




Speech By
Peter Russo
MEMBER FOR TOOHEY

Record of Proceedings, 24 October 2023

PROPERTY LAW BILL

 **Mr RUSSO** (Toohey—ALP) (2.56 pm): I rise to speak to the Property Law Bill 2023 and support the passing of the legislation and amendments to be moved during consideration in detail by the Attorney-General. The amendments are of a minor, clarifying and correcting nature and will ensure the bill meets its objectives. The Legal Affairs and Safety Committee, in its report No. 45, tabled in this Assembly on 14 April 2023, has recommended to the Assembly that the bill be passed. Our committee made a total of four recommendations as a result of our consideration into the proposed bill.

The purpose of the bill is to replace the current Property Law Act with new, modernised property legislation drafted broadly in accordance with the recommendations of the *Final report: Property Law Act 1974*. The Property Law Act report was released by the Queensland University of Technology's Commercial and Property Law Research Centre in 2018. The primary objectives of the bill are to: replace the Property Law Act with new, modernised property legislation; simplify and streamline Queensland's property laws; redraft existing provisions in plain English; better facilitate e-conveyancing and electronic transactions; remove outdated or unnecessary provisions; and implement a statutory seller disclosure scheme for sales of freehold land.

The key issues raised during the committee's examination of the bill included: scope of the bill and the proposed statutory seller disclosure scheme; disclosure for lots and community titles scheme; the proposed new body corporate certificate; the inclusion of a community management statement in disclosure documents; lease return conditions; disclosure during auctions; mandating disclosure of natural hazard risks; compliance with the Legislative Standards Act; and compliance with the Human Rights Act.

The Property Law Act came into force on 1 December 1975. Since its commencement there have been very few structural amendments to the act, and the first overall review was the Property Law Act report published in 2018. The Property Law Act report stated that many provisions in Queensland's Property Law Act are based on the United Kingdom's Law of Property Act 1925, which draws on historical land law concepts from the 18th and 19th centuries. Sections of the Property Law Act contain dated language and use concepts that are not reasonably applicable to Queensland. The Property Law Act report recommended that the Property Law Act be repealed and replaced with a new act drafted with modern legislative wording and in line with the Property Law Act report's other recommendations.

The creation of a seller disclosure scheme has been proposed that would apply to all sales of freehold land. The scheme would require sellers to give the buyer a disclosure statement and prescribed documents before the buyer signs a contract for sale. Currently, there is no statutory seller disclosure scheme in Queensland and property sellers disclose information to prospective buyers under a mix of legislative, common-law and contract-law obligations.

QUT's Commercial and Property Law Research Centre examined the feasibility of a statutory seller's disclosure scheme alongside its review of the Property Law Act. The seller disclosure scheme report recommended the scheme be underpinned by four guiding principles including: clarifying the

disclosure obligations of a seller, requiring a transparent and effective form of disclosure, providing information of value to the decision of a buyer to purchase and balancing the information cost between buyer and seller.

Many stakeholders expressed support for the introduction of a statutory seller disclosure scheme in Queensland with the Strata Community Association stating that an appropriate balance has been found in terms of the amount of disclosure required. The Real Estate Institute of Queensland stated that they have advocated for the introduction of a seller disclosure scheme and supported the four guiding principles of the proposed scheme. The committee noted the seller's disclosure scheme will involve changes to the way business is done in the real estate sector and were pleased to note that the department will work with and educate stakeholders during the implementation of the scheme.

The proposed disclosure for the sale of a lot in a community titles scheme was supported by the Strata Community Association of Queensland, which recommended that the newly required body corporate certificates include a brief summary of the duties and functions of the Office of the Commissioner for Body Corporate and the Community Management. The Strata Community Association of Queensland stated that advising buyers about the commissioner's office and its dispute resolution and education services would benefit consumers.

Other stakeholders were not as supportive of the change in their proposed form. The advice from the department noted that many buyers currently do not obtain a body corporate information certificate or search of body corporate records. It was further noted by the department that there is no current legislative requirement for sellers to hire agents or third parties to prepare disclosure statements. The department advised that sellers and buyers will still be able to use search agents under the proposed seller disclosure scheme and stated that the new legislative framework does not prevent or restrict bodies corporate and search agents from entering into relationships whereby a search agent is authorised to prepare a body corporate certificate on the body corporate's behalf.

The bill proposes creating a statutory seller disclosure scheme for the sale of freehold land. The department stated that the purpose of a seller disclosure scheme is to introduce transparency and provide valuable information to a buyer to inform their decision of whether or not to purchase. The bill proposes the seller disclosure scheme have different options for buyers who register as bidders before the start of an auction and buyers who register after an auction starts. The REIQ expressed several concerns regarding the auction requirements in clause 103 of the bill. The department stated in its response to submissions that—

... the new disclosure provisions for auctions 'provide a tailored approach for giving disclosure documents for an auction' ensuring sellers can provide disclosure documents to all bidders before the end of an auction.

For bidders who register before the auction starts, sellers are required to provide disclosure documents before the auction starts, consistent with the requirements for an ordinary sale. For bidders who register after the auction starts, the seller is only required to make the disclosure documents available in accordance with cl 103.

The department said it would be impossible to comply with the disclosure requirement for a buyer who registered after the start of an auction. If the late registering buyer was successful at the auction, that buyer could terminate the contract because the disclosure documents were not given prior to the contract being entered into. Accordingly, the bill seeks to avoid an unintended change to existing auction processes and to provide a method for giving disclosure to a buyer who registers after the start of an auction. Under the bill's seller disclosure scheme, a prospective buyer is warned about matters not covered by the seller disclosure statement and encouraged to make their own inquiries before signing the contract of sale. One of these matters is a property's history regarding flooding and other natural disasters.

The Local Government Association of Queensland provided substantial feedback to the committee on natural hazard risk information for lots. The Local Government Association of Queensland stated that 'a minimum level of information on natural hazard risk provided by the seller will help to drive greater community awareness of potential risks and enable buyers to make better informed decisions'. The department stated that the draft regulation proposes to prescribe a warning statement in the disclosure statement advising the buyer to inquire with the relevant local authority about whether the property is affected by flooding or other natural hazard.

The committee noted, as was raised in the Attorney-General's introductory speech, that there is no consistent standard of natural hazard risk records for local authorities across Queensland and that local councils charge vastly different fees for members of the public to access this information. It will be easier for councils with a high density of ratepayers across a smaller area such as Brisbane. I commend the bill to the House.