



# **Inquiry into Property Law Bill 2023**

**Report No. 45, 57th Parliament  
Legal Affairs and Safety Committee  
April 2023**

## **Legal Affairs and Safety Committee**

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### **Acknowledgements**

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All web address references are current at the time of publishing.

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## Abbreviations

Abbreviation	Definition
Attorney-General	Honourable Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence
Bill	Property Law Bill 2023
CMS	Community management statement
committee	Legal Affairs and Safety Committee
CTLWG	Community Titles Legislation Working Group
DJAG	Department of Justice and Attorney-General
HRA	<i>Human Rights Act 2019</i>
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
Property Law Act	<i>Property Law Act 1974</i>
PLA report	<i>Final Report: Property Law Act 1974</i>
QLS	Queensland Law Society
QUT	Queensland University of Technology
REIQ	Real Estate Institute of Queensland
SCA	Strata Community Association
SCCA	Shopping Centre Council of Australia
SSAAQ	Strata Search Agents Association Qld Inc.
Seller Disclosure Scheme report	<i>Final Report: Seller Disclosure in Queensland</i>
UOAQ	Unit Owners Association of Queensland Inc.

## Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Property Law Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Bill seeks to replace the current *Property Law Act 1974* with new, modernised property legislation, drafted broadly in accordance with the recommendations of the *Final Report: Property Law Act 1974* (PLA report). The PLA report was prepared by the Queensland University of Technology's (QUT) Commercial and Property Law Research Centre.

The Bill also creates a statutory seller disclosure scheme for sales of freehold land, as recommended by the *Final Report: Seller Disclosure in Queensland* (Seller Disclosure Scheme report) in 2017. The Seller Disclosure Scheme report was also prepared by QUT's Commercial and Property Law Research Centre.

As part of its Inquiry, the committee called for and received written submissions from stakeholders, was briefed by the Department of Justice and Attorney-General and heard evidence from organisations and individuals at a public hearing. On the basis of all evidence submitted, the committee is satisfied the Bill will achieve its policy objectives. The committee recommends the Bill be passed.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General.

I commend this report to the House.



Peter Russo MP

Chair

## Recommendations

**Recommendation 1** **3**

The committee recommends the Property Law Bill 2023 be passed.

**Recommendation 2** **11**

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.

**Recommendation 3** **15**

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 when the lessee first took possession.

**Recommendation 4** **17**

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.

## Executive Summary

The Property Law Bill 2023 (Bill) was introduced into Parliament by the Honourable Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (Attorney-General), and referred to the Legal Affairs and Safety Committee (committee) on 23 February 2023.

### Summary of the Bill

The purpose of the Bill is to replace the current *Property Law Act 1974* (Property Law Act) with new, modernised property legislation, drafted broadly in accordance with the recommendations of the *Final Report: Property Law Act 1974* (PLA report). The PLA report was released by the Queensland University of Technology's (QUT's) Commercial and Property Law Research Centre in 2018.

The Bill also creates a statutory seller disclosure scheme for sales of freehold land, as recommended by the *Final Report: Seller Disclosure in Queensland* (Seller Disclosure Scheme report) in 2017. The Seller Disclosure Scheme report was also prepared by QUT's Commercial and Property Law Research Centre.

The statutory seller disclosure scheme seeks to simplify and consolidate the disclosure process for sales of freehold land and empower prospective buyers to make informed decisions. The seller disclosure scheme implemented by the Bill is drafted broadly in accordance with the recommendations in the Seller Disclosure Scheme report.

The Attorney-General tabled 2 regulations in the Bill's introductory speech, the draft *Property Law Regulation 2023* and the draft *Body Corporate and Community Management and other Legislation Amendment Regulation 2023*. The regulations are subject to ongoing consultation and demonstrate the requirements of the statutory disclosure scheme.

### Key issues examined

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 in a 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 1992*
- compliance with the *Human Rights Act 2019*.

### Conclusion

The committee has recommended that the Bill be passed.

## 1 Introduction

### 1.1 Policy objectives of the Bill

The Property Law Bill 2023 (Bill) was introduced into Parliament by the Honourable Shannon Fentiman, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (Attorney-General), and referred to the Legal Affairs and Safety Committee (committee) on 23 February 2023.

The explanatory notes state that the Bill replaces the *Property Law Act 1974* (Property Law Act) with new, modernised property legislation, drafted broadly in accordance with the recommendations in the 2018 *Final Report: Property Law Act 1974* (PLA report).<sup>1</sup>

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
- implement a statutory seller disclosure scheme for sales of freehold land.<sup>1</sup>

### 1.2 Background

#### 1.2.1 New Property Law Act

The Property Law Act came into force on 1 December 1975. Since commencement, there have been very few structural amendments to the Act and the first overall review was the PLA report published in 2018. The PLA report was prepared by the Commercial and Property Law Research Centre at the Queensland University of Technology (QUT).<sup>2</sup>

The PLA 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 18<sup>th</sup> and 19<sup>th</sup> centuries. Sections of the Property Law Act contain dated language and use concepts that are not reasonably applicable to Queensland.<sup>3</sup> The PLA 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 PLA report's other recommendations.<sup>4</sup>

#### 1.2.2 Creation of a statutory seller disclosure scheme

QUT's Commercial and Property Law Research Centre examined the feasibility of a statutory seller disclosure scheme alongside its review of the Property Law Act. Currently, there is no statutory seller disclosure scheme in Queensland and property sellers disclose information as required by a mix of legislative, common law and contract law obligations.<sup>5</sup>

<sup>1</sup> Explanatory notes, p 1.

<sup>2</sup> Explanatory notes, p 1.

<sup>3</sup> PLA report, pp 52-53.

<sup>4</sup> PLA report, p 55.

<sup>5</sup> Explanatory notes, pp 1, 12.

The *Final Report: Seller Disclosure in Queensland* (Seller Disclosure Scheme report) was released in 2017 and recommended introducing a seller disclosure scheme for all sales of freehold land.<sup>6</sup> The reform objectives of the scheme included:

1. clarifying the disclosure obligations of a seller
2. requiring a transparent and effective form of disclosure
3. providing information of value to the decision of a buyer to purchase
4. balancing the information cost between buyer and seller.<sup>7</sup>

### **1.3 Legislative compliance**

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

#### **1.3.1 Legislative Standards Act 1992**

We examined the Bill and considered the application of fundamental legislative principles contained in Part 2 of the LSA. We considered the following matters:

Rights and liberties of individuals:

- Administrative power – decision to include land in the land registry
- Natural justice – various matters around leases, including assigning of a lease, breaches of a lease, remedies for a breach and notice for decisions
- Compulsory acquisition of property – various matters around fair compensation
- Retrospectivity – various matters.

Institution of Parliament:

- Delegation of legislative power – regulation-making power – various clauses, including the requirements of the seller disclosure scheme that exist in regulation.

##### **1.3.1.1 Explanatory notes**

Explanatory notes were tabled with the Bill. We are satisfied the explanatory notes contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

#### **1.3.2 Human Rights Act 2019**

We considered the Bill's compatibility with the HRA and find the Bill is compatible with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. In general, we are satisfied the statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

### **1.4 Should the Bill be passed?**

The committee is required to determine whether or not to recommend that the Bill be passed.

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<sup>6</sup> Seller Disclosure Scheme report, p 8.

<sup>7</sup> Seller Disclosure Scheme report, p 8.

**Recommendation 1**

The committee recommends the Property Law Bill 2023 be passed.

## 2 Examination of the Bill

The committee invited stakeholders and subscribers to make written submissions on the Bill. Twenty-nine submissions were received (see **Appendix A** for a list of submitters).

The committee received a written briefing on the Bill from the Department of Justice and Attorney-General (DJAG) on 23 March 2023 and received a public briefing on the Bill from DJAG on 24 March 2023 (see **Appendix B** for a list of officials at the public departmental briefing). The committee also received advice from DJAG responding to the submissions on 16 March 2023.

The committee held a public hearing on 21 March 2023 in Brisbane to speak with stakeholders (see **Appendix C** for a list of witnesses). The submissions, correspondence from DJAG and transcripts of the hearing and briefing are available on the committee's webpage.

In its examination of the Bill, the committee considered all the material before it. This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

### 2.1 Overview of the seller disclosure scheme

#### 2.1.1 Bill proposal

The Bill proposes to create a statutory seller disclosure scheme that will apply to all sales of freehold land. Under the scheme, a seller will be required to give the buyer a disclosure statement and prescribed documents before the buyer signs the contract for sale.<sup>8</sup>

Currently, sellers are required to disclose information to prospective buyers under a complex mix of common law, statutory and contractual obligations. This creates a significant regulatory burden on the seller and their advisers, as well as buyers receiving a variety of different disclosure documents at different stages of the sale process.<sup>9</sup>

A statutory seller disclosure scheme was recommended in the Seller Disclosure Scheme report. The Seller Disclosure Scheme report recommended the scheme be underpinned by 4 guiding principles:

- information to be provided by the seller to the buyer pre-contract should be within the seller's knowledge or readily available by search at reasonable cost to the seller
- information should be of value to a buyer in making their decision to purchase – primarily, this will be information impacting on title to the property or ongoing financial liability of ownership
- information should be in an accessible form, easily understood and capable of being relied upon by the buyer
- a single legal framework should be established providing consistency in the content and timing of disclosure and remedies available for a failure to comply.<sup>10</sup>

<sup>8</sup> Explanatory notes, pp 12-13.

<sup>9</sup> Explanatory notes, p 12.

<sup>10</sup> Explanatory notes, p 12; DJAG, *Parliamentary Committee Briefing Note: Property Law Bill 2023*, p 2; Seller Disclosure Scheme report, p 18.

### 2.1.2 Stakeholder views

Many stakeholders expressed their support for the introduction of a statutory seller disclosure scheme in Queensland.

The Strata Community Association Queensland (SCA) stated that an appropriate balance has been found in terms of the volume of disclosure required.<sup>11</sup> The Real Estate Institute of Queensland (REIQ) stated they have advocated for the introduction of a seller disclosure scheme, and support the 4 guiding principles of the proposed scheme.<sup>12</sup>

Support was also expressed by the Strata Search Agents Association of Queensland (SSAAQ), the Queensland Law Society (QLS) and the Local Government Association of Queensland (LGAQ).<sup>13</sup>

DJAG noted the stakeholder support for a statutory seller disclosure scheme in its response to submissions.<sup>14</sup>

Stakeholders provided specific commentary on several components of the seller disclosure scheme. These are addressed in the following sections of this report.

#### **Committee comment**

The committee notes the broad support among stakeholders for a seller disclosure scheme for the sale of freehold land in Queensland.

We are satisfied of the value of such a scheme, the 4 guiding principles for the scheme as proposed in the Seller Disclosure Scheme report and the scheme's objectives of providing clarity, transparency, value and balance.

We also note that such a scheme will involve changes to the way business is done in the real estate sector, and are pleased to note that DJAG will work with and educate stakeholders during the implementation of the scheme.

## 2.2 Disclosure for sale of lot in a community title scheme

### 2.2.1 Bill proposal

The Bill proposes consolidating the disclosure requirements for the sale of a lot in a community title scheme under the *Body Corporate and Community Management Act 1997* or a lot included in a plan under the *Building Units and Group Titles Act 1980*.

A community title scheme, commonly known as a strata title, allows buyers to purchase individual units that share common property, such as carparks, swimming pools, barbeque areas or gyms. These arrangements occur in apartment buildings or unit complexes.

Currently, the seller of a lot in a community title scheme must:

- produce a 'copy of body corporate records' for the lot<sup>15</sup>
- comply with the disclosure requirements under the *Body Corporate and Community Management Act 1997*.<sup>16</sup>

The Bill replaces the old 'copy of body corporate records' with a new 'body corporate certificate' provided by the body corporate manager. The Bill also omits the disclosure requirements. This is

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<sup>11</sup> SCA, submission 11, p 1.

<sup>12</sup> REIQ, submission 19, p 7.

<sup>13</sup> SSAAQ, submission 14, p 4; LGAQ, submission 22, p 3; QLS, submission 25, p 4.

<sup>14</sup> DJAG, correspondence, 16 March 2023, pp 54, 59,

<sup>15</sup> *Body Corporate and Community Management Act 1997*, s 205.

<sup>16</sup> *Body Corporate and Community Management Act 1997*, s 206.

because the disclosure requirements for all freehold sales, including sales of community title scheme lots, are being moved to the new statutory seller disclosure scheme and would exist under the proposed *Property Law Act 2023*.<sup>17</sup>

### 2.2.2 Stakeholder views

SCA recommended the body corporate certificate include a brief summary of the duties and functions of the Office of the Commissioner for Body Corporate and Community Management. SCA stated that advising buyers about the Commissioner's Office and its dispute resolution and education services would benefit consumers.<sup>18</sup>

SSAAQ does not support the changes in their current form, stating that:

- Having the body corporate certificate be generated by the body corporate creates a conflict of interest where the body corporate is reporting on their own management.
- Making the body corporate responsible for the body corporate certificate will reduce the quality of disclosure, as it is likely to be 'automatically generated information dump' from a database and unlikely to be reviewed or made easier to understand.
- Disclosure will take longer and cost more, with body corporates charging urgency fees for fast generation of certificates.<sup>19</sup>

SSAAQ stated that its members, who are strata search agents, provide strata search services to buyers and sellers under the current legislative framework, and that these amendments will 'result in the destruction of the body corporate disclosure industry operating within Queensland, including widespread job losses'.<sup>20</sup>

SSAAQ has recommended the proposed body corporate certificate be replaced with a 'certificate of inspection of body corporate records' that is provided by the seller and based on records held by the body corporate. SSAAQ stated that this recommendation:

- upholds privity of contract by keeping the flow of disclosure between buyer and seller
- allows the seller's search agents to generate a certificate based on body corporate records if the body corporate does not generate the certificate in a timeframe that suits the seller.<sup>21</sup>

Body Corporate Reports, Holmes Strata Inspection Reports and other submitters also raised the impact on their businesses.<sup>22</sup>

The Unit Owners Association of Queensland Inc. (UOAQ) recommended that the body corporate certificate include a simple English statement of the 'lawful use of the land and the strata building' based on the development approval given under the *Planning Act 2016* (Qld). Such a statement 'should identify the lawful use of the strata lot and the potential non-lawful uses that could seriously compromise a buyer's interests', such as short-term accommodation on behalf of non-resident investor owners.<sup>23</sup>

<sup>17</sup> Bill, cls 263-266; explanatory notes, pp 48-49.

<sup>18</sup> SCA, submission 11, p 2.

<sup>19</sup> SSAAQ, submission 14, p 5.

<sup>20</sup> SSAAQ, submission 14, pp 2, 6.

<sup>21</sup> SSAAQ, submission 14, p 15.

<sup>22</sup> Body Corporate Reports, submission 12, p 2; Holmes Strata Inspection Reports, submission 16, p 7; Name withheld, submission 26, p 1.

<sup>23</sup> UOAQ, submission 27, pp 1-2.

The Main Beach Association supported the recommendation of the UOAQ, stating that ‘the *Property Law Act 2023* should require the seller disclosure document to contain a simple English statement of the lawful use of the land and the strata building drawn from the development approval’.<sup>24</sup>

### 2.2.3 Department response

DJAG noted SCA’s support for the Bill and draft regulations.<sup>25</sup> In response to SCA’s recommendation for the proposed body corporate certificate to contain information about the Office of the Commissioner for Body Corporate and Community Management, DJAG advised that the format and contents of the body corporate certificate are still being developed to ensure ‘information in the certificate is of value and accessible to buyers’.<sup>26</sup>

SSAAQ’s submission raised concerns regarding the new body corporate certificate and its generation by bodies corporate, specifically:

- conflicts of interest with bodies corporate preparing information
- reduction in the quality of disclosure through automated data extraction processes
- increase in the cost and time to produce disclosure documents
- job losses in the strata search industry.<sup>27</sup>

Regarding conflicts of interests, DJAG stated that the introduction of a seller disclosure scheme is to ‘transparently and effectively provide information of value to a buyer’.<sup>28</sup> Under the new scheme, a buyer of a lot in a community titles scheme will receive a seller disclosure statement under the new *Property Law Act 2023* and a body corporate certificate from the seller.

DJAG stated that many buyers currently do not obtain a body corporate information certificate or a search of body corporate records, and that most buyers will now likely receive more useful information when deciding to purchase.<sup>29</sup>

DJAG noted that there is currently no legislative requirement for sellers to hire agents or third parties to prepare disclosure statements, and it is unclear how many sellers use search agents for this purpose. While DJAG noted that search agents may often find errors in body corporate records, stakeholders have not raised concerns about the accuracy of information during consultation.<sup>30</sup>

Regarding the quality of disclosure information and automation, DJAG advised that bodies corporate will not be limited in the way they complete the body corporate certificate, and may find efficiencies through automation, as long as they produce accurate information and comply with the approved form of the body corporate certificate.<sup>31</sup>

In response to concerns for the cost and timeliness in the production of disclosure documents, DJAG stated that body corporate certificates will be required to be disclosed before entering into a contract of sale, and that no real estate or legal professionals have raised concerns about the proposed 5-day timeframe under the seller disclosure scheme.<sup>32</sup>

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<sup>24</sup> Main Beach Association, submission 15, p 1.

<sup>25</sup> DJAG, correspondence, 16 March 2023, p 7.

<sup>26</sup> DJAG, correspondence, 16 March 2023, p 7.

<sup>27</sup> SSAAQ, submission 14, p 9.

<sup>28</sup> DJAG, correspondence, 16 March 2023, p 12.

<sup>29</sup> DJAG, correspondence, 16 March 2023, p 12.

<sup>30</sup> DJAG, correspondence, 16 March 2023, pp 13-14.

<sup>31</sup> DJAG, correspondence, 16 March 2023, p 14.

<sup>32</sup> DJAG, correspondence, 16 March 2023, p 14.

DJAG said it will be working closely with stakeholders to ensure the sector is prepared for the reforms and can provide advice to sellers about when to obtain disclosure documentation, but ultimately that decision rests with the seller after receiving advice from their solicitor or agent.<sup>33</sup>

Regarding potential job losses in the strata industry, DJAG noted the concerns that search agent businesses may be adversely impacted by the introduction of the new body corporate certificate. However, DJAG advised 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 body corporate certificates on the body corporate's behalf. For example, a body corporate could use a search agent to prepare a body corporate certificate or, a seller could use a search agent to verify information in a body corporate certificate.<sup>34</sup>

DJAG did not support UOAQ's proposal for a simple English statement disclosing the lawful use of land. DJAG stated that legislative requirements for a building's original owner (usually the developer) to provide this information have varied over time. As such, some bodies corporate will not have this information. DJAG said that finding full development approval documents is also likely to be 'difficult, time consuming and expensive' for many bodies corporate.

DJAG advised that requiring bodies corporate to obtain developer approvals does not align with the guiding principles of the statutory disclosure scheme, which include the principle of requiring information that is within the seller's knowledge, or readily available by search at reasonable cost.<sup>35</sup>

Another guiding principle is that information should be accessible, and DJAG understands that development approval documents contain many references to planning laws and regulations and vary in style, length and complexity. Given these factors, it would be difficult to provide a short and simple statement regarding the lawful use of the lot.<sup>36</sup>

DJAG also noted that a lawful use statement would not provide an accurate representation of how lots in a building are being used, if, as UOAQ submits, there is a situation where actual use does not match approved use.<sup>37</sup>

### **Committee comment**

We note the recommendations from stakeholders on the form of disclosure for the sale of a lot in a community title scheme.

We note the response from DJAG regarding these matters and are pleased to note that, under the scheme, buyers will now receive more useful information when deciding to purchase. We are also pleased to note that, under the Bill, a buyer or seller may still hire a search agent if they wish to undertake a more detailed review of body corporate records.

We also note that DJAG will continue to work with the members of the Community Titles Legislation Working Group (CTLWG) on the final format and content of the body corporate certificate, and that DJAG will work closely with stakeholders to ensure the sector is prepared for the reforms.

<sup>33</sup> DJAG, correspondence, 16 March 2023, pp 14-15.

<sup>34</sup> DJAG, correspondence, 16 March 2023, pp 12-13.

<sup>35</sup> DJAG, correspondence, 16 March 2023, p 66.

<sup>36</sup> DJAG, correspondence, 16 March 2023, pp 66-67.

<sup>37</sup> DJAG, correspondence, 16 March 2023, pp 67-68.

## 2.3 Community management statement

### 2.3.1 Bill proposal

The Bill proposes creating a statutory seller disclosure scheme for the sale of freehold land. Clause 99 of the Bill outlines the requirements for disclosure documents and allows disclosure documents to be prescribed in subordinate legislation. The subordinate legislation, the proposed *Property Law Regulation 2023*, was tabled when the Bill was introduced into Parliament.<sup>38</sup>

Under the proposed regulation, if the lot is in a community titles scheme, a community management statement (CMS) must be provided as part of the seller disclosure.<sup>39</sup>

### 2.3.2 Stakeholder views

Several stakeholders did not support the inclusion of the CMS as part of disclosure documentation.

REIQ believed the CMS requirement is 'regressive, given that the requirement was previously introduced in Queensland in 2011 and shortly repealed thereafter'.<sup>40</sup> REIQ added that CMSs 'can be voluminous—hundreds and hundreds of pages' and that it 'overwhelms the buyer' and is likely to be ignored.<sup>41</sup>

SCA submitted in the public hearing that 'the requirement to give a community management statement is overdisclosure' and that the relevant information in the CMS (the exclusive use plan and the by-laws) is readily available to prospective buyers.<sup>42</sup>

REIQ and SCA agreed that the solution is to focus on educating buyers on where they can find this information themselves.<sup>43</sup>

### 2.3.3 Department response

The Seller Disclosure Scheme report did not recommend a copy of the CMS be disclosed for sales of lots in a community titles scheme. Instead, the report recommended a compromise where the seller discloses the:

- exclusive use plan
- relevant by-laws, such as restrictions on smoking, pets and noise.<sup>44</sup>

The department noted in its written briefing to the committee that, following feedback from the CTLWG, it was determined that the seller should also disclose a copy of CMS as it contained by-laws and other important information. DJAG added that it is not necessary to specifically disclose exclusive use plans and relevant by-laws, as these documents exist in the CMS, and the CMS will be a prescribed disclosure document under the regulation.<sup>45</sup>

In its response to submissions, DJAG 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. DJAG added that during consultation with the CTLWG, some stakeholders considered disclosing the CMS as 'crucial'.

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<sup>38</sup> Bill, cl 99(1); Queensland Parliament, Record of Proceedings, 23 February 2023, p 275.

<sup>39</sup> *Property Law Regulation 2023*, s 4(1)(h).

<sup>40</sup> REIQ, submission 19, p 12.

<sup>41</sup> Public hearing transcript, Brisbane, 21 March 2023, p 3.

<sup>42</sup> Public hearing transcript, Brisbane, 21 March 2023, pp 25-26.

<sup>43</sup> Public hearing transcript, Brisbane, 21 March 2023, pp 3, 26.

<sup>44</sup> Seller Disclosure Scheme report, pp 43-44, 69.

<sup>45</sup> DJAG, *Parliamentary Committee Briefing Note: Property Law Bill 2023*, Attachment 1, pp 7-8.

While DJAG recognised CTLWG views were mixed, on balance DJAG considers providing the CMS gives effect to the guiding principles of the proposed seller disclosure scheme. DJAG added that, at the time of writing, the CMS is readily accessible for a small search fee through Titles Queensland (\$42.24).<sup>46</sup>

### **Committee comment**

We note the concerns by stakeholders regarding the inclusion of the CMS as a required document for the sale of a lot in a community titles scheme. We note submissions that such documents can be voluminous and that the Seller Disclosure Scheme report did not recommend including such documents in full.

We also note the response by DJAG that a seller disclosure scheme is meant to increase transparency and provide valuable information to the buyer to inform their decision to buy, with some stakeholders in the CTLWG supporting the disclosure of the CMS as crucial.

We note that the Seller Disclosure Scheme report recommended including specific components of the CMS, however we are satisfied with the requirement to disclose the entire document, rather than provide pieces of the CMS and risk the buyer not receiving potentially valuable information that helps them in their decision.

## **2.4 Disclosure during auctions**

### **2.4.1 Bill proposal**

The Bill proposes the seller disclosure scheme have different options for buyers that register as bidders before the start of an auction and buyers that register after an auction starts.<sup>47</sup>

The explanatory notes state that simplified procedures are provided (including displaying a physical copy of disclosure documents, or displaying a link to an electronic copy) for a buyer that registered as a bidder after an auction has started, and has not previously been provided with the disclosure documents.

For an in-person auction where a link to an electronic copy has been displayed, a buyer may request a physical copy of the disclosure statement and prescribed certificates at the auction before the auction finishes.<sup>48</sup>

### **2.4.2 Stakeholder views**

REIQ expressed several concerns regarding the auction requirements in cl 103 of the Bill. In its submission, the REIQ referred to its Auctioneers Committee, who ‘felt strongly that these provisions are unnecessarily onerous and complex’ and that the ‘rights between the seller and buyer should be more balanced.’ REIQ’s view is that the proposed drafting ‘overcomplicates the matter, particularly where additional physical and electronic “communications” are required’.<sup>49</sup>

REIQ supported a single process for parties at auctions, regardless of whether they register before or during the auction. REIQ recommended:

- having a copy on display for at least 30 minutes before the auction commences (or available in electronic format for online auctions)
- having a copy available at the seller’s agent’s office (or if there is no physical office, an electronic copy available) at least 3 days before to the auction

<sup>46</sup> DJAG, correspondence, 16 March 2023, pp 31-32.

<sup>47</sup> Bill, cls 101 and 103.

<sup>48</sup> Explanatory notes, p 13.

<sup>49</sup> REIQ, submission 19, p 9.

- delivering the documents, physically or electronically, in accordance with the delivery requirements in cl 231 of the Bill.<sup>50</sup>

QLS also believed the disclosure requirements for auctions were confusing, and recommended that cl 103 of the Bill be replaced with words to the effect that disclosure is achieved when:

- the buyer had already received a copy of the disclosure documents prior to the start of auction, either physical or electronic
- the buyer is given a copy of the disclosure documents at the time of registering for the auction, or
- the documents are displayed at the auction.<sup>51</sup>

QLS stated that cl 103 is 'a process whereby a bidder can register mid-way through an auction with insufficient time to understand the disclosure documents, which seems contrary to the intent of a seller disclosure scheme'.<sup>52</sup> QLS considers it preferable that all registered bidders receive disclosure documents before the auctions starts, as that is more closely aligned with the intent of the legislation.<sup>53</sup>

### **2.4.3 Department response**

DJAG 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.<sup>54</sup>

Regarding QLS's preference for all bidders to receive disclosure documents before an auction starts, DJAG said it would be impossible to comply with the disclosure requirement for a buyer who registered after the start of the auction. If the late registering buyer was successful at 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 provide a method for giving disclosure to a buyer who registers after the start of an auction.<sup>55</sup>

### **Committee comment**

We note DJAG's response that the Bill provides a 'tailored' set of provisions where sellers can provide disclosure documents to all bidders before the end of the auction, and that the proposed seller disclosure scheme does not limit a late bidder from participating in the auction.

We note QLS's preference that all registered bidders receive their disclosure documents before the auctions starts. However we also note that although a single method of disclosure occurring before the auction starts is the ideal, it is not always compatible with the practicalities of hosting auctions and the existence of bidders who register midway through an auction.

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<sup>50</sup> REIQ, submission 19, p 10.

<sup>51</sup> QLS, submission 25, pp 5-6.

<sup>52</sup> QLS, submission 25, p 6.

<sup>53</sup> QLS, submission 25, p 7.

<sup>54</sup> DJAG, correspondence, 16 March 2023, p 25.

<sup>55</sup> DJAG, correspondence, 16 March 2023, p 60.

We also note the concerns by REIQ and QLS regarding a two-limbed disclosure method for sales by auction based on whether the bidder registers for the auction before the auction commences. As such, we recommend that DJAG review the provisions for providing disclosure documents to buyers of property by auctions to ensure the provisions are working effectively for both buyers and sellers.

## 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 disclosure documents 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.

## 2.5 Natural hazard risks

### 2.5.1 Bill proposal

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 enquiries before signing a contract of sale. One of these matters is a property's history regarding flooding and other natural disasters.<sup>56</sup>

### 2.5.2 Stakeholder views

LGAQ provided substantial feedback on natural hazard risk information for lots, stating that the disclosure regulations 'do not go far enough in meeting the recommendations of the Royal Commission into National Natural Disaster Arrangements' to 'introduce mandatory disclosure of natural hazard risks at point of sale and prior to property purchase'.<sup>57</sup>

LGAQ recommended the Bill broaden the seller disclosure scheme to include the mandatory disclosure of natural hazard risks, similar to the approaches of New South Wales and Victoria. At LGAQ's 2022 Annual Conference, a resolution was passed calling on the government to 'investigate a pathway for mandatory disclosure of flood and other natural hazard risks in all property transactions'.<sup>58</sup>

LGAQ 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.' LGAQ expressed a desire to work with the government to identify solutions to enable mandatory disclosure of natural hazard risks.<sup>59</sup>

REIQ was in favour of the disclosure in its current form, supporting a warning that seller disclosure statements do not include natural hazard information and that the buyer should conduct their own enquiries. REIQ added that buyers should be directed to other sources if the FloodCheck Queensland portal or the Australian Flood Risk Information portal do not hold the relevant information.<sup>60</sup>

### 2.5.3 Department response

DJAG noted the recommendation from the LGAQ that the seller disclosure scheme should include flood and other natural hazard information. DJAG stated that the draft regulation proposes to prescribe a warning statement in the disclosure statement advising the buyer to enquire with the

<sup>56</sup> *Property Law Regulation 2023*, Schedule 1 s 1.

<sup>57</sup> LGAQ, submission 22, p 3.

<sup>58</sup> LGAQ, submission 22, p 5.

<sup>59</sup> LGAQ, submission 22, p 7.

<sup>60</sup> REIQ, submission 19, pp 14-15.

relevant local government about whether the property is affected by flooding or another natural hazard.<sup>61</sup>

DJAG, referring to the Attorney-General's introductory speech for the Bill, advised that there are practical and legal difficulties in mandating disclosure of this information, including:

- the level of information held by different councils can differ quite considerably
- councils across Queensland charge vastly different fees for access to the information.

DJAG, again referring to the Attorney-General's speech, stated the need for frameworks that work for all Queenslanders, and the commitment to continue working with the LGAQ to develop a mandatory scheme using uniform information.<sup>62</sup>

DJAG advised that stakeholders will be consulted more in finalising the regulation. DJAG added that, as the warning statements are contained in regulation, there is flexibility to update the warning statements referring buyers to flood information resources as new or relevant information sources arise, as was suggested by REIQ.<sup>63</sup>

### **Committee comment**

We note the LGAQ's recommendation to make natural hazard risks mandatory and include them in disclosure documents for prospective buyers. We also note REIQ's satisfaction with the current form of disclosure for natural hazard risk and the warning that the prospective buyer should conduct their own enquiries.

We also note that, as was raised in the Attorney-General's introductory speech, there is no consistent standard of natural hazard risk records for local councils across Queensland; and that local councils charge vastly different fees for members of the public to access the information. It will be easier for councils with a high density of ratepayers across a smaller area, such as Brisbane, to provide high quality natural hazard risk information cheaply. By contrast, councils with a low density of ratepayers across a larger area, such as Croydon, Burke and Diamantina, may find this more challenging.

We note that, since there is no consistent standard of natural hazard records among local councils, it cannot be guaranteed that the disclosure of such information would consistently be of value to the buyer. We are satisfied with the decision to warn the prospective buyer to carry out their own enquiries.

## **2.6 Leases**

### **2.6.1 Bill proposal**

The explanatory notes state that the Bill simplifies the rules for leases.<sup>64</sup> DJAG advised in its written briefing that Part 9 of the Bill, which contains the lease provisions, 'substantially clarifies, modernises and updates' the existing legislative framework for leases, while maintaining long-established provisions, clarifying uncertain areas and better balancing the rights between lessors and lessees by:

- providing protections for certain third parties in relation to a default under a lease and for loss of an option to renew, extend the term of, or purchase the reversion of, the lease
- clarifying provisions around decisions made by lessors about requests to assign a lease
- updating provisions in relation to the effect of the transfer of the reversion of a lease (removing the need for covenants to touch and concern the land)

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<sup>61</sup> DJAG, correspondence, 16 March 2023, p 55.

<sup>62</sup> DJAG, correspondence, 16 March 2023, p 56.

<sup>63</sup> DJAG, correspondence, 16 March 2023, p 33.

<sup>64</sup> Explanatory notes, p 5.

- providing for the automatic release of a lessee under previous assignments for any breach of the lease by the subsequent assignee
- harmonising existing timeframes under other legislation to provide consistency in leasing practice in Queensland.<sup>65</sup>

The Bill expressly states that the relief provisions (including relief against forfeiture) in the Bill do not apply to particular leases, including residential tenancies under the *Residential Tenancies and Rooming Accommodation Act 2008*.<sup>66</sup>

### 2.6.2 Stakeholder views

REIQ stated it was generally pleased with the redrafting of Part 9 of the Bill, the modernisation and clarification of language, as well as the standard lease terms in Schedule 1.<sup>67</sup> However, REIQ recommended changes to the provisions around the assignment of leases and liability.

Clause 144 of the Bill states that if a tenant assigns the lease to a second person (referred to in the Bill as the assignee), and the assignee then assigns the lease to a third person (subsequent assignee), the original tenant is released from any liability caused by the subsequent assignee. The provision applies regardless of any agreement between the parties to the contrary.<sup>68</sup>

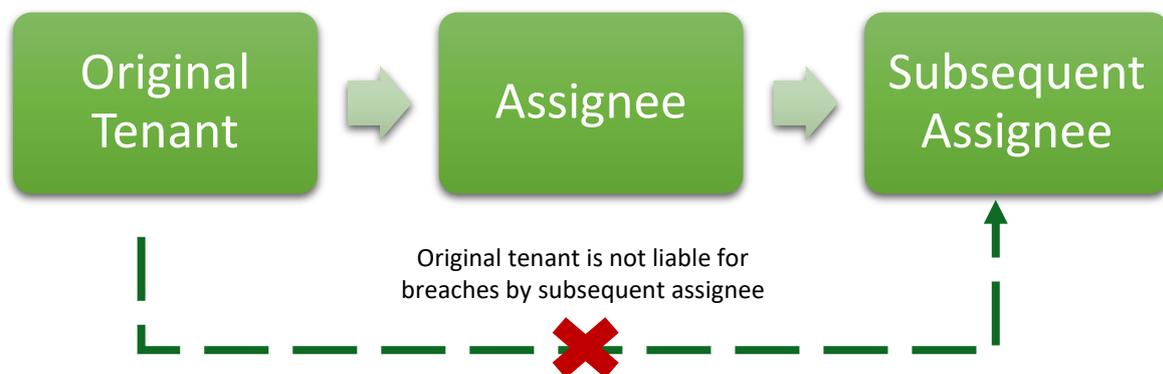


Figure 2: Liability relationships for assigned leases.

REIQ submitted that the liability of a tenant who transfers their lease is often negotiated as part of the transfer of lease process, and that '[n]egotiation of release from future liability is a common feature of commercial negotiations and business structuring.'<sup>69</sup>

REIQ recommended that cl 144 should be subject to any agreements between the parties 'in order to maintain flexibility of negotiation between commercial parties'.<sup>70</sup>

The Shopping Centre Council of Australia (SCCA) provided feedback on the standard terms for leases in Schedule 1 of the Bill, specifically cl 3(1)(b), which requires tenants to:

[A]t the end of the lease, whether by expiration of the lease term or otherwise, surrender and yield up the leased premises to the lessor in at least the same repair and condition in which the premises were in at the start of the lease.

SCCA submitted that if a tenant renews their lease then the phrase 'at the start of the lease' would effectively reset the repair and condition of the premises to the start of each lease term, with no

<sup>65</sup> DJAG, *Parliamentary Committee Briefing Note: Property Law Bill 2023*, p 5.

<sup>66</sup> Explanatory notes, p 6.

<sup>67</sup> REIQ, submission 19, pp 17, 19.

<sup>68</sup> Bill, cl 144.

<sup>69</sup> REIQ, submission 19, p 17.

<sup>70</sup> REIQ, submission 19, pp 17-18.

reference to its initial state when it was first leased to that particular tenant. SCCA submits this is ‘unfavourable to landlords and will almost certainly be routinely contracted out of if not amended’.<sup>71</sup>

SCCA recommended that the subclause require the leased premises be returned ‘in at least the same repair and condition in which the premises were *when first occupied*’ to ensure that leased premises are returned to the landlord in at least the same condition as when a tenant first assumed responsibility.<sup>72</sup>

### 2.6.3 Department response

DJAG stated in its response to submissions that cl 144 was a recommendation of QUT’s PLA report, specifically recommendation 130. DJAG quoted the following from the PLA report:

[I]t is unjust and inequitable for a lessee to potentially be liable for the breaches of covenants by all subsequent assignees, the choice over which the lessee has no control. While the Centre acknowledges that sophisticated parties entering into commercial arrangements are able to protect their own interests, the relationship of lessor and lessee is not one of equal power and control.

The commercial reality is that the position of a lessor is superior to that of any lessee and a lessor can within reason place conditions on the acceptance of an assignee such as a new guarantor or a higher bank guarantee. ... [A] lessor is able to pursue any of the assignors (where there has been more than one) as each remains liable for the breaches of the assignee. The Centre is of the view that in this day and age this goes beyond what is necessary to protect the interests of the lessor.

Under the recommended regime, the lessor would be able to seek damages for any breaches of the covenants of the lease by an assignee from that assignee and its guarantors (if any), the immediate assignor, and the assignor’s guarantors (if any). This framework provides adequate protection for the lessor, and reasonably limits the assignor’s liability.<sup>73</sup>

Regarding the recommendation of the SCCA, DJAG noted that the standard terms in Schedule 1 may be contracted out of by the parties to a lease, and that ‘the terms are intended to provide default positions in the absence of any agreement.’ DJAG also noted that the current s 105(1)(b) of the Property Law Act provides for the lessee to keep the premises in good repair having regard to the condition at the ‘commencement of the lease’.<sup>74</sup>

### **Committee comment**

We note that stakeholders were broadly pleased with the Bill’s updated lease provisions. We note REIQ’s recommendation to adjust cl 144 and allow parties to negotiate whether the transferor of the lease will be released from liability. We also note SCCA’s recommendation to vary the wording in Schedule 1 about the condition in which a property must be handed back to the lessor.

We note that cl 144 was worded in accordance with Recommendation 130 of the PLA report. We note that the PLA report reached this conclusion because the relationship between lessor and lessee is not ‘one of equal power and control’ and that it is unjust to hold a lessee potentially liable for any breaches by any subsequent assignees of a lease. We note that lessors are well-protected in that they can place conditions on the acceptance of an assignee and can pursue the assignor, as each assignor remains liable for the damages of the assignee.

We note that DJAG advised the terms in Schedule 1 may be contracted out of by parties to the lease, and that they are there to provide default positions in the absence of agreement. This appears to be the very concern of the SCCA. As such, we recommend that DJAG vary the wording of Schedule 1 to

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<sup>71</sup> SCCA, submission 9, p 1.

<sup>72</sup> SCCA, submission 9, p 1.

<sup>73</sup> DJAG, correspondence, 16 March 2023, pp 34-35; PLA report, p 386.

<sup>74</sup> DJAG, correspondence, 16 March 2023, p 7.

require a lessee to surrender the premises to the lessor in the same condition it was when the lessee first took possession.

### **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 when the lessee first took possession.

## **2.7 Covenants and easements**

### **2.7.1 Bill proposal**

The Bill proposes to create certainty regarding the transfer of covenants in registered easements. Under cl 65, a covenant in relation to ‘the use, ownership or maintenance’ of the land binds the grantor and grantee of the easement, and their successors in title.<sup>75</sup> The clause is based on, but goes further than, an equivalent provision in New South Wales.<sup>76</sup>

An easement is a right attached to land to utilise another’s land in a particular manner. Examples of easements include easements:

- of right of way for access
- of support of buildings
- for party (or shared) walls
- for drainage or sewerage reticulation
- for water storage/supply
- of retention of light or air
- for electricity transmission.<sup>77</sup>

A covenant is an obligation in relation to land. Covenants can be positive (requiring action, such as an obligation to keep a building in a state of repair) or negative (preventing action, such as a restriction on buildings above a certain height)<sup>78</sup> and may form part of an easement.

The explanatory notes state that it is unclear whether covenants transfer to successors in title under common law or the current Property Law Act. The Bill provides certainty by stating that both negative and positive covenants contained in registered easements bind the grantor and the grantee, and their respective successors in title, unless the covenant is said to be a personal arrangement between the parties.<sup>79</sup>

### **2.7.2 Stakeholder views**

Submitter Brian Noble stated that the Bill needs to go further with covenants that bind successors in title. Mr Noble submitted that the words ‘use, ownership or maintenance’ and the examples provided in cl 65(2) will be difficult to apply to covenants found in modern easements.

Mr Noble gave an example of a landowner with a gas pipeline running through their land. The original owner of the land and the owner of the pipeline had an agreement where the pipeline owner would

<sup>75</sup> Bill, cl 65(2).

<sup>76</sup> DJAG, correspondence, 16 March 2023, p 56-57.

<sup>77</sup> Titles Queensland, *Land Title Practice Manual: Part 9 – Easements*, 2021, paras 9-0000, 9-0040.

<sup>78</sup> PLA report, pp 348-349.

<sup>79</sup> Explanatory notes, p 4.

purchase public liability insurance for the pipeline and indemnify the owner for any damages caused by the pipeline.

Mr Noble advised that the current owner, who was third down the line of ownership from the original landowner, cannot enforce that agreement with the pipeline owner under the current legislative framework. Mr Noble added that the current owner would still be unable to enforce the agreement under the proposed new framework, because the words 'use, ownership or maintenance' limit the scope of what covenants would be enforced by future landowners.<sup>80</sup>

Mr Noble stated that this is an undesirable situation, and recommended the Bill be broadened to apply to all covenants to do with burdened land. This will cover reasonable requirements for insurance and indemnity, as described in the above pipeline situation. Mr Noble suggested that exceptions be added for covenants that were added by those abusing the easements system.<sup>81</sup>

### 2.7.3 Department response

DJAG advised that the PLA report recommended that the types of covenants that are enforceable should be deliberately limited. This would avoid abuse by parties who would include personal covenants into easements so as to unfairly impose those obligations on future parties.<sup>82</sup>

DJAG stated that cl 65(2), in its current form, applies to a covenant contained in a registered easement, and provides that an obligation, whether positive or negative in relation to the use, ownership or maintenance of the burdened land binds the grantor and grantee of the easement and their successors in title. Accordingly, only covenants in registered easements will have the benefit of the section. DJAG added that the examples given in cl 65(3) do not limit the effects of cl 65(2).<sup>83</sup>

DJAG added in the public briefing that the approach where all covenants are allowed, with some specific exceptions, raises a problem in that:

[D]efining those exceptions could be very difficult because covenants can be for all types of things. They can be restricting the height that you build your building to; they can be about maintaining the colour of a building at a particular site. Nobody regulates those when they are registered. If the covenant is registered in easement, nobody is looking through it and saying, 'This is not going to be enforceable.'<sup>84</sup>

DJAG submitted that the phrase 'use, ownership and maintenance' is broad enough to capture insurance and indemnity covenants if they are relevant to the use of the land.<sup>85</sup>

### **Committee comment**

We note Mr Noble's comments regarding whether certain easements will be protected under cl 65, and thus whether they will bind successors in title. We note the situation Mr Noble provided for the committee's consideration and that covenants to insure the pipeline and indemnify the landowner against damages caused by the pipeline may not be construed as covenants to do with the 'use, ownership or maintenance' of the land.

We also note DJAG's advice that the PLA report recommended a limit on the types of covenants that were enforceable so as to not create a system that parties would unfairly impose personal obligations on future parties. We note that DJAG advised the section, as drafted, covers all positive and negative covenants in registered easements that relate to the use, ownership and maintenance of the land.

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<sup>80</sup> Public hearing transcript, Brisbane, 21 March 2023, p 37.

<sup>81</sup> Public hearing transcript, Brisbane, 21 March 2023, p 37.

<sup>82</sup> PLA report, p 363.

<sup>83</sup> DJAG, correspondence, 16 March 2023, p 57.

<sup>84</sup> Public briefing transcript, Brisbane, 24 March 2023, p 9.

<sup>85</sup> Public briefing transcript, Brisbane, 24 March 2023, p 9.

We note DJAG's statements in the public briefing that defining exceptions would be more challenging than the current approach, and that the phrase 'use, ownership and maintenance' ought to be broad enough to capture covenants relating to insurance and indemnity.

We recognise that it would be difficult for the new Act to include an exhaustive list of covenants that were not enforceable under the law, but we are concerned that parties to easements, and their successors in title, may disagree on whether their particular arrangements are covered by the wording 'use, ownership and maintenance' of the land. As such, we recommend DJAG review the easement and covenant provisions after 12 months of the Act being in force to ensure enforceable covenants are binding successors in title.

**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.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Jan Davies Strata Assist Qld
002	Confidential
003	Russell Cowling
004	Don Martyn
005	Peter Conway
006	Wide Bay Burnett Community Legal Service
007	Name withheld
008	Name withheld
009	Shopping Centre Council of Australia
010	Confidential
011	Stata Community Association Qld
012	Body Corporate Reports
013	Anna MacMaster
014	Strata Search Agents Association Qld Inc.
015	Main Beach Association Inc.
016	Holmes Strata Inspection Reports
017	Confidential
018	Judy Hoy
019	Real Estate Institute of Queensland
020	Name withheld
021	HWL Ebsworth Lawyers
022	Local Government Association of Queensland
023	Brian Noble
024	Name withheld
025	Queensland Law Society
026	Name withheld
027	Unit Owners Association of Queensland Inc.
028	Name withheld
029	Robert Heron
030	Ralan Purchasers' Rights Alliance

## Appendix B – Officials at public departmental briefing

### Department of Justice and Attorney-General

- Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Mr Leighton Kraa, Principal Legal Officer, Strategic Policy and Legal Services
- Mr Riccardo Rivera, Principal Legal Officer, Strategic Policy and Legal Services
- Mr David McKarzel, Executive Director, Office of Regulatory Policy – Liquor, Gaming and Fair Trading
- Ms Nina Starling, Director, Office of Regulatory Policy – Liquor, Gaming and Fair Trading
- Ms Belinda Guinea, Manager, Officer of Regulatory Policy – Liquor, Gaming and Fair Trading

## Appendix C – Witnesses at public hearing

### Real Estate Institute of Queensland (REIQ)

- Ms Antonia Mercorella, Chief Executive Officer
- Ms Casey Cossu, Legal and Policy Officer

### Unit Owners Association of Queensland Inc. (UOAQ)

- Mr Greg Melloy, Executive Committee Secretary
- Mr Wayne Stevens, Executive Committee Vice-President

### Local Government Association of Queensland (LGAQ)

- Ms Alison Smith, Chief Executive Officer
- Ms Nicole Lessio, Lead – Intergovernmental Relations

### Queensland Law Society (QLS)

- Prof Sharon Christensen, Member, QLS Property and Development Law Committee
- Ms Wendy Devine, Principal Policy Solicitor
- Mr Matt Dunn, General Manager – Advocacy, Governance and Guidance

### Strata Community Association Queensland (SCA)

- Ms Laura Bos, General Manager
- Ms Jessica Cannon, Advocacy Director
- Mr Kristian Marlow, Policy and Media Officer

### Shopping Centre Council of Australia (SCCA)

- Mr James Newton, Manager, Policy and Regulatory Affairs
- Mr John Nicolas, Partner, Gadens

### Strata Search Agents Association Qld Inc. (SSAAQ)

- Ms Jessica Haddley, Principal
- Ms Lisa Rutland, Treasurer

### Private capacity

- Mr Brian Noble, Director

### Private capacity

- Ms Alexandra Dapontes

## Statements of Reservation

## **Statement of Reservation - Sandy Bolton MP, Member for Noosa**

The *Property Law Bill 2023* replaces the older *Property Law Act 1974* with a modernised piece of legislation based on recommendations in the 2018 Report on the Act prepared by the Commercial and Property Law Research Centre at Queensland University of Technology (QUT), with broad support for the changes introduced in this Bill.

One area of significant discussion by submitters were the requirements for seller disclosures. These are provided by sellers of property to potential buyers and disclose salient facts about the property, such as information about a body corporate (if one exists).

The Unit Owners Association of Queensland raised an important issue for disclosure — that the seller disclosure should 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*. This is extremely relevant given the short-term accommodation issues being experienced with buildings approved for residential use being utilised unlawfully for short term stays.

The Department's response was not to support this as a disclosure requirement, as recording development approvals has varied over time and therefore obtaining a full development approval document is likely to be difficult, time consuming and expensive in many cases. It also stated that it would be difficult to outline the lawful use of a lot in a development approval in a short and simple way that may be easily understood by buyers, particularly given the complexities of the regulation of planning and lawful usage under the various applicable planning laws. In addition, planning is enforced by local government and disclosing planning approvals would not provide any additional pathways for enforcement.

This issue highlights key failures in the planning system that needs to be addressed.

First, even though buildings receive planning approval for lawful use, this information seemingly can be impossible to find without difficult and costly investigation.

Second, even if this information was available, apparently it is too complex to be understood by a potential purchaser of the building.

Third, knowing the lawful use is pointless because it would have no impact on enforcement.

The above demonstrates a system that is failing to achieve its own objectives and should be acknowledged and rectified. What is the point of a planning scheme if it does not, and seemingly cannot, achieve the goal of ensuring buildings and land are used for the lawful purpose for which they were approved?

The key takeout is that the planning system needs to be reformed so that it actually works, and 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.

The argument that the Department gave for not providing disclosure was to rely on a principle set out in the review QUT undertook for the seller disclosure scheme which said:

“information to be provided by the seller to the buyer pre-contract should be within the seller’s knowledge or readily available by search at reasonable cost to the seller”.

That this information is not readily available should not be a reason to omit it from disclosure, which the Department has argued it is the reason why it should.

This principle should be read the other way round. If a disclosure is important, and if the information is not readily available, then it should be made so.

The same principle applies when the Local Government Association of Queensland recommended that disclosure statements include flood and other natural disaster information. The Government responded that the level of information held by different councils can differ quite considerably, and that councils across Queensland charge vastly different fees for access to this kind of information.

Again, this also highlights how problematic it is for people to access information on natural hazards, and in this case, the Attorney-General stated that the Government is committed to continuing to work with stakeholders to develop a mandatory scheme using uniform information. This needs to include the issues being faced by landowners impacted by Coastal Hazard Adaptation Plans (CHAPs) with ongoing concerns around methodologies and insurance ramifications.

Ultimately, this report does not contain the recommendations needed to remedy, which is for government to review the planning system to rectify its failings in relation to ‘lawful use’ and to provide appropriate information in the seller’s disclosure.

Thank you to our Chair and fellow members of the Committee for their work on this report, to the Secretariat for their support, and all individuals and organisations who gave their time to provide submissions and appear at hearings.



**SANDY BOLTON MP**  
Member for Noosa

**Date – 13 April 2023**