

LEGAL AFFAIRS AND SAFETY COMMITTEE

Report No. 45, 57th Parliament, April 2023

Property Law Bill 2023

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 23 February 2023, the Property Law Bill 2023 (Bill) was introduced into the Legislative Assembly.

The objectives of the Bill are to replace the current *Property Law Act 1974* with a new Property Law Act that:

- redrafts existing property law provisions in plain English with modernised language;
- repeals outdated or unnecessary provisions;
- establishes a legal framework to recognise and facilitate e-conveyancing and electronic property transactions;
- simplifies and updates rules relating to mortgages, leases, covenants, neighbouring land and the common law rule against perpetuities;
- minimises the inadvertent creation of instalment contracts; and
- enacts a statutory seller disclosure scheme to simplify and consolidate the disclosure process for sales of freehold land and empower prospective buyers to make informed decisions to purchase.

After introduction, the Bill was referred to the Legal Affairs and Safety Committee (Committee) for consideration. On 14 April 2023, the Committee tabled its report (No. 45, 57th Parliament) on the Bill.

On 28 June 2023, the interim Government Response was tabled advising that the Committee's report was still under consideration.

The Queensland Government response to the recommendations made by the Committee is provided below.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1 -

The Committee recommends the Property Law Bill 2023 be passed.

Queensland Government response:

The Government thanks the Committee for its consideration of the Bill and notes the Committee's recommendation that the Bill be passed.

Recommendation 2 -

That the Department of Justice and Attorney-General engage with stakeholders and review the provisions of the *Property Law Act 2023* for providing sellers disclosure statements at auctions within 12 months of the Act commencing, giving consideration to the provision of disclosure documents to buyers registering before and during an auction.

Queensland Government response:

The Government supports this recommendation.

The Department of Justice and Attorney-General (DJAG) will conduct a review, within 12 months of the Act commencing, of the provisions for how sellers provide buyers with disclosure documents for a property sold by auction. To conduct this review, DJAG will engage with stakeholders, particularly legal and real estate practitioner stakeholders, to determine whether the provisions are operating as intended and if any operational issues are arising.

The relevant provisions provide a tailored approach for giving disclosure documents for a property sold by auction to ensure that all bidders (i.e. prospective buyers) have the opportunity to receive the disclosure documents prior to the completion of the auction. The requirements for how the disclosure documents are given differs depending on whether the bidder registers before or after the start of the auction, to ensure that a bidder is provided the disclosure documents, while balancing the interests of the seller, noting that the practical circumstances for giving the documents will be more limited after an auction has started.

Recommendation 3 -

That the lease provisions of the Property Law Bill 2023 be amended to require a lessee to surrender the premises to the lessor in the same condition it was in when the lessee first took possession.

Queensland Government response:

The Government does not support this recommendation.

Clause 139 of the Bill provides that a lease of land includes the 'standard terms' set out in schedule 1 of the Bill. The standard terms are subject to any agreement to the contrary, meaning the standard terms operate as the default terms if the landlord and tenant have not agreed otherwise.

It is expected that typically the standard terms will not apply, as it is common practice in modern commercial leasing for the landlord and tenant to enter into a lease agreement that deals with the matters set out in the standard terms.

The Committee's recommendation relates to standard term 3(1)(b) in schedule 1 of the Bill, which requires the tenant to leave the premises in the same repair and condition as at the start of the lease (which is subject to the exceptions in term 3(2) such as reasonable wear and tear).

For a standard lease, where the parties have not agreed on a repair and condition provision, it is appropriate that regard is had to the condition of the premises at the start of the lease. At the start of the lease, both the landlord and tenant have the opportunity to consider the state of the premises, and may choose to not re-let the premises if there are any concerns about the condition of the premises or the prior conduct of the other party.

Specifying the start of the lease as the reference point may also reduce disputes, as it avoids the parties needing to determine what the condition of the premises was at a historical point in time under another lease agreement, and how reasonable wear and tear should be applied over that extended period of time.

Additionally, the Committee's recommended reference to when the lessee 'first took possession' of the premises may potentially result in unfair outcomes, as this reference may not account for any terms in relation to repair and condition under previous lease agreements, which may have provided for different standards or conditions in relation to repair.

Therefore, the standard term as currently drafted balances the interests of landlords and tenants and provides certainty in relation to the condition in which the tenant must leave the premises.

Recommendation 4 -

That the Department of Justice and Attorney-General review the easement and covenant provisions of the *Property Law Act 2023* within 12 months of the Act commencing to ensure that all non-abusive covenants found in modern easements will still bind successors in title.

Queensland Government response:

The Government supports this recommendation.

DJAG will conduct a review of clause 65 of the Bill within 12 months of the provision commencing to determine whether any issues are arising with the enforceability of covenants relating to the use, ownership or maintenance of the land against successors in title.