DAVID MORRIS MP
Member for Mornington

Outlawing Sunset Clauses in Off-The -Plan Purchases

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Mr MORRIS (Mornington) (18:25): I am glad we got back to the bill eventually.

The Sale of Land Amendment Bill 2019 amends the Sale of Land Act 1962, the Anzac Day Act 1958 and the Estate Agents Act 1980.

I think it is reasonable to say that, compared with many markets, the Victorian property market, particularly the housing market, operates reasonably well. It is certainly not perfect, and I am not suggesting all participants—I am thinking particularly now of first home buyers—find it an easy market, but in terms of market structure I think it works reasonably well.

But it is often said that buying a house—or, more correctly, buying a dwelling—is the most significant purchase most people will make in their lifetime. There is significant debt involved and consequently there is an element of risk.

That risk is often overlooked in a rising market. But as we know, even in times of a rising market there can be traps for the unwary, not necessarily because of illegal or inappropriate behaviour by some participants in the market but still potentially challenging for the inexperienced.

The Sale of Land Act then is an important part of our consumer protection legislation. It is often not thought of in the sense of being consumer protection legislation, particularly given that in probably most transactions the buyer and seller have pretty much the same sort of market power, whereas most consumer law is concerned about protecting the rights of the consumer versus the vendor or the rights and obligations of the vendor, and appropriately so because the relative power is often significantly different.

The changes that are proposed here are essentially about improving the operation of the existing legislation.

I think the member for Macedon talked about restrictions on the use of sunset clauses in off-the-plan contracts, and that is certainly an important element of this bill. I want to focus basically on that, but certainly the bill also proposes prohibition of the use of certain types of contracts. It proposes the prohibition of rent-to-buy arrangements under some circumstances and the regulation of moneys paid with regard to land banking schemes and of course the inevitable and necessary consequential amendments.

As I have noted, the bulk of the transactions in the housing market are between vendors and purchasers with relatively equal market power, but there are of course some circumstances where that is not the case. If you are purchasing a block of land in a large subdivision, that is an obvious one.

There might be somewhere between 30 and 200 lots in a large subdivision; obviously there is an imbalance there. If you are purchasing an apartment in a 200-apartment block, there is obviously an imbalance of power there.

Clause 12 inserts new sections into the Sale of Land Act to introduce arrangements to govern those purchases known as off the plan.

Buying off-the-plan essentially means you are buying something that is not yet built. It has proved an effective method of gauging buyer sentiment. It has proved an effective method of providing some early finance for developers. It has often been used to provide assurance to a bank or some other source of finance that the project is in fact financially sound.

Of course it also means that a significant deposit is paid, and the benefit to the purchaser is generally that there is an opportunity or a potential opportunity to pay significantly less stamp duty than you would pay if you were buying an existing property.

As all members would be aware, in the period to probably around about November 2017 we had a solidly rising market for a number of years and property prices grew strongly. That generated a situation where properties that had been purchased off the plan were often worth significantly more when it came time to complete the transfer than they had been when the project was commenced and the initial deposit was paid.

These contracts were not of course open-ended, and indeed purchasers had a right under the existing legislation to rescind a contract if the plan of subdivision was not registered within 18 months of the contract being entered into or alternatively some other period which is stated in the contract. The act does not currently give vendors a corresponding right, but it does not preclude contracts from including such a right. It is now very common to include a clause of this nature to provide that right to vendors.

At first blush it would seem reasonable to have parallel rights for purchasers and vendors in these contracts. But in fact that is a position that I think would be unreasonable. There is certainly potential for abuse of such a situation in a rising market.

It is most obvious in a rising market, because if a property is estimated to be worth, say, $650 000 upon completion and that is the price that is placed on it but it is subsequently found to be worth closer to $800 000 when you get to the point of practical completion through the impact of a rising market—and there have certainly been plenty of examples of a similar scale—it is clear that there is a significant incentive for a vendor to drag their heels and to drag the process out until the 18 months or whatever the specified date that is included in the contract is reached to effectively postpone the completion date and therefore the registration of the plan of subdivision until that date is reached. Therefore there is an option to terminate the contract and obviously sell the property for significantly more.

That is demonstrably unfair to the purchaser. While they get their money back, they get their money back without interest, and over 18 months or more it could be a significant amount. But more importantly they do not get their new home or alternatively they do not get the investment property which they intended to purchase, and it is now significantly

more expensive.

The intent of the act currently is to protect the interests of the purchaser, and these changes simply take that protection further. Certainly vendors will miss out on the opportunity to capitalise on a rising market. The current laws do not allow purchasers to withdraw simply because the market has declined, so why should the vendors be able to withdraw because the market has risen?

In recent years I have spoken with a number of constituents who have had their fingers burned and burned very badly in a financial sense through this process, and that is blatantly unfair.

The bill before the house does contain the capacity for a vendor to rescind an off-the-plan contract, but only with the written consent of the purchaser and after there has first been an indication of why the rescission is proposed. The

Supreme Court does that, and there are some arrangements that are proposed in the bill.

I want to briefly speak about the rent-to-buy arrangements that are proposed in clause 22. Somewhat surprisingly the clause does not apply to contracts entered into by the director of housing or a registered housing association.

Perhaps the current minister does not remember back to the Cain years when the rent-to-buy scheme for public housing tenants caused an enormous amount of pain, so much so that even in 2005 the Uniting Church in the *Age* talked about the lack of recognition for borrowers that were 'still burdened by the loan scheme started by the Cain government in 1984'.

With that rather glaring omission aside, I do agree with the changes that are proposed.

The last point I want to make is around the changes that are proposed to Anzac Day. The member for Gippsland East put the point eloquently and at length about the importance of the changes proposed. I do congratulate the government on picking up the changes that were proposed by the Liberal and National parties, and I also commend the bill to the house.