

10 March 2023

Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4170

**By Email:** [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear Committee,

**RE: PROPERTY LAW BILL 2023, PROPERTY LAW REGULATION 2023 & BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT REGULATION 2023**

The Real Estate Institute of Queensland (**REIQ**) welcomes the opportunity to provide further feedback in relation to the *Property Law Bill 2023* (**Bill**), *Property Law Regulation 2023* (**Regulation**) and *Body Corporate and Community Management Amendment Bill 2023* (**Amendment Bill**).

We note the REIQ has actively participated in consultation of the Bill, Regulation and Amendment Bill over the past eight months, including providing six Submissions to the Property Law Act Review Team (**PLA Review Team**), meeting with and discussing by correspondence, various sections of the Bill with the PLA Review Team.

In this regard, we commend the PLA Review Team for giving stakeholders the opportunity to provide extensive feedback with thorough consideration given, and recommendations adopted throughout the development of the Bill. As we have noted throughout the consultation period, the REIQ commends the Department and the State Government in progressing the re-write of the *Property Law Act 1974* (**PLA**).

That said, we do have concerns with the Bill being introduced into Parliament by the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence on 23 February 2023. Although we understand the time constraints and finite sitting times remaining in the current term of Government, we are disappointed that the Bill was prematurely introduced while discussions in relation to material matters were being worked through, up to the days preceding 23 February 2023.

The importance and complexity of rewriting the PLA arises from the foundational significance to our society and the broader economy of the PLA in establishing property rights and the 'rule of law' relating to property and other legal and contractual rights more broadly (such as the provisions relating to Deeds and Covenants).

The REIQ therefore urges that all due time and resources are dedicated by the Government to ensuring that thorough consultation is completed, all feedback and suggestions or concerns received are thoroughly reviewed, and all potential legislative impacts of any changes from the existing PLA are fully considered and understood prior to enactment of the Bill.

## **The REIQ and our role for Real Estate Professionals and Real Property Investors**

The REIQ is the peak body representing real estate professionals across Queensland. As the State's most trusted and influential advocate for real estate business interests and private property investor rights for more than 104 years, the REIQ remains committed to ensuring the highest levels of professionalism and good governance are achieved through regulatory compliance and the advancement of best practice standards of professional conduct.

The REIQ's enduring purpose is to lead a sustainable industry which continues to make significant contributions to the Queensland economy and to strengthen conditions for those working within the industry. Above all, the peak body aims to:

- make important contributions to government legislation and policy settings;
- advocate for balanced regulations for the benefit of all stakeholders;
- provide industry-leading training for real estate professionals;
- deliver timely, innovative and market-driven education programs;
- promote risk management and increase professional competence;
- implement effective and compliant professional standards; and
- contribute to substantial industry research and development.

The REIQ Membership and customer base representation includes over 30,000 property professionals. This includes principal licensees, salespeople, property managers, auctioneers, business brokers, buyers' agents, residential complex managers, and commercial and industrial agents in Queensland.

Collectively, Queensland's real estate sector directly employs over 46,000 people (the State's second largest employer), is one of the top four industries which comprises over 50% of Queensland's small business landscape and pays the second highest amount of State tax each year (2018/19: \$20 billion).

The REIQ's vision statement, for the real estate profession, extends our support and expertise beyond our membership to the broader real estate profession and community. We believe everyone should be able to make educated, informed decisions about buying, selling or renting property and business in Queensland.

### **Our Submission**

The REIQ is generally supportive of the desire to modernise and clarify language, and to use an updated legislative style in the Bill as a comprehensive re-write of the existing PLA.

However, as outlined in this paper, there are a number of areas of concern we wish to highlight, to which we have provided recommendations for further consideration or amendments.

Given the limited opportunity to further change the Bill, we hope the Committee will appreciate the gravity under which our comments are made. As we have seen over the past three years, the real estate sector is a key driver of our economy and material changes to the operation and stability of the sector will have far-reaching implications.

Please note that due to limited time and resources, we have elected to focus on those Parts of the Bill considered of most impact upon our members and their areas of operation, and of greatest importance to the property sector generally.

The absence of our detailed comments on other Parts of the Bill should not be taken as endorsement of those Parts, but rather a focus on our part, and an election to leave detailed comments to other stakeholders who may be better placed to provide input on those provisions.

Furthermore, in this Submission we have not provided further comment for matters of which have been settled or addressed through prior consultation with the PLA Review Team and Department.

### **Further Consultation or Meetings**

The REIQ confirms that we are happy to participate in further consultation and/or attend any meetings that may be convened to discuss the whole or relevant Parts of the Bill. We confirm that no aspect of this Submission is private and therefore consent to public disclosure of its contents.

If you have any queries in respect of our submission or any of the matters or issues we have raised, please do not hesitate to contact Katrina Beavon, General Counsel on (07) 3249 7303 or via email [kbeavon@reiq.com.au](mailto:kbeavon@reiq.com.au).

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Antonia Mercorella', with a long horizontal flourish extending to the right.

Antonia Mercorella  
Chief Executive Officer

# PROPERTY LAW BILL 2023

Submission to the Legal Affairs & Safety  
Committee

## 1. DEEDS & COVENANTS – PART 6

Deeds and covenants are foundational to our legal system in Queensland – the certainty and enforcement of deeds and covenants are essential to a well-functioning economy.

Overall, we are supportive of the modernisation of the language and further clarification of the provisions within the Bill. We are pleased with the current drafting of these provisions and changes adopted over the consultation period.

We are also supportive of the modernisation of the deed formation and execution provisions, and the removal of the distinction in limitation periods between contracts and deeds, as historical reasons for these provisions no longer appear to be relevant.

The REIQ considers it desirable that there be as close alignment as possible with these provisions and the *Corporations Act 2001* (Cth) in relation to execution of deeds by Australian corporations. It appears the Bill echoes this position. We do not have any further comments in relation to this Part of the Bill.

## 2. CONTRACTS FOR SALE & ECONVEYANCING – PART 7 DIV 1 & 2

As identified in the Explanatory Notes, a notable advancement achieved by the redrafting of Part 7 is the recognition and facilitation of electronic dealings in property in Queensland. This reform is timely given the recent enactment of the eConveyancing mandate in Queensland which commenced on 20 February 2023<sup>1</sup>.

We acknowledge that many of the new provisions capture the existing contractual obligations contained in the REIQ standard contract for sale, being the most common form of contract for property transactions in Queensland. We consider the real estate profession, legal profession and broader community will easily adapt to these changes.

We commend the PLA Review Team for giving due consideration to, and adopting, many of the recommendations provided by the REIQ (and other stakeholders) over the consultation period. Specifically, we recognise the following provisions:

Section	Comments
69 - Guarantee not enforceable unless in writing	The REIQ is supportive of this amendment to expand this provision to capture indemnities, and note that this also reflects common practice for buyer entities to electronically sign a contract for sale of land as guarantor.
70 - Effect of conclusive evidence	The REIQ is supportive of the amendments to modernise this provision.

<sup>1</sup> *Land Title Regulation 2022* (Qld)

76 - Implied conditions	<p>The REIQ is of the view that it is no longer appropriate to continue providing the default place of settlement as the nearest office of the land registry (especially in light of the fact that some regional Titles Registry offices have closed).</p> <p>The REIQ also notes that in practice it is rare for a physical settlement to occur at a land registry office. The REIQ submits that for 'paper' / non-electronic settlements, it may be appropriate to provide for the 'first' default venue for settlement if not otherwise agreed, to be the office of the solicitor or conveyancer appointed by the seller if there is one, or the office of the first mortgagee if there is one, and then otherwise the publicly available office of the titles registry nearest to the land as the 'final default'.</p>
77 - Restoration of property	<p>We are generally supportive of the redrafting of this provision and addition of subsections (3) and (4).</p> <p>We agree with the description of "dwelling house" being amended to "residential dwelling" in this section for the purpose of modernisation and clarity. We agree with the Recommendation 69 from QUT Property Law Review that this provision should not be extended to contracts for sale of commercial properties.</p>
78 - When day of settlement is next business day	<p>We support the retention of this provision and its application to e-conveyancing / electronic settlements, as previously recommended.</p>
ss 79, 80 - Effect of inoperative computers	<p>We are pleased with the redrafting of s79 and addition of s80, in alignment with our previous recommendation to the PLA Review Team to capture inoperability in other contexts than the land registry, which may delay or prevent settlement or compliance with contract conditions. We support this provision being limited to inoperative computers of the entities listed in s80(1)(c) only.</p> <p>Additionally, we are pleased that s79(5) allows settlement to reset after 3 business days, which we consider is a reasonable time.</p>
81- Adverse effect on settlement	<p>As noted above, we support the introduction of this section in the Bill. These provisions closely align with the current contractual requirements under the REIQ standard contracts.</p>

If the Committee would like our position on, and/or reasons for support of, any of the other provisions of Part 7 not mentioned above, we would be pleased to provide a copy of our prior Submissions for the Committee's consideration.

### 3. SELLER DISCLOSURE REGIME – PART 7 DIV 4

The REIQ has advocated for the introduction of a seller's disclosure regime for a number of years, on the basis that such a regime enhances, without inhibiting, the unique property landscape we have in Queensland.

To this end, the REIQ has participated in extensive consultation with the PLA Review Team in relation to this regime, given the significant implications its enactment will have on the real estate industry.

As a key objective of the regime, we consider it essential to balance the level of information provided to the buyer within the seller's own knowledge, with the time and financial cost of obtaining such information to ensure the property sector is not burdened and contracts can continue to be practically and efficiently facilitated.

We strongly support the four guiding principles of the regime:

- Information provided should be within the seller's knowledge and/or readily available by search at reasonable cost to the seller;
- Information should be of value to the buyer in making their decision to purchase a property;
- Information should be in an accessible form, easily understood and capable of being relied on by the buyer; and
- A single legal framework should provide consistency in the content and timing of disclosure and remedies available for a failure to comply.

Although we acknowledge the PLA Review Team has undertaken extensive consultation on these provisions and have adopted many of the changes recommended by the REIQ, we still have concerns regarding a number of the provisions in Part 7 Division 4 of the Bill, the Regulation, Amendment Bill and prescribed certificates.

The REIQ is **primarily concerned** with:

- the prescriptive requirements for providing disclosure documents at auction (which varies depending on whether the auction has commenced) and how the average person will be able to understand obligations and comply with same in such environment;
- the regressive reintroduction of Community Management Statement (CMS) disclosure when selling lots in a Community Titles Scheme;
- the current form of seller's disclosure statement and body corporate certificate being unnecessarily complex with potentially irrelevant information and ultimately not fit for its purpose;
- a buyer's ability to terminate without having to prove it has been materially impacted by any error or omission; and

- the lack of infrastructure available for the broader community to comply with disclosure requirements, particularly those living in regional or remote locations across Queensland.

As we have indicated to the PLA Review Team, our support of this regime is contingent on the above matters being adequately addressed. We note in the days before the Bill was introduced, our office discussed these concerns with the PLA Review Team and it was our understanding that such matters were still under consideration. We trust this continues to be the case.

Notwithstanding, we provide our comments in relation to the Bill, the Regulation, the Amendment Bill and the approved forms as follows:

<b>Section</b>	<b>Comments</b>
Definitions	The REIQ supports the additional definitions and clarification about the terms “disclosure documents”, “disclosure statement” and “prescribed certificate”.
99 – Seller must give buyer disclosure documents	Although the termination provisions may limit an instance where a buyer can terminate a contract on the basis of a minor technical error in a disclosure statement, we maintain that an express provision should be included to the effect that a disclosure statement is not defective merely because it contains a minor technical error or omission.
Exceptions under 100(a)	<p>We are satisfied with the current drafting of the exceptions under s100, noting that many of our specific recommendations have been adopted by the PLA Review Team.</p> <p>In particular, we are pleased with the policy position in (a), that a seller is only exempt from providing a related buyer with the disclosure documents if the buyer provides an express waiver, regardless of what type of entity the seller is.</p> <p>If the parties are related and the seller is a company (or other entity), it is our view that a buyer should still be required to provide a waiver of their right to a disclosure statement before the exemption can apply.</p> <p>As noted throughout the consultation period, the nature of relationship between parties should not dictate the level of knowledge and understanding those parties may have with respect to a property, and cannot be presumed. Regardless of the nature of the relationship between the individual buyer and the selling corporate entity, a power imbalance is likely to exist, even if the seller is not considered sophisticated. In reference to the core objectives of the disclosure regime, the information disclosed may provide value to a buyer being a related party with their decision to proceed with the transaction.</p>
Giving a disclosure statement - Auctions ss 101, 102 and 103	With the approval of the PLA Review Team, our office shared the proposed drafting of these provisions with our Auctioneer Chapter Committee.



The REIQ Auctioneers Committee felt very strongly that these provisions are unnecessarily complex and onerous.

Comparisons were drawn of the procedures in other States which are less onerous. For example, in South Australia the equivalent document must be made available at the office of the agent at least 3 business days before the auction and at least 30 minutes before the auction at the place where the auction takes place. Similarly, in New South Wales a written acknowledgement can be taken from the buyer confirming they received the disclosure statement with the burden of proof sitting with the buyer.

The REIQ Auctioneers Committee strongly expressed that the processes under s101 and s103, with respect to giving a disclosure statement at auction, should be simplified and rights between the seller and buyer should be more balanced.

The proposed provisions place the onus on the seller to prove they provided the buyer with the disclosure statement and it will not be sufficient for the buyer to sign an acknowledgement to the effect that they have received the disclosure documents prior to entering into the contract. The REIQ maintains that in order to balance the rights of the buyer and seller, a provision should be inserted, requiring a signed statement from the buyer of a lot confirming receipt of the disclosure statement should satisfy the requirements under the Bill.

If a person is going to attend an auction to purchase, even if they register after the start of the auction, they should be treated as a competent buyer that has consciously made the decision to purchase on this basis, even if it means having less time to access information. Generally, properties purchased at auction are purchased on an unconditional basis with no statutory cooling-off rights. Accordingly, the creation of a separate process for giving a person disclosure documents if they register **after** the commencement of an auction is unnecessary and futile for the purpose of consumer protection principles.

In our view, the proposed drafting overcomplicates the matter, particularly where additional physical and electronic “communications” are required to provide the disclosure statement in lieu of simply providing the disclosure statement. It is our view that a simpler approach will provide the greater benefit to both parties, in keeping with the objective of the regime.

Another consideration is how these provisions operate if a third party or buyer’s agent is authorised to attend an auction and bid on behalf of the bidder (or if the bidder is bidding by telephone).

We appreciate the difficulty in settling a position where one approach may not suit every circumstance. For this reason, a simpler approach may offer a broader application in practice.

	<p>In summary, there should be no distinction between parties who register before or during the auction (physical or electronic). If a specific time of giving should be identified, then it should be at the time of registration. That is, a seller is taken to have given the buyer the disclosure documents if at the time of registration, they had the statement available by way of an approved method.</p> <p>We recommend the following methods for 'giving' disclosure statements where a property is sold at auction:</p> <ul style="list-style-type: none"> <li>• having a copy on display for at least 30 minutes before the auction commences (or available in electronic format where auction is conducted online)</li> <li>• having a copy available at the seller's agent's office (or if there is no physical office, electronic delivery may requested) at least 3 days before to the auction;</li> <li>• electronic/physical delivery in accordance with s231 of the Bill.</li> </ul> <p>The recommended approach is generally consistent with s103. In limited circumstances where a purchaser decides to bid after an auction has commenced, the potential buyer will have limited time and realistically, insufficient time to review the disclosures in any event.</p> <p>We agree that parts of the proposed ss 101, 102 and 103 should be retained, such as:</p> <ul style="list-style-type: none"> <li>• the definition of 'link';</li> <li>• that the link must be live when given to the buyer; and</li> <li>• that the seller satisfies the disclosure requirement whether the buyer uses the link or not.</li> </ul> <p>We expect these provisions will be a source of dispute where it is not understood if a party has complied with a requirement.</p> <p>On the basis of the current drafting and anticipated impact to the auction sector, we do not support these provisions. We recommend the amendments outlined above.</p>
104 - Termination	<p>Although the REIQ supports a provision which sets out the basis upon which a buyer may terminate a contract, we request that section 104(b)(iii) be expanded to transfer the onus on the Buyer to prove that they are materially prejudiced by the error or omission.</p> <p>We propose that Section 104(2)(b) be amended as follows:</p> <p><i>(ii) at the time the contract is signed by the buyer, the buyer is not aware of the correct state of affairs concerning the matter <b>under this subsection</b>;</i></p> <p><i>(iii) if the buyer had been aware of the correct state of affairs concerning the matter, the buyer would not have signed the contract <b>and would be materially prejudiced if required to complete the contract.</b></i></p>

	<p>Once this regime is enacted, this provision will form the basis for a party to terminate a contract. Given its significance, it is critical that the drafting of this provision is improved and clarified.</p> <p>We further recommend, that the time for the buyer to exercise this termination right be reconsidered to promote a greater balance between the rights of the buyer and seller.</p> <p>Currently the buyer may exercise this right any time before settlement. Instead, we recommend the termination right be limited within a specified time frame after a contract is entered by the buyer. It is likely that any inaccuracy in a statement or certificate would come to the attention of the buyer in the early stages of the contract when usual due diligence occurs.</p> <p>By ensuring any rightful termination under these grounds occurs earlier, this will provide certainty to the parties that the contract will indeed settle and save both parties time and expenditure in preparing for the settlement of the contract.</p> <p>In considering the appropriate time frame, we suggest the length of the contract should be taken into consideration. A contract for 60 or more days for example, may attract a specified time limit for termination. We suggest further consultation be undertaken on this point. Such limitation appropriately balances the rights of the buyer and seller and, also gives the seller certainty that the buyer may not try to rely on this section to terminate a contract after it becomes unconditional, in the event that the buyer is unable to complete a contract.</p> <p>We consider this to be reasonable, particularly for longer term contracts (60 days or more). Under the current provisions, although a buyer would need to argue that they would not have proceeded with the contract if they had been aware of a minor technical omission, this requirement may be arguable in most circumstances as is subjective to the circumstances of the buyer and may lead to an unnecessary increase in disputes and potentially, litigation.</p>
<p>106 – No other remedy is prescribed certificate contains inaccurate information given by statutory body or body corporate</p>	<p>The REIQ is supportive of this provision being an important protection for the seller in the event the seller is provided with inaccurate information by a body corporate or statutory authority.</p>
<p><b>Property Law Regulation 2023</b></p>	<p>We are generally supportive of the ‘prescribed certificates’ and ‘prescribed information’ provisions being set out in the Regulation.</p>

<p>s 4 - prescribed certificates</p>	<p>Briefly, the certificates prescribed for sale of a lot include:</p> <ul style="list-style-type: none"> <li>• a title search;</li> <li>• a survey plan;</li> <li>• a copy of a QBCC s47 notice regarding unlicensed building work;</li> <li>• a show cause notice/enforcement notice under ss167, 168 of the <i>Planning Act 2016</i> or ss 246AG, 247 or 248 of the <i>Building Act 1975</i> that is in effect;</li> <li>• a notice by a competent authority requiring work to be done or money spent in relation to lot in effect;</li> <li>• a copy of any document given to seller in relation to transport infrastructure proposal, notice of resumption or heritage listing concerning the property;</li> <li>• if there is a pool either the compliance certificate or form 36 Notice of No Pool Safety Certificate; and</li> <li>• if the lot is in a community titles scheme, a copy of the community management statement (<b>CMS</b>) the body corporate certificate or statement that seller hasn't obtained and reasons why (with similar provisions if the lot is in a scheme established for an existing 1980 Act plan or under the <i>Building Units and Group Titles Act 1980</i>).</li> </ul> <p>We do not oppose the items listed in s4(1)(a)-(i), save for the requirement to provide a copy of the CMS.</p> <p>We reiterate our position held throughout consultation that a seller should not be obligated to provide a copy of the CMS with the body corporate certificate, as a CMS can be voluminous and providing same will inundate the buyer with information that will likely overwhelm the buyer and undermine the purpose of the disclosure.</p> <p>This is a matter that has been discussed broadly, in particular, by the Community Titles Legislation Working Group (<b>CTL Working Group</b>), of which the REIQ is a party. In alignment with discussions held within the CTL Working Group, we recommend that this requirement be deleted.</p> <p>In our view, including such requirement to provide a CMS with the disclosure documents is regressive given that the requirement was previously introduced in Queensland in 2011 and shortly repealed thereafter because of the practical difficulties associated.</p> <p>Notably, this decision is against the recommendations given in the QUT Property Law Review.</p> <p>We direct the Committee's attention to section 6.3.7 of the Report<sup>2</sup>:</p>
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<sup>2</sup>Final Report: Seller Disclosure in Queensland, Commercial and Property Law Research Centre QUT LAW (2017) <https://apo.org.au/sites/default/files/resource-files/2017-09/apo-nid107061.pdf>

	<p><i>The Interim Report suggested that the by-laws for a body corporate could be included with the body corporate certificate. The by-laws for a scheme under the BCCM Act are contained in the community management statement (CMS) for the scheme a copy of which can be obtained from the Land Registry. Concern was raised by stakeholders about the cost to the seller of obtaining a copy of the by-laws, potential difficulties for body corporate managers in obtaining a copy (given that there is no statutory obligation for a current copy of the by-laws to be held by the body corporate manager) and whether a buyer will actually read and also understand the impact of the by-laws on them. To accommodate these concerns the Centre recommends a compromise. A buyer should be provided with information about key types of by-laws that may apply with a recommendation to make further inquiries with the body corporate. The body corporate certificate should include prescribed information as follows: By-laws for the Scheme regulate the responsibilities and conduct of lot owners and occupiers in the scheme. If you buy a lot in the scheme you will be bound to comply with the by-laws. The by-laws may contain rules about:</i></p> <ul style="list-style-type: none"> <li>• <i>smoking;</i></li> <li>• <i>whether there are restrictions on keeping pets;</i></li> <li>• <i>noise on the lot and parties;</i></li> <li>• <i>parking on lots and common property; and</i></li> <li>• <i>rights and restrictions about lot owners' use of common property or</i></li> <li>• <i>exclusive use areas.</i></li> </ul> <p><i>The by-laws are part of the Community Management Statement for the Scheme. Your solicitor can obtain a copy of the by-laws and Community Management Statement for you.</i></p> <p>We query what basis the Department has formed its policy to bring back this requirement and strongly recommend this position is reconsidered.</p>
<p>s 5 - prescribed information</p>	<p>The information prescribed for the sale of a lot, to be included in the disclosure statement, includes:</p> <ul style="list-style-type: none"> <li>• the name of the seller;</li> <li>• the address of the lot;</li> <li>• the lot on plan description;</li> <li>• whether the lot is included in a community titles scheme or subject to a plan under the BUGTA;</li> <li>• details of each unregistered encumbrance: <ul style="list-style-type: none"> <li>○ an unregistered lease, including, for example, a short lease as mentioned in the <i>Land Title Act 1994</i>, section 185(1)(b);</li> <li>○ an access agreement, opt-out agreement or conduct and compensation agreement under the <i>Mineral and Energy Resources (Common Provisions) Act 2014</i>;</li> <li>○ an unregistered charge, mortgage, easement or profit a prendre</li> </ul> </li> </ul>

	<p>known, or reasonably expected to be known, to the seller;</p> <ul style="list-style-type: none"> <li>○ a charge, restriction, or other burden affecting the title of the lot created under an Act of the Commonwealth or a State in favour of the Commonwealth, a State or a local government;</li> <li>● the zoning as published on the local government website;</li> <li>● information relating to contamination and environmental protection;</li> <li>● information about whether an application effecting tree or order effecting a tree on lot exists;</li> <li>● whether the lot is subject to a transport infrastructure proposal;</li> <li>● whether the lot is affected by the <i>Queensland Heritage Act</i> or is included in the World Heritage List;</li> <li>● if the Commonwealth or State has issued a notice of intention to resume;</li> <li>● if there is a pool;</li> <li>● if there is a commercial office building that's bigger than 1,000 SQM;</li> <li>● rates information pertaining to the lot; and</li> <li>● water information pertaining to the lot.</li> </ul> <p>Generally, we are satisfied with the policy position taken in relation to the prescribed information, notwithstanding our view that unregistered statutory encumbrances should be expressly excluded.</p> <p>Generally, the information in this list will be within the seller's knowledge, or attainable at nominal cost and time delay to the seller.</p> <p>In particular, we are pleased with the definition of unregistered encumbrance which reasonably limits the type of unregistered encumbrance which must be disclosed, and in the case of an unregistered charge, mortgage, easement or profit a prendre, places the appropriate limitation, being that only those known, or reasonably expected to be known to the seller, must be disclosed. We are also pleased that the requirement for the seller to describe the unregistered encumbrance has been removed from this version of the Bill.</p> <p>Notwithstanding the above, it remains our view that statutory encumbrances should not need to be disclosed by the seller.</p> <p>This brings much needed balance to the provision and in our view, aligns with the guiding principles of the regime.</p>
<p>Schedule 1 Warnings and other statements</p>	<p>We are generally supportive of the warning statements and in particular, the statement to the buyer that they should seek legal advice about the matters contained within the disclosure statement.</p> <p>With respect to flooding, we support the position set out in Schedule 1, being a warning that the statement does not include flooding and other natural hazard information and a direction to the buyer of how they may conduct their own searches and enquiries.</p>

	We do however request that the Buyers be directed to other sources should the FloodCheck Queensland portal or the Australian Flood Risk Information portal not hold the relevant information.
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If the Committee would like our position on, and/or reasons for support of, any of the other provisions of Part 7 not mentioned above, we would be pleased to provide a copy of our prior Submissions for the Committee's consideration.

### *Approved Forms*

We have not reviewed the draft statutory forms since August 2022. Given there have been numerous changes to the draft Bill since initial consultation, we strongly recommend the Department provide the relevant stakeholders, including the REIQ, with an opportunity to provide feedback on the proposed approved form.

Focus should be given to the guiding principles, on the basis that the supply of too much and potentially irrelevant information within the forms, will likely result in same being ignored by buyers due to its inherent overwhelming nature and accordingly, will undermine the intention of the regime.

## **INFRASTRUCTURE TO SUPPORT SELLER'S DISCLOSURE**

The introduction of a seller's disclosure regime will change the way property is transacted in Queensland. An important practical consideration is how information can be easily and quickly obtained by the seller or their agent, at minimal cost, in alignment with the guiding principles.

In other States, such as South Australia, Victoria and New South Wales, the Government supports their seller's disclosure regime by having robust information systems and infrastructure that allows property owners to easily obtain some or all of the information they need at minimal cost (in most cases) to satisfy their disclosure requirements.

For example, in addition to usual property searches (title search, plan search, dealing searches), Land Use in Victoria provides a number of free reports for properties in Victoria including:

1. Property PDF containing:
  - a detailed map of the property;
  - information about the property;
  - Local Government Area and Council Property number;
  - Directory references;
  - Electoral information – legislative council and assembly;
  - Utilities such as water providers and power distributors; and
  - Also information about Planning Zones and Overlays.

2. Planning PDF containing:
- Planning scheme information;
  - Planning zones and overlaps; and
  - Planning mapping information.

Currently in Queensland, the availability of property information is disparate between the local government areas.

The type, currency and accessibility of information is dependent on the information systems managed by the local governments and are generally greater in metropolitan areas than in regional areas. Consequently, a seller in a regional or rural area may not have access to the same information as a seller in a metropolitan area. An example of this disparity can be seen in the flood history information provided by the various local governments.

The cost of searches can also vary significantly between local governments. By way of example, a rates search is free from Brisbane City Council but costs \$180.00 from Western Downs Regional Council, \$151.00 from Gold Coast City Council and \$92.00 from Burdekin Shire Council.

We recommend at minimum that investment is made in the current information systems at a State level (Queensland Globe, State Planning Policy (SPP) Interactive Mapping System) to improve these systems, expand the offering and ensure sellers in all areas of Queensland have the same ability to access current information that they may need in order to comply with the regime.

As we have previously noted during consultation, the implementation of this regime will cause an additional administrative burden to the real estate industry. However, the REIQ is in support of the objectives of the regime given its benefits.

Further, we note the REIQ is committed to creating resources and education to assist real estate professionals in Queensland with the introduction of the seller disclosure regime. It is our view that in addition to improved infrastructure, having real estate agents prepare compliant forms is achievable with the right support and education.

It is critical that further consideration is given to the development of infrastructure to support the regime and to ensure accessibility and price consistency. If sellers are required to comply with this new regime, they are entitled to expect that appropriate support mechanisms are invested in by Government.



## 4. LEASES

The REIQ is generally pleased with the redrafting of Part 9 of the Bill and the modernisation and clarification of language.

Although the provisions embody long-standing legal principles, the changes will have important impacts for dealing with and the enforcement of leases and will also impact day-to-day property management of leased premises. Use of existing precedents and forms will need to be updated, and appropriate lead time for introduction and education should be assured.

Notwithstanding, we provide our comments in relation to the follow:

Section	Comments
<p>142 - Effect of requirement in lease for consent of lessor to assign lease or take other action</p>	<p>The REIQ is supportive of the extensive re-drafting of the existing PLA s121. The provision now sets out a process for obtaining a consent under a lease (such as for assignment, sublease or to carry out works) which generally aligns with common commercial practice.</p> <p>We are pleased that our recommendations in relation to this section have been adopted.</p> <p>We support the protection of commercial freedoms offered by this section by ensuring the lessee shall provide required information under the lease for the lessor's consideration in making such request for consent, with the lessor equally enabled to request further information if needed to consider a request.</p> <p>We consider the time frames provided are reasonable and appropriate given the nature of the matters consent is sought for.</p> <p>Overall, the REIQ considers that the most significant 'regulator' in practice is the requirement that consent not be unreasonably withheld by the lessor, and the Court will ultimately decide whether any withholding of consent is unreasonable.</p> <p>The REIQ is supportive of the clarification of process set out in proposed sub-sections (8) – (10).</p>
<p>143 – Effect of assignment of lease to assignee &amp; 144 – Effect of assignment of lease by transferee to subsequent transferee</p>	<p>The REIQ is supportive of a provision to clarify the 'default' position relating to the lessee's continuing liability where a lease is transferred.</p> <p>However, the release or continuing liability of a transferee of a lease and their guarantor is often the subject of negotiation as part of the transfer of lease process and request for lessor's consent. Negotiation of release from future liability is a common feature of commercial negotiations and business structuring.</p>

	<p>The provision as drafted in s144(3) applies despite any agreement to the contrary.</p> <p>In order to maintain flexibility of negotiation between commercial parties, the REIQ recommends that the position outlined in the section should be subject to any agreement between the parties to the contrary, as is reflected in s143(6)(b).</p>
<p>153 – 162 Relief against forfeiture</p>	<p>The REIQ is generally supportive of the re-write and clarification of s124, being an important provision stipulating how a lessor can take possession of the premises as a result of a lessee failing to remedy a breach of a lease, of which they have received notice.</p> <p>The re-casting of requirements for the lessor’s notice to remedy breach is acceptable and appear to be an attempt to overcome instances with the existing PLA s124 by reason of minor or ‘technical’ flaws with the notice.</p> <p>It is noted that the period for remedy remains cast as a “reasonable period” without prescribing a specific timeframe.</p> <p>The REIQ supports this approach as a continuance of the current position.</p>
<p>164 – When lessor may refuse to renew or extend term of a lease</p>	<p>By virtue of the wording of s164(1)(b)(iii), (c)(iii) and (4), it would seem that in the event the tenant failed to give notice of intention to exercise an option within the period required under the lease, then rather than the option lapsing as is the current position under s128 of the PLA, this provision would put the onus on the lessor to give a notice to the tenant of the loss of option within 10 business days, otherwise the lessor would lose the right to forego the option. This is a significant change from the current position and effectively overrides the terms of commercial and retail leases where presently it is taken that time is of the essence for exercise of options to renew in leases. This change would have important impact on current practices for property management of leased properties.</p> <p>The REIQ recommends that the definition of formal requirement under subsection (4) be amended to include the requirement for the notice to be given within the strict time limits imposed by the lease. These time frames are generally 3 or more months in length and allow parties sufficient time to make commercial arrangements depending on whether the option is to be exercised, impacting on both the financial viability of the premises for the lessor and the day-to-day business operations of the lessee. Therefore, it is our view that disregarding time frames to provide notice stipulated and agreed between the parties in the lease would be disadvantageous and the current position of the PLA should be retained.</p> <p>We further note the introduction of new provisions ss 166 and 167 provides a lessee with a statutory right to apply for relief if the lessor has not complied with s164. Whilst we are in favour of this addition as an important protection for</p>

	<p>lessees, our support is subject to our above comments to ensure the rights of the parties are balanced and commercial freedoms with respect to negotiating the term of a lease is retained.</p>
<p>Schedule 1 (3) - Standard terms of lease</p>	<p>We are generally supportive of the Standard Terms contained in Schedule 1 to the Bill and are pleased with the REIQ's recommendations being adopted with respect to (3), ensuring that a lessee shall only be required to yield up possession of a premises in no better repair and condition than as required under the lease.</p>

## 5. AMENDMENT OF OTHER ACTS

Section	Comment
Amendment of Body Corporate and Community Management Act	<p>We note the addition in section 263 of the Bill which amends s205(4) to (6), of new subsections (7) to (12).</p> <p>In subsection (7), a seller may rely on the body corporate certificate as conclusive evidence of matters stated in the certificate to the extent that the certificate does not contain an error that is “reasonably apparent”.</p> <p>We accept this addition and the intention that the seller should not rely on information if it is obviously incorrect, however, we note some ambiguity may be created where an item may be “<i>reasonably apparent</i>” to one party but not to another depending on the particular seller.</p> <p>Sellers with less knowledge and understand of community titles legislation may be disadvantaged where they rely on the certificate. This should be a point for education of the general public and we expect will become a matter in which the scope is determined judicially.</p>
Amendment of BUGTA	We reiterate our above comments, noting the changes made are reflected in BUGTA.
Amendment of Property Occupations Act	We are pleased that this section has been inserted as s229A in the <i>Property Occupations Act 2014</i> . We do not oppose the minor amendment made to this section.

## 6. CONCLUSION

### **Proclamation Date**

We note the Act will commence on a day to be fixed by proclamation, however to our knowledge, there is no proposed time frame for this period.

It is our view that Part 7, Division 4 (Seller's disclosure) should not come into effect for a period of at least 12 months after the commencement of the Act.

This will enable the requisite education and training to be developed and implemented to ensure the real estate sector and Queensland property owners are familiarised with the provisions and can carry out their obligations under the Act. We expect the legal profession will also require this time to ensure they have the resources available to provide the necessary advices to buyers with respect to these processes, the disclosure statements and prescribed certificates.

The disclosure requirements to be introduced will change the way property is transacted in Queensland and our population needs to have time to significantly familiarise themselves with the changes before it comes into effect.

The remaining provisions (ie. Part 6 (Deeds) and Part 7 (Contracts for sale of land) and Part 9 (Leases)), we suggest should not come into effect for a period of at least 6 months to allow:

- the necessary updates to the REIQ Contracts for sale of land;
- updates to resources relating to commercial leases; and
- development of education and training for the real estate profession, legal profession and Queensland residential and commercial property owners.

Notably, in addition to the Property Law Bill, there are a number of other proposed legislative reforms planned to take effect around the same time such as changes to tenancy laws, body corporate legislation and mandatory CPD for real estate professionals, that will have significant impact on the property sector.

For this reason, we strongly request consideration be given to the timing of implementation to allow the sector the appropriate time to prepare for these changes. As a critical contributor to the economy of Queensland, the property sector must be granted appropriate time to prepare for these significant changes.

### **Our Support of the Seller's Disclosure Regime**

Although we are generally pleased with most of the changes adopted by the Bill, we note the policy position and drafting of some outstanding matters are of concern to the REIQ.

In particular, we are most concerned with:

- the omission of an express statement that a disclosure statement is not defective merely because it contains minor technical inaccuracies;

- the drafting of s101 and s103, prescribing two separate processes for giving a disclosure statement before and during an auction depending on when a buyer registered as a bidder;
- the buyer's ability to terminate without being materially prejudiced by the error and/or omission under section 104(1)(b); and
- the regressive requirement for sellers of a lot in a community titles scheme to provide a community management statement (CMS) as a prescribed certificate.

For the reasons outlined in this Submission, we strongly recommend the above provisions should be reconsidered.

Additionally, to balance the rights of the buyer and seller, we recommend a time limit should be imposed on when the buyer can exercise their termination rights under s104 of the Bill.

Such limitation would secure the benefit of the termination rights for a buyer in a position where the statement given is inaccurate in a timely manner, saving both parties the time and expenditure of preparing for settlement and the potential risk of dispute where a buyer relies on provisions to terminate an unconditional contract for minor technical errors or omissions, if they are unable to complete a contract.

### **Education, training and resources**

Queensland has a property transaction landscape unique to any other State or Territory in Australia.

Transactions are generally shorter in time and are more cost effective to both parties because of the important role real estate professionals play in facilitating the transaction and contract.

We believe the current version of the Bill, subject to our comments herein, will achieve the intended objectives and aligns with the guiding principles.

Given that the majority of real estate transactions and dealings in Queensland are facilitated by real estate professionals, the REIQ, as the peak industry body, will play an instrumental role in educating about these changes. For this reason, it is imperative that we are consulted about the commencement of the Bill and ancillary matters, such as the contents of the approved forms for the seller's disclosure regime.

Additionally, there also needs to be sufficient time for revision or preparation of many standard forms and precedents that are presently geared for the existing PLA.

It should be understood that of the effectiveness of the property sector arises from a stable and certain legislative environment regarding fundamental property rights and obligations, which has enabled a high degree of efficiency in the market.

The enactment of the Bill will be a temporary but significant disruption to that efficiency, and there will be a 'productivity cost' to implement the new Act for all industry participants, so a significant lead-in time is considered essential for these changes.

We are committed to working with the Department and creating the required resources and education to prepare real estate professionals and stakeholders in Queensland for the proposed changes. Community education should also be prioritised with the introduction of this Bill, given that it encapsulates some of the most significant changes to property transactions since the Bills inception in 1974.