

## CIVIL LAW (SALE OF RESIDENTIAL PROPERTY) AMENDMENT BILL 2021 EXPLANATORY STATEMENT

### Overview

This Bill amends the *Civil Law (Sale of Residential Property) Act 2003* (the **Act**) with respect to contracts for the purchase of an off-the-plan property. The Bill requires a seller to obtain a buyer's consent before they end such a contract using a sunset clause. Otherwise, the seller will need to apply to the Supreme Court of the Australian Capital Territory to justify termination.

### Clauses 1-3

Clauses 1 to 3 include formal provisions that name the Bill, specify the Bill's commencement on the day after its notification, and identify the legislation the Bill proposes to amend.

### Clauses 4-11

Clauses 4 to 11 make necessary changes to reconfigure the structure of the Act, part 2 and the organisation of definitions so as to accommodate new division 2.3 inserted by clause 12.

### Clause 12

Clause 12 inserts new division 2.3 (Off-the-plan contract for sale of unit),

New division 2.3 prevents a seller from unilaterally rescinding an off-the-plan contract for the sale of a residential property that is a unit (or proposed unit) in a units plan (or proposed units plan) on the basis of a sunset provision in the contract.

The division also defines the following key terms:

- **off-the-plan contract**—as a contract for the sale of residential property that is a unit in a units plan before the plan is registered;
- **unit** to include a proposed unit;
- **units plan** to include a proposed units plan.

Under proposed Section 19E (Notice of intention to rescind under sunset provision), a seller proposing to rescind an off-the-plan contract under a sunset provision must give each buyer under the contract at least 28 days' notice in writing of the proposed rescission. The seller is permitted to rescind only if each buyer under the contract consents to the rescission, or the Supreme Court makes an order allowing the seller to rescind the contract if the court considers rescission to be just and equitable.

Section 19F requires the court to take into account a number of considerations when deciding whether rescission is just and equitable, including — the terms of the off-the-plan contract, whether the seller has acted unreasonably or in bad faith, and whether the unit the subject of the contract has increased in value. Also, proposed section 19F (2) (h) enables the Executive to prescribe by regulation any additional considerations that the court must consider.—The seller must pay the costs of a buyer in relation to a proceeding for an order under this section unless the court is satisfied that the buyer unreasonably withheld consent to the rescission.

The proposed section does not limit any right that a buyer may have to rescind an off-the-plan contract under a sunset provision.

### Clauses 13-24

Clauses 13 to 24 make necessary consequential changes to provisions of the Act including the adjustment or insertion of definitions in the dictionary.