




Speech By
Jim Madden

MEMBER FOR IPSWICH WEST

Record of Proceedings, 24 October 2023

PROPERTY LAW BILL

 **Mr MADDEN** (Ipswich West—ALP) (5.28 pm): I rise to speak in support of the Property Law Bill 2023 and the amendment proposed by the Attorney-General. The object of the Property Law Bill 2023 introduced to the Legislative Assembly by the former attorney-general on 23 February 2023 is to create a new, modernised Property Law Act drafted broadly in accordance with the recommendations in the 2018 *Final report: Property Law Act 1974*, prepared by the Commercial and Property Law Research Centre at the Queensland University of Technology, which made 232 recommendations. The bill is the culmination of many years of policy development and consultation and will provide a modernised, plain English framework for property law in Queensland.

The current Property Law Act has been in place for almost 50 years, having been passed by the Legislative Assembly in 1974. As the member for Scenic Rim said, the Property Law Act is very important. I recall that when I studied law at QUT this one single act was a standalone subject.

The Property Law Bill 2023 largely retains the effect of many existing provisions in the act that are well known and settled, but the bill does make several significant changes to the 1974 act. These changes include: the repeal of outdated and unnecessary provisions such as the provisions relating to de facto relationships; redrafting existing property law provisions in plain English with modernised language; establishing a legal framework to recognise and facilitate e-conveyancing and electronic property transactions; simplifying and updating the common-law rule against perpetuities and rules relating to leases and covenants; and minimising the inadvertent creation of instalment contracts. Some of these changes, if introduced, would align Queensland with certain disclosure obligations currently required at law in Victoria for the sale of real property. The bill amends the Limitation of Actions Act 1974 to provide that the limitation period for taking legal action in relation to a deed entered into after the commencement will be six years, which is consistent with the limitation period for contracts.

The bill also seeks to significantly modify conveyancing in Queensland with the inclusion of a seller disclosure regime. The introduction of this regime aims to mandate sellers to disclose certain information about the property to prospective buyers. The prescribed disclosure statement requirements include: a title search; a copy of the registered plan of survey; and, in the case of community titles schemes, a copy of the community management statement. The bill will also make it mandatory—with some exceptions—for the seller of freehold land to disclose to the buyer, before the buyer signs the contract, relevant information in a single document along with prescribed certificates, including a body corporate certificate where relevant. The buyer will have termination rights in case of the seller's noncompliance or where the disclosure is inaccurate or incomplete. The disclosure statement must be signed by the seller or their authorised representative as a true statement at the time of signing. It must be given to the buyer and contain information on any unregistered encumbrance, zoning under the local government scheme, information about contamination or pest infestation that the vendor is aware of, financial information about rates and water charges, and details such as whether the property is heritage listed. These changes will introduce significant obligations on the vendor to disclose information about the property. Conversely, the changes will provide buyers with greater

understanding of the risks associated with a certain property but the ability to make a more informed decision about their purchase. The information to be disclosed under the seller disclosure scheme will be prescribed by regulation.

Time is usually of the essence in contracts of sale. Under the proposed bill the concept of time being of the essence will no longer apply in certain adverse events that occur beyond a party's control. This will offer protection to parties who are unable to complete settlement due to no fault of their own; however, the affected party must provide notice as soon as possible and should not intentionally cause undue delay. The proposed bill also incorporates electronic conveyancing provisions that were not reflected in the 1974 act. This change is particularly timely given that the electronic conveyancing mandate commenced 20 February 2023. The bill, once enacted, will change the way property transactions occur in Queensland. It will be of even more importance that the vendors obtain professional advice on the new disclosure requirements to ensure compliance with the new bill and to safeguard their property transaction.

The bill provides for the statutory release of liability for tenants and/or guarantors who assign their interest under a lease, specifically where an assignee further assigns their interest to a third party. This means that post assignment a tenant and/or guarantors will not be responsible for any breach to the subsequent assignee; furthermore, these provisions cannot be excluded by parties involved in a lease assignment. The bill also gives tenants the right to apply to the courts to recover damages when a landlord unreasonably withholds consent to a lease dealing.

After being introduced to the Legislative Assembly the bill was referred to the Legal Affairs and Safety Committee, chaired by the member for Toohey. The committee tabled report No. 45 of the 57th Parliament in April 2023. The committee made various recommendations, including that the bill be passed. In closing, I would like to thank the members of the Legal Affairs and Safety Committee, the committee secretariat, Hansard and submitters. I commend the bill and the amendments proposed by the Attorney-General to the Legislative Assembly.