

SECOND READING SPEECH

RESIDENTIAL PROPERTY TRANSACTIONS BILL 2013

Mr Speaker, I move that the *Residential Property Transactions Bill 2013* be read a second time.

The purchase of real estate is the most significant purchase that many people will make in their lifetime. Generally, the purchase is without problems, although there are significant risks. The key risks for a purchaser are that they may be unable to use the property for the purpose they intended or they will incur substantial costs after the purchase. Substantial costs are likely to result from illegal building works or because there is a need for costly remedial works or renovations.

Currently, the conveyancing process is based on the principle of 'caveat emptor', or 'buyer beware'. This means that the buyer must decide what conditions to place on a contract and what searches or questions to ask before agreeing to a purchase. However, the problem with this approach is that it relies on the purchaser having the right skills and as many people buy property infrequently, they are unlikely to become an expert in this process. The risk of not asking the right questions, before signing a contract, is significant as there is currently no cooling off period and they may be locked into an unconditional contract.

Mr Speaker, this Bill attempts to strike a balance between mandatory disclosure and giving consumers an opportunity to make further relevant inquiries. The Bill requires a vendor to attach some basic information to a contract for sale, such as the relevant title documents and a 337 council certificate. This will flag key problems and will help purchasers and their legal practitioner or conveyancer to determine what further inquiries to make. Where a significant problem is identified as

a result of these inquiries, it will be possible to rescind the contract.

Legal practitioners and conveyancers play an important role in protecting, where possible, the interests of purchasers. However, options are limited once a contract is signed. This Bill will strengthen the role of legal practitioners and conveyancers, who will be able to work with the purchaser to make key decisions during the cooling off period about what further inquiries to make about the property.

The *Residential Land Transactions Bill 2013* repeals the existing vendor disclosure scheme contained in Part 10 of the *Property and Land Transactions Act 2005*. This scheme was based on the vendor giving to purchasers, answers to a series of questions. Although there was extensive consultation in developing this proposal, problems were identified when implementing the scheme. Ultimately, it was found to be impossible to create questions that did not create legal risk for the vendor or ambiguity for the purchaser. For these reasons, the new scheme takes a different approach and relies entirely on the provision of third party documents.

Mr Speaker, this Bill will only apply to the sale of residential property or residential land and not to the sale of commercial properties. Generally, purchasers of commercial properties do not need the same protections as consumers.

Mr Speaker, the legislation will require the vendor of a residential property or residential land to give certain documents to the purchaser along with the contract for sale. These documents must include:

- a copy of the relevant folio of the register or, in the case of general law system land, a copy of the last conveyance or mortgage;
- a copy of the title plan for the property;

- a local government 337 certificate;
- a copy of the last local government rates notice for the property;
- a copy of all easements and covenants;
- a copy of any agreement with a Planning Authority that would affect the future use of the property; and
- a copy of a section 56ZQ certificate for water supply and sewerage.

If the property is part of a strata scheme, the vendor will also be required to provide:

- a copy of any variation to the standard by-laws for strata schemes;
- details of any outstanding and ongoing liabilities of the lot owner to the body corporate;
- details of relevant insurance held by the body corporate; and
- details of the secretary or manager of the body corporate.

Mr Speaker, the key policy intent of this Bill is to address illegal building works and to identify issues with the structure and general state of a building. For this reason, the Bill adopts the existing common practise of obtaining a building inspection report before completion of a contract. However, at present a report can only be obtained where both the vendor and purchaser agree. This Bill makes this decision a right of the purchaser which can be exercised during the same period as the cooling off period and therefore after the contract is signed.

The Bill also clarifies existing law around the sale of property. A contract can provide for rescission where a property is unable to be used for a residential purpose. However, as there

is some doubt about the application of the relevant law, the Bill removes this doubt and makes the position clear.

Mr Speaker, the Bill provides that the following matters are implied as a term of any contract for the sale of a residential dwelling. The implied terms are that:

- unless otherwise disclosed in the contract, there are no restrictions on the use of the property that may hinder or prevent the use of the property as a residential dwelling;
- a purchaser can, during the same period as the cooling off period, exercise an option to arrange for a building inspection report from an appropriately qualified building inspector; and
- a purchaser can, during the same period as the cooling off period, exercise an option to apply for a building certificate, from the relevant local council.

A purchaser can rescind a contract for sale if it is established that the property cannot be used for a residential purpose. A purchaser can also rescind the contract if remediation works are identified that exceed 1% of the purchase price or if a council is unable to issue a building certificate. This would arise where, for example, there are unapproved building works.

The Bill will also provide for a cooling off period of 5 business days from the signing of a contract. During the cooling off period, the purchaser will have an option to arrange, at their own cost, for a building inspection and/or a local government building certificate.

Mr Speaker, although the Real Estate Institute of Tasmania support this Bill, they have expressed reservations about the length of the cooling off period. This matter has been carefully considered and there are important reasons for a 5 day cooling off period. The main reason is that most of the important decisions that will be made by a purchaser, their legal

practitioner and conveyancer will be made during these 5 days. A shorter cooling off period would not give adequate time to make appropriate inquiries and to make informed decisions. For this reason, the 5 day cooling off period is probably one of the most important aspects of this Bill.

Mr Speaker, this Bill has been developed as a result of considerable effort on the part of the Crown Solicitor and his knowledge and skill has contributed significantly to the content of this Bill. However, there has also been extensive consultation with both the Law Society and the Real Estate Institute of Tasmania and considerable input from them. There has also been discussion with the Local Government Association. To a large extent, this Bill has been tested from a practical perspective by those people who understand the impact of this proposed law and who will work with this law into the future.

Mr Speaker, I commend the Bill to the House.