

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By the Honourable Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

Property Law Bill 2023

Objectives of the Amendments

The objective of the Property Law Bill 2023 (Bill) is to replace the *Property Law Act 1974* (PLA) with new, modernised property legislation, drafted broadly in accordance with the recommendations in the 2018 *Final Report: Property Law Act 1974* (PLA Report) prepared by the Commercial and Property Law Research Centre at the Queensland University of Technology (QUT).

The Bill also implements a statutory seller disclosure scheme for sales of freehold land in Queensland, drafted broadly in accordance with the recommendations in QUT’s 2017 *Final Report: Seller Disclosure in Queensland* (Seller Disclosure Report).

The objectives of the amendments are to:

- clarify that easements in gross and certain insurance and indemnity covenants are in scope of clause 65 (Particular covenants in registered easements bind successors)
- correct the requirement under clause 68 (Contract containing promise for benefit of third party) that every party to the contract must be joined to legal proceedings, with a requirement that every party to the contract must be served with a copy of the proceedings;
- clarify, for the avoidance of doubt, that clause 80 (Effect of inoperative computers in particular entities on day of settlement) will operate on a rolling basis to continue to delay settlement if a computer system continues to be inoperative on the next business day and so on;
- clarify that the requirements under clause 101 (How disclosure documents to be given) and clause 103 (Giving of disclosure documents to buyer who is not registered as bidder until after start of auction) for giving seller disclosure documents to a bidder who registers after the start of an auction only apply if the bidder was not given the documents prior to the start of the auction;

- clarify that clause 106 (No other remedy if prescribed certificate contains inaccurate information given by statutory body or body corporate) will apply to a prescribed certificate issued by any entity;
- correct clause 191 (Discharge of debt or legal thing in action when no actual notice of assignment) to ensure that the common law principle for determining priorities as between competing assignees of a debt or legal thing in action will continue to apply; and
- clarify that, if a repealed provision of the PLA contained an express reference to the signing of a document by a person's authorised agent and the corresponding provision in the Bill has omitted that express reference, this does not limit or otherwise affect the application of the general law of agency.

Achievement of the Objectives

The amendments are of a minor, clarifying and correcting nature. The amendments will ensure that the Bill meets its objectives.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways for achieving these policy objectives.

Estimated Cost for Government Implementation

There will be no cost for government in implementing the amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

The amendments do not alter the intent of the provisions as drafted in the Bill. A full consideration of the Bill's consistency with the fundamental legislative principles is set out in the original explanatory notes.

Consultation

The amendments are the result of consultation on the Bill through the parliamentary committee process. The amendments address issues identified by the Legal Affairs and Safety Committee and in submissions made to the Committee during its inquiry into the Bill.

NOTES ON PROVISIONS

Amendment 1 amends clause 65 of the Bill by omitting the reference to 'for the benefit of other land' from subclause (1) so that the clause applies to easements in gross.

Amendment 2 amends clause 65 of the Bill by amending the covenants referred to in subclause (3) to include an obligation to indemnify a party to the easement in connection with the use of the easement; or an obligation to insure, pay for or contribute

to insurance in connection with the use of the easement. The amendment also inserts a new subclause (3A) to clarify that subclause (3) does not limit the covenants that may impose an obligation in relation to the use, ownership of maintenance of the burdened land.

Amendment 3 amends clause 65 of the Bill by inserting a new subclause (6) to provide that, to remove any doubt, it is declared that a registered easement under the clause includes a registered easement in gross.

Amendment 4 amends clause 68 of the Bill to require that, under subclause (6)(a), the third party must serve each party to the contract with a copy of the proceeding.

Amendment 5 amends clause 80 of the Bill by inserting a new subclause (6A) to provide that, to remove any doubt, it is declared that if, on the next business day mentioned in subclause (4), the contract again can not be settled because of the circumstances mentioned in subclause (1), clause 80 will again apply in relation to the circumstances.

Amendment 6 amends clause 101 of the Bill to clarify that subclause (2)(c) will only apply if the buyer was not given the disclosure documents under subclause (1) before the start of the auction.

Amendment 7 amends clause 103 of the Bill by amending subclause (1)(b) as a consequence of Amendment 8.

Amendment 8 amends clause 103 of the Bill by inserting a new subclause (1)(c) to provide that clause 103 only applies if the buyer of the lot was not given the disclosure documents under clause 101(1) before the start of the auction.

Amendment 9 amends clause 106 of the Bill by omitting the reference to ‘statutory body’ in the heading of the clause.

Amendment 10 amends clause 106 of the Bill by inserting a reference to ‘or other entity’ in the heading of the clause.

Amendment 11 amends clause 106 of the Bill by replacing the reference to ‘statutory body’ with ‘other entity’ in subclause (1)(b).

Amendment 12 amends clause 106 of the Bill by replacing the reference to ‘statutory body’ with ‘other entity’ in subclause (1)(c).

Amendment 13 amends clause 191 of the Bill by omitting subclauses (4) and (5).

Amendment 14 inserts a new clause 239A in the Bill to provide, for the avoidance of doubt, that if a repealed provision of the PLA contained an express reference to the signing of a document by a person’s lawfully authorised agent, and the corresponding provision in the Bill omits that express reference, the omission does not limit or otherwise affect the application of the general law of agency in relation to the corresponding provision.