

# Property Law Bill 2023

## Statement of Compatibility

### 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

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Property Law Bill 2023 (the Bill).

In my opinion, the amendments to be moved during consideration in detail of the Bill (the amendments) are compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview 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 (Amendments 1 to 3);
- correct the requirement under clause 68 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 (Amendment 4);

- clarify, for the avoidance of doubt, that clause 80 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 (Amendment 5);
- clarify that the requirements under clauses 101 and 103 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 (Amendments 6 to 8);
- clarify that clause 106 will apply to a prescribed certificate issued by any entity (Amendments 9 to 12);
- correct clause 191 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 (Amendment 13); 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 (Amendment 14).

## Human Rights Issues

### Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights under the *Human Rights Act 2019* (HR Act) engaged by the amendments are property rights (section 24 of the HR Act).

### **If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

Amendments 1, 2, 3, 4, and 5 may limit property rights under section 24 of the HR Act; however, I consider that the limitation is only to the extent that is reasonable and demonstrably justifiable for the reasons set out below.

#### (a) the nature of the right

All persons have the right to own property alone and in association with others and to not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

The right includes the protection from the deprivation of property. Deprivation in this sense has been held to include the substantial restriction on a person's use and enjoyment of their property. Property generally includes all real and personal property interests recognised under general law (including but not limited to interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

*Clause 65 – Particular covenants in registered easements bind successors (Amendments 1 to 3)*

Clause 65 of the Bill makes a covenant contained in a registered easement over land for the benefit of other land binding on the successors in title of the parties to the easement, unless those covenants are personal to the parties to the easement. This may limit the property rights of the successors in title to the burdened land, and may increase the rights of the successors in title to the benefited land. The clause operates retrospectively (by virtue of clause 247) and in certain cases will change the enforceability of positive covenants contained in easements and therefore alter parties' rights.

The amendments to clause 65 are intended to clarify that insurance and indemnity covenants that relate to the use of the burdened land, and easements in gross, will be in scope of the clause. These changes assist with interpreting the clause and ensure that the purpose of the clause is achieved. In this respect, the clause (as amended) will ensure that the enforceability of covenants in registered easements is balanced, fair and certain.

*Clause 68 – Contract containing promise for benefit of third party (Amendment 4)*

Clause 68 of the Bill, which replicates the effect of section 55 of the PLA, allows a person who is not a party to a contract, but who will receive the benefit of a promise under that contract, to enforce the benefit of that promise. This limits the property rights of parties to a contract by allowing a third party (who is not a party to the contract) to enforce covenants in the contract that benefit them. The clause also provides that, if the third party accepts the benefit of the promise, either expressly or by conduct, the promisor under the contract can enforce an obligation imposed by the contract on the third party for the benefit of the promisor.

The limitation on property rights imposed by this clause is consistent with a free and democratic society based on human dignity, equality and freedom because the limitation is consistent with existing legal requirements and has been designed to provide commercial certainty while balancing competing rights of interested persons.

The amendment to clause 68 replaces the requirement 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 proceeding. The amendment will maintain the property rights of each party to the contract by ensuring they are aware of the legal proceedings, without necessitating that each party to the contract be joined and therefore incur legal costs.

*Clause 80 – Effect of inoperative computers in particular entities on day of settlement (Amendment 5)*

Clause 80 of the Bill limits rights to terminate a contract for the sale of land when the electronic settlement and lodgement computer systems are inoperative so the electronic settlement is unable to proceed.

The amendment to clause 80 will clarify, for the avoidance of doubt, that the clause 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. Therefore, the amendment will assist with the interpretation of the clause only and does not alter the purpose of the clause.

The potential limitation on property rights under clause 80 is intended to account for digital advances in relation to conveyancing procedures and provide fairness by balancing the interests of all parties that may be affected by an inoperative computer system, while also providing commercial certainty about how the contract operates.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

As set out above, the amendments to the Bill are of a minor, clarifying and correcting nature, and will ensure that the Bill meets its objectives by providing certainty and clarity as to the interpretation and operation of the amended clauses.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments adopt an appropriate balance of competing property rights and provide greater certainty and clarity about how protections and property rights may be enforced. The benefits gained by fulfilling the purposes of the Bill outweigh any possible negative impact on the property rights identified.

## Conclusion

In my opinion, the amendments to the Property Law Bill 2023 are compatible with human rights under the *Human Rights Act 2019* because they human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

**YVETTE D'ATH MP**  
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE  
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