

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.



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