

# CONSULTATION PAPER:

## Exposure draft of the Property Law Bill 2022

September 2022

**This document does not represent government  
policy**



# Background

The Department of Justice and Attorney-General (**DJAG**) invites public comment on an exposure draft of the Property Law Bill 2022 (**draft Bill**).

The draft Bill is intended to replace the current *Property Law Act 1974* (**PLA**) with modern legislation, drafted in accordance with contemporary drafting practice and using plain English to simplify, streamline and modernise Queensland's property legislation.

## Property Law Review

From August 2013 to January 2018, the Commercial and Property Law Research Centre at the Queensland University of Technology (**QUT**) conducted a broad-ranging, independent review of Queensland's property laws, including a review of the PLA.

The PLA governs many aspects of Queensland's property law, including: general rules affecting property; the creation and disposition of interests in land; co-ownership; deeds; covenants; mortgages; leases; the rule against perpetuities; and old system land.

The PLA commenced in December 1975 and has not been substantially amended since.

Following the release of six issues papers, each dealing with different aspects of the PLA, QUT prepared the *Property Law Act 1974 - Final Report* (**Final Report**). The six issues papers and the Final Report can be accessed at: <https://www.justice.qld.gov.au/community-engagement/community-consultation/past/review-of-property-law-in-queensland>.

The Final Report comprises over 1,000 pages and 232 recommendations with the overarching recommendation that the PLA be replaced with a new, modernised property law act, drafted in accordance with QUT's recommendations. The bulk of QUT's recommendations are for the repeal of outdated provisions or the retention of existing provisions, redrafted in modern language.

The Final Report was released for public consultation in 2018 and a number of submissions were received expressing general support for QUT's proposed approach, or commenting on specific changes recommended by QUT. Some submissions noted that the final wording of the new and redrafted provisions would be important for determining whether the modernised provisions would be workable in practice.

## Queensland Government Election Commitment

Prior to the 2020 general election, property industry, legal and academic stakeholders were invited to participate in targeted stakeholder consultation during drafting of the Bill, based on QUT's recommendations in the Final Report.

For the 2020 general election, the Queensland Government committed to continue to work with key stakeholders to modernise and replace the PLA in this term of Government.



## Draft Bill

The draft Bill based on QUT's recommendations also reflects the results of targeted stakeholder consultation to date.

The structure of the draft Bill is, as follows:

- Part 1 - Preliminary
- Part 2 - General rules affecting property
- Part 3 - Freehold estates
- Part 4 - Future interests
- Part 5 - Co-ownership of property
- Part 6 – Deeds and covenants
- Part 7 – Contracts, sales of land and instalment contracts for sale of land
- Part 8 – Mortgages
- Part 9 – Leases
- Part 10 – Neighbouring land
- Part 11 – Transactions
- Part 12 – Powers of appointment
- Part 13 – Perpetuities
- Part 14 – Unregistered land
- Part 15 – General
- Part 16 – Repeal
- Part 17 – Savings and transitional provisions
- Part 18 – Amendment of Acts
- Schedule 1 – Implied terms
- Schedule 2 – Dictionary
- Schedule 3 – Acts amended (under consideration – to be completed).

The heading for each clause contains information intended to aid the reader . Each clause heading contains a reference to the equivalent section in the current PLA, a reference to the most relevant recommendation from the Final Report and, where relevant, a reference to a similar section in another jurisdiction that has been considered in drafting the new section.

For example, clause 6 of the draft Bill reads as follows:

6 Act applies to land, property and documents [s 5; NZ, s 8; QUT, rec 4]

The information in square brackets indicates:

- the clause is equivalent to PLA, section 5;
- the *Property Law Act 2007* (NZ), section 8 was considered in drafting the clause; and
- the drafting is based on recommendation 4 of the Final Report.



To assist in considering and commenting on the draft Bill, please note:

- final policy positions on the provisions have not yet been established and the draft Bill will be subject to further review following the results of this consultation;
- there are a number of specific consultation notes throughout the draft Bill;
- while QUT's recommendations have generally been adopted in the draft Bill,
  - **Attachment 1** to this paper notes some areas where stakeholders have indicated that they disagree with QUT's recommendations and submitters may wish to comment on these issues; and
  - **Attachment 2** to this paper notes areas where some of QUT's recommendations have not been adopted, wholly or in part.

## **Seller disclosure scheme –flooding history disclosure**

DJAG has recently consulted on the [Exposure draft of the Bill](#) for implementing a statutory seller disclosure scheme in Queensland and the following associated forms:

- [draft Disclosure statement](#)
- [draft Body corporate certificate for the sale of a lot included in a community titles scheme under the \*Body Corporate and Community Management Act 1997\*, and](#)
- [draft Body corporate certificate for the sale of a lot under the \*Building Units and Group Titles Act 1980\*.](#)

Consultation closed on 31 August 2022.

Subject to consideration of the results of consultation, it is expected that the provisions for the implementation of the seller disclosure scheme will be incorporated as part of the Property Law Bill 2022.

Consistent with QUT's recommendations, the draft disclosure statement does not require flooding history information to be disclosed but rather warns buyers to make their own enquiries.

In response to recent flooding events the State Recovery and Resilience Plan 2022–24 (July 2022) provides: *Property flood information systems in flood prone local government areas will be developed under the Resilient Homes Fund, which will enable property owners, tenants and communities to access property level flood information. Work is currently underway to explore how to best disseminate this information to potential property owners and tenants.*

Further consideration is therefore being given to whether flooding history information should also be included in the seller disclosure statement.

Consideration of this issue will include

- the form that the disclosure of flooding history information might take, acknowledging that the type of information that is available and method of publication varies among local governments;
- any practical difficulties/ additional costs to the seller in accessing this information;
- the consequences of failing to provide that information or providing information that is inaccurate; and
- any necessary disclaimers in respect of the information provided.



The views of the public and interested stakeholders are sought to inform further consideration of the issue.

## Have your say

If you would like to provide a written response, please either:

- email your submission to [PropertyLawActReview@justice.qld.gov.au](mailto:PropertyLawActReview@justice.qld.gov.au), or
- post your submission to:  
Property Law Act Review  
Strategic Policy and Legal Services  
Department of Justice and Attorney-General  
GPO Box 149  
BRISBANE QLD 4001

The consultation is now open and the closing date for written submissions is **5pm on 21 October 2022**.

## Your privacy

The Queensland Government is bound by the *Information Privacy Act 2009*. Find out more by reading our [privacy statement](#).

We may contact you for further information on the issues you raise in your submission. Information in your submission will be used to inform this consultation process. Your submission may also be published on our website. If you would like your submission—or any part of it—to be treated as confidential, please indicate this clearly. Please note however that all submissions may be subject to disclosure under the *Right to Information Act 2009*.

## Contact

Please email the Property Law Act Review team on [PropertyLawActReview@justice.qld.gov.au](mailto:PropertyLawActReview@justice.qld.gov.au) if you would like to find out more about this consultation.



## DIFFERING VIEWS RAISED BY STAKEHOLDERS

### **Recommendation 45 – section 10(3) of the *Limitation of Actions Act 1974*:**

Some stakeholders have raised concerns in relation to the reduction of the 12 year limitation period for deeds to 6 years. The recommendation is based on the view that the historical rationale for a longer limitation period for deeds is not appropriate in a modern context. Aligning the limitation periods for deeds and contracts promotes consistency in practice.

### **Recommendation 103 – former section 92 (Appointment, powers, remuneration and duties of receiver):**

The draft Bill provides in addition for amounts owing on any other mortgages to be paid out before distribution of any balance sale proceeds to the owner of the property.

### **Recommendation 157 – former section 179 (Right to support of land and buildings):**

The draft Bill adopts the recommendations to replace the current nuisance-based provision with a provision based on duty of care and negligence principles. Stakeholder consultation raised concern that this may unfairly leave parties without a remedy in certain circumstances. Concerns have also been raised, in the context of public authorities, about the inclusion of omissions in the duty of care.

### **Recommendation 158 – former section 180 (Imposition of statutory rights of user in respect of land):**

The draft Bill adopts the recommendation that the provision apply where it is reasonably necessary in the interests of the effective use or development in any reasonable manner of any land. Some stakeholders raised concerns regarding the inclusion of 'development' in the court's consideration of whether or not to grant a statutory right of use.

### **Recommendation 159 – former section 181 (Power to modify or extinguish easements and restrictive covenants):**

The draft Bill adopts the effect and wording (albeit with modernisation) of the existing provision under the PLA. Stakeholders have raised concerns that the considerations for the court are expressed in a way that may unfairly favour an applicant.



## QUT REPORT RECOMMENDATIONS NOT ADOPTED IN THE DRAFT BILL

*This list does not include recommendations that have been adopted in the draft Bill but have been drafted differently to suggestions in the Final Report*

### **Recommendations 13 and 14 - former section 59 (Contracts for sale etc. of land to be in writing):**

The recommendation was for a general provision to be included to permit a contract in electronic form, and for a contract to be signed by using an electronic signature. Section 14 of the *Electronic Transactions (Queensland) Act 2001* addresses the issue.

### **Recommendation 18 – former section 15A (Rights of aliens):**

The recommendation was for the retention of a redrafted provision. It is addressed as a savings provision in the draft Bill.

### **Recommendation 23 – former section 20 (Incidents of tenure on grant in fee simple):**

Given the operation of the *Succession Act 1981*, and that the effect of the existing provision is saved by the section 20(2)(a) of the *Acts Interpretation Act 1954*, it is not necessary to include a general abolition of escheat in relation to intestacy or deal with intestacy generally in the draft Bill.

### **Recommendation 34 – former section 34 (Power of corporations to hold property as joint tenants):**

The recommendation that “dissolution” be replaced with “deregistration” has not been adopted in accordance with drafting practice. Similarly, the recommendation for using the definition of a corporation under the *Corporations Act 2001* (Cth) has not been adopted, with the broader definition under the *Acts Interpretation Act 1954* to apply.

### **Recommendation 66 – former section 61 (Conditions of sale of land):**

The recommendation was made that where a party is unable to physically attend settlement due to an adverse event on the date of settlement, that time is no longer of the essence for the contract, and that this provision not apply to electronic conveyances. After stakeholder feedback, the draft Bill has been broadened to include circumstances where the adverse event prevents a party settling, and also include any electronic conveyances.

### **Recommendation 79 – Inoperative computer systems and electronic conveyancing:**

The recommendation was that a new provision be inserted that addresses the issue of inoperative computer systems on the day of settlement. This has not been adopted in the draft Bill as it is adequately provided for under the Electronic Conveyancing National Law.



**Recommendations 80 and 81 – former sections 71 and 71A (Definitions and Application of division):**

Based on stakeholder feedback, the recommendations that a contract for a proposed lot be excluded from the definition of an instalment contract and that the division bind the Crown have not been adopted.

**Recommendation 120 – former section 111 (Lessee to give notice of ejectment to the lessor):**

Notwithstanding the recommendation, this provision has not been retained after stakeholder feedback as it is adequately addressed under *Uniform Civil Procedure Rules 1999*.

**Recommendation 122 – former section 113 (head leases may be renewed without surrendering under-leases):**

The recommendation provided that the provision be repealed. After stakeholder feedback, the effect of this provision has been retained.

**Recommendation 129 – former section 121 (Provisions as to covenants not to assign etc. without licence or consent):**

Notwithstanding the recommendation that lessors be granted a 14 day period after they have received all of the information required from the lessee about the proposed assignment to provide a decision on whether to grant consent, a period of one month has been adopted based on stakeholder feedback and to ensure consistency in leasing practice in Queensland under both the draft Bill and the *Retail Shop Leases Act 1994*.

This recommendation was also not adopted for the following matters:

- (a) provision has not been made for compensation for the lessee in the event of the lessor's failure to grant consent; however, the courts have been given broad powers to make orders;
- (b) the information to be provided by the lessee to allow the lessor to make a decision as to whether or not to consent to the assignment has not been limited to that required to "make a commercial decision" but that which "the lessor may reasonably require....to decide whether to give consent".

**Recommendation 134 – former section 124 (Restriction on and relief against forfeiture):**

The recommendation has not been strictly adopted in relation to the service of notices to "designated persons and the rights that they will have to intervene in court proceedings about leases and loss of options. Further, the recommendation that certain defects in the Notice to Remedy Breach does not invalidate the Notice has not been adopted. The circumstances in which a lessor can retake possession of premises without issuing a Notice to Remedy Breach, or without a court order are also to be considered further.

**Recommendation 138 – former section 128 (Relief against loss of lessee's option):**

The Final Report, at paragraph 141.4.1.1 outlines the policy intent that the notice requirements need to apply to breaches that occur after the notice of exercise of the option is given until the expiry of the lease. The draft Bill does not provide that notices





must be issued by the lessor before the date of the new lease (created by the option) or the date for the purchase of the reversion.

**Recommendation 139 – former section 129 (Abolition of yearly tenancies arising by implication of law):**

The notice period to terminate tenancies at will has been amended to 20 business days rather than 20 days as recommended which aligns with the current provision of one month's notice.

**Recommendation 157 – former section 179 (Duty of care in relation to support for land):**

The recommendation is that the obligations on owners of supporting land and supported land should apply to occupiers including lessees. Concerns were raised by stakeholders that this would impose obligations on lessees over and above those provided for under any lease and this was not appropriate. Further, no definition of “structures” as recommended has been adopted.

**Recommendation 158 – former section 180 (Imposition of statutory rights of user in respect of land):**

The recommendation that this provision not apply to the State has not been adopted with the current position remaining. The recommendation that this provision be expanded to allow orders to be made for easements in gross in favour of public utility providers has not been adopted as stakeholder feedback was of the view that this was already adequately provided for under the *Acquisition of Land Act 1967* and *Land Title Act 1994*.

**Recommendation 170 – former Part 14 (Perpetuities):**

The recommendation that this part be included in the *Trusts Act 1973* or a separate Act is under consideration.

**Recommendations 190-193 – former sections 223-227 (Devolution of property of corporation sole, Vacancy in corporation, Transactions with corporation sole, Corporations incapable of acting):**

Notwithstanding the recommendation that these provisions be retained, feedback has suggested that these no longer have utility. Feedback is sought about whether it is necessary to retain any part of these provisions.

**Recommendation 205 – former section 347 (Service of notices):**

The recommendation is that service of a document sent by post be deemed to have occurred 5 business days after the document has been sent and that deemed service occur on the following business day if service via electronic means is affected after 4 p.m. Further to feedback from stakeholders, the draft Bill provides for deemed service after 7 business days (for service by post) and that service by electronic means after 5 p.m. is deemed to have occurred after 9 a.m. on the next business day.

