

# Information Disclosure & Residential ‘Off the Plan’ Sales Contracts

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Stage 2 & 3 Report  
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## Executive summary

There is an increasing trend in development approvals for attached dwellings (i.e. apartments, units, townhouses and duplexes) compared to single-family homes in Australia, prompting property developers to capitalize on consumer desires for liveability and lifestyle. The increase in apartment development has also been perceived to address issues of housing affordability, with the Australian desire for home ownership still one of the highest in the world, despite the costs. However, there is a fundamental lack of understanding on what strata titling is among consumers. Strata titling enables individual titling of lots (e.g. apartments) as well as shared ownership of the property used in common (i.e. lobby, garages, driveways and gardens).

Historically, sales of strata title properties have been targeted towards investors. Of the 2,587,397 strata title lots in Australia, approximately 59 per cent of all apartments are rented (Easthope, Buckle and Mann, 2018). An assumption exists that investors are sophisticated and thus have the capacity to make informed decisions about property purchases. In the 2017 financial year approximately 2,156,319 individuals had interests in rental properties (Australian Taxation Office, 2017). The Australian Tax Office (2017) found that the typical Australian residential property investor in 2017 was 40-49 years old (25 per cent) or 50 plus years (49 per cent), with 64 per cent earning less than AUD\$80,000. Approximately 71 per cent of investors own one investment property, 19 per cent own two properties and only 10 per cent own three or more properties (Australian Taxation Office, 2017). Therefore, Australian residential property investors are predominately unsophisticated investors (commonly termed 'Mum and Dad' investors).

Two key challenges arise for strata title purchasers. First, consumers purchasing apartments 'off the plan' (OTP) are subject to quite biased and complex sales contracts that favour developers, the 'original owner.' OTP sales contracts are a popular way for developers to sell land, or lots, to a parcel of land or strata title unit that does not have an existing title at the time contracts are signed. Many times, this OTP sales transaction occurs prior to construction commencing to facilitate funding requirements put in place by financiers. There is no 'standard' contract for purchasing 'off the plan' as the developer drafts these contracts, which provides a level of uncertainty to consumers. Secondly, most consumers are unaware of the property rights and obligations that arise from purchasing a strata title property. This is despite the varying information disclosure requirements in each of the Australian states and territories regarding residential sales transactions. To date, there has been no comprehensive critical review of 'off the plan' information disclosure requirements of apartment sales contracts. Furthermore, anecdotal evidence and ongoing industry discussion has pointed to a lack of consumer knowledge of strata title property rights and expectations (Sherry, 2018). Within this context, this research project aimed to examine information disclosure requirements of 'off the plan' sales contracts and understand consumers' knowledge of strata title property ownership obligations.

This exploratory mixed methods study examined the importance of information disclosure requirements of 'off the plan' sales contracts as a consumer protection mechanism in residential property transactions, the largest purchase most consumers will ever make. In Australia, information disclosure requirements can range from being mandatory with penalties attached for non-compliance, to non-mandatory without penalty apart from, in some cases, the potential for civil breach of contract actions by the buyer. Reliance on a buyer to commence proceedings or take advantage of rights, for example not to be bound by the contract, relies on individuals understanding their rights, and having

the means and inclination to pursue, or take advantage of those rights. A product or service provider might be more dissuaded from breaching statutory obligations where there is a regulator tasked with pursuing significant criminal or civil penalties for breach. To address this research gap, in-depth interviews were conducted with 31 industry practitioners (lawyers, property developers, real-estate agents, policy mangers, and consumer policy advocates) from Queensland, New South Wales, Victoria, Western Australia and Tasmania. The findings of this research are presented under four key themes: appreciating information disclosure; customer experience in buying off the plan; valuing relationships; referencing Acts, Regulations and policies. A review of six 'off the plan' sales contracts and information disclosure documents was undertaken. Additionally, an online survey of 512 'off the plan' residential apartment purchasers was conducted.

The key findings from the survey has shown that that there are two main areas which are significantly more important than others relating to the usefulness of information sources and a clear outline of the obligations of the developer. These findings indicate the importance of effective and relevant communication to buyers so that they are consistently well-informed throughout the purchasing process. Future research directions are outlined in light of these findings.

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# 1. Introduction

This report represents stages two and three of the larger project on information disclosure in relation to 'off the plan' (OTP) strata title purchases in Australia. An OTP contract is used to sell a parcel of land or strata title unit that does not have an existing title at the time contracts are signed. OTP sales contracts are a popular way for developers to sell land, or lots, to offset development and funding risks. In most cases financiers impose as a condition of finance the requirement for developers to achieve certain OTP sales targets, commonly in the vicinity of 70 per cent, prior to development funding being released. Buyers also perceive OTP purchases to be an attractive way to enter into the property market at current pricing, that is in the year of signing the contract, with the balance of payment not being required until settlement at a future date. Buyers bank on positive capital growth in property values between contract signing and settlement in the hope of securing a capital gain for their early investment. Buyers pay a deposit when contracts are exchanged, with the balance purchase price due after construction and registration of title to the lot (which is often several years later). Purchasers are generally unable to physically inspect a property they purchase OTP before entering into a contract, and as such, they must rely on the written information that the developer gives them (Queensland Government, 2016). Property developers sell property OTP to mitigate financial risk and to demonstrate to financiers' demand for their projects.

The focus of this project on OTP strata title sales contracts is appropriate, given that residential strata title sales are a rapidly growing sector of the AUD\$7 trillion property market. In 2018 the Australian apartment market had an approximate value of close to AUD\$1 trillion (Easthope et al., 2018), representing a significant contributor to the overall property value of the Australian economy. Coupled with this, strata title developments are becoming a dominant form of new housing supply. In 2016 for the first time since data collection began 50 years ago, multi-owned property (apartment, units, townhouse) developments outpaced development approvals for single dwelling housing (Australian Bureau of Statistics, 2020). Within the multi-owned properties market, it is always a challenge to ensure that consumers understand their legal rights and the risks involved in the purchase contracts into which they are entering. Interestingly, those challenges relate to consumers' understanding of strata title property rights and owner obligations, as well as the sales contracts that they are entering into.

This exploratory mixed methods study examined the importance of information disclosure requirements of OTP sales contracts as a consumer protection mechanism in residential property transactions, the largest purchase most Australian consumers will ever make. Disclosure requirements are intended to ensure that people understand the product that they buy. Information disclosure has been utilized for this purpose by a range of industries and products, as highlighted in Stage 1.

Interestingly, the literature regarding information disclosure places considerable emphasis on the need for consumer understanding of the information disclosed if it is to be effective in protecting consumers. However, none of the disclosure regimes which we examined involved any obligation to demonstrate that the information was disclosed in a way which was, or was likely to be, understood by a reasonable consumer of the product. It is clear that the primary disclosure obligation—to provide customers with a Product Disclosure Statement (PDS)— is not fulfilling this purpose.

In Australia, information disclosure requirements can range from being mandatory with penalties attached for non-compliance, to non-mandatory without penalty apart from, in some cases, the potential for civil breach of contract actions by the buyer. Reliance on a buyer to commence proceedings or take advantage of rights, for example not to be bound by the contract, relies on those individuals understanding their rights, and having the means and inclination to pursue or take advantage of those rights. A product or service provider might be more dissuaded from breaching statutory requirements where there is a regulator tasked with pursuing significant criminal or civil penalties for breach.

This report adopts a mixed method research approach to address the effectiveness of information disclosure to achieve consumer protection. Firstly, 27 in-depth semi-structured interviews were conducted with 31 industry practitioners (lawyers, property developers, real-estate agents, policy managers, consumer policy advocates) from Queensland, New South Wales, Victoria, Western Australia and Tasmania. The qualitative interviews with industry experts provide rich insights on information disclosure requirements in order to inform recommendations for information disclosure tailored for residential OTP strata sales contracts. Secondly, document analysis of six OTP apartment sales contracts and information disclosure documents was undertaken. Thirdly, an online questionnaire completed by 512 OTP consumers was collected.

The findings of this research are presented from each of these methods. Qualitative findings were categorized under four key themes: Appreciating information disclosure; Customer experience in buying OTP; Valuing relationships; Referencing Acts, Regulations and policies. Content analysis findings are presented, focused on comprehension, readability and terminology. Finally, the quantitative findings demonstrate the demographic profile of OTP apartment purchasers, the information that they utilize in decision making and their experiences of purchasing OTP. A model of the effectiveness of information disclosure in OTP sales contracts on consumer experiences and the relationships between six constructs was developed. Future research directions are outlined in light of these findings.

## 2. Research context

The stage 1 report provided a comprehensive analysis on information disclosure requirements. Those requirements can range from being mandatory with penalties attached for non-compliance, to non-mandatory without penalty apart from, in some cases, the potential for civil breach of contract actions by the buyer. Reliance on a buyer to commence proceedings or take advantage of rights, for example to invalidate the contract, is subject to those individuals understanding their rights, and having the means and inclination to pursue or take advantage of those rights. A product or service provider might be more dissuaded from breaching statutory requirements where there is a regulator tasked with pursuing significant criminal or civil penalties for breach.

Solomon and Martin-Hobbs (2018) suggest that the most effective way to rebuild positive customer engagement with the market is to empower consumers to make informed decisions about the products they are seeking, and to gain the skills to compare services between different providers. They outline five key preconditions to facilitate this understanding, including: ensuring that key information is disclosed in a relevant, clear and comprehensible manner; ensuring that comparison tools are fair and accurate; ensuring that switching costs are low so as to facilitate easy switching; making sure consumers are aware of how to access, assess and act on relevant information; and, making sure there are increased interventions for consumers that may have a reduced capacity. An aspect of this final precondition seeks to go beyond the provision of information. The authors argue that it is not enough to improve the consumer experience alone; rather, they seek to acknowledge that a greater focus must be placed on consumer comprehension. This final precondition is directed by the authors to 'consumers with reduced capacity or vulnerability' (Solomon & Martin-Hobbs, 2018). Arguably there is a case to find most purchasers in a vulnerable and unequal bargaining position vis-à-vis a property developer, such as would justify a universal emphasis on consumer comprehension of material information in OTP strata title contracts.

There are nuances in the jurisdictions, clearly outlined in the stage 1 report. A preliminary desktop study on the Department of Fair Trading New South Wales, Queensland Office of Fair Trading and Consumer Affairs Victoria websites shows a number of key categories as important elements to consider when purchasing property OTP. These include increased disclosure, notification of changes and statutory remedies, the cooling off period, deposits, and sunset clauses (Table 1).

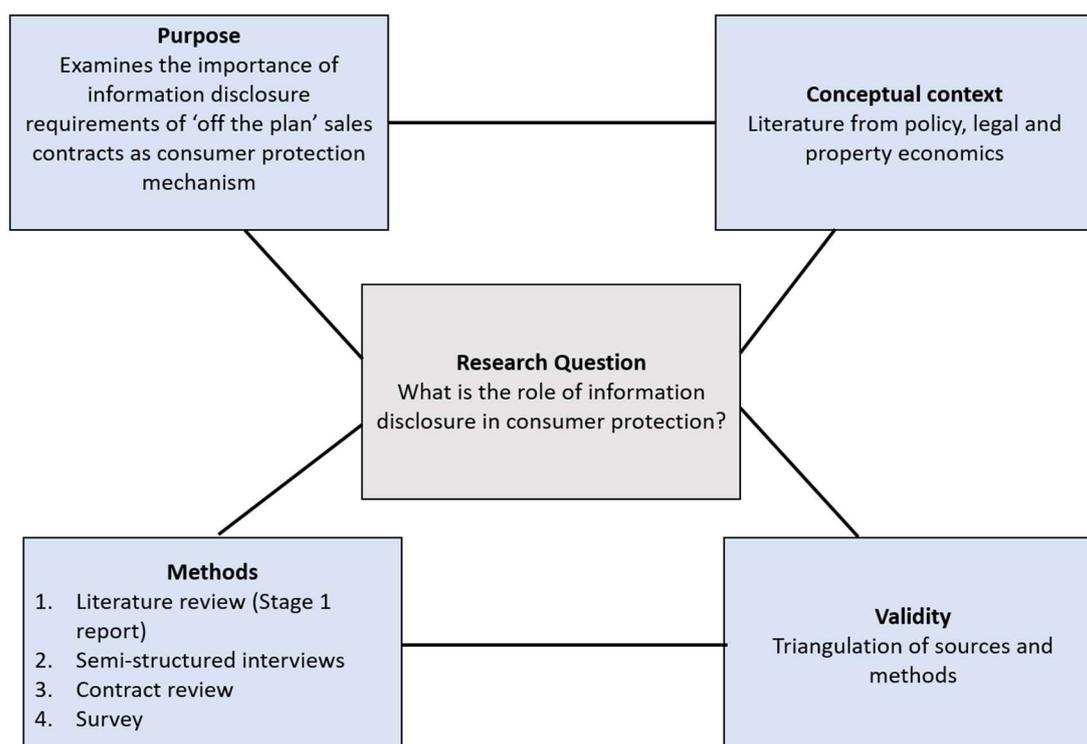
**Table 1:** Key considerations of information disclosure (synthesizing key information from Queensland Government, 2016; NSW Fair Trading, 2019; Consumer Affairs Victoria, 2020 )

Key consideration	State	Description
Increased disclosure	NSW	Sellers who sell property off-the-plan need to give purchasers more information than when selling an already constructed home. Sellers must attach a <i>Disclosure Statement</i> to the contract that outlines key information, like sunset dates and other conditional events, and provide draft documents like a plan, proposed schedule of finishes, and draft by-laws (NSW Fair Trading, 2019).
	QLD	Consumers must sign and date the disclosure statements to confirm that they understand it (Queensland Government, 2016).

Notification of changes and statutory remedies	NSW	<p>Sellers must notify buyers of changes that make what was disclosed inaccurate in a 'material particular'.</p> <p>Material particulars are changes that will adversely affect the use or enjoyment of the lot being purchased. In some cases, where buyers are materially prejudiced by a change to a material particular, they can pull out of the contract and get the deposit back.</p> <p>As an alternative, they may choose to settle the purchase but claim compensation for the change.</p> <p>Buyers also need to be given a copy of the registered plan at least 21 days before settlement (NSW Fair Trading, 2019).</p>
	QLD	<p>The consumer has a right to back out of a contract if:</p> <ul style="list-style-type: none"> <li>the consumer finds out that there is a change to the initial disclosure about the state of the land, and</li> <li>the change will cause a significant disadvantage (known as <i>material prejudice</i>).</li> </ul> <p>This could be (whichever is sooner):</p> <ul style="list-style-type: none"> <li>within 30 days of receiving the notification</li> <li>before the title of ownership transfers to the buyer.</li> </ul> <p>In this approach:</p> <ul style="list-style-type: none"> <li>the developer must notify you of a change in any detail that was set out in the disclosure statement</li> <li>the consumer must show that the change will be a significant disadvantage (such as a significantly reduced size)</li> </ul> <p>The courts have set a precedent to decide if a disadvantage is a material prejudice (Queensland Government, 2016).</p>
Deposits	NSW	<p>From 1 December 2019, deposit monies and any instalments paid under an off the plan contract must be held by the stakeholder (usually the real estate agent) in a trust or controlled money account during the contract period.</p> <p>This money cannot be released to the vendor before settlement, meaning that deposit and instalment monies are protected in the event of the developer's insolvency.</p> <p>Restrictions on how deposit/instalment monies are held do not prevent buyers from using a bank guarantee or deposit bond in lieu of a cash deposit (NSW Fair Trading, 2019).</p>
	QLD	<p>Deposits must be held in trust accounts. Contracts may be avoided if deposits were not paid directly to the Public Trustee, a solicitor's or licensed real estate agent's trust account (Queensland Government, 2016).</p>
	VIC	<p>Consumers are required to pay a deposit of no more than 10 per cent of the contract price.</p> <p>When buying off-the-plan and the plan of subdivision is not registered by the time specified in the contract, or the default time of 18 months, consumers have the right to end the contract and get their deposit back (Consumer Affairs Victoria, 2020).</p>
Sunset clauses	NSW	<p>Developers will need a buyer's consent before they end a contract using a sunset clause, otherwise the developer will need to apply to the NSW Supreme Court to justify termination (NSW Fair Trading, 2019).</p>
	QLD	<p>A sunset clause puts conditions and limits on the contract. This could allow the consumer, the builder or the developer cancel the contract (Queensland Government, 2016).</p>
	VIC	<p>Under the <i>Sale of Land Amendment Act 2019</i> (the Act), developers may only exercise a sunset clause with written consent from the buyer, or permission of the Supreme Court of Victoria.</p> <p>The new laws on sunset clauses are backdated to 23 August 2018. The changes mean that a sunset clause exercised from that date, regardless of when the contract was signed, must be in accordance with the new laws (Consumer Affairs Victoria, 2020).</p>

### 3. Research approach

The purpose of conducting this exploratory study was to draw on experiences of Australian industry experts and generate rich contextualised insights on information disclosure and informed choice within those experts' respective jurisdictions. The exploratory approach allows understanding of the intricacies of information disclosure and informed choice within the respective jurisdictions and provides groundwork for further research (Cooper, Schindler, & Sun, 2006). This method is adapted in previous research on mandatory disclosure as an effective consumer protection mechanism in the Australian real estate markets (Miller et al., 2006). A series of semi-structured interviews were conducted with industry experts from the following professions: lawyers, property developers, real-estate agents, policy managers, and consumer policy advocates (Cooper et al., 2006; Kvale, 2006). In addition, consumers with experience purchasing OTP residential properties were also interviewed to obtain deeper insights on information disclosure for OTP sales contracts. The overall research design is illustrated in Figure 1, which outlines the research question, purpose, conceptual context, methods and strategies for ensuring validity (Maxwell, 2012).



**Figure 1:** An illustration of the research design (Adapted from Maxwell (2012))

#### 3.1 Qualitative In-depth Interviews

The qualitative in-depth semi-structured interview participants were selected using one of the main types of a non-probability sampling technique of 'convenience and snowball sampling.' We approached these participants through established professional networks of the research team members and directly liaising with the government bodies through email. Furthermore, a snowball

sampling method was adopted to further approach relevant participants. Interview participants were selected based on the criteria that the participant should be a consumer, or industry practitioner who has expertise with OTP sales contracts and information disclosure. The interview participants represented the legal, property development and real estate sectors from Queensland, Victoria, New South Wales, Western Australia and Tasmania. The participant details and codes are shown in Table 2. Such diversity in interview participants provided a wide range of perspectives on their experience and knowledge on information disclosure and OTP sales contracts. Theoretical saturation was achieved after 25 interviews, although in total 27 interviews with 31 interview contacts were conducted. Interviews were undertaken via Microsoft Teams and Zoom meeting platforms dependent upon choice and convenience of the participant. All interviews were digitally recorded, verbatim transcribed and member cross-checked prior to analysis.

**Table 2:** Summary of the interview participants

Code	Organization type	State	Interview duration
Policy expert 1	Industry body	QLD	60 min
Policy expert 2	Government	NSW	60 min
Policy expert 3	Government	NSW	60 min
Policy expert 4	Government	QLD	60 min
Policy expert 5	Government	SA	60 min
Policy expert 6	Government	VIC	60 min
Policy expert 7	Government	VIC	60 min
Policy expert 8	Government	VIC	60 min
Policy expert 9	Government	VIC	60 min
Policy expert 10	Government	NSW	60 min
Policy expert 11	Government	QLD	60 min
Legal expert 1	Private	QLD	60 min
Legal expert 2	Private	QLD	60 min
Legal expert 3	Private	QLD	60 min
Legal expert 4	Private	QLD	60 min
Legal expert 5	Private	QLD	60 min
Legal expert 6	Private	QLD	60 min
Legal expert 7	Private	QLD	60 min
Legal expert 8	Private	QLD	60 min
Legal expert 9	Private	QLD	60 min
Legal expert 10	Private	QLD	60 min
Legal expert 11	Private	QLD	60 min
Legal expert 12	Private	VIC	60 min
Legal expert 13	Private	VIC	60 min
Legal expert 14	Industry body	NSW	60 min
Legal expert 15 [academic]	Academic	QLD	60 min
Real estate expert 1	Industry body	QLD	60 min
Real estate expert 2	Industry body	QLD	60 min

Developer 1	Private	QLD	40 min
Consumer 1	Public	VIC	60 min
Consumer 2	Public	QLD	60 min

### 3.1.1 Qualitative In-Depth Interview data collection protocol

The data collection protocol described the interview procedure and comprised the semi-structured interview questions. The interview questions were inspired by previous research synthesized in the stage 1 report (Yin, 2013). Prompts were used to further probe into the phenomena of information disclosure and OTP sales contracts. Theoretical saturation was reached at the 25<sup>th</sup> interview. Saturation can be defined as the state of data satisfaction where no new information was obtained from further data (Fusch & Ness, 2015; Mason, 2010). After theoretical saturation in total there were 27 interviews with 31 participants. In addition, one written response was received by a policy expert. The interviews were held between 6 March and 10 June 2020. The interviews ranged between 40-60 minutes in length.

### 3.1.2 Qualitative data analysis

The digitally recorded interviews were transcribed and data reduction methods were then used to analyze the information (Miles & Huberman, 1994). A thematic analysis method was applied to identify emerging themes (Braun & Clarke, 2006). An inductive reasoning approach was employed (Braun & Clarke, 2006). The analysis began with a data-driven coding system (in-vivo codes) using NVivo 11 software, creating additional new nodes inductively from emerging interview data. Axial coding then categorized data in new ways (12 codes), identifying associations and links between initial 198 codes (Savin-Baden & Major, 2013). Then, four selective codes were created categorizing data into major categories and themes. The research team coded interview data, corroborating to reduce bias and validate the emergent themes (Eisenhardt, 1989; Pettigrew, 1990). Figure 2 illustrates the coding process with exemplary data. A content analysis was carried using a selected sample of OTP sales contracts, and relevant government websites and technical reports to triangulate data.

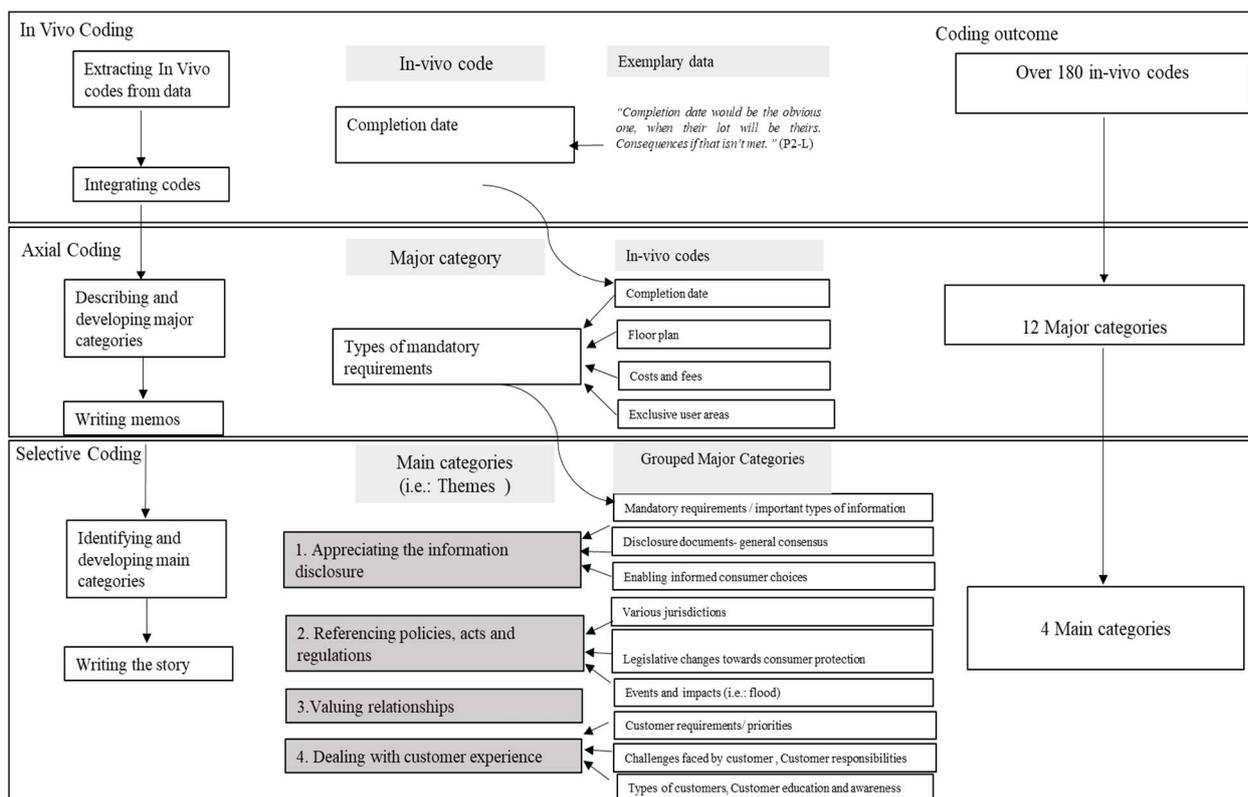


Figure 2: Coding diagram illustrating the formation of concepts from data

To ensure rigour of this research method, the following alternative guidelines were included: 1) present a comprehensive chain of evidence (Walsham, 1995), 2) consider alternative explanation, multiple viewpoints, potential biases (Klein & Myers, 1999), 3) corroborate results and theoretical saturation (Strauss & Corbin, 1996), 4) and aim at generalization beyond the area under investigation by use of theory (Klein & Myers, 1999). Section 4.1 presents the key findings of the exploratory study along with summary tables.

### 3.2 Sales Contract Review

Six OTP contracts and/or disclosure statements were reviewed as part of the research, one from Victoria and the remainder from Queensland. One bundle provided to the researchers only included the contract. Another only contained the disclosure statement. A manual document content analysis approach was utilized to analyze these sales contracts and information disclosure documents. A matrix for analysis focused around comprehension, readability and terminology adopting a simple traffic light system of classification. Red for poor, orange for average and green for good. The findings and observations relating to the sales contract review analysis is presented in Section 4.2.

### 3.3 Online OTP Consumer Questionnaire

The quantitative online questionnaire was created in Qualtrics™, who were also responsible for disseminating the questionnaire online. Additionally, several industry and stakeholder portals were also utilized to advertise and recruit participants for the survey. These sources included through: Strata Communities Australia (SCA), Australian Resident and Accommodation Managers Association (ARAMA) and Unit Owners Association of Queensland (UOQ) newsletter and databases.

A total of 512 respondents completed the questionnaire, resulting in a representative sample. All data was input into the computer software such as the Statistical Package of the Social Sciences (SPSS 24) program and AMOS (AMOS 24) for quantitative data analysis. This study analyzed quantitative data from the online questionnaires using descriptive analysis and structural equation modelling (SEM). SEM is considered one of the most widely used statistical techniques for testing complex models that involve several dependent and independent variables (Nunkoo, Ramkissoon, & Gursoy, 2013). The primary aim of SEM is to explain the pattern of a series of inter-related dependent relationships simultaneously between a set of latent (unobserved) constructs, each measured by one or more manifest (observed) variables (Reisinger & Turner, 1999). SEM uses a conceptual model, path diagram and system of linked regression-style equations to capture complex and dynamic relationships within a web of observed and unobserved variables (Gunzler, Chen, Wu, & Zhang, 2013).

### 3.3.1 Quantitative Data Analysis Procedures

Upon receiving the initial data file from Qualtrics™, the quality of data was checked to deal with missing data and to detect and handle outliers. Firstly, the coding of the variables was examined and any survey that had the same response for many consecutive items was deleted (Rex B Kline, 2011). Secondly, the demographic characteristics of the sample such as gender, age, income, marital status, employment status and level of education were described using a frequency analysis. Finally, a descriptive analysis on all the items was carried out to gain a general picture of the data distribution. This included the scores of mean, standard deviation, minimum and maximum scores, skewness and kurtosis. Analysis of the quantitative data was carried out using SPSS 24 (Statistical Package of the Social Sciences 24) program and AMOS 24.

The data was then analyzed utilizing SEM. The study tested the model fit through three categories: absolute fit measures, incremental fit measures, and parsimonious fit measures. The important indices of these three categories include the normed  $\chi^2$  (chi square/degree of freedom,  $\chi^2/df$ ), root mean square error of approximation (RMSEA), comparative fit index (CFI), and goodness-of-fit index (GFI) (Rex. B. Kline, 2011). The normed  $\chi^2$  was used to measure the model fit, and the smaller the value in the normed  $\chi^2$  the better the model fit was. The indicators of CFI and GFI, should lie between zero and one and a value closer to one indicated an acceptable fit. The acceptable value was larger than 0.9. The RMSEA was used to measure the average of unexplained variance and covariance. The value of RMSEA was acceptable when it was smaller than .05 or .08 (Jöreskog & Sörbom, 1989; Rex. B. Kline, 2011) which indicates a better model fit. Model fit shows that data analysis provides an approximate and valid representation of the phenomena under investigation. That is to say, sample data will represent the data the researcher would expect to find in the actual population.

A detailed breakdown of the quantitative findings is presented in Section 4.3.

## 4. Findings and Discussion

### 4.1 Qualitative In-depth Interviews

In presenting the findings of the semi-structured interviews, the four emergent themes from the thematic analyses were identified: appreciating information disclosure, referencing Acts, Regulations and policies; valuing relationships; and, dealing with customer experience. Given that the purchase of real estate is the largest and most important investment decision most Australian consumers will ever make; homebuyers have a right to know the details about the property that may affect their decision to buy it. Overall, the data clearly highlighted a common appreciation of the need for clear, comprehensible, digestible information disclosure to enable customers to make informed decisions. For example, a legal expert described the importance of information disclosure, *"Before anything, it's got to be in a form that is comprehensible and digestible, no matter what its content. If it's not in that form, then it's inhibited, and may be useless"* (Legal expert 12). Another legal expert added to this idea of providing critical information to the consumers,

I mean I've read a bit over the years in terms of you should be disclosing the critical information; what's the critical information; we need you to be disclosing in a way that provides information to people that are able to understand and digest and the difficulty there of course is that you can either pitch for the median or the lowest common denominator and if you go the lowest common denominator, everybody understands but the quality of the information is not what it should be (Legal expert 13).

Both legal and policy experts argued that the disclosure documents should include key information that is mandated through statute. However, it was raised that there is some level of information asymmetry in what consumers need to know, and what they receive through the disclosure documents. For example,

...what are you actually buying, where is it, who is the point of contact for it, how much is it going to cost you on an ongoing basis just to be there, are there any special rights or privileges attending the unit that you are buying. There's not really any capacity for the next one which is the Anything special or unusual about the scheme; and then are there existing known or likely problems that you are buying into? And, of course, it's very easy to formulate those things, very difficult to actually put them in a way that sellers are then going to comply (Lawyer 13).

Due to the complexity of the contract documents, most consumers do not fully read or attempt to understand the disclosed information. Multiple experts, as well as buyers, highlighted that buyers had been sold the "dream," marketed the "lifestyle," and were buying into these marketing creations. The emotion involved in finding the "perfect" home often clouded analytical judgement.

Additionally, many buyers may opt to engage low-cost conveyancing services and do not seek comprehensive legal advice on full documents. For example, a legal practitioner highlighted that the consumer may not know what to ask from the solicitor. As one industry expert commented,

My problem is that it's so complex on the one hand, number two people doing the conveyancing don't go anywhere near giving legal advice in respect of the implications

of what's in the disclosure document. They just presume that the purchaser has read it and they're happy with all the terms and conditions, so solicitors really only do the clinical conveyancing work which is 5% of what they should be doing. But it could also be the fact that purchasers don't even know what to ask, so if I'm not asking the solicitors for, can you give me comprehensive advice on the ins and outs of all the terms and conditions in the disclosure document (Body corporate expert 1).

The body corporate expert felt that consumers are often unaware of the key areas they need advice on, which exposes them to unexpected risks in the future. Due to the legislative enabling of strata titling, which as highlighted previously is jurisdiction specific, multi-owned properties are a legal area of specialization. Specialization may present challenges to generalist, or even property solicitors, or the conveyancer in themselves understanding the complexity of strata title schemes, information required and in presenting all of this in a manner that can be comprehended by the buyer. As the body corporate expert articulated,

They [buyers] probably don't know to ask, number two when they are given a quote for a bill of many thousands of dollars if that's what you want done it's going to cost you dearly. Either of those two factors is likely to influence nothing happening. All the solicitors do is just do the conveyancing they don't give any advice in respect of the disclosure document that few people read, and few people understand (Body corporate expert 1)

There is a perception in the public and perpetuated through the media, financial institutions and in property education forums that the approximate cost of legal fees associated with property purchases is between AUD\$400-\$1400. The competition in the marketplace has evidenced a race to the bottom in fee structures, which ultimately has an effect on the depth of advice provided.

A policy expert provided another perspective into this phenomena by highlighting the importance of consumer characteristics and behavioural insights, *"So, there's different ways of doing it, but there's so many aspects to information disclosure, it's not just about what you put in a contract or what you put mandatory papers. There's the timing, there's the language, there's a lot of things. There's a behavioural insights exercise, really"* (Policy expert 7). This highlights the importance of considering the consumer characteristics and behaviour for policy frameworks to better protect consumers. The findings also demonstrate the diversity of the experiences related to OTP sales contracts from the perspectives of consumers, policy managers, lawyers and real estate agents.

#### 4.1.1 Appreciating information disclosure

Appreciating information disclosure was examined under the two key elements of the characteristics of existing information disclosure and critical information types. All industry professionals, consumers, real estate agents and body corporate managers viewed disclosure in OTP sales contracts as an essential component of consumer protection. Although all participants endorsed the intent of information disclosure, there were common concerns about effectiveness, complexity and bias. The industry experts queried the effectiveness of current information disclosure, raising six key criticisms. These includes characteristics of disclosure documents such as, 'voluminous,' 'onerous,' 'developer centric,' 'reduces risks for the developer,' 'driven by commerce' and 'highly variable.'

First it was raised that the voluminous nature of the contracts does not encourage customers to read and fully understand the document. The critical need for a summary document of one to two pages was identified. As Legal expert 7 noted,

it's too voluminous to actually make sense and there's way too much there. They're just not going to read it. The same with PDSs and all that sort of stuff, with listings and all that sort of thing, I dead set reckon you could summarize in probably two pages the things that people need to be aware of.

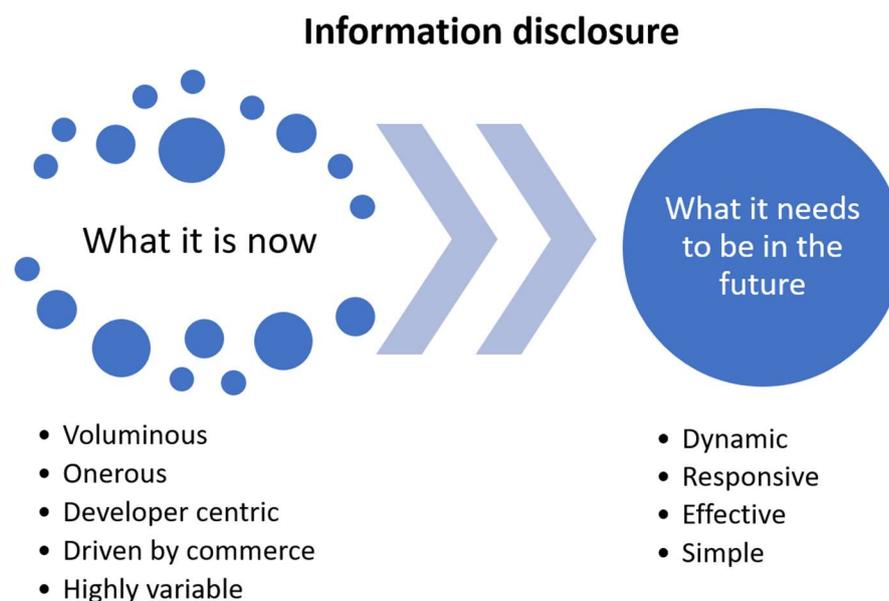
The second key point was that the disclosure documents can be onerous. For example, *"So, I had come from South Australia, which has probably one of the most onerous disclosure, extensive disclosure regimes in the country"* (Real estate expert 1). Another challenge highlighted was that most contracts are very developer centric. For example,

...we've got a very developer-centric contract; it's made out to look like it's got fair terms in it, and all that sort of stuff, but at the end of the day the developer has a lot of scope to make variations and changes, and extend settlement dates, and all those sorts of things. And the contract is 100-plus clauses, and it's 50-odd pages long. And then it's accompanied by a massive disclosure statement (Legal expert 3).

At times there was a tendency to over disclose, with the aim of mitigating or offsetting all the developer's risks to the buyer – through the proxy of "buyer beware." This approach has led to the voluminous and perceived onerous nature of information disclosure regimes. However, all interviewees considered in some form it was important to disclose relevant information to the buyer to inform their decision making.

The nature of property development, and OTP sales, is risky. A multitude of risks from planning, marketing, financial, contractual and construction risks influence development projects. It was emphasized by several policy experts that information disclosure has been formed as an exercise to reduce risks to the developer. For example, *"the Disclosure Statement that we have introduced is trying to address that and make sure front and centre people have a realization of what could happen and whether or not they're willing to take on that risk. So yes, long story short, yes, very important, but on both sides of the coin, not only for the purchaser, what they're going to get, but also what is uncertain and what could change"* (Policy expert 10). Information disclosure will never alleviate these risks. However, if highlighted to buyers, it can inform their decision-making processes in assessing the OTP sales risks. A real estate expert added to this conversation by stating, *"with Lexon just trying to really improve that relationship between real estate practitioners and legal practitioners and trying to ensure that risk is minimized for both parties"* (Real estate expert 1).

While there were consensuses among industry practitioners that most of the disclosure document are driven by commerce and highly variable, they all emphasized the need for a clear and simple approach to disclose key information to consumers. They highlighted the potential use of an executive summary style standard document that is clear and comprehensible. Figure 3 shows a simple illustration of the characteristics of information disclosure elicited from the interviews and the required transition for informed consumers.



**Figure 3:** Overview of information disclosure characteristics

While appreciating the diversity of strata title developments, it is also critical that the information disclosure be dynamic, responsive, and achieve a balance between the level of information provided, efficiency and effectiveness. For example, a legal expert highlighted, *“I suppose at a high level it’s got to be dynamic and responsive. So, by dynamic means are changing according to changes in the legislative environment”* (Legal expert 8). Considering the complexities of the external environment, real estate agents suggested a process that is dynamic and responsive. For example,

... when after the 2011 floods, that triggered a discussion about the delay event clause to suspend time due to a natural disaster event and over time that’s been slightly expanded. So, those sorts of things will happen on occasion. But usually we amend them based on legislative change, as a general rule. So, we’ll work together on that and so we do have a relationship with QLS [Queensland Law Society] and then obviously we also work to some extent as well, with Lexon on just trying to really improve that relationship between real estate practitioners and legal practitioners and trying to ensure that risk is minimized for both parties (Real estate expert 1).

Information disclosure must contain tailored and targeted information to enable informed consumer choices.

A range of important information types were described by the participants to demonstrate the categories that should be captured in information disclosure. These categories include definitions, building information, price, sunset clause, cooling off period, management plans and agreements, statutory disclosure and other. Table 3 presents a summary of these key categories and examples of information types outlined by interview participants. Participants expressed the importance of the floor plan with clear information on the use of other areas. For example, *“I think it’s critical for people to understand, I think the floor plan and the context in what they’re getting is important. And I think that in a diagrammatic form is important, because that’s how people understand. So, understanding where their lot sits, or other exclusive-use areas, or other allocations is important”* (Legal expert 5). Consumer 1 commented on the information received stating,

So, he provided us with a floor plan of what we might expect, pictures, photographs and photographs of the finishes but not the actual finishes. So, not physically, we couldn't see. So, we had a photo, for example, of what the kitchen cupboards might look like, but couldn't see the actual material, yeah (Consumer 1).

**Table 3:** Important types of information requirements

Category	Information type
<b>Definitions</b>	Body corporate Structure of the body corporate/owners' corporation Contract
<b>Building information</b>	Building permit Floor plan (size, shape) Associated costs/fees (land tax, body corporate levies, rates, insurance, utilities) Cost variations Schedule of details - what is actually included to what fittings, what brand, what style and style of finish Warranty Any material change (changes to material particulars)
<b>Price</b>	Associated costs/fees (land tax, body corporate levies, rates, insurance, utilities) Cost variations
<b>Sunset clause</b>	Sunset date
<b>Cooling off period</b>	Cooling off period
<b>Management plan and agreements</b>	Use of communal areas Facilities Management plan Parking/disability access Location of easement/configurations Exclusive use areas - car park, storage Land boundary/planning control
<b>Statutory disclosure</b>	By-laws Insurance NATA (National Association of Testing Authorities) certificate Occupancy certificate Management rights and Caretaking management agreements Information around embedded networks Exclusive use of areas and other allocations Proxies/power of attorney signed over to the developer Material prejudice
<b>Other</b>	Proposed documents Reservations Nearby infrastructure

The interview findings demonstrate the importance of the cooling off period and their varying length in different states. For example, *"In New South Wales all residential contracts, other than those sold at auction or on the day of auction, are subject to a five-business day cooling off period unless a*

*statutory certificate is provided by a solicitor at the time of exchange*" (Policy expert 10). The challenges with this limited time period were raised by a number of policy and legal experts. A policy expert from New South Wales highlighted that this was a major consideration in one of the state's policy reforms. For example, *"But we took some feedback from stakeholders to say that that's not long enough for off the plan properties and we extended that out to 10 business days as well. So, that was another key change that was introduced then"* (Policy expert 10).

The interviews confirmed anecdotal evidence that sellers have significantly more knowledge about a project and OTP sales contract than buyers. This highlights potential information asymmetries which may negatively impact on the consumer's ability to make an informed choice in relation to the product. The existence of this type of information asymmetry typically justifies policy intervention, which is further discussed under theme 4. Section 4.2 also provides a comprehensive analysis of sample OTP sales contracts to demonstrate current industry practice.

#### 4.1.2 Consumer experience in buying off the plan

Consumer experience was examined under the five key elements: 1) consumer journey; 2) challenges for consumers, 3) types of consumers; 4) consumer responsiveness; 5) consumer awareness and education. All industry professionals, consumers, real estate agents and body corporate managers acknowledged that a deeper understanding of consumer experience is a foundation step for any policy reviews and industry actions to protect consumers.

##### *Consumer journey*

Every consumer has different wants, needs and priorities, which makes the purchasing of property a complex process. Specifically, within the OTP residential strata context, consumers are buying into a dream and a lifestyle with which they have emotional attachment. However, it was apparent that many consumers struggled in *understanding* the binding contract document that they were required to sign to make their lifestyle dream a reality. For example, one legal expert shared, *"people are buying off brochures, they're buying off models, they're buying off oral representations, they can't see the product, the product's three or four years away and so we looked at a lot of brochure"* (Legal expert 15). It was re-iterated that sellers market a lifestyle, rather than a property. As one legal expert commented,

what people were selling in the brochures was a lifestyle. They weren't really selling property. If you were selling property you would get sort of a lot more detail I think about the dimensions and all this type of thing and of course, what they were selling in the brochures was really a lifestyle, particularly the off the plan stuff in the coastal areas, you know, the Gold Coast and Sunshine Coast and even in Brisbane (Legal expert 15).

In order to offer a better experience to consumers, is critical to understand the buyer's journey and the priorities they have when purchasing an OTP residential strata title property. Buyers first contact the marketing agents who often provide information including glossy brochures. For example, *"the first contact people have buying off the plan is with marketing agents. Marketing agents have a certain amount of information, but they really have these glossy brochures"* (Legal expert 15). Industry experts pointed out that consumers make limited attempt at, or are aware that they are able to, interrogate

the details in these marketing materials and are often attracted to the imaginary created in them. The academic expert noted that developers often included disclaimers on the brochure seeking to exculpate the developer from any liability.

During the purchasing process, buyers experience several defining points, or pain points. A developer shared their insight stating,

...there's sort of ... 'Defining moments,' 'Pain points,' etc. So, one of the biggest pain points we find is at the latter end, so obviously contract signing is a pain point. But then the bigger pain points usually come through the latter end of the customer journey which is around handover. And then of course, you've got the whole, the biggest pain point is if there's defects and the time for them to be fixed, that's the single biggest pain point I would have thought (Developer 1).

Within this journey, consumers have numerous priorities and requirements that would affect their purchasing decision. For example, most consumers highlighted the importance of price and location. One of the purchasers explained that they purchased based off,

The position and view, we're right opposite the beach, so and this is the problem that the buildings that are laboured, anchored by management rights, they seem to take all the prime positions along the beachfront and to get something without caretakers management rights, you basically have to pay double the price at least, but we thought, after what we'd been through, we thought, no, we'll pay double the price, we don't care, we just don't want any caretaking management rights (Consumer 1).

Other important purchasing decision points highlighted in the interviews were the credibility of the developer, cooling off period, caretaking agreements, body corporate fees, quality of the build, ability to have pets, and information on the use of communal areas.

A challenge for developers is the multiple pivotal points along the development journey. The risk of OTP contracting is that in most instances along the development journey, there is no guarantee that the project will proceed. Therefore, whilst a buyer might be purchasing an apartment OTP at "today's pricing" they are inheriting a burden of risk that the project might not proceed. As a consequence, their deposits represent an opportunity cost, which they could have invested elsewhere. Additionally, the emotional investment of their wants and needs is not secured. One legal expert shared an important point,

I'll [the developer] provide you with proof of my right to become the owner' and so the contract becomes conditional of (1) me settling; (2) me getting the planning permit, so I haven't got my planning permit yet; (3) finding a builder; (4) building the development; (5) getting enough pre-sales to make it work; finding a bank who will lend me the money to fund the development. All those things can be conditioned subsequent effectively. Now, commercially do you? You probably don't, you probably try and have a bit more certainty as to title or no one will buy from you (Legal expert 9).

Several concerns about the body corporate arrangements were raised by legal practitioners. It was pointed out that consumers generally prioritize the final look and configuration of the products. For example,

But once you get to the stage where you've got a layered-arrangement body corporate, with perhaps even a building management statement in the arrangement, you're talking volumes and volumes of materials to look at. And, let's face it, at the end of the day they're interested in what their view looks like, and what their internal reconfiguration of their apartment looks like, and what level they're on (Legal expert 3).

However, over time consumers may realize the importance of body corporate functions and their commitments as an owner. *"It really important and ... it's essential both for buyers to understand, you know, body corporate arrangements both for off the plan sales and for existing lots"* (Policy expert 4). This is due to the legal and governance obligations of bodies corporate, or owners corporations, having a direct financial burden upon owners.

The legal practitioners emphasized the need to extensively explain to consumers the caretaking agreements or other contractual arrangements the body corporate will become liable for, so they are aware of the process from the beginning of their journey. For example,

...have a requirement that if they're to be told about something like a Caretaking Agreement or some other agreement that's with the Body Corporate Manager, that certain things have to be spelled out on the form, so to speak, so that they get some real information without having to wade their way through" (Legal expert 6).

This is particularly important for consumers who have never lived or owned in strata title. The contractual arrangements that the developer (original owner) of the scheme has entered into on behalf of the body corporate may be conflicted, providing benefit to the developer and leaving a long-term contractual obligation on the body corporate and lot owners.

Another consumer highlighted the importance of sustainability requirements such as energy usage, National Association of Testing Authorities (NATA) rating, heating and cooling requirements. For example,

I was looking at energy usage, energy efficiency ratings, I wanted a high NATA rating, I would have loved a good north facing aspect if I could have gotten it, the heating and cooling requirements as embodied NATA, but also by the layout, so the fact that we were able to get ceiling fans and seal off rooms was good. I was looking at the embodied energy in the materials used and the recycled materials where possible" (Consumer 2).

This consumer had expertise in the sustainability domain and highly valued these characteristics, which might not reflect the general consumer population. However, as 40 per cent of overall energy consumption, 40 per cent of atmospheric emissions, 30 per cent of raw materials and 25 per cent of water usage is involved in property development, this is a growing interest area for consumers and developers (Ang & Wilkinson, 2008; Mahmoud, Asif, Hassanain, Babsail, & Sanni-Anibire, 2017).

### *Challenges for consumers*

Within the OTP sales journey, consumers face a range of challenges and barriers. These include challenges in four key categories relating to contract characteristics, consumer characteristics, firm behaviour, and external market characteristics and delivery. These challenges are categorized as being subject to internal and external environmental conditions as evidenced in Table 4.

**Table 4:** Challenges faced by the consumers when purchasing OTP residential strata property

Scope	Challenge category	Challenge description
Internal	<b>Contract characteristics + Information failure</b>	Disclosure is too complex, lengthy
		Inequities of terms and conditions
		Conspicuous nature of Information (i.e. embedded networks)
		Variation in body corporate fees
		Power of attorney or proxy signed over to the developer
		Restrictions on keeping pets in the property
		Lengthy contracts
		Lack of information on community titling/strata titling
		Mixed use buildings
		Car parking issues (possible tandem parking or car lifts)
		<b>Consumer characteristics + Community expectations</b>
	Lack of understanding of the depth of the contract	
	Underestimating the risks	
	Lack of fundamental understanding of rights and responsibilities (associated laws)	
	Not knowing whom to approach to get help	
	Power of attorney or proxy signed over to the developer	
	Lack of understanding of key elements such as sunset date, body corporate fees	
	Traits related to trusting others, polite, non-confrontational	
	Emotional attachments to the place and associated pressure	
	Change of financial situations over the time of contract signing to settlement (i.e. loss of jobs)	
	Pain points - contract signing, handover	
	Caretakers favouring committee members	
	<b>Firm behaviour + Final product delivery</b>	
		Failure to have occupation certificate issued from the council
		Denying changes to request/Inability to request change in brands of appliances
		Final product not fit for purpose
		Systemic failures in the build
		Building defects
		Material changes
	<b>External Market characteristics</b>	Market fluctuations
		Changes in laws and policies
		Changes in material prices and supply

Challenges related to consumer characteristics were highlighted by most interview participants. For example, a consumer emphasized that buying OTP residential property comes with uncertainty and risks about the future, and used the analogy of an arranged marriage:

Well, it was not knowing what you were going to get. It was like an arranged marriage and so I didn't know if I was going to like the fella or not. I had no idea, I had photographs of him, but they could have been photos that were 10 years earlier, you know what I mean? You just don't know, whereas when you walk into a property normally, you have an emotional engagement with that property. All you're emotionally engaging with is an idea and that's very, very difficult, particularly if it's represented as a luxury apartment, when you get here and you find it's got the worst kitchen. The kitchen was like, I wouldn't even put it in an investment unit, I mean it was so basic, it was... yeah" (Consumer 1).

A lack of understanding of key information such as the sunset date, plan registration termination rights and the timing of the process creates numerous challenges for consumers. A policy expert shared,

I mean things that were really important to people that they didn't perhaps understand at the time of exchange from the enquiries we got were things like what's the sunset date? Can this be extended? What does the sunset date mean? Is it about registration of a plan? Is it about some other thing that triggers the ability to terminate? Is there some other condition that can allow people, the developer to terminate the contract?" (Policy expert 10).

These discussions also raised whether the consumer is aware of where they could go for help or advice (Policy experts 4, 7 and 10). Government bodies such as the Office of Fair Trading within each of the states and territories typically received complaints from consumers having challenging experiences. As one policy expert discussed,

We did have a lot of enquiries early on about or complaints, I suppose, early on about the fact developers were terminating contracts because they didn't have development approval or they didn't have development approval for subsequent stages in the development or other aspects of the development and buyers didn't understand that at the time they exchanged contracts it was so early in the process that that approval, that consent hadn't actually been obtained from council" (Policy expert 10).

Interview participants established the importance of disclosing information up front. The discussions centred on the need for a properly advised purchaser being able to understand that as it is so early on in the development process there are a lot of things that may change. Therefore, if they want to take the risk of having something done so early on and to commit before there's even a development approval, well, then they can accept that there is potentially a likelihood of change (Policy expert 10). However, as discussed earlier the complexity, voluminous and onerous nature of OTP contracts is perceived to discourage consumers from reading them.

...it's too voluminous to actually make sense and there's way too much there. If you go and look at some of the bigger ones which are schemes with volumetric lots and building management statements and all of that sort of stuff, people get two inches worth of disclosure in two separate packages plus the contract, they're just not going to read it. They're just not going to read it. The same with PDSs and all that sort of

stuff, with listings and all that sort of thing, I dead set reckon you could summarize in probably two pages the things that people need to be aware of." (Legal expert 7).

Another lawyer (Legal expert 2), also highlighted that specific information around embedded networks are some of the elements that are difficult for experts themselves to comprehend. This highlights a significant information imbalance. *"I think that the information around embedded networks is important, but that people don't understand it, and that even lawyers are struggling with that. And that's something that's catching people out by signing agreements up"* (Legal expert 5). The information asymmetry between being able to understand complex legal agreements and property development structuring presents an opportunity to 'bamboozle' consumers.

While consumers are reluctant to pay a solicitor to fully review the documents, based on the premise that 'everything will be alright,' they may not anticipate surprise events. Several legal practitioners shared experiences where consumers approach them during problem times to find a fault in the contract they had signed which would entitle them to terminate it. For example, *"I was asked by a client, can you find a flaw when something goes wrong and wants to terminate the contract"* (Real estate expert 1). Developers and policy experts also highlighted that consumers were not fully aware of the possible market fluctuations during the time period from signing the contract to handover.

I think it's certainly very important that everyone is on the same page at the outset and we have found that a lot of the problems that we were seeing come through our office has stemmed from the fact that perhaps people didn't have in mind the fact that their settlement was going to be two years down the track and a lot of circumstances can change from time of exchange to actual completion" (Policy expert 10).

This speaks to the risks associated in buying OTP, which is clearly not fully understood by all buyers regardless of the amount of readily available information on government websites and advocated by consumer protection mechanisms.

The issues with defects, material changes and the quality of the final products were also pointed out as key challenges for consumers. The developer stated, *"...the biggest pain point is if there's defects and the time for them to be fixed, that's the single biggest pain point I would have thought"* (Developer 1). The amount of media and other attention focussed on building defects in multi-owned property over the last couple of years has highlighted a significant and fundamental concern for OTP property purchasers. Unfortunately, *"A lot of developers will go to market first and then worry about getting the necessary council approvals later which is probably an unfortunate"* (Legal expert 14). Thus, this stems from the very start of the property development process and facilitates potential shortcomings of the regulation and oversight of this sector.

It was argued that inclusion of a minor change clause could be favourable to the developer. For example,

Now, what traditionally happened was that the vendor's solicitors would include a special condition which allowed for the making of 'minor changes' and often there would be a rough definition of a minor change as being one which resulted in less than a five per cent variation. Now, they often weren't clear about whether that meant five per cent in area or five per cent in value. There are some variations which might turn out to be very critical which are in fact small in size (Legal expert 14).

As Section 4.2.2, the sales contract review results, indicated most OTP sales contracts have a five per cent variation clause. Therefore, potentially all OTP sales may be five per cent smaller in size than

what consumers contracted to purchase. Whilst this variation is to allow for a range of 'minor changes,' particularly if the development does not already have planning approval, in practice it allows developers to obtain financial benefit for square meterage that is not provided.

Building defects go beyond not receiving what a consumer contracted to purchase. Many multi-owned properties have a design concept and architectural drawings but enter into a build contract that gives flexibility to the builder in the provision. The policy expert spoke about the difference between a compliant product and a quality product,

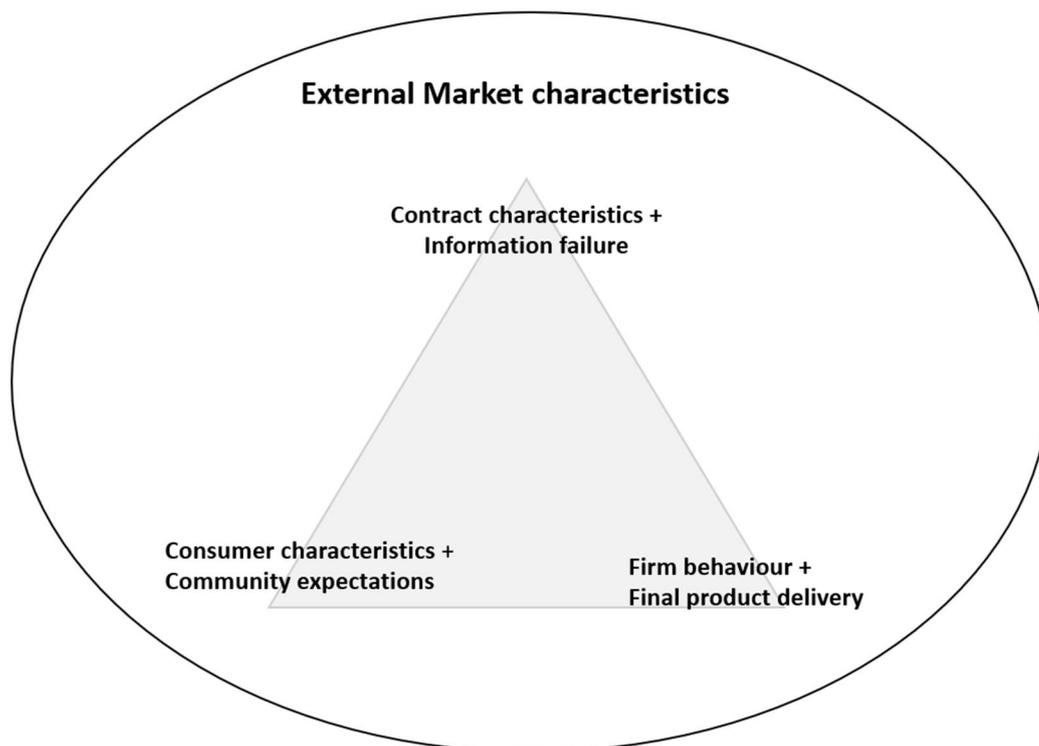
I think a lack of understanding about how the interaction with the building surveyors work. So, the fact that, well, first of all, the consumer's supposed to appoint a building surveyor, not a builder, that's a big issue because they don't really understand what the role is. Second of all, that consumers feel like the surveyor, if things are signed off along the process, that means it's going to be good quality, whereas I think the difference between, I suppose to pull it up to a high level, the difference between compliant and quality isn't clearly understood. And so that means people can be walking into buildings that are technically compliant but are actually like a bit crap to live in (Policy expert 6).

The aesthetics and quality of the final product was also discussed by many of the respondents. A policy expert highlighted that concerns were raised about the standard of the final product. This individual stated,

We did get some concerns raised by people who were not happy with the standard of finishes as well. That really was a matter for the contractor as to whether or not there's the scope to deal with those sorts of issues and again, even now a purchaser would have to be able to show that they're materially prejudiced by that change and it's a significant change (Policy expert 10).

However, this extended beyond just the internal characteristics of the lots. Changes to placement of lots within buildings, as well as surrounding areas were also discussed. Particularly, changes in nearby infrastructure and possible impacts on views and aspects of the building was highlighted by consumers. A policy expert who had experience in dealing with some consumer complaints related to similar situations also confirmed these challenges. The policy expert indicated,

...the outlook I think, if they're north facing as opposed to some other outlook and I did have a couple of complaints about units that had... ultimately I think there was an easement granted over common property such that there's a substation or some piece of infrastructure nearby which then impacted on the view and the outlook that the unit would have. So, it's a really a broad range of things that would impact the use and enjoyment" (Policy expert 10).



**Figure 4:** Snapshot of the typical categories of challenges faced by consumers

In synthesizing the key findings related to challenges faced by consumers, it was clear that the three key categories often influence each other, while the external market characteristics could possibly influence each of the internal challenges, as illustrated in Figure 4.

### *Types of consumers*

The consumer types in the market to buy OTP lots are diverse, ranging from naïve first home buyers to sophisticated investors. Unlike other consumer goods, the purchase of residential property is not a recurring transaction and for many individuals it is one of the biggest financial decisions many Australian buyers will make. Each property is generally unique and this provides variety in the available properties; however, it poses a challenge for customers when comparing products. Especially within the context of OTP purchases, consumers often rely on a brochure, or oral representation provided by the real estate agent. However, the Sales Contract Review in Section 4.2 observed that most of the contracts reviewed contained 'no representations' clauses purportedly limiting a buyer's ability to rely on those representations.

Participants highlighted several categories of consumers, including first home buyers, owner occupiers, mum and dad investors and foreign investors. Developer 1 discussed the major OTP consumer types,

So we've got the first home buyers, they're usually a bit naïve, I guess, in terms of the process and they need their hand held a lot.

You've got investors and some people invest a lot, so some people have a fairly decent portfolio, they don't need their hand held or they know the process, they might have done it multiple times.

You've got the owner occupiers, so these are typically, but not always, down graders, so people who are selling the family home, want to live in an apartment at New Farm or something like that, so the lifestyle change. They're usually pretty savvy as well because they've been through contracts, whether it's detached housing or whatever, but they understand the contractual process. They may get a little bit more confused in the settlements and progressive payments sort of process.

And then you've got the overseas buyers and they have a bit of confusion around the way Australia does business essentially and when I say overseas, I'm predominantly talking sort of Singapore, Hong Kong, China, etc, so that sort of South East Asia sort of area. So, their challenges are little bit different, more around the legalities, I guess, and some of that's driven by comms I would say (Developer 1).

The different consumer types would have differing requirements in terms of their level of expertise, knowledge and understanding of the OTP buying process. Therefore, it is challenging being able to provide a 'one stop fits all' information disclosure requirement to address each of these different consumer types.

However, technology can bridge the gap. As Lawyer 4 pointed out the role of less sophisticated buyers such as mum and dad investors, "*I just sit there and go the technology that we've got now is so much better to be able to give your mum-and-dad consumer ability to see what they're actually buying*" (Legal expert 11). This respondent went on to highlight that technology and virtual reality could assist consumers that cannot visualise a tangible product. They noted,

Because mum-and-dad consumer, getting that amount of paper... no reasonable person can make a lot of sense of the important issues. And the things that they're going to be worried about is how big is it? What's the layout? What's it going to look like? How much is it going to cost me? To ongoing maintenance. What exclusive-use areas are there? And what amenities am I going to have in the building as a whole? They're really the big-ticket items that most consumers would be concerned about. You will get some people that are worried about the view from the window: 'I didn't expect it to be that.' And then, I guess the other thing is what type of building it is going to be. Because for some people, the differential between it being kind of a letting pool and a holiday-type building as opposed to a residential high building, that is of concern to some people as well" (Legal expert 11).

The use of new technologies could assist developers and real estate/marketers in overcoming some of the hurdles that consumers may have in buying a product that they cannot see and feel. However, it may also further fuel the marketing paraphernalia that currently permeates OTP sales process.

### *Consumer responsiveness to information disclosure and expected responsibilities*

Legal and industry experts expressed a range of customer responses towards information disclosure. These included 'naivety,' 'recklessness,' and 'laziness.' There was a clear connection between the consumer responses and actions. While consumers may appear apathetic or naïve and reckless, this

may merely reflect a commercial decision made by those buyers in opting for cut-price conveyancing instead of having their lawyers review the full OTP contract and information disclosure documents. This decision may be influenced by a cost/benefit perception held by the buyer, as well as the societal expectation that conveyancing is 'cheap' and covers the key points of all property transactions.

Buyers may perceive that contract terms are not negotiable, so it is not worth investing in a review of them in circumstances where they cannot be changed. Those buyers are prepared to accept the conditions 'as is.' However, those buyers may not understand the implications of the documents they are signing, prejudicing themselves by underestimating the risks associated with the OTP transaction. For example, a real estate agent argued that,

I think there's a few challenges there. It's that there's all this consumer protection law around and the reality is, I mean consumers are lazy. I'm sorry, I don't know how to say that without sounding impolite and sounding blunt about it, I mean it drives me insane. I'm blown away by, I mean even as a former lawyer, I used to get blown away when people wanted to buy, people were spending half a million bucks on becoming some franchisee of a system and they'd ring me and they'd go 'Can I just bring in my disclosure document to get an autograph, what will you charge me for it?' and you'd kind of go 'Oh well, look, to review the document and give you some advice' and you'd give them a price and then they'd go 'Well, that's ridiculous, I'm not spending \$2,000 on that. All I need you to do is pop an autograph, can you just do it for \$50?' and like I'd be going 'You're about to invest half a million bucks and you don't want to spend two grand getting some advice before you commit half a million dollars to this exercise?' So, I know it's about a different thing, but it's sort of the mentality, the idea behind it is the same" (Real estate expert 1).

There appears a disconnect between the buyer's emotional investment from finding an OTP apartment and just wanting to execute or facilitate that transaction, rather than the details that might affect it. However, this is reversed when these buyers experience a problem with the product. Further research is required to ascertain decision making processes of buyers and their expectations and experiences of conveyancing for OTP purchases.

The influence of conveyancing practices has been the subject of quite heated discussions amongst many respondents. One lawyer shared their experience,

How can a solicitor out at... and I'll be a little bit inflammatory, out at Sunnybank, acting for a Chinese buyer, for a thousand dollars, which they actually get paid half of their fee upfront, and half of the fee in five years' time, actually make money and do their job properly in that paradigm. And we know that they're not doing their job properly, because how can a solicitor doing their job properly send back a 100-clause contract without a request for a single amendment? Conveyancing from a Law Society point of view, particularly off-the-plan conveyancing from an insurance point of view, from an everyman thinking that they can do it, and they've got a right to do it, and they ought to be doing it, and doing it, is very dangerous. Because it's massive jobs, with lots of money involved in it, with naïve clients, and the work is being done, frankly, often by the lowest common denominator, at the lowest price. You wouldn't use the cheapest heart surgeon to do your surgery (Legal expert 3).

Therefore, the consumer who is under the perception that conveyancing is conveyancing cannot differentiate between the different service levels and price points,

... when you've got this statutory intervention all the time, developers also develop a mindset that as long as they comply with statutory [requirements], they've done what they need to do, when that can be often providing the lowest common denominator and/or tricky ways of compliance (Legal expert 9).

All these concerns can then be linked back to a root cause of a lack of understanding by consumers of what they are getting into, made worse by failing to obtain additional advice and a review of the full contract document by opting for cut-price conveyancing. For example,

The cut price conveyancing as well, the public's perception that you can get, well, at least in Queensland, but I'm pretty sure it's around many of the states, that with the race to the floor in terms of conveyancing fees, people expect that they're only going to be paying like \$800-1,000 for a property transaction. Now, that's going to obviously result in reduced service and reduced information and searches and things like that as well (Legal expert 12).

Therefore, the consumer is affected by the 'cut price' conveyancing and the perpetuating of this approach by real estate agents, financiers and conveyancing practice.

Industry professionals also highlighted consumers' responsibilities in making informed purchasing decisions. They expected that consumers would evaluate the credibility of the builders, compare the current project with their previous developments, read the full contract and obtain legal advice on it. It was also expected that consumers would seek to develop a deeper understanding of the contractual processes, timeline and the possible risks when signing an OTP sales agreement. Basic literacy of property ownership and finances was assumed, in order to better understand the contractual process.

### *Consumer education and awareness*

Industry experts highlighted a range of methods to improve consumer education and awareness. These methods were further categorized into broadcast, digital engagement face-to-face engagement and print modes (Table 5).

**Table 5:** Pathways and channels for increasing customer awareness on information disclosure

Categories of channels/ modes	Sub-categories	Method
<b>Broadcast</b>	<ul style="list-style-type: none"> <li>• Radio</li> <li>• Television</li> </ul>	<ul style="list-style-type: none"> <li>• Radio program</li> <li>• Television program</li> </ul>
<b>Digital engagement</b>	<ul style="list-style-type: none"> <li>• Videos</li> <li>• Social media</li> </ul>	<ul style="list-style-type: none"> <li>• Chatbots</li> <li>• Videos (including animations)</li> <li>• Interactive online platform / electronic links / Step by step process links</li> <li>• Introductory courses with a quiz</li> <li>• Discussion forums</li> <li>• Digital representation of the property (for example, Building Information Modelling (BIM))</li> </ul>
<b>Face to face engagement</b>	<ul style="list-style-type: none"> <li>• General (on-demand) liaising</li> <li>• Targeted training and workshops</li> </ul>	<ul style="list-style-type: none"> <li>• Seminars</li> <li>• Training for first home buyers</li> <li>• Increased communication prior to signing the contract and at settlement</li> </ul>
<b>Print</b>	<ul style="list-style-type: none"> <li>• Glossy products</li> <li>• Newspapers</li> </ul>	<ul style="list-style-type: none"> <li>• Brochures</li> <li>• Paper columns</li> <li>• Summary forms</li> </ul>

One real estate expert shared their insights on using broadcast channels such as radio and television programs as a potential pathway for increasing consumer awareness,

...we try and give advice through, like we do weekly columns in lots of different newspapers around the state, we do radio, TV, things like that. We used to have a good weekly slot on ABC radio where we'd deal with these sorts of issues, we don't have that anymore, but we do have, we still have weekly sort of columns and we try and cover off on a whole array of issues and certainly off the plan is something we deal with on a fairly regular basis (Real estate expert 1).

Many respondents highlighted the importance of digital engagement tools, considering the digital literacy of consumers and their access to smart devices. These tools could take the form of a chat bot that is available to assist consumers, informative videos, online courses and online quizzes. For example,

Now, it's a bit farfetched, I suppose, at this point, but sitting down with a chatbot and saying 'Right, you've got to spend half an hour with me before you can go ahead with your purchase. Why are you buying this unit?' 'Because it's close to the ocean.' 'Okay, do you have any pets?' 'Yes, I do' and just basically let it roam free and go through the process that a lawyer usually goes through, but this is the thing, to get someone to the point where they can have that conversation to work out what is important to the buyer to then be able to provide the buyer with quality information and the buyer for

them to then make the decisions, that's the dream run. But, of course, then you chuck another overlay on top of it" (Legal expert 9).

Legal expert 1 also proposed potential leveraging of online platforms to create a step by step process where consumers are prompted to click and read certain links and respond to a quiz before they complete their contracts signing.

There are now many distributive platforms that would allow me to have a certificate generated to tell me when you did download it and potentially to say well I'm not going to execute a contract with you until you do download it and I get that evidence. Just in a broader sense I think you know as a society we're much more used to dealing with things in that format now, we're much more comfortable with, and expect material and information to come to us in the form of links and you know electronic communications. So, I do wonder and there's also a lot more work being done through online portals and platforms as well" (Legal expert 1).

Another suggestion by a real estate expert related to the use of animated videos or cartoons to briefly explain information in a comprehensible manner. For example, *"one of the ones I saw I think it was ABMA, Australian Building Management Association where they had their little cartoon. A cartoon format video, quite short regarding facilities management"* (Legal expert 2).

The increasing applications of digital engineering in asset management and property developments was raised by legal experts who proposed a possible integration of Building Information Modeling (BIM) technologies to digitally present the proposed property to the consumer so that they might obtain a better idea of what they are purchasing. That is,

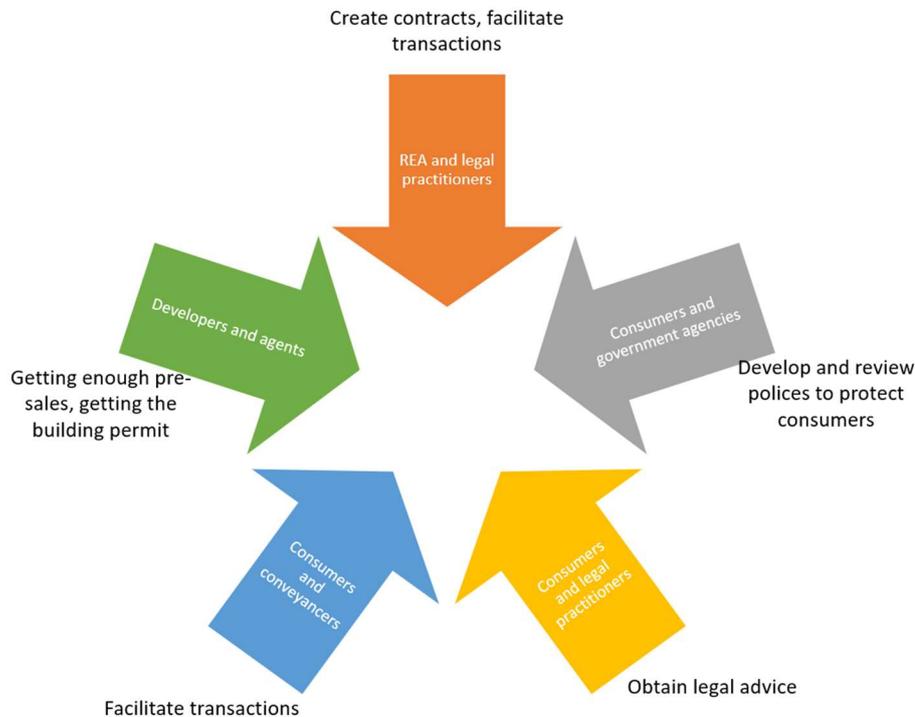
I honestly think that digital getting a feel for what it will look like sitting the room would help people a lot. And I don't know how you kind of put that digital thing into it, contractual or a disclosure right, or something like that. But I think that that would help manage people's expectations. So, it'll be interesting to see. I just don't know if people are ... those things cost a lot of time and money to virtually build. But I kind of think that that might help in some way manage people's expectations in that regard. And the financial stuff, I think, is pretty important. And if there was a shorter form disclosure, I think that would definitely help, that it's a few pages of these are the critical things you need to know, that's a fill-in the blanks. And then coupled with the annexures that you need to give. As opposed to 40 pages of words, plus another 250 pages of attachments. That would, I think, help people as well. It certainly would help people explaining contracts too (Legal expert 11).

In considering the printed material it was suggested by several industry practitioners to create a guide addressing most of the problem areas enabling consumers to use it as a reference point. Conversely another legal practitioner argued, *"I think that in something as complex and as thoroughly documented as a sale of real estate, one more document is not going to make a real difference"* (Legal expert 14).

These findings highlight future opportunities for engaging consumers through digital platforms. Most importantly, a sensible, simple approach is needed to avoid overloading consumers with additional information in circumstances where they may already be in receipt of extensive materials.

### 4.1.3 Valuing relationships

There are variety of interactions between key stakeholders such as real estate agents, policy makers, legal practitioners, developers and consumers (Figure 5). These relationships are based on unique drivers and obligations between each party.



**Figure 5:** Overview of stakeholder interactions and relationships

The interviews documented that the consumers are situated in a subservient position of power to the seller, because OTP contracts largely favored the seller, granting the seller additional discretions that were not replicated for buyers. Detail about these observations is further reinforced in Section 4.2.1 in the review of the sales contracts. Furthermore, consumers' reliance on real estate agents for information and advice, when those professionals represent the sellers, can create a conflict of interest. The real estate expert argued that agents are not obligated to educate the consumer, stating,

Some people would argue it's the job of the real estate agent which I'm not just saying this because of where we work, I don't think it is that. I don't think it is their role, I really don't. I would argue it's, I mean don't get me wrong, if the real estate agent has to hand over something, then sure, but I don't think a real estate agent should be educating a buyer about what they're buying, that's not their role, they don't act for that party. I think it should be government and whoever the relevant statutory body" (Real estate expert 1).

Interestingly, that agent made no mention of the buyer's legal representative as a source of advice. There appears to be an expectation gap between the conveyancing services that may be delivered by a lawyer and the additional value-add of providing advice on the documents to be signed.

Inexperienced consumers are likely to experience difficulties in identifying what information is particularly relevant to their decision making, and in turn locating that information within the OTP contract documents without assistance. They are likely to rely on a real estate agent, with whom they may perceive a relationship as a result of the facilitation of the deal. Other parties may include a surveyor; however, a buyer's likely exposure to a surveyor would be limited, or their solicitor. Of these, the solicitor is the only party appointed to act on behalf of the buyer, but it also means that the buyer is required to pay for the solicitor's services. Consumers appear not to understand that real estate agents have a fiduciary duty to the seller. The legal expert highlighted that the power imbalance experienced by buyers causes them to seek advice from a party they believe knows the relevant information on the project and would communicate it to them—the real estate agent. That is,

Real estate agents hold an incredible position of power when it comes to body corporate purchases and therefore disclosure...part of the problem is that the motivation for the real estate agent is the sale, the commission and not only that, but a real estate agent's primary responsibility is to their vendor. That's legislated, that responsibility, so if they have a choice between satisfying the needs of their vendor or satisfying the needs of a purchaser, then effectively by law they're required to opt for the vendor, not the purchaser" (Legal expert 8).

With respect to parties external to the contracting process, such as surveyors, there was a perception that a sign-off on building processes resulted in consumers attaching meaning beyond mere compliance. For example,

...consumers feel like the surveyor, if things are signed off along the process, that means it's going to be good quality, whereas I think the difference between, I suppose to pull it up to a high level, the difference between compliant and quality isn't clearly understood. And so that means people can be walking into buildings that are technically compliant but are actually like a bit crap to live in" (Policy expert 6).

Therefore, compliance does not necessarily align with quality. Consumers need greater education of the different stakeholders and the relationships between these stakeholders in the property development process. If the public was made aware of each of the stakeholders and their roles and responsibilities that are required of them they may be surprised, as well as understand why the built environment has such systemic building defect issues. Regulators need greater carriage of ensuring that the roles and responsibilities of stakeholders is conducted, in a manner that aligns with legislative and compliance mechanisms. Furthermore, regulators must ensure they enforce minimum standards and also report on or educate the public on the stakeholders that are not. This will ensure that consumers are empowered to conduct independent research on stakeholders involved in OTP developments and make informed decisions about the proposed development that they are buying into.

Assuming the information was explained correctly by a party such as a real estate agent, a consumer remains unlikely to have a complete understanding of the implications of the seller's adoption of such structures and agreements with respect to strata title schemes as they might have obtained from their own advisor. Similarly, placing reliance on external contractors appointed by the seller to assess compliance, such as surveyors, will not ensure consumers comprehend the product they are purchasing. There is a larger role for the legal profession to play here in educating consumers of the value of obtaining independent legal advice on contracts prior to signing, and in providing more than transactional assistance in the conveyancing process. Advice and services that will aid in

comprehension and facilitate informed decision making must extend to more than merely the mechanical conveyancing process. Rather, they should focus on the content of the disclosure documents and how they may create downstream negative impacts on the buyer and the body corporate that they will become a member of.

#### 4.1.4 Referencing Acts, Regulations and policies

The existing information asymmetry and the lack of commitment to form voluntary obligations of disclosure by sellers provide sufficient impetus for government intervention. This could be viewed as a form of mandatory requirements for information disclosure by sellers of OTP residential property. Across Australia there is general acknowledgement by government and the judiciary that there is an information imbalance in OTP sales contracts urging policy reforms and reviews towards better consumer protection. For example a policy expert from New South Wales shared,

We had done a review of our disclosure obligations generally in 2016 because our Regulation was up for repeal and remake around about that time and we sort of initially put out some feelers about off the plan which did, I guess, promote some discussion in the community but it was not until we started getting an influx of concerns from the community about them not getting what they expected to receive and floor plans changing and things like that, no parking spaces and all that kind of stuff, but that also coincided I suppose with some of the significant building defects issues that arose in New South Wales (Policy expert 10).

Legislation is directed towards reducing the consumer risks and overcoming information asymmetries between sellers and buyers. Within this context, the interview findings highlighted a suite of relevant legislative instruments across different states that correlated with the findings in the stage 1 report. While the participants highlighted the nuances between law and policy in each state, the overarching aim of this research was to investigate information disclosure as a mechanism to protect consumers and reduce information imbalance.

However, greater importance of customer behaviours and behavioural economics could form targeted and tailored policy tools was also highlighted. For example,

...it depends on things like what exactly you're using it for; whether you're trying to use it to change behaviour that might be better changed through other regulatory tools; depends on the timing of the information that's been provided to consumers, what stage they are in decision making process. We know things like if you're providing disclosure after a person's kind of set their mind on a product or has virtually made a preliminary decision to purchase that product, that that may not be the appropriate time to really be providing important details that may otherwise have changed their minds (Policy expert 7).

Building on the stage 1 report, and by synthesizing the key findings of the interviews, Table 6 provides a summary of key laws and policies relevant to OTP contracts.

**Table 6:** Summary of the relevant laws and policies for OTP sales contracts across different jurisdictions in Australia

State	Relevant policies, regulations and schemes
Federal	<ul style="list-style-type: none"> <li>• <i>Competition and Consumer Act 2010</i> (Cth)</li> </ul>
QLD	<ul style="list-style-type: none"> <li>• <i>Body Corporate and Community Management Act 1997</i> (Qld)</li> <li>• <i>Land Sales Act 1984</i> (Qld)</li> <li>• <i>Building Units and Group Titles Act 1984</i> (Qld)</li> <li>• <i>Fair Trading Act 1989</i> (Qld)</li> </ul>
VIC	<ul style="list-style-type: none"> <li>• <i>Owners Corporations Act 2018</i> (Vic)</li> <li>• <i>Subdivision Act 1988</i> (Vic)</li> <li>• <i>Sale of Land Act 1962</i> (Vic)</li> <li>• <i>Australian Consumer Law and Fair Trading Act 2012</i> (Vic)</li> </ul>
NSW	<ul style="list-style-type: none"> <li>• <i>Strata Schemes Management Act 2015</i> (NSW)</li> <li>• <i>Conveyancing Act 1919</i> (NSW)</li> <li>• <i>Conveyancing Legislation Amendment Act 2018</i> (NSW)</li> <li>• <i>Conveyancing (Sale of Land) Regulation 2017</i> (NSW)</li> <li>• <i>Fair Trading Act 1987</i> (NSW)</li> </ul>
SA	<ul style="list-style-type: none"> <li>• <i>Law of Property Act 1936</i> (SA)</li> <li>• <i>Land and Business (Sale and Conveyancing) Act 1994</i> (SA)</li> <li>• <i>Fair Trading Act 1987</i> (SA)</li> </ul>
TAS	<ul style="list-style-type: none"> <li>• <i>Strata Title Act 1998</i> (TAS)</li> <li>• <i>Property Agents and Land Transactions Regulations 2006</i> (TAS)</li> <li>• <i>Fair Trading Act 1990</i> (TAS)</li> </ul>
ACT	<ul style="list-style-type: none"> <li>• <i>Civil Law (Property) Act 2006</i> (ACT)</li> <li>• <i>Civil Law (Sale of Residential Property) Act 2003</i> (ACT)</li> <li>• <i>Fair Trading Act 1992</i> (ACT)</li> </ul>
WA	<ul style="list-style-type: none"> <li>• <i>Strata Titles Act 1985</i> (WA)</li> <li>• <i>Fair Trading Act 1987</i> (WA)</li> </ul>
Northern Territory	<ul style="list-style-type: none"> <li>• <i>Unit Title Schemes Act 2009</i> (NT)</li> <li>• <i>Law of Property Act 2000</i> (NT)</li> <li>• <i>Consumer Affairs and Fair Trading Act 1990</i> (NT)</li> </ul>

## 4.2 Sales Contract Review

Six OTP contracts and/or disclosure statements were reviewed, one from Victoria and the remainder from Queensland. One bundle provided to the researchers only included the contract. Another only contained the disclosure statement. No broad sector-wide conclusions may be made from the limited review; however, there are numerous observations worthy of notation.

### 4.2.1 Sales Contract Observations

A limitation of the OTP sales contract and information disclosure review is the small number of the sample. Figure 6 summarizes the comprehension, readability and terminology adopted using a simple traffic light system of classification. It appears that use of plain-English terminology was most successfully achieved, with poorer rankings for both comprehension and readability.

The contracts were reviewed by the researcher with extensive legal experience in development of strata schemes and in contract review exercises. Despite this, the reviewer experienced difficulties in identifying key information in two areas, including:

- 1) the number of lots in some schemes, without adding the number of lots listed in statements noted throughout the disclosure document; and
- 2) the broader structuring of the development adopted by the developer. On the face of some documents, the scheme appeared to be a straightforward subdivision; however, on closer inspection of the disclosure documents, a different structure was revealed, which resulted in costs implications for potential buyers.

Both these factors contributed to lower rankings of comprehension and readability for some developments. In addition, while one of the contracts ranked highly in comprehension, readability and terminology, the disclosure document for that development was not provided. As a result, the overall impression of the OTP contract documents was somewhat clouded.

The difficulties in collecting information on the number of lots in the scheme and the structuring of the scheme is an important point to note. The researcher's experience in reviewing these documents facilitated their review and comprehension. Nevertheless, difficulties persist. A consumer with less experience and knowledge in this area would likely have found it significantly more difficult to identify the information for themselves. As noted above, reliance would likely have been placed on the real estate agent and, potentially, their solicitor to explain the terms. Assuming the information was explained in sufficient depth to enable comprehension of that aspect of the transaction, the consumer may still not have a complete understanding of the implications for both themselves and the body corporate that they will be future members of as a result of the seller adopting such structures and agreements. For example, the additional cost overlays and overlapping or missing layers of management may have significant long-term effects for a scheme.



**Figure 6:** Traffic light ranking of elements of contracts

The review also confirmed the interview results and prior literature with respect to the drafting of OTP contracts. While terminology appeared reasonably well executed, the clauses themselves raised numerous concerns for consumers. One contract was well balanced, with largely corresponding rights for both buyer and seller. However, this was the exception. The remaining contracts were heavily weighted in favour of the seller. Clauses commonly found throughout the contracts included:

- Clauses limiting the buyer's ability to rely on representations made by the seller or their agent, by acknowledging that the buyer had undertaken their own research on the lot and building before deciding to enter into the agreement;
- Purported limitations on buyers' rights with respect to making claims for defects. In all cases, there was a process that buyers were required to follow in order to make claims. There were short timeframes imposed in the contracts which sought to limit the seller's obligation to correct defects, potentially contrary to statutory requirements around defect rectification;
- There were prohibitions on delays to settlement and withholding of settlement proceeds to secure the seller's compliance with their contractual obligations. Buyers were required to proceed to settlement when notified by the seller, irrespective of the seller's compliance with certain obligations. In one case, this included the seller's ability to withdraw the right for a buyer to undertake a pre-settlement inspection of the lot on the basis that the site was too dangerous for entry. However, there was no commensurate ability for the buyer to delay settlement until entry was safe enough for both a pre-settlement inspection and the buyer or their tenant to move into the building;
- The discretion granted to sellers to change aspects of the lot, building and development, including amenities and agreements that the seller proposed to require the body corporate or owners' corporation to enter into, was broad. Statutory obligations overlay the seller's ability to make changes, in some cases by mandating further disclosure. Nevertheless, on a review of the contracts, the buyers appear to be disclaiming any 'material prejudice' for all but the most significant alterations;
- Every OTP contract contained a right for the seller to vote at committee meetings and meetings of the body corporate or owners' corporation for a period of twelve months after

either registration of the scheme, or settlement of the contract. The disclosure documents often described what types of motions the seller was entitled to exercise this right to vote on; however, the categories were broad enough to create some discretion in favour of the seller; and

- In all but one of the OTP contracts, the seller was entitled to terminate the contract based on the exercise of a broad discretion by that seller. There was only one contract with a partly commensurate ability for the buyer to terminate (however, this right was significantly narrower than the discretion granted to the seller, in that it was limited to only one of the areas where the seller was entitled to exercise their discretion to terminate).

The review identified that contracts largely favoured sellers, with buyers' rights being significantly limited in comparison. Arguably a degree of discretion is necessary in order to execute the development as intended by the seller; however, the researchers question the fairness of such one-sided discretions and powers granted to sellers in these contracts.

Finally, the length and resulting complexity of the OTP disclosure materials varied significantly and was also of concern. Contracts were, on average 57 pages long, while disclosure statements ranged from a low of 129 and a high of 689 pages, with a median of 292 pages. These documents were predominantly text or tables of numbers, with birds-eye survey plans common throughout. While floor plans were provided, it not necessarily limited to the floor plan of the contracted lot, but rather the floor plans for all lots within the development. The complexity of the structuring adopted by the seller also contributed to the length of the documents, their readability and ability to be comprehended.

4.2.2 Sales contract review results

Attribution:	State:	Classification:	
SC1	Victoria	Comprehension	
<b>Scheme Features:</b>		Readability	
<b>No of Lots:</b>	<b>Length of Materials:</b>	Terminology	
Only able to be calculated by counting lots off plans	Disclosure materials: 190 pages Sales contract: 68 pages		
<b>Structure of Scheme:</b>	Three owners' corporations. Planning permit indicates 'eight-storey building (plus basements) accommodating retail premises, office, dwellings and associated car parking' is permitted, but not immediately obvious from disclosure materials.		
<b>Specific Information Disclosed:</b>			
<ul style="list-style-type: none"> <li>• Cooling off period</li> <li>• Deposit payable</li> <li>• Length of time between contract and registration may be substantial</li> <li>• Value of lot may change</li> <li>• Recognition that buyers have received copy of section 32 of the <i>Sale of Land Act 1962</i></li> <li>• Copy of full terms of contract</li> <li>• Car parking plan</li> <li>• Lot plans</li> <li>• General specifications</li> <li>• Owners' corporation rules</li> <li>• Nomination deed</li> <li>• Deed [specific to development – name removed to preserve confidentiality of development]</li> <li>• Vendors statement</li> <li>• Consumer Affairs Victoria Due Diligence Checklist</li> </ul>			

<ul style="list-style-type: none"> <li>• Draft subdivision plan</li> <li>• Lot entitlements</li> <li>• Existing plan and certificate of title extract</li> <li>• Planning Certificate</li> <li>• Water Information Statement</li> <li>• Rates Certificate</li> <li>• Land Information Certificate</li> <li>• Land Tax Clearance Certificate</li> <li>• Land or Building Information Certificate</li> <li>• Environmental Protection Authority Certificate</li> <li>• Roads Property Certificate</li> <li>• Victorian Aboriginal Heritage Register</li> <li>• Planning Property Report</li> <li>• Planning Permit</li> </ul>	
<p><b>Notes:</b></p>	<p>The special conditions vary the general conditions to the contract so a clause cannot be read without searching for the amendments to it and cross referencing the two.</p> <p>The Vendors statement notes approximately that outgoings are between \$3,500 and \$12,000 per annum plus GST, a significant variation which may impact on affordability as well as value of the lot.</p>
<p><b>Clauses of note for consumer decision making:</b></p>	
<p>General Condition 3: Identity of land and Special Condition 6 (Amendments to Plan): no claims or termination for misdescription of land including size or measurements (cl 6 caps the size or measurement differential at five per cent).</p> <p>Special Condition 11 (Vendor’s right to terminate): when the seller determines for any reason that construction will not proceed, together with other matters at the seller’s discretion, the seller may terminate the contract.</p> <p>Special Condition 16.4 (Defective work): the buyer cannot delay settlement, withhold funds or claim compensation if there are building defects.</p>	

Special Condition 16.6 (Changes to building contract & plans and specifications): the seller may change the façade, fixtures, fittings, appliances etc without the buyer's approval if it is efficient or cost effective.

Special Condition 16.9 (Marketing materials): the buyer acknowledges that they have not relied on the display unit, but on plans and specifications contained in the OTP contract when purchasing.

Special Condition 16.11 (Dispute): the buyer cannot delay settlement, retain funds etc for disputes under Special Condition 16. They may only claim compensation after settlement.

Special Condition 18.2 (Restriction of rights): the seller may reasonably direct the buyer's actions as committee members or member of the Owners' Corporation while the seller remains the owner of a lot in the Owners' Corporation.

Special Condition 18.7 (Deed [relates to specific arrangements made for the development]): a grant of power is made to a third party to change the façade of parts of the building pursuant to the agreement that the seller will procure between the relevant entity and the Owners' Corporation.

Special Condition 20 (Restriction on re-sale): the buyer agrees that they have no right to resell the lot, or advertise it for resale, until after the settlement date.

Special Condition 26 (Insolvency event): there is a deemed default by the buyer if an insolvency event occurs as defined by the contract. No equivalent provision exists for the seller.

Special Condition 33 (No warranties): the buyer restricts their reliance on warranties provided by the seller and any associated entity, including the agent, except as disclosed by the buyer in the contract.

Special Condition 37 (Pre-settlement inspection): only one pre-settlement inspection is permitted. The seller may delay the inspection if the site is unsafe for the buyer to enter. There is no equivalent right for the buyer to delay settlement because of unsafe conditions on the site, or an inability to inspect the property.

Special Condition 42 (Substation): the buyer cannot object to the installation of an electrical substation on the site.

Special Condition 43 (Car lifts): the buyer acknowledges that not all car types will fit in the car lift. The buyer acknowledges that they have no exercisable rights against the seller if the buyer's car does not fit into the car lift.

Attribution:	State:	Classification:	
SC2	Queensland	Comprehension*	
Scheme Features:		Readability*	
No of Lots:	Length of Materials:	Terminology*	
Insufficient detail provided	Sales Contract: 25 pages (Disclosure document not provided)		
Structure of Scheme:	Insufficient detail provided		
Specific Information Disclosed:			
Disclosure document not provided.			
Notes:	The classification of the comprehension, readability and terminology was coloured by the lack of disclosure statement. The 25-page contract was easy to read. However, the researcher was unable to identify key features of the development based on the contract alone. As a result, the classification as 'green' for each of comprehension, readability and terminology is somewhat misleading.		
Clauses of note for consumer decision making:			
<p>Clause 4.3 (Right to cancel contract): the seller may terminate the contract if an authority refuses approval of a necessary permit, sealing of the plan or withdraws an approval.</p> <p>Clause 5.1 (Pre-sales): the seller may terminate by the date specified in the contract if the seller does not achieve sufficient pre-sales to satisfy the finance conditions.</p> <p>Clause 7.3 (Right to change building): the seller may change the number of lots, layout, size of the building, the community management statement, and the budget (plus numerous other items). The contract repeats the buyer's statutory right of termination.</p> <p>Clause 7.5 (Right to change property): the seller may change (a) the size of the lot by up to five per cent, (b) the specifications, or (c) the internal layout of the lot. The buyer is not entitled to terminate the contract, but may be entitled to seek compensation (clause 7.6). If the buyer does so, the seller may terminate the contract in response (clause 7.7).</p> <p>Clause 8.1 (Your obligation to settle): the buyer has no ability to refuse to settle or delay settlement because of defects.</p>			

Clause 11.3 (What you cannot complain about): the buyer cannot raise an issue if a car park, courtyard or storage area is allocated by exclusive use by-law (rather than being on title), if there are changes to the layout of the lot or building, the Regulation module is changed, or services or facilities are not constructed.

Clause 16 (Power of attorney): the buyer appoints the seller as their attorney for the matters set out in the power of attorney disclosure statement for a period of 12 months from settlement.

Attribution:	State:	Classification:	
SC3	Queensland	Comprehension	
Scheme Features:		Readability	
No of Lots:	Length of Materials:	Terminology	
401 (noted from contribution entitlement)	Disclosure document: 292 pages Sales Contract: 61 pages		
Structure of Scheme:	Single body corporate (basic scheme) overlaid by a building management statement		
Specific Information Disclosed:			
<ul style="list-style-type: none"> <li>• Statutory Disclosure Statements</li> <li>• Schedule of Contributions</li> <li>• Survey Plans</li> <li>• Community Management Statement</li> <li>• Building Management Statement</li> <li>• Body Corporate Manager's Agreement</li> <li>• Management Agreement – Building Management Statement</li> <li>• Caretaking Agreement</li> <li>• Letting Agreement</li> <li>• Hot Water and Gas Agreement</li> <li>• Embedded Network Agreement, Alarm Agreement.</li> </ul>			

<b>Notes:</b>	<p>Hot water and gas, together with embedded network agreements both provide for ownership of some facilities by the services provider. Should termination of those agreements occur, the body corporate must pay out the remaining contract price based on a yearly depreciating value. This is not disclosed in the materials other than by way of a clause in the embedded network agreement.</p> <p>The anticipated value of the caretaking and letting rights for the scheme is \$5.475 million, which the developer will retain.</p>
<b>Clauses of note for consumer decision making:</b>	
<p>Special Condition 1 (Buyer's acknowledgement about representations): the buyer acknowledges they have not placed reliance on any pre-contractual representations when entering into the contract.</p> <p>Clause 2 (Liability of Seller and Developer): the owner of the land and developer of the scheme were different entities. The clause distinguished between the liabilities of each.</p> <p>Clause 21.6 (Insolvency of Developer or Seller): an insolvency event is not regarded as a breach by the seller, but it is for the buyer.</p> <p>Clause 25 (Matters to which Buyer cannot object): the contract contains an extensive list of matters to which the buyer cannot object to, including alteration in lot entitlement, or aggregate lot entitlements of scheme, columns protruding into car spaces, tandem car spaces being smaller than two ordinary spaces, no pool safety certificate at completion, facilities not being available at completion, a change in Regulation module, or the existence of electrical substations, transformers or other telecommunications facility on scheme land.</p> <p>Clause 27 (Engagement of body corporate manager, service contractors and letting agent): the developer may appoint body corporate manager, service contractors or letting agent on behalf of the body corporate on terms generally disclosed, subject to any variations the developer makes in its discretion. The buyer acknowledges that the terms are appropriate and fair and reasonable. The Developer will be entitled to retain the sale price.</p> <p>Clause 28 (Power of attorney): the buyer appoints the developer as its attorney, to the buyer's exclusion, for the matters disclosed in the contract for a period of one year from the settlement date.</p> <p>Clause 29 (Appointment of Proxy): the buyer irrevocably appoints the developer as its proxy for one year after the scheme is established.</p> <p>Clause 66 (Fair contract terms): the buyer acknowledges that they were given the opportunity to get advice on the contract, negotiate the terms, and the terms of the contract are reasonably necessary to enable the developer to carry out the development.</p>	

Attribution:	State:	Classification:	
SC4	Queensland	Comprehension	
Scheme Features:		Readability	
No of Lots:	Length of Materials:	Terminology	
28 (noted from contribution entitlement)	Disclosure document: 129 pages Sales Contract: 39 pages		
Structure of Scheme:	Single body corporate (simple scheme) but no explanation		
Specific Information Disclosed:			
<ul style="list-style-type: none"> <li>• Lot number</li> <li>• Parties (Seller and Buyer)</li> <li>• Variations</li> <li>• Disclosure Statement:                             <ul style="list-style-type: none"> <li>○ Proposed lot</li> <li>○ Sunset date</li> <li>○ Annual contributions</li> <li>○ Body Corporate Assets</li> <li>○ Community Management Statement</li> <li>○ Regulation Module</li> <li>○ Disclosure Plan</li> <li>○ Budget and Annual Contributions</li> <li>○ Body Corporate Manager's Agreement</li> <li>○ Caretaking Agreement</li> <li>○ Letting Agreement including Occupation Authority</li> <li>○ Proposed Community Management Statement</li> <li>○ Power of Attorney</li> </ul> </li> </ul>			

<ul style="list-style-type: none"> <li>○ Schedule of Finishes and Fittings</li> </ul>	
<b>Notes:</b>	There is no information in the contract regarding the proposed car stacker to be installed. In the CMS there is an acknowledgement that only certain sized cars may fit in the stacker.
<b>Clauses of note for consumer decision making:</b>	
<p>Clause 6.2 (Termination by seller): the seller may terminate the contract if approvals are refused or withdrawn, the development cannot be completed by the sunset date or the development is no longer viable.</p> <p>Clause 6.4 (Termination by buyer): the buyer may terminate if titles to the lots to be created in the development are not registered, and the certificate of occupation is not obtained by the sunset date.</p> <p>Clause 10 (Pre-settlement inspection): the buyer may inspect the property once before settlement in the presence of the seller to identify defects, and must sign a certificate either stating there are no defects, or listing the defects. No funds may be withheld at settlement to ensure the defects are rectified. The seller must fix any defects notified in writing within 30 days after settlement.</p> <p>Clause 16 (No objections): the buyer cannot object to the seller being unable to provide a pool safety certificate at settlement or if there are any one of numerous changes to the disclosure document.</p> <p>Clause 18.2 (Variations to disclosure statement by further statement): if a further statement is issued, and the buyer seeks to terminate the contract pursuant to their statutory rights, the buyer must first justify to the seller the material prejudice they will suffer.</p> <p>Clause 19 (Power of attorney): the buyer appoints the seller as its attorney to vote on the items set out in the disclosure statement for a period of one year after creation of the scheme.</p>	

Attribution:	State:	Classification:	
SC5	Queensland	Comprehension	
<b>Scheme Features:</b>		Readability	
<b>No of Lots:</b>	<b>Length of Materials:</b>	Terminology	

<p>100 to 110 residential lots (unclear from information)</p>	<p>Disclosure document: 368 pages Sales Contract: 94 pages</p>
<p><b>Structure of Scheme:</b></p>	<p>Single body corporate. Appears to be a mixed-use scheme (cl 13.4 in the contract), but the community management statement notes that it is residential only. The scheme is overlaid with three building management statements.</p>
<p><b>Specific Information Disclosed:</b></p>	
<ul style="list-style-type: none"> <li>• Buyer</li> <li>• Proposed Lot</li> <li>• Contract Sunset Date</li> <li>• Disclosure Plan</li> <li>• Proposed Community Management Statement</li> <li>• Schedule of Levies</li> <li>• General Information</li> <li>• Power of Attorney</li> <li>• Proposed Budget</li> <li>• Proxy Form</li> <li>• Proposed Building Management Statement &amp; Extinguishments</li> <li>• Proposed Volumetric Plan</li> <li>• Important Notes</li> <li>• Warranty</li> </ul>	
<p><b>Notes:</b></p>	
<p><b>Clauses of note for consumer decision making:</b></p>	
<p>Clause 9 (Completion of the lot): the lot will be constructed “generally in accordance with” the plan and floor plan as disclosed to the buyer. The buyer cannot object to changes to plans where they are minor. The buyer cannot object to any other changes (for example, fixtures and fittings) if replaced with equivalent quality items. Subject to statutory obligations regarding building defects, the buyer must notify the seller of defects within 90 days of settlement and the seller must fix them.</p>	

Clause 13 (What we may do): the buyer may not object to a series of actions that the seller may engage in, including making certain variations to the lot, building and disclosure documents, entering into agreements on terms different to the disclosure documents, services or facilities are not constructed as at the settlement date, if there is water penetration or wind noise into the lot, bulk supply utility agreements are entered into, access to certain parts of the common property is restricted (including the use of certain lifts). The seller may also change the number of lots in the scheme, the number of levels, the contribution entitlements and the budget, provided the latter two do not effect a variation applicable to the lot of greater than 5 per cent.

Clause 18 (We may assign land): the seller may, without the buyer’s consent, assign the land to another entity, provided that that entity agrees to perform the seller’s obligations.

Clauses 19 and 20 (Power of attorney and proxy, respectively): the buyer appoints the seller as its attorney and proxy for the maximum period allowable under the Act.

Clause 21 (Approvals and conditions): the seller may terminate the contract if approvals are not obtained or revoked, sufficient presales are not obtained, or the plan cannot be registered by the sunset date.

Clause 29 (Proposed budget): the budget is an estimate only and the buyer cannot object if the actual expenditure varies from the budgeted amount because of factors outside the seller’s control.

Clause 53 (No representations): the buyer acknowledges that they have made their own inquiries and is not relying on statements made by the agent when entering into the contract.

Clause 58 (No objection): the buyer cannot object to a failure by the seller to provide a swimming pool safety certificate at settlement.

Attribution:	State:	Classification:	
SC6	Queensland	Comprehension	
Scheme Features:		Readability	
No of Lots:	Length of Materials:	Terminology	
Stage 1 – 467 lots plus a balance development lot	Disclosure document: 689 pages (sales contract not provided)		

which will be developed into 201 lots in stage 2.	
<b>Structure of Scheme:</b>	Single scheme, multi-staged development overlaid by numerous building management statements.
<b>Specific Information Disclosed:</b>	
<ul style="list-style-type: none"> <li>• Buyer</li> <li>• Seller</li> <li>• Lot no.</li> <li>• Statutory Disclosure Statements (sunset date, body corporate levies, all agreements)</li> <li>• Identification Plan – Stages 1 and 2</li> <li>• Schedule of Proposed Contributions Stages 1 and 2</li> <li>• Proposed CMS – Stages 1 and 2</li> <li>• Proposed building management statements for the building and the precinct</li> <li>• Proposed Body Corporate Manager's Agreement</li> <li>• Proposed Management Agreements for the building and the precinct</li> <li>• Proposed Caretaking Agreement</li> <li>• Proposed Letting Authorisation Agreement</li> <li>• Proposed Concierge Agreement</li> <li>• Proposed Utility Billing Agreement</li> <li>• Proposed Electricity Supply Agreement</li> <li>• Proposed Gas Supply Agreement</li> <li>• Proposed Alarm Agreement</li> <li>• Description of Parcel</li> <li>• Development Overview</li> <li>• Disclosure about Management Rights</li> <li>• Proposed Specifications</li> <li>• Notice to Buyers – Payment of Deposit and Compliant Bank Guarantee</li> </ul>	

<b>Notes:</b>	The development is large scale and complex. There are numerous utility agreements entered into by the body corporate while the seller is in control of the body corporate. These are disclosed.
<b>Clauses of note for consumer decision making:</b>	
Contract not provided so terms could not be assessed.	

## 4.3 Quantitative Online Survey

As detailed in Section 3.3 an online quantitative questionnaire was created and disseminated through Qualtrics™. Approximately 650 surveys were collected with a total of 512 valid surveys filtered and utilized for further analysis. The target population was composed of consumers who had purchased properties 'off the plan' in Australia. The project team used questionnaires for collecting data on the existing consumer profile, consumers' experiences of purchased properties OTP, seller information, purchasing process and information disclosure in OTP sales contract.

The survey responses were then coded and entered into the computer using the Statistical Package of the Social Sciences (SPSS 24) program and AMOS 24. First, initial frequency analysis was done in order to detect possible errors in data entry. When inappropriate values were detected, the questionnaire number was noted and then the particular questionnaire was checked. Second, the data treatment, and the processes used to test the reliability and validity of the measurements, as well as the descriptive statistics of the measurements used in this project were analysed. Finally, a multigroup analysis was conducted on the proposed relationships to assess whether the proposed relationships differed by demographic variables of the consumers. The analysis for each construct is discussed in the following sections.

### 4.3.1 Consumer characteristics

The following figures present an overview of the sample demographics, which highlights an alignment for a representative sample. There was little difference between males and females. Approximately 50.39 per cent were male and 49.22 per cent were female. Most respondents were within the younger age bracket with approximately 60 per cent of respondents being less than 44 years old. Specifically, between the ages of 20-34 years (34.96 per cent), followed by 35-44 years (25 per cent), 45-54 years (16.60 per cent), 65 or more (12.11 per cent), 55-64 years (10.55 per cent) and 15-19 years old (0.78 per cent) (evidenced in Figure 7).

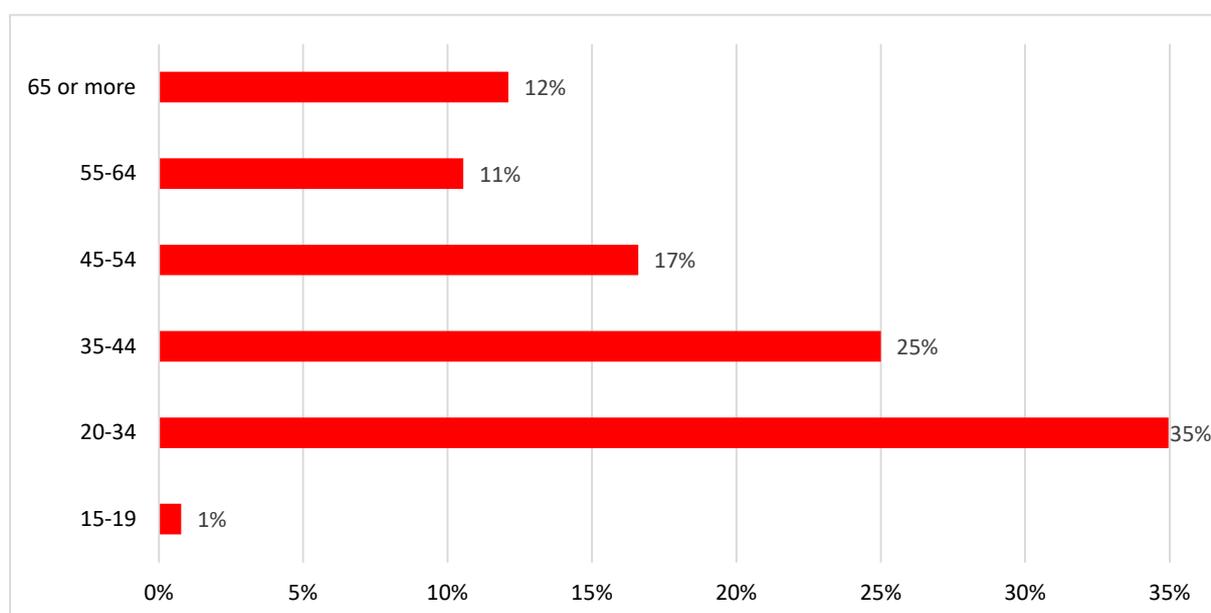
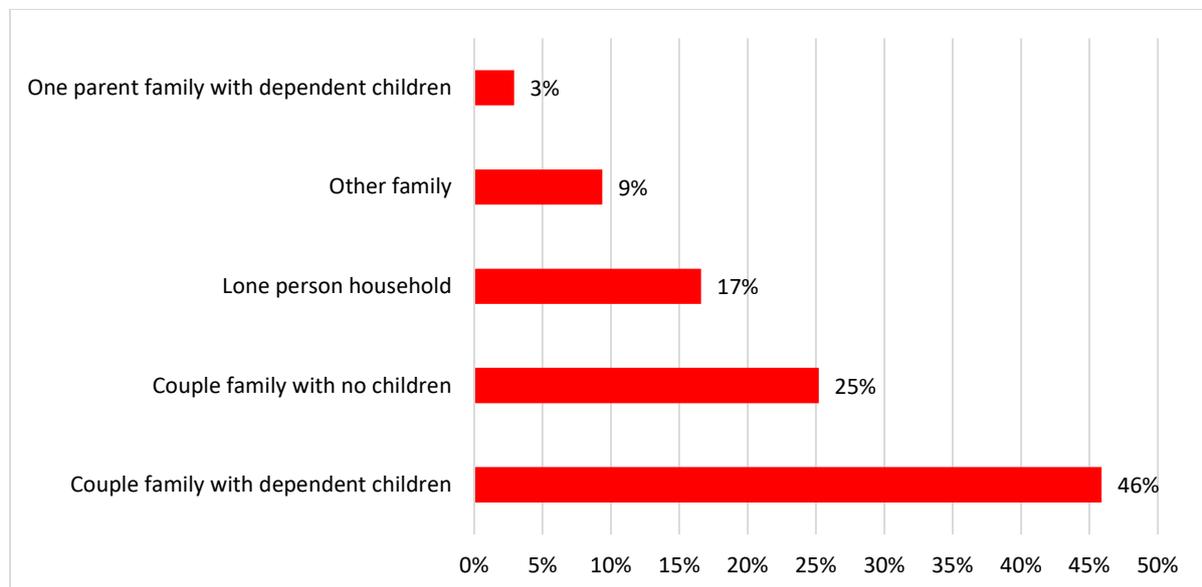


Figure 7: Age of Respondents

The family composition of respondents is depicted in Figure 8 below. They were comprised of: a couple with dependent children (45.90 per cent), a couple with no children (25.20 per cent), a single person household (16.60 per cent), other family (9.38 per cent), and one parent family with dependent children (2.93 per cent). The family composition of respondents in this study correspond with the 2019 Australian Bureau of Statistics report on the characteristics of family compositions whereby 43.6 per cent are couple families with dependents and 56.4 per cent are couple families without dependents.

This is an interesting finding, as previous research had found that residents of strata title had a different composition. Easthope et al., (2018) found that those families living in apartments in Australia were lone persons (35 per cent), couple with no children (24 per cent), couple with children (13 per cent), group households (11 per cent), single parents (six per cent) and other (11 per cent). Therefore, a key difference between their research and this research is that not all respondents to this survey were living within the OTP apartment that they purchased, but may have purchased it for investment purposes.



**Figure 8:** Family composition of Respondents

Most households have only two persons living in the same residence (29.88 per cent), followed by four persons (26.56 per cent), three (19.73 per cent), five (8.20 per cent) and six or more (2.15 per cent) (as evidenced in Figure 9). This corresponds to the smaller family composition which has 2-4 people living within one residence, and the mix between owner occupiers and investment purchasers.

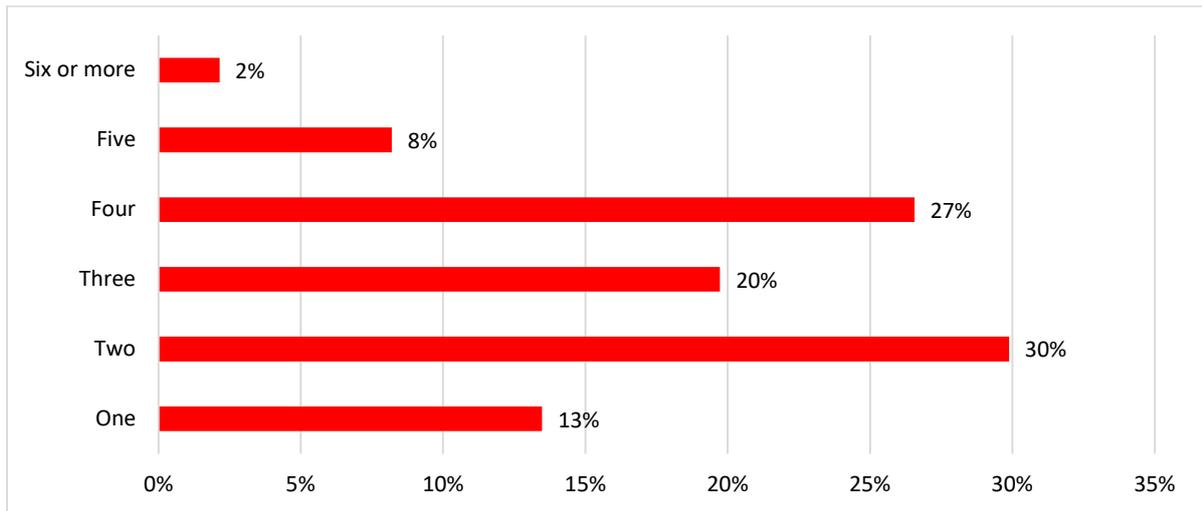


Figure 9: Number of persons living in your residence (including yourself)

OTP apartment purchasers were generally higher income earners with more than 50 per cent of respondents earning a weekly net income of above AUD\$2,000 (as evidenced in Figure 10). The highest combined weekly net income was between \$2000-\$2999 (27.54 per cent), followed by \$3000 or more (22.85 per cent), \$1500-\$1999 (17.97 per cent), \$1000-\$1499 (16.02 per cent), \$500-\$999 (10.16 per cent) and less than \$500 (4.49 per cent). This shows that respondents are high income earners which corresponds to the Australian Bureau of Statistics where there was a 21 per cent increase in both parents working full-time and a 70 per cent increase in families with employed mothers in 2019.

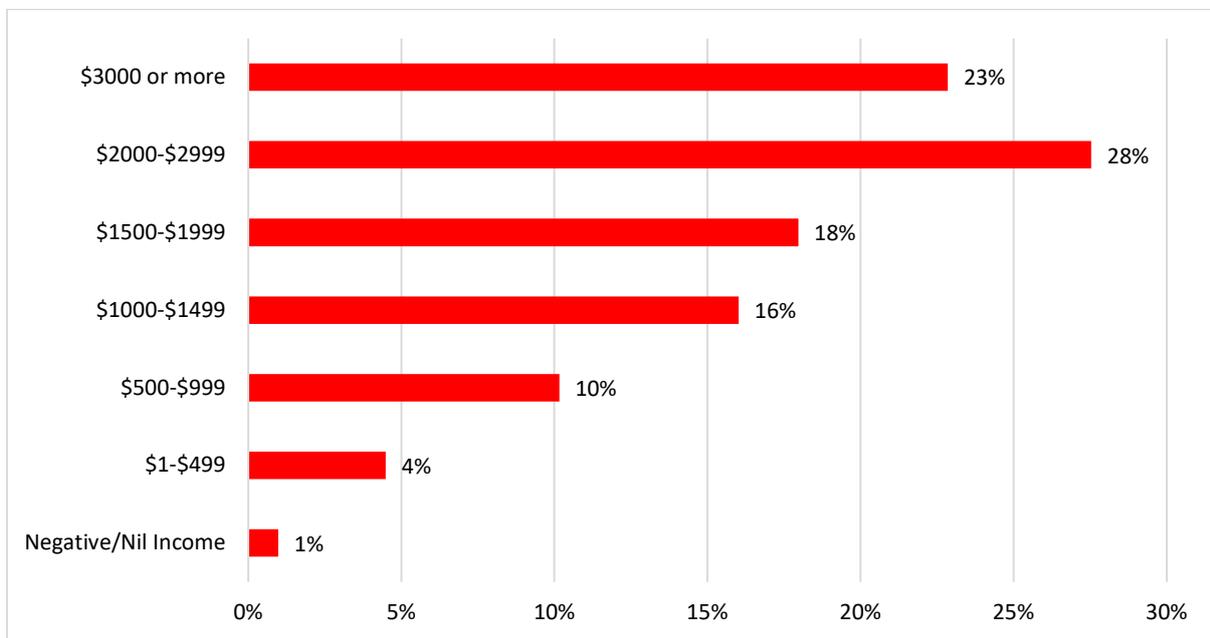
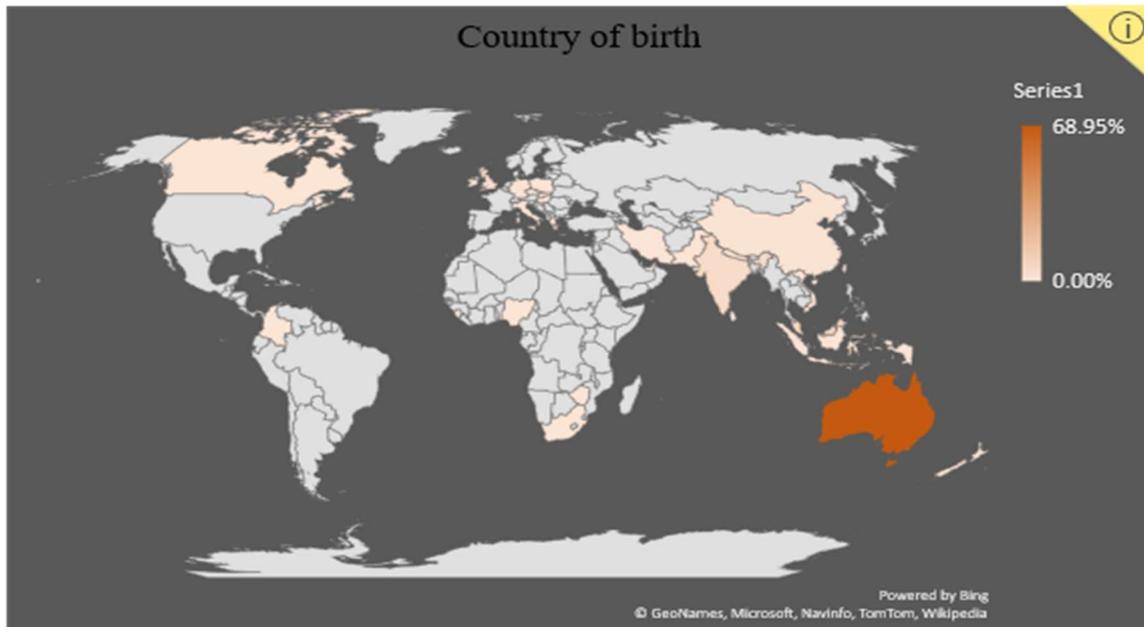


Figure 10: Total combined weekly net income

Figure 11 depicts the country of birth origin of respondents. According to Table 7, most respondents were born in Australia (68.95 per cent), followed by Malaysia (7.26 per cent), India (4.84 per cent), United Kingdom (3.23 per cent), New Zealand (1.81 per cent), China (1.21 per cent), Hong Kong (1.21 per cent), Nepal (0.81 per cent) and Scotland (0.81 per cent). This finding corresponds with earlier research findings (Easthope et.al., 2018).



**Figure 11:** Country of birth

**Table 7:** Respondents Country of Birth

Country of Birth	Percentage
Australia	68.95%
Malaysia	7.26%
India	4.84%
United Kingdom	3.23%
New Zealand	1.81%
China	1.21%
Hong Kong	1.21%
Germany	1.01%
Nepal	0.81%
Scotland	0.81%

As most respondents are within professional and managerial occupations (depicted in Figure 12), there is a correlation with their income earning being over \$2000 weekly income. In total, 33.40 per cent of respondents were in managerial positions, followed by professionals (28.13 per cent), not currently employed (16.21 per cent), clerical and administrative workers (8.40 per cent), sales workers (4.49 per cent), community and personal service workers (3.32 per cent), technicians and trade workers (3.13 per cent), labourers (1.56 per cent) and machinery operators and drivers (1.37 per cent).

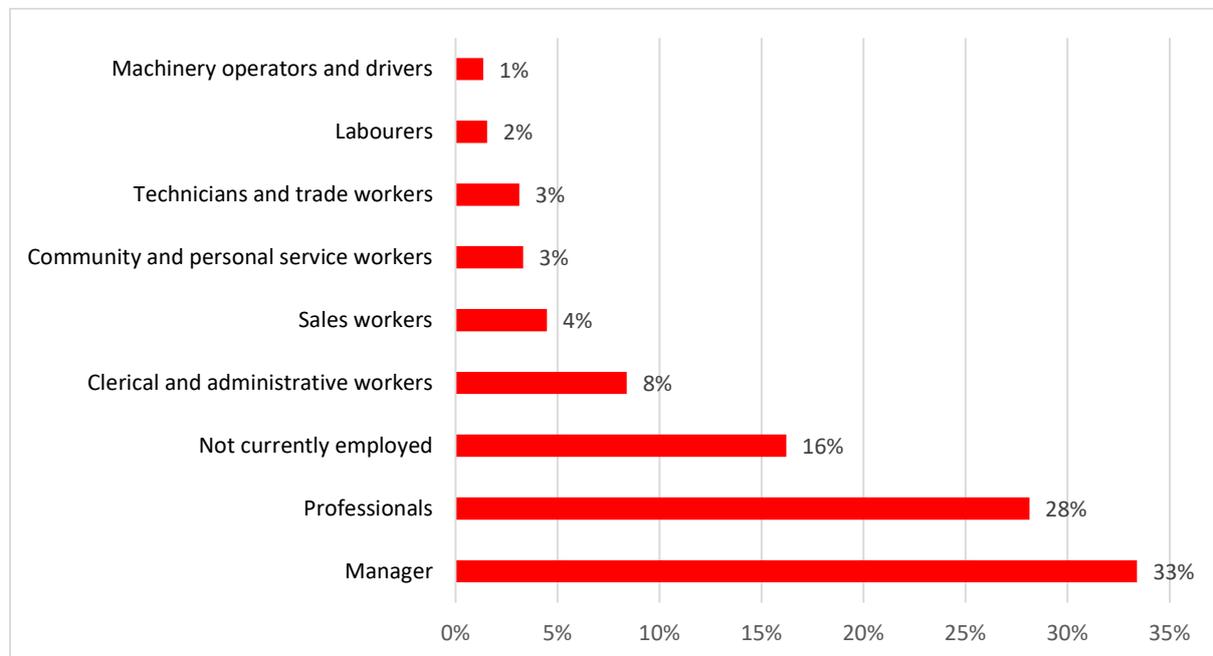


Figure 12: Occupation

The majority of respondents are highly educated with either a Bachelor degree (44.73 per cent) and Postgraduate degree (22.27 per cent). This corresponds with the fact that respondents are within managerial or professional occupations and high-income earners (evidenced in Figure 13).

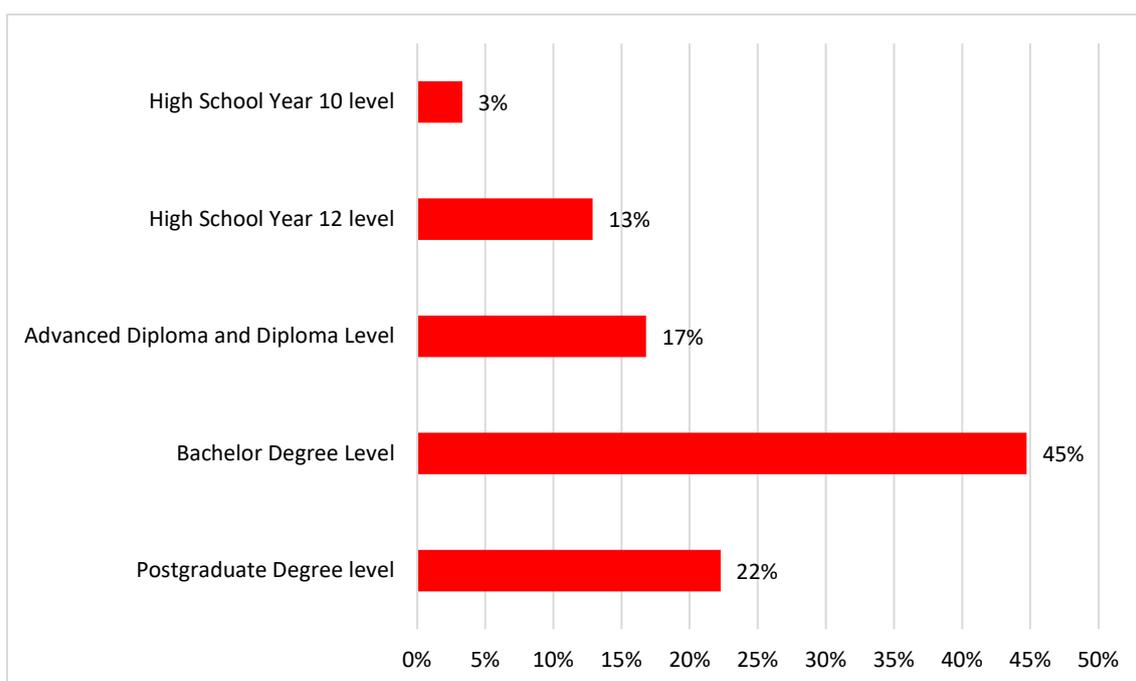


Figure 13: Educational qualifications

### 4.3.2 Consumer experience

Interestingly, 53.91 per cent of respondents purchased their OTP property as their principal place of residence, whilst 45.31 per cent purchased the property as an investment property for rent (as evidenced in Figure 14).



Figure 14: Reason for Property Purchase

Most of these OTP properties were purchased with finance (depicted in Figure 15). Approximately 66.21 per cent of purchases were financed with a mortgage through an Australian bank. A further, 20.51 per cent was purchased outright with savings, with the remainder being purchased outright with the help from friends and relatives (9.96 per cent) or with a mortgage through an overseas bank (2.34 per cent) and other sources (0.98 per cent).

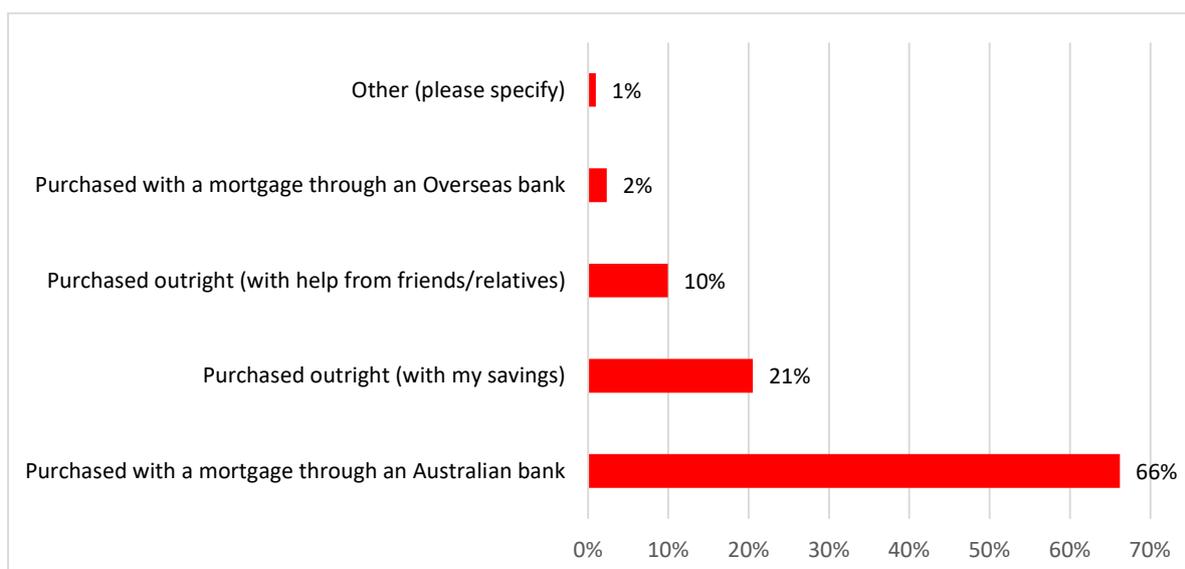
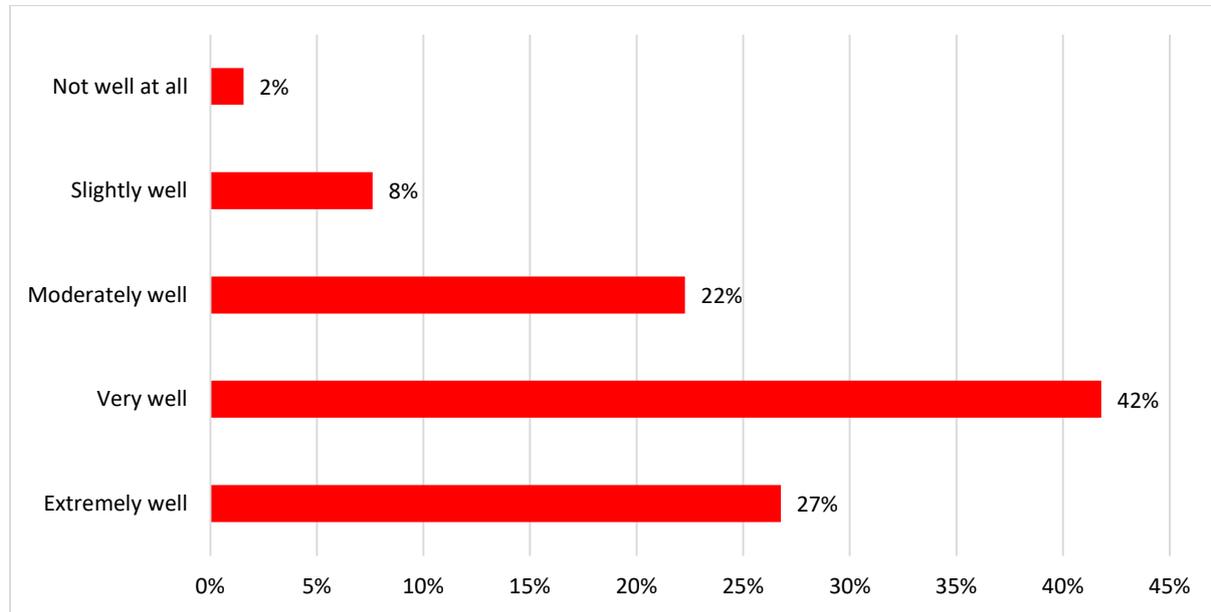


Figure 15: Financing of OTP apartment

Approximately, 94.34 per cent of respondents did read other documentation prior to signing their OTP apartment sales contract. This included fact sheets and information disclosure statements. Most respondents indicated they understood this other documentation prior to signing their contract either very well (41.8 per cent) or extremely well (26.67 per cent) (as evidenced in Figure 16).



**Figure 16:** Understanding of other documentation (such as fact sheets and disclosure statements)

There were seven other sources of information self-identified by respondents as other avenues for accessing other documentation. In order of prominence, these were lawyers, real-estate agents, property developers, financial institutions, internet searches, friends and family and Government departments/resources.

The researchers were interested to investigate the usefulness of a variety of different information sources prior to signing the sales contract, as evidenced in Figure 17. The role of marketing OTP developments through developer or marketing websites, factsheets and the information pertaining to the sales contract and information disclosure were the most useful information sources. Approximately, 28.13 per cent of respondents found apartment websites or brochures extremely useful, lawyers or legal advisors were very useful (37.70 per cent), apartment salespeople were moderately useful (27.34 per cent), media (newspapers and magazines) were slightly useful (16.41 per cent) and others indicated were not at all useful (48.63 per cent).

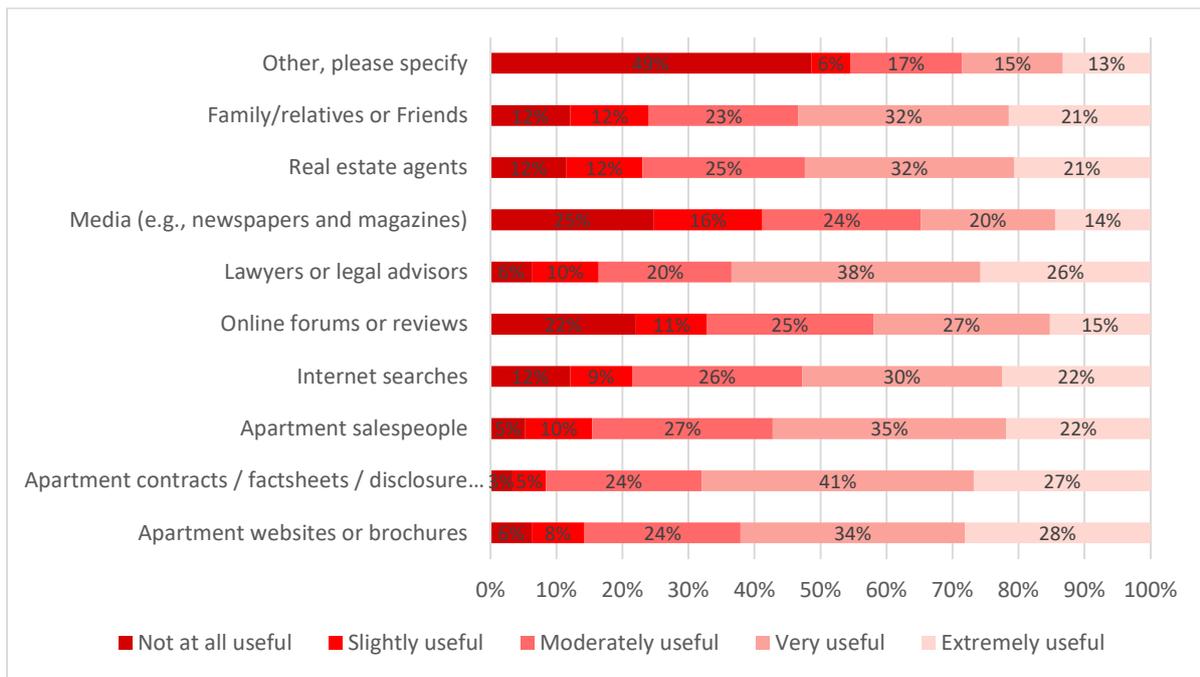


Figure 17: Usefulness of information sources

It was also important to understand how well the respondents understood their sales contract prior to signing. Over 69.7 per cent of respondents understood the contract very well (40.23 per cent) or extremely well (29.49 per cent). Whilst, 21.68 per cent only understood the contract moderately well, a further 7.03 per cent slightly well and 1.56 per cent not well at all (as depicted in Figure 18). These findings are interesting as they are at odds with the discussions from the qualitative component of this research, as well as the evidence from complaints to government. This may indicate that individuals overestimate their capacity or understand or that they have not tested their understanding until something goes wrong.

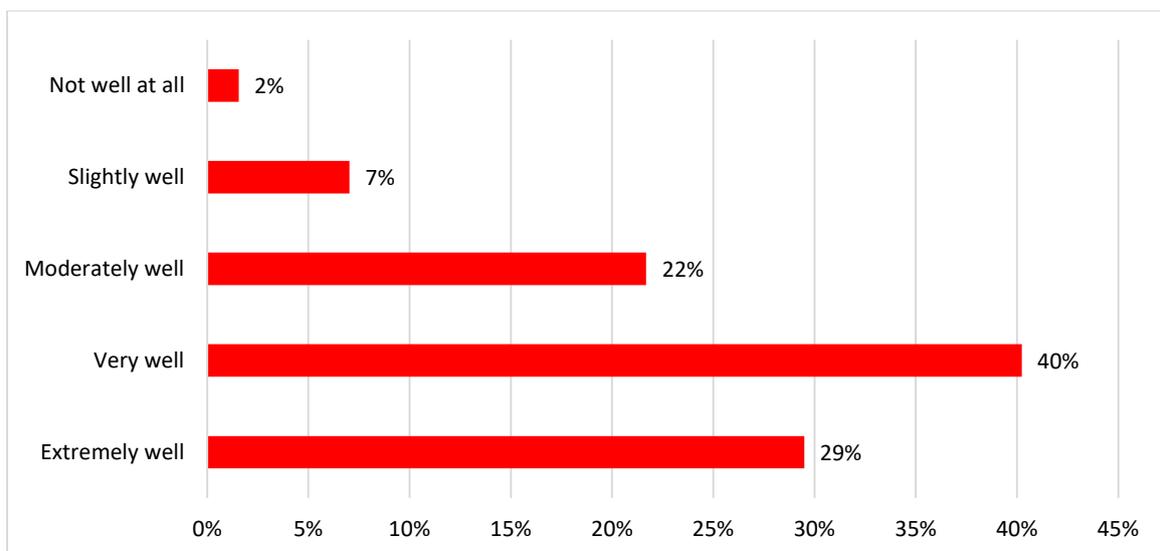


Figure 18: Understanding of the contract prior to signing

However, it was clear that the financial obligations of the deposit and where/who holds this deposit, as well as timelines associated with the deposit were clear in the sales contract and information disclosure documents. Less well understood was how fees and charges were calculated or charged (as depicted in Figure 19).

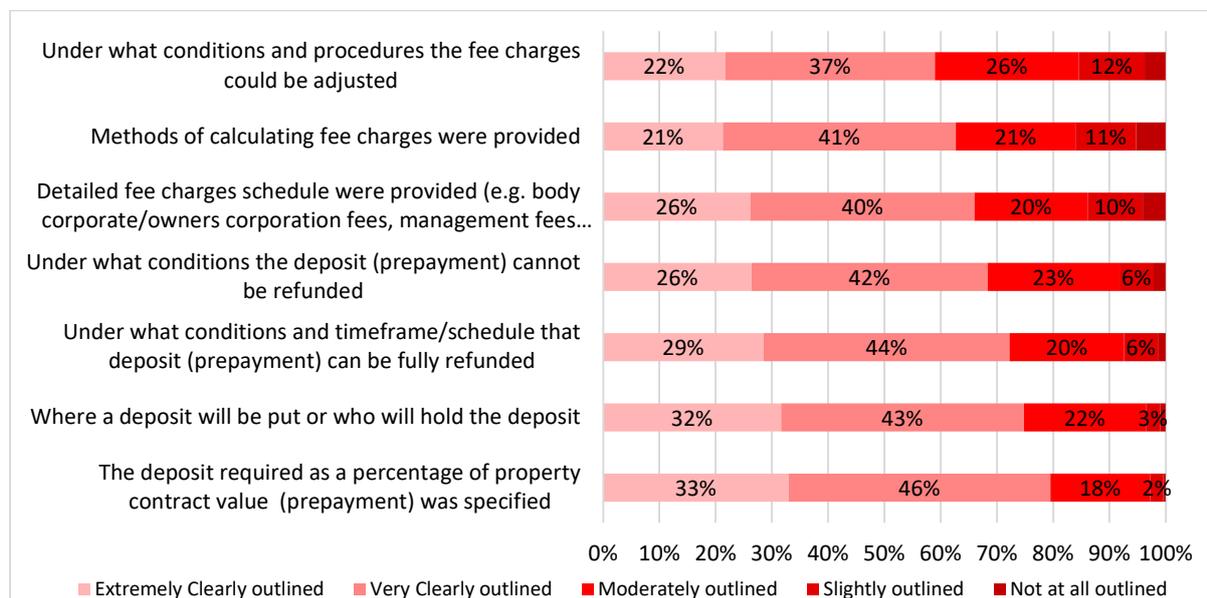


Figure 19: Financial obligations of the contract

This was reinforced in Figure 20, when comparing information relating to the costs of OTP apartments. Details about ongoing costs such as lot entitlements, body corporate fees and levies were not as clear.

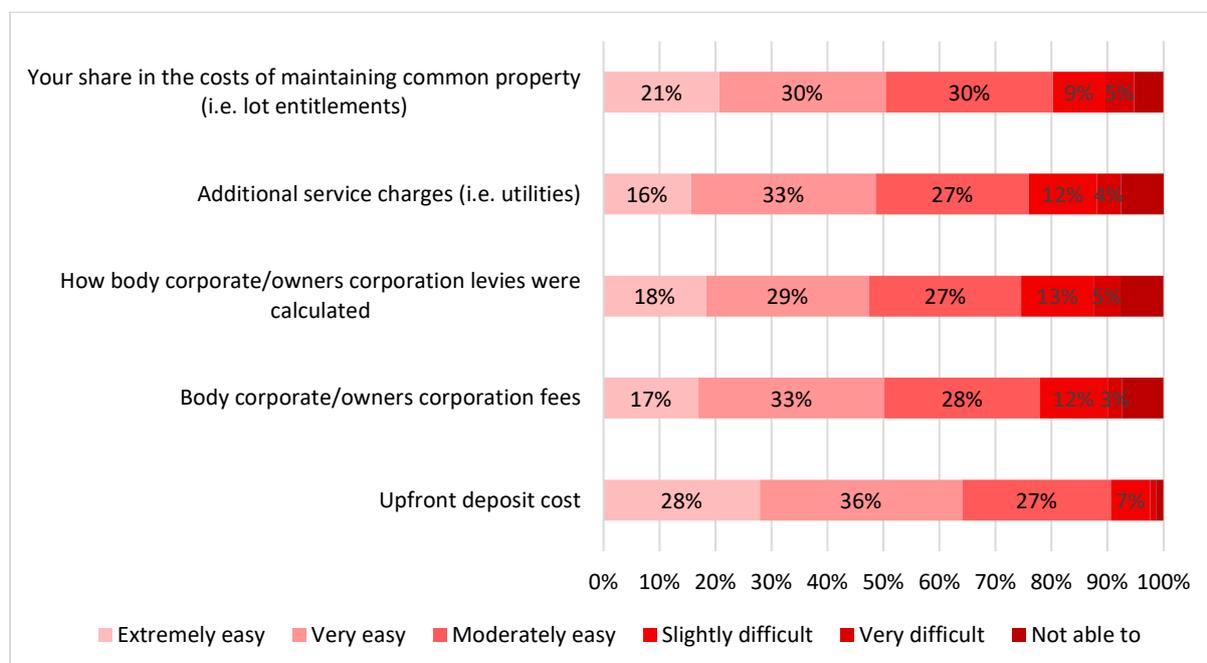


Figure 20: Comparison of information relating to costs of OTP apartments

Whilst 91 per cent of respondents knew about the cooling off period key dates only 71.09 per cent knew about the specified sunset date (as evidenced in Figure 21). Although still high, there is some confusion about what a sunset date refers to and how it can affect an OTP sales contract.

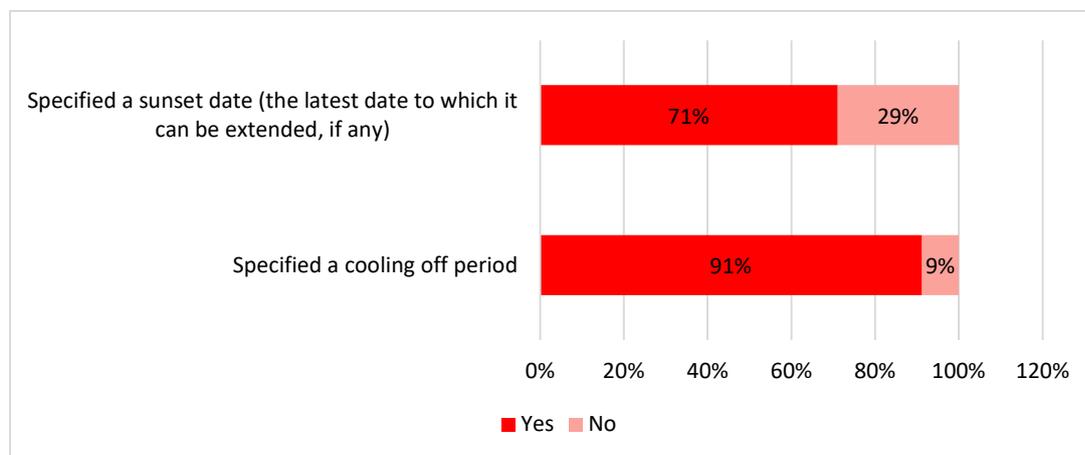


Figure 21: Key dates of the OTP sales contract

There was also some variation in respondents' perceptions of whether they could change or reconfigure lots and who was responsible for this should that be implemented. Figure 22 highlights that up to 20 per cent of respondents were not clear about this based on their reading of the sales contracts and information disclosure.

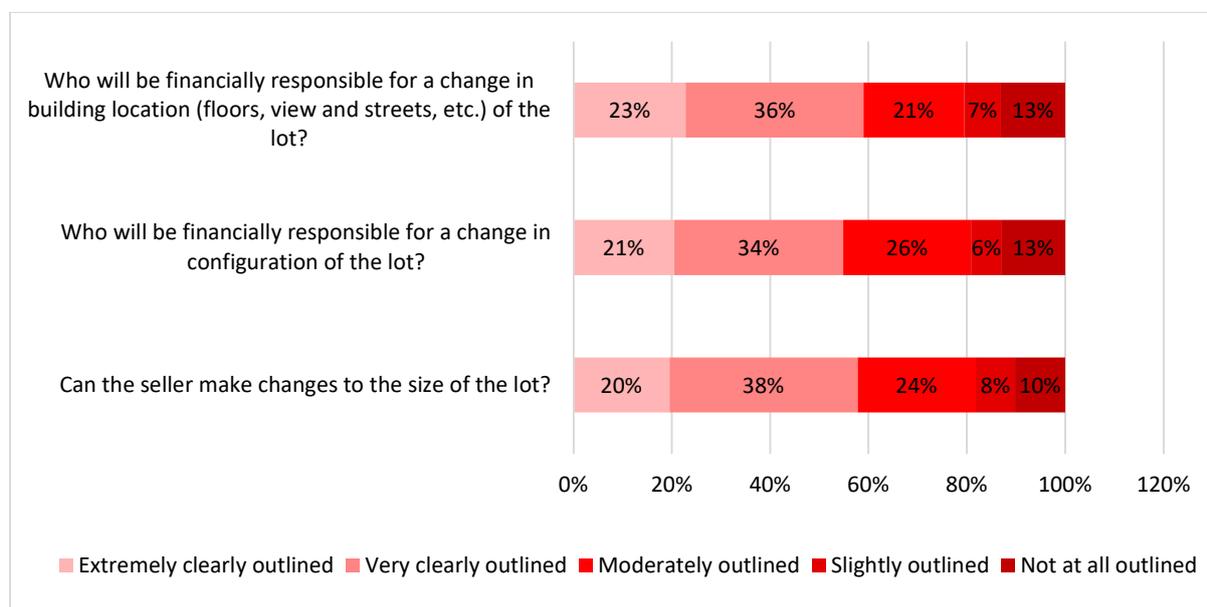
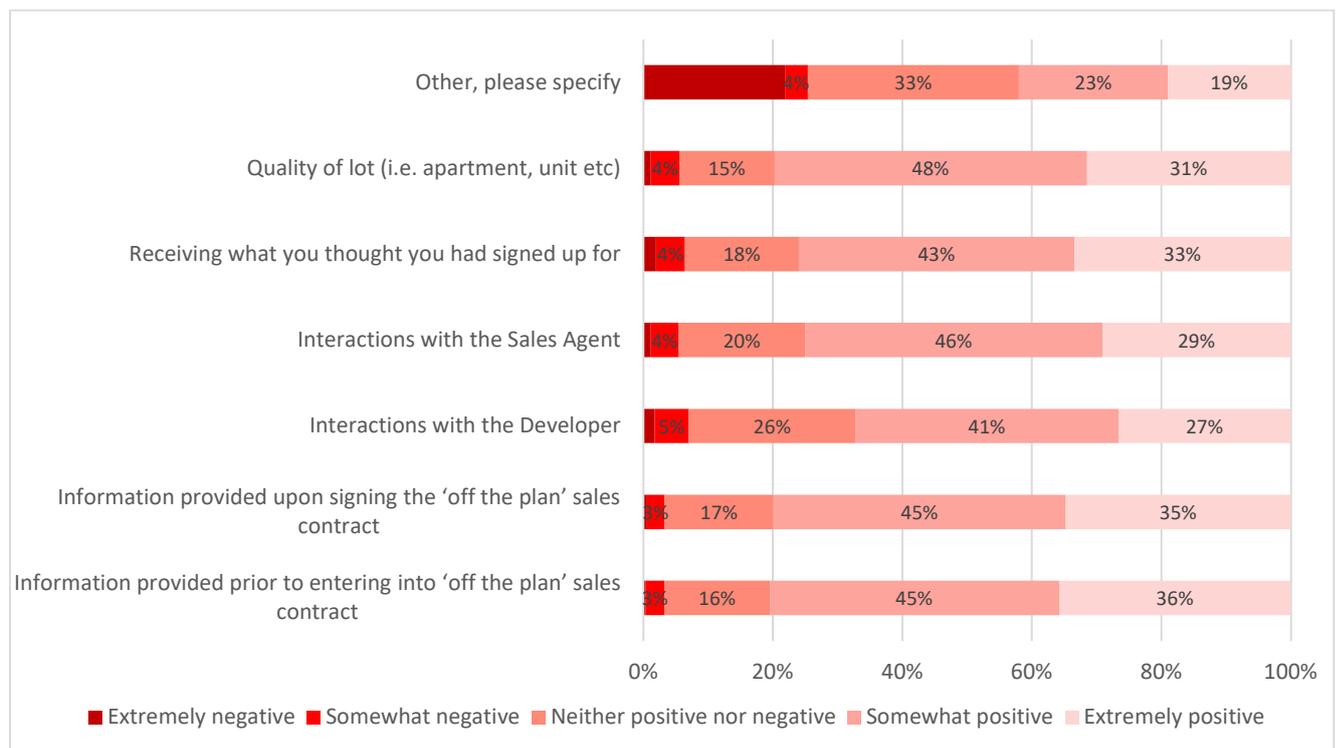


Figure 22: Changes in the design/plans and construction of the contract

The overall experience of purchasing an OTP apartment was also investigated in the questionnaire, as evidenced in Figure 23. Overall, respondents were happy with numerous aspects of purchasing OTP, particularly about the information that they received prior to (81 per cent) and upon signing (80 per cent), receiving what they expected to (76 per cent) and the quality of the lot (79 per cent).



**Figure 23:** Overall experience of purchasing an apartment 'off the plan'

However, there were five main areas of information that respondents identified. These were:

- (1) The financial obligations and return on investment of the purchase of the apartment 'off the plan';
- (2) The quality and reputation of the developer;
- (3) The location and development trends of the suburb;
- (4) Legal information;
- (5) Specifications of the building and apartment

There were four main reasons identified as why this additional information would have been useful. For forward planning to facilitate personal and household financial budgeting it would have been beneficial to have this information more clearly outlined in sales contracts and information disclosure documentation. Several respondents indicated that this information would have also assisted them in further understanding the potential of the investment. Key to all of this was to 'assist the consumer in making more informed decisions' and to 'minimize any unseen risks.'

### 4.3.3 Seller information

Many of the OTP apartment sales were purchased directly with the developer (39.4 per cent) or the sale agent or project marketer (38.87 per cent). The remainder of the OTP sales were facilitated by a buyer's agent (11.33 per cent), private sellers (9.57 per cent) or from other sources (0.78 per cent) (evidenced in Figure 24).

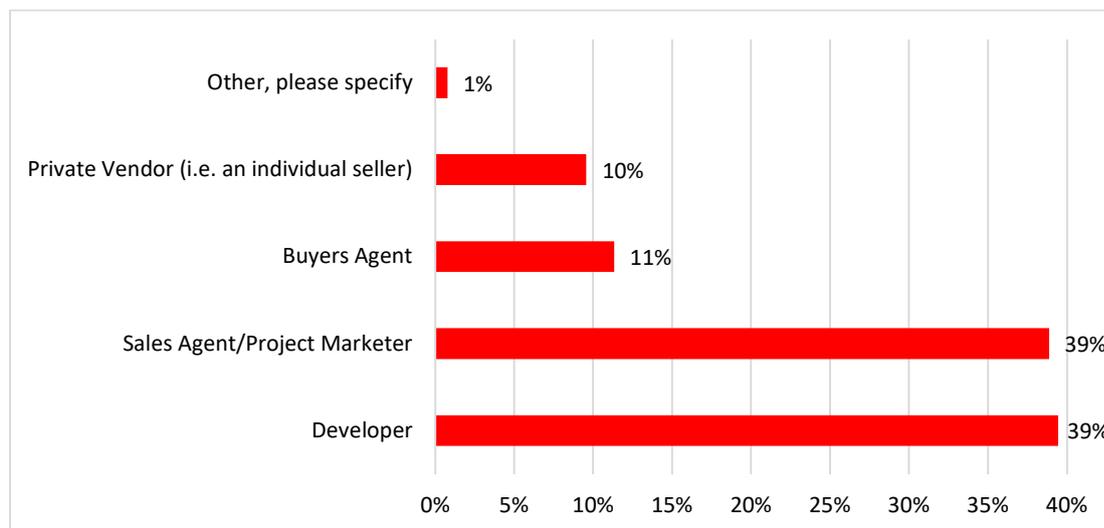


Figure 24: Types of OTP seller

The obligations of the developer within the sales contract were examined. Generally, the developer’s obligations were clearly outlined (Figure 25). However, more than 34 per cent of respondents were still unclear as to how long the developer had to complete the whole construction of the buildings. This aligns with an earlier finding that 71 per cent knew there was a sunset date in the contract.

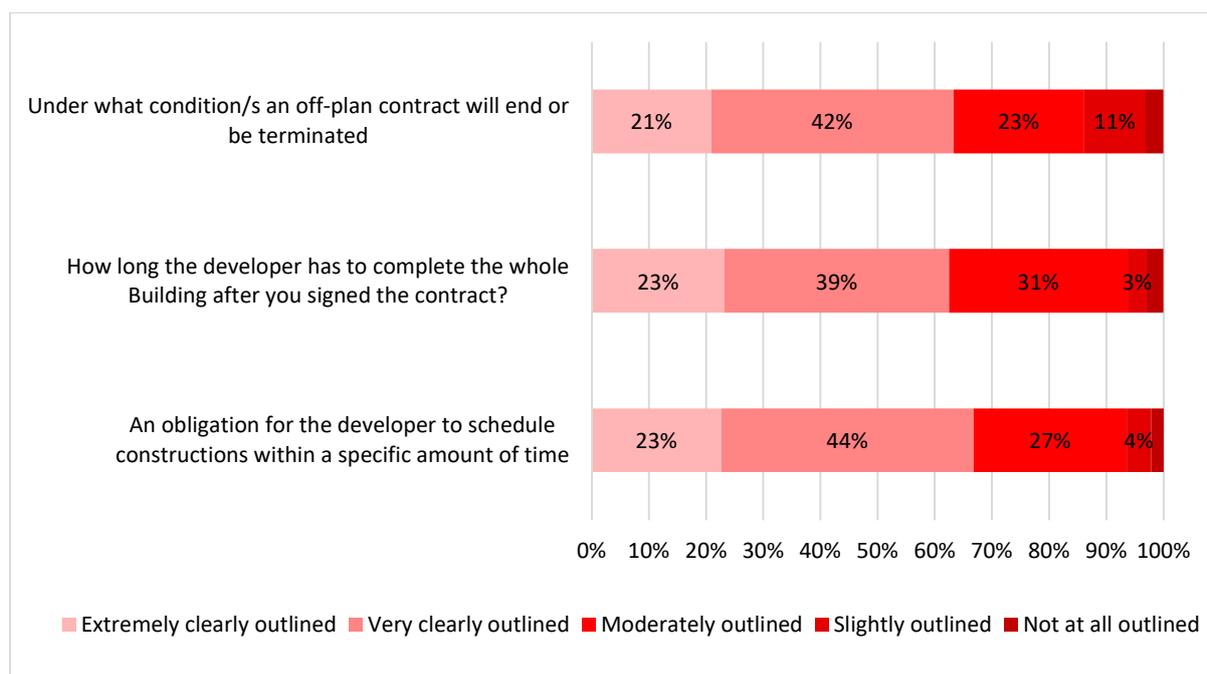


Figure 25: Obligations of the developer

It was clear that approximately 70 per cent of respondents did research the track record or previous project experience of the developer. However, 25.39 per cent did no further investigations into the developer. The three key areas why respondents undertook this research was to identify:

1. the quality and reputation of the developer (e.g., timely completions, past projects, whether there were any defects, trustworthiness).
2. the financial capability of the developer (e.g., whether they would go bankrupt, selling success).

- the creativity and architecture of the developer.

#### 4.3.5 Purchasing process

Unsurprisingly, given that 66 per cent of respondents purchased OTP utilizing a loan from an Australian financial institution, they engaged with a range of other stakeholders in the purchasing process. Mortgage brokers or financiers were the most commonly cited stakeholder (43.55 per cent), followed by legal firm/lawyers (25.78 per cent) engaged with a legal firm/lawyers, property conveyancer (23.83 per cent) and a body corporate or strata manager (4.49 per cent) (as evidenced in Figure 26). This indicates that despite repeated advice to seek independent legal advice, more than 50 per cent of OTP sales buyers are not engaging either property conveyancers or lawyers.

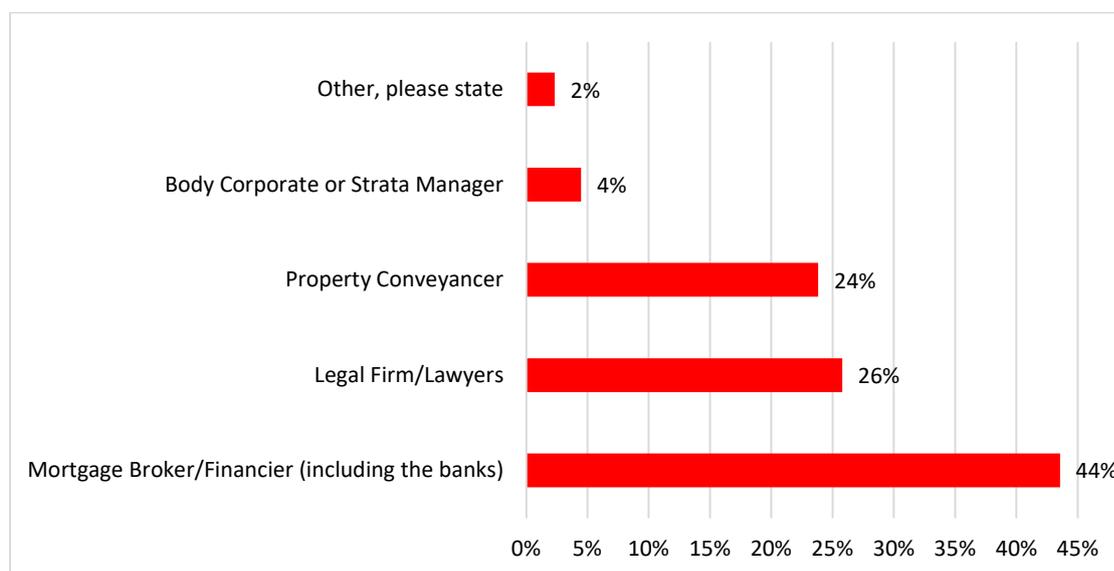


Figure 26: Other stakeholders in the purchase process

#### 4.3.7 Effect of information disclosure in OTP Sales Contract on consumer experiences

The research then examined six constructs which are outlined below in Table 8 to determine the effectiveness of information disclosure in OTP sales contracts on consumer experiences. The independent variables were the usefulness of information sources, financial obligations, developer obligations, changes in the design/plans and understanding of the contract and other plans. The dependent variable was the overall experience of purchasing an apartment 'off the plan.'

**Table 8:** Structural Equation Modelling Variables

Variables	Items
Usefulness of information sources	The following information sources were useful in helping me make my decision before signing the contract on my 'off the plan' apartment: <ol style="list-style-type: none"> <li>1. Apartment websites or brochures</li> <li>2. Apartment contracts/factsheets/disclosures</li> <li>3. Apartment salespeople</li> <li>4. Internet searches</li> <li>5. Online forums or reviews</li> <li>6. Lawyers or legal advisors</li> <li>7. Media (eg: newspapers and magazines)</li> <li>8. Real estate agents</li> <li>9. Family/relatives or friends</li> </ol>
Financial obligations	The financial obligations of the contract were clearly outlined in the Sales Contract/Information Disclosure: <ol style="list-style-type: none"> <li>1. The conditions the deposit could not be refunded</li> <li>2. Detailed fee charges schedule</li> <li>3. Methods of calculating fee charges</li> <li>4. Conditions and procedures the fee charges could be adjusted</li> </ol>
Developer obligations	The following obligations of the developer were clearly outlined: <ol style="list-style-type: none"> <li>1. To schedule construction within a specific amount of time</li> <li>2. How long the developer has to complete the whole building after the contract has been signed</li> <li>3. The condition/s an off-plan contract will end or be terminated</li> </ol>
Changes in the design/plans	The changes in the design/plans and construction of the 'off the plan' sales contract was clearly outlined: <ol style="list-style-type: none"> <li>1. The seller makes changes to the size of the lot</li> <li>2. Who will be financially responsible for a change in the configuration of the lot</li> <li>3. Who will be financially responsible for a change in building location (floors, view and streets etc) of the lot.</li> </ol>
Understanding of contract and other documents	<ol style="list-style-type: none"> <li>1. I understood other documentation (such as fact sheets and disclosure statements) before signing the contract</li> <li>2. I understood the contract before signing it</li> </ol>
Overall experience	My overall experience of purchasing an apartment 'off the plan' <ol style="list-style-type: none"> <li>1. Information provided upon signing the 'off the plan' contract</li> <li>2. Interactions with the sales agent</li> <li>3. Receiving what you thought you had signed up for</li> </ol>

By adopting the above constructs, this study examined five relationships with the following questions:

1. Does the usefulness of information sources significantly influence the overall experience of purchasing an apartment 'off the plan'?
2. Does a clear outline of financial obligations outlined in the sales contract/information disclosure significantly influence the overall experience of purchasing an apartment 'off the plan'?
3. Does a clear outline of the developer obligations significantly influence the overall experience of purchasing an apartment 'off the plan'?

4. Does a clear outline of changes in the design/plan and construction significantly influence the overall experience of purchasing an apartment 'off the plan'?
5. Does the understanding of the contract and other documents significantly influence the overall experience of purchasing an apartment 'off the plan'?

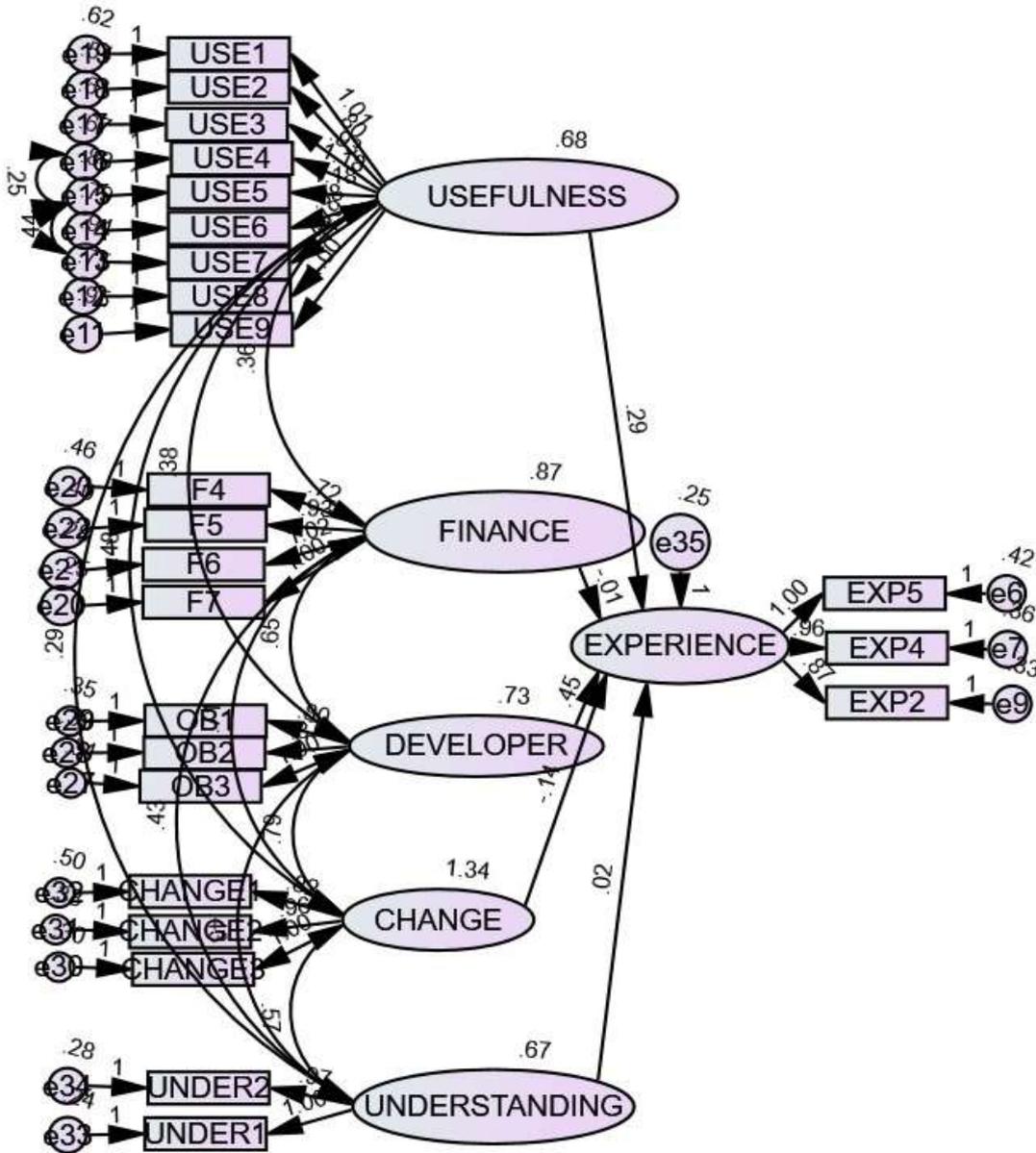


Figure 27: Structural equation modeling (SEM) for effect of information disclosure in off-plan contract on consumer experiences

A goodness of fit test was carried out to test if the sample data fits a distribution from a certain population. The model appears to fit the data reasonably well ( $\chi^2(191) = 547.148, p < .0005, GFI = .901; TLI = .938; RMSEA = .060$ ), which indicates our data analysis provides an approximate and valid representation of the phenomena under investigation. In other words, our sample data represents the data you would expect to find in the actual population.

Structural Equation Modelling (SEM) was deployed to examine the five proposed relationships in the current study (Figure 27), and the statistical results are highlighted in the Table 9 below:

**Table 9:** SEM Relationship Analysis

			Estimate	S.E.	C.R.	P
EXPERIENCE	<---	USEFULNESS	0.287	0.051	5.673	***
EXPERIENCE	<---	FINANCE	-0.014	0.072	-0.198	0.843
EXPERIENCE	<---	DEVELOPER	0.449	0.118	3.795	***
EXPERIENCE	<---	CHANGE	-0.138	0.056	-2.474	0.013
EXPERIENCE	<---	UNDERSTANDING	0.025	0.055	0.455	0.649

\*\*\* Significant level at  $p < .001$

Statistically significant associations were found (\*\*\*) Significant level at  $p < .001$ ) between above constructs and the overall experience of purchasing an OTP apartment. Specially, the two variables that significantly influences the overall experience of purchasing an OTP apartment are the usefulness of information sources ( $\beta = 0.333$ ,  $p < .001$ ) and a clear outline of the obligations of the developer ( $\beta = 0.562$ ,  $p < .001$ ).

In simple terms, in order for buyers to have an overall satisfying experience in purchasing an OTP apartment it is critical for information sources to be useful and that the obligations of the developer are clearly outlined. This further emphasizes the importance of clear communication to buyers to ensure that they are consistently well-informed throughout the purchasing process.

The variables that do not significantly influence the overall experience of purchasing an OTP apartment are a clear outline of financial obligations ( $\beta = 0.014$ ,  $p > .001$ ), changes to the design/plan ( $\beta = -0.223$ ,  $p > .001$ ) and an understanding of the contract and other documents ( $\beta = -0.037$ ,  $p > .001$ ).

### Moderation analysis

A moderator analysis is used to determine whether the relationship between two variables depends on (or is moderated by) the value of a third variable. In this study, we used five demographic variables as moderators evidenced in Table 10.

**Table 10:** Moderator Variables

Variable	Characteristics
Gender	Female Male
Age	20-34 years

	35-44 years 45-54 years 55-64 years 65 or more
Education	Year 12 Diploma/Certificate Bachelor's Degree Postgraduate Degree
Income	\$500-\$999 \$1000-\$1499 \$1500-\$1999 \$2000-\$2999 \$3000 or more
Occupation	Managers Professionals Unemployed Administrative workers

The moderation variables and the relationships that this has on the model is then depicted figuratively in Figure 28.

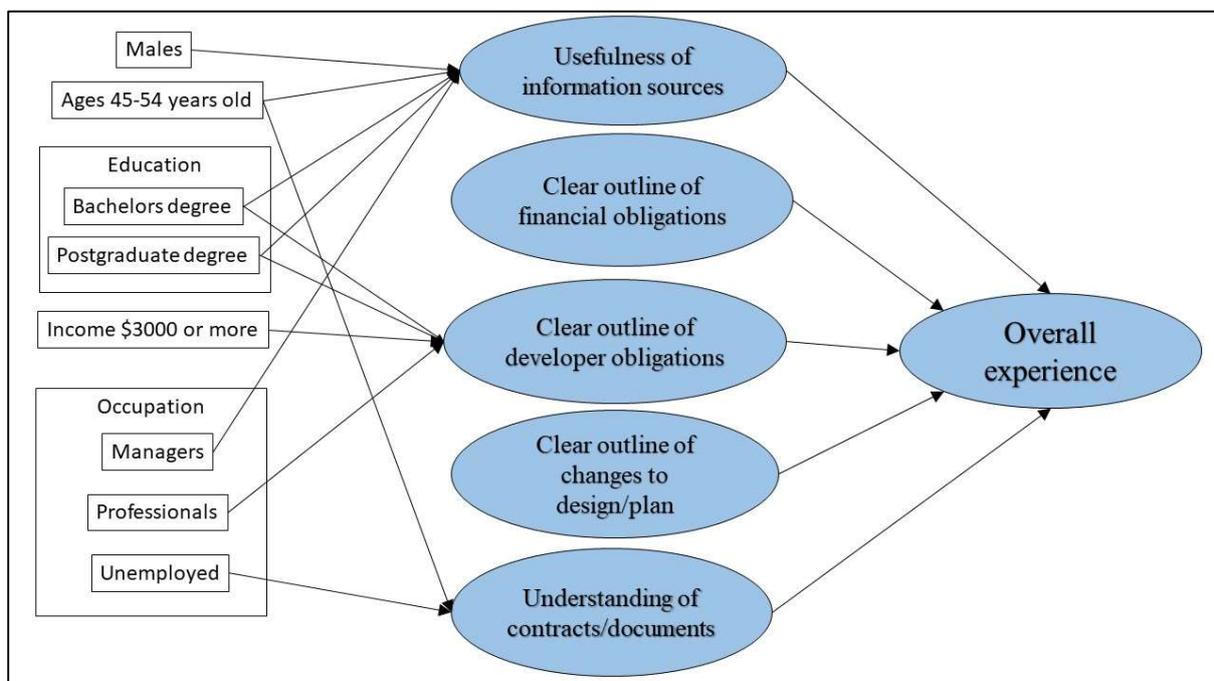


Figure 28: Moderation relationship

A multigroup analysis was conducted on the proposed relationships to assess whether the proposed relationships differed by demographic variables. The categories for each demographic construct are explained in detail below.

### **Gender**

The chi-squared difference between the constrained and unconstrained models was significant for gender at the model level ( $\chi^2(63)$ ,  $p < .0005$ ), thus indicating that gender moderates the relationship between the variables and the overall experience. A path-by-path analysis was carried out and found that gender only moderated the relationship between usefulness of information sources and overall experience. Males have a stronger effect ( $\beta = 0.352$ ,  $p < .001$ ) in comparison to females ( $\beta = 0.262$ ,  $p > .001$ ). However, gender does not affect the relationship between a clear outline of obligations of the developer, clear outline of financial obligations, changes to the design/plan and understanding of the contract on the overall experience.

In simple terms, how females and males perceive the usefulness of information sources influences whether they have a satisfying overall experience in the purchase of an OTP apartment. More importantly, males have a stronger effect in comparison to females. This means that the usefulness of information sources is more important for males rather than females in order to have a satisfying overall experience in the purchase of an OTP apartment.

### **Age**

Note: Category for Under 19 years was removed as sample size is too small to run on SEM. The chi-squared difference between the constrained and unconstrained models was significant for age at the model level ( $\chi^2(88)$ ,  $p < .0005$ ), thus indicating that age moderates the relationship between the variables and the overall experience. A path-by-path analysis was carried out and found that age only moderated the relationship between usefulness of information sources and overall experience.

In simple terms, age plays a significant role on the usefulness of information sources on the overall experience in the purchase of an OTP apartment. More specifically, respondents between the ages 45-54 years old found the usefulness of information sources and understanding of the contract influenced their overall experience more than the other age categories.

### **Education**

Note: Category for Year 10 was removed as sample size is too small to run on SEM. The chi-squared difference between the constrained and unconstrained models was significant for education at the model level ( $\chi^2(70)$ ,  $p < .0005$ ), thus indicating that education moderates the relationship between the variables and the overall experience. A path-by-path analysis was carried out and found that education moderated the relationship between usefulness of information sources and the obligations of the developer on the overall experience.

More specifically, respondents with a tertiary education at Bachelor's and Postgraduate level found that the usefulness of information sources and the obligations of the developer had more of an effect on the overall experience compared to respondents from other education categories.

### **Income**

Note: Category for Nil income and \$1-499 was removed as sample size is too small to run on SEM. The chi-squared difference between the constrained and unconstrained models was significant for income at the model level ( $\chi^2$  (80),  $p < .0005$ ), thus indicating that income moderates the proposed relationships. A path-by-path analysis was carried out and found that income only moderated the relationship between obligations of the developer and the overall experience.

More specifically, households earning AUD\$3,000 or more found that the clearer the obligations of the developer are outlined, the more satisfying their overall experience. The remaining income categories did not have a significant effect on the proposed relationships.

### **Occupation**

Note: Occupations related to machinery operators and drivers, labourers, technicians/trade workers and community and personal service workers were removed as the sample size was too small to run on SEM. The chi-squared difference between the constrained and unconstrained models was significant for income at the model level ( $\chi^2$  (180),  $p < .0005$ ), thus indicating that occupation moderates the proposed relationships. A path-by-path analysis was carried out and found that the following occupations had a stronger effect on overall experience:

- Managers found that the usefulness of information sources had a stronger effect on their overall experience.
- Professionals found that the obligations of the developer had a stronger effect on their overall experience.
- Unemployed respondents found that the understanding of the contract and other resources had a stronger effect on their overall experience.

The modelling presents some interesting results in determining the effectiveness of useful information sources, financial obligations, developer obligations, and understanding of contracts on the overall consumer experience.

## **5. Conclusions and Recommendations**

This exploratory research project sought to examine the importance of information disclosure requirements of 'off the plan' sales contracts as a consumer protection mechanism in residential property transactions. The research is timely in understanding information disclosure requirements within the property industry and identifying consumers' knowledge gaps. An understanding of these key issues can inform important consumer policy education and protection strategies.

As property ownership is the single largest financial decision for most Australians, it is integral that consumers in the modern Australian housing market are aware of the obligations that they are taking on. Whilst financial harm is caused most people break this down into poor financial decision making. There is limited evidence to demonstrate financial harm across the consumer lifecycle of these issues or the consumer lifecycle cost of purchasing OTP. For example, these costs include the property cost,

costs for legal representation, body corporate fees and levies, and remedial/rectification costs that occur at different points along the homeownership lifecycle.

Strata law varies in each jurisdiction in Australia and is a complex area of law regulated by extensive legislative instruments which combine elements of self-management and regulatory oversight. Strata living presents unique challenges and opportunities for lifestyle and livability, but also imposes rights and obligations on owners which are specific to strata law and would be unfamiliar to owners and occupiers who have not resided in strata and community title scheme lots before. Developers of strata products hold a broad discretion in the design and structuring of schemes which, in turn, has implications for buyers into the scheme. Together with the structuring of the development, and all construction elements, the seller controls the content of the OTP sales contracts, subject to overarching statutory obligations. Systemic change needs to occur so that consumers are protected from the provisions of biased and complex OTP sales contracts.

This report built on the stage 1 report which provided a comprehensive review of law and policy. It was evident from that report that information disclosure is critical, from both a consumer protection and a strata title governance perspective. As Solomon and Martin-Hobbs (2018, p. 2) noted, it is not enough to improve consumer's experience, a greater focus needs to be placed on consumer comprehension particularly towards "consumers with reduced capacity or vulnerability." As the stage 1 report argued, most buyers of OTP strata title contracts would be considered vulnerable and have an unequal bargaining position vis-à-vis a property developer. While it is acknowledged that universal emphasis on consumer comprehension of material information in OTP sales contracts is important, no amount of disclosure will cure problems inbuilt into the system such as a lack of accountability, the discretion on developers and poor quality products. Specifically, consumers need to be protected from features within these contracts that are inherently harmful. The process of disclosing those aspects within the contracts should not be considered enough when there is an information and power imbalance between the buyer and developer. Additionally, the irrational optimism bias further reiterates potential harm, as buyers are keen to purchase a "lifestyle" and are less focused on the product elements.

Disclosure as a consumer protection policy may be a double-edged sword. That is, the goal of educating consumers through disclosure is said to empower them to make informed decisions, and this goal appears a worthy one. However, it is important not to deflect the need for real and systemic changes to the broader questions of accountability, developer discretion and delivery of poor quality products by focusing legislative amendment aimed solely at educating consumers. Doing so, will have the unintended effect of shifting blame onto consumers for their decisions in a market that is plagued by information asymmetries and complexity. That shift in blame negates responsibility for the supplier of the products by refocusing efforts on consumers and this, in turn, stifles the development of other policy tools aimed at improving welfare (Willis, 2008). Exploratory research is a rich resource for taking a deep dive into issues that are not well understood. We were able to identify who has been purchasing OTP apartments in Australia. Importantly, these are typically Australian 'Mum and Dad' investors albeit a growing portion of owner occupiers. These OTP buyers are mid to high income earners, that are well educated in professional or managerial roles, who are between the 20 to 44 year age brackets. Furthermore, the results established that 45.9 per cent of OTP buyers are couples with dependent children, therefore young Australian families. These findings contradict the anecdotal and media perception that large numbers of overseas investors are the primary source of OTP sales contracts.

Buyers were generally happy with their OTP apartment purchase. However, our modelling indicated that there are five factors that influence the OTP consumer experience. These were: the usefulness of information sources; clearly outlined financial obligations; clearly outlined developer obligations; clear outline of changes to design/plans; and understanding of the sales contract. The effectiveness of information disclosure is affected by demographic variables (i.e. gender, age, education, income and occupation).

However, more importantly consumers' comprehension of OTP information disclosure and sales contracts is challenged by structural constraints (i.e. length of information/contracts, comprehension and readability) as well as industry norms. Consumer financial and contract literacy is a concern. Especially, the question of who is educating consumers about the property rights and obligations that they are entering into.

Structurally the lack of government oversight of property contracts and the housing sector more broadly is glaring. In other sectors, such as purchasers contracting for consumer goods (i.e. mobile telephones, whitegoods, insurance) there are distinct and clear roles for government oversight, accountability and consumer protection for non-compliance. Most of the breaches in legislation allowed for civil remedies (i.e. termination of contracts or damages) that are dependent upon buyers' exercising their rights, assuming they even know of their rights. Termination of OTP sales contracts may be an unsatisfactory result in many cases because buyers are buying the "lifestyle dream," therefore are not so willing to give this up.

The role of 'cut price' conveyancing services is also not aiding this process. Further research is required to further unpack this complex and challenging area of the strata title property. The following section presents a range of emergent opportunities or recommendations flowing from the research.

### 5.1 Emergent opportunities for key stakeholders

The research findings present several opportunities. These include, recommendations related to key stakeholders including consumers, policy makers, regulators, developers and real estate agents and legal practitioners, as shown below. Only with the participation of these multi-stakeholders can the challenges related to OTP buying and selling processes be addressed. Therefore, we provide suite of recommendations and guidelines for effective engagement in OTP transacting processes. Figure 29 presents a simple graphic depiction of the recommendations.

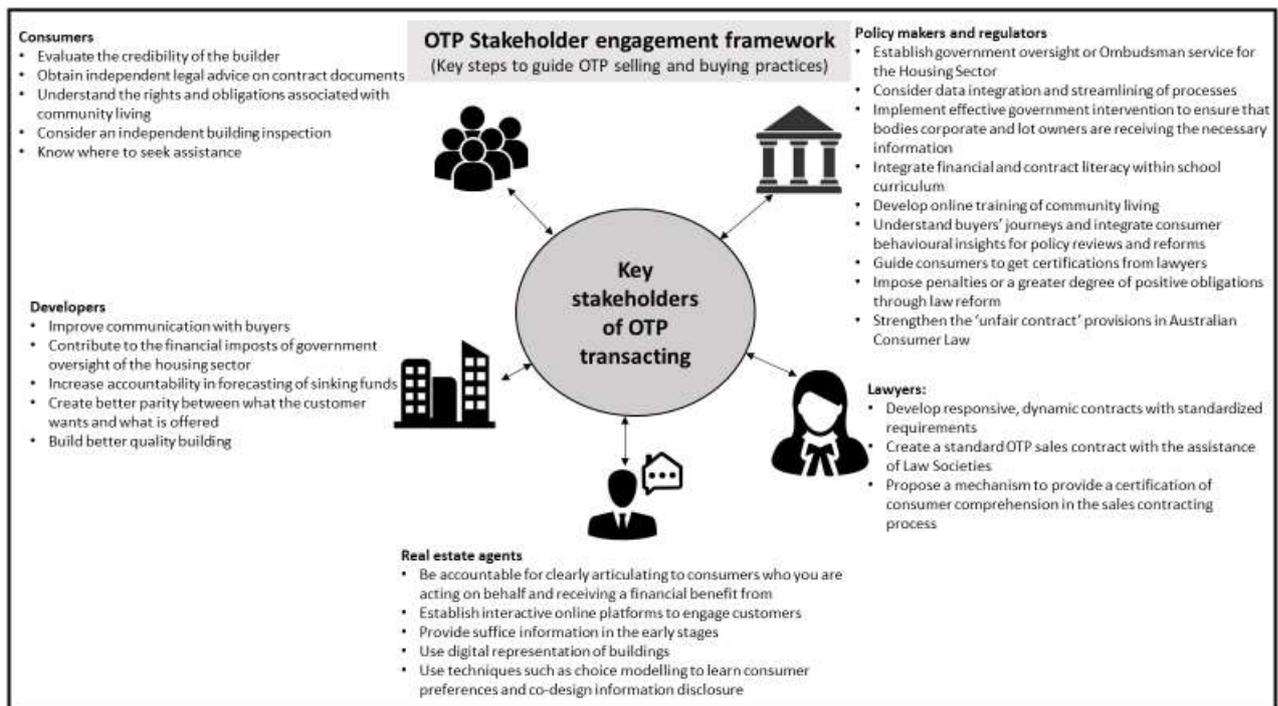


Figure 29: Guidelines for effective stakeholder engagement in OTP selling and buying processes

The following section describes guidelines and recommendations for each stakeholder category drawing on the key findings from the interviews, survey and contract analysis.

**Consumers:** Analysis of the data made apparent that consumers must be active throughout the purchasing journey by gathering relevant information and seeking independent legal advice.

- *Know where to seek assistance:* Be aware of Office of Fair Trading institutions and possible mechanisms to lodge a complaint. Additionally, resources should also be factored into connecting OTP buyers to other Government regulators or agencies, for example:
  - Residential Tenancies Authorities – for residential tenancy issues and bond lodgement,
  - Titles Registry Offices – registration of titles, community management statements, survey plans, and searches of property registers,
  - Building and Construction Commissions or Regulators – for information on contractor registration and compliance, building issues and adjudication,
  - Building Codes in states and territories – for development and building codes, fire safety, sustainable housing, pool safety and accessibility,
  - Worksafe – for WorkCover insurance, work, and health and safety issues, and
  - Australian Taxation Office - goods and services tax, Australian business numbers, and tax returns,
  - Strata Communities Australia - national body corporate or owner's corporation managers association.
- *Knowing the roles of stakeholders:* Being aware of the roles of different stakeholders in the buying journey and who they have fiduciary and/or contractual duties to, such as the real estate agent (i.e. real estate agents vs buyer's advocate) and solicitor. This will assist in identifying independent stakeholders who will be able to provide independent advice.

- Consider a building inspection through an independent qualified and licensed inspector prior to the settlement on the OTP apartment, by either a surveyor or architect.

**Policy makers / regulators:** The current OTP sales contract process is broken. Consumers are not fully aware of their obligations and the intricacies of the sales contracts that they are entering into with OTP residential property. Considering the variety of legislative instruments and policies influencing OTP sales contracts, there is a significant opportunity for targeted government intervention while integrating buyers' insights into these mechanisms to better protect the consumer.

- There is a need for government oversight with specific powers to address the housing sector. This is pertinent to ensure consumer protection of Australian's homes and housing assets are built to standard and of high quality. Given the current environment, with attention on apartment buildings following the highly publicized defect issues with Opal Towers in Sydney and the Lacrosse Apartments in Melbourne, consumer trust and confidence needs to be regained in Australian apartment construction. An ombudsman scheme could provide this oversight. For example, the Australian Financial Complaints Authority enables complaints to be easily made online. Developers and the construction sector would have to be members of such a scheme and pay the costs. However, the membership costs would enable them to utilize their membership in marketing material and thus gain reputational benefits. Complaints could be resolved relatively inexpensively with determinations of the ombudsman binding on developers.
- Data integration and streamlining of processes needs to be addressed. The siloed approach to many government organizations and across jurisdictions is hampering consumer protection.
- There are already mandatory requirements for the handover of building documentation from the developer to the body corporate or owners corporation within the first year of existence of the scheme; however the quality of this documentation, if it is received at all, is highly variable. Government intervention is required to ensure that bodies corporate and lot owners are receiving the necessary information pertaining to the building. One approach could be the submission of this documentation to the government upon registration of title, therefore the information can be retained and searchable for bodies corporate and future residents.
- *Improve contract and financial literacy:* While financial literacy education programs have been criticized we believe that education of personal finances, financial and contract literacy should be introduced into primary and high school curriculum, through to the development of online activities to improved consumer comprehension of financial literacy. The literature has highlighted that many individuals do not realise that they were signing a binding contract, and it if there is a problem it is not as simple as "just walking away."
- *Creation on online financial literacy education:* Attention spans have diminished (Lorenz-Spreen, Mønsted, Hövel and Lehmann, 2019), thus to continue to engage content must be presented in numerous formats. For example, a mixture of short videos, images and narrative, ensures consumers receive the same message through multiple formats which enhance comprehension. Language must be easy to read, including terminology, sentence structure and grammatical structuring, together with simple formatting to achieve readability. Adopting multiple formats also improves accessibility of the website, particularly for those users who experience visual, hearing or reading impediments.

- *Be informed - Creation of online training of Community Living:* Consumer education and understanding of what an individual has purchased when they buy into or live within a strata title property is critical.

We have identified two flashpoints for which communication with consumers may be undertaken. Firstly, prior to settlement of purchase contracts, buyers are dealing with numerous professionals. We acknowledge that these professionals could 'push' information to consumers — the buyers of lots within strata title development — with digital or paper materials. However, given sustainability considerations many organizations are phasing out printed materials and utilizing digital technologies or QR technology. Secondly, once settlement occurs, communication with all purchasers of CTS lots would be beneficial.

We recommend implementing a training module directed to owners of lots, as well as potential buyers of strata title property. In particular, first-time buyers of strata title lots given the additional rights and obligations applicable to community living and strata title ownership. This will enable potential buyers or lot owners with the capacity to learn more about community living, independent property and communal property rights, building defects, termination rights, compensation rights, and caretaking or other service agreements.

Once again, different delivery methods of the content should be utilized to ensure engagement with the content. Collaboration with peak real estate agency bodies, state law societies and other government departments for cross marketing of this may also assist in widespread dissemination and impact.

- Understanding buyers' journeys is important so policies can be targeted and tailored towards consumer protection and at significant "touch points" along this journey. This is particularly pertinent for OTP sales as the buyer's journey is often long with significant risks and capacity for change to occur.
- Integrating consumer behavioural insights for policy reviews and reforms. Particularly, consumer behavioural insights of information disclosure and the most appropriate times to disclose, in what format and in a way that is utilized by consumers is a priority.
- Guide consumers to get certifications from lawyers, including but not limited to certifying that lawyers/conveyancers have explained the terms of the OTP sales contract and a consumer comprehension test has been undertaken.
- Impose penalties or a greater degree of positive obligations through law reform.
- Possibility exists to ensure that the developers, real estate agents and/or legal profession are held responsible for the buyers understanding what they are signing by entering into an OTP sales contract.

**Developers:** While we acknowledge that the developer is in a favourable position compared to the consumer, the following strategies would facilitate consumers making more informed purchasing decisions and, potentially, build ongoing relationships with developers. It is anticipated building strong relationships will facilitate repeat sales as those buyers move through the property purchasing stages of second and later homes and in expanding investment portfolios.

- Improved communication between sellers and buyers. One potential avenue could be assigning a customer liaison officer on larger developments, to act as an intermediary between developer and consumer.

- To overcome the issues of declining consumer trust in property developers, especially in the OTP property sector, and to facilitate the costs of government oversight that is required in the housing market developers must financially contribute. An obligation to fund the independent body or Ombudsman service would need developer contribution on a per lot basis.
- Accountability in forecasting of sinking funds, transparent body corporate processes and agreements. There is very little transparency that allows consumers to compare body corporate fees, levies, charges, service contracts. At present no central repository or database collects this information to enable informed choice for consumers, despite legislation in all the jurisdictions requiring developers to provide this information and the body corporate to legislative manage and maintain schemes upon transition to new lot owners. Harsher penalties on non-compliance, or at minimum, collection and monitoring of this by an overseeing government department is required.
- Create better parity between what the customer wants and what is offered by the developer, learned through consumer behavioural insights research.
- Better building both in terms of quality of product and the reduction of and magnitude of building defects. The systemic issue of building defects in the Australian built form is complex and requires a whole of government approach. However, accountability for developers is ensuring that they are adopting building codes, more stringent monitoring and enforcement of quality-built outcomes. OTP sales contracts is as significant an issue as building defects, as consumers who are sold defective or faulty products, in this case an OTP property, should have the protection of the government to seek rectification and remediation. A seismic shift is required away from property being considered a personal matter, therefore lacking government intervention, towards property as blend of fundamental human right and a product is required. This would enable understanding that the person who suffers is always the consumer because of the power differential between the parties.

**Real estate agents:** Understanding that real estate agents are consumers' first point of contact, there are opportunities to use digital tools such as BIM and other platforms to offer a clear picture to the buyers of ownership and the respective rights and obligations passing with each agreement. Furthermore, engaging consumers and learning their preferences would be valuable to cater to their different needs and wants.

- Real estate agents must be direct with consumers about who their responsibilities or obligations are to. The relational aspect of selling property has the potential to influence or have a "reciprocity effect" on buyers. That is, some buyers may feel influenced or want to reciprocate the agent's kindness or upfront approach and help the agent out by signing a sales contract. Clarity and acknowledgement of who the real estate agent is acting on behalf of should be clearly articulated to buyers.
- As Willis (2008, p. 247) notes "Even if they know how to select a qualified expert, not everyone has the resources to hire or enough money at stake to warrant hiring a financial advisor. This is an informational problem, too; before implementing an expert's advice, a consumer has little means to determine whether the benefits of the advice outweigh the costs of obtaining it. Without independent advice, consumers tend to rely on the advice dispensed by the 'expert' closest at hand, the seller."

- Establishing interactive online platforms to engage customers in learning more about information disclosure and the community living environment.
- Front loading of information.
- Digital representation of buildings – Use of BIM technology. This has long term benefits for document record keeping for bodies corporate if this material is incorporated in the developer's document handover at settlement. Furthermore, it can aid governments in ensuring the quality of the built form and a national database of strata title property in Australia.
- Use of choice modelling to learn consumer preferences and co-design information disclosure.

**Lawyers:** While appreciating the unique nature of each property, there is an opportunity for lawyers who act for developers to develop responsive dynamic contract documents while fulfilling the standardized legislative requirements for the jurisdiction and seeking to align consumer expectations with developers.

Those lawyers who predominantly act for buyers should be advising their clients of the risks involved with not obtaining detailed legal advice and working with agents to encourage buyers to seek that advice prior to signing. It is incumbent on those to offer advice with a greater value-add than merely the transaction contemplated by the OTP contract. Lawyers are the advocates for their clients. They have the expertise to provide advice to facilitate comprehension of both the transaction and the structure, rights and obligations that their clients are entering into. Unlike real estate agents, who act for the seller, they also have a professional and contractual obligation to act in the buyer's best interests. Legal practitioners have a significant role to play when they are drafting OTP contracts for sellers, as well as when acting for buyers and reviewing documents.

- The 'unfair contract' provisions in the Australian Consumer Law need to be strengthened to ensure OTP contracts are more fairly balanced. These should also be reworked in any provisions within jurisdictions as well, with the remit of the Office of Fair Trading being extended to ensure that they are the government organization to ensure this is enforced/enacted.
- Develop responsive, dynamic contracts with standardized requirements.
- Potential exists to draft a standard OTP sales contract with the assistance of Law Societies. However, we note that the difficulty here is ensuring that the stakeholders (i.e. consumers) are properly represented in the drafting of these contracts to overcome the existing developer bias. Additionally, this would be dependent upon developers' adoption of standardized OTP sales contracts.
- Propose a mechanism to provide a certification of consumer comprehension in the sales contracting process.

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