Land Sales and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the Land Sales and Other Legislation Amendment Bill 2014.

Policy objectives and the reasons for them

The Bill has four objectives, to:

1. reduce red tape and regulation relating to the sale and purchase of proposed allotments and proposed lots, while ensuring important consumer protections are maintained;
2. modernise, improve and streamline the legislation regulating the sale of proposed allotments and proposed lots;
3. address minor editorial errors that have been identified in section 157 of the *Property Occupations Act 2014*; and
4. amend the *Breakwater Island Casino Agreement Act 1984* to provide for the transfer of ownership of the Jupiters Townsville Hotel and Casino from Jupiters Limited to CLG Properties Pty Ltd as trustee for CLG Property Trust.

Regulation of the sale of proposed lots and proposed allotments

The *Land Sales Act 1984* (the Act) regulates the sale of proposed allotments (i.e. unregistered reconfigured land) and proposed lots (i.e. lots, such as apartments or units, in a community titles scheme sold off the plan). The Act establishes a regulatory framework to facilitate property development in Queensland while ensuring appropriate consumer protections are provided.

Over the years, the Act has been reviewed and amended on a piecemeal basis in response to specific marketplace changes, but has not been comprehensively reviewed in over a decade. It is crucial that the Act remains current so it can continue to foster an environment in which property development in Queensland is encouraged. Accordingly, a complete review of the Act was undertaken between 2010 and 2013 to identify opportunities to modernise and improve the legislation, including by reducing unnecessary red tape and regulation. The outcomes of the review led to the amendments contained in the Bill for achieving the first and second policy objectives listed above.

Achievement of policy objectives

To achieve the policy objectives, the Bill will amend the following Acts –

- *Agents Financial Administration Act 2014*

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

The Bill will also make necessary consequential amendments to the *Fair Trading Inspectors Act 2014* and the *Land Title Act 1994*.

Objectives 1 and 2 – Regulation of the sale of proposed lots and proposed allotments

The way the Bill will specifically achieve objectives 1 and 2 is outlined in detail below.

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

Achievement of objective 1 - Reducing red tape and regulation relating to the sale of proposed lots and proposed allotments

Restriction on selling unregistered reconfigured land

The Act currently restricts the point at which a person may sell a proposed allotment. Such land may only be sold if there is an effective development or compliance permit for reconfiguring the land or, if there is operational work associated with reconfiguring the land, development approval for the operational works.

The Bill removes this restriction so that unregistered reconfigured parcels of land may be sold prior to receiving the relevant permits for developing the land. This will bring the regulation for the sale of proposed allotments in line with the regulation of the sale of proposed lots, for which there is no requirement for prior development approval.

This amendment reduces red tape for developers, allowing them to obtain pre-sales which contribute to securing finance and ensuring the viability of projects. While there are risks that development approval may not be granted, or the actual allotment may vary significantly from the proposed allotment contracted upon, these are mitigated by the consumer protection measures contained in the Act.

For example, the Act provides a buyer with a right to terminate the sale contract if there is a variation in the allotment that would materially prejudice the buyer, or if title for the allotment has not been given to the buyer within 18 months of buyer entering into the contract.

Exemption from the Act for reconfiguring land into not more than five proposed allotments

Currently, the Act allows a buyer or seller to make an application to the chief executive for an exemption from all, or some, of Part 2 of the Act in relation to a proposed allotment relating to land that is to be subdivided into not more than five allotments. Currently, part 2 of the Act prescribes the seller disclosure and trust account requirements for the sale of proposed allotments.

Approximately 50 applications are made to the chief executive per month for exemption from Part 2 of the Act. It is very rare for such applications to be refused and they are only refused if the objective criteria for the exemption are not met (for example, the proposed allotment subject to the application does not relate to land that is to be subdivided into not more than five allotments; or, if the buyer is making the application, the buyer does not have the seller's consent).

The Bill removes the provision allowing for applications to be made for exemption and replaces it with an automatic exemption. This means that for proposed allotments relating to land that is to be subdivided into not more than five allotments, the disclosure and trust account provisions of the Act will not apply to the sale of the proposed allotment. Removing the application process will reduce red tape for buyers and sellers of proposed allotments arising from land that is to be subdivided into not more than five allotments and who wish to be exempt from the relevant provisions of the Act.

In addition, the Bill will clarify that the exemption also applies to a proposed allotment relating to an *amalgamation* of land into not more than five allotments (not just a subdivision), further reducing red tape for industry, consumers and the Government.

Disclosure requirements

The Bill also makes a number of amendments to the legislation to remove unnecessary red tape and regulation relating to seller disclosure requirements, and these amendments are discussed below.

The Act requires the seller of a proposed allotment or proposed lot to disclose particular information about the proposed lot/allotment to a prospective buyer before the prospective buyer enters into the contract of sale. As part of this disclosure material, the Act requires the seller to state the names and addresses of the seller and the buyer.

For a proposed lot, if the names or addresses of the seller or buyer, as disclosed in the disclosure material given to the buyer, changes or is inaccurate then the seller must give the buyer a further notice to update the information. This requirement for the seller to disclose the names and addresses of the buyer and seller is unnecessary red tape as this is information that would otherwise be communicated to the buyer and seller in the contract. Accordingly, the Bill removes the requirement for the seller of a proposed allotment or proposed lot to include the names and addresses of the seller and buyer in the disclosure material.

The Bill also removes the requirement for the seller of a proposed allotment to provide a buyer with a copy of any plan for reconfiguring land for the allotment forming part of a development or compliance permit or approval. There are two reasons this requirement is unnecessary and is therefore being removed.

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

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

Currently, if a seller of a proposed lot/allotment chooses to provide the prescribed disclosure material for the lot/allotment to a prospective buyer when they enter into an option, the seller is potentially (and unnecessarily) burdened by having to give the disclosure material a second time if the same parties subsequently enter into a sale contract because the legislation is not clear in these circumstances.

The Bill provides that if the disclosure documents are given to the buyer before the buyer enters into the option then the seller does not need to give the buyer the disclosure material again at the subsequent sale contract stage. Accordingly, this proposal will result in red tape reduction by making it clear that the prescribed disclosure materials only need to be given to the buyer once if it is given before the option is granted to the buyer.

Importantly, consumer protections will be maintained by the continuation of the requirement for the seller to notify the buyer of any changes in the disclosure documentation before settlement occurs. Furthermore, the Bill requires that if the buyer who is to enter into the sale contract is not the same buyer who the option was granted to by the seller, the seller must ensure the buyer is given the disclosure material before the buyer enters into the sale contract.

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

Currently the Act and relevant community titles legislation (i.e. the *Body Corporate and Community Management Act 1997*, the *Building Units and Group Titles Act 1980* and the *South Bank Corporation Act 1989*) provides for an agent of a buyer or seller of a proposed lot/allotment to act on the buyer's or seller's behalf for particular prescribed matters. This makes it unclear as to whether a buyer or seller could also authorise a person to act on their behalf for other matters relating to the sale or purchase of a proposed lot/allotment. This potentially, and unnecessarily, restricts buyers and sellers.

Accordingly, the Bill clarifies that a seller or buyer of a proposed lot/allotment may authorise a person to act on their behalf in relation to any thing that the buyer or seller is permitted or required to do under the Act (or relevant community titles legislation) for the sale or purchase of the proposed lot/allotment. In addition, for the community titles legislation (which also deal with the sale of existing lots, not just proposed lots), the provision is also proposed to apply to the sale of existing lots.

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

The Act currently requires a seller of a proposed lot to provide the buyer with a title transfer form (registrable transfer) within three and a half years of the buyer entering into the contract. The buyer may terminate the contract if the seller does not comply with this requirement. The Act also allows a regulation to be made to prescribe an extension to this three and half year period for up to a further two years, bringing the time for development completion to a maximum of five and half years. This typically requires the developer to make a written application to the responsible Government department to seek an amendment to the *Land Sales Regulation 2000* to prescribe the extension.

The Bill removes the requirement for a regulation to be made to extend the time for giving the registrable transfer to the buyer of a proposed lot and provides that sellers and buyers of proposed lots will instead be able to specify the time for giving the registrable transfer in the contract. The time specified in the contract can be up to a maximum of five and a half years after the buyer enters into the contract. Where no time is specified in the contract, a default period of three and a half years will apply in relation to the seller giving the buyer the registrable transfer. A termination right will still accrue for the buyer if the registrable transfer is not supplied to the buyer within the required time.

Restriction on amount of deposit for purchase of unregistered reconfigured land

The Act provides for a buyer to terminate a contract for the sale of a proposed allotment if the deposit under the contract is more than 10% of the purchase price. There is no such limit in the Act though for the amount of deposit payable for the sale of proposed lots. However, the *Property Law Act 1974* also regulates the maximum amount of deposit payable in respect of the sale of land before specific instalment contract provisions apply. Currently, this maximum deposit level in the Property Law Act is also 10% of the purchase price.

The Bill removes the maximum deposit restriction in the Act for the sale of proposed allotments, which provides consistency in the regulation of deposits payable for proposed allotments and proposed lots. In addition, the Bill increases the maximum deposit allowable for the sale of proposed lots and proposed allotments, from the current 10%, to 20%, of the purchase price before the instalment contract provisions of the Property Law Act apply. These amendments will significantly reduce red tape for property developers associated with instalment contracts, and facilitate improved financial viability for large off the plan developments.

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

Offences

The Act contains offences for a contravention of the seller disclosure requirements and requirement for a seller to give a registrable transfer to a buyer. The offences are rarely prosecuted and are considered unnecessary given that for these particular requirements there are also associated contract termination rights for buyers where the seller does not comply with the requirements. Accordingly, the Bill removes the offences but retains the termination rights for buyers.

Moving Part 3 of the Act into the relevant community titles scheme legislation

Part 3 of the Act deals with the sale of proposed lots in community titles schemes. Community titles schemes are, by and large, regulated by one of the following community titles laws: the *Body Corporate and Community Management Act 1997*, the *Building Units and Group Titles Act 1984* or the *South Bank Corporation Act 1989*.

Part 3 sets out the seller disclosure and trust account requirements for the sale of a proposed lot. However, there are also separate disclosure frameworks for the sale of proposed lots contained in the relevant Queensland community titles scheme laws mentioned above.

To remove unnecessary duplication and provide a more streamlined approach to the regulation of the sale of proposed lots, the Bill combines the separate disclosure regimes in the relevant community titles scheme legislation. Specifically, the Bill removes Part 3 from the Act and replicates it (with necessary amendments) in the Body Corporate and Community Management Act, the Building Units and Group Titles Act and the South Bank Corporation Act.

In addition, the disclosure requirements in the Building Units and Group Titles Act and the South Bank Corporation Act will be amended by the Bill to align, as much as possible, with the more contemporary disclosure regime in the Body Corporate and Community Management Act. This will modernise the seller disclosure frameworks in the Building Units and Group Titles Act and the South Bank Corporation Act and provide for greater consistency across the seller disclosure frameworks in the three community titles laws.

Achievement of objective 2 - Modernising and improving the legislation regulating the sale of proposed lots and proposed allotments

Modernising terminology

The Bill modernises the terminology used throughout the Act to align it with terminology used by the community, industry and in other Queensland property laws. By way of example, the terms ‘vendor’ and ‘purchaser’ are being replaced with ‘seller’ and ‘buyer’ respectively, and the phrase ‘enters upon a purchase’ is being replaced with ‘enters into a contract’.

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

The Bill makes a number of amendments to clarify and improve the trust account provisions and the seller disclosure framework, including the associated buyers’ termination rights. These amendments are described below.

The Bill provides that a person intending to buy a proposed lot will be informed upfront about when the seller is required to give the person a registrable transfer for the proposed lot. Currently, the Act places time restrictions on the seller of a proposed lot to give the prospective buyer a registrable transfer and the buyer may terminate the contract if the seller does not meet this timeframe, however this information is not normally required to be disclosed to the seller in the disclosure material given to a prospective buyer before they enter into a sale contract for the proposed lot.

Given the importance of this right, the Bill makes an amendment to require a prospective buyer of a proposed lot to be informed of this information in the disclosure material given to the buyer by the seller. This requirement is already included in the disclosure requirements of the Act for the sale of proposed allotments.

The Bill will also clarify what is required to be disclosed to a prospective buyer of a proposed lot by the seller of the proposed lot. Currently, the Act simply requires that the seller must 'identify' the proposed lot in the disclosure material, but does not describe exactly what is meant by 'identify'. This can result in inconsistent and inadequate information being disclosed to buyers about proposed lots. Accordingly, the Bill prescribes exactly what information must be disclosed by the seller in identifying the proposed lot. For example, for a proposed lot that is to be a proposed building format lot, the following must be disclosed by the seller:

- the proposed number of the lot;
- the total area of the lot;
- identification of any parts of the lot proposed to be outside the proposed primary structure (for example the apartment building) in which the lot is to be contained, including any proposed balcony, courtyard or carport;
- the floor level on which the lot is proposed to be located;
- identification of other lots and common property proposed to be on the same floor level in the proposed primary structure in which the lot is to be contained; and
- identification of the proposed orientation of the lot by reference to north.

Also, the Bill will ensure that only relevant information will be required to be disclosed by a seller of a proposed allotment or proposed lot to a buyer where there are operational earthworks for the proposed allotment/lot. Specifically, the existing requirement in the Act to disclose the contour levels as they exist before the operational works occur will be removed. Instead, the seller will be required to disclose prescribed information about the earthworks, including details about the areas of the land to be cut or filled, the depth of the fill and compaction rates, and any retaining walls to be built. The seller is also required to provide contour maps of the lot showing what the surface contours will be at the completion of the operational work.

This means that instead of providing the buyer with unnecessary information about the land before any operational works occur, the buyer will be better informed of relevant information in advance about the proposed final product, including what is intended to happen as part of the operational works.

The Bill will also clarify that the disclosure plan, which identifies the proposed allotment or proposed lot, must be prepared by a registered cadastral surveyor to provide greater protection and confidence for consumers. While this is technically a new requirement, the property development and surveying industries advise that over 95% of disclosure plans are currently prepared by registered cadastral surveyors. Accordingly, for the majority of the property development sector, this new requirement in the legislation will not, in practice, be an increase in regulation.

Furthermore, where there are any inaccuracies in a disclosure plan given to the buyer of a proposed allotment, which must be rectified through a further document (a further statement) given to the buyer by the seller, the Bill provides that the further document must explain in plain English the inaccuracy being corrected in the further statement. This amendment is necessary because of the technical nature of the information contained in a disclosure plan, which means a buyer may not be able to identify the inaccuracy being rectified or understand its impact on the proposed allotment.

The Bill will also include protections for security instruments (such as a deposit bonds or bank guarantees) used by buyers to pay a deposit for the sale of a proposed lot or proposed allotment. The Bill prescribes how the security instrument must be dealt with by a law practice, real estate agent or the public trustee who receives the instrument on behalf of the seller.

The existing consumer protections in the Act relating to amounts paid towards the purchase of a proposed lot or proposed allotment will also be improved by clarifying that the obligations for holding an amount paid towards the sale of a proposed lot/allotment in a trust account apply to not only amounts paid under a sale contract, but also to amounts paid under other instruments (whether legally binding or not) such as an option to purchase or an expression of interest.

The Bill also changes and streamlines the timeframe in which a seller must give the buyer a statement, referred to in the Bill as a 'further statement', correcting an inaccuracy in the disclosure statement (for a proposed lot) or the disclosure plan (for a proposed allotment). Currently, the Act provides that a seller of a proposed allotment must give the buyer a notice about a variation in the disclosure plan (the equivalent of a further statement) as soon as practicable, but not later than 14 days, after the seller is given the registrable plan of survey for the proposed allotment and the buyer has a 30 day termination right.

For a proposed lot, the Act requires that a further statement rectifying a variation or inaccuracy must be given to the buyer as soon as practicable after the proposed lot is registered and, if materially prejudiced by the variation, the buyer has a right to terminate the contract within 30 days of receiving the notification or before the seller gives the buyer the registrable transfer (whichever is sooner).

In addition, for a proposed lot, the Body Corporate and Community Management Act requires other information to be disclosed by a seller to a buyer about the proposed lot and the buyer must be notified of any variations or inaccuracies in the disclosure material within 14 days of the seller becoming aware of the variation/inaccuracy. For a notice of variation given to the buyer under the Body Corporate and Community Management Act the buyer is given 14 days to terminate the contract if they are materially prejudiced by the variation. In large development projects that take years to complete, there can be multiple variations to the

development and so this could result in the seller having to give a buyer multiple variation notices.

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

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

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

The new provisions in the Legal Profession Act and Agents Financial Administration Act will allow the law practice or real estate agent (whomever holds the amount in trust) to more efficiently account to the party that they consider is entitled to the amount. This will be balanced with a requirement for the real estate agent or law practice to provide written notice to all parties to the amount of their intention to account to a particular party unless the other party, within a stated period of at least 60 days, commences legal proceedings to claim entitlement to the amount.

The law practice or real estate agent will be able to pay the amount the party stated in the written notice after 60 days (or a longer period stated in the notice), or pay the amount to the party before the 60 day period if, before the 60 days, all parties consent in writing to the amount being paid to the party stated in the written notice. If the law practice or real estate agent receives written consent from all parties authorising payment of the amount to the stated party before the 60 days, the law practice or real estate agent may pay the amount to the stated party once the consent is received.

The amendments to the Agents Financial Administration Act will also apply to other licensed persons for which that Act applies, to ensure that the other licensed industries (and their clients) and consumers will also benefit from the changes.

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

Currently, the Act provides that a buyer may terminate a contract for the sale of a proposed allotment, before the contract settles, if there is a 'significant variation' in what is contained in the disclosure plan given to the buyer and the final product.

The term 'significant variation' is defined in the Act to mean the following: in relation to details between a disclosure plan and a survey plan – a variation of more than 2% in details of area or a variation of more than 1% in details of linear dimensions; or, in relation to details

between a disclosure plan and an as constructed plan – a variation of more than 500mm in height in details of surface contours or fill levels.

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

On the other hand, the Body Corporate and Community Management Act takes a 'material prejudice' approach to a buyer's termination right for proposed lots. That is, the seller is obliged to notify the buyer of any variation between the disclosure material relating to the proposed lot and the proposed final product and the onus is placed on the buyer to demonstrate that the variation materially prejudices the buyer in order to exercise the termination right. For this approach, there is now a body of judicial opinion with respect to the meaning of the term 'material prejudice'. This provides a more balanced approach because it ensures that all variations or inaccuracies are disclosed but only those matters that materially disadvantage buyers are avenues for termination, rather than technical matters that may not have any negative impact on a buyer.

Accordingly, the Bill adopts the 'material prejudice' approach used in the Body Corporate and Community Management Act for a buyer's termination right in relation to a proposed allotment. This will align buyers' termination rights for proposed allotments and proposed lots in relation to the disclosure requirements.

Also, as explained above, the Act requires a seller of a proposed lot to provide the buyer with a registrable transfer by a specified time. If the seller fails to comply with this requirement, the buyer accrues a statutory right to terminate the contract for the sale of the proposed lot. In February 2012, the Parliament passed the *Sustainable Planning and Other Legislation Amendment Act 2012* (the SPOLA Act) which clarified the intention of section 27 of the *Land Sales Act 1984*. The SPOLA Act clarified that a buyer, who purposely does not settle the contract within the required time when the seller is in a position to give a title transfer form, cannot take advantage of the statutory termination right.

The Bill makes the equivalent amendment for proposed allotments that was made in the SPOLA Act for proposed lots. That is, the Bill clarifies that the termination right for a seller's contravention of the requirement to provide the registrable transfer to the buyer accrues only if the buyer is not at fault. This will ensure consistency in buyer termination rights for proposed allotments and proposed lots in relation to the giving of the registrable transfer.

Objective 3 – Amendments to address editorial errors in the *Property Occupations Act 2014*

The amendments to the *Property Occupations Act 2014* address minor editorial errors that have been identified in section 157 (Disclosures to prospective buyer) of the Act.

First, the amendments ensure the example that is provided in subsection (1) is provided in relation to subsections (d) and (e) and is provided in relation to entities, not persons, as entities are referred to in these subsections.

Second, the amendments replace the cross reference to subsection (1)(c) in section 157(2), with reference to subsections (1)(d) and (1)(e).

The amendments to section 157(2) of the *Property Occupations Act 2014* ensure the provision is operating as intended and that agents are no longer required to disclose to a prospective buyer any commissions, fees or charges they will be receiving from the seller. The inclusion of the terms 'fee or charge' in this section are necessary because in some instances, a client may agree to pay an agent a fee or charge for the services performed by the agent instead of a commission.

This amendment ensures the removal of the requirement to disclose to buyers the payment arrangements agreed to between a seller and agent apply consistently regardless of whether or not an agent will be paid a commission, fee or charge by the seller.

Objective 4 – Amendments to the *Breakwater Island Casino Agreement Act 1984*

In accordance with the *Casino Control Act 1982* (Casino Control Act) the casino licensee and the State of Queensland are parties to a casino agreement, the Breakwater Island Casino Agreement (casino agreement). The casino agreement is ratified by Parliament and has the force of law, through its inclusion in the *Breakwater Island Casino Agreement Act 1984* (casino agreement Act).

The licensee of Jupiters Townsville Hotel and Casino (Jupiters Townsville) is Breakwater Island Limited (Breakwater) as the responsible entity of the Breakwater Island Trust (Breakwater Trust). Jupiters Limited (Jupiters) currently owns all of the shares and units in Breakwater and the Breakwater Trust, respectively. As the owner of the shares and units in Breakwater and the Breakwater Trust, Jupiters is a party to the casino agreement.

Jupiters Townsville is being sold to CLG Properties Pty Ltd as trustee for CLG Property Trust (CLG). Under the sale these shares and units will be transferred to CLG. With the sale of these shares and units it will be necessary for Jupiters to cease being a party to the casino agreement and for the obligations of Jupiters to be imposed on CLG. Therefore Schedule 2 of the casino agreement Act needs to be amended to reflect the changes to the agreement itself.

The amendments are procedural in nature, executing an existing function of the agreement Act. The amendments are reflective of an amendment deed to the casino agreement that Jupiters, Breakwater and CLG propose to enter into with the State of Queensland. In essence the amendments replace references to Jupiters with references to CLG.

Alternative ways of achieving policy objectives

Legislative amendment is the only way in which to achieve the policy objectives.

Estimated cost for government implementation

The implementation of the Bill is not anticipated to impose any significant costs on the Government. Any expenditure associated with implementing the Bill will be met from existing appropriations.

Consistency with fundamental legislative principles

The Bill is generally consistent with the fundamental legislative principles. However, justification is provided below for three matters that potentially breach fundamental legislative principles.

Fundamental legislative principle issues listed in the *Legislative Standards Act 1992,* section 4(3)(g) – Retrospectivity

Removing buyer's right to terminate in particular circumstances

Section 10A of the *Land Sales Act 1984* (the Act) provides a buyer of a proposed allotment with a right to avoid completing a sale if the seller fails to give the buyer a registrable transfer within the prescribed time. A similar right was previously provided for the sale of proposed lots under section 27 of the Act until the provision was amended in February 2012 by the *Sustainable Planning and Other Legislation Amendment Act 2012* (the SPOLA Act). The SPOLA Act clarified that the buyer's termination right under section 27 of the Land Sales Act was only available if the buyer was not at fault. This amendment was made to ensure that a buyer could not disingenuously take advantage of the statutory termination right.

Through new section 14 of the Act (inserted by Clause 43 of the Bill) the buyer's termination right provided under section 10A of the Act is retained. However, like the amendment made to section 27 of the Act in February 2012, new section 14 of the Act makes it clear that the right of termination is only available when the buyer is not at fault.

New section 14 of the Act is intended to apply retrospectively. That is, it is intended to apply to all contracts for the sale of proposed allotments that have not settled when the section commences. Accordingly, the new section 14 potentially infringes the fundamental legislative principle that legislation should not adversely affect a person's rights and liberties retrospectively.

The retrospective application of new section 14 is considered justified on the grounds that if a defaulting buyer terminates a contract under the existing interpretation of section 10A, the seller must return the deposit to the buyer. In such circumstances, the seller is left in a position of no return on their investment and also facing new marketing and selling costs for the now completed but unsold allotment, which is not a fair outcome for sellers that are able, and attempting, to comply with the requirements of the Act.

Fundamental legislative principle issues listed in the *Legislative Standards Act 1992,* section 4(4)(c) – Henry VIII clauses

Clause 39 of the Bill inserts section 4 in the Act, which authorises the use of a regulation to exclude the operation of the Act with respect to certain leases under the *Land Act 1994*. Accordingly, section 4 may contravene the fundamental legislative principle that legislation should have sufficient regard to the institution of parliament. That is, section 4 may amount to a Henry VIII clause in that it allows the operation of the Act to be limited by subordinate legislation.

Section 4 is not a new provision in the Act and replicates existing section 18 of the Act. However, it has been moved as part of the Bill to be new section 4. Existing section 18 was

inserted in the Act by the *Land Sales Act 1984 Amendment Act (No 2) 1985 (No 105)* (the Amendment Act). As explained in the relevant second reading speech for the Amendment Act, the provision was introduced for the following reasons:

> "In order that the special position of lessees under development leases and special leases held pursuant to the Land Act are not unnecessarily disturbed, it is proposed to grant to the Governor in Council power to exempt a proposed subdivision of leasehold land from the provisions of the relevant provisions of Part II of the Act." (Hansard, 27 November 1985 at pages 2920-2922)

The operation of section 18 was not raised by stakeholders as an issue during the review of the Land Sales Act. Accordingly, it is proposed to retain the provision to provide flexibility for leases under the Land Act, albeit the provision has been rarely used since its inclusion in the Act in 1985.

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

New offences

The Act currently includes requirements for how and when an amount paid by a buyer towards the purchase of a proposed lot or proposed allotment must be kept by a real estate agent, law practice or the public trustee in a trust account. To ensure consumers' money is protected, the Act provides that it is an offence to breach the trust account provisions. The penalty for these offences is 200 penalty units or 1 year's imprisonment.

The Bill inserts a new provision to regulate dealings with security instruments (such as deposit bonds or performance guarantees), if they are used by buyers of proposed lots/allotments to pay an amount towards the purchase of the proposed lot/allotment. Specifically, the new provision prescribes requirements about the keeping of security instruments by a law practice, real estate agent or the public trustee (see for example, new section 21 of the Act, inserted by Clause 43 of the Bill). This provision has been inserted to provide appropriate consumer protection, and it includes an offence for a contravention of the provision.

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/allotment. 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/allotment.

Relocated offences

The Bill omits Part 3 of the Act (which regulates the sale of proposed lots in community titles schemes and relocates it to the relevant community titles legislation (i.e. the Body Corporate and Community Management Act, the Building Units and Group Titles Act and the South Bank Corporation Act). Accordingly the existing offences and associated penalties in Part 3 have also been relocated to the relevant community titles legislation. The offences are for the

trust account provisions which regulate how and when an amount paid by a buyer for the purchase of a proposed lot must be kept by a real estate agent, law practice or the public trustee. It is considered appropriate to retain the offences to ensure consumer protections are maintained.

Consultation

The Bill is the result of the outcomes of a comprehensive review of the Act undertaken between 2010 and 2013. The review involved considerable public consultation, including through the release of a discussion paper in late 2010 to seek feedback on the operation of the Act, and a consultation paper in October-November 2012 to seek feedback on the policy proposals being implemented through the proposed amendments in the Bill.

In addition to the broad public consultation process, a Reference Committee was established for the purpose of targeted consultation. The Reference Committee is comprised of property law experts from academia; representatives of the peak bodies for the property industry and legal sector; and representatives from relevant Government agencies. The Reference Committee provided expert advice and input into key stages of the review, including the development of the two consultation papers and also provided input into the Bill.

The members of the Reference Committee are:

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

Echo Entertainment Ltd, the owners of Jupiters Ltd, and CLG have been consulted regarding the amendments to the casino agreement Act.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with, or complementary to, legislation of the Commonwealth or another State.

[*] These two stakeholders were included in the Reference Committee at the point of consultation on the draft Bill. However, these two stakeholders also provided submissions to the 2012 consultation paper.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title is the *Land Sales and Other Legislation Amendment Act 2014*.

Clause 2 states that the Act, other than parts 4 and 10, commences on a day to be fixed by proclamation.

Part 2 Amendment of *Agents Financial Administration Act 2014*

Clause 3 states that Part 2 amends the *Agents Financial Administration Act 2014*.

Clause 4 makes a necessary consequential amendment to section 22(4) to replace the reference to section 26 with a reference to division 5.

Clause 5 omits division 5 of part 2 and replaces it with a new division 5 (Payments from trust accounts if dispute arises or is likely to arise).

New part 2, division 5 contains new sections 25 to 28, which provide for payments of amounts from trust accounts in the event a dispute arises or is likely to arise about a party's entitlement to the amount.

New section 25 provides for the application of part 2, division 5. Section 25 provides that division 5 applies if an agent holds a transaction fund for a transaction under section 22 and before the transaction fund is paid out under section 22 the agent *becomes aware of a dispute* between the parties to the transaction about entitlement to the transaction fund or part of the fund (which is subsequently referred to as the 'amount in dispute').

Also, new section 25 provides that part 2, division 5 applies if before the transaction fund is paid out under section 22 the agent *considers a dispute may arise* between the parties to the transaction about entitlement to the transaction fund or part of the fund (also subsequently referred to as the 'amount in dispute'). The reason new section 25 provides that part 2, division 5 applies if an agent considers a dispute may arise is to provide for situations where, for example, a party to a transaction does not take the required action to complete the transaction and does not make contact with the other party or the agent to explicitly state a dispute has arisen. Depending on the circumstances, this type of situation may lead an agent to believe a dispute may arise about entitlement to the transaction fund.

In new section 25, a 'party' to a transaction does not include an entity, such as a real estate agent or legal practitioner, acting for a party to the transaction.

New section 26 provides for a process for the payment of an amount in dispute. In summary, new section 26 provides that if an agent considers that a party to the transaction is entitled to the amount in dispute, the agent may pay out the amount to the party if:

- the agent gives all parties to the transaction a written notice notifying the parties of the agent's intention to pay the amount to a stated party; and

- a proceeding disputing the party's entitlement to the amount in dispute is not started within a period (stated in the written notice) of at least 60 days.

However, the section does not require an agent to give the written notice 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.

The written notice given by the agent to all parties to the transaction must state, in effect, that the agent considers that a stated party is entitled to the amount in dispute and the agent is authorised under the Act to pay the amount in dispute to the stated party on or after a stated date (which must be at least 60 days after the notice) unless:

- 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
- all parties to the transaction authorise payment of the amount to the stated party before the stated date.

The agent may pay the amount in dispute to the stated party *after* the stated date in the written notice if the agent is unaware of the start of a proceeding claiming an entitlement to the amount. However, the agent may pay the amount in dispute to the stated party *on or before* the stated date if before, or by, the stated date the agent receives written notice from all parties to the transaction authorising payment of the amount to the stated party.

New section 26 also removes liability from the agent in relation to the payment of the amount in dispute to the stated party as provided under new section 26 if it is subsequently found that the stated party was not entitled to the amount. Also, it is declared that new section 26 does not decide legal entitlement to the amount in dispute or prevent a person legally entitled to the amount recovering it from the person to whom it was paid.

New section 27 applies if the amount in dispute is not dealt with by the agent under new section 26. New section 27 prohibits the agent from paying out the amount in dispute unless the agent receives written notice from all parties to the transaction stating the person who is entitled to the amount or receives written notice that a proceeding has been started to decide who is entitled to the amount. It is an offence for an agent to contravene this section.

New section 28 provides for where an amount in dispute must immediately be paid if a proceeding to decide entitlement to the amount is started or if a notice is received under new section 27(2)(a) from all parties to the transaction stating the person who is entitled to the amount.

Clause 6 makes consequential amendments to section 82 to take account of amendments to the Land Sales Act. Clause 6 also inserts new subsection (1)(i) to (k) into section 82 to take account of provisions of the Land Sales Act reflected in section 82(1) which have been omitted from the Land Sales Act and inserted into the *Body Corporate and Community Management Act 1997*, the *Building Units and Group Titles Act 1980* and the *South Bank Corporation Act 1989*.

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

Clause 7 states that part 3 amends the *Body Corporate and Community Management Act 1997*.

Clause 8 inserts new section 205AA into chapter 5, part 1A, before section 205A. New section 205AA provides for the application of chapter 5 generally.

Clause 9 inserts new sections 205C and 205D into chapter 5, part 1A, after section 205B.

New section 205C provides that, in chapter 5, a reference to a disclosure statement includes a reference to the documents accompanying the statement as prescribed under section 213(2)(a)(ii) and 213(2)(f). This provision has been inserted to make it clear that a reference to a disclosure statement is a reference to a disclosure plan and any other documents (such as a proposed community management statement) required under section 213(2)(a)(ii) and 213(2)(f) to accompany the disclosure statement. However, this provision is not intended to imply that prior to the commencement of the clause a reference to a disclosure statement given to a proposed buyer under section 213 did not include the prescribed documents.

New section 205D provides that an agent may, on behalf of a buyer or seller of a lot or proposed lot, do a thing that is required or permitted to be done by the buyer or seller under a provision of part 1 or 2 if the agent is authorised to act for the buyer or seller in relation to the thing.

Clause 10 renumbers divisions 1 and 2 of chapter 5, part 2 as divisions 2 and 3. This is a consequential amendment to take account of a new division 1 being inserted in part 2 of chapter 5 (by Clause 11).

Clause 11 inserts a new division 1 (Preliminary) in part 2 of chapter 5. The new division 1 comprises of new section 211A, also inserted by Clause 11, which provides definitions for particular terms used in part 2 of chapter 5.

Clause 12 inserts a new section, section 212B, into division 3 (as renumbered by the Bill) of chapter 5, part 2.

New section 212B provides for the application of division 3 if an option is granted by a seller to a buyer of a proposed lot. The section provides that if a person (the seller) grants an option to purchase a proposed lot to another person (the buyer), the seller may comply with section 213(1) when granting the option to the buyer; that is, the seller may give the buyer a disclosure statement prescribed under section 213. If the seller complies with section 213(1) for the option and the seller and buyer enter into a sale contract for the sale of the proposed lot arising from the option, then the seller is not required to give the buyer another disclosure statement in relation to the sale contract. This makes it clear that the seller does not have to give the buyer the disclosure statement prescribed under section 213 twice if the seller and buyer are the same parties to the sale contract arising from the option.

In this circumstance, the disclosure statement given in relation to the option is taken to have been given in relation to the option and the sale contract, and any right of termination under

division 3 relating to the disclosure statement applies in relation to the option and the sale contract.

However, if the person (the buyer) who was granted the option by the seller is not a party to the contract arising from the option, the seller must comply with section 213 before entering into the contract. This is to ensure that the buyer who is a party to the sale contract, but was not a party to the option, does not miss out on receiving the disclosure statement prescribed under section 213 before entering into the sale contract.

Clause 13 makes a consequential amendment to the drafting of section 213(1) to reflect the insertion (by Clause 11) of a definition of *proposed lot* in new section 211A.

Clause 13 also inserts new subsection (2)(aa) into section 213, which prescribes additional requirements for the disclosure statement.

As a consequence of the insertion of new subsection (2)(aa) in section 213(2), Clause 13 also renumbers section 213(2)(aa) to (g) as section 213(2)(a) to (h).

Clause 13 also makes a consequential amendment to remove the words 'or a person authorised by the seller' from section 213(3). Providing for a person authorised by the seller to sign the disclosure statement in section 213(3) is no longer necessary given the insertion of new section 205D under Clause 9 which provides for a person to do a thing on behalf of the seller if the person is authorised by the seller to do the thing.

Clause 14 inserts new section 213AA after section 213. New section 213AA prescribes the requirements for a disclosure plan. To reflect the different characteristics between a building format lot or volumetric format lot and a standard format lot, the disclosure plan requires different information to be disclosed for the different lot formats.

Clause 15 amends section 214. Clause 15(1) amends section 214(2) to provide that the seller must give the buyer a further statement rectifying inaccuracies in the disclosure statement at least 21 days before the contract is settled.

Clause 15(2) amends section 214(3) to require the further statement given under section 214 to be certified as accurate by a cadastral surveyor if the further statement rectifies inaccuracies in the building or volumetric format lot particulars or standard format lot particulars mentioned in the disclosure statement.

Clause 15(3) amends section 214(4)(c) to replace the reference to 14 days with a reference to 21 days. This amendment means that termination of a contract by a buyer may be 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, instead of 14 days.

Clause 15(4) omits section 214(5) and inserts new section 214(5) and 214(6). New section 214(5) provides that subsections (1) to (4) of section 214 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.

New section 214(6) provides a buyer a right to terminate a contract for the sale of a proposed lot if the seller contravenes section 214. This is an existing termination right under section

25(1)(b) of the Land Sales Act, where a seller of a proposed lot fails to give the buyer a notice rectifying an inaccuracy in a statement disclosing information about the proposed lot given by the seller to the buyer. The termination right is being transferred to section 214 of the Body Corporate and Community Management Act because section 25 of the Land Sales Act is to be repealed by Clause 44 of the Bill.

Clause 16 inserts new division 4 (Other grounds for terminating contract) into part 2 of chapter 5. This new division contains new section 217B, which is inserted by Clause 17.

Clause 17 inserts new section 217B in new division 4. This new section provides a buyer of a proposed lot with a right to terminate the contract for the sale of the proposed lot if the seller does not unconditionally give the buyer a registrable transfer for the lot in the buyer's favour by the required time, other than because of the buyer's default.

If the contract provides for when the registrable transfer must be given by the seller to the buyer (the sunset date), the required time for when the seller must give the buyer the registrable transfer is at the end of the sunset date or the end of 5 ½ years after the day the contract was entered into by the buyer, whichever is the earlier time. If the contract does not provide for when the registrable transfer must be given by the seller to the buyer, the required time for giving the registrable transfer is at the end of 3 ½ years after the day the contract was entered into by the buyer. However, new section 441 (inserted by Clause 21 provides for the particular circumstances in which the 3½ year period may be changed to a longer period, even if the contract does not provide for when the registrable transfer must be given to the buyer.

In this section, the buyer's termination right applies up until the seller gives the buyer a registrable transfer for the lot in the buyer's favour.

This requirement for a buyer of a proposed lot to be given a registrable transfer and the associated buyer's right to terminate a contract for the sale of the proposed lot is currently provided for under section 27 of the Land Sales Act. However, the provision is being replicated in the Body Corporate and Community Management Act because section 27 of the Land Sales Act is to be repealed by Clause 44 of the Bill.

Clause 17 also inserts, directly after new section 217B, new division 5 (Miscellaneous provisions) in part 2 of chapter 5, and also inserts subdivision 1 (Termination) in new division 5. New division 5, subdivision 1 comprises of section 218.

Clause 18 omits and replaces section 218. New section 218 continues to provide that if a buyer terminates a contract for the sale of a proposed lot under part 2 of chapter 5 that the seller must repay to the buyer any amount paid to the seller or the seller's agent towards the purchase of the lot within 14 days after the termination. New section 218 also provides that any interest that accrued on the amount while it was held by the seller or the seller's agent must also be repaid to the buyer within 14 days after the termination.

Section 29 of the Land Sales Act provided for interest accrued on an amount paid by a buyer and held in trust by the seller for the purchase of a proposed lot to be paid to the buyer where the buyer terminates the contract for the proposed lot under the Land Sales Act. This provision is being transferred to section 218 of the Body Corporate and Community

Management Act because section 29 of the Land Sales Act is to be repealed by Clause 44 of the Bill.

New section 218 also makes it clear that if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under section 218 to repay the amount or interest applies subject to compliance with the law governing the entity's trust account.

In addition, new section 218 provides that an amount repayable under the section may be recovered as a debt.

Clause 19 inserts subdivision 2 (Amounts held in trust accounts) and subdivision 3 (Other provisions) in new division 5 of part 2, chapter 5.

Clause 19 also inserts new sections 218A, 218B, 218C, and 218D into chapter 5, part 2, division 5, subdivision 2 and new sections 218E and 218F into chapter 5, part 2, division 5, subdivision 3. Subdivision 3 also consists of existing section 219.

Subdivision 2 provides for particular amounts paid towards the purchase of a proposed lot to be kept in a trust account and provides for dealing with the amount, including disposing of the amount and investing the amount. It replicates sections 23 and 24 of the Land Sales Act, which are repealed by Clause 44 of the Bill.

However, through new section 218A, the application of subdivision 2 is extended to include amounts paid under an instrument (whether legally binding or not) relating to the sale of a proposed lot, other than a contract for the sale of a proposed lot, such as an instrument granting an option to purchase a proposed lot or an instrument providing for an expression of interest.

New section 218B requires that the person to whom the amount is paid must pay the amount directly to a recognised entity (defined in new section 211A). The amount must be held by the recognised entity in a prescribed trust account (defined in new section 211A) and be dealt with by the entity in accordance with subdivision 2 and the law governing the operation of the entity's prescribed trust account.

New section 218C provides that a recognised entity that is paid an amount under section 218B(1) must hold the amount in the entity's prescribed trust account until a party to the sale contract or instrument becomes entitled, under part 2 of chapter 5 or otherwise according to law, to the repayment or payment of the amount. New section 218C also provides that, 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.

New section 218D provides that a recognised entity that holds an amount paid under section 218B(1) in a prescribed trust account may invest the amount if the contract or instrument under which the amount was paid authorises the investment. This is consistent with section 24 of the Land Sales Act. However, unlike section 24 of the Land Sales Act, new section 218D also enables the amount to be invested by the recognised entity if the parties to the contract or instrument under which the amount was paid give the entity their consent to the investment by signed written notice.

New section 218E provides that a recognised entity that receives, on behalf of a seller of a proposed lot, an instrument (such as a bank guarantee) from a buyer as security for the payment of an amount under the contract for the sale of the lot must keep the security instrument at the prescribed place (defined in the section) until the instrument is returnable to the buyer according to law or the instrument is given to the issuer of the security in exchange for the amount it secures.

Section 218E also makes it clear that an amount given in exchange for the instrument is trust money and must be held by the recognised entity, who held the security instrument, in the entity's prescribed trust account. The amount held in the prescribed trust account must be dealt with by the recognised entity in accordance with chapter 5, part 2, division 5 and the law governing the operation of the entity's prescribed trust account.

New section 218F is an evidentiary provision relating to the sale or purchase of a proposed lot. The provision replicates new section 34 of the Land Sales Act (inserted by Clause 48 and renumbered as section 24 by Clause 51), and has been inserted as a consequence of part 3 being omitted from the Land Sales Act and placed in the Body Corporate and Community Management Act.

Clause 20 inserts new section 309A which provides for the responsibility of a person for the acts or omissions of a representative of the person in a proceeding for an offence against the Body Corporate and Community Management Act. This provision was included in section 32A (renumbered as section 23 by Clause 51) of the Land Sales Act and has been replicated in the Body Corporate and Community Management Act to retain its application because part 3 of the Land Sales Act is being omitted (see Clause 44) and replicated in the Body Corporate and Community Management Act. However, new section 309A is not limited in its application to the provisions of part 3 of the Land Sales Act that have been replicated in the Body Corporate and Community Management Act.

Clause 21 inserts new part 13 in chapter 8, which provides the transitional provisions for the amendments to the Body Corporate and Community Management Act. New part 13 consists of new sections 437 to 444.

New section 437 provides the definitions for particular terms used in chapter 8, part 13.

New section 438 provides for the application of section 212B.

New section 439 provides for the application of section 213(2)(a), as in force immediately after the commencement of chapter 8, part 13.

New section 440 provides for the application of section 214.

New section 441 provides for the application, and modified application, of section 217B. New section 441 provides that section 217B applies only in relation to a contract for the sale of a proposed lot entered into by a buyer after the commencement of chapter 8, part 13.

Also, new section 441 provides that if a period has been prescribed for the proposed lot under the *Land Sales Regulation 2000* as provided by section 28 of the Land Sales Act (as in force immediately before the commencement of chapter 8, part 13) and the contract does not provide for when the seller must give the buyer a registrable transfer, the relevant time under

section 217B for giving the buyer a registrable transfer may be extended to be the period prescribed under the Land Sales Regulation. However, the extended period prescribed by regulation applies only if, before the buyer enters into the contract, the seller gives the buyer written notification that:

- the period for giving the registrable transfer to the buyer is extended as provided for under sections 217B and 441 of the Body Corporate and Community Management Act; and
- states the period within which the seller must give the buyer a registrable transfer.

In this circumstance, the period within which the seller must give the buyer a registrable transfer must not be longer than the end of the prescribed period in schedule 2 of the repealed Land Sales Regulation, worked out from the day the contract was entered into.

A seller may comply with the written notification requirement in new section 441(2)(c) by including the information in the disclosure statement given to the buyer under section 213.

New section 442 provides for the application of section 218.

New section 443 provides for the application of chapter 5, part 2, division 5, subdivision 2.

New section 444 continues the application of part 3 of the Land Sales Act, as in force at any relevant time before the commencement of part 13 of chapter 8, to a contract for the sale of a proposed lot entered into before the commencement of part 13 as if the *Land Sales and Other Legislation Amendment Act 2014* had not been enacted.

Clause 22 inserts the following new terms in the dictionary (Schedule 6): building format lot, cadastral surveyor, law practice, prescribed trust account, proposed lot, public trustee, real estate agent, recognised entity, registrable transfer, standard format lot, and volumetric format lot.

Part 4 Amendment of *Breakwater Island Casino Agreement Act 1984*

Clause 23 provides that part 4 amends the *Breakwater Island Casino Agreement Act 1984* (the agreement Act).

Clause 24 amends section 3 to replace the reference to part 2 of Schedule 2 of the agreement Act to part 3 of Schedule 2 of the agreement Act.

Clause 25 inserts a new part 3 into Schedule 2 of the agreement Act to include the proposed form of the agreement that will be entered into by the parties to formalise the change in ownership of Jupiters Townsville.

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

Clause 26 states that part 5 amends the *Building Units and Group Titles Act 1980*.

Clause 27 amends section 7(1) to insert interpretations for the following terms: cadastral surveyor; law practice; prescribed trust account; real estate agent; recognised entity; and registrable transfer.

Clause 28 replaces the heading of part 4, division 3 with the new heading, 'Sale of lots and proposed lots'. Clause 28 also inserts subdivision 1 (General) under division 3 and new sections 48C, 48D, 48E, 48F and 48G under the new subdivision 1.

New section 48C provides for the general application of part 4, division 3.

New section 48D provides the definitions for particular terms used in part 4, division 3.

New section 48E provides that in part 4, division 3, a reference to a disclosure statement includes a reference to the documents accompanying the statement. This provision has been inserted to make it clear that a reference to a disclosure statement is a reference to a disclosure plan and any other documents required under section 49 to accompany the disclosure statement. However, this provision is not intended to imply that prior to the commencement of Clause 28 a reference to a statement given under section 49 to a proposed purchaser did not include the prescribed documents.

New section 48F provides that an agent may, on behalf of a purchaser or original proprietor of a lot or proposed lot, do a thing that is required or permitted to be done by the purchaser or original proprietor under part 4, division 3 if the agent is authorised to act for the purchaser or original proprietor in relation to the thing.

New section 48G provides for the application of section 49 to a contract granting an option to purchase a proposed lot entered into by an original proprietor and purchaser.

New section 48G provides that if an original proprietor grants an option to purchase a proposed lot to another person (the purchaser), the original proprietor may comply with section 49(1) when granting the option to the purchaser; that is, the original proprietor may give the purchaser a disclosure statement prescribed under section 49(1). If the original proprietor complies with section 49(1) for the option and the original proprietor and purchaser enter into a sale contract for the sale of the proposed lot arising from the option, then the original proprietor is not required to give the purchaser another disclosure statement in relation to the sale contract. This makes it clear that the original proprietor does not have to give the purchaser the disclosure statement prescribed under section 49(1) twice if the original proprietor and purchaser are the same parties to the sale contract arising from the option.

In this circumstance, the disclosure statement given in relation to the option is taken to have been given in relation to the option and the sale contract, and any right of avoidance under section 49 relating to the statement applies in relation to the option and the sale contract.

However, if the person (the purchaser) who was granted the option by the original proprietor is not a party to the sale contract arising from the option, the original proprietor must comply with section 49(1) before entering into the contract. This is to ensure that the purchaser who is a party to the sale contract, but was not a party to the option, does not miss out on receiving the disclosure statement prescribed under section 49(1) before entering into the sale contract.

Clause 29 amends section 49.

Clause 29(1) omits subsection (1) of section 49 and replaces it with a new subsection (1). The key change to subsection (1) of section 49 is the removal of the requirement for the disclosure statement, given by the original proprietor to the purchaser of a lot or proposed lot, to be in the prescribed form. This means the way a disclosure statement must given under the Building Units and Group Titles Act will align with the way a disclosure statement must be given under section 206 and 213 of the Body Corporate and Community Management Act.

Section 49(1) is also amended to remove the reference to a purchaser's agent being able to be given the statement by the original proprietor on the purchaser's behalf as this is no longer required now that new section 48F has been inserted by Clause 28.

Clause 29(2) amends section 49(2) to modernise the drafting of the subsection.

Clause 29(3) amends section 49(2)(b) to include new requirements for the disclosure statement when the statement is given in relation to the purchase of a proposed lot.

Section 49(2) is also amended by Clause 29(4) to omit the requirement for the disclosure statement to state the date it was signed, to align with the disclosure statement requirements under the *Body Corporate and Community Management Act 1997*. Clause 29 also amends section 49(2) to remove the reference to an agent being able to sign the statement on the original proprietor's behalf as a consequence of the insertion of new section 48F.

Clause 29(5) replaces section 49(3) to provide that a statement under section 49(1) must be substantially complete, and inserts new section 49(3A) to provide that the original proprietor does not fail to comply with section 49(1) merely because the statement, although substantially complete as at the day the contract is entered into, contains inaccuracies. The purpose of the amendments made in Clause 29(5) is to align the requirements for a disclosure statement under section 49 with the disclosure statement requirements under the Body Corporate and Community Management Act.

Clause 29(6) amends section 49(4) to provide that section 49(4) applies before the contract for the sale of a lot or proposed lot is settled. That is, the amendment provides that the section applies if at any time before the contract for the sale of a lot or proposed lot is settled the disclosure statement given to the purchaser is not accurate as at the time it is given, or contains information that subsequent to the time it is given becomes inaccurate in any respect. This amendment is made to align the requirement for giving a further statement under section 49(4) (which was previously referred to under section 49 as a 'rectification notice') with the requirement for giving a further statement under section 214 of the Body Corporate and Community Management Act.

Clause 29(7) also amends section 49(4) to provide that the original proprietor must give the purchaser a further statement at least 21 days before the contract is settled.

Clause 29(8) replaces subsections (4A) to (6) of section 49 with new subsections (4A) to (6B), to align the requirements for a further statement, and a purchaser's right to avoid a contract in relation to the further statement, with the requirements and buyer's termination rights in relation to a further statement given to a buyer under section 214 of the Body Corporate and Community Management Act.

New section 49(4A) provides the requirements for the further statement.

New section 49(4B) provides for when a purchaser may avoid the contract for the sale of the lot or proposed lot in relation to the further statement.

New section 49(4C) provides that sections 49(4) to (4B) continue to apply after a further statement is given.

New section 49(5) provides a purchaser with a right to avoid the contract for the sale of a lot or proposed lot if the original proprietor fails to give the purchaser a disclosure statement in compliance with section 49(1) to (3) or a further statement.

New section 49(6) provides that if a purchaser avoids a contract under section 49, the original proprietor must, within 14 days after the avoidance, repay to the purchaser any amount paid to the original proprietor towards the purchase of the lot or proposed lot and any interest accrued on the amount since it was paid.

Section 29 of the Land Sales Act provided for interest accrued on an amount paid by a buyer and held in trust by the seller for the purchase of a proposed lot to be paid to the buyer where the buyer terminates the contract under the Land Sales Act. This provision is being transferred to section 49(6) of the Building Units and Group Titles Act because section 29 of the Land Sales Act is to be repealed by Clause 44 of the Bill.

New section 49(6A) provides that if the amount or interest mentioned in section 49(6) is kept by an entity in a trust account kept for the purposes of an Act, the requirement under section 49(6) applies subject to compliance with the law governing the entity's trust account.

New section 49(6B) provides that an amount repayable under section 49(6) may be recovered as a debt.

Clause 29(9) makes a consequential amendment to section 49(7) to replace a reference to subsection (5B) with a reference to subsection (5).

Clause 29(10) omits section 49(8) and section 49(10), as the provisions are no longer relevant.

Clause 30 omits section 49A as it is no longer required and replaces it with a new section 49A, which provides the requirements for a disclosure plan prescribed under section 49(2)(b)(i). To reflect the different characteristics between a lot in a building units plan and a lot in a group titles plan, the disclosure plan requires different information to be disclosed for proposed lots in the different plans.

Clause 30 also inserts new section 49B in part 4, division 3, subdivision 1. New section 49B provides a purchaser of a proposed lot a right to avoid the contract for the sale of the proposed lot if the original proprietor does not unconditionally give the purchaser a registrable transfer for the lot in the purchaser's favour by the required time, other than because of the purchaser's default.

If the contract provides for when the registrable transfer must be given by the original proprietor to the purchaser (the sunset date), the required time for when the original

proprietor must give the purchaser the registrable transfer is at the end of the sunset date or the end of 5½ years after the day the contract was entered into by the purchaser, whichever is the earlier time. If the contract does not provide for when the registrable transfer must be given by the original proprietor to the purchaser, the required time for giving the registrable transfer is at the end of 3½ years after the day the contract was entered into by the purchaser. However, new section 139 (inserted by Clause 34) provides for the particular circumstances in which the 3½ year period may be changed to a longer period, even if the contract does not provide for when the registrable transfer must be given to the purchaser.

In this section, the purchaser's right of avoidance applies up until the original proprietor gives the purchaser a registrable transfer for the lot in the purchaser's favour.

This requirement for a purchaser of a proposed lot to be given a registrable transfer by the original proprietor and the associated right to avoid the contract for sale is currently provided for under section 27 of the Land Sales Act. However, the provision is being replicated in the Building Units and Group Titles Act because section 27 of the Land Sales Act is to be repealed by Clause 44 of the Bill.

Clause 30 also inserts subdivision 2 (Amounts held in trust accounts and security instruments) in part 4, division 3. Clause 30 also inserts new sections 49C to 49H in the new subdivision 2.

The new subdivision 2 provides for particular amounts paid towards the purchase of a proposed lot to be kept in a trust account and provides for dealing with the amount, including disposing of the amount and investing the amount. Subdivision 2, except for section 49H, replicates sections 23 and 24 of the Land Sales Act, which are repealed by Clause 44 of the Bill. However, through new section 49D, the application of subdivision 2 is extended to include amounts paid under an instrument (whether legally binding or not) relating to the sale of a proposed lot, other than a contract for the sale of a proposed lot, such as an instrument granting an option to purchase a proposed lot or an instrument providing for an expression of interest.

New section 49C provides the definitions for particular terms used in subdivision 2.

New section 49D provides the application of subdivision 2.

New section 49E requires that the person to whom an amount mentioned under section 49D is paid in relation to the sale of a proposed lot, must pay the amount directly to a recognised entity (defined in new section 49C). The amount must be held by the recognised entity in a prescribed trust account (also defined in new section 49C) and be dealt with by the entity in accordance with part 4, division 3, subdivision 2 and the law governing the operation of the entity's prescribed trust account.

New section 49F provides that 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 sale contract or instrument becomes entitled, under division 3 of part 4 or otherwise according to law, to the repayment or payment of the amount. New section 49F also provides that, 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. Also, new section 49F provides that subsections (1) and (2) of the

section apply despite anything in the contract or instrument under which the amount was paid to the entity.

New section 49G provides that a recognised entity that holds an amount paid under section 49E(1) in a prescribed trust account may invest the amount if the contract or instrument under which the amount was paid authorises the investment. This is consistent with section 24 of the Land Sales Act. However, unlike section 24 of the Land Sales Act, new section 49G also enables the amount to be invested by the recognised entity if the parties to the contract or instrument under which the amount was paid give the entity their consent to the investment by signed written notice.

New section 49H provides that a recognised entity that receives, on behalf of the original proprietor of a proposed lot, an instrument (such as a bank guarantee) from a purchaser as security for the payment of an amount under the contract for the sale of the lot must keep the security instrument at the prescribed place (defined in the section) until the instrument is returnable to the purchaser according to law or the instrument is given to the issuer of the security in exchange for the amount it secures.

Section 49H also makes it clear that an amount given in exchange for the instrument is trust money and must be held by the recognised entity (who held the security instrument) in the entity's prescribed trust account. The amount held in the prescribed trust account must be dealt with by the recognised entity in accordance with part 4, division 3 and the law governing the operation of the entity's prescribed trust account.

Clause 30 also inserts new subdivision 3 (Evidence) in part 4, division 3. Clause 30 also inserts new section 49I in the new subdivision 3.

New section 49I is an evidentiary provision relating to the sale or purchase of a proposed lot. The provision replicates new section 34 of the Land Sales Act (inserted by Clause 48 and renumbered as section 24 by Clause 51), and has been inserted as a consequence of part 3 being omitted from the Land Sales Act and placed in the Building Units and Group Titles Act.

Clause 31 inserts new section 133A, which provides for the responsibility of a person for the acts or omissions of a representative of the person in a proceeding for an offence against the Building Units and Group Titles Act. This provision was included in section 32A (renumbered as section 23 by Clause 51) of the Land Sales Act and has been replicated in the Building Units and Group Titles Act to retain its application because part 3 of the Land Sales Act is being omitted and replicated in the Building Units and Group Titles Act. However, new section 133A is not limited in its application to the provisions of part 3 of the Land Sales Act that have been replicated in the Building Units and Group Titles Act.

Clause 32 makes a consequential amendment to the heading of part 7 of the Building Units and Group Titles Act to reflect the inclusion of the transitional provisions inserted by Clause 34.

Clause 33 inserts division 1 (Transitional provision for *Audit Legislation Amendment Act 2006*) in part 7, which consists of existing section 135.

Clause 34 inserts division 2 (Transitional provisions for *Land Sales and Other Legislation Amendment Act 2014*) in part 7, which provides the transitional provisions for the amendments to the Building Units and Group Titles Act. Clause 34 also inserts new sections 136 to 141 in the new division 2.

New section 136 provides the definitions for particular terms used in part 7, division 2.

New section 137 provides for the application of section 48G.

New section 138 provides for the application of section 49 as in force before and after the commencement of part 7, division 2.

New section 139 provides for the application, and modified application, of section 49B. New section 139 provides that section 49B applies only in relation to a contract for the sale of a proposed lot entered into by a purchaser after the commencement of part 7, division 2.

Also, new section 139 provides that if a period has been prescribed for the proposed lot under the Land Sales Regulation as provided under section 28 of the Land Sales Act (as in force immediately before the commencement of part 7, division 2) and the contract does not provide for when the original proprietor must give the purchaser a registrable transfer, the relevant time under section 49B for giving the purchaser a registrable transfer may be extended to the period prescribed under the Land Sales Regulation. However, the extended period prescribed in regulation applies only if, before the purchaser enters into the contract, the original proprietor gives the purchaser written notification that:

- the period for giving the registrable transfer to the purchaser is extended as provided for under sections 49B and 139 of the Building Units and Group Titles Act; and
- states the period within which the original proprietor must give the purchaser a registrable transfer

In this circumstance, the period within which the original proprietor must give the purchaser a registrable transfer must not be longer than the end of the prescribed period in schedule 2 of the repealed *Land Sales Regulation 2000*, worked out from the day the contract was entered into.

An original proprietor may comply with the written notification requirement in new section 139(2)(c) by including the information in the disclosure statement given to the purchaser under section 49.

New section 140 provides the application of part 4, division 3, subdivision 2.

New section 141 continues the application of part 3 of the Land Sales Act, as in force at any relevant time before the commencement of part 7, division 2 of the Building Units and Group Titles Act, to a contract for the sale of a proposed lot entered into before the commencement of part 7, division 2 as if the *Land Sales and Other Legislation Amendment Act 2014* had not been enacted.

Part 6 Amendment of *Fair Trading Inspector Act 2014*

Clause 35 states that part 6 amends the *Fair Trading Inspectors Act 2014*.

Clause 36 makes a necessary consequential amendment to section 4(1).

Clause 36 inserts new subsections (1)(aa), (1)(ab) and (1)(la) into section 4 to ensure that the Fair Trading Inspectors Act continues to enact common provisions in relation to part 3 of the Land Sales Act, which is being omitted from the Land Sales Act under Clause 44 and transferred to the Body Corporate and Community Management Act, the Building Units and Group Titles Act and the South Bank Corporation Act.

Part 7 Amendment of *Land Sales Act 1984*

Clause 37 states that part 7 amends the *Land Sales Act 1984*.

Clause 38 amends section 2(c) to omit the reference to proposed allotment. This is a necessary consequential amendment to reflect that the Bill (under Clause 41) amends the Act to replace the term 'proposed allotments' with 'proposed lots'.

Clause 39 replaces section 5 with new section 3, which provides for the application of the Act generally.

Clause 39 also inserts new section 4, which provides that a regulation may declare that, subject to any stated conditions, the Act does not apply to the whole or part of:

- a stated miners homestead under the *Land Act 1994*, chapter 8, part 7, division 2; or
- a stated lease or a stated class of lease under the *Land Act 1994*.

If a person contravenes a condition that relates to land which is the subject of a declaration, 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.

Clause 40 renumbers section 5A as section 5.

Clause 41 omits the definitions of various terms in section 6 that are no longer relevant and includes definitions for new terms used in the Act. Clause 41 also relocates all the definitions that were provided for in section 6 to the dictionary in new schedule 1 of the Act (inserted by Clause 55).

Clause 42 omits section 6A as it is no longer relevant.

Clause 43 omits part 2 (Sale of proposed allotments) and replaces it with a new part 2 (Sale of proposed lots). Clause 43 also inserts new divisions 1 to 5 in part 2 and new sections 7 to 21.

New division 1 (Preliminary) consists of new sections 7 and 8.

New section 7 provides that an agent may, on behalf of a buyer or seller of proposed lot, do a thing that is required or permitted to be done by the buyer or seller under part 2 if the agent is authorised to act for the buyer or seller in relation to the thing.

New section 8 provides a restriction on selling State leasehold land, including a development lease.

New division 2 (Disclosure requirements) consists of new sections 9 to 13.

New section 9 provides that if a person (the seller) grants an option to purchase a proposed lot to another person (the buyer), the seller may comply with section 10(1) when granting the option to the buyer; that is, the seller may give the buyer the documents prescribed under section 10(1)(a) or (b). If the seller complies with section 10(1) for the option and the seller and buyer enter into a sale contract for the sale of the proposed lot arising from the option, then the seller is not required to again give the buyer the documents prescribed under section 10(1)(a) or (b) in relation to the sale contract. This makes it clear that the seller does not have to give the buyer the relevant documents prescribed under section 10(1) twice if the seller and buyer are the same parties to the sale contract arising from the option.

In this circumstance, the documents given in relation to the option are taken to have been given in relation to the option and the sale contract, and any right of termination under part 2, division 2 relating to the giving of the documents applies in relation to the option and the sale contract.

However, if the person (the buyer) who was granted the option by the seller is not a party to the contract arising from the option, the seller must comply with section 10(1) before entering into the contract. This is to ensure that the buyer who is a party to the sale contract, but was not a party to the option, does not miss out on receiving the relevant documents prescribed under section 10(1) before entering into the sale contract.

New section 10 requires the seller of a proposed lot to give the proposed buyer of the lot, before the proposed buyer enters into a contract for the sale of the lot, either a disclosure plan and disclosure statement or a copy of the approved plan of survey for the proposed lot. Section 10 also provides a buyer with a right to terminate the contract before it settles if the seller contravenes the requirement to give the relevant documents prescribed under section 10.

New section 11 prescribes the requirements for a disclosure plan mentioned under section 10.

New section 12 prescribes the requirements for a disclosure statement mentioned under section 10.

New section 13 provides for when a seller must give the buyer a further document (the further statement) rectifying any inaccuracies in the disclosure plan. The further statement must be signed by the seller and be prepared by a cadastral surveyor. Also, the further statement must explain, in plain English, the differences between the information in the disclosure plan and the information in the further statement. That is, a plain English explanation must be given about what in the disclosure plan was inaccurate and what the information provided in the further statement rectifying the inaccuracy is.

New section 13 also provides a buyer with a right to terminate the contract for the sale of the proposed lot if the contract has not already been settled and 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. The termination must be 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.

In addition, new section 13 provides a buyer with a right to terminate the contract for the sale of the proposed lot if the seller does not comply with section 13. The termination right applies if the contract has not already settled and 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.

New section 13 continues 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.

New division 3 (Registrable transfers) consists of new section 14.

New section 14 requires the seller of a proposed lot to give the buyer a registrable transfer for the lot not later than 18 months after the buyer enters into the contract for the sale of the lot.

New section 14 also requires that if the seller has not given the buyer a copy of the approved plan of survey for the proposed lot before the buyer enters into the contract for the sale of the lot, the seller must give the buyer the following documents at least 14 days before the contract is settled:

- a copy of the registered plan of survey for the lot (the registered plan); and
- if the information contained in the registered plan matches the information contained in the disclosure plan for the lot given to the buyer under section 10, 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 disclosure plan.

If there are differences between the information contained in the registered plan and the disclosure plan, then the seller must give the buyer a further statement prescribed under section 13 rectifying the inaccuracies in the disclosure plan.

New section 14 also provides a buyer with a right to terminate the contract for the sale of the proposed lot before the contract is settled if, other than because of the buyer's default, the seller fails to comply with section 14.

New division 4 (Amounts held in trust accounts) consists of new sections 15 to 19.

New division 4 provides for particular amounts paid towards the purchase of a proposed lot to be kept in a trust account and provides for dealing with the amount, including disposing of the amount and investing the amount.

New section 15 provides the definitions for particular terms used in division 4.

New section 16 provides that division 4 applies to an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (excluding an amount the payment of which entitles the buyer to a registrable transfer in the buyer's favour). New section 16 also provides that division 4 applies to an amount paid under another instrument (whether legally binding or not), relating to the sale of a proposed lot, such as an option to purchase a proposed lot or an instrument providing for an expression of interest for a proposed lot.

New section 17 requires that the person to whom the amount is paid must pay the amount directly to a recognised entity (defined in new section 15). The amount must be held by the recognised entity in a prescribed trust account (also defined in new section 15) and be dealt

with by the entity in accordance with division 4 and the law governing the operation of the entity's prescribed trust account.

New section 18 provides that 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 sale contract or instrument becomes entitled, under part 2 or otherwise according to law, to the repayment or payment of the amount. New section 18 also provides that, 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.

New section 19 provides that a recognised entity that holds an amount paid under section 17(1) in a prescribed trust account may invest the amount if:

- the contract or instrument under which the amount was paid authorises the investment; or
- the parties to the contract or instrument under which the amount was paid give the entity their consent to the investment by signed written notice.

New division 5 (Other provisions) comprises of sections 20 and 21.

New section 20 provides that the seller of a lot must repay to a buyer, who has terminated a contract under part 2, any amount paid to the seller towards the purchase of the lot, together with any interest accrued on the amount while it was held by the seller. The amount, and any interest accrued on the amount, must be repaid to the buyer within 14 days after the termination of the contract.

New section 20 also makes it clear that if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under section 20 to repay the amount or interest applies subject to compliance with the law governing the entity's trust account.

In addition, new section 20 provides that an amount repayable under the section may be recovered as a debt.

New section 21 provides that a recognised entity that receives, on behalf of a seller of a proposed lot, an instrument (such as a bank guarantee) from a buyer as security for the payment of an amount under the contract for the sale of the lot must keep the security instrument at the prescribed place (defined in the section) until the instrument is returnable to the buyer according to law or the instrument is given to the issuer of the security in exchange for the amount it secures.

New section 21 also makes it clear that an amount given in exchange for the instrument is trust money and must be held by the recognised entity (who held the security instrument) in the entity's prescribed trust account. The amount held in the prescribed trust account must be dealt with by the recognised entity in accordance with part 2 and the law governing the operation of the entity's prescribed trust account.

Clause 44 omits part 3 of the Land Sales Act. The provisions under part 3 have been transferred to the Body Corporate and Community Management Act, Building Units and Group Titles Act and the South Bank Corporation Act.

Clause 45 renumbers part 4 of the Land Sales Act as part 3, as a consequence of the omission of part 3 by Clause 44.

Clause 46 replaces section 31. The purpose of the replacement of section 31 is to modernise the drafting of the provision. New section 31 continues to prohibit contracting out of the requirements of the Act.

Clause 47 omits sections 32 and 33 because they are no longer relevant.

Clause 48 replaces section 34. The purpose of the replacement of section 34 is to modernise the drafting of the provision and to reflect that the term 'proposed allotment' is to be no longer used in the Act.

Clause 49 omits section 35A as a consequence of the amendments to the Act which have removed the requirement for any approved forms to be used for the Act.

Clause 50 replaces section 36. This is a consequential amendment to update the regulation-making power.

Clause 51 renumbers sections 31 to 36 as sections 22 to 26.

Clause 52 inserts new part 4 into the Act, which provides the transitional provisions.

Clause 52 also inserts new division 1 (Transitional provision for Sustainable Planning and Other Legislation Amendment Act 2012) into part 4. Division 1 retains the transitional provision for the *Sustainable Planning and Other Legislation Amendment Act 2012*.

Clause 53 makes consequential amendments to renumber section 37 as section 27 and amend the heading of the section.

Clause 54 inserts new division 2 (Transitional provisions for Land Sales and Other Legislation Amendment Act 2014) into new part 4, which provides the transitional provisions for the *Land Sales and Other Legislation Amendment Act 2014*. New division 2 consists of new sections 28 to 38.

New section 28 provides the definitions for particular terms used in part 4, division 2.

New section 29 provides for the continuation of particular rights of prosecution for an offence against a provision of part 2 of the Land Sales Act as in force at any relevant time before the commencement of part 4, division 2.

New section 30 provides for the application of section 8(2) of the Land Sales Act, as in force at any relevant time before the commencement of part 4, division 2, in relation to an agreement made in contravention of subsection (1) or (1A) of that section before the commencement of part 4, division 2.

New section 31 provides for the application of part 2, division 2 of the Land Sales Act, as in force immediately after the commencement of part 4, division 2. New section 30 also provides that sections 9 and 10 of the Act, as in force before the commencement of part 4, division 2, continue to apply in relation to a contract for the sale of a proposed lot entered

into before the commencement of part 4, division 2 as if the Land Sales and Other Legislation Amendment Act had not been enacted.

New section 32 provides the application of section 14 of the Land Sales Act, as in force immediately after the commencement of part 4, division 2. New section 32 also provides that the purchaser of a proposed lot entered into before the commencement of part 4, division 2, may avoid the contract as provided for under section 10A(4) of the Act (as in force at any relevant time before the commencement of part 4, division 2) only if the vendor's contravention of section 10A was not a result of the purchaser's default.

New section 33 provides for the application of part 2, division 4, as in force immediately after the commencement of part 4, division 2 to amounts paid under a contract for the sale of a proposed lot entered into after the commencement of part 4, division 2.

New section 34 provides for the application of sections 11 and 12 of the Land Sales Act, as in force at any relevant time before the commencement of part 4, division 2, to amounts paid under a contract for the sale of a proposed lot entered into before the commencement of part 4, division 2.

New section 35 provides the application of section 11A of the Land Sales Act, as in force at any relevant time before the commencement of part 4, division 2, to a contract for the sale of a proposed lot entered into before the commencement of part 4, division 2.

New section 36 continues a declaration in effect under section 18 of the Land Sales Act (as in force at any relevant time before the commencement of part 4, division 2) immediately before the commencement of part 4, division 2.

New section 37 provides that an application under section 19 of the Land Sales Act, as in force at any relevant time before the commencement of part 4, division 2, that has not been decided at the commencement of part 4, division 2 lapses at the commencement.

New section 38 provides that part 2, as in force immediately after the commencement of part 4, division 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 under section 19 (as in force at any relevant time before the commencement of part 4, division 2) the chief executive has either refused to grant an exemption, or has granted an exemption subject to conditions, for the reconfiguration.

Clause 55 inserts new schedule 1 (Dictionary).

Part 8 Amendment of *Legal Profession Act 2007*

Clause 56 states that part 8 amends the *Legal Profession Act 2007*.

Clause 57 makes a consequential amendment to the heading of part 3.3, division 2 by inserting the word 'generally' at the end of the heading.

Clause 58 amends section 249(2) by inserting a reference to division 2A, to provide that section 249(1) applies subject to an order of a court of competent jurisdiction, division 2A or as authorised by law. Clause 58 also amends section 249(3) to provide that the subsection is subject to the new division 2A.

Clause 59 inserts a new division 2A (Disputes about trust money for sales of lots and proposed lots) into part 3.3. Clause 59 also inserts new sections 262A and 262B into new division 2A, which provide for payments of amounts from trust accounts in the event a dispute arises, or is likely to arise, about a person's entitlement to the amount.

New section 262A provides for the application of part 3.3, division 2A. Section 262A provides that division 2A applies if a law practice holds an amount for the sale of a lot or proposed lot in the practice's trust account and before the amount is paid out under division 2 the law practice becomes aware of a dispute, or considers a dispute may arise, between persons having an interest in the amount about entitlement to the amount. In this section a reference to 'amount' includes part of the amount.

Also, in new section 262A, the reference to 'a person having an interest in the amount' does not include an entity acting for a person in relation to the sale or purchase of the lot or proposed lot, such as a real estate agent or a legal practitioner.

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

New section 262B provides for a process for the payment of an amount in dispute. In summary, new section 262B provides that if a law practice considers that a person having an interest in the amount held in the practice's trust account is entitled to the amount, the practice may pay out the amount to the person if:

- the practice gives all persons having an interest in the amount a written notice notifying them of the law practice's intention to pay the amount to a stated person; and
- a proceeding disputing the person's entitlement to the amount is not started within a stated period (stated in the written notice) of at least 60 days.

However, new section 262B does not require a practice to give the written notice 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 is decided by a court.

The written notice given under section 262B by the practice to all parties having an interest in the amount must state, in effect, that the practice considers that a stated person is entitled to the amount and the agent is authorised under the Act to pay the amount to the stated person on or after a stated date (which must be at least 60 days after the notice) unless:

- a proceeding disputing the stated person's entitlement to the amount is started and the law practice is advised of the start of the proceeding; or
- all persons having an interest in the amount authorise payment of the amount to the stated person before the stated date.

The practice may pay the amount to the stated person *after* the stated date in the written notice if the practice is unaware of the start of a proceeding claiming an entitlement to the amount. However, the practice may pay the amount to the stated person *on or before* the

stated date if before, or by, the stated date the practice receives written notice from all persons having an interest in the amount authorising payment of the amount to the stated person.

New section 262B also removes liability from the practice in relation to the payment of the amount to the stated person as provided under section 262B if it is subsequently found that the stated person was not entitled to the amount. Also, it is declared that section 262B does not decide legal entitlement to the amount held by the law practice in their trust account or prevent a person legally entitled to the amount recovering it from the person to whom it was paid.

Part 9 Amendment of *Property Law Act 1974*

Clause 60 states that part 9 amends the *Property Law Act 1974*.

Clause 61 inserts new section 68A.

New section 68A applies in relation to a contract for the sale of a proposed lot (which is defined in the section). New section 68A provides that a contract may provide for an amount paid under the contract as a deposit, which is not more than 20% of the purchase price of the proposed lot (whether paid in 1 or more instalments), to be forfeited and retained by the vendor in the event of a breach of contract by the purchaser. New section 68A also provides that the deposit may, however, only be forfeited or retained by the vendor if the breach of contract results in the termination of the contract.

Also, new section 68A declares that, for the section, an amount of not more than 20% of the purchase price of the proposed lot that is paid under the contract as a deposit is not (either at law or in equity) a penalty if the amount is forfeited and retained by the vendor because the contract is terminated as a result of a breach of contract by the purchaser. The purpose of this declaration under new section 68A is to expressly provide that the deposit (of not more than 20% of the purchase price of the proposed lot) paid under the contract is not, at law or in equity, a contractual penalty.

Clause 62 amends section 71. Clause 62 amends the definition of 'deposit' by replacing sub paragraph (a) of the definition with the words 'the prescribed percentage'. Clause 62 also inserts a definition for the term 'prescribed percentage' and 'proposed lot' in section 71.

The amendment to section 71 made by Clause 62 provides that a contract for the sale of a proposed lot which provides for a deposit of not more than 20% of the purchase price, and does not include terms under which the purchaser is bound to make a payment or payments (other than a deposit) without becoming entitled to receive a conveyance in exchange for the payment or payments, is excluded from the application of part 6, division 4 of the *Property Law Act 1974*.

Clause 63 inserts new part 23 and new sections 354 to 356 into part 23. New part 23 provides the transitional provisions for the Land Sales and Other Legislation Amendment Act.

New section 354 provides the definition for particular terms used in part 23.

New section 355 provides for the application of section 68A.

New section 356 provides for the application of section 71 to existing instalment contracts.

Part 10 Amendment of *Property Occupations Act 2014*

Clause 64 states that part 10 amends the *Property Occupations Act 2014*.

Clause 65 amends section 157 to provide that the examples in subsection (1) are for subsections (d) and (e). In addition, clause 65 replaces the term 'persons' with the term 'entities' to ensure the relevant terms are used consistently throughout the provision.

Clause 65 also inserts into subsection (2) of section 157, reference to subsection (1)(e) and the terms 'fee' or 'charge'. Reference to subsection (1)(e) is necessary to ensure subsection (1)(e) also does not apply if subsection (2) is applicable. The insertion of the terms 'fee' or 'charge' is necessary to ensure the policy to remove the requirement for an agent to disclose to a buyer what they are being paid by the seller for their services applies consistently to all agents whether or not an agent and a client have agreed to the payment of a fee, charge or commission for the agent's services.

Part 11 Amendment of *South Bank Corporation Act 1989*

Clause 66 states that part 11 amends the *South Bank Corporation Act 1989*.

Clause 67 inserts, in section 3, definitions for a range of new terms for the South Bank Corporation Act that have been inserted by part 11 of the Bill.

Clause 68 inserts a note under section 47(2) to notify readers that the modified Building Units and Group Titles Act is set out in schedule 4 and that part 9A of the South Bank Corporation Act also applies to land that is subdivided under section 47.

Clause 69 inserts new part 9A after section 97. Clause 69 also inserts new sections 97A to 97R in new part 9A. New part 9A has been inserted to provide for the regulation of the sale of leasehold building units lots and proposed lots (including proposed leasehold building units lots), as a consequence of part 3 being omitted from the Land Sales Act.

New section 97A provides for the application of part 9A.

New section 97B provides the definitions for particular terms used in part 9A.

New section 97C provides that, in part 9A, a reference to a disclosure statement for a leasehold building units lot or proposed lot includes a reference to the documents accompanying the statement as prescribed under section 97F(2)(b) or 97F(2)(c). This provision has been inserted to make it clear that a reference to a disclosure statement is a reference to a disclosure plan and any other documents (such as the by-laws or proposed by-laws) required under sections 97F(2)(b) and 97F(2)(c) to accompany the disclosure statement. However, this provision is not intended to imply that prior to the commencement of Clause 69 a reference to a statement given by an original lessee under section 49 of schedule 4 of the Act did not include the prescribed documents.

New section 97D provides that an agent may, on behalf of a buyer or seller of a leasehold building units lot or proposed lot, do a thing that is required or permitted to be done by the buyer or seller under part 9A if the agent is authorised to act for the buyer or seller in relation to the thing.

New section 97E provides that if a person (the grantor) grants an option to purchase a proposed lot to another person (the buyer), the grantor may comply with section 97F(1) when granting the option to the buyer; that is, the grantor may give the buyer a disclosure statement prescribed under section 97F(1). If the grantor complies with section 97F for the option and the grantor and buyer enter into a sale contract for the sale of the proposed lot arising from the option, then the grantor is not required to give the buyer another disclosure statement in relation to the sale contract. This makes it clear that the grantor does not have to give the buyer the disclosure statement prescribed under section 97F(1) twice if the grantor and buyer are the same parties to the sale contract arising from the option.

In this circumstance, the disclosure statement given in relation to the option is taken to have been given in relation to the option and the sale contract, and any right of termination under division 2 relating to the disclosure statement applies in relation to the option and the sale contract.

However, if the person (the buyer) who was granted the option by the grantor is not a party to the contract arising from the option, the grantor must comply with section 97F before entering into the contract. This is to ensure that the buyer who is a party to the sale contract, but was not a party to the option, does not miss out on receiving the disclosure statement prescribed under section 97F before entering into the sale contract.

New section 97F prescribes information that must be given by a seller to a buyer. Section 97F(1) requires a seller, before the 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, to give the buyer a disclosure statement. Section 97F also prescribes the requirements for the disclosure statement and provides the buyer with a right to terminate the contract if the seller has not complied with the subsection (1). The requirements for the disclosure statement differ for a leasehold building units lot and the different types of proposed lots.

New section 97G prescribes the requirements for a disclosure plan, which section 97F requires a seller of a proposed leasehold building units lot to give to a buyer as part of the disclosure statement given to the buyer.

New section 97H prescribes the matters that must be included in the disclosure statement in relation to the sale of a leasehold building units lot or a proposed leasehold building units lot. Section 97H replicates the requirements for a disclosure statement prescribed under section 49 of schedule 4 of the Act to retain the requirements, because Clause 73 revokes the application of section 49 of schedule 4 of the Act to the sale of a leasehold building units lot or a proposed leasehold building units lot.

New section 97I provides for when a seller must give the buyer a further statement rectifying any inaccuracies in the disclosure statement. The further statement must be signed by the seller and, if the further statement rectifies inaccuracies in the relevant lot particulars in the disclosure plan given for a proposed leasehold building units lot, the accuracy of that part of the further statement must be certified by a cadastral surveyor.

New section 97I continues 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.

New section 97I also provides a right for a buyer to terminate the contract for the sale of the leasehold building units lot or a proposed lot if the contract has not already settled and 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.

In addition, new section 97I provides a right for a buyer to terminate the contract for the sale of the leasehold building units lot or proposed lot if the seller does not comply with section 97I. The termination right applies if the contract has not already settled and 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.

New section 97J provides a buyer of a proposed lot with a right to terminate the contract for the sale of the proposed lot if the seller does not unconditionally give the buyer a registrable transfer for the lot in the buyer's favour by the required time, other than because of the buyer's default.

If the contract provides for when the registrable transfer must be given by the seller to the buyer (the sunset date), the required time for when the seller must give the buyer the registrable transfer is at the end of the sunset date or the end of 5½ years after the day the contract was entered into by the buyer, whichever is the earlier time. If the contract does not provide for when the registrable transfer must be given by the seller to the buyer, the required time for giving the registrable transfer is at the end of 3½ years after the day the contract was entered into by the buyer. However, new section 139 (inserted by Clause 72) provides for the particular circumstances in which the 3½ year period may be changed to a longer period, even if the contract does not provide for when the registrable transfer must be given to the buyer.

In this section, the buyer's right of termination applies up until the seller gives the buyer a registrable transfer for the lot in the buyer's favour.

New section 97K provides that if a buyer avoids a contract under part 9A, the seller must, within 14 days after the termination, repay to the buyer any amount paid to the seller towards the purchase of the leasehold building units lot or proposed lot and any interest accrued on the amount since it was paid.

New section 97K also makes it clear that if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under section 97K to repay the amount or interest applies subject to compliance with the law governing the entity's trust account.

In addition, new section 97K provides that an amount repayable under the section may be recovered as a debt.

New sections 97L to 97O (division 5 of part 9A) provide the requirements for particular amounts paid towards the purchase of a proposed lot. Division 5 of part 9A replicates sections 23 and 24 of the Land Sales Act, which are repealed by Clause 44 of the Bill.

However, through new section 97L, the application of division 5 is extended to include amounts paid under an instrument (whether legally binding or not) relating to the sale of a proposed lot, other than a contract for the sale of a proposed lot, such as an instrument granting an option to purchase a proposed lot or an instrument providing for an expression of interest.

New section 97L provides for the application of division 5.

New section 97M requires that the person to whom an amount mentioned under section 97L is paid must pay the amount directly to a recognised entity (defined in new section 97B). The amount must be held by the recognised entity in a prescribed trust account (defined in new section 97B) and be dealt with by the entity in accordance with part 9A and the law governing the operation of the entity's prescribed trust account.

New section 97N provides that a recognised entity that is paid an amount under section 97M must hold the amount in the entity's prescribed trust account until a party to the sale contract or instrument becomes entitled, under part 9A or otherwise according to law, to the repayment or payment of the amount. New section 97N also provides that, 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. Section 97N applies despite anything in the contract or instrument under which the amount was paid to the recognised entity.

New section 97O provides that a recognised entity that holds an amount paid under section 97M in a prescribed trust account may invest the amount if the contract or instrument under which the amount was paid authorises the investment. This is consistent with section 24 of the Land Sales Act. However, unlike section 24 of the Land Sales Act, new section 97O also enables the amount to be invested by the recognised entity if the parties to the contract or instrument under which the amount was paid give the entity their consent to the investment by signed written notice.

New section 97P provides that a recognised entity that receives, on behalf of a seller of a proposed lot, an instrument (such as a bank guarantee) from a buyer as security for the payment of an amount under the contract for the sale of the lot must keep the security instrument at the prescribed place (defined in the section) until the instrument is returnable to the buyer according to law or the instrument is given to the issuer of the security in exchange for the amount it secures.

Section 97P also makes it clear that an amount given in exchange for the instrument is trust money and must be held by the recognised entity, who held the security instrument, in the entity's prescribed trust account. The amount held in the prescribed trust account must be dealt with by the recognised entity in accordance with part 9A and the law governing the operation of the entity's prescribed trust account.

New section 97Q provides that 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 part 9A.

New section 97R is an evidentiary provision. The provision replicates section 34 of the Land Sales Act and has been inserted as a consequence of part 3 being omitted from the Land Sales Act (see Clause 44) and placed in the South Bank Corporation Act.

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

This provision was included in section 32A of the Land Sales Act and has been replicated in the South Bank Corporation Act given that part 3 of the Land Sales Act is being omitted and replicated in the South Bank Corporation Act. However, new section 98A is not limited in its application to the provisions of part 3 of the Land Sales Act that have been replicated in the South Bank Corporation Act.

Clause 71 omits section 103 because it is no longer relevant, given that part 3 of the Land Sales Act is being omitted by Clause 44.

Clause 72 inserts a new division 8 in part 11. Clause 72 also inserts new sections 138 to 140 in part 11, division 8 to provide transitional provisions.

New section 138 provides the definitions for particular terms used in part 11, division 8.

New section 139 provides for the application of part 9A and modified application of section 97J.

New section 139 provides that 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 of part 11, division 8.

Also, new section 139 provides that if a period has been prescribed for the proposed lot under the Land Sales Regulation as provided by section 28 of the Land Sales Act (as in force immediately before the commencement of part 11, division 8) and the contract does not provide for when the seller must give the buyer a registrable transfer, the relevant time under section 97J for giving the buyer a registrable transfer may be extended to be the end of the prescribed period after the day the contract was entered into. However, the extended period prescribed by regulation applies only if, before the buyer enters into the contract, the seller gives the buyer written notification that:

- the period for giving the registrable transfer to the buyer is extended as provided for under sections 97J and 139 of the South Bank Corporation Act; and
- states the period within which the seller must give the buyer a registrable transfer.

In this circumstance, the period within which the seller must give the buyer a registrable transfer must not be longer than the end of the prescribed period in schedule 2 of the repealed Land Sales Regulation, worked out from the day the contract was entered into.

A seller may comply with the written notification requirement in new section 139(2)(c) by including the information in the disclosure statement given to the buyer under section 97F.

New section 140 continues the application of sections 49 and 49A in schedule 4 of the South Bank Corporation Act, and part 3 of the Land Sales Act, to a contract for the sale of a lot or

proposed lot entered into before the commencement of new part 11, division 8 of the South Bank Corporation Act.

Clause 73 makes a consequential amendment to schedule 4, section 7 to omit the reference to sections 49 and 49A in paragraph (b) of the definition of the term 'original lessee' and inserts the word 'amended' in brackets at the end of section 7 of schedule 4 to indicate the provision has been amended.

Clause 73 also omits the provisions under part 4, division 3 of schedule 4 and inserts the words 'not applied' in brackets to indicate that part 4, division 3 of schedule 4 has been omitted.

Part 12 Repeal of Land Sales Regulation 2000

Clause 74 repeals the Land Sales Regulation 2000, SL No. 221.

Part 13 Minor and consequential amendments of Acts

Clause 75 inserts schedule 1, which makes minor and consequential amendments to sections 206(3) and 210 of the Body Corporate and Community Management Act and section 122(3) of the *Land Title Act 1994*.

The amendments to the Body Corporate and Community Management Act are a consequence of the insertion of new section 205D, as inserted by Clause 9. The amendment to the Land Title Act is a consequence of the replacement of the term 'proposed allotment' with 'proposed lot' in the Land Sales Act.