

Property Law Bill 2023

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10 March 2023

Mr Peter Russo MP
Chair
Legal Affairs and Safety Committee
Member for Toohey

Via: lasc@parliament.qld.gov.au

Dear Committee Chair,

RE: LGAQ submission on Property Law Bill 2023 and draft regulation

The Local Government Association of Queensland (LGAQ) is a not-for-profit association representing all 77 local governments across Queensland as the state-wide peak body for our sector.

We thank the Legal Affairs and Safety Committee (the Committee) for the opportunity to make a submission to its inquiry into the Property Law Bill 2023, and draft regulation.

Please find enclosed a copy of the LGAQ's submission, on behalf of our members, for your consideration.

On behalf of our member councils, we make four recommendations for the committee's consideration including that the Bill be amended prior to its commencement, to deliver on recommendation 19.1 of the Royal Commission into National Natural Disaster Arrangements through the introduction of a statutory seller disclosure scheme that includes mandatory disclosure of natural hazard risk at point of sale.

For further information in relation to this submission, please contact Ms Crystal Baker, Lead – Planning & Development and Climate Risk & Resilience on [REDACTED] or [REDACTED]

Yours sincerely,



Alison Smith
CHIEF EXECUTIVE OFFICER


Property Law Bill 2023 (and Draft Property Law Regulation 2023)

Submission to the Legal Affairs and Safety
Committee


March 2023

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About the Local Government Association of Queensland (LGAQ)

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association established solely to serve councils and their needs. The LGAQ has been advising, supporting, and representing local councils since 1896, enabling them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and providing them with the means to achieve community, professional and political excellence.

Property Law Bill 2023 and Draft Property Law Regulation 2023

1.0 Executive Summary

The Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide a submission to the Legal Affairs and Safety Committee on the *Property Law Bill 2023* (the Bill) and the associate regulations introduced by the Hon. Shannon Fentiman MP, Minister for Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence on 23 February 2023.

The LGAQ understands the objective of the Bill is to replace the *Property Law Act 1974* with new, modernised property legislation, drafted broadly in accordance with the recommendations of the Commercial and Property Law Research Centre at the Queensland University of Technology (QUT) contained in the:

- [2018 Final Report: Property Law Act 1974](#) (PLA Report), and
- [2017 Final Report: Seller Disclosure in Queensland](#) (Seller Disclosure Report).

The overall intent to contemporise Queensland's property legislation and introduce a statutory seller disclosure scheme in Queensland, is supported.

The majority of the changes contained in the Bill relate to repealing outdated/unnecessary provisions of the *Property Law Act 1974*, modernising language and simplifying/updating various provisions including to reflect other legislative changes that have been made (such as electronic conveyancing). No significant issues have been identified with these changes in the time available to review the Bill since it was introduced.

On the other hand, statutory seller disclosure is of significant interest to Queensland councils, in particular aligning Queensland conveyancing laws with those of other jurisdictions and including the requirement for mandatory disclosure of natural hazard risks. Queensland is the country's most disaster-prone state. Changing this would benefit Queensland communities through increased awareness of risks.

The LGAQ acknowledges and appreciates the previous consultation undertaken by the Department of Attorney-General in mid-late 2022 on a draft *Property Law Bill 2022* and proposed seller disclosure scheme. However, the LGAQ remains concerned the Bill and the associated draft Property Law Regulation 2023 (the draft Regulation), do not go far enough in meeting the recommendations of the Royal Commission into National Natural Disaster Arrangements, or reflecting the calls of Queensland councils, to align Queensland's conveyancing laws with those of other jurisdictions such as NSW and Victoria, and to introduce mandatory disclosure of natural hazard risks at point of sale and prior to property purchase.

The LGAQ has made three formal submissions to the Department of Justice and Attorney-General on the matter of seller disclosure – in September 2022, October 2022 and December 2022 – with key outstanding issues carried forward in this submission.

Importantly, the LGAQ and Queensland councils remain committed to working with the State Government to identify workable solutions to ensure mandatory disclosure of natural hazard risks can be implemented prior to commencement of the Bill, should it be passed.

1.1 Recommendations

In total, the LGAQ makes four key recommendations which are summarised below:

- **Recommendation 1:** The LGAQ recommends the proposed seller disclosure scheme for Queensland be broadened to align vendor obligations for provision of due diligence information at point of sale, with those of other jurisdictions that already require detailed property sale disclosure statements, including flood and other natural hazard information.
- **Recommendation 2:** The LGAQ recommends the State Government continue working with the LGAQ and Queensland councils to identify workable solutions that will enable mandatory disclosure of natural hazard risks in Queensland, prior to commencement of the Bill should it be passed.
- **Recommendation 3:** The LGAQ recommends the draft Property Law Regulation 2023 be amended prior to commencement of the Bill, to deliver on recommendation 19.1 of the Royal Commission into National Natural Disaster Arrangements through introduction of a statutory seller disclosure scheme that includes mandatory disclosure of natural hazard risk at point of sale.
- **Recommendation 4:** The LGAQ recommends the State Government develop and implement a comprehensive awareness and education program regarding the new seller disclosure scheme in the lead up to, during and following the commencement of the Bill, should it be passed.

2.0 Mandatory disclosure of constraints on land, including natural hazard risk

The LGAQ and Queensland councils have long been calling for reform to introduce statewide statutory disclosure provisions, similar to the approach taken in other jurisdictions which already require detailed property sale disclosure statements, including flood and other natural hazard information.

At the LGAQ 2018 Annual Conference, resolution #73 was passed by Queensland councils seeking an alignment of vendor obligations for provision of due diligence information in Queensland, with those of other jurisdictions such as under the *Sale of Land Act 1962* (section 32) in Victoria, and 2) the *Conveyancing Act 1919* (section 52A) and *Conveyancing (Sale of Land) Regulation 2017* (section 4 and Schedule 1) in New South Wales. This includes disclosure of natural hazard risks and man-made constraints on land.

This call for action was reinforced at the 2022 LGAQ Annual Conference, with resolution #86 passed calling on the State Government to “investigate a pathway for mandatory disclosure of flood and other natural hazard risks in all property transactions.”

Queensland is the country’s most disaster-prone state and yet, without a statutory seller disclosure scheme, it is currently a case of ‘buyer-beware’. By including an onus on the vendor in the provision of ‘due diligence’ information in legislation governing conveyancing in Queensland, there is an opportunity for prospective purchasers to avoid purchasing property that proves to be adversely affected by factors they may be unaware of and subsequent impacts from an insurance, liability and property value perspective.

As such the introduction of a statutory seller disclosure scheme is supported. However, the current proposed reforms do not go far enough to inform buyers of constraints on land and natural hazard risks, putting even more pressure on councils. There is a need for a consistent state-wide approach to this issue to benefit Queensland communities through increased awareness of risks, which is also supported by other key peak industry bodies such as the Planning Institute of Australia in their previous submissions on the proposed reforms and also the Royal Commission into National Natural Disaster Arrangements discussed further below.

2.1 Alignment with disclosure requirements of other jurisdictions

In New South Wales (NSW), a planning certificate under section 10.7 of the *NSW Environment Planning and Assessment Act 1979* is a prescribed document under the NSW conveyancing laws and it is therefore mandatory for a vendor to attach a copy of this to the contract of sale before it is signed. Information to be included on a planning certificate in NSW is prescribed under schedule 2 of the *Environmental Planning and Assessment Regulation 2021*, which specifies 22 overarching categories including, but is not limited to:

- Names of relevant planning instruments and development control plans
- Zoning and land use under relevant planning instruments
- Flood related development controls and bushfire prone land
- Council and other public authority policies on hazard risk restrictions
- Contribution plans (i.e. related to development contributions)
- Property vegetation plans and biodiversity stewardship sites
- Whether land is affected by road widening and road alignment
- Whether complying development or exempt development may be carried out on the land.

In Victoria, a statement of matters affecting land must also be signed and given by the vendor to the purchaser under a contract for the sale of land before the purchaser signs the contract (i.e. under section 32 of the *Sale of Land Act 1962*).

Consistent with the approach in NSW, the Section 32 Statement in Victoria must include matters such as the amount of any rates, taxes, charges or other similar outgoings (including interest payable on parts unpaid), planning scheme matters including zoning of the land and the name of any applicable planning overlay (such as natural hazards), as well as details regarding whether land is subject to a growth areas infrastructure contribution.

The information provided on disclosure statements in other jurisdictions such as NSW and Victoria, is largely consistent with the information provided through a 'planning and development certificate' under section 265 of the *Planning Act 2016* (the Planning Act), with *limited* planning and development certificates required to include the following information in accordance with schedule 23 of the *Planning Regulation 2017*:

- a) a summary of the provisions of any planning scheme or charges resolution applying specifically to the premises; and
- b) if a temporary local planning instrument applies to the premises and suspends or otherwise affects the operation of a planning scheme provision stated in paragraph (a)—a description of the way in which the TLPI suspends or otherwise affects the provision; and
- c) if a variation approval is in effect for the premises—a description of the way in which the variation approval varies the effect of a planning scheme provision stated in paragraph (a); and
- d) if a state planning instrument applies to the premises—the name of the instrument; and
- e) a description of any designation applying to the premises; and
- f) a copy of any information recorded for the premises in the infrastructure charges register kept by the local government.

Although a person may apply to a local government for a 'planning and development certificate' under section 265 of the Planning Act, there is no mandatory requirement that this must be attached to a contract of sale or that this be provided as part of a disclosure statement to a purchaser prior to the purchaser signing the contract.

Recommendation 1: The LGAQ recommends the proposed seller disclosure scheme for Queensland be broadened to align vendor obligations for provision of due diligence information at point of sale, with those of other jurisdictions which already require detailed property sale disclosure statements, including flood and other natural hazard information.

2.2 Form of disclosure

Notwithstanding the similarities outlined in section 2.1 above, the draft Regulation does not list a 'planning and development certificate' under the Planning Act as a *prescribed certificate* (for the purposes of section 99(1)(b) of the Bill). The 'zoning of a lot as published by a local government in a local planning scheme on its website' is listed, however there is no mention of overlay mapping affecting a lot more broadly.

In addition, the draft Regulation specifically excludes disclosure of flooding or other natural hazard history in a *disclosure statement* (draft Regulation, schedule 1, section 1) and only suggests a prospective purchaser *'enquires with the relevant local government as to whether a property is affected by flooding or another natural hazard or within a natural hazard overlay'* (draft Regulation, schedule 1, section 3(2)).

This is despite the previous submissions of the LGAQ and various local governments and is inconsistent with the approach taken in other jurisdictions and also with the recommendations of the Royal Commission into National Natural Disaster Arrangements – see section 2.3 below.

Currently in Queensland the onus is on the prospective buyer to undertake due diligence when purchasing a property. The prospective buyer bears the cost of this critical exercise. This means there is no guarantee a buyer will know the risks when purchasing a home in an area affected by a natural hazard.

In other jurisdictions, costs are borne by the vendor to obtain the necessary certificates as part of the conveyancing process, so buyers are informed.

The introduction of a minimum level of information on natural hazard risk that must be provided by the vendor prior to the sale of a property in Queensland will help to drive greater community awareness of potential risks and enable buyers to make better informed decisions.

In relation to natural hazard mapping, this is available for flood, bushfire and coastal hazards statewide. Under the State Planning Policy, local governments can integrate state mapping into their planning scheme or locally refine the state mapping in a way that achieves the state interest policy for natural hazards, risk and resilience. The State Government approves any locally refined mapping for inclusion in a local planning scheme and the SPP mapping applies to the extent of any inconsistency.

As stated in the SPP guidance for Integrating state interests in a planning scheme, *“the base SPP IMS Flood hazard area mapping – the Queensland Floodplain Assessment Overlay (QFAO) – is classed as Level 1 mapping and provides the baseline flood hazard area mapping for the local government area where a local government does not otherwise have a region-wide understanding of flood hazard”* (page 159). It is important that there is further and ongoing dedicated State Government support and investment to ensure the most up to date up to date mapping is available for all natural hazards, similar to recent investments that have been made for coastal hazards under the QCoast2100 program.

In relation to disclosure of natural hazard (and other) risks, the LGAQ is aware that QUT did consider the option of requiring a seller to provide a ‘limited town planning certificate’ (LTPC) to the buyer but came to the view that *“as the same information contained within a LTPC is available for a lesser cost, imposing this obligation is not justified”* (QUT Seller Disclosure Report, page 36). QUT did, however, recommend *“this position should be reviewed after commencement of the Planning Act 2016”*.

The LGAQ acknowledges there is a cost-recovery fee associated with the provision of planning and development certificates in Queensland set by a local government. This fee does vary across councils, as it does in other jurisdictions. It is important to retain this as councils do need to recover costs for such services.

The LGAQ is seeking to work with the State Government to identify workable solutions and remove any potential barriers, in consultation with councils, to enable mandatory disclosure of natural hazard risks in Queensland, prior to the commitment of the Bill should it be passed.

We believe that through consultation with the LGAQ and its member councils, a solution can be found that is cost-effective for both vendors and for councils, and ensures buyers are informed.

Recommendation 2: The LGAQ recommends the State Government continue working with the LGAQ and Queensland councils to identify workable solutions that will enable mandatory disclosure of natural hazard risks in Queensland, prior to the commencement of the Bill should it be passed.

2.3 Outcomes of the Royal Commission into National Natural Disaster Arrangements

In relation to natural hazard risk disclosure, the LGAQ is also extremely concerned that the draft Regulation associated with the Bill is inconsistent with the policy intent and recommendation 19.1 contained in the Royal Commission into National Natural Disaster Arrangements Report, which states:

Recommendation 19.1 Communication of natural hazard risk information to individuals

State and territory governments should:

- 1. each have a process or mechanism in place to communicate natural hazard risk information to households (including prospective purchasers) in 'hazard prone' areas, and*
- 2. work together, and with the Australian Government where appropriate, to explore the development of a national mechanism to do the same.*

The Royal Commission report noted that “some states already have programs in place to notify home buyers of their natural hazard risks when a home is purchased, but applicable schemes vary considerably”. Although the Bill seeks to introduce a statutory seller disclosure regime in Queensland applying to the sale and purchase of freehold land, it specifically excludes disclosure of natural hazard risk information to prospective purchasers in ‘hazard prone’ areas.

The Royal Commission also noted the “Queensland Government questioned whether there is a need to directly communicate risk to people when they can access government websites that already host this information”, with the Royal Commission responding, “the answer is simple: many people do not” (Royal Commission Final Report, paragraph 19.34, page 405).

The Royal Commission’s report was tabled in Parliament in October 2020, three years after completion of QUT’s Seller Disclosure Report in 2017. Although QUT did not recommend mandating seller disclosure of flood information (or any other natural hazard information), there is a critical need to reconsider this in the context of more contemporary recommendations such as those made by the Royal Commission.

The importance of disclosing natural hazard risk is also surely heightened, given the significant natural disaster events experienced in Queensland since the QUT report was finalised, including the 2018 Central Queensland bushfires, the 2019 Queensland bushfires and the flooding associated with the 2019 North and Far North Queensland Monsoon Trough and 2021-22 Southern Queensland Floods.

The LGAQ and its member councils are extremely grateful to the State and Federal Government for funding the \$741 million Resilient Homes Fund to provide Queensland homeowners affected by the 2022 floods with the option to apply to retrofit, raise or have their home bought back.

The Association is hopeful this program will be extended or replicated to enable Queenslanders in other parts of the state to have access to these options and has made a formal request to the State and Federal governments leading up to this year’s State and Federal Budgets.

But this measure must be complemented by reforms to protect homebuyers from unwittingly finding themselves in harm’s way.

To enable buyers to make more informed decisions when purchasing a property, the LGAQ implores the State Government to use the current opportunity presented by the review of the *Property Law Act 1974*, to deliver on recommendation 19.1 of the Royal Commission through introduction of a statutory seller disclosure scheme that includes mandatory disclosure of natural hazard risk at point of sale.

Recommendation 3: The LGAQ recommends the draft Property Law Regulation 2023 be amended prior to commencement of the Bill, to deliver on recommendation 19.1 of the Royal Commission into National Natural Disaster Arrangements through introduction of a statutory seller disclosure scheme that includes mandatory disclosure of natural hazard risk at point of sale.

3.0 Implementation and commencement of Bill

The LGAQ understands the Bill authorises the making of transitional regulations, during a transitional period of two years.

Given the extent of changes proposed by the Bill, and particularly the introduction of an entirely new statutory seller disclosure scheme for Queensland, there is a critical need for the State Government to deliver extensive education, training, guidance for all affected stakeholders in the lead up to, during and following the commencement of the Bill, should it be passed.

Recommendation 4: The LGAQ recommends the State Government develop and implement a comprehensive awareness and education program regarding the new seller disclosure scheme in the lead up to, during and following the commencement of the Bill, should it be passed.

As noted throughout this submission, the LGAQ and Queensland councils remain committed to continuing to work with the State Government to ensure prospective buyers are fully informed of natural and human-made constraints on land, specifically including natural hazard risks, similar to approaches in other jurisdictions.

The LGAQ thanks the Committee for its consideration of this submission.