

Property Agents and Motor Dealers and Other Legislation Amendment Bill 2010

Explanatory Notes

Short Title

The short title of the Bill is the *Property Agents and Motor Dealers and Other Legislation Amendment Bill 2010*.

Objectives of the Bill

The objectives of the Bill are to amend Chapter 11 of the *Property Agents and Motor Dealers Act 2000* (the PAMD Act) and to make parallel amendments to the *Body Corporate and Community Management Act 1997* (the BCCM Act). The Bill will simplify the processes for the delivery and presentation of contracts for the sale of residential property, while still maintaining consumer protection provisions, and thereby promote greater certainty in residential property sales. The Bill also makes miscellaneous amendments to the PAMD Act that aim to reduce red tape for industry.

Reasons for the Bill

The purpose of the current Chapter 11 provisions are to: (1) give a cooling-off period for persons entering into relevant contracts; (2) require all proposed relevant contracts and relevant contracts to include consumer protection information, including advising of the cooling-off period; and (3) enhance consumer protection by ensuring the independence of lawyers acting for buyers.

The PAMD Act requires sellers to continuously draw a buyer's attention to the warning statement, and the information sheet and disclosure statement if a unit sale, and to attach those documents to the proposed contract in a strict order. The documents must be delivered in that same order every time the buyer receives a copy of the proposed contract during the negotiation process. Different delivery methods for electronic or facsimile transmissions are prescribed and different processes must be followed. If

not followed exactly by the seller, a right to terminate arises for the buyer at any time before settlement. The courts have confirmed this interpretation.

Once the contract is signed by the seller, the buyer is only bound by the contract when the documents are delivered to the buyer in the same strict order. Buyers can therefore claim they are not bound by a contract simply because it was not delivered in a particular way, although under contract law principles, the concept of offer, acceptance and communication of the acceptance is enough to bind parties to the contract. The cooling-off period commences when the parties become bound by the contract.

Many real estate industry and legal stakeholders have indicated the processes for the delivery and presentation of residential real estate contracts under Chapter 11 are overly complex, prescriptive and difficult to comply with. As a consequence of the prescriptive nature of this part of the Act, many sellers or their agents have failed to comply with the strict processes. This has had serious, substantial consequences, not only for real estate agents, but also for sellers and the property market generally, as non-compliance with the technical requirements of Chapter 11 provides buyers with a right to terminate residential real estate contracts at any time prior to settlement.

Buyers seeking to avoid residential contracts have been able to rely on minor and technical breaches arising from, often inadvertent, failures by sellers or sellers' agents to comply with the requirements for delivery of contracts under Chapter 11. An example of a technical breach under the pre-amendment provisions is the circumstance where a seller might have given a relevant contract to a buyer via fax and in sending the fax the seller faxes the relevant contract pages before the warning statement pages. This technical breach is grounds for termination under the pre-amendment provisions of Chapter 11, even though the buyer's attention may have been drawn to the warning statement, they were fully aware of their rights and consequences of entering into the proposed relevant contract, and have suffered no loss as a result of the technical breach.

Buyers have been able to use technical breaches of Chapter 11 to terminate contracts sometimes years after the breach, even though they may not have suffered any material detriment because of the breach. For example, a buyer may simply have changed their mind about purchasing the property because they have found a better priced property. This is particularly relevant to long term contracts where a contract may be terminated many years after execution of the contract, for example, where units in a community title scheme are being bought off the plan. Finance is often

based on a level of pre-sales, and the ability of buyers to terminate contracts due to technical breaches merely if they have changed their minds is detrimental to sellers.

In 2008, the former Service Delivery and Performance Commission (the SDPC) conducted a review of the PAMD Act to identify the major regulatory features of the PAMD Act, its associated Regulation and Codes of Conduct and to recommend changes to reduce red tape for business while maintaining effective consumer benefits. The review report and government response were subsequently tabled in Parliament on 23 April 2009.

The SDPC made several recommendations which included the repeal and replacement of the current Chapter 11 Parts 1 - 3 requirements concerning the presentation and delivery of residential property contracts, and adding a requirement that a one page information statement be included in residential real estate contracts. The SDPC also recommended that parallel amendments be made to the BCCM Act. The Government did not support a complete repeal, as important consumer protection provisions are contained within Chapter 11, such as warning statements and the cooling-off period. Rather, the government supported a streamlining of the Chapter. SDPC also made a number of other recommendations to reduce red tape on the occupational industries regulated under the PAMD Act, and these recommendations were supported by the Government.

Achievement of the Objective

The Bill implements the Government's preferred approach to streamline the presentation and delivery of residential real estate contracts contained under Chapter 11. The Bill also contains amendments to the BCCM Act, which are parallel to the Chapter 11 amendments, and makes amendments to the PAMD Act to implement a number of other minor recommendations by the SDPC.

The Bill streamlines Chapter 11 of the PAMD Act by removing many of the prescriptive requirements for the presentation and delivery of residential real estate contracts and by limiting the circumstances under which a buyer may terminate a contract for technical breaches by the seller or seller's agent. However the principle of requiring a seller to draw a buyer's attention to important pre-contractual consumer protection information contained in the warning statement, and information sheet for unit sales, is retained. Under the amendments to the PAMD Act, it will be

an offence for a seller to not attach a warning statement, or information sheet for unit sales, to a proposed relevant contract or a relevant contract. However, the Bill removes the technical requirements for how the warning statement is to be attached to the contract and as such, removes the right to terminate the contract for a technical breach. A buyer will still have a right to terminate a contract for failure to comply with the requirement for the seller or the seller's agent to give a clear statement alerting the buyer to the warning statement, the information sheet if a unit sale, and the proposed relevant contract. The right to terminate must be exercised within 90 days of formation of the contract. If the buyer signs the warning statement they are taken to have had their attention drawn to the document and the buyer may not terminate the relevant contract.

Offences have been retained for other breaches of the amended requirements within Chapter 11, such as the seller failing to give the buyer a copy of the valuation before the relevant contract is entered into (s.367(2)) and the seller being required to have the warning statement attached to the relevant contract when the seller gives the buyer a copy of the relevant contract (s.368C(3)).

Parallel amendments have been made to the BCCM Act. This Act requires an information sheet to be given to buyers of lots and proposed lots that are not residential property. The amendments remove the requirement for sellers to comply with the prescriptive requirements for delivery and presentation of the information sheet contained in the BCCM Act and in Chapter 11 of the PAMD Act. However, the amendments to the Acts provide that buyers may terminate a contract for the sale of a residential lot under the BCCM Act if sellers do not comply with the requirement to give a clear statement to buyers directing their attention to the information sheet. For non-residential lots, buyers may terminate a contract if sellers do not attach the information sheet to the contract.

Alternative Ways of Achieving the Policy Objective

The alternative options considered in relation to the process for presentation and delivery of pre-contractual consumer protection documents were to: (1) adopt the SDPC recommendations as made; or (2) retain the status quo. Neither of these options was preferred.

The SDPC recommendation was to repeal the requirements of Chapter 11, and instead require that an information statement containing consumer protection information be included within the contract. This proposal was

not supported because the warning statement and information sheet, for unit sales, provides important consumer protection information that should be brought to the attention of the buyer prior to entering into the contract. A stand-alone warning statement provides more of an alert to proposed buyers and more strongly ensures consumers are forewarned and are aware of their rights. Retaining the status quo would not address the uncertainty created in the industry by the complex rules for provision of the documents and need to continually direct buyers to the documents through the pre-contractual negotiation process.

Estimated Cost for Government Implementation

There will be no additional costs to Government in implementing these changes. There are some costs associated with producing and publicising information to stakeholders, which will be absorbed within the Office of Fair Trading's budget.

Consistency with Fundamental Legislative Principles

Section 4(2)(a) of the Legislative Standards Act 1992 requires legislation to have sufficient regard to the rights and liberties of individuals. The Bill arguably infringes on this fundamental legislative principle by limiting the termination rights of buyers under contracts entered into prior to the amendment of Chapter 11. The Bill will provide that a buyer under a contract entered into prior to the commencement of the amended Chapter 11, will only be able to terminate that contract for the reasons provided in the amended Chapter 11. That is, these buyers will be afforded the same rights to terminate the contract as buyers under contracts entered into after commencement.

This means a buyer under an existing contract will lose the right to terminate the contract for the technical failure by a seller, or the seller's agent, to present the warning statement, or information sheet for a unit sale, in the way prescribed under the pre-amendment Chapter 11. For example, for a relevant contract that has been made at the time of commencement, a buyer will not be able to terminate that contract under the pre-amendment section 367 of the PAMD Act, after commencement, for failure to give the proposed relevant contract with the warning statement as the top sheet. Buyers are unlikely to suffer any material detriment as a result of this type of breach.

Stakeholders who represent developers have indicated that finance for community title developments is obtained based on contracts which have been entered into. Contracts for proposed lots in a community titles scheme to be established under the BCCM Act may take years to settle, as the construction and titling need to be completed before the buyer obtains title to the property. Buyers, who have entered into a contract some time ago and have a right to terminate because of some failure or non-observance of contract delivery requirements, may choose to terminate because they may be able to purchase property elsewhere at a lower price, or because a rise in interest rates now makes the property unaffordable. Stakeholders advise that some buyers who are aware of their right to terminate simply wait for the right moment to do so. A technical breach does not necessarily cause buyers any material detriment. There will be no certainty in the marketplace if buyers can avoid contracts, particularly long term contracts, because a seller has not strictly complied with the technical requirements of continuously drawing attention to a warning statement and/or delivered documents in a specific order.

The Bill provides that a buyer will still be able to terminate a contract for residential property if the warning statement or information sheet, for a unit sale, is not given, or if the seller fails to give a clear statement directing the proposed buyer's attention to the warning statement or information sheet, if for a unit sale. The termination right is limited to 90 days after a copy of the relevant contract has been received by the buyer.

The limited extinguishing of termination rights under the pre-amendment Chapter 11 provisions is considered justified as the impact on buyers will be minimised and it will restore certainty to the marketplace. It will balance the rights between buyers and sellers more equitably. The proposal will only remove the technical reasons for termination which are unlikely to result in financial loss or diminished assets for the buyers. It will also ensure parity between contracts made prior to amendment and those made on or after commencement.

Key consumer protection measures, such as the cooling-off period and the requirement to attach a warning statement remain unchanged. Buyers are able to place additional terms and conditions within the sale contract such as finance approval and building and pest inspections. The transitional amendments do not affect those existing rights.

Consultation

Community

The SDPC undertook extensive consultation during its review of the PAMD Act, including consultation with the Queensland Consumers Association, the Real Estate Institute of Queensland and the Queensland Law Society.

Targeted consultation was undertaken with key stakeholder representatives on a draft Bill, including the Queensland Consumers Association, Queensland Law Society, Real Estate Institute of Queensland, Urban Development Institute of Australia, the Property Council of Australia, and the Motor Trades Association Queensland.

Government

Consultation was undertaken with the Department of the Premier and Cabinet, Queensland Treasury, the Department of Justice and Attorney-General, and other appropriate Government agencies.

Uniform or Complementary with legislation of the Commonwealth or another State

Neither the PAMD Act nor the BCCM Act is uniform or complementary with legislation of the Commonwealth or another State.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 provides that the commencement date for the Act is 1 October 2010.

Part 2 Amendment of Property Agents and Motor Dealers Act 2000

Clause 3 provides that Part 2 of the Bill and the schedule to the Bill amend the PAMD Act.

Clause 4 provides that the Bill amends Chapter 11 by omitting parts 1 to 3 and inserting new parts 1 to 3B.

Part 1 outlines the purpose of the chapter and contains preliminary provisions including definitions for Chapter 11. Section 363 outlines the purposes of Chapter 11, which are to give buyers who enter into relevant contracts a cooling-off period, to require all proposed relevant contracts or relevant contracts to have consumer protection information attached, to ensure the independence of lawyers acting for buyers, and to impose certain obligations on seller's agents in relation to information on sustainable housing measures for the sale of particular residential property. Section 364 contains definitions for terms in Chapter 11. Section 365 declares that Chapter 11 is subject to the provisions of the *Electronic Transactions (Queensland) Act 2001*.

Part 2 provides for the provision of a lawyer's certificate and property valuations. Section 366 requires a lawyer engaged by a buyer for the proposed purchase or the purchase of a residential property to provide the proposed buyer or buyer with a lawyer's certificate in the approved form and explain the purpose and nature of this certificate to the buyer. The certificate must be signed and dated by the lawyer, and must contain certain information, including whether the lawyer is independent of the seller, the seller's agent or anyone else involved in the sale, and whether the lawyer has or will receive any benefit, other than professional costs and disbursements payable by the buyer, in relation to the sale of the property. The signed certificate must also state that the lawyer has explained to the buyer the purpose and nature of the certificate.

Section 367 ensures that a buyer is to receive a copy of a property valuation that the buyer has paid for, before the relevant contract is entered into. Where a term of a relevant contract requires a buyer to pay for a valuation of the property, or the seller or seller's agent otherwise requires that the buyer must pay for a valuation, the buyer must receive a copy of the property valuation from the seller or seller's agent before the relevant contract is entered into, regardless of whether this is a term of the relevant

contract or otherwise required by the seller or seller's agent. Failure to do this is an offence which attracts a penalty of up to 200 penalty units, but it does not affect the validity of the relevant contract. The term of the relevant contract or requirement is only effective if the buyer receives the valuation and acknowledges receipt of the valuation in writing. This must occur before the buyer enters into the relevant contract.

Part 3 provides for the provision of a warning statement, the content and effectiveness of a warning statement, that a warning statement must be attached to a proposed relevant contract when given to a buyer for signing, and that the warning statement must be attached to the relevant contract when the seller gives the buyer a copy of the relevant contract.

Section 368 sets out the information which must be included on a warning statement. Section 368(2) provides that the warning statement is of no effect unless the words are presented in substantially the same way as the words are presented on the approved form.

Section 368A applies when a proposed relevant contract is given to a proposed buyer by a seller, for the buyer to sign. For the purposes of this section, it does not matter whether the proposed relevant contract has been signed by the seller. Section 368A requires that where a seller or seller's agent gives a proposed relevant contract to a buyer for signing, a warning statement, and, if the property is a unit, an information sheet must be attached to the proposed relevant contract. It requires a seller to give a proposed buyer a clear statement directing the buyer's attention to the warning statement, information sheet (if the property is a unit) and the proposed relevant contract. The clear statement may be made orally or in writing. An example of a written clear statement (in this example for the sale of a unit) is that it could be a paragraph drawing the buyer's attention to the proposed relevant contract, warning statement and information sheet included in a covering letter that is given to the buyer with the proposed relevant contract, warning statement and information sheet. The statement in the letter could read as follows—'Your attention is drawn to the warning statement, information sheet and proposed relevant contract accompanying this letter.' A statement given orally could be an appropriately modified verbal statement to the same effect. The new section 368A(3) declares that a clear statement has not been given if, at the time the statement is given, the warning statement, or information sheet (for unit sales) is not attached to the proposed relevant contract.

Section 368A(4) and (5) make it clear that a proposed relevant contract does not become another proposed relevant contract if the residential

property concerned and the parties to the contract remain the same. This is regardless of whether the terms and conditions of the proposed relevant contract change, either textually amended on the original proposed relevant contract or another proposed relevant contract form is prepared to incorporate the changes.

Section 368A(6) provides that if a warning statement, and an information sheet, if a unit sale, are not attached to the proposed relevant contract and a clear statement is not given directing the proposed buyer's attention to the proposed relevant contract, warning statement, and information sheet where it is a unit sale, then an offence has been committed to which a penalty of up to 200 penalty units applies. If it was the seller who gave the proposed relevant contract to the buyer, then it is the seller who has committed the offence. If it was the seller's agent who gave the proposed relevant contract to the buyer, then it is the seller's agent who has committed the offence.

Section 368B provides a defence for this offence. The defence applies where the seller or the seller's agent notifies the proposed buyer of the failure to comply and withdraws the proposed relevant contract at any time before the proposed relevant contract becomes a relevant contract. The notice must identify the failure to comply, and state the proposed relevant contract is withdrawn and whether or not new documents complying with the requirements will be given.

Section 368C provides that the warning statement must also be attached to a copy of the relevant contract when the seller gives the buyer a copy. If the relevant contract is in relation to a unit sale, then the information sheet must also be attached. Failure to attach the warning statement, or for a unit sale failing to attach either the warning statement or the information sheet, is an offence attracting a penalty of up to 200 penalty units. If it was the seller personally who gave the copy of the relevant contract to the buyer, then it is the seller personally who has committed the offence. If it was the seller's agent who gave the copy of the relevant contract to the buyer, then it is the seller's agent who has committed the offence.

Section 368C only applies in relation to section 368A, and specifically does not apply in the circumstance where a buyer initiates the sale by giving the seller a signed proposed relevant contract. Section 368C only applies in relation to section 368A where the seller has given the buyer a proposed relevant contract. In the circumstances outlined above, where the buyer signs the contract and gives it to the seller to sign, when the seller signs and returns the contract to the buyer, it is then a relevant contract and

the seller has not given the buyer a proposed relevant contract in the process.

The amended chapter 11 continues to provide the ability to terminate relevant contracts during the cooling-off period. Part 3A defines a cooling-off period and outlines how a buyer may waive or shorten the cooling-off period. The new section 369 defines the cooling-off period for a relevant contract to be five business days. A business day is defined in the amended section 364, in clause 4 of this Bill as being any day other than a Saturday, Sunday or public holiday. The five day cooling-off period commences on the day the buyer receives a copy of the relevant contract from the seller. If the buyer receives a copy of the relevant contract on a Saturday, Sunday or public holiday, the period commences on the first business day after that day. The five day cooling-off period ends at 5p.m. on the fifth business day.

The new section 369 gives a simple example of a cooling-off period. A further example is where a copy of the relevant contract is given to a buyer at 7p.m. on a day that is a business day. Assume this day is a Thursday and that the Friday is a public holiday. The cooling-off period would end at 5p.m. on the following Thursday.

Section 369(2) clarifies when a buyer is taken to receive a copy of the relevant contract from the seller for the purpose of calculating the cooling-off period in the circumstance where the seller signs a proposed relevant contract first and gives it to the buyer to sign. In this case, the cooling-off period will not commence until the buyer has both signed the proposed relevant contract and communicated the buyer's acceptance of the seller's offer to the seller.

New section 369A provides for the waiving of the cooling-off period prior to entering into a relevant contract. New Section 369B provides for shortening the cooling-off period once it has commenced. Under the new sections, a buyer may only waive or shorten the cooling-off period for a relevant contract by giving the seller under that proposed relevant contract a lawyer's certificate. The certificate must be in the approved form, and must be given to the seller before the buyer and seller enter into the relevant contract. The new sections 369A and 369B outline the components of the lawyer's certificate and when it must be given to the seller.

Part 3B provides rights for terminating a relevant contract. Section 370 provides that a buyer may terminate a relevant contract where a clear statement under section 368A(2)(c)(i) has not been given to the buyer. A

buyer may terminate a relevant contract any time before the relevant contract settles by giving a signed and dated notice to the seller that the contract is terminated under this section. However, limitations have been placed on this right. The buyer may not terminate the relevant contract under this section if the buyer has signed the warning statement attached to the proposed relevant contract before the buyer signed the proposed relevant contract. Also, the termination must be exercised within 90 days after the day the buyer receives the relevant contract.

Section 370 requires the seller to refund any deposit paid under the relevant contract to the buyer within 14 days of the termination. Failure to comply with this requirement attracts a maximum penalty of 200 penalty units. The section prescribes that the seller personally or the seller's agent is liable to the buyer for the buyer's reasonable legal and other expenses incurred in relation to the relevant contract after it was signed. Under this section, any amount payable to the buyer is recoverable as a debt.

The proposed section 370A gives buyers a right to terminate a relevant contract during the cooling-off period. The section provides that where a buyer has not waived the cooling-off period, the buyer may terminate a relevant contract at any time during the cooling-off period. If the cooling-off period has been shortened in accordance with section 369B, then notice to terminate may be given at any time during this shortened period. Such a termination is effected by the buyer giving to the seller a signed and dated notice of termination, stating that the relevant contract is terminated under section 370A.

The seller is permitted to deduct from any deposit paid an amount not greater than the termination penalty, which is defined in the new section 364 to be an amount equal to 0.25% of the purchase price under the relevant contract. The seller must refund to the buyer, any deposit that has been paid under the relevant contract within 14 days of the termination of the contract under this section. If the seller is deducting a termination penalty, then this may be deducted from the deposit before the balance of the deposit is refunded. There is a maximum penalty of 200 penalty units for not making the refund within 14 days of the termination of the contract, and any amount payable to the buyer under section 370A(4) is recoverable as a debt.

Clause 5 inserts the new Chapter 19, Part 8, which covers transitional provisions for the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010.

The new section 644 provides definitions for transitional terms.

The new section 645 provides transitional arrangements for the termination of contracts entered into prior to the commencement of the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010 (a pre-amendment relevant contract). This section provides that once the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010 commences, buyers who are a party to a pre-amendment relevant contract will not be able to terminate that contract on the basis of a breach of the pre-amendment Chapter 11 provisions. However, if a pre-amendment relevant contract has been terminated prior to commencement, the termination will continue to have effect.

Prior to commencement, if a buyer and seller have a signed relevant contract, but at some point in the giving of the contract to the buyer, the seller or the seller's agent breached pre-amendment section 365(1) then the buyer is able to withdraw the offer to purchase under section 365(3) as they are not bound by the contract because of the breach of section 365(1). The withdrawal of the offer to purchase may happen at any time up until being bound by the relevant contract. The new section 646(1) provides that section 646(2) applies where a buyer and seller are not bound under a relevant contract prior to commencement of the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010 because of a breach of the pre-amendment section 365(1) and the buyer would have been able to withdraw the offer to purchase under section 365(3). Section 646(2) provides that in such circumstances the buyer will not be able to withdraw the offer to purchase for that reason after the commencement of the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010. Section 646(3) provides that where such a withdrawal of an offer to purchase already has effect immediately prior to commencement, that withdrawal of the offer to purchase continues to have effect.

The new section 647 provides that where a proposed relevant contract is given to a proposed buyer by a seller or a seller's agent before commencement and the proposed relevant contract became or becomes a relevant contract before, on or after commencement then the buyer has the right to terminate under the new section 370, not under pre-amendment Chapter 11 provisions. The section makes amendments to ensure the application of section 370 to pre-amendment relevant contracts.

Section 647(5) provides that for pre-amendment contracts, the warning statement is taken to be a warning statement as defined under pre-amendment Chapter 11, but 'attached' has the meaning as given in the

amended Chapter 11. This ensures that the technical provisions regarding presentation of contracts and warning statements under the pre-amendment chapter 11 do not apply.

Section 648 enables a buyer with a pre-amendment relevant contract to terminate the contract before the expiry of the cooling-off period under section 370A of the amended Chapter 11, where that cooling-off period has not ended before the commencement of the amendments. Again, the section is to include all necessary amendments to ensure it applies to pre-amendment relevant contracts.

Section 649(1) provides that a cooling-off period for a pre-amendment relevant contract that has begun before commencement and has not ended before commencement remains the cooling-off period for that relevant contract. For example, where a relevant contract's cooling-off period, which has not been shortened, begins the day before commencement, the cooling-off period for that relevant contract would continue until the close of the fifth business day after the cooling-off period began, despite the commencement of the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010. Section 649(2) provides that any waiving or shortening of the cooling-off period for a pre-amendment relevant contract will also continue to have effect after commencement.

Section 649(3) provides that section 649(4) applies if the cooling-off period of a pre-amendment relevant contract had not started at commencement of the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010 because the buyer was not bound by it under section 365 of the PAMD Act. For a relevant contract other than a contract relating to a unit sale, this would occur when the buyer had received the warning statement and relevant contract, but not in accordance with the requirements in section 365(2). For a relevant contract relating to a unit sale, this would occur when the buyer had received the warning statement, information sheet and relevant contract, but not in accordance with the requirements in section 365(2A). Section 649(4) provides that if, at commencement, the buyer has received a copy of the pre-amendment relevant contract and the circumstances in section 649(3) apply, then the buyer is taken to have received a copy of the relevant contract on commencement and this is day from when the cooling-off period for that relevant contract starts.

Section 650 ensures that where a person is alleged to have committed an offence against a prescribed provision before the commencement of the Property Agents and Motor Dealers and Other Legislation Amendment Act

2010, proceedings for the offence may be continued or started as if that Act had not been enacted.

Section 651 provides that any amendment to the *Property Agents and Motor Dealers Regulation 2001* by the Property Agents and Motor Dealers and other Legislation Amendment Act 2010 does not affect the powers of the Governor in Council to make further amendments to the regulation or to repeal the regulation.

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

Clause 6 provides that Part 3 amends the BCCM Act.

Clause 7 amends the definitions contained in section 205A of the BCCM Act to be consistent with the definition of ‘*attached*’ in the PAMD Act as amended by the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010. *Clause 7* also removes the definition of *warning statement* from the BCCM Act as all requirements for warning statements are to be contained within Chapter 11 of the PAMD Act and not in the BCCM Act.

Clause 8 inserts a note referring to examples in the *Electronic Transactions (Queensland) Act 2001*.

Clause 9 is in relation to existing lots, and amends section 206 by removing the prescriptive requirements as to how an information sheet is to be attached and now simply requires a seller of a lot that is not residential property to have an information sheet in the approved form attached to the contract when the contract is given to the buyer. For residential property, clause 9 removes the requirement for an information sheet and a warning statement to be given in a way prescribed by the PAMD Act, as the requirement for an information sheet and a warning statement to be attached to a contract is already included in the PAMD Act. The chief executive may approve a form for an information sheet for a lot that is residential property under section 320 of the BCCM Act. Section 206 is also amended to replace the word ‘cancel’ with ‘terminate’. The amended section 206(7)(b) permits a buyer to terminate a contract that has not settled

where the seller has not attached an information sheet when a contract for an existing lot that is not residential property is given to the buyer.

Previously, rules about how an information sheet is to be attached to a proposed relevant contract for residential property were included in the PAMD Act. This Bill removes those prescriptive requirements from the PAMD Act and includes the amendment to section 206 in the BCCM Act for the requirement to attach an information sheet and the termination right if an information sheet is not attached.

Clause 10 omits the current section 206A to remove the prescriptive requirements as to how the information sheet must be given for section 206(5). The new section 206A applies to contracts for residential property where the seller has failed to give the clear statement relating to an information sheet, as required by the PAMD Act, section 368A(2)(c)(ii). The buyer may terminate the contract at any time before the contract settles by giving the seller a signed and dated notice of termination. However, the termination must be given within 90 days of the day the buyer receives a copy of the contract from the seller, and the notice of termination must state that it is given under section 206A of the BCCM Act. Section 206A(3) provides that a buyer may not terminate a relevant contract if the buyer signed the information sheet attached to the contract form, as required by the new section 368A(2)(b) of the PAMD Act, before the buyer signed the contract form.

The clause also sets out who is responsible for the buyer's reasonable legal and other expenses incurred by the buyer in relation to the contract after it was signed, and that any amount payable to the buyer is recoverable as a debt.

Clauses 11, 12 and 13 update the language used in sections 209, 210 and 212A of the BCCM Act to align with terminology used in the PAMD Act around termination.

Clause 12 also adds a condition to section 210 of the BCCM Act that the seller must repay to the buyer any amount paid to the seller towards the purchase of the lot within 14 days of the termination.

Clause 14 is in relation to proposed lots, and amends section 213 by requiring a seller of a lot that is not residential property to have an information sheet in the approved form attached to the contract when the contract is given to the buyer. The chief executive may approve a form for an information sheet for a proposed lot that is residential property under section 320 of the BCCM Act. Section 213 is also amended to replace the

word ‘cancel’ with ‘terminate’. The amended section 213(6)(b) permits a buyer to terminate a contract that has not settled where the seller has not attached an information sheet when a contract for a proposed lot that is not residential property is given to the buyer.

Clause 15 omits the current section 213A to remove certain requirements as to how the information sheet must be given for section 213(5). The new section 213A applies to contracts for residential property where the seller has failed to give the clear statement relating to an information sheet, as required by the PAMD Act, section 368A(2)(c)(ii). The buyer may terminate the contract at any time before the contract settles by giving the seller a signed and dated notice of termination. However, the termination must be exercised within 90 days of the day the buyer receives a copy of the contract from the seller. Section 213A(3) provides that a buyer may not terminate the relevant contract if the buyer signed the information sheet attached to the contract form, as required by the new section 368A(2)(b) of the PAMD Act, before the buyer signed the contract form.

Clause 15 also requires the seller to refund to the buyer any amount paid to the seller towards the purchase of the lot, within 14 days of the termination and sets out who is responsible for the buyer’s reasonable legal and other expenses incurred in relation to the contract after it was signed by the buyer, and that any amount payable to the buyer is recoverable as a debt.

Clauses 16 – 21 update the language used in the BCCM Act to align with terminology used in the PAMD Act around termination. Clause 18 and clause 21 also amend sections 218 and 224 respectively to add that the repayment of amounts paid to the seller towards the purchase of a proposed lot must be made to the buyer within 14 days from the date of a termination under Part 2 of Chapter 5 (section 218) and under Part 3 of Chapter 5 (section 224).

Clause 22 inserts Chapter 8, Part 8, into the BCCM Act which covers transitional provisions for the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010. The new section 368 provides definitions for transitional terms in the new Part 8. The new section 369 provides that once the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010 has commenced, a pre-amendment contract can not be cancelled under the pre-amendment provisions. However, any cancellation on foot that has been made under pre-amendment provisions at the time of commencement of the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010 continues to have effect after commencement.

The new section 370 provides that where a contract form for an existing lot that is not residential property is given to a proposed buyer by a seller before commencement and the contract form became or becomes a contract before, on, or after commencement then the buyer has the right to terminate under the new section 206(7)(b), not under pre-amended provision, section 206(7)(b). The section makes amendments to ensure the application of section 206(7)(b) to pre-amendment non-residential contracts.

Section 370(4) provides that for pre-amendment non-residential contracts, the information sheet is taken to be an information sheet as defined under pre-amended provision, section 206(5), but 'attached' has the meaning as given in the amended Chapter 5 of the BCCM Act. This ensures that the technical provisions regarding presentation of contracts and information sheets under the pre-amended provisions do not apply.

The new section 371 provides that where a contract form for an existing lot that is residential property is given to a proposed buyer by a seller before commencement and the contract form became or becomes a contract before, on or after commencement then the buyer has the right to terminate under the new section 206A, not under pre-amended provision, section 206(7)(b). The section makes amendments to ensure the application of section 206A to pre-amendment residential contracts.

Section 371(5) provides that for pre-amendment residential contracts, the information sheet is taken to be an information sheet as defined under pre-amended provision, section 206(6), but 'attached' has the meaning as given in the amended Chapter 5 of the BCCM Act. This ensures that the technical provisions regarding presentation of contracts and information sheets under the pre-amended provisions do not apply.

The new section 372 provides that where a contract form for a proposed lot that is not residential property is given to a proposed buyer by a seller before commencement and the contract form became or becomes a contract before, on, or after commencement then the buyer has the right to terminate under the new section 213(6)(b), not under pre-amended provision, section 213(6)(b). The section makes amendments to ensure the application of section 213(6)(b) to pre-amendment non-residential contracts.

Section 372(4) provides that for pre-amendment non-residential contracts, the information sheet is taken to be an information sheet as defined under pre-amended provision, section 213(5), but 'attached' has the meaning as

given in the amended Chapter 5 of the BCCM Act. This ensures that the technical provisions regarding presentation of contracts and information sheets under the pre-amended provisions do not apply.

The new section 373 provides that where a contract form for a proposed lot that is residential property is given to a proposed buyer by a seller before commencement and the contract form became or becomes a contract before, on, or after commencement then the buyer has the right to terminate under the new section 213A, not under pre-amended provision, section 213(6)(b). The section makes amendments to ensure the application of section 213A to pre-amendment residential contracts.

Section 373(5) provides that for pre-amendment residential contracts, the information sheet is taken to be an information sheet as defined under pre-amended provision, section 213(5A), but ‘attached’ has the meaning as given in the amended Chapter 5 of the BCCM Act. This ensures that the technical provisions regarding presentation of contracts and information sheets under the pre-amended provisions do not apply.

Clause 23 removes the definition of warning statement from the Dictionary in Schedule 6 as all requirements for warning statements are to be contained within Chapter 11 of the PAMD Act and not in the BCCM Act. Clause 23 also inserts the definitions for transitional terms provided in Part 8 into the Dictionary in Schedule 6.

Part 4 Schedule Other Amendments

Clause 24 provides that the Schedule in the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010 amends the legislation mentioned in the Schedule. The legislation amended in the Schedule is the PAMD Act and the *Property Agents and Motor Dealers Regulation 2001*.

The amendments in this schedule implement some minor recommendations made by the SDPC that the Government supports.

Amendments to the *Property Agents and Motor Dealers Act 2000*

Clause 1 of the Schedule removes the requirement for applicants, other than those applying for a commercial agent's licence, to provide photographs. It inserts words to specify that only an applicant for a commercial agent's licence needs to provide two certified recent photographs of the applicant as specified by the *Property Agents and Motor Dealers Regulation 2001*.

Clause 2 of the Schedule inserts a new provision (section 23A) requiring an applicant for a resident letting agent's licence to satisfy the chief executive that prescribed approval has been provided by the body corporate of the building complex in which the applicant will carry on the business of letting lots before a licence will be issued. This removes the requirement to provide body corporate approval with the application, but requires body corporate approval to be provided before the chief executive may issue the licence.

Clause 3 of the Schedule makes a minor drafting correction.

Clause 4 of the Schedule omits the current section 35(1)(c)(i). Section 35(1)(c)(i) requires an applicant to satisfy the chief executive that the person has body corporate approval to carry on a business of letting lots in the building complex, when applying for a resident letting agent's licence. The amendment will mean that this approval will not need to be provided at the time of applying for a licence. However, in accordance with the new sections 23A and 49(2)(d), the approval will still be required to be provided to the chief executive before the chief executive may issue the licence. This will enable the person to finalise negotiations with the body corporate at the same time as their licence application is being processed.

Clause 5 of the Schedule amends numbering due to amendments.

Clause 6 of the Schedule omits the current section 35(3)(a). Section 35(3)(a) requires a corporation that is an applicant to satisfy the chief executive that the corporation has body corporate approval to carry on a business of letting lots in the building complex, when applying for a resident letting agent's licence. The amendment will mean that this approval will not need to be provided at the time of applying for a licence. However, in accordance with the new sections 23A and 49(2)(d), the approval will still be required to be provided to the chief executive before the chief executive may issue the licence. This will enable the corporation to finalise negotiations with the body corporate at the same time as their licence application is being processed.

Clauses 7 to 9 of the Schedule make minor amendments to renumber provisions and update language.

Clause 10 of the Schedule amends section 44 to remove the requirement for motor dealer licence applicants to satisfy the chief executive that the use of the place of business is authorised under the *Sustainable Planning Act 2009*.

Clause 11 of the Schedule removes the requirement in section 44(3)(b) for a corporation to satisfy the chief executive that the place at which the corporation intends to carry on the business as a motor dealer is authorised for such use under the *Sustainable Planning Act 2009*.

Clause 12 of the Schedule inserts a new provision under section 49(2) that states that if a licence application is for a resident letting agent's licence, the applicant must have received the prescribed approval under the new section 23A before the chief executive may issue the licence.

Clauses 13 and 14 of the Schedule make minor drafting adjustments and corrections.

Clause 15 of the Schedule amends section 84 to remove the requirement for applicants for registration as a registered employee to supply the name and business address of the licensee by whom the applicant is to be employed. Categories of registered employees are listed in section 82 of the PAMD Act and include, for example real estate salespersons and motor salespersons.

Clauses 16 of the Schedule makes a minor amendment to renumber section 84.

Clause 17 of the Schedule removes mention of an employment authority as these amendments are removing the requirement for licensees to give employment authorities.

Clause 18 of the Schedule amends section 94 to remove the requirement for applicants for renewal of registration as a registered employee to supply the name and business address of the licensee by whom the applicant is employed.

Clause 19 of the Schedule makes a minor amendment to renumber section 94.

Clause 20 of the Schedule amends section 97 to remove this requirement for applications for registration restoration.

Clause 21 of the Schedule makes a minor amendment to renumber section 97.

Clause 22 of the Schedule makes a minor drafting correction.

Clause 23 of the Schedule amends section 109 to remove the requirement to show the name and business address of the proposed employer on the registration certificate register for applicants for a registration certificate.

Clause 24 of the Schedule makes a minor amendment to renumber section 109(3)(a).

Clause 25 of the Schedule amends section 109 to remove the requirement to show the name and business address of the employer on the registration certificate register for registered employees.

Clause 26 of the Schedule makes a minor amendment to renumber section 109(3)(b).

Clause 27 of the Schedule amends section 129 to remove the requirement to ensure an employed real estate salesperson acts only within the scope of the person's employment authority as a result of the removal of section 130 of the PAMD Act.

Clause 28 of the Schedule omits section 130 to remove the requirement for a real estate agent to give an employed salesperson an employment authority.

Clause 29 of the Schedule amends section 159 to remove the note to section 159(2) of the PAMD Act indicating that an employment authority must be provided to a salesperson.

Clause 30 of the Schedule updates terminology from 'residential service' to 'rooming accommodation'.

Clauses 31 – 32 of the Schedule make minor drafting corrections.

Clause 33 of the Schedule amends section 169 to remove the requirement to ensure an employed pastoral house salesperson acts only within the scope of the person's employment authority as a result of the removal of section 170 of the PAMD Act.

Clause 34 of the Schedule omits section 170 to remove the requirement for a pastoral house to give an employed pastoral house salesperson an employment authority.

Clause 35 of the Schedule amends section 196 to remove the note to section 196(2) of the PAMD Act indicating that an employment authority must be provided to a pastoral house salesperson.

Clause 36 of the Schedule amends 206 to remove the requirement to ensure a trainee auctioneer acts only within the scope of the trainee's employment authority as a result of the removal of section 207 of the PAMD Act.

Clause 37 of the Schedule omits section 207 to remove the requirement for an auctioneer to give an employed trainee auctioneer an employment authority.

Clauses 38 – 41 of the Schedule make minor drafting corrections.

Clause 42 of the Schedule amends section 253 to remove the note to section 253(2) of the PAMD Act indicating that an employment authority must be provided to a trainee auctioneer.

Clause 43 of the Schedule amends section 264 to remove the requirement to ensure a property developer salesperson acts only within the scope of the salesperson's employment authority as a result of the removal of section 265 of the PAMD Act.

Clause 44 of the Schedule omits section 265 to remove the requirement for a property developer to give an employed property developer salesperson an employment authority.

Clause 45 of the Schedule amends section 274 to remove the note to section 274(2) of the PAMD Act indicating that an employment authority must be provided to a property developer salesperson.

Clause 46 of the Schedule amends section 280 to remove the requirement for a motor dealer to ensure a motor salesperson acts only within the scope of the motor salesperson's employment authority as a result of the removal of section 281 of the PAMD Act.

Clause 47 of the Schedule omits section 281 to remove the requirement for a motor dealer to give a motor salesperson an employment authority.

Clause 48 of the Schedule amends section 327(1) to remove the requirement for a motor dealer who is a principal licensee to provide documentary evidence to the chief executive that, where there is a change of place of the licensee's business, that the use of the new premises is lawful under the *Sustainable Planning Act 2009*.

Clause 49 of the Schedule amends section 327(3) to remove the requirement for a motor dealer who is a principal licensee to provide

documentary evidence to the chief executive that, where a new place of business is opened, that the use of the new premises is lawful under the *Sustainable Planning Act 2009*.

Clause 50 of the Schedule amends section 329 to remove the note to section 329(2) of the PAMD Act indicating that an employment authority must be provided to a motor salesperson.

Clause 51 of the Schedule amends section 340 to remove the requirement for a commercial agent to ensure a commercial subagent acts only within the scope of the subagent's employment authority as a result of the removal of section 341 of the PAMD Act.

Clause 52 of the Schedule omits section 341 to remove the requirement for a commercial agent to give an employed commercial subagent an employment authority.

Clause 53 of the Schedule amends section 353 to remove the note to section 353(2) of the PAMD Act indicating that an employment authority must be provided to a commercial subagent.

Clause 54 of the Schedule amends section 375 to remove the requirement for a licensee to provide written notice to the chief executive prior to opening a trust account or special trust account. The requirement to then provide the chief executive's acknowledgement of this notice to the financial institution prior to the opening of the account is also removed. Instead, the clause requires that a trust account or special trust account can only be opened at an approved financial institution within the State, and that the licensee must provide a copy of the licensee's licence before opening the account. The clause also imposes a maximum penalty of 200 penalty units for not complying with either subsection of section 375.

Clause 55 of the Schedule amends section 377 of the PAMD Act such that written notice must be given to the chief executive within 14 days if a licensee opens, changes the name of, or closes a trust account or special trust account.

Clause 56 of the Schedule amends section 496 to remove as grounds for starting disciplinary proceedings the circumstance where a registered employee has performed an activity not authorised under the employee's authority statement as there is no longer a requirement for an authority statement.

Clauses 57 and 58 of the Schedule make minor drafting corrections.

Clause 59 of the Schedule removes definitions for ‘disclosure statement’ and ‘employment authority’ from the Dictionary. This is because requirements for disclosure statements and employment authorities have been removed from the PAMD Act.

Clause 60 of the Schedule inserts definitions into the Dictionary for ‘amended chapter 11’, ‘benefit’, ‘commencement’, ‘formed on a sale by auction’, ‘pre-amended chapter 11’ and ‘pre-amendment relevant contract’.

Clauses 61 – 63 of the Schedule make minor drafting corrections.

Amendments to the *Property Agents and Motor Dealers Regulation 2001*

Clause 1 of the Schedule amends section 12 to remove the requirement to notify the chief executive of a change of a registered employee’s employer or place of employment.

Clause 2 of the Schedule provides for renumbering.

Clause 3 of the Schedule amends section 15 to remove the requirement for information about authority statements to be included in an employment register.