

20 October 2022

Property Law Act Review  
Strategic Policy and Legal Services  
Department of Justice and Attorney-General  
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BRISBANE QLD 4001

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### **Property Law Bill 2022**

Thank you for the opportunity to provide additional input into the Government's draft *Property Law Bill 2022* (Draft Bill). The Property Council is committed to ongoing, collaborative engagement with the Queensland Government on important regulatory issues affecting the property industry.

The Property Council welcomes the Draft Bill's modernisation of the *Property Law Act 1974* in accordance with contemporary concepts and language that reflect current commercial practice.

We strongly support the inclusion of 'development' in section 168 (Power of court to impose statutory rights of use). The right to seek a statutory right of use over other land for effective development is critical in ensuring much needed supply of housing stock to market.

We agree with the stakeholder positions outlined in Attachment 1 in relation to the following recommendations:

- » Recommendation 45 – section 10(3) of the Limitation of Actions Act 1974
- » Recommendation 103 – former section 92 (Appointment, powers, remuneration and duties of receiver)
- » Recommendation 157 – former section 179 (Duty of care in relation to support for land)
- » Recommendation 158 – former section 180 (Imposition of statutory rights of user in respect of land)
- » Recommendation 159 – former section 181 (Power to modify or extinguish easements and restrictive covenants)

We agree with the reasons for non-adoption outlined in Attachment 2 in relation to the following recommendations:

- » Recommendations 13 and 14 - former section 59 (Contracts for sale etc. of land to be in writing)
- » Recommendation 23 – former section 20 (Incidents of tenure on grant in fee simple)
- » Recommendation 34 – former section 34 (Power of corporations to hold property as joint tenants)
- » Recommendation 66 – former section 61 (Conditions of sale of land)
- » Recommendation 79 – Inoperative computer systems and electronic conveyancing
- » Recommendations 80 and 81 – former sections 71 and 71A (Definitions and Application of division)
- » Recommendation 120 – former section 111 (Lessee to give notice of ejectment to the lessor)
- » Recommendation 122 – former section 113 (head leases may be renewed without surrendering under-leases)
- » Recommendation 134 – former section 124 (Restriction on and relief against forfeiture)
- » Recommendation 138 – former section 128 (Relief against loss of lessee's option)
- » Recommendation 139 – former section 129 (Abolition of yearly tenancies arising by implication of law)
- » Recommendation 157 – former section 179 (Duty of care in relation to support for land)
- » Recommendation 158 – former section 180 (Imposition of statutory rights of user in respect of land)
- » Recommendations 190-193 – former sections 223-227 (Devolution of property of corporation sole, Vacancy in corporation, Transactions with corporation sole, Corporations incapable of acting)

However, we do not believe it is necessary to make the changes outlined in Attachment 2 in relation to the following recommendations:

- » Recommendation 18 – former section 15A (Rights of aliens)
- » Recommendation 157 – former section 179 (Right to support of land and buildings)
- » Recommendation 170 – former Part 14 (Perpetuities)
- » Recommendation 205 – former section 347 (Service of notices)

The Property Council outlines concerns relation to the balance of the recommendations below:

- » Recommendation 129 – former section 121 (Provisions as to covenants not to assign etc. without licence or consent)
  - The time periods adopted in the Draft Bill (30 business days and 1 month) are very short given that that appropriate due diligence in respect of a

consent matter quite often takes longer than this, depending on the amount of information required to be assessed. The nature of leasing arrangements is broad and differing time frames should be reflected to accommodate such arrangements, with parties permitted to contract out of section 129.

- » Recommendation 130 – new section 131 (Effect of assignment of lease by transferee to subsequent transferee)
  - Parties should be permitted to contract out of section 131.
- » Recommendation 121 – former section 112 (Limitation on award of damages for breach of obligation to repair)
  - The limitation in subsection (2) on the Court's discretion to award damages is arguably inappropriate and should be removed from the Draft Bill.
- » Recommendation 158 – former section 180 (Power of court to impose statutory rights of use)
  - It is critical that QUT's recommendation that this provision be expanded to allow orders to be made for easements in gross in favour of public utility providers be adopted (as per 158.4.7 of the QUT report). The suggestion that this is adequately provided for in other legislation is flawed as those utility providers have refused to exercise their statutory powers under that legislation for effective development of land by private parties.
  - Further, it is critical that the wording of new section 168(f)(i) (i.e. 'unreasonably refused') be further considered given the decision of the High Court in *Ainsworth v Albrecht* [2016] HCA 40, otherwise it is unlikely any application under section 168 could ever be successful (as the refusal would need to be unfounded or vexatious, which is far too high of a threshold to reach).
  - The right to see a statutory right of use over other land for effective development is critical in addressing housing supply and affordability issues facing Queensland.
- » Recommendation 211 – Schedule 1 (Implied Terms)
  - Regarding 'change of use', whilst the terms are subject to any agreement to the contrary (refer to new section 126), such that a lessor can contract out of the standard term, any application of the standard term is a cause for concern in light of all laws as to the use and occupation of premises (e.g. zoning, planning approvals, certificates of classifications).

### **Seller disclosure scheme – flood history information**

We note that further consideration is being given to whether flood history information should also be included in the seller disclosure statement. It is our preference that this occurs, with appropriate qualifiers when a property is in an area where flood modelling has not been undertaken. For efficacy and to ensure appropriate access to information,

a centralised portal for buyers and sellers that directs them to the appropriate local government websites where up to date flood history information should be readily available.

For certainty for buyers and sellers, it is imperative that there is certainty and accuracy in information being accessed and that it is not in conflict with any other information available (for example insurance flood mapping).

We welcome the opportunity to discuss any aspect of this submission with the Property Law Act Review in more detail. If you have any questions in relation to the Property Council or this submission, please do not hesitate to contact me on [jcaire@propertycouncil.com.au](mailto:jcaire@propertycouncil.com.au) or 0499 181 366

Yours sincerely

A handwritten signature in cursive script that reads "Jess Caire".

**Jess Caire**

Queensland Deputy Executive Director