




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 25 October 2023

PROPERTY LAW BILL

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (2.30 pm), in reply: I thank the member for Capalaba and all members for their contributions. I also thank those members who acknowledged their wedding anniversaries—congratulations—and the member for Bundaberg for his very interesting and informative speech. I thank everyone for their contribution to the debate on the Property Law Bill 2023.

As indicated in my earlier speech, the bill replaces the current Property Law Act 1974 with modern property laws that will serve Queenslanders for another generation to come. As stated in my first and second reading speeches, I am very pleased with the widespread stakeholder support and engagement in developing and refining the bill and the positive improvements and clarifications the bill will make to Queensland's property laws. I note the opposition's intention to support this bill and the amendments circulated by the government.

As foreshadowed in my earlier speech, I intend to move amendments during consideration in detail that are clarifying and technical in nature. These amendments will ensure that the bill operates as intended and address the recommendations made by the Legal Affairs and Safety Committee and various concerns raised in stakeholder submissions. I will now address some of the matters raised by members during the course of this debate. I note claims by some members opposite that the property law reforms in the bill have taken too long to implement, and I am going to take some time to address this issue.

From August 2013 to January 2018, just under five years, the Commercial and Property Law Research Centre at the Queensland University of Technology conducted its review. The review involved the release of 10 papers, each dealing with different aspects of the act, and ultimately resulted in two final reports dealing with seller disclosure and the Property Law Act as well as reports on bodies corporate. The final report on the Property Law Act itself, let alone the other papers in relation to bodies corporate and other areas, comprised over 1,000 pages and 232 recommendations.

Following the receipt of this report the government undertook extensive consultation with stakeholders over 2021 and 2022 through multiple rounds of both targeted and public consultation to ensure that the drafting of this important law was right. In fact, it was noted in submissions to the Legal Affairs and Safety Committee that many stakeholders, including the Queensland Law Society and the Real Estate Institute of Queensland, recognised the significant and extended consultation processes undertaken to develop the bill. This included the preparation of detailed exposure drafts for public consultation, assessing the feedback received, and redrafting where appropriate. It was noted that this was an intensive task, but it has produced a bill which will modernise property law in Queensland for the benefit of Queensland consumers. It is something that needed to be done right, so the government makes no apologies for taking the time needed to develop this once-in-a-generation rewrite of Queensland's property laws.

Despite some members' belief that seemingly nothing has happened in this space until this bill was introduced, I would also like to remind members opposite of the substantial list of property law review reforms and associated initiatives that have already been considered and implemented by this Labor government: firstly, QUT's recommendations about reforming the system of lot entitlements under the Body Corporate and Community Management Act 1997 were subject to extensive stakeholder consultation undertaken by government; secondly, the great majority of the 64 property law review recommendations for procedural and administrative reforms for community titles schemes were implemented as part of the 2021 reform and remake of four of the Body Corporate and Community Management Act's regulation modules and amendment of a fifth regulation module. Then the government needed to reprioritise efforts in this area as part of responding to the COVID-19 health emergency. The government took prudent and decisive action to assist owners, occupiers and bodies corporate to safely govern their schemes during the COVID-19 health emergency. In addition, government put in place measures to assist bodies corporate and owners to deal with the associated financial pressures being experienced at that time.

Late 2022 saw the government put in place a package of urgent reforms to address critical deficiencies in the Building Units and Group Titles Act 1980 and Mixed Use Development Act 1993, legislation under which several complex mixed-use developments are established and regulated in Queensland. The Community Titles Legislation Working Group has also been busy considering a broad range of key issues of particular interest to the community titles sector, including providing advice and perspectives on outstanding recommendations of the property law review. Many of the outcomes of the working group's considerations have informed the Body Corporate and Community Management and Other Legislation Amendment Bill 2023, which is currently before the House. I look forward to parliament considering this bill in the near future. Clearly, this area has been given substantial attention by successive Labor governments.

The member for Scenic Rim queried whether the government will address the submission from Brian Noble to the Legal Affairs and Safety Committee regarding the operation of clause 65 of the bill in relation to the enforceability of certain covenants in registered easements. I note that the committee's report referenced stakeholder concerns that it is potentially unclear whether the scope of the terms 'use', 'ownership' or 'maintenance' are sufficient to include covenants in modern easements that would reasonably be expected to bind successors, specifically in relation to insurance and indemnity covenants. As noted in my second reading speech, I intend to move amendments to specifically clarify that clause 65 of the bill will apply to easements in gross and clarify the list of examples in the clause to illustrate how insurance and indemnity covenants will be enforceable.

The member for Noosa noted the government's position to not support recommendation 3 of the Legal Affairs and Safety committee's report. I would like to reiterate that the standard lease terms under the bill are only implied into a lease if the parties have not agreed otherwise. It is a matter for the parties to agree on the condition of the premises at the end of the lease. However, in the event that no agreement is reached it is appropriate that the default position is to have regard to the condition of the premises at the start of the lease, as it provides a simple point of reference for both parties and avoids the need to consider the condition of the premises at historical points in time under previous lease agreements and how reasonable wear and tear should also be applied over an extended period.

The member for Nanango noted that the proposed requirement for a seller to give a buyer a community management statement for the community titles scheme was not a recommendation of the property law review and that it is opposed by some stakeholders. The community management statement is intended to be disclosed, given it contains important information impacting on the title to the property or ongoing financial liability of ownership. In particular, the by-laws in the community management statements are important for buyers to be aware of, as they will apply to the buyer—and tenants if applicable—should they choose to live in the property. From 2011 a community management statement was required to be provided by a seller to a prospective buyer of an existing lot in a community titles scheme, but this was removed in 2013 by the former government.

The views of the Community Titles Legislation Working Group regarding the disclosure of community management statements were mixed; however, some members of the working group considered it was crucial because the statement contains key information, including: by-laws relating to pets, parking, or alterations to lots, for example; exclusive use areas of common property that have been allocated to lots such as car parks or courtyards; and lot entitlements, which determine an owner's share of body corporate costs and voting rights, share of common property and lot value for calculating rates and other charges. On balance, it was determined that the disclosure of the community management statement will give effect to the guiding principles for the seller disclosure scheme because it provides information of value to a buyer in making a decision to purchase and it is readily available by search at reasonable cost to the seller.

Some stakeholders suggested that buyers instead be informed about the existence of the community management statement and how to obtain their own copy. However, the purpose of the statutory seller disclosure regime is for buyers to receive key information before they enter into the contract. The community management statement is directly relevant information for a person considering buying a lot in any community titles scheme. The body corporate certificate will include information to alert and signpost buyers to the most important information in the community management statement. The body corporate certificate is a prescribed certificate that will need to be provided by a seller of a lot in a community titles scheme and a lot in a plan under the Building Units and Group Titles Act 1980.

I note comments by some members, including the member for Noosa and the member for Surfers Paradise, raising concerns that the seller disclosure statement does not contain a simple statement of the lawful use of the land and the building drawn from the development approval given by local government under the Planning Act 2016. However, the reasons for not including this information was also discussed in detail by the member for Noosa. While information about the permitted use of lots under planning and development approvals has not been included in the body corporate certificate, to ensure there is some assistance provided on this issue, it is intended that the body corporate certificate will include general statements advising the prospective buyer to seek advice about lawful use of the lot, if that is an issue that is of interest to them, and that, if the buyer is considering purchasing the lot for short-term letting, it is important to explore any approvals needed and whether there are legal requirements prohibiting short-term letting at the property. As stated in my second reading, I have referred this matter to the Deputy Premier for consideration.

The report recommended implementing a centralised registration system to support local governments to monitor short-term rental activity, and it is understood consultation will occur with the Short-Term Residential Accommodation Industry Reference Group on this recommendation.

The member for Nanango highlighted the concerns raised by the Strata Search Agents Association about the new body corporate certificate, and in particular its generation by bodies corporate raising potential conflicts of interest. The Strata Search Agents Association has proposed a model under which a seller could obtain a certificate of inspection of body corporate records, using a search agent to inspect the records of the body corporate. This approach is not supported. The body corporate is required to keep and maintain records. Accordingly, the preferred option is for the body corporate to be the entity attesting to these records. How the body corporate reaches a point of being satisfied regarding the certificate will be a matter for them, but this could foreseeably include utilising a search agent for preparation of the certificate.

Search agents have also raised concerns that body corporate certificates may be automatically generated by bodies corporate or body corporate managers. The body corporate will not be limited in the way it completes the body corporate certificate. A body corporate, through its body corporate manager, may be able to find some efficiencies in producing body corporate certificates through automation. However, the information in the certificate will need to be accurate and bodies corporate and/or body corporate managers will need to be satisfied that the automated process is in accordance with the requirements of the legislation and the approved form of the certificate.

I note that some body corporate search agents have raised concerns about the new requirements on their businesses. Search agents may be used by existing sellers to prepare the existing disclosure statement required under the BCCM Act, which is being replaced by the new body corporate certificate. It is acknowledged the new requirements will mean some changes for the search agent industry, but it is not considered it will remove the need for the industry. The new body corporate certificate will be prepared by a body corporate or a person authorised by a body corporate for an interested person. The new seller disclosure regime does not prevent or restrict bodies corporate and search agents from entering into relationships whereby a search agent is authorised to prepare body corporate certificates on the body corporate's behalf.

I note the member for Maiwar's views that body corporate managers should be regulated given their potential involvement in preparing the new body corporate certificates for bodies corporate. The Community Titles Legislation Working Group has been considering the regulation of body corporate managers. The government will be considering the views and options on body corporate manager regulation presented by working group members.

I would also like to indicate that the government will not be supporting the amendments circulated by the member for South Brisbane. Amendments 1 to 5 circulated by the member for South Brisbane propose to specify particular information that must be disclosed by a seller to a buyer under the seller disclosure scheme. The government will not be supporting the amendments that would require a seller to give a buyer a copy of a building management statement that applies to an existing lot being sold. A

building management statement is an instrument under the Land Title Act 1994 used to regulate parts of a building with multiple owners—for example, retail on lower floors and residential scheme land owned by a community titles scheme on the upper floors.

A building management statement must contain provisions around supply of services and access to lots, rights of support and shelter and insurance. It may also contain other provisions, including those around costs, maintenance, dispute resolution and rules for common services and facilities.

In terms of community titles lots, and consistent with the guiding principles and approach of this legislation, the bill adopts a nuanced approach to building management statements depending on whether the lot being sold is a proposed lot being sold off the plan or an existing lot. In terms of proposed lots, the bill specifically amends the Body Corporate and Community Management Act 1997 to require a seller to provide a buyer with a copy of a proposed building management statement. That is because, in the case of proposed lots, it may not be possible for a buyer to search for and obtain a copy of the proposed building management statement. While building management statements must be registered with Titles Queensland, this may not have yet occurred at the time a buyer enters into an 'off the plan' sale contract.

In terms of existing lots, new section 205AAA to be included in the Body Corporate and Community Management Act 1997 deals with the approved form for a body corporate certificate and allows for regulations to be made prescribing matters for inclusion in the certificate. Without anticipating debate, I note the draft Body Corporate and Community Management and Other Legislation Amendment Regulation 2023 tabled with the bill includes provisions for the approved form for the body corporate certificate to include whether a building management statement under the Land Title Act 1994 applies to the scheme. This will alert buyers of existing lots to the existence of a building management statement that applies to the lot so that they can make further enquiries as needed. This may include making relevant searches through Titles Queensland, which records building management statements, and seeking legal advice.

In addition, as part of implementation, consideration will be given to the most effective ways to communicate information about building management statements to buyers, including the importance of obtaining independent legal advice about potential rights and responsibilities under the statement. In developing this nuanced approach to building management statements, a relevant consideration was that building management statements can be voluminous and complex and involve a risk of buyers being overwhelmed by information. Accordingly, the government's approach is to ensure buyers of proposed lots receive proposed building management statements as they are not easily accessible, while flagging for buyers of existing lots whether a building management statement is in place and providing supporting information to help buyers and their legal advisers decide if further enquiries would be beneficial.

In her speech, the member for South Brisbane raised concerns about the fairness of provisions in building management statements which are outside the scope of body corporate legislation. The content of building management statements is governed by the Land Title Act 1994, which is within the portfolio of the Minister for Resources, Hon. Scott Stewart MP. These issues have been raised with the Minister for Resources. It is important to note that building management statements may apply to a building that includes a community titles scheme, but building management statements can apply to other buildings also.

In relation to the proposal for the seller to disclose natural disaster information that is in the knowledge of the seller, any disclosure obligation based on the knowledge of the seller raises difficulties about subjective interpretation. Unless the definition of 'natural disaster' and 'flood' are clearly defined, there will be different interpretations by sellers in complying with this requirement. Historically, it has been difficult to reach a consensus with practitioners and agencies on a definition of 'flood', and councils hold different interpretations based on their individual risk assessments.

Furthermore, a seller who has owned the property for a short time may not be aware of previous natural disaster impacts. In these circumstances, if a seller discloses that there is no natural disaster history or risk, this may give the buyer a false impression as to the true nature of the natural disaster impact. The buyer may also rely on this representation instead of conducting their own due diligence. This may have a negative impact on the consumer protection purpose of the disclosure.

As I said in my second reading speech, important work is being conducted by Queensland agencies to improve access to natural disaster risk information, in particular the Queensland Reconstruction Authority. The draft 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.

Finally, amendment 6 circulated by the member for South Brisbane is a proposal to introduce a new disclosure requirement for lessors under the Residential Tenancies and Rooming Accommodation Act 2008, which is outside the scope of the bill, and is a proposal that should be addressed in relation to that act. In any event, the same practical and legal challenges for requiring disclosure of this information under the seller disclosure scheme would also apply in these circumstances.

In conclusion, I once again thank all members for their contribution during the debate. I thank the committee members and of course all stakeholders—not just those who have been involved in the committee process but those who have worked with us over many years to see this important bill being brought before the House. I commend the bill to the House.