



Off-the-plan contracts for residential property Submission

January 2018

To: Off-the-plan contract Review
Office of the Registrar General
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

Email: ORG-admin@finance.nsw.gov.au

Submission Date: Tuesday 30 January 2018 by 5pm

Estate Agents Co-operative or EAC was established by a group of seven real estate agents in 1960 to help agencies meet the challenges of the time. While our purpose hasn't changed, today we are a network of more than 300 member agencies representing over 6,000 real estate professionals from independent and franchise agencies, based in Australia, bringing like-minded agents together, providing the support you need.

We enable and inspire real estate agents to work together to build strong, prosperous and sustainable businesses that are well-equipped to cope with the modern era. We provide end to end support to independent and franchise organisations via a comprehensive suite of real estate support services, including:

- Agency Practice Support and Advice
- Business Consulting and Coaching
- Professional Development and Training
- Insurance Services in conjunction with Aon
- Real Estate Forms & Merchandise
- Real Estate Publications
- Property Data and Mapping
- Listing Services and a property portal
- Digital Marketing including video, 360 virtual tours, website design and hosting.

EAC as an industry body represents its members by working with government and other bodies to ensure the views of our members and the greater industry are heard, as well as ensuring that consumers' interests are protected. We are part of the NSW Fair Trading Real Estate Reference Group and sit on NCAT and other industry forums.

Our submission includes feedback from our members, Jemmeson & Fisher Solicitors and Accountants who provide legal support to EAC and its members, Rosy Sullivan from the Australian College of Professionals who are the preferred training provider for EAC.

EAC would like to note its appreciation for the opportunity to provide feedback on the discussion paper and are happy to meet with those government agencies involved to clarify any points within our submission.

Yours sincerely



David Crombie
Chief Executive Officer

2. Mandatory Disclosure

Q.1 Is a separate mandatory disclosure regime needed for off-the-plan contract?

Yes, I agree that a separate mandatory disclosure regime is needed for off the plan contracts.

Q. 2 Is there benefit in mandating a prescribed disclosure statement for all off-the-plan contracts?

Yes, there is a benefit in mandating a prescribed disclosure statement for all off the plan contracts

Q. 3 If so, what should be included in the Statement?

- a) Details of planning approval
- b) Details of the deposit holder and if it will be invested and whether the deposit will be released to the vendor and when RS
- c) Anticipated completion date
- d) Details of any sunset clause
- e) Site details including size of lot
- f) Proposed levies
- g) Schedule of finishes
- h) Commissions paid to marketers and others. These commissions can be quite high

Q. 4 Would buyers have more certainty if the following documents were included as part of mandatory disclosure:

- a. Proposed plan showing the proposed lot
- b. Proposed by-laws
- c. Proposed schedule of unit entitlement
- d. Estimate of proposed levy contributions

Yes, there would be more certainly if the proposed documents were included as part of the mandatory disclosure

Q. 5 Are any of the documents unable to be provided or would impose significant cost on developers if required at the time contracts are prepared?

No, obtaining this information would not incur substantial additional cost to the developer.

3. Variation of the Disclosure Statement

Q. 6 Should developers be required to notify purchasers where a change is made to:

- a. The proposed plan,
- b. The schedule of unit entitlements (for strata and community schemes) and;

- c. The by-laws or management statement that is likely to have a material impact on the purchaser?

Yes, they must provide written advice of any changes that are likely to have a material impact on the purchaser.

Perhaps there should also be a clause included in the contract to enable a purchaser to rescind if significant changes are made to the contract or disclosure document. In this case, significant would need to be defined and would most likely be linked to any additional costs that would be incurred by the purchaser or any losses that would be incurred due to the changes.

Q. 7 Are there any other changes to the scheme that developers should be required to notify purchasers of?

Yes they must notify in writing.

Q. 8 Should notification of changes be required to be made at a set time before settlement can be enforced?

Any changes in the original disclosure must be notified to purchasers.

If the change would sit within a change that would allow the purchaser the option to rescind with no penalty then the developer should notify the purchaser within 14 days of the developer's knowledge of the change. Waiting until 21 days before settlement could mean that a purchaser may have to wait up to 2 years before they find out that their property is not something that they want.

Q. 9 What period of notice is appropriate; 14 or 21 days?

We believe 21 days notice is appropriate.

Q. 10 Should the developer be required to provide a copy of the registered plan to the purchaser before a notice to settle can be issued?

Yes, the developer must provide a copy of the registered strata plan & and a final occupation certificate to the purchaser before a notice to settle can be issued.

Q. 10 Should the purchaser's ability to terminate a contract be based on a the purchaser demonstrating "material prejudice"?

No a purchaser's ability to terminate a contract should not be based on the purchaser demonstrating a material prejudice.

Q. 11 Should any statutory termination scheme include, as an alternative, a claim for compensation?

Yes any statutory termination scheme should include an option for a claim for compensation.

4. Cooling Off Period

Q. 12 Should the cooling off period be extended for off-the-plan contracts?

Yes off the plan contracts should include a cooling off period.

Q. 13 If so, should the cooling off period be 10 or 15 days?

We believe the proposed cooling off period should be 15 days.

5. Deposit

Q.14 Should legislation mandate that the deposit be held in the trust account of a stakeholder?

Yes, legislation should mandate that the deposit be held in the trust account of a stakeholder. This should also include information about the release of the deposit and what would constitute a condition for release.

6. Jurisdiction

Q.15 Should NCAT be allowed to make orders as suggested?

Yes, NCAT should be allowed to make order.

Q.16 Should a condition be inserted in the contract for sale requiring parties to attempt to settle disputes through arbitration?

Yes, disputes to be attempted to be settled through arbitration with a contract clause to that effect.

Q.17 Should legislation be introduced requiring parties to attempt to settle disputes through arbitration?

No for a legislative requirement for mediation.

7. Sunset Clauses

Q.18 Should the definition of sunset date be expanded so that it covers other termination events?

No.

Q.19 Are there some termination points that a developer should be allowed to use to end a contract without seeking approval of the Court? If so, what are they?

No.

Q.20 Should s 66ZL be clarified or amended to allow the Court to make an award of damages to purchasers if the circumstances so require?

Yes.