




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 23 February 2023

PROPERTY LAW BILL

Introduction

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (4.02 pm): I present a bill for an act to consolidate and provide for the law relating to property, and to amend this act, the Body Corporate and Community Management Act 1997, the Building Units and Group Titles Act 1980, the Land Title Act 1994, the Limitation of Actions Act 1974, the Property Occupations Act 2014 and the acts mentioned in schedule 3 for particular purposes, and to repeal the Property Law Act 1974. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Legal Affairs and Safety Committee to consider the bill.

Tabled paper: Property Law Bill 2023 [207](#).

Tabled paper: Property Law Bill 2023, explanatory notes [208](#).

Tabled paper: Property Law Bill 2023, statement of compatibility with human rights [209](#).

For the benefit of the House and committee, I also table a draft Property Law Regulation 2023 and a draft Body Corporate and Community Management and Other Legislation Amendment Regulation 2023. I want to stress that these regulations are draft only and will be subject to ongoing stakeholder consultation.

Tabled paper: Draft Property Law Regulation 2023, Subordinate Legislation No. xx [210](#).

Tabled paper: Draft, Body Corporate and Community Management and other Legislation Amendment Regulation 2023, Subordinate Legislation No. xx [211](#).

I am pleased to introduce the Property Law Bill 2023. This bill will replace the current act with modernised property legislation, drafted in line with modern practice and using plain English to simplify Queensland's property laws. The bill will also enact, for the first time in Queensland, a statutory seller disclosure scheme. The new scheme will simplify disclosure for freehold land sales and empower buyers to make well-informed decisions when purchasing property.

The current Property Law Act governs many aspects of Queensland's property law. The act deals with a broad range of issues including: general rules around property, creating and disposing of land interests, co-ownership of property, deeds, covenants and mortgages. The breadth of these laws mean they will affect Queenslanders everywhere at some point in their lives, so it is essential that the legislation is modern and robust. The current act commenced in December 1975 and has not been substantially amended since. In fact, many of its provisions use language from the early 1900s legislation on which they were modelled. While the current act has served our state well, it is time for Queensland to modernise our property legislation.

From 2013 to 2018, the Commercial and Property Law Research Centre at the Queensland University of Technology conducted a broad-ranging, independent review of Queensland's property laws. The research centre looked at equivalent provisions in other jurisdictions and undertook substantial consultation with a wide range of stakeholders. As part of its review, the research centre prepared a total of 18 papers, including comprehensive final reports recommending a new Property Law Act and the implementation of a statutory seller disclosure scheme. I would like to acknowledge, in particular, Professor Bill Duncan, Professor Sharon Christensen and Associate Professor William Dixon for their work in conducting such a thorough and comprehensive review. I should also mention at this point that I had the distinct honour of working with Professor Duncan as his research assistant while I completed my studies at QUT, and I understand he also taught the two most recent attorneys-general and is quite rightly regarded as Queensland's expert property lawyer.

Mr Nicholls: And shadow Attorney-General.

Ms FENTIMAN: And shadow Attorney-General—I take that interjection from the shadow Attorney-General. Bill Duncan has a lot to answer for!

Through extensive consultation and research, Professor Duncan and the team identified a range of issues with the current Property Law Act. These issues ranged from uncertainty regarding how a number of provisions should be applied, to provisions that do not reflect contemporary commercial practices and parts of the act that are outdated or unnecessary. The final report of the Property Law Review made 232 recommendations to modernise Queensland's property law framework. I again want to acknowledge the work of the QUT Commercial and Property Law Research Centre and thank them for their measured and detailed recommendations. These recommendations have been instrumental in the development of the bill.

Property law, no matter how technical it may be, will affect every Queenslanders at some point in their life, so it is important it reflects modern standards, practice and understandings. This bill modernises our property legislation in a number of important ways. For example, the bill repeals outdated or unnecessary provisions, including those dealing with unregistered or old system land. These provisions have been replaced with a simplified process for the registration of any unregistered land that still may exist. The provisions dealing with property settlement in de facto relationships have also been removed, given these provisions have been overtaken by the amendments to the Commonwealth Family Law Act 1975.

Another feature of the bill is an updated legal framework that reflects modern practice around electronic dealings in property and electronic service of documents. Technology has advanced dramatically since the mid-seventies, and our legislation should reflect that. These reforms will provide mechanisms to better facilitate the digital creation and signing of contracts and deeds and make certain that these documents can be validly used.

There are also changes in the bill that will streamline development processes and go towards increasing housing supply. The bill will explicitly provide that a court can consider development when granting an order for a right of use over neighbouring land. The bill also extends the court's power to order easements in gross in favour of public utility providers. These changes will give landowners a pathway to removing unreasonable limitations to the development of land.

Not only does the bill update the law to reflect modern practice; it also seeks to reflect modern community expectations. One of the ways it does this is by bolstering consumer protections in property transactions while maintaining sellers' rights. For example, the bill modernises and clarifies the process around rescinding a contract if the house or unit someone has purchased is damaged or destroyed. Under these circumstances, if a seller returns the dwelling to the condition it was previously in the buyer will not be able to terminate the contract, better balancing the rights of buyers and sellers in these circumstances.

The bill also modernises various provisions for mortgages to clarify the powers of mortgagees and the protections for mortgagors. In addition, the bill updates and improves various laws that apply to leases, providing for modern terms to be implied into lease agreements and protecting lessees from any impacts owing to defaults and assignments. The bill also harmonises time frames with the Retail Shop Leases Act 1994 to provide consistency in leasing practice in Queensland.

Further, the bill makes several improvements to laws that relate to neighbouring property. A significant change will be the introduction of a negligence framework for supported neighbouring land, replacing the old nuisance-based cause of action. In addition, a duty of care obligation will exist between neighbouring owners, giving the court discretion to consider the circumstances more fully.

Another core change in the bill is the abolition of the common law rule against perpetuities. The common law rule was intended to balance the freedom of a person to deal with their property as they wish with the need to protect the public interest by ensuring that property is not indefinitely tied up in trusts. However, the rule is legally complex to apply in practice and can give rise to anomalies. The bill introduces a perpetuity period of 125 years, reflecting a contemporary life expectancy and avoiding the uncertainty regarding the duration for which property can be held on trust.

This bill is about making our property law framework more user-friendly and accessible than the current act. While it modernises the language used, it retains, in large part, the long settled principles of property law on which it is based. Some legal complexities, however, cannot be addressed by modernising language alone.

In a significant step forward for Queensland's property marketplace, the bill will, for the first time, enact a statutory seller disclosure scheme. Currently, sellers are required to disclose information under a complex mix of common law, statutory and contractual obligations. In addition, buyers currently receive a variety of different disclosure documents at different stages of the sale process, including before contracts are formed, before settlement and at settlement, and the consequences of failing to disclose information varies. This can make it difficult for sellers and buyers to understand the information and their obligations and rights. We will implement a modernised statutory scheme which requires the seller to give the buyer a simple disclosure statement and copies of relevant documents before the contract is signed. The disclosure statement will also contain various warnings about information that is not included. This will ensure that the buyer is informed before making the decision to enter into the contract and knows what they need to research themselves.

The draft regulations tabled at the start of my speech are intended to indicate broadly what will be disclosed under the scheme, including: the title search and survey plan for the property; specified notices or orders, including whether there is an intention to resume the property; contamination and environmental protection matters; body corporate matters if applicable; and an indication of rates and water service costs currently paid for the property. Should the bill be passed, key stakeholders will be consulted in finalising the draft regulations to ensure the new requirements are clearly understood and workable in practice.

Queensland is the most disaster-prone state in Australia, and it is important that Queenslanders are informed about the level of risk to their property. Following last year's floods, the Queensland Reconstruction Authority recommended policies be developed so Queenslanders understand the flood risk in particular. The framework proposed in the bill will mean that disclosure certificates include a warning statement, encouraging buyers to do their due diligence in relation to flood and natural hazard risk.

I know that during consultation some stakeholders, including the LGAQ, advocated for the mandatory disclosure of natural hazard risk information, and I want to thank these stakeholders for raising this important issue. Unfortunately, however, there are a range of practical and legal difficulties in mandating disclosure of this information, including that the level of information held by different councils can differ quite considerably. In addition, councils across Queensland charge vastly different fees for access to this kind of information. Not only are we committed to ensuring that Queenslanders have access to the information they need to make an informed decision before they purchase; we also recognise that we need frameworks to work for all Queenslanders. I am committed to continuing to work with stakeholders, including the LGAQ, to develop a mandatory scheme using uniform information.

The seller disclosure scheme will apply to all sales of freehold land. However, there are also a number of exceptions where disclosure would not be mandated; for example, where the parties are related, co-owners or neighbours, where the buyer is a publicly listed corporation, or where the sale price is greater than \$10 million and the buyer waives their right to the disclosure documents.

To promote compliance with the disclosure obligations, the scheme will provide the buyer with a right to terminate the contract in two ways: firstly, if the seller does not provide the disclosure documents then the buyer can terminate the contract at any time before settlement; and, secondly, if the disclosure documents are provided but they contain an inaccuracy or are incomplete, then the buyer may terminate if they would not otherwise have signed the contract. However, if another act provides a remedy for the failure to disclose certain information, then the consequence under that act will apply instead of these termination rights. This ensures that the consequences for current disclosure requirements under existing legislation continue to apply.

The bill also will enhance disclosure of important information to buyers of 'off the plan' lots in community titles schemes. Amendments to the Body Corporate and Community Management Act will require a copy of any building management statement that will apply to the community titles scheme to

be provided to the buyer. I would like to acknowledge the representations made by stakeholders and members of the public on this issue. Their advocacy highlighted the importance of ensuring that building management statements are disclosed for proposed lots.

I would also like to thank the Community Titles Legislation Working Group for its important contribution to seller disclosure reforms for community titles schemes. The disclosure statement will include important information about the specific lot being sold. It will also outline information about the rights and responsibilities of owning a lot in community titles schemes, including information about the use of lots for short-term letting, and will note that buyers should seek advice about the permitted lawful use of the lot, including about whether this use could subsequently change. As with the seller disclosure statement, we will continue to refine the body corporate certificate itself in the lead-up to commencement of the scheme.

This bill has been the subject of extensive consultation over about a decade, particularly with stakeholders in the property industry, legal and community titles sectors. Ahead of the 2020 election, we committed to work with stakeholders to modernise and replace the current Property Law Act, and this bill delivers on that promise. I want to thank everyone who was involved in consultation for their ongoing involvement in this process. Their expertise has significantly informed the development of the bill. I want to thank the Queensland Law Society, the Real Estate Institute of Queensland, the Bar Association of Queensland, the Shopping Centre Council of Australia, the Property Council of Australia, the Urban Development Institute of Australia, Griffith University School of Law, Society of Trust and Estate Practitioners, the Australian College of Strata Lawyers, the Australian Banking Association, the Unit Owners Association of Queensland, the Owners Corporation Network, the Strata Community Association, the Australian Resident Accommodation Managers Association, and the Local Government Association of Queensland. I look forward to continuing to work with these stakeholders to refine the draft regulations and prepare for implementation of the bill.

I also want to take this opportunity to acknowledge that there are a number of stakeholder positions that we have not been able to adopt. In particular, I know the REIQ has made representations around disclosure obligations at auction. Unfortunately, we were not able to consult with other key stakeholders on that proposal in the lead-up to introduction, but I encourage all stakeholders to engage in the committee process to further refine the bill.

As I said at the outset of my speech, this bill will replace one of the core pieces of Queensland legislation. Every Queenslanders, at some point in their life, will come across or have some dealing with property law, so we have to make sure our legislation is fit for purpose. I again want to thank everyone who has been involved in redeveloping our property laws over the past decade, particularly the QUT Commercial and Property Law Research Centre. Their dedication to these important legislative reforms has been invaluable. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (4.17 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Safety Committee

Madam DEPUTY SPEAKER (Ms Bush): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.

Portfolio Committee, Reporting Date

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (4.17 pm), by leave, without notice: I move—

That, under the provisions of standing order 136, the Legal Affairs and Safety Committee report to the House on the Property Law Bill by Friday, 14 April 2023.

Question put—That the motion be agreed to.

Motion agreed to.