of the lot as provided under section 49B; and
- (4) Section 49(2)(f) and (g)—  
*omit, insert—*
  - (f) be signed by the original proprietor.
- (5) Section 49(3)—  
*omit, insert—*
  - (3) The disclosure statement must be substantially complete.
  - (3A) The original proprietor does not fail to comply with subsection (1) merely because the disclosure statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.

- 
- (6) Section 49(4), from ‘before’ to ‘(2)’—  
*omit, insert—*  
before the contract for the sale of a lot or proposed lot is settled, the disclosure statement
- (7) Section 49(4), from ‘(forthwith’—  
*omit, insert—*  
(at least 21 days before the contract is settled) to the purchaser a further statement (the ***further statement***), that rectifies the inaccuracy.
- (8) Section 49(4A) to (6)—  
*omit, insert—*
- (4A) The further statement must—
- (a) be signed by the original proprietor; and
  - (b) to the extent, if any, the further statement rectifies inaccuracies in the disclosure plan—be certified as accurate by a cadastral surveyor.
- (4B) The purchaser may avoid the contract if—
- (a) it has not already been settled; and
  - (b) the purchaser would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate; and
  - (c) the avoidance is effected by written notice given to the original proprietor within 21 days, or a longer period agreed between the purchaser and original proprietor, after the original proprietor gives the purchaser the further statement.
- (4C) Subsections (4) to (4B) continue to apply after a further statement is given on the basis that the disclosure statement under subsection (1) is taken

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to be constituted by the disclosure statement and any further statement.

- (5) If the original proprietor fails to give the purchaser a disclosure statement in compliance in every respect with subsections (1) to (3) or a further statement, the purchaser may avoid the contract by written notice given to the original proprietor if—
    - (a) the contract has not already been settled; and
    - (b) for a failure to give a further statement under subsection (4)—the purchaser would be materially prejudiced if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate.
  - (6) If the purchaser avoids a contract under this section, the original proprietor must, within 14 days after the avoidance, repay to the purchaser—
    - (a) any amount paid to the original proprietor towards the purchase of the lot or proposed lot; and
    - (b) any interest accrued on the amount since it was paid.
  - (6A) However, if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under subsection (6) applies subject to compliance with the law governing the entity's trust account.
  - (6B) An amount repayable under subsection (6) may be recovered as a debt.
- (9) Section 49(7), '(5B)'—  
*omit, insert—*
- (5)

- (10) Section 49(8) and (10)—  
*omit.*

**30 Replacement of s 49A (Interpretation of awareness in s 49(5))**

Section 49A—  
*omit, insert—*

**49A Disclosure plan requirements**

- (1) A disclosure plan may comprise 1 or more documents that contain—
- (a) for a proposed lot intended to be shown on a building units plan—the building units particulars; or
  - (b) for a proposed lot intended to be shown on a group titles plan—the group titles particulars.

*Example of a document that may comprise or form part of a disclosure plan—*

a draft plan of survey

- (2) A disclosure plan must be prepared by a cadastral surveyor.
- (3) In this section—

***appropriate contour intervals*** means contour intervals of not more than—

- (a) for a proposed lot of not more than 2000m<sup>2</sup>—50cm in height; or
- (b) for a proposed lot of more than 2000m<sup>2</sup>—1m in height.

***building units particulars***, for a proposed lot intended to be shown on a building units plan, means the following—

- (a) the proposed number of the lot;

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- (b) the total area of the lot;
- (c) identification of any parts of the lot proposed to be outside the building in which the lot is proposed to be located, including any proposed balcony, courtyard or carport;
- (d) the floor level in the building in which the lot is proposed to be located;
- (e) identification of other lots and common property proposed to be on the same floor level in the building in which the lot is proposed to be located;
- (f) identification of the proposed orientation of the lot by reference to north.

*existing surface contours*, of a proposed lot intended to be shown on a group titles plan, means the surface contours of the lot at the time the disclosure plan for the lot is prepared.

*group titles particulars*, for a proposed lot intended to be shown on a group titles plan, means the following—

- (a) the proposed number of the lot;
- (b) a description of the dimensions of the lot as bearings and distances;
- (c) if the original proprietor of the lot intends that before the contract is settled, a building be constructed on the lot by the original proprietor, or by another person who is not the purchaser under an arrangement procured by the original proprietor—
  - (i) the location of the building on the lot; and
  - (ii) the total area, and number of levels, of the building; and

- (iii) identification of any features proposed to be constructed on the lot, including, for example, any proposed driveway, carport, courtyard or pergola;
- (d) identification of the proposed orientation of the lot by reference to north;
- (e) if there is operational work for the lot—
  - (i) contour maps of the lot showing the surface contours, with appropriate contour intervals, as at the completion of the work; and
  - (ii) the location of any retaining walls that are part of the work; and
  - (iii) the height of any retaining walls that are part of the work or, if the height varies across the length of the wall, the height of the lowest and highest points of the wall and the average height of the wall; and
  - (iv) the areas of the lot to be cut or filled as part of the work; and
  - (v) the following information about any fill that is part of the work—
    - (A) the depth of the fill;
    - (B) whether the compaction of the fill will be done in accordance with Australian Standard AS 3798-2007, and the level of inspection and testing services carried out;
    - (C) if the compaction of the fill will not be done in accordance with that Australian Standard, the nature of the departure from the standard.

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- (f) if there is no operational work for the lot—contour maps of the lot showing the existing surface contours, with appropriate contour intervals.

#### **49B Avoiding contract if not settled within particular period**

- (1) This section applies if, other than because of the purchaser's default, the original proprietor has not settled the contract for the sale of the proposed lot before—
  - (a) if the contract provides for a date by which it must be settled (the *sunset date*), the earlier of the following—
    - (i) the sunset date or, if the purchaser requests a later date for settlement and the original proprietor agrees to the date, the later date;
    - (ii) the end of 5 $\frac{1}{2}$  years after the day the contract was entered into by the purchaser or, if the purchaser requests a later date for settlement and the original proprietor agrees to the date, the later date; or
  - (b) otherwise—the end of 3 $\frac{1}{2}$  years after the day the contract was entered into by the purchaser or, if the purchaser requests a later date for settlement and the original proprietor agrees to the date, the later date.

*Note—*

See section 139 for the particular circumstances in which the period prescribed in subsection (1)(b) is changed.

- (2) The purchaser may avoid the contract for the sale of the proposed lot by a signed written notice of avoidance given to the original proprietor before the contract is settled.



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## **Subdivision 2 Amounts held in trust accounts and security instruments**

### **49C Definitions for sdiv 2**

In this subdivision—

*law practice* means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;
- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

*prescribed trust account*, for a recognised entity, means—

- (a) if the recognised entity is a law practice—a trust account kept by the practice under the *Legal Profession Act 2007*; or
- (b) if the recognised entity is the public trustee—a common fund held by the public trustee under the *Public Trustee Act 1978*; or
- (c) if the recognised entity is a real estate agent—a trust account kept by the agent under the *Agents Financial Administration Act 2014*.

*real estate agent* means a real estate agent carrying on business as a real estate agent under the *Property Occupations Act 2014*.

*recognised entity* means—

- (a) a law practice; or

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- (b) the public trustee; or
- (c) a real estate agent.

#### **49D Payment of particular amounts**

This subdivision applies to the following amounts—

- (a) an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (other than an amount paid at settlement);
- (b) an amount paid under another instrument (whether legally binding or not) relating to the sale of a proposed lot.

*Examples of instruments for paragraph (b)—*

- an option to purchase
- an instrument providing for an expression of interest

#### **49E Amounts paid under s 49D to be held in prescribed trust account**

- (1) The person to whom the amount is paid must pay the amount directly to—
  - (a) if the contract or instrument states the amount is to be paid to either of the following recognised entities, the recognised entity—
    - (i) a law practice at its office in Queensland;
    - (ii) a real estate agent carrying on the business of a real estate agent; or
  - (b) if paragraph (a) does not apply, the public trustee.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) An amount paid to a recognised entity mentioned in subsection (1)(a) or (b) must be—
- (a) held by the entity in a prescribed trust account; and
  - (b) dealt with by the entity in accordance with this subdivision and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) An amount paid to a law practice under this section is taken to be trust money under the *Legal Profession Act 2007*, part 3.3.

#### **49F Disposal of amount held in prescribed trust account**

- (1) A recognised entity that is paid an amount under section 49E(1) must hold the amount in the entity's prescribed trust account until a party to the contract or instrument becomes entitled, under this division or otherwise according to law, to a repayment or payment of the amount.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) On a party becoming entitled to a repayment or payment of the amount, the recognised entity must dispose of the amount in accordance with the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) Subsections (1) and (2) apply despite anything in the contract or instrument under which the amount was paid to the entity.

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### **49G Investment of amount held in prescribed trust account**

- (1) A recognised entity that holds an amount paid under section 49E(1) in a prescribed trust account may invest the amount if—
  - (a) either of the following applies—
    - (i) the contract or instrument authorises the investment;
    - (ii) the parties to the contract or instrument give the entity their consent to the investment by signed written notice; and
  - (b) the investment is carried out in accordance with the law governing the operation of the prescribed trust account.
- (2) An amount invested as mentioned in subsection (1) is taken to be an amount in the prescribed trust account.
- (3) Any proceeds of an investment of an amount as mentioned in subsection (1) must be paid into the prescribed trust account, unless the proceeds are further invested as mentioned in subsection (1).

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

### **49H Security instruments**

- (1) This section applies if an instrument is received from the purchaser of a proposed lot as security for the payment of an amount under the contract for the sale of the lot—
  - (a) by a recognised entity on behalf of the original proprietor; or
  - (b) by any other person on behalf of the original proprietor; or

(c) by the original proprietor.

*Example of an instrument for subsection (1)—*

bank guarantee

- (2) For subsection (1)(a), the recognised entity must keep the instrument at the prescribed place until—
- (a) the instrument is returnable to the purchaser according to law; or
  - (b) the instrument is given to the issuer of the security in exchange for the amount it secures.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) The amount given in exchange for the instrument under subsection (2)(b) is trust money.
- (4) The amount given must be—
- (a) held by the recognised entity who held the instrument in the entity's prescribed trust account; and
  - (b) dealt with by the recognised entity in accordance with this division and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (5) For subsection (1)(b), the person must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (6) For subsection (1)(c), the original proprietor must give the instrument directly to a recognised entity.

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Maximum penalty—200 penalty units or 1 year’s imprisonment.

(7) If the instrument is given to a recognised entity under subsection (5) or (6), subsections (2), (3) and (4) apply as if the instrument were received from the purchaser by the recognised entity on behalf of the original proprietor as provided in subsection (1)(a).

(8) In this section—

*prescribed place* means—

(a) for a recognised entity that is a law practice—an office of the practice in Queensland; or

(b) for a recognised entity that is the public trustee—an office of the public trustee in Queensland; or

(c) for a recognised entity that is a real estate agent—the office of the real estate agency in which the agent carries on the business of a real estate agent.

## **Subdivision 3 Evidence**

### **49I Evidentiary provision**

In a proceeding for an offence against this division, a copy of a contract or other instrument purporting to relate to the sale or purchase of a proposed lot and produced on behalf of the complainant is admissible in evidence as if it were the original contract or instrument.

### **31 Insertion of new s 133A**

After section 133—

*insert—*

**133A Responsibility for acts or omissions of representative**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (3) 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.

- (4) In this section—

***representative*** means—

- (a) of an individual—an employee or agent of the individual; or
- (b) of an unincorporated body—a member of the body, or an employee or agent of the body; or
- (c) of a partnership—a partner, employee or agent of the partnership; or
- (d) of a corporation—an executive officer, employee or agent of the corporation.

***state of mind***, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and

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(b) the person's reasons for the intention, opinion, belief or purpose.

**32 Amendment of pt 7, hdg (Additional transitional provision)**

Part 7, heading, 'provision'—

*omit, insert—*

**provisions**

**33 Insertion of new pt 7, div 1, hdg**

Part 7, before section 135—

*insert—*

**Division 1                      Transitional provision for  
Audit Legislation  
Amendment Act 2006**

**34 Insertion of new pt 7, div 2**

Part 7, after section 135—

*insert—*

**Division 2                      Transitional provisions for  
Land Sales and Other  
Legislation Amendment  
Act 2014**

**136 Definitions for div 2**

In this division—

*amendment Act* means the *Land Sales and Other Legislation Amendment Act 2014*.

*commencement* means the commencement of this division.



*contract*, for the purchase of a proposed lot, means a contract, agreement or other document legally binding or intended to bind a purchaser in relation to the purchase.

### **137 Application of s 48G**

Section 48G applies only in relation to a grant of an option to purchase a proposed lot entered into after the commencement.

### **138 Application of s 49**

- (1) Section 49 as in force before the commencement continues to apply in relation to a contract for the purchase of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) Section 49 as in force after the commencement applies only in relation to a contract for the purchase of a proposed lot entered into after the commencement.

### **139 Application, and modified application, of s 49B**

- (1) Section 49B applies only in relation to a contract for the sale of a proposed lot entered into by a purchaser after the commencement.
- (2) However, section 49B as modified under subsection (3) applies in relation to the contract for the sale of the proposed lot if—
  - (a) the proposed lot is a proposed lot mentioned in the *Land Sales Regulation 2000*, schedule 2 as in force immediately before the repeal of that regulation; and

*Note—*

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Under old LSA, section 28, a period could be prescribed by regulation for giving a registrable instrument for a proposed lot.

- (b) the contract does not provide the date by which it must be settled.
- (3) Section 49B is modified by omitting subsection (1)(b) and inserting the following—
  - ‘(b) if the contract does not provide the date by which it must be settled—the end of the period prescribed in the repealed *Land Sales Regulation 2000*, schedule 2 worked out from the day the contract was entered into.’
- (4) In this section—

*old LSA, section 28* means section 28 of the *Land Sales Act 1984* as in force immediately before the commencement.

#### **140 Application of pt 4, div 3, sdiv 2**

Part 4, division 3, subdivision 2 applies only in relation to amounts paid under a contract for the sale of a proposed lot entered into after the commencement.

#### **141 Continuing application of old LSA, part 3**

- (1) Old LSA, part 3 continues to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) However, if, at any time before the settlement of a contract to which the part applies, the parties to the contract agree to settle the sale using e-conveyancing, the part is to be read with the following changes—
  - (a) old LSA, section 22(4)(a)—

---

*omit, insert—*

‘(a) the vendor or the vendor’s agent can not require the purchaser to settle; and’;

- (b) old LSA, section 23(1), ‘, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor’—

*omit, insert—*

‘(but excluding an amount payable at settlement)’;

- (c) old LSA, section 23(4)—

*omit;*

- (d) old LSA, section 25(2)(a)—

*omit, insert—*

‘(a) before settlement of the sale of the proposed lot; or’;

- (e) old LSA, section 25(2)(b)(ii)—

*omit, insert—*

‘(ii) before settlement of the sale of the proposed lot;’;

- (f) old LSA, section 27, heading—

*omit, insert—*

**‘27 Purchaser’s rights if purchase not settled within a certain period’;**

- (g) old LSA, section 27(1)(b), ‘the vendor has not given the purchaser a registrable instrument of transfer for the lot’—

*omit, insert—*

‘the sale of the proposed lot has not been settled’;



- (ab) *Building Units and Group Titles Act 1980*, part 4, division 3, subdivision 2;
- (la) *South Bank Corporation Act 1989*, part 9A, divisions 5 and 6;

## **Part 7**                      **Amendment of Land Sales Act 1984**

### **37 Act amended**

This part amends the *Land Sales Act 1984*.

### **38 Amendment of s 2 (Objects of Act)**

Section 2(c), ‘proposed allotments and’—  
*omit.*

### **39 Replacement of s 5 (Application of Act)**

Section 5—  
*omit, insert—*

#### **3 Application of Act generally**

- (1) This Act applies to the sale of a proposed lot if, when the proposed lot becomes a lot, it will be situated in Queensland.
- (2) For subsection (1), it does not matter where the contract for the sale was entered into.
- (3) This Act does not apply to the sale of a proposed lot if—
  - (a) the sale is part of a large transaction; or
  - (b) the sale arises from the reconfiguration of land into not more than 5 lots.

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(4) In this section—

*large transaction* means the sale of 6 or more proposed lots if—

- (a) the seller of each proposed lot is the same person; and
- (b) the buyer of each proposed lot is the same person; and
- (c) the sale is the subject of—
  - (i) a single contract; or
  - (ii) 2 or more contracts entered into within 24 hours.

*reconfiguration*, in relation to land, means reconfiguration by subdivision or amalgamation.

#### **4 Act does not apply to particular State leasehold land**

- (1) A regulation may declare that, subject to any stated conditions, this Act does not apply to the whole or part of land the subject of—
  - (a) a stated miners homestead under the *Land Act 1994*, chapter 8, part 7, division 2; or
  - (b) a stated lease or a stated class of lease under the *Land Act 1994*.
- (2) If a person contravenes a condition to which a declaration under subsection (1) is subject, the Supreme Court may, on the application of a buyer under a contract for the sale of a proposed lot to which the declaration relates, order the person to comply with the condition.

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**40 Renumbering of s 5A (Relationship with Fair Trading Inspectors Act 2014)**

Section 5A—

*renumber* as section 5.

**41 Amendment of s 6 (Definitions)**

- (1) Section 6, definitions *agreement, allotment, approved form, building units plan, compliance permit, development permit, disclosure plan, disclosure statement, group titles plan, leasehold building units plan, lot, PDA development approval, PDA development condition, plan, proposed allotment, proposed lot, purchase, real estate agent, registered lot, registrable instrument of transfer, registrar, sell* and *vendor's agent*—

*omit.*

- (2) Section 6—

*insert*—

***buyer***, of a proposed lot, means a person who signs a contract for the sale of the lot intended to bind the person (absolutely or conditionally) to buy the lot.

***law practice*** means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;
- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

***lot***—

- (a) means land the boundaries of which are shown on a plan of survey registered under

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the *Land Act 1994* or *Land Title Act 1994*;  
but

- (b) does not include a lot to which any of the following Acts apply—
  - (i) the *Body Corporate and Community Management Act 1997*;
  - (ii) the *Building Units and Group Titles Act 1980*;
  - (iii) the *South Bank Corporation Act 1989*.

***prescribed trust account***, for part 2, division 4, see section 15.

***proposed lot***—

- (a) means land that will become a lot on the registration of a plan of survey under the *Land Act 1994* or *Land Title Act 1994*; but
- (b) does not include a proposed lot to which any of the following Acts apply—
  - (i) the *Body Corporate and Community Management Act 1997*;
  - (ii) the *Building Units and Group Titles Act 1980*;
  - (iii) the *South Bank Corporation Act 1989*.

***public trustee*** means the public trustee under the *Public Trustee Act 1978*.

***real estate agent*** means a real estate agent carrying on business as a real estate agent under the *Property Occupations Act 2014*.

***recognised entity***, for part 2, division 4, see section 15.

***seller***, of a proposed lot, means a person who signs a contract for the sale of the lot intended to bind the person (absolutely or conditionally) to sell the lot.



- (3) Section 6, ‘In this Act—’—

*omit, insert—*

The dictionary in schedule 1 defines particular terms used in this Act.

- (4) Section 6, all definitions, as amended by this Act—

*relocate* to schedule 1 as inserted by this Act.

#### **42 Omission of s 6A (Meaning of purchaser)**

Section 6A—

*omit.*

#### **43 Replacement of pt 2 (Sale of proposed allotments)**

Part 2—

*omit, insert—*

### **Part 2 Sale of proposed lots**

#### **Division 1 Preliminary**

##### **7 References to things done by or in relation to buyer or seller**

- (1) This section applies in relation to a provision of this part that refers to—
  - (a) a thing required or permitted to be done by or in relation to a buyer or seller of a lot or proposed lot; or
  - (b) a thing having been done by or in relation to a buyer or seller of a lot or proposed lot.
- (2) The thing may be done, or the thing may have been done, by or in relation to the buyer or seller either—

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- (a) personally; or
- (b) through an agent who is authorised to act for the buyer or seller in relation to the thing.

## **8 Restriction on selling State leasehold land**

- (1) A person may sell a proposed lot that is State leasehold land, other than a development lease, only if—
  - (a) the chief executive under the *Land Act 1994* has made a subdivision offer for the proposed subdivision of the lot under section 176A of that Act; and
  - (b) the lessee of the land has accepted the subdivision offer as mentioned in the *Land Act 1994*, section 176F.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (2) A person may sell a proposed lot that is a development lease only if the Minister has consented, under the *Land Act 1994*, section 290J, to a plan of subdivision for the development lease dividing the development lease into proposed lots.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (3) A contract for the sale of a proposed lot entered into in contravention of subsection (1) or (2) is void.
- (4) Any person who paid an amount under a contract mentioned in subsection (3) may recover the amount, together with any interest accrued on the amount since it was paid, as a debt from the person to whom the amount was paid.
- (5) In this section—

*development lease* means an existing development lease issued under the *Land Act 1962*, part 9, division 1 that is taken to be a term lease under the *Land Act 1994*, section 476.

## **Division 2      Disclosure requirements**

### **9    Application of div 2 if option granted**

- (1) Section 10, as modified by this section, applies if a person grants an option (the *option*) to another person—
  - (a) to purchase a proposed lot; or
  - (b) to sell a proposed lot.
- (2) For subsection (1)—
  - (a) section 10(1) requires the seller to give the documents mentioned in section 10(1)(a) or (b) to the buyer in relation to the option as if a reference to a contract for the sale of a proposed lot being entered into were a reference to an option to purchase or sell the proposed lot being granted; and
  - (b) any right of termination under section 10 relating to the giving of the documents applies in relation to—
    - (i) the option; and
    - (ii) a contract entered into by the seller and buyer for the sale to the buyer of the proposed lot arising from the option.
- (3) If the seller and buyer enter into a contract for the sale to the buyer of the proposed lot arising from the option, section 10(1) does not require the seller to give the documents to the buyer.

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- (4) If the buyer is not a party to the contract for the sale of the proposed lot arising from the option, the seller must comply with section 10 before entering into the contract for the sale.
- (5) In this section—  
*buyer* means the person who is granted an option to purchase, or grants an option to sell, the proposed lot.  
*seller* means the person who grants an option to purchase, or is granted an option to sell, the proposed lot.

## **10 Documents to be given by seller to buyer**

- (1) The seller of a proposed lot must give the proposed buyer of the lot, before the proposed buyer enters into a contract for the sale of the lot—
  - (a) a disclosure plan and disclosure statement for the proposed lot; or
  - (b) a copy of the plan of survey for the proposed lot approved by the relevant local government under the Planning Act or by MEDQ under the Economic Development Act.
- (2) The seller of a proposed lot does not fail to give the buyer a disclosure plan or disclosure statement under subsection (1)(a) merely because the plan or statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.
- (3) If the seller of a proposed lot fails to comply with subsection (1), the buyer may terminate the contract for the sale of the lot by written notice given to the seller before the contract is settled.
- (4) In this section—

**disclosure plan** means a disclosure plan complying with section 11.

**disclosure statement** means a disclosure statement complying with section 12.

## 11 Requirements for disclosure plan

- (1) A disclosure plan may comprise 1 or more documents and must include—
  - (a) for a proposed lot intended to be a volumetric format lot—the volumetric format lot particulars for the lot; or
  - (b) for a proposed lot intended to be a standard format lot—the relevant lot particulars for the lot.

- (2) A disclosure plan must be prepared by a cadastral surveyor.

*Example of a document that may comprise or form part of a disclosure plan—*

a draft plan of survey

- (3) The disclosure plan must be substantially complete.
- (4) In this section—

**appropriate contour intervals** means contour intervals of not more than—

- (a) for a proposed lot of not more than 2000m<sup>2</sup>—50cm in height; or
- (b) for a proposed lot of more than 2000m<sup>2</sup>—1m in height.

**existing surface contours**, of a proposed lot for which there is no operational work, means the surface contours of the lot at the time the disclosure plan for the lot is prepared.

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*relevant lot particulars*, for a proposed lot intended to be a standard format lot, means the following—

- (a) the proposed number of the lot;
- (b) the total area of the lot;
- (c) a description of the dimensions of the lot as bearings and distances;
- (d) identification of the proposed orientation of the lot by reference to north;
- (e) if there is operational work for the lot—
  - (i) contour maps of the lot showing the surface contours, with appropriate contour intervals, as at the completion of the work; and
  - (ii) the location of any retaining walls forming part of the work; and
  - (iii) the height of any retaining walls forming part of the work or, if the height varies across the length of the wall, the height of the lowest and highest points of the wall and the average height of the wall; and
  - (iv) the following information about any fill that is part of the work—
    - (A) the depth of the fill;
    - (B) whether the compaction of the fill will be done in accordance with Australian Standard AS 3798-2007, and the level of inspection and testing services carried out;
    - (C) if the compaction of the fill will not be done in accordance with that Australian Standard, the

nature of the departure from the standard.

- (f) if there is no operational work for the lot—contour maps of the lot showing the existing surface contours, with appropriate contour intervals.

***standard format lot*** see the *Land Title Act 1994*, schedule 2.

***volumetric format lot*** see the *Land Title Act 1994*, schedule 2.

***volumetric format lot particulars***, for a proposed lot intended to be a volumetric format lot, means the following—

- (a) the proposed number of the lot;
- (b) an isometric representation of the lot;
- (c) the area of the projected footprint of the lot;
- (d) the level of the ground surface in approximate values for illustrating the location of the lot in relation to that level;
- (e) identification of the proposed orientation of the lot by reference to north;
- (f) if the lot is proposed to contain a building or be located in a building—the floor level on which the lot is proposed to be located.

## **12 Requirements for disclosure statement**

- (1) A disclosure statement for a proposed lot must be signed by the seller and state the following—
  - (a) that the seller has given the buyer a disclosure plan for the proposed lot under section 10;
  - (b) whether a development approval has been granted for—

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- (i) reconfiguring a lot for the proposed lot; or
  - (ii) any operational work for the proposed lot;
- (c) that the seller must—
  - (i) settle the contract for the sale of the proposed lot not later than 18 months after the buyer enters into the contract for the sale of the lot; and
  - (ii) give any other documents required to be given to the buyer under section 14(3) at least 14 days before the contract is settled.
- (2) The disclosure statement must be substantially complete.
- (3) In this section—

*development approval* means—

  - (a) a compliance permit or development permit under the Planning Act; or
  - (b) a PDA development approval under the Economic Development Act.

### **13 Variation of disclosure plan by further statement**

- (1) This section applies if the contract for the sale of a proposed lot has not been settled and—
  - (a) the seller becomes aware that information in the disclosure plan was inaccurate as at the day the contract was entered into; or
  - (b) the disclosure plan would not be accurate if now given as a disclosure plan.



- (2) The seller must, at least 21 days before the contract is settled, give the buyer a further document (the *further statement*)—
  - (a) rectifying the information in the disclosure plan; and
  - (b) explaining, in plain English, the differences between the information in the disclosure plan and the information in the further statement.

*Example—*

The depth of fill required for the lot has changed from that disclosed in the disclosure plan. The further statement must rectify the information by indicating the new depth of fill and explain, in plain English, that the depth of fill has changed and identify what the new depth of fill is.

- (3) The further statement must be—
  - (a) signed by the seller; and
  - (b) prepared by a cadastral surveyor.
- (4) The buyer may terminate the contract if—
  - (a) it has not already been settled; and
  - (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure plan was, or has become, inaccurate; and
  - (c) the termination is effected by written notice given to the seller within 21 days, or a longer period agreed between the buyer and seller, after the seller gives the buyer the further statement.
- (5) Subsections (1) to (4) continue to apply after the further statement is given on the basis that the disclosure plan is taken to be constituted by the disclosure plan and any further statement.

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- (6) If the seller fails to comply with this section, the buyer may terminate the contract by written notice given to the seller if—
  - (a) the contract has not already been settled; and
  - (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate.

## **Division 3          Settlements**

### **14 Settlement and documents to be given before settlement**

- (1) The seller of a proposed lot must settle the contract for the sale of the lot not later than 18 months after the buyer enters into the contract for the sale of the lot.
- (2) Subsection (3) applies if the seller of a proposed lot does not give the buyer a copy of the plan of survey for the proposed lot, approved by the relevant local government under the Planning Act or by MEDQ under the Economic Development Act, before the buyer enters the contract for the sale of the lot.
- (3) The seller must give the buyer of the proposed lot, at least 14 days before the contract is settled—
  - (a) a copy of the plan of survey for the lot registered under the *Land Act 1994* or *Land Title Act 1994* (**registered plan**); and
  - (b) a statement prepared by a cadastral surveyor to the effect that there are no differences between the information contained in the registered plan and the information

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contained in the disclosure plan for the lot given to the buyer under section 10.

- (4) For subsection (3)(b), if the information contained in the disclosure plan is rectified by a further statement given to the buyer under section 13, the reference to the information contained in the disclosure plan means the information as rectified.
- (5) If the seller fails to comply with subsection (1) or (3), other than because of the buyer's default, the buyer may terminate the contract for the sale of the proposed lot by written notice given to the seller before the contract is settled.

## **Division 4            Amounts held in trust                                  accounts**

### **15 Definitions for div 4**

In this division—

*prescribed trust account*, for a recognised entity, means—

- (a) if the recognised entity is a law practice—a trust account kept by the practice under the *Legal Profession Act 2007*; or
- (b) if the recognised entity is the public trustee—a common fund held by the public trustee under the *Public Trustee Act 1978*; or
- (c) if the recognised entity is a real estate agent—a trust account kept by the agent under the *Agents Financial Administration Act 2014*.

*recognised entity* means any of the following—

- (a) a law practice;

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- (b) the public trustee;
- (c) a real estate agent.

## **16 Payment of particular amounts**

This division applies to the following amounts—

- (a) an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (other than an amount paid at settlement);
- (b) an amount paid under another instrument (whether legally binding or not) relating to the sale of a proposed lot.

*Examples of instruments for paragraph (b)—*

- an option to purchase
- an instrument providing for an expression of interest

## **17 Amounts paid under s 16 to be held in prescribed trust account**

- (1) The person to whom the amount is paid must pay the amount directly to—
  - (a) if the contract or instrument states the amount is to be paid to either of the following recognised entities, the recognised entity—
    - (i) a law practice at its office in Queensland;
    - (ii) a real estate agent carrying on the business of a real estate agent; or
  - (b) if paragraph (a) does not apply, the public trustee.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) An amount paid to a recognised entity mentioned in subsection (1)(a) or (b) must be—
- (a) held by the entity in a prescribed trust account; and
  - (b) dealt with by the entity in accordance with this division and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) An amount paid to a law practice under this section is taken to be trust money under the *Legal Profession Act 2007*, part 3.3.

## **18 Disposal of amount held in prescribed trust account**

- (1) A recognised entity that is paid an amount under section 17(1) must hold the amount in the entity's prescribed trust account until a party to the contract or instrument becomes entitled, under this part or otherwise according to law, to a repayment or payment of the amount.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) On a party becoming entitled to a repayment or payment of the amount, the recognised entity must dispose of the amount in accordance with the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) Subsections (1) and (2) apply despite anything in the contract or instrument under which the amount was paid to the recognised entity.

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## **19 Investment of amount held in prescribed trust account**

- (1) A recognised entity that holds an amount paid under section 17(1) in a prescribed trust account may invest the amount if—
  - (a) either of the following applies—
    - (i) the contract or instrument authorises the investment;
    - (ii) the parties to the contract or instrument give the entity their consent to the investment by signed written notice; and
  - (b) the investment is carried out in accordance with the law governing the operation of the prescribed trust account.
- (2) An amount invested as mentioned in subsection (1) is taken to be an amount in the prescribed trust account.
- (3) Any proceeds of an investment of an amount as mentioned in subsection (1) must be paid into the prescribed trust account, unless the proceeds are further invested as mentioned in subsection (1).

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

## **Division 5 Other provisions**

### **20 Termination under this part**

- (1) This section applies if the buyer terminates a contract under this part.
- (2) The seller must, within 14 days after the termination, repay to the buyer—

- (a) any amount paid to the seller or the seller's agent towards the purchase of the lot; and
  - (b) any interest that accrued on the amount while it was held by the seller or the seller's agent.
- (3) However, if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under subsection (2) applies subject to compliance with the law governing the entity's trust account.
- (4) An amount repayable under subsection (2) may be recovered as a debt.

## **21 Security instruments**

- (1) This section applies if an instrument is received from the buyer of a proposed lot as security for the payment of an amount under the contract for the sale of the lot—
- (a) by a recognised entity on behalf of the seller; or
  - (b) by any other person on behalf of the seller; or
  - (c) by the seller.

*Example of an instrument for subsection (1)—*

bank guarantee

- (2) For subsection (1)(a), the recognised entity must keep the instrument at the prescribed place until—
- (a) the instrument is returnable to the buyer according to law; or
  - (b) the instrument is given to the issuer of the security in exchange for the amount it secures.

[s 43]

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Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (3) The amount given in exchange for the instrument under subsection (2)(b) is trust money.
- (4) The amount given must be—
  - (a) held by the recognised entity who held the instrument in the entity’s prescribed trust account; and
  - (b) dealt with by the recognised entity in accordance with this part and the law governing the operation of the entity’s prescribed trust account.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (5) For subsection (1)(b), the person must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (6) For subsection (1)(c), the seller must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (7) If the instrument is given to a recognised entity under subsection (5) or (6), subsections (2), (3) and (4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller as provided in subsection (1)(a).

- (8) In this section—

*prescribed place* means—

- (a) for a recognised entity that is a law practice—an office of the practice in Queensland; or



- (b) for a recognised entity that is the public trustee—an office of the public trustee in Queensland; or
- (c) for a recognised entity that is a real estate agent—the office of the real estate agency in which the agent carries on the business of a real estate agent.

**44 Omission of pt 3 (Sale of proposed lots)**

Part 3—

*omit.*

**45 Renumbering of pt 4 (Miscellaneous provisions)**

Part 4—

*renumber* as part 3.

**46 Replacement of s 31 (Contracting out of Act void)**

Section 31—

*omit, insert—*

**31 Contracting out prohibited**

A contract for the sale of a proposed lot is void to the extent to which it purports to exclude, restrict or otherwise change the effect of a provision of this Act.

**47 Omission of ss 32 and 33**

Sections 32 and 33—

*omit.*

[s 48]

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**48 Replacement of s 34 (Evidentiary provision)**

Section 34—

*omit, insert—*

**34 Evidentiary provision**

In a proceeding for an offence against this Act, a copy of a contract or other instrument purporting to relate to the sale or purchase of a proposed lot and produced on behalf of the complainant is admissible in evidence as if it were the original contract or instrument.

**49 Omission of s 35A (Approval of forms)**

Section 35A—

*omit.*

**50 Replacement of s 36 (Regulations)**

Section 36—

*omit, insert—*

**36 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose a penalty of no more than 20 penalty units for contravention of a regulation.

**51 Renumbering of ss 31–36**

Sections 31 to 36—

*renumber* as sections 22 to 26.

**52 Insertion of new pt 4, hdg and pt 4, div 1, hdg**

After section 26, as renumbered by this Act—

*insert—*

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**Part 4**                      **Transitional provisions**

**Division 1**                **Transitional provision for  
Sustainable Planning and  
Other Legislation  
Amendment Act 2012**

**53**            **Amendment and renumbering of s 37 (Transitional  
provision for Sustainable Planning and Other Legislation  
Amendment Act 2012)**

Section 37, heading—

*omit, insert—*

**27**    **Application of s 27 as amended by Act No. 3 of  
2012**

**54**            **Insertion of new pt 4, div 2**

After section 27, as renumbered by this Act—

*insert—*

**Division 2**                **Transitional provisions for  
Land Sales and Other  
Legislation Amendment  
Act 2014**

*Note—*

The following provisions provide for the continued application of part 3 of this Act as in force before the commencement to particular contracts for the sale of particular proposed lots—

- the *Body Corporate and Community Management Act 1997*, section 444
- the *Building Units and Group Titles Act 1980*, section 141
- the *South Bank Corporation Act 1989*, section 140.

[s 54]

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## 28 Definitions for div 2

In this division—

*amendment Act* means the *Land Sales and Other Legislation Amendment Act 2014*.

*commencement* means the commencement of this division.

*contract* includes agreement as defined under old section 6.

*e-conveyancing* see the *Property Law Act 1974*, section 58A.

*lot* includes allotment as defined under old section 6.

*new*, in relation to a provision, means the provision as in force immediately after the commencement.

*old*, in relation to a provision, means the provision as in force at any relevant time before the commencement.

## 29 Continuation of particular rights of prosecution

- (1) This section applies if a person is alleged to have committed, before the commencement, an offence against a provision of old part 2.
- (2) Proceedings for the offence may be continued or started and the court may hear and decide the proceedings, as if the amendment Act had not been enacted.
- (3) This section applies despite the Criminal Code, section 11.

### **30 Application of old s 8(2)**

Old section 8(2) continues to apply in relation to an agreement made in contravention of old section 8(1) or (1A) before the commencement.

### **31 Disclosure requirements**

- (1) New part 2, division 2 applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.

*Note—*

See also section 38.

- (2) Old sections 9 and 10 continue to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (3) However, if, at any time before the settlement of the contract for the sale of the proposed lot, the parties to the contract agree to settle the sale using e-conveyancing, old sections 9 and 10 are to be read with the following changes—
  - (a) old section 9(5) is omitted and the following provision inserted—

‘(5) If the vendor or the vendor’s agent contravenes this section, other than subsection (3)(a), (b) or (h), the purchaser may avoid the instrument relating to the sale by written notice given to the vendor or vendor’s agent before the settlement of the sale of the allotment.’;
  - (b) old section 10(1)(a) is omitted and the following provision is inserted—

‘(a) the sale of the proposed allotment has not been settled.’;

[s 54]

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- (c) old section 10(3)(b)(ii) is omitted and the following provision inserted—  
‘(ii) settle the sale of the allotment.’;
- (d) old section 10(4)(a) is omitted and the following provision inserted—  
‘(a) for a contravention of subsection (2)—before the settlement of the sale of the allotment; or’

### **32 Application of new s 14 and old s 10A to contracts**

- (1) New section 14 applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.
- (2) Old section 10A continues to apply after the commencement in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (3) However, if, at any time before the settlement of the contract, the parties to the contract agree to settle the sale using e-conveyancing, old section 10A is to be read with the following changes—
  - (a) old section 10A(1) is omitted and the following provision inserted—  
‘(1) The vendor of a proposed allotment must settle the sale of the allotment not later than 18 months after the purchaser enters upon the purchase of the allotment.’;
  - (b) old section 10A(4) is omitted and the following provision inserted—  
‘(4) If the vendor contravenes this section, the purchaser may avoid the instrument

relating to the sale by written notice given to the vendor before the sale is settled.’

- (4) The purchaser may avoid the contract under old section 10A(4) for a contravention of the section by the vendor (including as it is applied under subsection (3)) only if the contravention arose other than because of the purchaser’s default.

### **33 Application of new pt 2, div 4**

New part 2, division 4 applies only in relation to amounts paid under a contract for the sale of a proposed lot entered into after the commencement.

### **34 Application of old ss 11 and 12 to existing contracts**

- (1) Old sections 11 and 12 continue to apply in relation to amounts paid under a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) However, if, at any time before the settlement of the contract, the parties to the contract agree to settle the sale using e-conveyancing—
- (a) old section 11(1) is to be read by omitting ‘, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor’ and inserting ‘(but excluding an amount payable at settlement)’; and
- (b) old section 11 is to be read by omitting section 11(3).

[s 54]

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### **35 Application of old s 11A to existing contracts**

- (1) Old section 11A continues to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) However, if, at any time before the settlement of the contract, the parties to the contract agree to settle the sale using e-conveyancing, old section 11A(2) is to be read by omitting ‘before the registrable instrument of transfer for the allotment is given to the purchaser’ and inserting ‘before the sale of the allotment is settled’.

### **36 Existing declarations under old s 18**

A declaration in effect under old section 18 immediately before the commencement is, from the commencement, taken to be a declaration under new section 4.

### **37 Undecided applications under old s 19**

- (1) Except to the extent provided under subsection (3), an application under old section 19 that has not been decided at the commencement lapses at the commencement.
- (2) Subsection (3) applies if, at the commencement—
  - (a) a contract is conditional on an application being granted under old section 19(2); and
  - (b) the application has not been decided.
- (3) The application is taken to be granted without any condition being imposed under old section 19(2A).



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**38 Application of new pt 2 if existing decision about exemption**

- (1) New part 2 does not apply to the sale of a proposed lot forming part of the reconfiguration of land into not more than 5 lots even if the chief executive—
  - (a) refused to grant an exemption for the reconfiguration under old section 19; or
  - (b) granted an exemption under old section 19 for the reconfiguration subject to conditions.
- (2) In this section—

*reconfiguration*, in relation to land, means reconfiguration by subdivision or amalgamation.

**55 Insertion of new sch 1**

After part 4—

*insert—*

**Schedule 1 Dictionary**

section 6

**Part 8 Amendment of Legal Profession Act 2007**

**56 Act amended**

This part amends the *Legal Profession Act 2007*.

[s 57]

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**57 Amendment of pt 3.3, div 2, hdg (Trust accounts and trust money)**

Part 3.3, division 2, heading, after ‘money’—

*insert—*

**generally**

**58 Amendment of s 249 (Holding, disbursing and accounting for trust money)**

(1) Section 249(2), from ‘or’—

*omit, insert—*

, division 2A or as otherwise authorised by law.

(2) Section 249(3), ‘The’—

*omit, insert—*

Subject to division 2A, the

**59 Insertion of new pt 3.3, div 2A**

Part 3.3—

*insert—*

**Division 2A Disputes about trust money for sales of lots and proposed lots**

**262A Application of div 2A**

(1) This division applies if—

(a) a law practice holds an amount for the sale of a lot or proposed lot in the practice’s trust account; and

(b) before the amount is paid out under division 2, the law practice becomes aware of a dispute, or considers a dispute may arise,

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between persons having an interest in the amount about entitlement to the amount.

*Example of when a law practice may consider a dispute may arise—*

A party to the contract 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.

(2) In subsection (1)—

**amount** includes part of the amount.

**lot** means land the boundaries of which are shown on a plan of survey—

- (a) registered under the *Land Act 1994* or *Land Title Act 1994*; or
- (b) registered by the registrar of titles as provided under the *South Bank Corporation Act 1989*.

**person**, having an interest in an amount for the sale of a proposed lot, does not include an entity acting for a person in relation to the sale or purchase of the proposed lot.

**proposed lot** means—

- (a) a proposed lot within the meaning of the *Land Sales Act 1984*; or
- (b) a proposed lot within the meaning of the *Body Corporate and Community Management Act 1997*; or
- (c) land that will be shown as a lot on a building units plan or group titles plan registered under the *Building Units and Group Titles Act 1980*; or

*Note—*

See the *Building Units and Group Titles Act 1980*, section 5A about the limited operation of that Act.

[s 59]

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- (d) a proposed lot within the meaning of the *South Bank Corporation Act 1989*, section 97B.

**262B When amount held for sale of lot or proposed lot may be paid**

- (1) This section applies if the law practice considers that a person is entitled to an amount mentioned in section 262A(1)(a).
- (2) The law practice may give all persons having an interest in the amount a written notice to the following effect—
  - (a) the practice considers that a stated person is entitled to the amount;
  - (b) the practice is authorised, under this Act, to pay the amount to the stated person on or after a stated date (at least 60 days after the notice is given) unless—
    - (i) a proceeding disputing the stated person's entitlement to the amount is started and the practice is advised of the start of the proceeding; or
    - (ii) all persons having an interest in the amount authorise payment of the amount to the stated person before the stated date.
- (3) The practice may pay the amount to the stated person if—
  - (a) after the stated date, the law practice is unaware of the start of a proceeding claiming an entitlement to the amount; or
  - (b) on or before the stated date, the law practice receives written notice under subsection (2)(b)(ii) authorising payment of the amount to the stated person.

- (4) The practice does not contravene section 249 by disbursing trust money as provided under this section.
- (5) The practice is not liable civilly or under an administrative process in relation to the payment of the amount as provided under this section if it is subsequently found that the stated person was not entitled to the amount.
- (6) To remove any doubt, it is declared that this section—
  - (a) provides a process for the payment of an amount mentioned in section 262A(1)(a); and
  - (b) does not decide legal entitlement to the amount or prevent a person legally entitled to the amount recovering it from the person to whom it was paid.
- (7) Nothing in this section requires the practice to give notice under subsection (2) if the practice decides to retain the amount until payment of the amount is authorised by all persons having an interest in the amount or entitlement to the amount is decided by the court.

## **Part 9**                      **Amendment of Property Law Act 1974**

### **60**      **Act amended**

This part amends the *Property Law Act 1974*.

### **60A**      **Insertion of new ss 58A and 58B**

Part 6, division 3—

[s 60A]

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*insert—*

### **58A Definitions for div 3**

In this division—

***conveyancing transaction*** see the National Law, section 3.

***e-conveyance*** means a conveyancing transaction to be completed using e-conveyancing.

***e-conveyancing*** means a system of land conveyancing that uses an ELN to lodge documents electronically for the purposes of the land titles legislation.

***electronic workspace***, for an e-conveyance, means a shared electronic workspace within an ELN that allows the participating subscribers to the e-conveyance—

- (a) to lodge a document electronically under the National Law; and
- (b) if relevant, to authorise or complete financial settlement of the e-conveyance.

***ELN*** means an Electronic Lodgment Network under the National Law.

***financial settlement***, of an e-conveyance, means the exchange of value, in an ELN, between financial institutions in accordance with the instructions of participating subscribers to the e-conveyance.

***land titles legislation*** see the *Electronic Conveyancing National Law (Queensland) Act 2013*, section 6.

***National Law*** means the Electronic Conveyancing National Law (Queensland).

***participating subscriber***, to an e-conveyance, means a subscriber who is involved in the

e-conveyance as a party to the e-conveyance or as a representative of a party.

*subscriber* see the National Law, section 3.

### **58B Meaning of *settlement* of a sale of land in an e-conveyance**

- (1) In an Act, a reference to the *settlement* (however described) of a sale of land or a contract for the sale of land has the meaning given by this section if the sale is to be completed using e-conveyancing, unless the Act expressly provides otherwise.

*Example of another way to describe a settlement of the sale of land—*

completion of the sale of the land

- (2) Settlement, of the sale of land, occurs when the electronic workspace for the e-conveyance records that—
  - (a) financial settlement occurs; or
  - (b) if there is no financial settlement, the documents necessary to transfer title have been accepted for electronic lodgment by the registrar.
- (3) In this section—

*sale*, of land, includes an exchange for value.

### **60B Insertion of new s 67A**

After section 67—

*insert—*

#### **67A When statutory rights of termination end for land sales if e-conveyancing is used**

- (1) This section applies if—

[s 61]

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- (a) an Act provides for a right of termination (however described) in relation to the sale of land or a contract for the sale of land; and
  - (b) the right is expressed to end on settlement; and
  - (c) the sale is settled using e-conveyancing.
- (2) The right of termination ends on settlement.
  - (3) However, the right of termination may not be exercised during any period the electronic workspace for the e-conveyance is locked for the purpose of settlement.
  - (4) In this section—  
*locked*, in relation to an electronic workspace for an e-conveyance, means the ELN for the workspace does not allow a participating subscriber to the e-conveyance to change a document or instruction in the workspace.

## 61 Insertion of new s 68A

After section 68—

*insert—*

### **68A Forfeiture of deposit on purchaser's default**

- (1) This section applies in relation to a contract for the sale of a proposed lot.
- (2) The contract may provide for a sum not exceeding 20% of the purchase price of the proposed lot paid under the contract as a deposit (whether paid in 1 or more amounts) to be forfeited and retained by the vendor in the event of a breach of contract by the purchaser.
- (3) However, the sum may only be forfeited or retained by the vendor if the breach results in the termination of the contract.



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(4) It is declared, for this section, that a sum not exceeding 20% of the purchase price of the proposed lot that is paid under the contract as a deposit (whether paid in 1 or more amounts) is not, either at law or in equity, a penalty if the sum is forfeited and retained by the vendor because the contract is terminated following the purchaser's breach of the contract.

(5) In this section—

***proposed lot*** means—

- (a) a proposed lot within the meaning of the *Land Sales Act 1984*; or
- (b) a proposed lot within the meaning of the *Body Corporate and Community Management Act 1997*; or
- (c) land that will be shown as a lot on a building units plan or group titles plan registered under the *Building Units and Group Titles Act 1980*; or

*Note—*

There is limited scope for the registration of new building units plans and group titles plans under the *Building Units and Group Titles Act 1980*—see section 5A of that Act.

- (d) a proposed lot within the meaning of the *South Bank Corporation Act 1989*, section 97B.

## 62 Amendment of s 71 (Definitions for div 4)

(1) Section 71—

*insert—*

***prescribed percentage*** means—

- (a) for a contract for the sale of a proposed lot—20%; or

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(b) otherwise—10%.

***proposed lot*** means—

- (a) a proposed lot within the meaning of the *Land Sales Act 1984*; or
- (b) a proposed lot within the meaning of the *Body Corporate and Community Management Act 1997*; or
- (c) land that will be shown as a lot on a building units plan or group titles plan registered under the *Building Units and Group Titles Act 1980*; or

*Note—*

There is limited scope for the registration of new building units plans and group titles plans under the *Building Units and Group Titles Act 1980*—see section 5A of that Act.

- (d) a proposed lot within the meaning of the *South Bank Corporation Act 1989*, section 97B.

- (2) Section 71, definition *deposit*, paragraph (a), ‘10%’—  
*omit, insert—*  
the prescribed percentage

### **63 Insertion of new pt 23**

After part 22—

*insert—*

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## Part 23                      Transitional provisions for Land Sales and Other Legislation Amendment Act 2014

### 354 Definitions for pt 23

In this part—

*amendment Act* means the *Land Sales and Other Legislation Amendment Act 2014*.

*commencement* means the commencement of this section.

### 355 Application of s 68A

Section 68A applies only in relation to a contract entered into after the commencement.

### 356 Existing instalment contracts

- (1) This section applies to an instalment contract entered into before the commencement.
- (2) Part 6, division 4 as in force before the commencement continues to apply in relation to the instalment contract as if this Act had not been amended by the amendment Act.

### 63A Amendment of sch 6 (Dictionary)

Schedule 6—

*insert—*

*conveyancing transaction*, for part 6, division 3, see section 58A.

*e-conveyance*, for part 6, division 3, see section 58A.

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*e-conveyancing*, for part 6, division 3, see section 58A.

*electronic workspace*, for part 6, division 3, see section 58A.

*ELN*, for part 6, division 3, see section 58A.

*financial settlement*, for part 6, division 3, see section 58A.

*land titles legislation*, for part 6, division 3, see section 58A.

*National Law*, for part 6, division 3, see section 58A.

*participating subscriber*, for part 6, division 3, see section 58A.

*settlement*, of a sale of land or a contract for the sale of land, see section 58B.

*subscriber*, for part 6, division 3, see section 58A.

## **Part 10**                      **Amendment of Property Occupations Act 2014**

### **64**      **Act amended**

This part amends the *Property Occupations Act 2014*.

### **65**      **Amendment of s 157 (Disclosures to prospective buyer)**

- (1) Section 157(1), ‘Examples for paragraph (c) of persons’—  
*omit, insert—*

*Examples for paragraphs (d) and (e) of entities*

- (2) Section 157(2)—

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*omit, insert—*

- (2) However, subsection (1)(d) and (e) does not apply if—
- (a) the entity is the residential property agent; and
  - (b) the benefit is the amount the entity received, receives or expects to receive by way of fee, charge or commission from the seller for the sale.

## Part 11                      **Amendment of South Bank Corporation Act 1989**

### 66      **Act amended**

This part amends the *South Bank Corporation Act 1989*.

### 67      **Amendment of s 3 (Definitions)**

Section 3—

*insert—*

*cadastral surveyor*, for part 9A, see section 97B.

*disclosure statement*, for part 9A, see section 97B.

*law practice*, for part 9A, see section 97B.

*leasehold building units lot*, for part 9A, see section 97B.

*lot*, for part 9A, see section 97B.

*original seller*, for part 9A, see section 97B.

*prescribed trust account*, for part 9A, see section 97B.

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*proposed leasehold building units lot*, for part 9A, see section 97B.

*proposed lot*, for part 9A, see section 97B.

*public trustee*, for part 9A, see section 97B.

*real estate agent*, for part 9A, see section 97B.

*recognised entity*, for part 9A, see section 97B.

*registered*, for part 9A, see section 97B.

*seller*, for part 9A, see section 97B.

**68 Amendment of s 47 (Subdivision of land by a leasehold building units plan)**

Section 47(2)—

*insert—*

*Note—*

The modified Building Units and Group Titles Act is set out in schedule 4. Part 9A also applies to land that is subdivided under this section.

**69 Insertion of new pt 9A**

After section 97—

*insert—*

**Part 9A                      Sale of leasehold  
   building units lots and  
   proposed lots**

**Division 1                  Preliminary**

**97A Application of pt 9A**

(1) This part applies to—

- (a) the granting of an option, or the entry into a contract, relating to the sale of a proposed lot or a leasehold building units lot by a seller of the proposed lot or lot; and
  - (b) any contract for the sale of a proposed lot or lot.
- (2) Also, this part applies to the sale of a proposed lot regardless of where the contract for the sale was entered into if, when the proposed lot becomes a lot, it will be situated in Queensland.
- (3) Without limiting section 104, if a person is required to comply with this part and another Act providing for the same matter as this part in relation to the sale of leasehold building units lots or proposed lots, this part applies to the exclusion of the other Act.

## 97B Definitions for pt 9A

In this part—

*cadastral surveyor* see the *Surveyors Act 2003*, schedule 3.

*disclosure statement* means a disclosure statement given under section 97F.

*law practice* means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;
- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

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***leasehold building units lot*** means a lot shown on a registered leasehold building units plan.

***lot*** means a lot, including a leasehold building units lot and a stratum lot, within the corporation area shown on a registered plan.

***original seller*** means any person who, immediately after the registration of a leasehold building units plan subdividing South Bank public land, is—

- (a) the lessee of all lots in the plan; or
- (b) a successor or assignee of the lessee, other than a genuine transferee for value of the lease of a lot or any successor or assignee of the transferee.

***prescribed trust account***, for a recognised entity, means—

- (a) if the recognised entity is a law practice—a trust account kept by the practice under the *Legal Profession Act 2007*; or
- (b) if the recognised entity is the public trustee—a common fund held by the public trustee under the *Public Trustee Act 1978*; or
- (c) if the recognised entity is a real estate agent—a trust account kept by the agent under the *Agents Financial Administration Act 2014*.

***proposed leasehold building units lot*** means land within the corporation area that will become a leasehold building units lot on the registration of the plan on which it is shown.

***proposed lot*** means land within the corporation area that will become a lot on the registration of the plan on which it is shown.

***public trustee*** means the public trustee under the *Public Trustee Act 1978*.



***real estate agent*** means a real estate agent carrying on business as a real estate agent under the *Property Occupations Act 2014*.

***recognised entity*** means any of the following—

- (a) a law practice;
- (b) the public trustee;
- (c) a real estate agent.

***registered***, in relation to a plan, means registered by the registrar of titles as provided by this Act.

***seller***, of a leasehold building units lot or a proposed leasehold building units lot, includes an original seller of the lot.

### **97C References to disclosure statement**

- (1) In this part, a reference to a disclosure statement for a leasehold building units lot or a proposed lot includes a reference to the prescribed documents accompanying the statement for the leasehold building units lot or the proposed lot.
- (2) In this section—

***prescribed documents***, accompanying a disclosure statement, means the documents mentioned in section 97F(2)(b) or (c).

### **97D References to things done by or in relation to buyer or seller**

- (1) This section applies in relation to a provision in this part that refers to—
  - (a) a thing required or permitted to be done by or in relation to a buyer or seller of a leasehold building units lot or a proposed lot; or

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- (b) a thing having been done by or in relation to a buyer or seller of a leasehold building units lot or a proposed lot.
- (2) The thing may be done, or the thing may have been done, by or in relation to the buyer or seller either—
  - (a) personally; or
  - (b) through an agent who is authorised to act for the buyer or seller in relation to the thing.

## **Division 2                      Statements about    leasehold building units    lots and proposed lots**

### **97E Application of div 2 if option granted for proposed lot**

- (1) Section 97F, as modified by this section, applies if a person grants an option (the *option*) to another person—
  - (a) to purchase a proposed lot; or
  - (b) to sell a proposed lot.
- (2) For subsection (1)—
  - (a) section 97F(1) requires the giving of the disclosure statement in relation to the option as if a reference to a contract for the sale of a proposed lot being entered into were a reference to an option to purchase or sell the proposed lot being granted; and
  - (b) any right of termination under section 97F relating to the disclosure statement applies in relation to—
    - (i) the option; and

- (ii) a contract entered into by the seller and buyer for the sale to the buyer of the proposed lot arising from the option.
- (3) If the seller and buyer enter into a contract for the sale to the buyer of the proposed lot arising from the option, section 97F(1) does not require the giving of a disclosure statement in relation to the contract for the sale.
- (4) If the buyer is not a party to the contract for the sale of the proposed lot arising from the option, the seller must comply with section 97F before entering into the contract for the sale.
- (5) In this section—  
*buyer* means the person who is granted an option to purchase, or who grants an option to sell, the proposed lot.  
*seller* means the person who grants an option to purchase, or who is granted an option to sell, the proposed lot.

### **97F Information to be given by seller to buyer**

- (1) Before a seller enters into a contract with another person (the *buyer*) for the sale to the buyer of a leasehold building units lot or a proposed lot, the seller must give the buyer a disclosure statement.
- (2) The disclosure statement must—
  - (a) identify the leasehold building units lot or the proposed lot; and
  - (b) if the contract is for the sale of a proposed leasehold building units lot by an original seller—be accompanied by a disclosure plan, complying with section 97G, for the proposed lot; and

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- (c) if the contract is for the sale of a leasehold building units lot or a proposed leasehold building units lot by an original seller—include or be accompanied by the matters mentioned in section 97H; and
  - (d) if the contract is for the sale of any proposed lot by a seller—state the date by which the seller must settle the contract for the sale of the lot as provided under section 97J.
- (3) The disclosure statement must be signed by the seller.
  - (4) The disclosure statement must be substantially complete.
  - (5) If the contract has not already been settled, the buyer may terminate the contract if the seller has not complied with subsection (1).
  - (6) The seller does not fail to comply with subsection (1) merely because the disclosure statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.

### **97G Disclosure plan requirements**

- (1) A disclosure plan may comprise 1 or more documents that contain the relevant lot particulars for a proposed leasehold building units lot.
- (2) A disclosure plan must be prepared by a cadastral surveyor.

*Example of a document that may comprise or form part of a disclosure plan—*

a draft plan of survey

- (3) In this section—  
***relevant lot particulars***, for a proposed leasehold building units lot, means the following—

- (a) the proposed number of the lot;
- (b) the total area of the lot;
- (c) identification of any parts of the lot proposed to be outside the building in which the lot is proposed to be located, including any proposed balcony, courtyard or carport;
- (d) the floor level in the building in which the lot is proposed to be located;
- (e) identification of other lots and common property proposed to be on the same floor level in the building in which the lot is proposed to be located;
- (f) identification of the proposed orientation of the lot by reference to north.

### **97H Matters to be included in disclosure statement**

- (1) A disclosure statement must—
  - (a) include or be accompanied by particulars of—
    - (i) for the sale of a leasehold building units lot—the lot entitlement of each leasehold building units lot on the leasehold building units plan on which the lot is shown, and the aggregate lot entitlement; or
    - (ii) for the sale of a proposed leasehold building units lot—the proposed lot entitlement of each proposed leasehold building units lot on the proposed leasehold building units plan for the lot, and the proposed aggregate lot entitlement; and

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- (b) include or be accompanied by details of any prescribed arrangement entered into in relation to the relevant plan, including—
    - (i) the terms and conditions of the prescribed arrangement; and
    - (ii) the cost or estimated costs to the lessee of each lot shown on the plan; and
  - (c) include or be accompanied by any by-laws or proposed by-laws for the building and its site the subject of the relevant plan; and
  - (d) include or be accompanied by any management statement or proposed management statement for the building and its site the subject of the relevant plan.
- (2) In this section—
- relevant plan* means—
- (a) for a leasehold building units lot—the leasehold building units plan on which the lot is shown; or
  - (b) for a proposed leasehold building units lot—the proposed leasehold building units plan for the lot.

### **971 Variation of disclosure statement by further statement**

- (1) This section applies if the contract for the sale of a leasehold building units lot or a proposed lot has not been settled and—
  - (a) the seller becomes aware that information contained in the disclosure statement was inaccurate as at the day the contract was entered into; or

- (b) the disclosure statement would not be accurate if now given as a disclosure statement.
- (2) The seller must, at least 21 days before the contract is settled, give the buyer a further statement (the *further statement*) rectifying the inaccuracies in the disclosure statement.
- (3) The further statement must—
  - (a) be signed by the seller; and
  - (b) to the extent, if any, the further statement rectifies inaccuracies in the relevant lot particulars mentioned in section 97G for a proposed leasehold building units lot—be certified as accurate by a cadastral surveyor.
- (4) The buyer may terminate the contract if—
  - (a) it has not already been settled; and
  - (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate; and
  - (c) the termination is effected by written notice given to the seller within 21 days, or a longer period agreed between the buyer and seller, after the seller gives the buyer the further statement.
- (5) Subsections (1) to (4) continue to apply after the further statement is given on the basis that the disclosure statement is taken to be constituted by the disclosure statement and any further statement.
- (6) If the seller fails to comply with this section, the buyer may terminate the contract by written notice given to the seller if—
  - (a) the contract has not already been settled; and

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- (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate.

### **Division 3            Additional ground for terminating contract**

#### **97J Terminating contract if not settled within particular period**

- (1) This section applies if, other than because of the buyer's default, the seller has not settled the contract for the sale of the proposed lot before—
  - (a) if the contract provides for a date by which it must be settled (the *sunset date*), the earlier of the following—
    - (i) the sunset date or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date;
    - (ii) the end of 5 $\frac{1}{2}$  years after the day the contract was entered into by the buyer or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date;
  - (b) otherwise—the end of 3 $\frac{1}{2}$  years after the day the contract was entered into by the buyer or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date.

*Note—*

See section 139 for the particular circumstances in which the period prescribed in subsection (1)(b) is changed.

- (2) The buyer may terminate the contract for the sale of the proposed lot by a signed written notice of termination given to the seller before the contract is settled.



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## **Division 4      Termination**

### **97K Termination under this part**

- (1) This section applies if a buyer terminates a contract under this part.
- (2) The seller must, within 14 days after the termination, repay to the buyer—
  - (a) any amount paid to the seller or the seller's agent towards the purchase of the leasehold building units lot or proposed lot; and
  - (b) any interest that accrued on the amount while it was held by the seller or the seller's agent.
- (3) However, if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under subsection (2) applies subject to compliance with the law governing the entity's trust account.
- (4) An amount repayable under subsection (2) may be recovered as a debt.

## **Division 5      Amounts held in trust accounts for proposed lots**

### **97L Payment of particular amounts**

This division applies to the following amounts—

- (a) an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (other than an amount paid at settlement);
- (b) an amount paid under another instrument (whether legally binding or not) relating to the sale of a proposed lot.

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*Examples of instruments for paragraph (b)—*

- an option to purchase
- an instrument providing for an expression of interest

### **97M Amounts paid under s 97L to be held in prescribed trust account**

- (1) The person to whom the amount is paid must pay the amount directly to—
  - (a) if the contract or instrument states the amount is to be paid to either of the following recognised entities, the recognised entity—
    - (i) a law practice at its office in Queensland;
    - (ii) a real estate agent; or
  - (b) if paragraph (a) does not apply, the public trustee.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) An amount paid to a recognised entity mentioned in subsection (1)(a) or (b) must be—
  - (a) held by the recognised entity in a prescribed trust account; and
  - (b) dealt with by the recognised entity in accordance with this part and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) An amount paid to a law practice under this section is taken to be trust money under the *Legal Profession Act 2007*, part 3.3.

### **97N Disposal of amount held in prescribed trust account**

- (1) A recognised entity that is paid an amount under section 97M(1) must hold the amount in the entity's prescribed trust account until a party to the contract or instrument becomes entitled, under this part or otherwise according to law, to a repayment or payment of the amount.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) On a party becoming entitled to a repayment or payment of the amount, the recognised entity must dispose of the amount in accordance with the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) Subsections (1) and (2) apply despite anything in the contract or instrument under which the amount was paid to the recognised entity.

### **97O Investment of amount held in prescribed trust account**

- (1) A recognised entity that holds an amount paid under section 97M(1) in a prescribed trust account may invest the amount if—

(a) either of the following applies—

- (i) the contract or instrument authorises the investment;
- (ii) the parties to the contract or instrument give the entity their consent to the investment by signed written notice; and

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- (b) the investment is carried out in accordance with the law governing the operation of the prescribed trust account.
- (2) An amount invested as mentioned in subsection (1) is taken to be an amount in the prescribed trust account.
- (3) Any proceeds of an investment of an amount as mentioned in subsection (1) must be paid into the prescribed trust account, unless the proceeds are further invested as mentioned in subsection (1).

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

## **Division 6      Other provisions**

### **97P Security instruments**

- (1) This section applies if an instrument is received from the buyer of a proposed lot as security for the payment of an amount under the contract for the sale of the lot—
  - (a) by a recognised entity on behalf of the seller; or
  - (b) by another person on behalf of the seller; or
  - (c) by the seller.

*Example of an instrument for subsection (1)—*

bank guarantee

- (2) For subsection (1)(a), the recognised entity must keep the instrument at the prescribed place until—
  - (a) the instrument is returnable to the buyer according to law; or

- (b) the instrument is given to the issuer of the security in exchange for the amount it secures.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) The amount given in exchange for the instrument under subsection (2)(b) is trust money.
- (4) The amount given must be—
- (a) held by the recognised entity who held the instrument in the entity's prescribed trust account; and
- (b) dealt with by the recognised entity in accordance with this part and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (5) For subsection (1)(b), the person must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (6) For subsection (1)(c), the seller must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (7) If the instrument is given to a recognised entity under subsection (5) or (6), subsections (2), (3) and (4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller as provided in subsection (1)(a).
- (8) In this section—  
*prescribed place* means—

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- (a) for a recognised entity that is a law practice—an office of the practice in Queensland; or
- (b) for a recognised entity that is the public trustee—an office of the public trustee in Queensland; or
- (c) for a recognised entity that is a real estate agent—the office of the real estate agency in which the agent carries on the business of a real estate agent.

### **97Q Contracting out prohibited**

- (1) A contract for the sale of a leasehold building units lot or a proposed lot is void to the extent to which it purports to exclude, restrict or otherwise change the effect of a provision of this part.
- (2) In this section—  
*contract*, for the sale of a leasehold building units lot or a proposed lot, includes any instrument relating to the sale of the leasehold building units lot or proposed lot.

### **97R Evidentiary provision**

In a proceeding for an offence against this part, a copy of a contract or other instrument purporting to relate to the sale or purchase of a proposed lot and produced on behalf of the complainant is admissible in evidence as if it were the original contract or instrument.

## **70 Insertion of new s 98A**

After section 98—

*insert—*

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## **98A Responsibility for acts or omissions of representative**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) 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.
- (4) In this section—

***representative*** means—

  - (a) of an individual—an employee or agent of the individual; or
  - (b) of an unincorporated body—a member of the body, or an employee or agent of the body; or
  - (c) of a partnership—a partner, employee or agent of the partnership; or
  - (d) of a corporation—an executive officer, employee or agent of the corporation.

***state of mind***, of a person, includes—

  - (a) the person's knowledge, intention, opinion, belief or purpose; and

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- (b) the person's reasons for the intention, opinion, belief or purpose.

**71 Omission of s 103 (Application of Land Sales Act to public authorities)**

Section 103—

*omit.*

**72 Insertion of new pt 11, div 8**

Part 11—

*insert—*

**Division 8 Transitional provisions for  
Land Sales and Other  
Legislation Amendment  
Act 2014**

**138 Definitions for div 8**

In this division—

*commencement* means the commencement of this division.

*proposed lot* has the meaning given by section 97B.

**139 Application of pt 9A and modified application of s 97J**

- (1) Part 9A applies only in relation to a contract for the sale of a lot or proposed lot entered into by a buyer after the commencement.
- (2) However, section 97J as modified under subsection (3) applies in relation to the contract for the sale of the proposed lot if—



- 
- (a) the proposed lot is a proposed lot mentioned in the *Land Sales Regulation 2000*, schedule 2 as in force immediately before the repeal of that regulation; and

*Note—*

Under old LSA, section 28, a period could be prescribed by regulation for giving a registrable instrument for a proposed lot.

- (b) the contract does not provide the date by which it must be settled.
- (3) Section 97J is modified by omitting subsection (1)(b) and inserting the following—

‘(b) if the contract does not provide the date by which it must be settled—the end of the period prescribed in the repealed *Land Sales Regulation 2000*, schedule 2 worked out from the day the contract was entered into.’

- (4) In this section—

*old LSA, section 28* means section 28 of the *Land Sales Act 1984* as in force immediately before the commencement.

#### **140 Continuing application of former provisions**

- (1) This section applies in relation to a contract for the sale of a lot or proposed lot entered into before the commencement.
- (2) The following provisions continue to apply in relation to the contract as if the *Land Sales and Other Legislation Amendment Act 2014* had not been enacted—
- (a) schedule 4, section 49 and 49A of this Act as in force at any relevant time before the commencement;
- (b) old LSA, part 3.

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- (3) However, if, at any time before the settlement of a contract to which the part applies, the parties to the contract agree to settle the sale using e-conveyancing, old LSA, part 3 is to be read with the following changes—
- (a) old LSA, section 22(4)(a)—  
*omit, insert—*  
'(a) the vendor or the vendor's agent can not require the purchaser to settle; and';
- (b) old LSA, section 23(1), ' , without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor'—  
*omit, insert—*  
'(but excluding an amount payable at settlement)';
- (c) old LSA, section 23(4)—  
*omit;*
- (d) old LSA, section 25(2)(a)—  
*omit, insert—*  
'(a) before settlement of the sale of the proposed lot; or';
- (e) old LSA, section 25(2)(b)(ii)—  
*omit, insert—*  
'(ii) before settlement of the sale of the proposed lot;';
- (f) old LSA, section 27, heading—  
*omit, insert—*  
**'27 Purchaser's rights if purchase not settled within a certain period'**;

- (g) old LSA, section 27(1)(b), ‘the vendor has not given the purchaser a registrable instrument of transfer for the lot’—

*omit, insert—*

‘the sale of the proposed lot has not been settled’;

- (h) old LSA, section 27(2), ‘before the vendor gives the purchaser the registrable instrument of transfer for the proposed lot’—

*omit, insert—*

‘before the sale of the proposed lot has been settled’;

- (i) old LSA, section 28, heading, ‘for giving of registrable instrument’—

*omit.*

- (4) In this section—

***e-conveyancing*** see the *Property Law Act 1974*, section 58A.

***old LSA***, followed by a provision number, means the provision with that number in the *Land Sales Act 1984* as in force at any relevant time before the commencement.

### **73 Amendment of sch 4 (Modified Building Units and Group Titles Act)**

- (1) Schedule 4, section 7, definition *original lessee*, paragraph (b), ‘49, 49A,’—

*omit.*

- (2) Schedule 4, section 7, definition *original lessee*, after paragraph (b)—

*insert—*

[s 74]

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(amended)

(3) Schedule 4, part 4, division 3—

*omit, insert—*

**Division 3            Duties of original lessee**

(not applied)

**Part 12                    Repeal of Land Sales  
Regulation 2000**

**74            Repeal provision**

The Land Sales Regulation 2000, SL No. 221 is repealed.

**Part 13                    Minor and consequential  
amendments of Acts**

**75            Acts amended in sch 1**

Schedule 1 amends the Acts it mentions.

## **Schedule 1      Minor and consequential amendments**

section 75

### **Body Corporate and Community Management Act 1997**

- 1      Section 206(3), ‘or a person authorised by the seller’—**  
*omit.*
  
- 2      Section 210, ‘(including the seller’s agent)’—**  
*omit.*

### **Land Title Act 1994**

- 1      Section 122(3), from ‘allotment’—**  
*omit, insert—*

lot under the *Land Sales Act 1984* that a person obtains by agreeing to buy the lot under a contract for the sale of the lot.