Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 24 October 2023

PROPERTY LAW BILL

Second Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (12.19 pm): I move—

That the bill be now read a second time.

I thank the Legal Affairs and Safety Committee for its detailed consideration of the Property Law Bill 2023. A total of 30 submissions were received by the committee in the course of its inquiry. The committee tabled its report on 14 April 2023, making four recommendations. I table the government's response to the committee's report.

Tabled paper: Legal Affairs and Safety Committee: Report No. 45, 57th Parliament—Property Law Bill 2023, government response 1734.

I will address the recommendations made by the committee in detail shortly, but I can foreshadow that I propose to move amendments during consideration in detail of the bill to address issues raised during the committee process. I extend my thanks to those stakeholders comprising members of the legal profession; the property and real estate sector; various advocacy groups representing search agents, property owners and local government; as well as individual members of the public who have particular experience of, and interest in, Queensland's property laws.

The current Property Law Act 1974 governs many aspects of Queensland's property law, such as general rules for dealing with property, creating and disposing of land interests, co-ownership of property, deeds, leases, covenants and mortgages. The bill will replace the current Property Law Act 1974 with modernised property legislation, drafted in line with contemporary practice and using plain English to simplify Queensland's property laws. The bill will also enact a new statutory seller disclosure scheme that will consolidate seller disclosure obligations and empower buyers to make well-informed decisions when purchasing property. The bill honours the Palaszczuk government's election commitment to review and modernise the current Property Law Act.

The bill is based largely on the recommendations of the Commercial and Property Law Research Centre at the Queensland University of Technology, following its broad-ranging, independent review of Queensland's property laws from 2013 to 2018. The research centre looked at equivalent provisions in other jurisdictions and undertook substantial consultation with a wide range of stakeholders. The final report of the research centre made 232 recommendations to modernise Queensland's property law framework. In line with these recommendations, the bill largely retains and re-enacts in modern drafting many of the existing provisions in the current Property Law Act, continuing the application of well-known and settled property law provisions. The bill also provides some incremental and minor changes for clarity or to address areas of uncertainty in the existing law, notably for leases, covenants and neighbouring property rights. Further, new rights and obligations are introduced to provide fairer outcomes.

Additionally, the bill repeals many outdated or unnecessary provisions in the current Property Law Act. For example, it removes the provisions in relation to 'old system' unregistered land which no longer operate in Queensland, as well as the state-based de facto property provisions which have been overtaken by the federal Family Law Act 1975.

The research centre also released the *Seller disclosure in Queensland* report, recommending the enactment of a statutory seller disclosure scheme. The bill will implement a seller disclosure scheme broadly in line with the recommendations in that report. The scheme will consolidate and simplify the disclosure obligations for sellers and ensure that buyers are given relevant information about the property before making a decision to purchase.

Turning to the recommendations of the Legal Affairs and Safety Committee, I thank the committee for its first recommendation that the bill be passed. The committee's second and fourth recommendations proposed that the Department of Justice and Attorney-General review certain provisions within 12 months of the act commencing. The committee's third recommendation proposed a change to a standard term implied into lease agreements in Queensland. I will take some time to discuss the committee's recommendations 2, 3 and 4 and the government's response.

In relation to recommendation 2, the committee recommended that the Department of Justice and Attorney-General engage with stakeholders to review the provisions for providing disclosure documents for properties sold by auction, giving consideration to bidders who register before and during an auction. The review is recommended to be conducted within 12 months of the act commencing. The government supports this recommendation. If the bill is passed, the Department of Justice and Attorney-General will conduct the proposed review into the relevant seller disclosure scheme provisions by engaging with stakeholders, particularly legal and real estate stakeholders, to determine whether the provisions are operating as intended and if any operational issues are arising. Further, the committee noted views from some stakeholders that the relevant provisions are not sufficiently clear about when a seller is required to comply with the requirements for giving the disclosure documents during an auction. I intend to move an amendment during consideration in detail to further clarify that a seller is only required to comply with the tailored provisions for giving disclosure documents during auctions if a bidder registers after the auction has started and the bidder has not already received the documents before the start of the auction.

In relation to recommendation 3, the committee recommended that the standard lease term in schedule 1 of the bill that deals with maintenance and repair obligations be amended to require a tenant to surrender the premises to the landlord in the same condition it was when the tenant first took possession. The government does not support this recommendation. Currently, the standard term in the bill requires the tenant to surrender the premises in at least the same repair and condition as at the start of the lease. The standard terms in schedule 1 of the bill that are implied into lease agreements are the default terms that apply only if the landlord and the tenant have not agreed otherwise. In circumstances where a lease does not specify how the premises are to be left at the end of the lease, it is appropriate that regard is had to the condition of the premises at the start of the lease subject to reasonable wear and tear. Specifying the start of the lease balances the interests of landlords and tenants. It provides a simple point of reference for both parties. Referring to the start of the lease avoids the need to consider the condition of the premises at historical points in time under previous lease agreements which can extend over a significant period of time and how reasonable wear and tear should also be applied over an extended period. In any event, it is only a default standard term and can be contracted out of to suit the circumstances of a particular lease.

In relation to recommendation 4, the committee recommended that the Department of Justice and Attorney-General review the easement and covenant provisions within 12 months of the act commencing to ensure that all covenants found in modern easements that are reasonably expected to relate to the use, ownership and maintenance of the land are binding on successors in title.

Further, in the body of the committee's report, the committee noted stakeholder views that the words 'use, ownership and maintenance' may not be broad enough to cover all covenants in modern easements, particularly covenants relating to insurance and indemnities. The government supports this recommendation. If the bill is passed, my department will conduct the suggested review within 12 months of the act commencing, by engaging with stakeholders to determine whether the provision is operating as intended. Additionally, I intend to move an amendment during consideration in detail to insert additional examples in clause 65 to clarify that insurance and indemnity covenants that relate to the use of the burdened land will be in scope of the clause.

I note the committee also made several other comments in the report in relation to important issues raised by stakeholders. Clause 144 of the bill will provide for a tenant to be released from liability for breaches of the lease by a subsequent assignee. A subsequent assignee occurs when a tenant

assigns the lease to a new tenant, who then assigns the lease again to another tenant, known as the subsequent assignee. The bill provides that the release from liability is despite any agreement to the contrary, meaning it cannot be contracted out of. The committee referenced the Real Estate Institute of Queensland's submission that the provision should be subject to agreement to allow the parties to negotiate the terms of any release. However, the committee noted that the provision was based on the relationship between landlord and tenant not being one of equal power and control and that it is unjust to hold a tenant potentially liable for breaches by a subsequent assignee of a lease. Accordingly, it is not proposed that any amendment will be made to clause 144.

I am aware that some stakeholders, including the Local Government Association of Queensland, advocated for the mandatory disclosure of natural hazard risk information under the seller disclosure scheme. This was specifically considered by the committee during its inquiry into the bill. The committee noted that since there is no consistent standard of records held by councils, it cannot be guaranteed that disclosure would consistently be of value to the buyer. The committee also noted that councils charge vastly different fees, and councils with a high density of ratepayers may offer a service more easily than councils with a low density of ratepayers. I note that the committee was satisfied with the ability to warn prospective buyers to carry out their own inquiries as provided under the draft property law regulations that were tabled during the explanatory speech for the bill.

I also acknowledge the statement of reservation by the member for Noosa provided with the committee's report which noted the Local Government Association of Queensland's recommendation to include flood and other natural disaster information as part of the seller disclosure statement as well as highlighted the impact of coastal hazard adaption plans. I would like to take this opportunity to acknowledge the important work being conducted by Queensland agencies to improve access to natural disaster risk information, in particular the Queensland Reconstruction Authority, which is working to improve the availability of flood information for many local government areas in Queensland.

The draft property law regulations are subject to ongoing stakeholder consultation and I am committed to continuing to work with stakeholders to ensure that an appropriate balance is struck between the information that sellers are required to provide and the information that buyers need to make informed decisions before they purchase.

The statement of reservation by the member for Noosa also noted the Unit Owners Association of Queensland's comments that seller disclosure should contain a simple statement of the lawful use of the land and the building drawn from the development approval given by the local government under the Planning Act 2016. The member for Noosa recommended that the planning system be reformed to ensure that, when a building is approved under the Planning Act for a specific purpose, relevant information is recorded and maintained so that building owners understand any restrictions of use and that these restrictions are enforced over time. Consideration was given to whether a statement of lawful use could occur as part of the seller disclosure scheme, specifically as part of the body corporate certificate. However, it was determined that this would not align with the guiding principles for the seller disclosure scheme, particularly given in some circumstances it may be difficult, time consuming and expensive for a body corporate to obtain development approval documents. It may also be difficult for a body corporate to outline lawful use of a lot in a short and simple way, given the complexities of the regulation of planning and lawful use under the various applicable planning laws, instruments and documents.

However, it is intended to include a statement in the body corporate certificate that short-term letting of lots in the scheme may be occurring or could occur in the future and advise that whether a lot can lawfully be used for short-term letting is determined by the relevant local government and that buyers should seek advice in this regard. This will alert buyers that they are able to undertake their own inquiries based on their own needs to obtain accurate information about lawful use of a property, for instance, from the relevant local government or a solicitor.

Additionally, the core issue being raised in the member's statement of reservation appears to relate to alleged failures by local governments to enforce relevant planning laws and approvals resulting in short-term letting occurring in circumstances where it is not permitted or appropriate. This is fundamentally a planning issue. Seller disclosure is not the right lever to address this issue as it will not provide any additional ability to enforce lawful use. If the alleged breaches are occurring, enforcement has to happen under relevant planning frameworks and processes.

As the concerns were specifically raised by the member for Noosa in relation to the planning system under the Planning Act 2016, I have referred the matter to the Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure for his consideration. I also note the Deputy Premier's announcement in August 2023 that a review commissioned by the government into the impact of

short-term rental accommodation has been completed and that the government will be consulting with the Short Term Residential Accommodation Industry Reference Group and the Local Government Association of Queensland on the review's findings and recommendations.

In addition to amendments that relate to the committee's report, I also intend to move amendments during consideration in detail of the bill which address other issues raised in stakeholder submissions to the committee. Firstly, some stakeholders noted that certain provisions in the bill no longer include express references to an authorised agent being permitted to act on behalf of a person. For example, clauses 7 and 8 of the bill retain the current requirement under sections 11 and 59 of the Property Law Act that certain dealings with land must be in writing. However, sections 11 and 59 of the Property Law Act currently include express references to an authorised agent being permitted to sign a document and those express references are not retained in clauses 7 and 8 of the bill. The reason for not including these references is to achieve a modernised and simplified drafting approach throughout the bill. The general law of agency will apply to authorise an agent to act on behalf of the person and it is not necessary to explicitly state this in every circumstance where it might be relevant throughout the bill. However, acknowledging that some stakeholders were concerned that omitting the express references to an authorised agent may lead to an interpretation that certain clauses in the bill will limit the general law of agency, a new provision will be inserted to remove any doubt about how the general law of agency will apply.

Secondly, I note the submission to the committee from the Wide Bay Burnett Community Legal Service in relation to a potential adverse outcome that may arise under clause 68 of the bill. If a third party commences legal proceedings to enforce the contractual promise under clause 68, then it is a requirement for every party to the contract to be joined as a party to the proceeding. On review, it is instead sufficient to require that all parties to the contract are served with a copy of the proceeding rather than a requirement to be joined to the proceeding. I will be moving an amendment to clause 68 to this effect.

Finally, I note the submission from the Queensland Law Society in relation to whether clause 80 of the bill could be clarified to ensure that for the avoidance of doubt, the section can be used on a rolling basis to continue to delay settlement if a computer system continues to be inoperative on the next business day and so on. While it is likely the provision will already apply in this way, I propose to move an amendment that will remove any doubt about this effect.

I would also like to take this opportunity to note stakeholder comments regarding a sufficient lead time for commencement of the bill. The bill will commence on proclamation and the government understands there needs to be a generous lead time for commencement of both the property law reforms and the new seller disclosure scheme to allow for the necessary education and preparation activities by affected legal, financial, property sector and community titles sector participants. I confirm that the government will have regard to stakeholder advice regarding an appropriate commencement date to ensure that there is sufficient time for these necessary preparatory activities.

I end my contribution today by thanking stakeholders for their submissions to the committee's inquiry and also for their engagement in the many consultation processes throughout the bill's development. Their continued engagement and expertise has played an important part in ensuring that the final form of the bill will serve Queenslanders for another generation to come.

I would also like to take this opportunity to again thank the Commercial and Property Law Research Centre at the Queensland University of Technology led by Professor Bill Duncan, Professor Sharon Christensen and Professor William Dixon for their work in conducting such a thorough and comprehensive review of Queensland's property laws and for their continued engagement since the review concluded, providing valuable expertise during the bill's development.

I would also like to thank the Community Titles Legislation Working Group and other invited stakeholders for input provided in relation to the statutory seller disclosure scheme as it relates to community titles scheme properties.

I am pleased that the bill has received such widespread support for the positive improvements and clarifications to Queensland's property laws. As noted by the committee, many stakeholders also expressed their broad support for the introduction of a statutory seller disclosure scheme in Queensland, and this scheme will be a significant improvement for Queensland's property marketplace. I commend the bill to the House.