

SALE OF LAND AMENDMENT BILL 2016

Introduction and First Reading

Bill introduced, on motion by **Mr D.T. Redman (Minister for Lands)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR D.T. REDMAN (Warren–Blackwood — Minister for Lands) [11.15 am]: I move —

That the bill be now read a second time.

I am pleased to introduce this bill that will protect consumers from the risks associated with purchasing from a vendor who is not yet the registered owner of a lot, whilst providing certainty to facilitate the ongoing timely release of new lots by land developers.

The purpose of the Sale of Land Act 1970 is to protect purchasers of land if the land is being purchased from a subdivision of five lots or more whereby the vendor is not the owner of the land. In particular, the current section 13 of the Sale of Land Act prohibits the sale of a lot by a person who has the right to sell five or more lots in a subdivision or proposed subdivision, or two or more lots in a strata subdivision or proposed strata subdivision, unless the seller is the registered owner of the land. The penalty for breaching section 13 is currently \$750. The prohibition in section 13 of the act was designed to protect the purchaser from the risk that a vendor/developer never obtains title to the land they are proposing to subdivide and sell and therefore is unable to effect settlement, causing the purchaser loss. That may include the loss of any deposit or any other moneys paid to the vendor/developer, the lost opportunity to purchase an alternative lot, or the difference between the price of the lot purchased and an alternative lot in a rising market.

The practice of a vendor or developer of land who is not the owner offering the land for sale to a purchaser without first having obtained all the relevant development approvals is widespread, especially amongst middle to lower tier developers. The practice is used to gain deposit moneys from purchasers as a way of satisfying banks to finance the completion of the development as the deposit moneys represent equity. The practice is not inherently bad; however, it is a risky transaction for the purchaser because there are not sufficient controls around this practice under the current Sale of Land Act to protect the purchaser. This is especially the case if the developer is unscrupulous and absconds with the deposit money without completing the development.

In 2014, the Supreme Court in *Barker v Midstyle Nominees Pty Ltd* found that these types of sales contracts are unenforceable by the developer/vendor. The court's decision has directly impacted finance and funding arrangements for the land development industry in Western Australia, which will ultimately affect the development and release of new lots onto the market and their affordability. This uncertainty could have a strong negative effect on the sustainability of an important driver of economic activity in Western Australia. This bill will amend the Sale of Land Act to re-establish certainty for purchasers and developers around the enforceability of sale contracts.

The Sale of Land Amendment Bill 2016 will introduce the following key reforms. To provide broader consumer protection, the restriction on the sale of subdivisional land will be applied to the sale of one or more lots in a subdivision, including strata subdivisions, rather than on sales of five lots or more, or two lots or more in a strata subdivision. To better inform consumers, it is proposed that a pre-contractual statutory warning be included in the future lot contract. This warning will state that the vendor is not currently the registered owner of the lot and include an explanation of the purchaser's rights. If it is not contained in the contract, then the contract will be illegal and void. For greater certainty, a contract of sale of any lot in a subdivision where the vendor is not the owner of the land—a "future lot contract"—will be conditional upon the vendor becoming the registered proprietor of the lot within six months, or such other date provided in the contract. A requirement has also been included for "reasonable endeavours" to cause the "vendor's condition" to be satisfied. This will place a vendor under an obligation to take all reasonable action to satisfy the conditions of the contract rather than having no obligation and manipulating the contract by purposely not gaining the approvals as a way of avoiding the contract. To provide greater surety of outcomes, an obligation to inform the purchaser about progress towards the vendor's condition being satisfied is taken to be included in the future lot contract by force of law.

To increase protection for purchasers, any deposit or other moneys paid to the vendor/developer will be held by a licensed settlement agent, real estate agent or solicitor in a trust account in Australia. Funds will be recoverable in the event of the contract of sale being terminated if the vendor's condition is not satisfied within six months, or such date as is provided in the future lot contract.

Higher penalties will be introduced for failure to comply with the Sale of Land Act. The penalty for breach of section 13, which applies the restrictions to the sale of land, is currently set at \$750. This penalty is considered to

be too low and is deemed inadequate in preventing a breach of section 13. The majority of stakeholders support increasing to \$100 000 the penalty for failure to place deposit moneys into a trust account, and for entering into a void contract, in order to provide a greater deterrent. A higher penalty of \$100 000 will also be introduced in sections 16 to 18 to deter vendors from false advertising, misrepresentation concerning public amenity, and house-to-house selling. These new provisions around future lot contracts align with the Planning and Development Act 2005 provisions for conditional contracts; so they have been well tested.

The Sale of Land Amendment Bill 2016 has been developed in close consultation with industry and government. The proposals for reform of the Sale of Land Act 1970 were developed by Landgate, based on this extensive consultation, and were unanimously supported by stakeholders. The draft bill was also consulted on widely, with stakeholders being given the opportunity to see the draft and provide comment.

As a result of this broad and ongoing consultation, I am confident that this bill provides a workable solution to the problems that came into being as a result of the uncertainty created in the case of *Barker v Midstyle Nominees*.

In conclusion, the Sale of Land Amendment Bill 2016 will facilitate better outcomes for both consumers and the land development industry, which will ultimately result in benefits for the Western Australian community.

I commend the bill to the house.

Debate adjourned, on motion by **Ms S.F. McGurk**.