




Speech By
Deb Frecklington

MEMBER FOR NANANGO

Record of Proceedings, 24 October 2023

PROPERTY LAW BILL

 **Mrs FRECKLINGTON** (Nanango—LNP) (12.37 pm): I rise to speak to the Property Law Bill 2023. I note that I have been asked to stand in the shadow Attorney-General's stead for the passing of this bill. I thank the shadow Attorney-General for the work he has done to date in relation to the Property Law Bill 2023. I also note the hard work and dedication by the member for Currumbin and the member for Beaudesert in relation to the Legal Affairs and Safety Committee, which examined this bill.

We know that Queensland is in the grips of a housing crisis impacting people at all stages of the market. On Sunday the LNP announced our first shadow minister for home ownership because we know it is a value of Queenslanders to have an aspiration which many people have but so few get to achieve, and that is to own their own home. As a mother of three daughters I certainly hope they can all get an opportunity to own their own home in Queensland. In Queensland we have the lowest home ownership rate in the nation. That is not because Queenslanders do not value home ownership; it is because the Palaszczuk government has systematically overseen a drop in residential lot approvals and rising cost-of-living pressures.

Mrs D'ATH: Mr Deputy Speaker, I rise to a point of order on relevance to the bill.

Mr DEPUTY SPEAKER (Mr Hart): I am listening closely. Member for Nanango, I will give you a little bit of latitude but I ask you to come back to the long title of the bill.

Mrs FRECKLINGTON: I look forward to continuing an in-depth discussion in relation to the bill, but I am talking about the Property Law Act in Queensland and home ownership that will be affected by the Property Law Act 2023.

Owning a home is a great source of pride for many people and we do take that right very seriously. Just last month an article was posted in the *Courier-Mail* with the headline 'Housing affordability in Qld now worse than GFC, mining boom'. I table that article.

Tabled paper: Media article, dated 2 September 2023, titled 'Housing affordability in Qld now worse than GFC, mining boom' [1735](#).

The article states—

Buying a home in Queensland is officially the toughest it has been in 16 years, with housing affordability at its worst since the depths of the mining boom.

It also found that it now takes Queensland buyers an average 5.4 years to save a deposit. None of this has been helped by the government's slow action to free up new lots for residential builds, with residential lot approvals decreasing across the state by close to 40 per cent between 2014-15 and 2019-20. For the first time buyer, they are now facing an uphill battle to enter the housing market. While this government continues to try to live by their announcements rather than their actions, it is actually the people on the ground who can feel the difference. They know how hard it has become to get into the housing market.

The bill before us cannot, unfortunately, fix the government's housing crisis. Realistically we need a change of government for that. However, the need to update and rewrite the Property Law Act is a long time coming and its modernisation is long overdue. The rewriting of this act, and particularly the introduction of a seller disclosure scheme, make the process of purchasing a property a little more easy, enabling buyers to have more clarity around what they are buying and their rights and responsibilities in that process.

As a former property lawyer, I have naturally dealt with many simple and complex property transactions and leases. It is imperative as legislators that we do all we can to simplify that process and reduce the cost to both the seller and buyer. How fortunate it is for all law students that they will now get to look at more simplified property law—whether it is property law A or B. I am not sure that was ever my favourite subject. I am not sure property law is ever anyone's favourite subject, but I am quite sure law students will appreciate the more simplified and modernised language.

Most of the changes in the bill before us flow out of the QUT review—and I was looking forward to stating this in the House—that was started by the LNP's attorney-general, the Hon. Jarrod Bleijie, the member for Kawana. The final report of the property law review was given to the government in 2018 and here we are in 2023—

Mrs Gerber: 2017.

Mrs FRECKLINGTON: 2017, I apologise. I will correct the record that it was 2017. Like so many other landmark reviews, it has gathered dust while this government has dragged its heels in taking action. That QUT review final report stated—

Since enactment—

that is, enactment of the Property Law Act 1974—

there have been very few substantive amendments to the Act and no overall review in the forty years since its commencement. Real property law draws heavily upon historical concepts which have their roots in the 18th and 19th century.

Had the shadow Attorney-General been here, I note that he would have given us a history lesson on this starting from the 18th century. I will not be doing that. It continues—

Consequently many provisions of the Property Law Act 1974 (Qld) are based upon the Law of Property Act 1925 (UK) ... which repealed the effects of Imperial Statutes and other provisions. Many sections of the Property Law Act 1974 (Qld) remain in the same language as the 1925 Act, or are direct transcripts of the Conveyancing Act 1919(NSW). At this point in time, such provisions are at least 90 years old.

Given this history, it is unsurprising that we need to replace the Property Law Act through this bill. I should have noted at the outset that the LNP will be supporting this bill.

Before I go much further I want to note the Attorney-General's comments in relation to the amendments that she will move. At first glance, the LNP will be supporting these amendments. I note the amendment that the Attorney-General talked about in relation to proposed section 65. I note that Brian Noble, a submitter to the committee inquiry, suggested an amendment in relation to that proposed section. I support that amendment because it acknowledges the need in relation to infrastructure easements. I believe that is a commonsense amendment.

The amendment with regard to auctions was raised in the committee report. In first reviewing this bill when taking over as the lead for the opposition, that was of concern to me. I am very pleased to see that the Attorney-General has looked at that and has had an amendment drafted to address those concerns so that disclosure documents are given before the start of an auction.

Many of the clauses concern the modernisation of language and the repeal of unnecessary sections. I will address the modernisation of the act around easements. Queensland, particularly Brisbane, has many heritage suburbs—for example, Paddington, Red Hill and Hamilton. Many of those areas have issues with overhanging lots—and I note the member for Cooper, who is in the chamber, would have certainly come across this. This creates many issues. This bill will amend the Property Law Act in relation to overhanging lots and make major changes in relation to compensation and how it is calculated by referencing market value rather than what was in the original which was unimproved capital value. It also allows the court to make orders regarding any land reasonably required as curtilage and for access to the encroachment.

Part 19A of the Property Law Act also refers back to the de facto relationship two-year limitation rule. That period is obviously not required now because of the superseded Family Law Act. There are many other outdated and unnecessary sections in the previous act. I had to read this one into the record as an example. It reads—

Rights of husband and wife (section 15), which overtook the common law that held a husband and wife were treated as one entity as a wife had no separate legal entity from her husband after marriage ...

I know that many wives in this chamber are very pleased to see that out of the act. I have been married to my husband for 29 years as of the weekend. Happy anniversary, Jason. That is very outdated. We are definitely two people. I just wanted to get in happy anniversary, Jason.

I turn my attention to the clauses concerned with the implementation of the statutory seller disclosure scheme. The introduction of the seller disclosure scheme comes from the 2017 QUT report, with the aim to have a consistent and transparent regime and to simplify the current matrix of obligations. The report put forward four guiding principles: one, the information to be provided by the seller to the buyer pre contract should be within the seller's knowledge or readily available by a search at reasonable cost to the seller; two, information should be of value to the buyer in making a decision to purchase; three, the information should be in an accessible form; and, four, a single legal framework should be established providing consistency in the content and timing of disclosure remedies available for the failure to comply.

These principles highlight the risks and advantages of a seller disclosure scheme. We must ensure that there is not an unnecessary cost burden to the seller and we must remember that the information given to the buyer should be of a practical level and in a helpful form. As the report stated, there is a limit to the information a buyer will read—we all know that—and take into account when buying a property. There is also obviously buyer beware. It is of no use if the seller disclosure scheme results in thousands of pages of documents being handed to a buyer who is then completely overwhelmed and understands very little of it and therefore does not take any of it in. Many of us would have experienced the overwhelming nature of the documents put before you when buying a house, unit or block of land and getting your head around that process and what you need to go through. It is hoped that this scheme will enable buyers to have the confidence to trust and understand the information before them. Currently, as the explanatory notes acknowledge, there is no formal statutory seller disclosure framework in Queensland. Rather than easing the burden on sellers, this increases the regulatory burden due to the complex mix of obligations between common-law, statutory and contractual obligation. It also means buyers are receiving different documents throughout different stages of the sale process and that is why a scheme is hoped to lead to a better outcome for all parties.

There were several issues raised with the proposed disclosure scheme and questions were raised as to why disclosure over natural hazard risks was not mandated. At present the draft regulation attached to the bill specifically excludes disclosure of flooding or other natural hazard history in a disclosure statement and instead contains a statement that a buyer should inquire with the relevant local government as to whether a property is affected by flooding or other natural hazard or within the natural hazard overlay. We live in the most disaster-prone state and not to acknowledge this is taking a real risk. However, it is important to raise because the royal commission into natural disaster arrangements recommended that state and territory governments should, one, each have a process or a mechanism in place to communicate the natural hazard risk information to households in hazard-prone areas and, two, work together with the Australian government, where appropriate, to explore the development of a national mechanism to do the same. The royal commission report 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. The answer is simple: many people do not.

The LGAQ raised concerns over this decision and recommended that the draft Property Law Regulation be amended prior to commencement of the bill. Both the 2018 and the 2022 LGAQ conferences passed regulations regarding disclosure of natural hazard risks. While it is acknowledged, the QUT *Seller disclosure in Queensland* report found—

The Centre does not recommend the imposition of a statutory obligation on a seller to disclose flooding information at this time. This view is influenced heavily by the difficulties associated with clearly articulating the meaning of 'flood information' or for the seller to state whether the property is 'flood prone' together with inconsistency in the information available ...

A little while ago I did searches in relation to one of the properties owned by myself and my husband in Brisbane and I note the difference between the two websites in flood notifications. FloodCheck by the department of natural resources showed no flood zone anywhere near that property but the Brisbane City Council Flood Awareness Map showed that it was quite obvious that the flood map goes into an adjoining street. Whilst I know that this is not within the ambit of the Attorney-General, I note that it would be good for the minister for natural resources to look at the overlay maps because that is one of the biggest concerns that buyers have—that is, that they get different information. In her introductory speech the Attorney-General detailed that the decision not to include a full natural hazard risk statement or overlay was due to practical and legal difficulties, including the difference of the level of information various councils hold and the fees they charge. Therefore, I do put to this House that it

is understandable why this position was taken. However, there is a clear need to improve our systems statewide so there is less disparity between local government areas in terms of accessibility to that very important information.

With regard to lots in community titles schemes, the bill brings in a new requirement for a body corporate certificate generated by the body corporate rather than a copy of body corporate records. This was opposed by a number of strata research agents who argued that this would not give the objective information, creating a conflict of interest. The fear conveyed is that this is more likely to be more of a 'press the button' exercise rather than a genuine search that they conduct on behalf of clients. This industry has said that the passing of this bill is likely to have a significant impact on its workforce and it is important that this is acknowledged. It has suggested a certificate of inspection of body corporate records rather than the body corporate certificate.

The bill proposes that if the lot is in a community titles scheme a community management statement must be provided. This statement was not part of the QUT recommendations and several stakeholders opposed the inclusion given the abundance of information it could result in the buyer receiving. The information the QUT report recommended providing is an exclusive-use plan and relevant by-laws including smoking, pets and noise. This would be included as part of the community management statement. However, the extra information could be quite voluminous and overwhelm the everyday buyer. The bill provides that if the seller fails to provide the disclosure statement or a prescribed certificate a buyer will have the right to terminate the contract and will not be required to prove that the non-disclosure related to a material matter. This is designed to incentivise disclosure by sellers. This position departs from the recommendation in the seller disclosure report. The REIQ has suggested the seller disclosure should not come into effect until at least 12 months after the commencement of the act to allow for ample education around the changes. In fact, the LGAQ stated that there is a critical need for the state government to deliver extensive education, training and guidance for all affected stakeholders in the lead-up to, during and following the commencement of the bill, should it be passed. This must be followed through to ensure schemes are fairly and effectively rolled out.

As I stated earlier in my speech, the LNP wants to see more people in homes and will support any effort towards that goal. While this bill is unlikely to bring about any real change in home ownership, we hope it brings more openness into the system. I note that it is one of the LNP's priorities for Queensland's future to make sure that we do secure our housing foundations. It is really important. I note that our priorities to secure housing foundations include improving housing affordability with more land supply and helping Queenslanders realise the dream of owning their own home, and this can be done through the Property Law Act where we look at that more modernised language and make it easier; developing timely plans for the future of every Queensland region to identify what infrastructure and services are needed to accommodate that growth; working closely with local governments to plan and deliver our regional plans for more housing for Queenslanders; improving project management to deliver infrastructure on time and on budget; strengthening public services project management capabilities—

Mrs D'ATH: Mr Deputy Speaker, I rise to a point of order on relevance. I am sure the LNP wants to run through its apparent policies, but that is not the purpose of this bill.

Mr DEPUTY SPEAKER (Mr Hart): Member for Nanango, I draw you back to the long title of the bill.

Mrs FRECKLINGTON: Thank you, Mr Deputy Speaker. We are just so proud of having those right priorities for Queensland's future.

Government members interjected.

Mr DEPUTY SPEAKER: Order, members!

Government members interjected.

Mrs FRECKLINGTON: I am happy to take that interjection and read more content into—

Government members interjected.

Mr DEPUTY SPEAKER: Order! Member for Maryborough, I just remind you that you are on a warning.

Mrs FRECKLINGTON: In relation to the Property Law Act, I again note that this was a process that was very ably started by the member for Kawana when he was the former attorney-general of Queensland. It was the LNP in government that commenced the much needed and long-awaited review into the Property Law Act 1974. For many of us who have a law degree—I note that the member for Currumbin has a law degree, the member for Ipswich West has a law degree and the Attorney-General

has a law degree—those of us who studied for that law degree under the Property Law Act 1974 have been long waiting and it took an LNP government to ensure there was a review into the Property Law Act. Almost a decade later we are thankfully debating this bill before the House, but it is something that should have happened many years ago. When the Attorney-General was the former attorney-general maybe she could have brought it in then. It did not happen then, but I do welcome the changes and the modernisation of the Property Law Act. It is important that the next generation of Queenslanders do get an opportunity to get into their own homes and the process of buying their first home is made simpler by the seller ensuring the right and correct information is disclosed. That is important. Ultimately, whilst these changes will not resolve the housing crisis, we do hope that they lead to better outcomes for Queenslanders.