




Speech By  
**Adrian Tantari**

**MEMBER FOR HERVEY BAY**

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### **PROPERTY LAW BILL**

 **Mr TANTARI** (Hervey Bay—ALP) (2.05 pm): I rise to make my contribution to the Property Law Bill 2023. As many contributors in this debate have already said, the changes we are debating have been introduced into this House to replace the Property Law Act 1974. The primary objective of this bill is to replace the Property Law Act with a new, modernised Property Law Act drafted broadly in accordance with the recommendations of the *Final report: Property Law Act 1974*, prepared by the Commercial and Property Law Research Centre at the Queensland University of Technology. I would like to thank the authors for their work on that report.

The Property Law Act governs many aspects of Queensland's property law, including general rules affecting property, the creation and disposition of interests in land, co-ownership, deeds, covenants, mortgages, leases, the rule against perpetuities and 'old system' land. The Property Law Act commenced in December 1975 and, while having been amended, the act itself has not been substantially redrafted since.

The bill will simplify, streamline and modernise Queensland's property legislation, better facilitate e-conveyancing and electronic transactions and remove outdated provisions as well as implement a new statutory seller disclosure scheme drafted broadly in accordance with the recommendations of the 2017 *Final report: Seller disclosure in Queensland*, also prepared by the Queensland University of Technology. In generally adopting the recommendations of the report, the bill will create a more certain, coordinated and transparent regime for the sale of freehold land in Queensland by promoting consistency and clarity of disclosure. Buyers will benefit from being in a more informed position prior to signing a contract to purchase land with a view to minimising disputes that currently arise if defects in the title are discovered after the contract is signed.

The bill largely retains the effect of many existing provisions in the Property Law Act 1974 that are well known and in other areas the bill builds upon the existing legal requirements but substantially simplifies or amends the existing requirements to address issues identified through the QUT review. The bill does not codify the law of property but instead builds on common law and equity. The significant changes to property law in the bill are: repealing outdated provisions, for example those related to 'old system' unregistered land; redrafting in modern language—effectively plain English—reflective of current drafting and property practice; providing a legal framework to recognise and facilitate electronic dealings in property; simplifying the common-law rule without perpetuities and rules relating to covenants; simplifying and updating the rules related to leases; and updating the neighbouring property provisions to reflect modern property practice and community expectations.

As mentioned earlier, the bill will establish a statutory seller disclosure scheme for sales of freehold land as recommended by QUT. Currently there is no statutory seller disclosure scheme in Queensland and property sellers disclose information as required by a mix of legislative, common-law and contract-law obligations. The seller disclosure scheme will simplify and streamline the disclosures process and empower buyers to make informed decisions about property dealings. We all know that

having a disclosure system allows the buyer to have a more open and transparent experience, allowing them to make an informed decision when buying property. This bill will make it mandatory, with some exceptions, for a seller of freehold land to disclose to the buyer, before the buyer signs the contract, relevant information in a single document with any prescribed certificates, including a body corporate certificate where relevant.

That raises the question of what happens if the seller does not comply with the disclosure obligation. Is the buyer entitled to terminate the contract at any time before the settlement including, for example, the day before settlement? This bill will allow the buyer the right to terminate the contract under the seller disclosure scheme. The buyer may choose to terminate at any time before settlement. The only exception is where the seller's failure to disclose is also a failure to comply with another piece of legislation and the other legislation provides a consequence for failing to disclose. In those circumstances, the consequences under the other legislation will apply.

The reason a buyer is entitled to terminate at any time until settlement under the seller disclosure scheme is that, where a contract provides for an extended settlement period, a buyer may delay in undertaking searches until immediately prior to settlement to ensure they rely on the most current information. Therefore, the buyer should be able to terminate the contract just before settlement once they have concluded the searches if the searches reveal nondisclosure that enlivens a termination right. However, it is important to note that the information disclosed by the seller must only be accurate at the time it is given to the buyer before signing the contract, meaning a buyer will not have a termination right simply because information has changed after the contract is signed. I note that report No. 45 of the Legal Affairs and Safety Committee states—

Many stakeholders expressed their support for the introduction of a statutory seller disclosure scheme in Queensland.

The Strata Community Association Queensland (SCA) stated that an appropriate balance has been found in terms of the volume of disclosure required.

The committee also noted the broad support from stakeholders for a seller disclosure scheme for the sale of freehold land in Queensland. The committee was satisfied with the value of such a scheme, the four guiding principles for the scheme as proposed in the seller disclosure scheme report and the scheme's objectives of providing clarity, transparency, value and balance. The committee also noted that such a scheme would involve changes to the way business is done in the real estate sector and was pleased to note that the Department of Justice and Attorney-General will work with and educate stakeholders during the implementation of the scheme

This modern, up-to-date legislation is what is needed now. In our own constituencies we have all heard about cases where a buyer is put in a situation where they believe that inaccurate or incomplete information has been given to them when making a decision to buy a property or freehold land. In that instance, with the changes in this bill, they will now receive complete and accurate information before making what is for most people, and maybe only once or twice, one of the most challenging lifetime decisions and probably the biggest purchase they will ever commit themselves and their families to. It is a decision that can be life changing but that is also fraught with stress and worry given the commitment they are making. I know within my own electorate of Hervey Bay there have been instances where full disclosure has not been forthcoming with information being inaccurate or incomplete. This bill will address that concern and put buyers in a situation where they at least have the option to terminate a contract if the seller is not compliant, giving certainty to not only buyers but also sellers.

The information to be disclosed under the seller disclosure scheme will be prescribed by regulation. Disclosure can be made physically or electronically or via an agent, giving sellers flexibility to provide disclosure documents in a variety of ways.

The minister has put forward several amendments to be moved during consideration in detail. The amendments propose to correct and clarify the bill to ensure it operates as intended and to address certain issues raised during the committee process. The amendments include: clarifying the inclusion of easements in gross and certain insurance and indemnity covenants; clarifying that every party to the contract must be joined to legal proceedings; clarifying, for avoidance of doubt, it will operate on a rolling basis; clarifying that the requirements for giving seller disclosure documents to a bidder who registers after the start of an auction only apply if the bidder has not been given the documents prior to the start of the auction; clarifying that clause 106 will apply to a prescribed certificate issued by an entity; and correcting clause 191 to ensure the common-law principle for determining priorities as between competing assignees of a debt or legal thing in action.

The property law in Queensland, with its recent shifts, is at the forefront of blending tradition with modernity. We know that property law is not just about bricks and mortar. It reflects the values of our society, ensures fairness in transactions and assists in maintaining the balance of rights amongst property owners. As a society evolves so must our laws. These changes are not merely procedural;

they reflect a deeper understanding of the ever-evolving nature of property transactions. It is a testament to the Palaszczuk government's commitment to ensuring that property law remains robust, fair and reflective of contemporary needs.

I acknowledge the committee; the committee secretariat; the chair, the member for Toohey; and the Attorney-General and former attorney-general for their work. I thank all the submitters and the stakeholders who contributed to this legislation. It is a good piece of legislation that is before the House and it needs to be fully supported by this House. I understand that some on the other side might have reservations about some of the issues in it, but I think that it should be fully supported. I support the bill before the House.