

04 July 2014

Mr Brook Hastie
Research Director

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Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Hastie



Land Sales and Other Legislation Amendment Bill 2014

Thank you for the opportunity to provide feedback on the *Land Sales and Other Legislation Amendment Bill 2014* (the Bill).



The Property Council has worked closely with the Office of Regulatory Policy within the Department of Justice and Attorney-General (the Department) throughout the development of the Bill.



During this process we have supported the move towards modernised legislation that reduces disclosure requirements and time and cost impost on a seller, while maintaining buyer protection and a streamlined sale process.



The Property Council particularly supports a number of proposed inclusions under the Bill, listed below.



Instalment Contracts

The prevalence of off-the-plan contracts becoming instalment contracts when the purchase deposit exceeds 10 per cent of the total price has been an ongoing concern for the property industry.



Instalment contracts are particularly problematic for developers, as they give rise to a range of statutory protections for buyers including:



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



The Property Council strongly supports the increase in the level of deposit allowable for the sale of proposed lots from 10 to 20 per cent.



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

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Alignment of disclosure requirements

Throughout the development of the Bill, the Property Council has supported the alignment of disclosure requirements (with respect to signatures, dates and timeframes for giving notices) between the *Land Sales Act* and the provisions within the *Body Corporate and Community Management Act (BCCMA)*.

Therefore the transfer of disclosure requirements relating to the sale of strata lots from the *Land Sales Act* to the BCCMA is supported.

Amendments to disclosure requirements

In addition to the consolidation of disclosure requirements, the Property Council supports the follow amendments under the BCCMA:

- The removal of provisions for offences relating to a contravention of seller disclosure. This amendment removes an unnecessary provision, as these offences are rarely prosecuted.
- Ensuring any *further statements* which aim to rectify inaccuracies in a building/volumetric or standard format lot plan must be certified by a surveyor.
- Provisions under which a developer is no longer required to wait till after the survey plan registers to provide a rectification statement.
- The option for a seller to automatically extended to a 5 ½ year contract sunset date. This appropriately accommodates projects for which the construction is delayed.
- The removal of the need to disclose the names and addresses of parties involved in the sale of a lot.
- Clarification that a seller is not required to re-issue disclosure material when an option is exercised by a buyer.

The amendments which require Expression of Interest holding deposits to be paid directly to a law practice or real estate agent (ie, may not be held by the seller) is concerning for the Property Council. While the amendment is reasonable, and accepted, this is a provision that industry must be made aware of due to the significant penalties that apply should it be contravened.

Authorising third parties on a buyer or sellers behalf

The Property Council strongly supports the ability for a buyer/seller to authorise a third party to act on their behalf with respect to signatures, dates and timeframes for giving notices.

Automatic exemption

The extension of the automatic exemption provisions to apply to the sale of a proposed lot arising from an amalgamation of land into not more than 5 lots is supported.

Terminology

The Property Council believes the modernisation and clarification of terminology throughout the Bill will assure greater comprehension by all parties.

Not considered by the Property Council

We have no position on the amendments made to the *Breakwater Island Casino Agreement Act 1984*.

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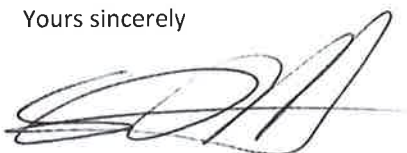
Conclusion

Thank you once again for the opportunity to provide comment on the *Land Sales and Other Legislation Amendment Bill*.

The Property Council would like to congratulate the Department on their consultation throughout the development of the Bill.

If you have any questions about the Property Council or this submission, please do not hesitate to contact me on cmountford@propertyoz.com.au or 07 3225 3000.

Yours sincerely



Chris Mountford
Deputy Executive Director

