




Speech By
Charis Mullen

MEMBER FOR JORDAN

Record of Proceedings, 25 October 2023

PROPERTY LAW BILL

 **Mrs MULLEN** (Jordan—ALP) (2.14 pm): I am pleased to rise in support of the Property Law Bill 2023. I note the significant work that occurred over a number of years to modernise Queensland's property laws. I acknowledge and thank the Attorney-General for bringing the legislation to the parliament.

Owning and dealing with property, purchasing property under a community titles scheme, signing and enforcing lease arrangements or being subject to covenants are all issues that affect many Queenslanders so it is very important that our property laws are modern and robust. The Property Law Act 1974 came into force on 1 December 1975. For some context, I was one when this act came in. At the time, it was considered one of the major property law reform projects ever undertaken in Queensland. The act was substantially a product of an extensive inquiry by the Queensland Law Reform Commission, which culminated in the publishing of a working paper in April 1972 and a final report in February 1973 containing draft legislation. It took nearly two years to enact the draft, which was keenly debated and finally adopted with some changes. Since its enactment there have been very few substantive amendments to the act and no overall review in the 40 years since that commencement. It is a credit to the legislation that it has generally served our state well for almost 50 years.

Real property law draws heavily upon historical concepts that have their roots in the 18th and 19th centuries. Consequently, many provisions of the Property Law Act 1974 were based upon the UK Law of Property Act 1925. Many sections of the current act remain in the same language as the 1925 act or in direct transcripts of the New South Wales Conveyancing Act 1919. At this point in time, such provisions are at least 90 years old. Many of the concepts from the 1925 act, such as those related to 'old system' land and conveyancing, no longer have any rational basis for retention in the Queensland context.

Through the Commercial and Property Law Research Centre at the Queensland University of Technology, there has been a significant body of work undertaken by researchers in terms of reviewing and seeking to reform legal and regulatory frameworks in the commercial and property law sector. The current bill draws on the work of the Commercial and Property Law Research Centre and, in particular, many of the recommendations of the centre's *Final report: Property Law Act 1974*. As well as replacing the current act, the bill also creates a statutory seller disclosure scheme for the sale of freehold land. This was a recommendation in the report titled *Final report: Seller disclosure in Queensland*, which was also prepared by QUT's Commercial and Property Law Research Centre.

There is a saying, 'buyer beware', which is never more important than in the purchase of property. It is most likely the most expensive purchase people will make in their lifetime. For some it may be the only big purchase in their lives whilst others may make a number of such purchases through investments. For the most part, the onus has always been on the purchaser to ensure they understand what they are paying for. Of course, the concern with this has always been around a lack of uniformity in terms of what is disclosed as, to date, there has not been a statutory seller disclosure scheme in Queensland. Currently, property sellers disclose information as required under a complex mix of

common law and statutory and contractual obligations. As the parliamentary committee noted in its inquiry on the bill, this creates a significant regulatory burden on the seller and their advisers as well as meaning that buyers can receive a variety of different disclosure documents at different stages of the sales process.

The bill proposes to create a statutory seller disclosure scheme that will apply to all sales of freehold land. Under the scheme, a seller will be required to give the buyer a disclosure statement and prescribed documents before the buyer signs the contract for sale. A statutory seller disclosure scheme is recommended in the seller disclosure scheme report. The report recommended the scheme be underpinned by four guiding principles: information to be provided by the seller to the buyer pre contract should be within the seller's knowledge or readily available by search at reasonable cost to the seller; information should be of value to a buyer in making a decision to purchase—primarily this will be information impacting on title to the property or ongoing financial liability of ownership; information should be in an accessible form, easily understood and capable of being relied upon by the buyer; and a single legal framework should be established providing consistency in the content and timing of disclosure and remedies available for a failure to comply.

Overall, stakeholders were generally supportive of the introduction of a statutory seller disclosure scheme in Queensland. It will also be helpful to the real estate sector in ensuring all agents have a clear understanding of what sellers must disclose to buyers, helping to provide greater clarity, transparency, value and balance. Certainly I have spoken to a number of local real estate agents in my electorate who welcome this new scheme.

The other topic I wish to raise relates to the sale of lots in a community titles scheme. Currently, the seller of a lot in a community titles scheme must comply with the disclosure requirements found under the Body Corporate and Community Management Act 1997. The bill before us omits the disclosure requirements under the BCCM Act as the new disclosure requirements for all freehold sales under the proposed Property Law Bill 2023 will include sales of community titles scheme lots. This creates better clarity, with all freehold sale disclosures found under the one act regardless of whether you are purchasing a freestanding house, an apartment, a townhouse or a unit. The requirement of a seller to also produce a copy of body corporate records will also change, with the new requirement for a body corporate certificate to be provided by the body corporate manager.

Businesses which currently provide strata search services to buyers and sellers have expressed concerns, particularly about whether this will detrimentally affect the body corporate disclosure industry operating within Queensland. The Department of Justice and Attorney-General noted in its response to the parliamentary committee that the new provisions should see most buyers receiving more useful information when deciding to purchase a property under a community titles scheme. Automation of the body corporate certificates was not seen as problematic, as long as the information provided was accurate and complied with the approved form of the certificate.

It was also noted that body corporate certificates will be required to be disclosed before entering into a contract of sale, and no concerns have been raised by the real estate or legal professions around the proposed five-day time frame under the seller disclosure scheme. Importantly, the new legislation does not prevent nor restrict sellers and buyers from being able to use search agents. Bodies corporate and search agents are also able to enter into relationships whereby a search agent is authorised to prepare body corporate certificates on behalf of bodies corporate. I note that the parliamentary report makes it clear that work is continuing with members of the Community Titles Legislation Working Group on the final format of the body corporate certificates. The department will ensure the sector is well prepared for these reforms as they are implemented.

The LGAQ did raise an important issue in relation to natural hazard risks—as has been referenced by a number of members in the House throughout this debate—in particular a property's history regarding flooding and other natural disasters. This was also a matter raised by the member for Noosa in her statement of reservation. I note the amendments proposed by the member for South Brisbane.

The draft regulation does prescribe a warning statement in the disclosure statement advising the buyer to inquire with the relevant local government about whether the property is affected by flooding or another natural hazard. Certainly I have found in both of the local government areas I represent—Ipswich and Logan—that flood mapping is high-quality and obviously quite current, given the most recent flooding events of 2022. I also appreciate that this may not always be the case for some councils in Queensland, which is so decentralised and ranges in terms of population, rate base and resources available—something that I do not think the Greens party completely understands.

The LGAQ's request for mandatory disclosure of natural hazard risks at point of sale and prior to property purchases at this point raises some practical and legal difficulties; however, I do believe it is a sound request that we should continue to work towards with all local councils and relevant flood information sources such as FloodCheck Queensland and the Australian Flood Risk Information Portal. The increased natural disasters that we are experiencing, particularly here in Queensland, means that buyers are certainly more aware than ever before of the risks associated with climate change and our changing weather patterns. The warning statement in the disclosure statement should really just be a prompt for a more thorough check of flood and natural hazard maps through the relevant local council.

I am really pleased that this bill is now before us. I appreciate that developing a brand new act is complex, takes time and requires considerable consultation with industry, stakeholders and the property law profession to ensure there are no unintended consequences. For buyers and sellers, it is an ongoing safeguard in ensuring that this most significant transaction in their life—the purchase or sale of a property—is undertaken with greater ease, with more transparency and with peace of mind. I commend the bill to the House.