

SALE OF LAND AMENDMENT BILL 2016

Second Reading

Resumed from 14 September.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [3.38 pm]: I rise to indicate that the opposition will be supporting this legislation that seeks to amend the Sale of Land Act 1970. This act does not allow the vendor if they are not the proprietor to enter into contractual arrangements for the sale of the property. When a vendor is preparing a property for subdivision, they have pre-sales. They will now need to use as evidence to the bank for full financing certain requirements that are set out in the bill before us. Up until now, it has been common practice for vendors to use the pre-sales as evidence to the bank for full financing. However, in the case of *Barker v Midstyle Nominees Pty Ltd* in which the purchasers were trying to get out of the contract, it became clear that the legislation did not reflect the current practice. This legislation does a couple of things. It addresses the need to provide certainty to industry so that it knows that it can get the finance that it requires. It also addresses the needs of the consumer to make sure that if the vendor is not the proprietor, certain conditions will apply to the enforcement of any contractual arrangements a consumer enters into. Those conditions include a warning in the contractual documents that the vendor is not the proprietor, and that warning needs to be in an approved form in the sales contract.

With respect to the vendor's condition, the vendor must be the registered proprietor of the property that they are trying to sell within six months or an agreed date, and that agreed date needs to be reflected in the contractual arrangements if both parties agree that the six months can be extended. Reasonable endeavours to meet financial ownership need to be able to be demonstrated. If the vendor is able to demonstrate those but still cannot complete the sale, the buyer can get out. Deposit moneys that are paid to the properties being sold must be held in an authorised institution and must be able to be audited. Those three conditions must be met to ensure that the sale contract is enforceable. The penalties for breaches of these conditions have been significantly lifted from, in some cases, around \$750 up to \$100 000. I am advised that consultation about the consumer protections and industry protections set out in this bill occurred with the Law Society of Western Australia, the Real Estate Institute of Western Australia and the Property Council of Australia and also with the consumer advisory body to the Department of Lands. It is important to know that the conditions set out in this legislation are not retrospective. It seems to be a sensible move to ensure that consumers' rights are protected and to provide vendors with certainty that the contractual arrangements they enter into can be enforced. With those comments, I indicate that we will support the legislation.

HON DONNA FARAGHER (East Metropolitan — Minister for Planning) [3.42 pm] — in reply: I thank Hon Sue Ellery for indicating the opposition's support for the Sale of Land Amendment Bill 2016. I agree that it is an important bill. It is a sensible bill because it seeks to protect consumers from the risks that are associated with purchasing from a vendor who is not yet the registered owner of a lot. Equally, it also provides certainty to facilitate the ongoing release of new lots by land developers. The legislation incorporates a number of reforms, particularly to provide broader consumer protections. Hon Sue Ellery mentioned that aspect, and it is obviously outlined in more detail in the second reading speech I gave earlier this year.

The legislation proposes that a pre-contractual statutory warning be included in the future lot contract. There is also greater certainty for a contract of sale of any lot in a subdivision in which the vendor is not the owner of the land. To increase protection for purchasers, any deposit or other moneys paid to the vendor or developer will be held by a licensed settlement agent, a real estate agent or a solicitor in a trust account in Australia. The 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 a date provided in the future lot contract. Hon Sue Ellery mentioned the higher penalties as well. A number of new requirements will be put in place through the passage of this legislation. When we deal with these matters, it is important that we have the right framework in place. Again, I mentioned this in my second reading speech. The government believes that the changes outlined in this bill are very much practical and workable solutions to problems that arose since the Supreme Court's decision in 2014 in the *Barker v Midstyle Nominees* case.

With that in mind, I indicate that the government is pleased to put this legislation to the house. I thank the opposition for its support. Can I also indicate that after the second reading, should the opposition be happy, I will seek leave to move to the third reading. Although Greens members are out on urgent parliamentary business, Madam Acting President—I hope they will not mind—they indicated to me earlier today that they did not need to go into Committee of the Whole House either.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Donna Faragher (Minister for Planning)** and transmitted to the Assembly.