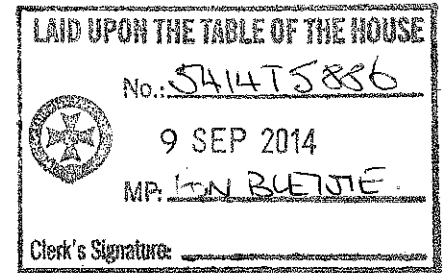


# Land Sales and Other Legislation Amendment Bill 2014

## Explanatory Notes

## FOR



## Amendments to be moved during Consideration in Detail by the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice

### Title of the Bill

Land Sales and Other Legislation Amendment Bill 2014

### Objectives of the amendments

There are four objectives of the amendments to the Bill.

The first objective is to clarify and improve the operation of particular aspects of the Bill in accordance with the original policy objectives, as set out in the Explanatory Notes for the Bill. The amendments will clarify and improve the operation of the seller disclosure obligations and requirements for dealing with security instruments and amounts held in trust relating to the sale or purchase of a proposed lot in a community titles scheme or unregistered reconfigured land. These particular amendments are being made to address issues raised by stakeholders in their submissions to the Legal Affairs and Community Safety Committee (the committee), during the committee's consideration of the Bill.

The second objective is to address issues arising from the introduction of National Electronic Conveyancing (e-conveyancing) in Queensland.

The third objective is to remove unnecessary regulatory duplication in relation to prescribed provisions of the Land Sales Act and various community titles laws for which a contravention would give rise to the right to make a claim against the claim fund established under the *Agents Financial Administration Act 2014* (AFA Act).

The fourth objective is to align commencement of the amendments to the *Land Sales Act 1984* and other legislation dealing with 'off the plan' sales of land and proposed lots to be included in

community titles developments with the commencement of part 7 of the *Property Occupations Act 2014* which deals with residential property sales.

## Achievement of the objectives

### Objective 1 – Clarify and improve the operation of the Bill

The amendments to the Bill will achieve the first objective by:

- amending clause 12 (new section 212B of the *Body Corporate and Community Management Act 1997* (BCCM Act)) to clarify the application of the seller disclosure requirements of the BCCM Act to a contract granting an option to purchase or sell a proposed lot. Similar amendments will be made to analogous provisions of the *Building Units and Group Titles Act 1980* (BUGT Act), the Land Sales Act and the *South Bank Corporation Act 1989* (SBC Act).
- amending clauses 14 (new section 213AA of the BCCM Act), 30 (new section 49A of the BUGT Act) and 43 (new section 11 of the Land Sales Act) to clarify aspects of the *standard format lot particulars, group titles particulars and relevant lot particulars* by:
  - a. providing that where the height of a retaining wall varies across the length of the wall, the highest and lowest points of the wall and the average height of the wall must be disclosed;
  - b. requiring disclosure about whether the compaction of any fill that is part of operational work for the proposed lot has occurred in accordance with the relevant Australian standard, and the level of inspection and testing services carried out; and
  - c. replacing the following words in subparagraph (c), “if the seller of the lot intends that a building be constructed on the lot”, with “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”.
- amending clause 14 (new section 213AA of the BCCM Act) to provide more appropriate requirements for the disclosure plan required to be given by a seller to the buyer of a proposed lot intended to be volumetric format lot in a community titles scheme established under the BCCM Act.
- amending clause 17 (new section 217B of the BCCM Act) and the analogous provisions in the BUGT Act and SBC Act to make it clear that the date for settlement cannot be extended past the statutory limit, except if a later date is requested by the buyer of the proposed lot and agreed to by the seller.
- amending clause 19 (new section 218E of the BCCM Act) and the analogous provisions in the BUGT Act, Land Sales Act and SBC Act, to provide that if a person other than a recognised entity receives a security instrument from a buyer, the person must provide it directly to a recognised entity.

- amending clause 43 (new section 11 of the Land Sales Act) to provide tailored disclosure plan requirements for proposed lots in volumetric format plans of subdivision that are not intended to be part of a community titles scheme.
- amending clause 43 (new section 14 of the Land Sales Act) to clarify that a seller must give a statement to the buyer prepared by a cadastral surveyor stating that there are no discrepancies between the registered plan and the disclosure plan (as varied by any further statement) for the lot.
- amending clause 54 (new section 37 of the Land Sales Act) to provide certainty for contracts entered into before commencement that are conditional on an application for an exemption from part 2 of the Land Sales Act being granted under old section 19 of the Act where, at commencement, the application has not been decided.
- inserting an example in clause 59 (in new section 262A of the *Legal Profession Act 2007*) about the type of circumstance that may lead a law practice to consider that a dispute may arise about entitlement to an amount held in the law practice's trust account in relation to the sale of a lot.

Further detail and explanation of each of the above proposed amendments to the Bill is outlined below.

#### Clarification of when a seller must comply with seller disclosure requirements

The BCCM Act currently requires a seller of a proposed lot to comply with the prescribed seller disclosure requirements under section 213 before the buyer enters into a contract of sale for the proposed lot.

Clause 12 of the Bill inserts new section 212B into the BCCM Act to clarify the application of section 213 to a contract granting an option to purchase. However, the Queensland Law Society (QLS) has advised that the drafting of section 212B effectively provides a loophole where a seller can grant a buyer an option to purchase without giving the buyer a disclosure statement prescribed under section 213 and may then exercise the option and require the buyer to proceed with the contract, without the buyer receiving the disclosure statement. This was not the intention of section 212B.

It has also been identified that the current drafting of section 212B means that section 213 would apply to a call option but not a put option. The intention is that section 212B provides that section 213 applies to any type of option.

Accordingly, to close the loophole and ensure that section 213 applies to all types of options, section 212B will be amended to make it clear that:

- section 213 applies to a contract granting an option to purchase *or sell* a proposed lot; and
- if the seller and buyer enter into a contract of sale arising from the option, section 213(1) does not require the giving of a disclosure statement in relation to the sale contract arising from the option.

This will ensure a buyer receives a disclosure statement before entering into an option, but the seller will not be required to give the disclosure statement again if the same buyer and seller enter into a contract arising from the option.

The amendment to section 212B will also be made to the analogous provisions of the BUGT Act, the Land Sales Act and the SBC Act in the Bill. That is, the amendment will be made to new section 48G of the BUGT Act (clause 28 of the Bill), new section 9 of the Land Sales Act (clause 43 of the Bill) and new section 97E of the SBC Act (clause 69 of the Bill).

Clarification of standard format lot particulars, group titles particulars and relevant lot particulars

Clause 14 of the Bill inserts new section 213AA into the BCCM Act, which requires the seller of a proposed lot in a standard format plan of subdivision to disclose the *standard format lot particulars* to the buyer. As part of the *standard format lot particulars* the seller must disclose the location and height of any retaining walls to be constructed on the lot and information about any fill that is to occur as part of any operational work for the lot, including the depth of the fill and compaction rates.

Under the BUGT Act (clause 30, new section 49A), the same disclosure requirement (referred to as *group titles particulars*) is made of sellers of proposed lots in a group titles plan of subdivision, and an analogous requirement (referred to as *relevant lot particulars*) is prescribed under the Land Sales Act (clause 43, new section 11).

The Urban Development Institute of Australia (Queensland) (UDIA), a peak industry body representing property developers, has identified a need to clarify what specificity is required for the disclosure of the height of retaining walls and the compaction rates of fill.

With respect to retaining walls, the height can vary across the length of the wall and so the UDIA recommended the Bill be clarified to describe what should be disclosed to the buyer about the height of the retaining wall in circumstances where the height of wall varies across the length of the wall.

To ensure buyers receive adequate information about the standard of the compaction of any fill to be done as part of operational works, the UDIA recommended the Bill should be amended to clarify that the information to be disclosed to buyers about compaction must be about whether the compaction will be undertaken in accordance with the relevant Australian Standard.

In addition, the Bill provides that some of the disclosure requirements prescribed under the *standard format lot particulars, group titles particulars and relevant lot particulars* are only applicable if the seller “intends that a building be constructed on the lot”. The UDIA identified that, as drafted, the provision could require the seller to disclose information about a building to be constructed on the lot after the contract has settled and by a third party who does not have an arrangement procured by the seller to construct the building. However, this is not the intention of the application of these particular seller disclosure requirements.

Accordingly, amendments are proposed to the Bill to clarify aspects of the *standard format lot particulars, group titles particulars and relevant lot particulars* by:

- providing that the seller must disclose the height of any retaining walls that are part of the operational work for the lot 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;
- providing that the seller must disclose whether the compaction of any fill that is part of the operational work for the lot will be done in accordance with Australian Standard 3798-2007, and the level of inspection and testing services to be carried out; and
- providing that the information about a building to be constructed on a lot applies only 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.

Disclosure plan for a lot intended to be a volumetric format lot in a community titles scheme established under the BCCM Act

For a proposed lot intended to be included in a community titles scheme established under the BCCM Act, the Bill requires the seller of the proposed lot to give the buyer a disclosure plan which identifies the lot. In recognition of the different nature and characteristics of lots in standard format plans of subdivision from lots in building format plans of subdivision and volumetric format plans of subdivision, the Bill sets out different disclosure plan requirements for proposed lots in standard format plans of subdivision.

However, the UDIA has advised that the disclosure plan requirements for lots in volumetric format plans of subdivision should be further tailored to take account of the different nature and characteristics of these lots from lots in building format plans of subdivision. If this amendment is not made, sellers of proposed lots intended to be volumetric format lots may not be able to comply with the disclosure plan requirements, which gives rise to a termination right for the buyers of the proposed lots.

Accordingly, clause 14 of the Bill (new section 213AA of the BCCM Act) will be amended to provide separate, tailored disclosure plan requirements for a proposed lot intended to be included in a volumetric format plan of subdivision in a community titles scheme established under the BCCM Act (referred to as *volumetric format lot particulars*). The *volumetric format lot particulars* means the following:

- the proposed number of the lot;
- an isometric representation of the lot;
- the area of the projected footprint of the lot;
- the level of the ground surface in approximate values for illustrating the location of the lot in relation to that level;
- identification of the proposed orientation of the lot by reference to north;

- 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;
  - identification of other lots and common property proposed to be on the same floor level in the building.

Clarification that the statutory limit for the date for settlement cannot be extended, except by request of the buyer

New section 217B of the BCCM Act (under clause 17 of the Bill) provides that a buyer has a right to terminate a contract for the sale of a proposed lot if the seller does not give the buyer a registrable transfer by the prescribed time. The same contract termination right is also provided for the sale of a proposed lot under the BUGT Act and the SBC Act.

As described in more detail below (see explanation under Objective 2 – effective operation of e-conveyancing), it is proposed to amend the Bill to replace the requirement to give a registrable transfer by the prescribed time with a requirement for settlement to occur by the same prescribed time.

In addition, QLS recommended amending this provision (in the BCCM Act, BUGT Act and SBC Act) to clarify that the prescribed time for when the contract must be settled cannot be extended, except if the buyer requests a later date and the seller agrees to the later date. This removes uncertainty for parties to the contract about the timeframe for settlement and associated contract termination rights.

Application of provision dealing with security instruments

Clause 19 of the Bill inserts new section 218E into the BCCM Act. This section provides for how a security instrument, such as a bank guarantee, must be dealt with if it is received by a recognised entity (a recognised entity is defined in the Bill to be a law practice, the public trustee or a real estate agent) on behalf of a seller. An analogous provision is also included in the BUGT Act (clause 30, new section 49H), Land Sales Act (clause 43, new section 12) and the SBC Act (clause 69, new section 97P).

The QLS has identified that a person other than a recognised entity might receive the security instrument from a buyer, but section 218E and the analogous provisions in the BUGT Act, Land Sales Act and SBC Act do not contemplate this scenario, which leaves a gap in the legislation. To make sure that this scenario is covered, the Bill will be amended to also provide that if a person that is not a recognised entity receives a security instrument from a buyer as security for a contract of sale, the person must give the security instrument directly to a recognised entity. The recognised entity is then required to comply with section 218E(2) to (4) of the BCCM Act (or the analogous provisions in the BUGT Act, Land Sales Act and SBC Act) as if the security instrument was received from the buyer by the recognised entity on behalf of the seller.

Disclosure plan requirements for proposed lots in volumetric format plans of subdivision that are not intended to be part of a community titles scheme

The Land Sales Act does not currently provide specific disclosure requirements for proposed lots in volumetric format plans of subdivision that are not intended to be part of a community titles scheme. However, the UDIA have advised that it is becoming increasingly common for property developments to be delivered with volumetric format lots, but not in a community titles scheme established under the BCCM Act. Instead the developments are established using a building management statement.

This means that, as the Bill is currently drafted, for new developments that are not intended to be a community titles scheme under the BCCM Act but are proposed to comprise of volumetric format lots, the seller may not be able to comply with the *relevant lot particulars* for the disclosure plan prescribed under new section 11 of the Land Sales Act (inserted by clause 43 of the Bill).

Accordingly, the Bill will be amended to insert separate, tailored requirements in new section 11 of the Land Sales Act for a disclosure plan which is required to be given to the buyer by the seller of a proposed lot that is intended to be a volumetric format lot.

Cadastral surveyor's statement

New section 14(3)(b) of the Land Sales Act (inserted by clause 43 of the Bill) requires that if there are no differences between the information contained in the registered plan for a proposed lot and the information contained in the disclosure plan given by the seller of the lot to the buyer, the seller must give the buyer a statement prepared by a cadastral surveyor to that effect. If there are differences, new section 13 of the Land Sales Act requires the seller to give the buyer a notification (referred to as a further statement) disclosing and explaining the differences.

The QLS has raised concern that if there are differences between the registered plan and the disclosure plan and the seller does not give the buyer a further statement under new section 13 to disclose the differences, the buyer has no right to refuse to settle the contract and is left to work out what the differences are and determine if they are materially prejudiced by them (which in turn gives rise to a statutory right to terminate the contract).

The QLS also raised concern that if the seller then makes further changes to the lot after giving a further statement, the buyer would not be expecting to receive a cadastral surveyor's statement under section 14(3)(b) and may not be aware of the need to carefully check the registered plan for any discrepancy between it and the disclosure plan as rectified by a further statement.

To overcome these issues, new section 14(3)(b) in the Bill will be amended to provide that the seller must give the buyer a statement prepared by a cadastral surveyor stating that there are no discrepancies between the registered plan and the disclosure plan for the lot given to the buyer under section 10, as varied by any further statement given to the buyer under section 13. This makes it clear that if there are differences between the information contained in the disclosure plan and the registered plan for the lot, the seller will be required to disclose the differences through further statement prescribed under section 13, in order to provide a cadastral surveyor's statement under section 14(3)(b).

This amendment provides certainty as to what information the seller should be giving the buyer about the lot and also gives certainty to the buyer that the information contained in the disclosure plan (as rectified by a further statement, if required) received from the seller is what the registered plan for the lot provides.

#### Transitional provision for section 19 of the Land Sales Act

Clause 54 of the Bill inserts new section 37 in the Land Sales Act which provides a transitional provision for applications made under section 19 of the Land Sales Act (as in force before the commencement of the Bill) that have not been decided at the commencement of the Bill. The application under old section 19 is for an exemption from part 2 of the Act (or particular provisions of part 2, as specified in the application) in relation to the sale of a lot arising from a proposed subdivision of land into not more than 5 lots. New section 37 provides that an application made under old section 19 that has not been decided at the commencement lapses at the commencement.

The UDIA and QLS raised concern that section 37 does not adequately provide for situations where a contract entered into before commencement is conditional on an exemption under old section 19 being granted, but an application for an exemption is not decided before commencement.

To deal with this situation clause 54 of the Bill will be amended to ensure that section 37 provides that an application under old section 19 that has not been decided at the commencement lapses at the commencement; however, if, at the commencement, a contract is conditional on an application being granted under old section 19 and the application has not been granted, the application is taken to be granted.

#### Legal Profession Act

Clause 59 of the Bill inserts part 3.3, new division 2A into the *Legal Profession Act 2007* to provide law practices with a process to pay out an amount held in their trust account for the sale of a lot in circumstances where entitlement to the amount is in dispute or the law practice considers a dispute may arise about entitlement to the amount.

The QLS raised concern that the application of the new division 2A may not be broad enough to cover the circumstances where a buyer of a proposed lot has apparently abandoned the contract prior to settlement because a law practice may not be able to reasonably apprehend in this circumstance that a dispute may arise.

The intention of new division 2A is to cater for circumstances such as when a party to a contract apparently abandons the contract prior to the statement and the explanatory notes for the Bill use this specific example.

Accordingly, to further assist with clarifying the intention and application of new division 2A, an example will be inserted under new section 262A (which provides for the application of new division 2A) for the type of circumstance that might lead a law practice to consider a dispute may arise about entitlement to the amount held in the law practice's trust account.



Specifically, the example that will be inserted under new section 262A will provide that a circumstance that may lead a law practice to consider that a dispute may arise about entitlement to an amount held in the law practice's trust account in relation to the sale of a lot is where a party to a contract for the sale of the lot does not take the required action to complete the contract and does not make contact with the other party or the law practice to explicitly state a dispute has arisen.

## **Objective 2 – Effective operation of e-conveyancing**

The roll-out of National Electronic Conveyancing (e-conveyancing) in Queensland is occurring in stages. The first release, in December last year, applied only to a limited range of transactions. The next release, scheduled for next year, will extend e-conveyancing to a greater range of transactions, including transfers and caveats.

In an e-conveyance, the traditional face to face settlement of a contract for the sale of land is replaced by an electronic exchange process for funds and transfer documents. The steps in the electronic process do not precisely mirror the paper process. This raises issues about applying the traditional concept of "settlement" to an electronic environment. To address this, amendments will be made to the Bill to amend the *Property Law Act 1974*, Land Sales Act, BCCM Act, BUGT Act and SBC Act.

### Property Law Act

The amendments to the *Property Law Act 1974* achieve the second objective by:

- inserting a definition of 'settlement' in relation to the sale of land or a contract for the sale of land which is completed using e-conveyancing; and
- inserting a new section 67A to address issues relating to the exercise of statutory rights of termination when e-conveyancing is used.

### Registrable transfers under the Land Sales Act

The Land Sales Act requires the seller of an unregistered subdivision of land or a proposed lot in a community titles scheme to give the buyer a registrable instrument of transfer within a prescribed period. If the seller does not comply with this requirement, the buyer has a right to terminate the contract of sale.

In a traditional settlement, the obligation to give a registrable transfer is not satisfied until the transfer is handed over as part of the settlement process. However, there is an issue with how the requirement to 'give' the buyer a registrable transfer can be satisfied in an electronic environment.

The requirement under the Land Sales Act for the registrable transfer to be given to a buyer within a prescribed timeframe is to ensure that settlement occurs within a prescribed timeframe. This is necessary for off the plan sales, to provide certainty to a buyer that development approvals for the subdivision or community titles scheme will be sought and any necessary operational works will be completed within a set timeframe (otherwise the buyer is given a statutory right to terminate the contract of sale).

The Bill omits the requirement under the Land Sales Act for a registrable transfer to be given to a buyer of a proposed lot in a community titles scheme and places the requirement in the BCCM Act, BUGT Act and SBC Act.

Accordingly, amendments will be made to the Bill to remove the requirement under the Land Sales Act, BCCM Act, BUGT Act and the SBC Act for a registrable transfer to be given by a seller of a proposed lot to a buyer within the prescribed time and replace it with a requirement for settlement to occur within the same prescribed time. This amendment will apply for traditional conveyancing and e-conveyancing and will ensure the seller of a proposed lot can meet their obligations regardless of the type of conveyancing used to settle a contract, without impacting on the buyer's existing rights.

### **Objective 3 – Claimable provisions under *Agents Financial Administration Act 2014***

The Bill will achieve its objective of removing unnecessary regulatory duplication in relation to the claim fund under the AFA Act by omitting clause 6 of the Bill and replacing it with a new clause 6, which removes section 82(1)(h) from the AFA Act.

The AFA Act establishes a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents licensed under the Property Occupations Act, *Motor Dealers and Chattel Auctioneers Act 2014* and the *Debt Collectors (Field Agents and Collection Agents) Act 2014*. A person may claim against the fund if the person suffers financial loss because of a contravention of particular seller disclosure and trust account provisions of the Land Sales Act by an agent licensed under the Property Occupations Act (who is appointed by the owner of the land to which the Land Sales Act applies), or an employee of the licensed agent.

Clause 6 of the Bill amends these provisions to remove the references in the AFA Act to the trust account provisions of the Land Sales Act because the claimable breaches are already covered by more general claim fund provisions in the AFA Act relating to trust accounts and dealing with money entrusted to an agent licensed under the Property Occupations Act for someone else.

It has been identified that the references to the seller disclosure provisions of the Land Sales Act in the AFA Act (section 82(1)(h)) are a regulatory duplication that should be removed. This is because the actions of an agent licensed under the Property Occupations Act in relation to seller disclosure are already covered by more general claimable provisions in the AFA Act.

The Land Sales Act seller disclosure provisions relate to identification of the proposed lot to the prospective buyer. In this respect, section 82(1)(g) of the AFA Act provides for claims against the fund where an agent licensed under the Property Occupations Act makes false representations in relation to the sale of property or engages in other misleading conduct (including the wilful concealment of a material fact) or unconscionable conduct. Accordingly, the proposed amendments to the Bill to remove the references to the Land Sales Act seller disclosure requirements from section 82 of the AFA Act will remove regulatory duplication without diminishing consumer protections.

In addition, the Bill inserts in the AFA Act a reference to a new provision as a claimable provision under that Act. The new provision was proposed to be inserted by the Bill into the

Land Sales Act and community titles laws and relates to security instruments (such as bank guarantees) used by buyers as security for an amount for the purchase of a proposed lot.

However, the actions of an agent licensed under the Property Occupations Act in relation to dealing with security instruments are also already covered by other claimable provisions in the AFA Act, namely section 82(1)(b) or the claimable breach of section 206 of the Property Occupations Act (as provided for under section 82(1)(g) of the AFA Act). For this reason, it is not necessary to retain a reference in the in the AFA Act to the security instrument provisions in the Land Sales Act and community titles laws.

Accordingly, amendments will be made to the Bill to omit clause 6 and replace it with a new clause 6 which omits section 82(1)(h) of the in the AFA Act. This will remove unnecessary regulatory duplication in the AFA Act in relation to claimable breaches of the seller disclosure, trust account and security instrument provisions of the Land Sales Act and community titles laws.

#### **Objective 4 - Commencement**

Clause 2 of the Bill provides for the Act (apart from parts 4 and 10) to commence on a day to be fixed by proclamation. Since introduction, the QLS has expressed a preference for the amendments in the Bill dealing with 'off the plan' sales of land and lots proposed to be included in community titles developments to commence at the same time as the Property Occupations Act, which received assent in May 2014 but is yet to commence.

Accordingly, it is proposed to amend clause 2 to provide for the amendments to the Land Sales Act and other legislation which relate to 'off the plan' sales to commence at the same time as part 7 of the Property Occupations Act which deals with residential property sales.

Other parts of the Bill will commence on assent, notably, part 4 dealing with the *Breakwater Island Casino Agreement Act 1984* and part 10 which makes a minor correction to the Property Occupations Act. In addition, amendments to the Property Law Act (new sections 60A and 63A) addressing definitional matters relating to e-conveyancing will also commence on assent.

### **Alternative ways of achieving objectives**

There is no alternative way to achieve the objectives other than by amending the Bill.

### **Estimated cost for government implementation**

There are no costs for government associated with the amendments to the Bill.

## Consistency with fundamental legislative principles

### Fundamental legislative principle issues not listed in the *Legislative Standards Act 1992* – Proportion and relevance

#### **New offences**

As described under Objective 1 above, the Bill is proposed to be amended to require that if a person other than a real estate agent, law practice or the public trustee receives a security instrument as security for the sale of a proposed lot, the person must give the security instrument directly to a recognised entity. This provision has been inserted to provide appropriate consumer protection, and it includes an offence for a contravention of the provision. The maximum penalty for this offence is 200 penalty units or 1 year imprisonment.

The fundamental legislative principles require that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The penalty for the proposed new offence relating to security instruments is consistent with the penalties for the offences for the trust account provisions, which also deal with amounts paid towards the purchase of a proposed lot.

It is considered relevant and proportionate to include such a penalty to provide a sufficient deterrent for inappropriately using amounts (which are usually significant sums of money) received from a buyer for the purchase of a proposed lot.

### Legislation should have sufficient regard for the rights and liberties of individuals – *Legislative Standards Act 1992, section 4(2)*

The insertion of new clause 67A into the *Property Law Act 1974* (Amendment 53) raises an issue regarding consistency with the fundamental legislative principle that legislation should have sufficient regard for the rights and liberties of individuals.

A range of Queensland legislation currently provides for rights of termination in relation to a contract for the sale of land that are expressed to end at “settlement” or “completion of the contract”.

In an electronic settlement, the traditional face to face settlement is replaced by a number of steps leading to electronic exchange of funds and the electronic lodgement of transfer and associated documents in the Land Registry. At a scheduled time agreed by all parties, the electronic workspace “locks” and settlement will proceed without further intervention by the parties. This presents practical problems if a buyer were to seek to notify termination after “locking” of the workspace but before actual settlement, as the Electronic Lodgement Network would continue to proceed with the transaction. To avoid these problems, the amendment provides that while the right to terminate will continue to end at “settlement”, the right cannot be exercised while the electronic workspace is locked for the purpose of settlement.

This potential fundamental legislative principle issue is justified by the need to ensure the practical workability of the e-conveyancing system and provide certainty in relation to parties’ rights. The amendment does not adversely affect individual rights, as the date and time for the “locking” of the electronic workplace is provided for in a settlement schedule which must be agreed and signed digitally by all parties to the settlement. It is also anticipated that, provided

there are no technical issues with the electronic lodgement network or the systems of the participating financial institutions or the Land Registry, the steps in the electronic exchange will be undertaken within a short period of time after locking. Also, if for some reason, the settlement were to fail, when the workspace “unlocks”, a buyer would continue to be able to exercise rights of termination under the relevant statutes.

## **Consultation**

Targeted consultation was undertaken with the Reference Committee for the review of the Land Sales Act on the amendments that will achieve Objective 1. The members of the Reference Committee for the review of the Land Sales Act are listed in the consultation section of the Explanatory Notes for the Bill.

The Commercial and Property Law Research Centre (Queensland University of Technology), the Department of Natural Resources and Mines and the Office of State Revenue were consulted in relation to the amendments to the *Property Law Act 1974* to address issues arising from the introduction of e-conveyancing in Queensland (Objective 2).

No external consultation was undertaken on the amendments that will achieve Objective 3.

The amendments to the commencement provision for the Act (Objective 4) are the result of representations from the QLS.

## Notes on provisions

Amendment 1 amends clause 2 of the Bill to change the commencement of the Act. This amendment provides that the Act, other than parts 4 and 10 and sections 60A and 63A, commences on the commencement of the *Property Occupations Act 2014*, part 7.

Amendment 2 amends clause 6 of the Bill to omit section 82(1)(h) of the *Agents Financial Administration Act 2014* and, as a result of the omission of section 82(1)(h), make a minor, consequential amendment to section 82(1)(g).

Amendment 3 makes a consequential amendment to clause 11 of the Bill to omit the definition of the term *registrable transfer* from new section 211A of the *Body Corporate and Community Management Act 1997* (BCCM Act).

Amendment 4 amends clause 12 of the Bill to redraft new section 212B of the BCCM Act to provide that section 213 (as modified by section 212B) applies if a person grants an option to another person to purchase or sell a proposed lot. This amendment clarifies that section 213(1) requires the giving of a disclosure statement in relation to the option as if a reference in section 213(1) 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.

This amendment also provides that:

- any right of termination under section 213 relating to the disclosure statement applies in relation to the option and the sale contract arising from the option;
- 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 arising from the option;
- if the buyer is not a party to the contract arising from the option, the seller must comply with section 213 before entering into the contract for the sale.

Amendment 5 amends clause 13 of the Bill to redraft new section 213(2)(a)(iii) of the BCCM Act, as renumbered by the Bill. This amendment replaces, in new section 213(2)(a)(iii), the notion of a seller giving the buyer a registrable transfer with the notion of a seller settling the contract.

Amendment 6 amends clause 14 of the Bill to redraft new section 213AA(1)(a) and 213AA(1)(b) of the BCCM Act. This is a consequential amendment to reflect the separation of the disclosure plan requirements for a proposed lot intended to be a building format lot and a proposed lot intended to be a volumetric format lot.

Amendment 7 amends clause 14 of the Bill to replace, in new section 213AA(3) of the BCCM Act, the *building or volumetric format lot particulars* with the *building format lot particulars*, to provide separate disclosure plan requirements for a proposed lot intended to be a building format lot. The matters to be disclosed under the *building format lot particulars* are the same as the matters prescribed under the *building or volumetric format lot particulars*

in the Bill. However the descriptor “proposed primary structure” used in the Bill for *building or volumetric format lot particulars* has been replaced for *building format lot particulars* with a simpler, more plain English descriptor, that being, “building in which the lot is proposed to be located”.

Amendment 8 amends clause 14 of the Bill to redraft subparagraph (c) under the *standard format lot particulars* in new section 213AA(3) of the BCCM Act. The redrafted subparagraph (c) of the *standard format lot particulars* provides that subparagraph (c)(i) to (c)(iii) apply 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.

Amendment 9 amends clause 14 of the Bill to omit subparagraph (e)(ii) to (e)(iv) under the *standard format lot particulars* in new section 213AA(3) of the BCCM Act and replace it with new subparagraph (e)(ii) to (e)(v). This amendment clarifies what must be included in the disclosure plan for a proposed lot intended to be a standard format lot in relation to any retaining walls that are part of the operational work for the lot and the fill that is part of the operational work.

Amendment 10 amends clause 14 of the Bill to insert *volumetric format lot particulars* in new section 213AA(3) of the BCCM Act to provide separate disclosure plan requirements for a proposed lot intended to be a volumetric format lot.

Amendment 11 amends clause 15 of the Bill to make a consequential amendment to amended section 214 of the BCCM Act to reflect the separation of the disclosure plan requirements for a lot intended to be a building format lot and a lot intended to be a volumetric format lot.

Amendments 12 and 13 amend clause 17 of the Bill by redrafting new section 217B(1)(a), 217B(1)(b) and 217B(2) of the BCCM Act to replace the notion of giving a registrable transfer with the notion of a contract being settled.

Amendment 12 also amends clause 17 of the Bill to make it clear that the prescribed time for settlement in section 217B(1)(a)(i) and (ii) and 217B(1)(b) applies, unless the buyer requests a later date for settlement and the seller agrees to the date, in which case the later date for settlement requested by the buyer applies.

Amendment 14 amends clause 19 of the Bill by omitting the words “the lot (excluding an amount the payment of which entitles the buyer to a registrable transfer in the buyer’s favour)” from new section 218A(a) of the BCCM Act and replacing them with the words “the lot (other than an amount paid at settlement)”.

Amendments 15 and 16 amend clause 19 of the Bill to redraft new section 218E of the BCCM Act. Amendments 15 and 16 provide that if the seller, or any other person (other than a recognised entity) on behalf of the seller, receives a security instrument from the buyer of a proposed lot, the instrument must be given directly to a recognised entity and section 218E(2) to 218E(4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller.

Amendment 16 also provides a maximum penalty for a breach of the requirement for a seller, or other person (other than a recognised entity), who receives a security instrument from the buyer to give the instrument directly to a recognised entity.

Amendment 17 amends new section 441(2)(b) and section 441(3) of the BCCM Act, inserted by clause 21, to replace the notion of giving a registrable transfer with the notion of a contract being settled.

Amendment 17 also amends new section 441 to omit subsection (2)(c) and subsection (4) because these provisions are unnecessary. New section 441(2)(c) and 441(4) are unnecessary because new section 213(2)(a) of the BCCM Act also applies to a contract entered into after commencement, which means the seller is required to disclose to the buyer the information prescribed in section 441(2)(c) as part of the disclosure statement prescribed under new section 213(2)(a).

Amendment 18 amends clause 21 of the Bill to insert transitional provisions into new section 444 of the BCCM Act for a contract of sale to which old part 3 of the Land Sales Act applies, where the parties to the contract agree to settle the sale using e-conveyancing.

Amendment 19 amends clause 22 of the Bill to make a consequential amendment to omit the term *registrable transfer*, which is inserted in schedule 6 of the BCCM Act by clause 22.

Amendment 20 amends clause 27 of the Bill to make a consequential amendment to omit the term *registrable transfer*, which is inserted in section 7(1) of the *Building Units and Group Titles Act 1984* (BUGT Act) by clause 27.

Amendment 21 amends clause 28 of the Bill to make a consequential amendment to omit the term *registrable transfer* from new section 48D of the BUGT Act, which is inserted by clause 28.

Amendment 22 amends clause 28 of the Bill to redraft new section 48G of the BUGT Act to provide that section 49 (as modified by section 48G) applies if a person grants an option to another person to purchase or sell a proposed lot. This amendment clarifies that section 49 requires the giving of a disclosure statement in relation to the option as if a reference in section 49 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.

This amendment also provides that:

- any right of termination under section 49 relating to the disclosure statement applies in relation to the option and the sale contract arising from the option;
- 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 arising from the option;
- if the purchaser is not a party to the contract arising from the option, the original proprietor must comply with section 49 before entering into the contract for the sale.



Amendment 23 amends clause 29 of the Bill to redraft amended section 49(2)(b)(ii) of the BUGT Act. This amendment replaces, in amended section 49(2)(b)(ii), the notion of an original proprietor giving the purchaser a registrable transfer with the notion of an original proprietor settling the contract.

Amendment 24 amends clause 30 of the Bill to redraft subparagraphs (c) to (e) under the *building units particulars* in new section 49A(3) of the BUGT Act to replace the descriptor, “proposed primary structure”, with a simpler, more plain English descriptor, that being, “building in which the lot is proposed to be located”.

Amendment 25 amends clause 30 of the Bill to redraft subparagraph (c) under the *group titles particulars* in new section 49A(3) of the BUGT Act. The redrafted subparagraph (c) of the *group titles particulars* provides that subparagraph (c)(i) to (c)(iii) apply 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 seller.

Amendment 26 amends clause 30 of the Bill to omit subparagraph (e)(ii) to (e)(iv) under the *group titles particulars* in new section 49A(3) of the BUGT Act and replace it with new subparagraph (e)(ii) to (e)(v). This amendment clarifies what must be included in the disclosure plan for a proposed lot intended to be a lot shown on a group titles plan in relation to any retaining walls that are part of the operational work for the lot and the fill that is part of the operational work.

Amendments 27 and 28 amend clause 30 of the Bill by redrafting new section 49B(1)(a), 49B(1)(b) and 49B(2) of the BUGT Act to replace the notion of giving a registrable transfer with the notion of a contract being settled.

Amendment 27 also amends clause 30 of the Bill to make it clear that the prescribed time for settlement in section 49B(1)(a)(i) and (ii) and 49B(1)(b) applies, unless the purchaser requests a later date for settlement and the original proprietor agrees to the date, in which case the later date for settlement requested by the purchaser applies.

Amendment 29 amends clause 30 of the Bill by omitting the words “the lot (excluding an amount the payment of which entitles the purchaser to a registrable transfer in the purchaser’s favour)” from new section 49D(a) of the BUGT Act and replacing them with the words “the lot (other than an amount paid at settlement)”.

Amendments 30 and 31 amend clause 30 of the Bill to redraft new section 49H of the BUGT Act. Amendments 30 and 31 provide that if the original proprietor, or any other person (other than a recognised entity) on behalf of the original proprietor, receives a security instrument from the purchaser of a proposed lot, the instrument must be given directly to a recognised entity and section 49H(2) to 49H(4) apply as if the instrument were received from the purchaser by the recognised entity on behalf of the original proprietor.

Amendment 31 also provides a maximum penalty for a breach of the requirement for an original proprietor, or other person (other than a recognised entity), who receives a security instrument from the purchaser to give the instrument directly to a recognised entity.

Amendment 32 amends new section 139(2)(b) and 139(3) of the BUGT Act, inserted by clause 34, to replace the notion of giving a registrable transfer with the notion of a contract being settled.

Amendment 32 also amends new section 139 to omit subsection (2)(c) and subsection (4) because these provisions are unnecessary. New section 139(2)(c) and 139(4) are unnecessary because amended section 49 of the BUGT Act also applies to a contract entered into after commencement, which means the original proprietor is required to disclose to the purchaser the information prescribed in section 139(2)(c) as part of the disclosure statement prescribed under amended section 49.

Amendment 33 amends clause 34 of the Bill to insert transitional provisions into new section 141 of the BUGT Act for a contract of sale to which old part 3 of the Land Sales Act applies, where the parties to the contract agree to settle the sale using e-conveyancing.

Amendment 34 makes a consequential amendment to clause 41 of the Bill to omit the definition of the term *registrable transfer* from amended section 6 of the *Land Sales Act 1984* (Land Sales Act).

Amendment 35 amends clause 43 of the Bill to redraft new section 9 of the Land Sales Act to provide that section 10 (as modified by section 9) applies if a person grants an option to another person to purchase or sell a proposed lot. This amendment clarifies that section 10(1) requires the giving of a disclosure statement in relation to the option as if a reference in section 10(1) 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.

This amendment also provides that:

- any right of termination under section 10 relating to the disclosure statement applies in relation to the option and the sale contract arising from the option;
- 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 giving of a disclosure statement in relation to the contract arising from the option; and
- if the buyer is not a party to the contract arising from the option, the seller must comply with section 10 before entering into the contract for the sale.

Amendment 36 amends clause 43 of the Bill to redraft new section 11(1) of the Land Sales Act. This is a consequential amendment to reflect the separation of the disclosure plan requirements for a proposed lot intended to be a volumetric format lot and a proposed lot intended to be a standard format lot.

Amendments 37 amends clause 43 of the Bill to make a consequential amendment to new section 11 of the Land Sales Act to reflect the separation of the disclosure plan requirements for a proposed lot intended to be a volumetric format lot and a proposed lot intended to be a standard format lot.

Amendment 38 amends clause 43 of the Bill to omit subparagraph (e)(ii) to (e)(iv) under the *relevant lot particulars* in new section 11(4) of the Land Sales Act and replace it with new

subparagraph (e)(ii) to (e)(v). This amendment clarifies what must be included in the disclosure plan for a proposed lot intended to be a standard format lot in relation to any retaining walls that are part of the operational work for the lot and the fill that is part of the operational work.

Amendment 39 amends clause 43 of the Bill to insert *volumetric format lot particulars* in new section 11 of the Land Sales Act to provide separate disclosure plan requirements for a proposed lot intended to be a volumetric format lot. Amendment 39 also inserts definitions for the terms *standard format lot* and *volumetric format lot*.

Amendment 40 amends clause 43 of the Bill to redraft new section 12(1)(c)(i) and 12(1)(c)(ii) of the Land Sales Act to replace the notion of a seller giving the buyer a registrable transfer with the notion of a seller settling the contract.

Amendment 41 amends clause 43 of the Bill to redraft new section 14(1) of the Land Sales Act to replace the notion of giving a registrable transfer with the notion of a contract being settled.

Amendment 41 also makes a consequential amendment to replace the title of division 3 of new part 2 of the Land Sales Act to reflect the removal in the Land Sales Act of the notion of giving a registrable transfer.

Amendment 42 amends clause 43 of the Bill to redraft new section 14(3)(b) of the Land Sales Act to provide that a seller must give the buyer of the proposed lot, at least 14 days before the contract is settled, a statement prepared by a cadastral surveyor. Amendment 42 also makes a consequential amendment to omit the note under new section 14(3)(b).

Amendment 42 also inserts a new subsection (4) under new section 14 and makes a consequential amendment to renumber existing section 14(4), as inserted by the Bill, as section 14(5). The new subsection (4) of new section 14, inserted by amendment 42, clarifies that for section 14(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.

Amendment 43 amends clause 43 of the Bill by omitting the words “the lot (excluding an amount the payment of which entitles the buyer to a registrable transfer in the buyer’s favour)” from new section 16(a) of the Land Sales Act and replacing them with the words “the lot (other than an amount paid at settlement)”.

Amendments 44 and 45 amend clause 43 of the Bill to redraft new section 21 of the Land Sales Act. Amendments 44 and 45 provide that if the seller, or any other person (other than a recognised entity) on behalf of the seller, receives a security instrument from the buyer of a proposed lot, the instrument must be given directly to a recognised entity and section 21(2) to 21(4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller.

Amendment 45 also provides a maximum penalty for a breach of the requirement for a seller, or other person (other than a recognised entity), who receives a security instrument from the buyer to give the instrument directly to a recognised entity.

Amendment 46 makes consequential amendments to clause 54 of the Bill by inserting definitions for the terms *contract*, *e-conveyancing*, and *lot* for division 2 of new part 4 of the Land Sales Act.

Amendment 47 amends clause 54 of the Bill to insert subsection (3) in new section 31 of the Land Sales Act. New section 31(3) provides transitional provisions for a contract of sale to which old sections 9 and 10 of the Land Sales Act apply, where the parties to the contract agree to settle the sale using e-conveyancing.

Amendment 47 also makes a consequential amendment to replace the title of new section 32 of the Land Sales Act in recognition of the removal of references to *registrable transfer* from the Land Sales Act.

Amendment 48 amends clause 54 of the Bill to omit subsections (2) and (3) of new section 32 of the Land Sales Act and replaces them with three new subsections, those being subsections (2), (3) and (4). New sections 32(2) to 32(4) provide transitional provisions for a contract of sale to which old section 10A of the Land Sales Act applies, where the parties to the contract agree to settle the sale using e-conveyancing.

Amendment 49 amends clause 54 of the Bill to redraft new section 34 of the Land Sales Act to provide a transitional provision for a contract of sale to which old sections 11 and 12 of the Land Sales Act apply, where the parties to the contract agree to settle the sale using e-conveyancing.

Amendment 50 amends clause 54 of the Bill to redraft new section 35 of the Land Sales Act to provide a transitional provision for a contract of sale to which old section 11A of the Land Sales Act applies, where the parties to the contract agree to settle the sale using e-conveyancing.

Amendment 51 amends new section 37 of the Land Sales Act, inserted by clause 54 of the Bill, to provide a transitional provision for a contract that is conditional on an application being granted under old section 19(2) of the Land Sales Act and the application has not been decided at the commencement.

Amendment 52 amends clause 59 of the Bill to insert an example under new section 262A of the *Legal Profession Act 2007* about when a law practice may consider a dispute may arise.

Amendment 53 inserts new clauses 60A and 60B in the Bill to provide for matters arising from the establishment of the National Electronic Conveyancing System.

Clause 60A amends the *Property Law Act 1974* by inserting new sections 58A and 58B which define a “settlement” or “completion” (however described) of a sale of land or a contract for the sale of land if the sale is completed using e-conveyancing.

Clause 60B amends the *Property Law Act 1974* by inserting new section 67A to provide for the situation where a statutory right of termination in relation to a sale of land or a contract for the sale of land is expressed to end on the settlement and the sale is settled using e-conveyancing. The amendment provides that in these situations, while the right of termination will continue to end on settlement, the right cannot be exercised during the time the electronic workspace is locked for the purpose of settlement.

Amendment 54 inserts new clause 63A. This clause amends the Dictionary in Schedule 6 to the *Property Law Act 1974* to include definitions relating to e-conveyancing.

Amendment 55 amends clause 67 of the Bill to make a consequential amendment to omit the term *registrable transfer*, which is inserted in section 3 of the *South Bank Corporation Act 1989* (SBC Act) by clause 22.

Amendment 56 amends clause 69 of the Bill to make a consequential amendment to omit the term *registrable transfer* from new section 97B of the SBC Act, which is inserted by clause 69.

Amendment 57 amends clause 69 of the Bill to redraft new section 97E of the SBC Act to provide that section 97F (as modified by section 97E) applies if a person grants an option to another person to purchase or sell a proposed lot. This amendment clarifies that section 97F(1) requires the giving of a disclosure statement in relation to the option as if a reference in section 97F(1) 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.

This amendment also provides that:

- any right of termination under section 97F relating to the disclosure statement applies in relation to the option and the sale contract arising from the option;
- 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 arising from the option; and
- if the buyer is not a party to the contract arising from the option, the seller must comply with section 97F before entering into the contract for the sale.

Amendment 58 amends clause 69 of the Bill to redraft new section 97F(2)(d) of the SBC Act. This amendment replaces, in new section 97F(2)(d), the notion of a seller giving the buyer a registrable transfer with the notion of a seller settling the contract.

Amendment 59 amends clause 69 of the Bill to redraft subparagraphs (c) to (e) under the *relevant lot particulars* in new section 97G(3) of the SBC Act to replace the descriptor, “proposed primary structure”, with a simpler, more plain English descriptor, that being, “building in which the lot is proposed to be located”.

Amendments 60 and 61 amend clause 69 of the Bill by redrafting new section 97J(1)(a), 97J(1)(b) and 97J(2) of the SBC Act to replace the notion of giving a registrable transfer with the notion of a contract being settled, and making a consequential amendment to replace the title of new section 97J and the title of division 3 of new part 9A of the SBC Act.

Amendment 60 also amends clause 69 of the Bill to make it clear that the prescribed time for settlement in section 97J(1)(a)(i) and (ii) and 97J(1)(b) applies, unless the buyer requests a later date for settlement and the seller agrees to the date, in which case the later date for settlement requested by the buyer applies.

Amendment 62 amends clause 69 of the Bill by omitting the words “the lot (excluding an amount the payment of which entitles the buyer to a registrable transfer in the buyer’s favour)” from new section 97L(a) of the SBC Act and replacing them with the words “the lot (other than an amount paid at settlement)”.

Amendments 63 and 64 amend clause 69 of the Bill to redraft new section 97P of the SBC Act. Amendments 63 and 64 provide that if the seller, or any other person (other than a recognised entity) on behalf of the seller, receives a security instrument from the buyer of a proposed lot, the instrument must be given directly to a recognised entity and section 97P(2) to 97P(4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller.

Amendment 64 also provides a maximum penalty for a breach of the requirement for a seller, or other person (other than a recognised entity), who receives a security instrument from the buyer to give the instrument directly to a recognised entity.

Amendment 65 amends new section 139(2)(b) and section 139(3) of the SBC Act, inserted by clause 72, to replace the notion of giving a registrable transfer with the notion of a contract being settled.

Amendment 65 also amends new section 139 to omit subsection (2)(c) and subsection (4) because these provisions are unnecessary. New section 139(2)(c) and 139(4) are unnecessary because new section 97F of the SBC Act also applies to a contract entered into after commencement, which means the seller is required to disclose to the buyer the information prescribed in section 139(2)(c) as part of the disclosure statement prescribed under new section 97F.

Amendment 66 amends clause 72 of the Bill to insert transitional provisions into new section 140 of the SBC Act for a contract of sale to which old part 3 of the Land Sales Act applies, where the parties to the contract agree to settle the sale using e-conveyancing.