

Property Law Bill 2023

Submission No: 23
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Sent: Friday, 10 March 2023 11:57 AM
To: Legal Affairs and Safety Committee
Subject: Property Law Bill 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane

I make the following submission in relation to the Property Law Bill 2023:

1. The review and introduction of the Property Law Bill is welcome.
2. I would like to make the following suggestions in relation to proposed section 65:
 - a. I have a particular interest in this section as I have had to advise a number of clients over the last 5 years in particular, the issue of what clauses in easements are binding on successors in title for both grantors and grantees.
 - b. The circumstances where this issue has arisen included:
 - i. mutual access easements put in place by a developer (where it is both the grantor and the grantee) and issues then arise between the subsequent body corporates as to what obligations and rights each body corporate has under the easements;
 - ii. The sale of a CBD building where easements entitled one party to recover moneys from other parties that shared the benefit of the easements and maintenance obligations imposed on one party;
 - iii. Purchasing rural properties where there were infrastructure easements for pipelines relating to gas and mining projects. These easements include insurance obligations and indemnities. The potential for loss in these types of easements is significant if an incident occurs; and
 - iv. Easements associated with windfarm infrastructure.
3. All these easements included insurance and indemnity obligations on parties. These obligations are not uncommon for easements particularly where there are inherent dangers in the use to which the easement is put eg vehicle access and pipelines for the carriage of gas and chemicals. As you would be aware it is often the case that the initial parties to the easements will sell or dispose of their interests and the legal

position of the subsequent holders of the benefited land and the burdened land are then unclear.

4. Prior to volumetric lots and building management statements being permitted in Qld easements were put in place which included a wide variety of clauses which did not run with the land but set out the terms on which various areas were to be used (including provisions for annual meetings of the users of the easements – ie terms similar to what are now in building management statements). Those easements are still in place and whilst this section will significantly assist there is an opportunity to further minimize disputes going forward.
5. To minimize potential disputes as to what the words “use, ownership or maintenance” mean (even with the benefit of sub-clause (3) I submit that all covenants that relate to the use of the burdened land should have the benefit of proposed section 65.
6. It is curious that in Qld the law allows for covenants and terms of any nature to be included in building management statements (which are binding on all subsequent owners and occupiers of lots which are subject to such statements) (section 54D(3) of the Land Title Act) but will not give easement terms the same protection. There does not appear to be any basis for either document to be treated differently when it comes to subsequent owners.
7. I think the terms of easements which are binding on subsequent owners of either the burdened or benefited land should just relate to the burdened land – using the terms “use, ownership or maintenance” whilst a significant advance on the current position will still lead to a range of litigation until the Courts determine what is intended by those words.
8. I have been practicing as a solicitor for over 35years. During that time my primary work has been property law. I was a partner at Clayton Utz for over 25 years and have had my own practice for over 5years.

I am happy to discuss this issue further.

Regards
Brian

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