

# Property Law Bill 2023

## Explanatory Notes

### Short title

The short title of the Bill is the Property Law Bill 2023.

### Policy objectives and the reasons for them

The *Property Law Act 1974* (PLA) governs many aspects of Queensland's property law. The PLA deals with: general rules affecting property; the creation and disposition of interests in land; co-ownership of property; deeds; covenants; mortgages; leases; the rule against perpetuities; and unregistered, or 'old system' land. The PLA commenced in December 1975 and has not been substantially amended since.

The objective of the Property Law Bill 2023 (Bill) is to replace the PLA with new, modernised property legislation, drafted broadly in accordance with the recommendations in the 2018 *Final Report: Property Law Act 1974* (PLA Report) prepared by the Commercial and Property Law Research Centre at the Queensland University of Technology (QUT).

The PLA Report was prepared after a broad-ranging, independent review of Queensland's property laws, including a review of the PLA. QUT considered equivalent provisions in other jurisdictions and undertook substantial consultation with a wide range of stakeholders who were generally supportive of the PLA Report's recommendations.

The Bill generally adopts the recommendations contained in the PLA Report to simplify, streamline and modernise Queensland's property laws, better facilitate e-conveyancing and electronic transactions, and remove outdated provisions.

Significant changes include: the repeal of outdated or unnecessary provisions (for example, those in relation to unregistered land and property matters arising from de facto relationships); redrafting existing property law provisions in plain English with modernised language; establishing a legal framework to recognise and facilitate e-conveyancing and electronic property transactions; simplifying and updating the common law rule against perpetuities and rules relating to leases and covenants; and minimising the inadvertent creation of instalment contracts.

The Bill also implements a statutory seller disclosure scheme for sales of freehold land in Queensland. In the 2017 *Final Report: Seller Disclosure in Queensland* (Seller Disclosure Report), QUT recommended that a statutory seller disclosure scheme be implemented to simplify and consolidate the disclosure process for sales of freehold land and empower prospective buyers to make informed decisions to purchase. The seller disclosure scheme implemented by the Bill is drafted broadly in accordance with the recommendations in the Seller Disclosure Report.

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## Achievement of policy objectives

The Bill achieves the policy objectives by:

- repealing outdated or unnecessary provisions in the PLA;
- redrafting the provisions in modernised language;
- providing a legal framework that is updated to reflect changes associated with electronic dealings in property and electronic service as well as reflecting current property, titling and conveyancing practice;
- simplifying and updating various provisions, for example, the rule against perpetuities, leases and covenants;
- minimising the inadvertent creation of instalment contracts; and
- implementing a statutory seller disclosure scheme that clarifies the disclosure obligations of a seller, requires a transparent and consolidated form of disclosure and provides information of value to the decision of a buyer to purchase.

The positions in the PLA that will be altered by the Bill are set out below. Unless otherwise stated, these changes are consistent with the recommendations contained in the PLA Report and Seller Disclosure Report prepared by QUT.

### Escheat and Intestacy

Common law provides that ultimate ownership of land vests in the State under escheat, and that if land is without an owner, then ownership would devolve *bona vacantia* to the State. These principles were varied by section 20 of the PLA which abolishes escheat in respect of a person dying intestate on or after 16 April 1968 and provides:

- (a) that for individuals, the rules of intestacy apply for any person dying intestate, rather than the property reverting to the State;
- (b) that for companies, on dissolution, the property reverts *bona vacantia* to the State; and
- (c) a process for the court, where the State has or appears to have a right to any property by escheat, devolution or *bona vacantia*, to waive that right in favour of another person.

The provisions abolishing escheat in respect of a person dying intestate or for property to revert to the State *bona vacantia* are no longer required because of the intestacy provisions in the *Succession Act 1981*, and the saving provisions in the *Acts Interpretations Act 1954*. Therefore, a substantially simplified process, compared to the current PLA and to that recommended by the PLA Report, has been adopted in the Bill for the State's waiver of any rights in escheat or to pass to the State on *bona vacantia*.

### E-Conveyancing and Contracts

Queensland is a participant in the national electronic conveyancing system (national e-conveyancing) which allows land conveyancing transactions to be completed in an electronic environment and instruments to be lodged directly to State and Territory land registers. The *Electronic Conveyancing National Law (Queensland) Act 2013* was enacted to facilitate digital lodgement, which is now used for a significant and increasing proportion of conveyancing instruments lodged with Titles Queensland.

The Bill recognises and facilitates electronic dealings in property, especially in relation to the formation and performance of electronic contracts. For example, several provisions aim to create certainty for contracting parties about the validity of electronic land contracts, electronic deeds and the use of electronic means for the giving of notices. Part 6 of the Bill recognises and facilitates deeds being entered into by electronic means by legislating about the validity of electronic signatures and electronic documents.

QUT's recommendations for general provisions to be included to permit a contract for the sale of land in electronic form and for such a contract to be signed using an electronic signature were not included in the Bill because the *Electronic Transactions (Queensland) Act 2001* already deals with these issues.

Further, provisions have been included in the Bill to update conveyancing process. The Bill provides for certainty to delay settlement where parties are unable to effect settlement due to an adverse event on the day of settlement such as a significant weather event, public health emergency, act of terrorism, war, or a similar event. Pursuant to the PLA Report's recommendation, provision has been made to address the issue of inoperative computer systems for electronic conveyances on the date of settlement.

Notwithstanding the PLA Report's recommendation that this be limited to an inability to physically attend settlement, the provision applies to an inability to settle due to the adverse event and includes e-conveyancing in accordance with stakeholders' feedback to ensure consistency between paper-based and electronic transactions.

Provisions which no longer have utility, due to changes in titling and/or conveyancing practice, have not been re-enacted in the Bill (see, for example, section 61(1)(a), (c), (1A) of the PLA).

## **Corporations**

The Bill uses the words 'corporation' and 'dissolution' throughout and relies on the *Acts Interpretation Act 1954* to define 'corporation'. This approach diverges from recommendation 34 of the PLA Report and intentionally adopts terms that are broader and in accordance with the existing application of the PLA.

## **Deeds**

The Bill retains, with minor modifications, the provision relating to deeds, including electronic deeds that were inserted in the PLA by the *Justice and Other Legislation Amendment Act 2021*. These provisions were broadly consistent with the recommendations in the PLA Report and began as a temporary response to the COVID-19 public health emergency before being made permanent along with other electronic document reforms.

The Bill abolishes the rule in *Pigot's* case (a common law rule that may render certain deeds void if an alteration is made by the obligee under the deed, or a third party, after the deed is executed). This was not a specific recommendation of the PLA Report but has been included in the Bill to respond to stakeholder feedback.

The Bill amends the *Limitation of Actions Act 1974* so that the limitation period for deeds entered into after commencement is reduced from 12 years to six years to match the limitation period for contracts.

### **Covenants in Easements**

Registered easements may contain both negative and positive covenants. A positive covenant may include an obligation to pay money or maintain a structure in a state of repair. Under common law, the burden of a positive covenant does not necessarily transfer to new owners of the land and the provisions in the PLA do not cure this issue completely leading to uncertainty. The utility and value of registered easements are diminished if positive covenants become unenforceable against successors in title.

The Bill brings certainty to the law by providing that both negative and positive covenants contained in registered easements bind the grantor and the grantee of the easement, and their respective successors in title (unless the covenant is expressed to be personal to the parties).

### **Guarantees and Indemnities**

Section 56 of the PLA requires that for guarantees to be enforceable, they must be in writing. The Bill extends this rule to indemnities, and to apply to guarantees and indemnities that are an electronic document or are digitally signed in accordance with section 14 of the *Electronic Transactions (Queensland) Act 2001*.

### **Sale of Land by Auction**

The consumer protection provision located in section 60 of the PLA (dealing with a seller bidding at the auction of the seller's own property) has been modernised and moved into the *Property Occupations Act 2014* by the Bill.

### **Right to Rescind Contract of Sale on Destruction of or Damage to Dwelling House**

Section 64 of the PLA (which permits a buyer to rescind a contract for the sale of a dwelling house that has been destroyed or damaged so as to be unfit for occupation as a dwelling house) has been modernised and clarified in clause 77 of the Bill.

The Bill provides additional clarity of the buyer's right to termination and that this ends on the earlier of: settlement; the buyer taking possession of the property; or the seller rectifying the dwelling so that it is returned to the condition it was prior to the damage or destruction. The buyer has also been given a right of inspection to confirm that the dwelling has been returned to the condition it was in prior to the damage or destruction.

### **Rights of Purchaser where Vendor's Title Defective**

Section 69 of the PLA permits a court to refund a deposit to a buyer where there are defects with the seller's title and specific performance cannot be granted. The equivalent provision in the Bill: has been modernised and restricted to circumstances where there is an actual defect with the seller's title (not just doubt); and broadens the power of the court to order a refund of the buyer's deposit (and any instalments) where specific performance cannot be granted and where the court chooses not to grant specific performance.

## **Mortgages**

Section 87 of the PLA protects a buyer who purchases a property from a mortgagee exercising a power of sale. The Bill extends this protection to an exercise of a power of sale by a receiver as well.

The Bill modernises and updates section 91 of the PLA. The Bill stipulates when a mortgagee may require an insurance payout to be paid towards repayment of the mortgage, and clarifies when a mortgagor may require an insurance payout to be paid towards the reinstatement of the mortgage property.

Section 92 of the PLA sets out the appointment, powers, remuneration and duties of the receiver. The Bill modernises the existing provision and varies it so that the receiver may only be appointed if suitably qualified, and only if the mortgagee is entitled to take or enter into possession of the property.

The Bill modernises and clarifies section 95 of the PLA to provide that a mortgagor can obtain relief against a claim for payment of an accelerated sum under a mortgage by the mortgagee if the mortgagor has remedied the default that made the accelerated sum payable.

Under section 97 of the PLA, where a mortgagee sues on the personal covenant in the mortgage and obtains a judgment debt, the mortgaged property is not available to satisfy the debt, with the mortgagee instead required to elect either to exercise a power of sale or foreclose. The Bill modernises the existing provision and extends its protective operation not only to the property against which the debt is secured but also any other property over which the mortgagor has granted a mortgage to the mortgagee. The result of this is that a mortgagee cannot sue on the personal covenant in the mortgage to obtain a judgment and then execute that judgment against the security given under the mortgage, or any other security given under any other mortgage given by the same mortgagor to the mortgagee.

The Bill modernises and expands section 101 of the PLA, which allows a mortgagor to apply to court to obtain a release of mortgage where the mortgagee is absent, uncertain, or unknown and:

- (a) extends the section to include a situation where a mortgagee has died but no personal representative is administering the deceased person's estate; and
- (b) clarifies that, if it is later proved that the mortgage debt was more than what was determined by the court to be payable, the remaining amount due and owing will continue to be a debt owing under the mortgage.

## **Leases**

The Bill simplifies the rules relating to leases.

Notwithstanding the PLA Report's recommendations that section 113 of the PLA (relating to the renewal of a head lease without surrendering a sublease) be repealed as it was unnecessary to current practice, this provision has been retained and modernised in the Bill after stakeholder feedback that this was still required for current titles registration practice.

The Bill updates sections 117 and 118 of the PLA to avoid uncertainties as to the enforceability of covenants relating to those which ‘touch and concern’ the land. The Bill provides that all rights and obligations contained in lease documents will be enforceable after assignment, or transfer of the reversion of the lease except where the:

- (a) lease expressly provides the term is personal; or
- (b) lease expressly excludes the term from assignment or transfer of the reversion of the lease; or
- (c) in the case of an assignment of lease, the party assigning the lease, expressly agrees with the transferee that the benefit of the term accruing prior to the assignment remains with the party assigning, or the lessor consents to the party assigning the lease retaining the benefit of the term; or
- (d) in the case of a transfer of the reversion of the lease, the party transferring the reversion expressly agrees with the transferee that the benefit of the term accruing prior to the transfer remains with the party transferring the reversion of the lease.

A covenant that restricts the use of the land also applies to the owner of the land, in the case of transfer of the reversion of the lease, and to the occupier of the land, in the case of an assignment of the lease.

The Bill also codifies the existing position whereby the lessor remains liable for a breach of the term of the lease committed by the lessor prior to transfer of the reversion of the lease.

Under section 121 of the PLA, a lessee may request the lessor consent to an assignment of, or other dealing with, the lease, or leased premises, and the lessor must not unreasonably withhold consent. The Bill retains the effect of this provision and includes provisions, broadly consistent with the PLA Report, as follows:

- (a) the timeframe for a lessor to consider and decide a request for the assignment of lease is one month The PLA Report suggested 14 days but stakeholders preferred one month for consistency with the *Retail Shop Leases Act 1994*;
- (b) in the event the lessor fails to consent, the lessee may apply to the court, which has been given broad powers to make appropriate orders. The PLA Report suggested the lessee be able to assign the lease without consent but this was not supported by stakeholders;
- (c) the lessee must provide the information that is required under the lease, or such further information the lessor considers is required to allow the lessor to make a decision about the assignment.

Under the common law, a lessee who assigns its interest in a lease may remain liable to the lessor for a breach of the lease by the assignee (the first assignee) and any subsequent assignees of the lease; even where the lessee had no part in the assignment of the lease to subsequent assignee(s). The Bill alters the law by releasing the lessee and the lessee’s guarantor for any breaches of the lease by subsequent assignees. This change to the law applies despite any agreement to the contrary.

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*.

Under section 124 of the PLA, if a lessee has breached a lease, the lessor is unable to re-enter or forfeit the lease for a breach of term of the lease until a notice to remedy breach has been served on the lessee and the lessee has failed to remedy the breach in the time provided for under the notice. The Bill updates this provision and requires service of a copy of the notice to remedy breach on designated persons (which includes mortgagees, receivers, guarantors and sublessees). After receiving stakeholder feedback, the category of designated persons was extended to include, where the lessee has assigned the lease, any previous lessee or lessee's guarantor who remains liable under the lease not having been released from liability on the assignment of the lease. Additionally, after stakeholder feedback, this provision deviates from the PLA Report by only requiring service of notices on designated persons where the designated person's name and address is known to the lessor.

These designated persons are also given rights to make a court application to seek relief from forfeiture.

The Bill specifically relieves the lessor of the requirement to serve a notice to remedy breach where the lessor reasonably believes that the lessee has given up possession of the land but requires the lessor to serve notice of re-entry on the designated persons as soon as possible after exercising the right to re-entry.

Section 128 of the PLA allows a lessor to issue a prescribed notice to a lessee if the lessee is in breach of the lease and that breach has the effect of precluding the lessee from exercising an option to renew a lease, extend a term of the lease, or purchase the reversion of the lease. If a lessor issues a prescribed notice, then the lessee may apply to the court for relief against the loss of their option within one month of service of the notice.

The Bill varies the existing provision by requiring that this notice is also served on a designated person for the lease, where the name and address of these parties is known to the lessor. The Bill clarifies that a breach of the lease that occurs after the notice of an exercise of option is given by the lessee to the lessor will still require a lessor to provide a further prescribed notice before the lessor can refuse the lessee's option on the basis of the subsequent breach, and the lessee can still apply to the court for relief against the loss of their option within one month of that further prescribed notice being given. The Bill also gives a designated person for a lease standing, within one month of the notice being given to the lessee, to make an application for relief from a refusal to renew or extend a term, or sell the reversion, of the lease by the lessor. The Bill also extends the operation of this provision to circumstances where the lessee gives a notice of the exercise of option within time but not as otherwise required under the lease. In such circumstances, the lessor must give a notice of refusal of the option which will permit the lessee or designated person to make an application for relief. The provision does not entitle a lessee to relief where the lessee does not exercise the option in time.

Section 129 of the PLA abolishes yearly tenancies arising by implication of law and provides a termination period for tenancies at will. The Bill clarifies the provision and provides that the termination period is 20 *business* days. This is broadly consistent with the existing provision under the PLA which provides for a termination notice period of one month.

The PLA provides that certain covenants are to be implied into leases. The Bill centralises these implied terms in schedule 1, and modernises them in accordance with

the recommendations of the PLA Report and stakeholder feedback. The implied terms in schedule 1 of the Bill may be altered or removed by contrary agreement and are subject to any other Act.

Many of the outdated covenants in the PLA, including those relating to: applying for and facilitating the transfer of a licence; cultivation of the property; fence and keep up fences; paint and paper the property; or paint the outside of the property, have been omitted.

### **Instalment Contracts**

An instalment contract is a contract for the purchase of land by payment of the purchase price in instalments over time. The title to the land remains in the seller's name until the final instalment is paid.

A contract for the sale of land is deemed to be an instalment contract under the PLA if the deposit under the contract exceeds 10% of the purchase price (or 20%, in the case of a contract for the sale of a proposed lot, for example, under the *Land Sales Act 1984*). The PLA Report noted instalment contracts were being created inadvertently by exceeding the deposit percentage, with the result that a seller terminating a contract, for the buyer's inability to settle at the appointed time could be found to be a wrongful termination where the required 30 days' notice for the termination of instalment contracts was not given under section 72 of the PLA.

The Bill preserves some of the PLA's protection mechanisms for buyers under instalment contracts including: the right for the buyer to lodge a caveat; the right for the buyer to require a conveyance of the land; restrictions on how the seller can deal with the land during the term of the instalment contract; and restrictions on the seller's right to terminate the contract without providing 30 days' notice.

The Bill clarifies and modernises the language used in the relevant provisions to minimise the inadvertent creation of instalment contracts and to streamline the process where instalment contracts exist. In particular, the definition of an instalment specifically excludes payments made by the buyer to the seller for rent, outgoings, maintenance, rates and taxes, interest on any part of the purchase price, or for an extension of time to complete the contract.

Further, the buyer must elect for the instalment contract to be treated as an instalment contract before the instalment contract provisions will apply (rather than applying automatically as under the current PLA provisions).

The operation of the instalment contract provisions have also been simplified in the Bill as:

- (a) the buyer is no longer able to require conveyance of the property in return for a mortgage for any outstanding balance of the purchase price which will be owing on settlement of the sale of the property; and
- (b) the seller is no longer required to deposit the title deed and an instrument of transfer in escrow pending settlement of the sale of the property (as paper certificates of title are no longer issued in Queensland).

For an instalment contract, or where a contract is deemed an instalment contract and the buyer elects for the instalment contract to be performed as an instalment contract:

- (a) the seller cannot sell or mortgage the property unless the buyer has consented to the stated terms of the sale or mortgage in advance and the sale or mortgage has been notified to the buyer by the seller (which is a further clarification of the current PLA provisions); and
- (b) as with the current PLA provision, the buyer is able to lodge a caveat preventing registration of any other document affecting the land until settlement of the contract; and
- (c) as with the current PLA provision, the seller cannot terminate the contract unless the seller has given a notice to the buyer requiring the buyer to settle within 30 days of that notice; and
- (d) the buyer, provided the buyer is not in default, on giving 3 months' notice to the seller, may require transfer of the property on payment of the balance purchase money owing at settlement date (rather than in return for a mortgage for the balance of the purchase price as under the current PLA provisions).

Notwithstanding the PLA Report's recommendation to the contrary, the Bill also retains the existing exclusion of the State, Commonwealth, other States and the Public Trustee from the operation of the provisions relating to instalment contracts. The provision will also continue to apply to proposed lots, reflecting the preferred approach of stakeholders.

### **Right to Support of Land and Buildings**

Section 179 of the PLA varied the common law to provide a natural right for a building to be supported by adjoining land with strict liability in nuisance for a breach of this right. The PLA Report found this is unsatisfactory and may lead to unjust results.

The Bill varies the common law by abolishing any action in nuisance in relation to acts or omissions that adversely affect the support provided by supporting land to supported land. As recommended in the PLA Report, the Bill implements a duty of care in negligence between owners of supporting land and supported land so that neither owner may do or omit to do anything that adversely affects the support provided by the supporting land to the supported land.

The Bill allows this duty to be modified or excluded by express agreement between the parties.

### **Imposition of Statutory Rights of User in respect of Land**

Section 180 of the PLA allows the Supreme Court to impose a statutory right of user on servient land (burdened land) where it is reasonably necessary in the interests of the effective use of the dominant land (benefited land). The Bill extends this provision to where it is reasonably necessary for the effective use and development of the benefited (dominant) land, and also permits the order to be made for an easement in gross for public utility providers and permits the State to be bound to the extent that the State is the public utility provider in whose favour the easement in gross has been made.

## **Power to Modify or Extinguish Easements and Restrictive Covenants**

The existing section 181 allows the Supreme Court to modify or extinguish easements and restrictive covenants on the application of an interested person in certain circumstances including, for example, where the easement or covenant is obsolete.

The Bill extends the power of the court to modify easements to include provision for additional terms into the easement (such as usage and maintenance obligations), and to allow for modification or extinguishment of a Building Management Statement where the existing lot owners' consent cannot be obtained, and the modification or extinguishment is just and equitable and reasonably necessary in the circumstances.

## **Encroachment**

Section 182 of the PLA allows the court to make orders with respect to a building encroaching on adjoining land.

The Bill retains this provision but modernises it so that any compensation is calculated by reference to market value rather than unimproved capital value, and allows the court to make orders with respect to any land reasonably required as curtilage and for access to the encroachment.

## **Improvements under Mistake of Title**

Part 11 division 2 of the PLA provides for relief in the case of improvements constructed on land where the owner of the improvement mistakenly believed they owned the land.

The Bill retains this provision in modernised terms but expressly excludes its operation to fencing.

## **Equitable Interest and Things in Action**

Section 199 of the PLA permits assignment of debts or other things in action. The Bill modernises this provision and extends it to permit assignment of a part of a debt or other legal thing in action.

## **Perpetuities**

The common law rule against perpetuities provides that an interest in property must vest earlier than 21 years after the death of a person alive (or in the womb) at the time the interest was created.

The rule is intended to balance the freedom of disposition (that is, the ability of a person to deal with their property as they wish) and the need to protect the public interest by ensuring that property is not indefinitely tied up in trusts. However, it is legally complex to apply in practice, can give rise to anomalies and has been modified by statute.

Part 14 of the PLA modifies the common law rule against perpetuities and gives an option to select a set perpetuity period of up to 80 years.

The Bill abolishes the common rule and adopts a fixed perpetuity period of 125 years (as in the United Kingdom) for any trusts created after commencement or where the trust is drafted such that the new rule may be applied. The Bill also makes provision for existing trusts to ‘opt-in’ to the new fixed perpetuity period in certain circumstances.

The ‘wait and see rule’ in section 210 of the PLA is also modernised and updated in the Bill to make it clear that a disposition of property is not invalid because it may vest at a date that is after the end of the perpetuity period for the disposition provided it may vest within the perpetuity period.

The power of the court on an application for declarations for validity of a disposition of property with respect to the perpetuity period (currently in section 211 PLA) is also modernised and extended to permit the court to make orders extending the perpetuity period for trusts that predate the commencement of the Bill and for vesting of property that has not or will not vest within the 125-year perpetuity period.

As recommended in the PLA Report, the Bill clarifies section 218 of the PLA to ensure that the rule against perpetuities does not apply to options and rights of pre-emption. The PLA Report recommended that the re-drafted provisions relating to the powers of appointment, perpetuities and accumulations (in parts 13-14 of the PLA) be placed in a stand-alone legislation. However, the re-drafted provisions have included in the Bill and will remain part of the property law.

### **Corporations**

Part 15 of the PLA relating to corporations has been retained but simplified and modernised.

### **Apportionment**

Part 17 of the PLA provides for apportionment of annuities, rent, dividends, and other periodical payments on a day-to-day basis. The Bill has been drafted pursuant to the PLA Report’s recommendations to limit the application of the provisions to rent, as dividends and annuities are adequately covered under other legislation.

### **Unregistered Land**

The Bill replaces the existing provisions dealing with unregistered (or ‘old system’ land) (part 18 of the PLA) with a simplified process for notification and registration of any unregistered land. This process will involve public notification of the land for a two-month period allowing interested parties to claim a legitimate interest in the land. If appropriate, an inquiry under the *Land Title Act 1994* or a referral to court for directions by the Registrar under the *Land Title Act 1994* may occur. Otherwise, the Registrar will make a decision on whether the land shall either be declared unallocated state land, or if a person makes a successful claim to the land, that the person should be registered as the owner of the land in freehold under the *Land Title Act 1994*.

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## Property (de facto relationships)

The PLA Report recommended that part 19 of the PLA be reviewed with a view to repeal if it is found to no longer be of utility. The existing provisions deal with property settlement in de facto relationship. These provisions have been overtaken by the amendments to the *Family Law Act 1975 (Cth)* (FLA), which applies to all de facto relationships where the parties have separated after 1 March 2009.

Given the passage of time, and the limitation period which applies to making an application under part 19 (i.e. two years from the date the relationship ended unless leave is granted by the court) it is not necessary for these provisions to remain within the property law legislation. Accordingly, part 19 will be repealed by the Bill.

## Service of Notices

The Bill updates the existing service of notice provision under the PLA (section 347) to: facilitate electronic service in certain circumstances; provide deemed time for receipt of notices sent via post or electronic means; and extend the deemed postal services timeframes to reflect those now provided by Australia Post.

## Seller Disclosure Scheme

Seller disclosure refers to the information that a seller of real property discloses to the buyer of that property. There is currently no formal statutory seller disclosure framework in Queensland. Sellers are required to disclose certain information to comply with a complex mix of common law, statutory and contractual obligations. This multi-layered and disparate approach imposes a significant regulatory burden on a seller (and advisers) in identifying those obligations which apply to a particular conveyance transaction. It also results in buyers receiving a variety of different disclosure documents at different stages of the sale process including before contracts are formed, before settlement and at settlement. The consequences of failure to disclose information or inaccurate disclosure vary from outright termination to termination on grounds of material prejudice. This makes it difficult for buyers to understand information made available to them and the rights available to them in instances of non-disclosure.

In the Seller Disclosure Report, QUT recommended bringing together common law, statutory and contractual seller disclosure obligations into a statutory seller disclosure scheme for freehold land underpinned by four guiding principles:

- (a) 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; and
- (b) 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; and
- (c) information should be in an accessible form, easily understood and capable of being relied upon by the buyer; and
- (d) a single legal framework should be established providing consistency in the content and timing of disclosure and remedies available for a failure to comply.

The seller disclosure scheme in the Bill has been developed broadly in line with the recommendations in the Seller Disclosure Report, underpinned by the guiding principles.

The seller disclosure scheme will apply to all sales of freehold land, including sales by auction, sales by a mortgagee or receiver, and sales arising from the exercise of an option. There are exceptions for several categories of transaction either because the guiding principles are not satisfied or the consumer protection rationale is not satisfied due to the identity of the buyer or seller (for example, sales between co-owners for a boundary alignment). Whilst these exemptions will exempt a seller from providing the required disclosure under the Bill, this will not exempt a seller from making any disclosure required under another Act including, for example, under section 408 of the *Environmental Protection Act 1994*.

Under the scheme, a seller will be required to give the buyer a disclosure statement and any prescribed certificates that are applicable to the lot, before the buyer signs the contract for sale. The disclosure statement must contain the prescribed information, be in the approved form, be completed with information that is true at the time it is given to the buyer, and be signed by the seller. Prescribed certificates will include a body corporate certificate for a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997* (BCCM Act), or a lot included in a plan under the *Building Units and Group Titles Act 1980* (BUGT Act).

The disclosure statement and prescribed certificates may be given physically or electronically as set out the seller disclosure provisions.

The deeming service provision which applies to the seller disclosure provisions adopts electronic service time frames similar to those under the *Electronic Transactions (Queensland) Act 2001*. This reflects the fact that many contracts are entered into and/or provided outside of usual business hours. There are also specific requirements for how the disclosure statement and prescribed certificates must be given in relation to auctions.

Where the sale is by auction, the seller disclosure scheme distinguishes between the buyer of a lot that registers as a bidder before the start of an auction, and the buyer of a lot that registers as a bidder after commencement of an auction. In recognition of the practicalities of sales by auction, where a buyer registers as a bidder after the commencement of an auction, and has not previously been provided with the disclosure statement and prescribed certificates, simplified service procedures are provided (including display of a physical copy of the disclosure statement and prescribed certificates, or display of a link to an electronic copy). 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 prior to the conclusion of the auction.

The scheme provides that the buyer is entitled to terminate the contract prior to settlement if:

- (a) the seller fails to provide the buyer with the disclosure statement and any applicable prescribed certificate; or

- (b) the disclosure statement or a prescribed certificate contains an inaccuracy about, or is incomplete in relation to, a material matter, the buyer was unaware of the matter when the contract was entered into, and the buyer would not have entered into the contract had they been aware of the correct state of affairs.

If the seller fails to provide the disclosure statement or a prescribed certificate, a buyer will have an absolute right to terminate the contract, and will not be required to prove that the non-disclosure related to a material matter. This is intended to incentivise disclosure by sellers and their agents and compliance with the scheme generally. This position departs from the recommendation in the Seller Disclosure Report.

The only exception to the termination right is if the seller's failure to disclose, or the inaccuracy in the disclosure, is also a failure to comply with another Act. In these circumstances, the consequence provided in the other Act will apply instead. This ensures that the consequences for current disclosure requirements under existing legislation continue to apply.

The implementation of the seller disclosure scheme will represent a significant change to conveyancing practice in Queensland. However, the scheme will benefit parties to a conveyancing transaction by clearly identifying seller disclosure obligations; simplifying the current matrix of obligations; and creating a coordinated and transparent regime for disclosing information to the buyer that promotes consistency and clarity.

### **Outdated/Unnecessary Provisions**

Other outdated or unnecessary provisions of the PLA that are repealed by the Bill include:

- effect of repeal of Statute of Uses (section 7); Lands lie in grant only (section 8); Reservation of easements etc. in conveyances of land (section 9); Presumption that parties are of full age (section 16); Words of limitation (section 29); Provisions relating to co-parceners (section 33(2)); Receipt in instrument or endorsed evidence (section 52); Rights of purchasers as to execution of conveyance (section 65); Actions for possession by mortgagors (section 81); Effect of conveyance on sale (section 86); Prohibition upon creation of rent charges (section 176); and Release of part of land subject to rent charge (section 177), as these only apply, or apply only in effect, to old system land, so no longer serve any purpose;
- Persons taking who are not parties (section 13), as it has been overtaken by operation of the *Land Title Act 1994* and other provisions of the PLA and only applies to unregistered land;
- Rights of husband and wife (section 15), which overtook the common law that held that a husband and wife were treated as one entity as a wife had no separate legal identity from her husband after marriage, is no longer required as it has been adequately provided for by other legislative intervention;

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- Restrictions on operation of conditions of forfeiture (section 18), as it has little or no application in modern trust law practice. It has been overtaken in respect of alienation by bankruptcy by the *Bankruptcy Act 1966* (Cth);
  - Alienation in fee simple (section 21), as it has no ongoing utility, particularly given the application of the *Land Act 1994* and the *Land Title Act 1994*;
  - Insurance money from burnt building (section 58), as the provision has no utility. There are more effective alternative mechanisms under other legislation as well as mortgage, lease and contract for sale documents;
  - Application of insurance money on completion of a sale or exchange (section 63), as it has little or no utility;
  - Restrictions on vendor's right to rescind on purchaser's objections (section 67), as this is now obsolete in modern conveyancing practice;
  - Applications to court by vendor and purchaser (section 70); and Lessee notice of ejectment to the Lessor (section 111), as these provisions are already adequately addressed under the *Uniform Civil Procedure Rules 1999*;
  - section 102(3), which voids leases which take effect more than 21 years into the future as there appears no policy reason for this provision;
  - section 114(1) and (1A), provisions related to attornment by the lessee, that have no utility in modern leasing practice;
  - Relief against notice to effect decorative repairs (section 127); Tenants and other persons holding over to pay double the yearly value (section 138); and Tenant holding over after giving notice to be liable for double rent (section 139), as these provisions are out of step with or have no role in current commercial practice;
  - Summary recovery of possession (part 8 division 5); and Payments into and application to court (section 348), as there is an alternative process under the *Uniform Civil Procedure Rules 1999* and these sections have no utility;
  - Agricultural holdings (part 8 division 6, and schedules 4 and 5), as the provisions are out of step with modern commercial leasing practice and the matters covered are dealt with during the lease negotiation practice;
  - No presumption of right to access or use of light or air (section 178); and Prescriptive rights of way not acquired by user (section 198A), as these are antiquated and no longer consistent with modern easements under the *Land Title Act 1994*;
  - Presumptions and evidence as to future parenthood (section 212), and Unborn husband or wife (section 214), as the perpetuity period will no longer be determined by reference to life or lives so this is no longer required;

- Abolition of rule against double possibilities (section 216), as this is no longer required given the savings provision under the *Acts Interpretation Act 1954*;
- Voluntary disposition of land how far voidable as against purchasers (section 229); and Acquisition of reversions at an undervalue (section 230), as these provisions are inconsistent with general concepts of indefeasibility of title and are adequately provided for under existing equitable remedies;
- Restriction on constructive notice (section 346); and Forms (section 349), as these provisions no longer have any ongoing utility.

## Alternative ways of achieving policy objectives

The proposed Bill is essential to give effect to the policy objectives. There is no alternative way of achieving the policy objectives.

## Estimated cost for government implementation

Any additional costs associated with implementation of this Bill will be adequately met by existing budgetary provisions.

## Consistency with fundamental legislative principles

The Bill is generally consistent with the fundamental legislative principles (FLP) in the *Legislative Standards Act 1992*. Aspects of the Bill that raise possible FLP issues, and justifications for any breaches, are addressed below.

### The Rights and Liberties of Individuals

- Makes rights and liberties or obligations depend on administrative power only if the power is sufficiently defined and subject to appropriate review

The power of the Registrar to decide whether unregistered land should be registered under Part 15 of the Bill is well defined and is subject to the Registrar's right to hold an inquiry and, if required, refer the matter to the Supreme Court for directions or a decision under part 2 division 5 of the *Land Title Act 1994*.

- Consistent with principles of natural justice

The Bill embodies the principles of natural justice including requiring notice to be given to relevant parties so that they are aware of any deprivation of their rights, interests or legitimate expectations and are able to take steps to protect their interests or refer the matter to an independent and impartial decision maker under a number of provisions in the Bill as set out below.

*Right to relief against payment of accelerated sum (clause 130 of the Bill)*

This provision provides that if a mortgagor defaults under a mortgage and the terms of the mortgage provide for an acceleration of the whole, or any part of, the principal amount or interest secured by the mortgage over and above that the subject of the default, then if the mortgagor remedies the default (including payment of any reasonable expenses for the mortgagee associated with the default) before the mortgagee exercises a power of sale or starts proceedings to enforce their rights, the mortgagee cannot seek the accelerated amount and the court may grant the mortgagor relief from any proceedings by the mortgagee seeking payment of the accelerated amount.

*Effect of requirement in lease for consent of lessor to assign lease or take other action (clause 142 of the Bill)*

This provision:

- (i) allows the lessor to request further information from the lessee to make a decision as to whether or not to grant consent, thereby giving the lessee an opportunity to provide the lessor with all information required to enable the lessor to make a decision on whether or not to consent to the lessee's proposal;
- (ii) requires the lessor to make a decision and provide notification of the decision along with reasons for any conditions attaching to any consent, or reasons for any refusal to grant consent; and
- (iii) allows the lessee a right to apply to court to challenge the lessor's decision to withhold consent, or attach unreasonable, unnecessary or onerous conditions to the consent, or a failure to make a decision on the basis that the lessor has unreasonably withheld consent.

*Lessor to give notice to remedy breach to lessee and designated persons before forfeiture of the lease (part 9, division 5, subdivision 2 of the Bill)*

These provisions:

- (i) require that before the lessor may exercise a right to re-enter land for a breach of a term of the lease, the lessor must give a notice to remedy breach to the lessee, unless the lessee has given up possession of the land;
- (ii) require the lessor to give a copy of any notice to remedy breach given to the lessee to each designated person for the lease where the lessor knows that designated person's name and address;
- (iii) allow the lessor to peaceably re-enter the land where the lessor reasonably believes the lessee has given up possession of the land. The lessor is required to give notice to any designated person for the lease after the re-entry, where the lessor knows that designated person's name and address;
- (iv) provide that unless the lessor can peaceably re-enter the land, or the lessee gives up possession of the land, the lessor must make an application to the court for recovery of possession; and
- (v) allow the lessee or a designated party to apply to the court for relief against forfeiture, or proposed forfeiture.

*Application for relief to lessor's refusal to renew or extend lease term or sell reversion of lease by tenant or designated persons (part 9, division 5, subdivision 3)*

These provisions:

- (i) require the lessor to give notice to the lessee and any designated person for the lease where the lessor has a name and address for the designated person, that the lessor intends to refuse to renew or extend the lease term or refuse to sell the reversion of the lease and set out the reasons for the refusal;
- (ii) allow the lessee or a designated person for the lease to apply to the court within one month of the notice of refusal from the lessor for relief from the lessor's refusal (or notice of intention to refuse);
- (iii) do not permit the lessor to refuse to renew, or extend the term of, or sell the reversion of, the lease unless the lessor has given the required notice to the lessee, and the lessee or a designated person has not made an application to court within 1 month of the notice from the lessor.

*Registrar to give public notice of unregistered land or of a request to register unregistered land in favour of a person (part 15 of the Bill)*

These provisions require the Registrar to give public notice of any unregistered land or of any request to register unregistered land to allow any interested parties to make a claim in relation to the unregistered land within two months of the public notice, and for the Registrar, if appropriate, to hold an inquiry under the *Land Title Act 1994* and to refer the matter for directions or a decision by the Supreme Court under the *Land Title Act 1994*.

- Does not adversely affect rights and liberties, or impose obligations, retrospectively

The Bill applies the following rights and obligations from commencement of the Bill retrospectively as set out below.

*Waiver of State's rights to property by escheat on death intestate of person before commencement (clauses 243 and 18 of the Bill)*

A person may apply for waiver of a right of the State to property by escheat, devolution or *bona vacantia* on the death intestate of a person whether the death happened before or after the commencement of the Bill. Having this clause apply irrespective of when the death happened, whilst retrospectively impacting on the State's obligations and rights, is in the public interest to enable, where a waiver is granted by the State, property of a deceased person to pass other than to the State.

*Liability of co-owner of property to account for interest in property arising before commencement (clauses 244 and 27 of the Bill)*

A co-owner of property is liable to account to another co-owner whether the interest in the property of the co-owners arose before or after the

commencement. While the clause could be considered retrospective in that it applies to an interest in co-owned property arising prior to commencement, the effect of this clause is identical to the equivalent provision in section 43 of the PLA. In any event, the retrospective operation of this clause continues to allow a just and equitable outcome between co-owners which is in the public interest.

*Abolition of rule in Pigot's case (clauses 245 and 60 of the Bill)*

The rule in *Pigot's case*, which provides that a material alteration of a deed invalidated or rendered the deed voidable, is abolished under the Bill, whether the alteration is made before or after the commencement of the Bill. However, the rule is not abolished for proceedings started before commencement.

*Covenant or agreement made by person with self and others before commencement (clauses 246 and 63 of the Bill)*

A covenant or agreement entered into by a person with the person's self and others are enforceable as between that person and the others, whether the covenant or agreement was entered into before or after the commencement of the Bill, except in relation to a court order made before the commencement.

While the clause could be considered retrospective in that it applies to a covenant or agreement entered into before commencement, the effect of this clause is identical to the equivalent provision in section 14 of the PLA. In any event, the retrospective operation of this clause ensures consistency and certainty in the rights between parties to the covenant or agreement. Limiting the operation of this provision where those rights have already been determined by a court before the commencement of the Bill ensures that there is no interference with the administration of justice and the courts.

*Particular covenants in registered easements created before commencement (clauses 247 and 65 of the Bill)*

Under the Bill, a covenant in a registered easement over land for the benefit of other land is binding on parties to the easement and their successors in title, unless the covenant is expressed to be personal to the parties to the easement. This provision applies whether the easement was created or registered before or after the commencement. The retrospective effect of this provision provides certainty and consistency in the rights of parties to the easement and their successor in title, which is in the public interest. Further, the PLA Final Report specifically recommended that this provision operate retrospectively to: clarify the law in this area; avoid creating confusion where the old rules continue to apply; and avoid a situation where only new covenants get the benefit of the reform in this area.

*Effect of inoperative computers in office of the land registry on day of settlement on contract entered into before commencement (clauses 248 and 79 of the Bill)*

Suspending time of the essence, to provide a new settlement date, where inoperative land registry computers on the date of settlement prevent

verification of title, irrespective of whether the contract was entered into before or after the commencement of the Bill, is in the public interest, whether the contract was entered into before or after the commencement. It provides a certain outcome and process without penalising either party where settlement of the contract is unable to proceed as per the contract due to no fault by either party to the contract.

*Effect of inoperative computers in particular entities on day of settlement on contract entered into before commencement (clause 249 and 80 of the Bill)*

This clause provides a new settlement date, where inoperative computers that impact on the e-conveyancing settlement and registration system on the date of settlement, prevent settlement of the contract. The clause applies irrespective of whether the contract was entered into before or after the commencement of the Bill. It provides a certain outcome and process without penalising either party where settlement of the contract is unable to proceed as per the contract due to no fault by either party to the contract, which is in the public interest. Time remains of the essence and the day of settlement is taken to be the next business day, which means there is no adverse impact on existing rights.

*Effect of adverse event on day of settlement on contract entered into before commencement (clauses 250 and 81 of the Bill)*

This clause suspends time of the essence to provide a process for nomination of a new settlement date where an adverse event, outside of the party's control, prevents a party settling on the contract settlement date., This clause provides a certain outcome and process without penalising either party where settlement of the contract is unable to proceed as per the contract due to no fault by either party to the contract and is in the public interest. whether the contract was entered into before or after the commencement. Time is again of the essence when a new settlement date is agreed or notified under the clause, which means there is no adverse impact on existing rights.

*Mortgagee's power of sale in relation to disclaimed property mortgaged before commencement (clauses 252 and 115 of the Bill)*

While the clause could be considered retrospective in that it applies to a mortgage that was either entered into, or disclaimed, before commencement, the effect of this clause is identical to the equivalent provision in section 84A of the PLA. In any event, the retrospective operation of this clause simplifies and streamlines the process for a mortgagee to exercise a power of sale over disclaimed property, reducing costs to the mortgagee and to the State, which is in the public interest.

The clause also continues to provide adequate protection of any other interested parties' rights by requiring the mortgagee to give notice to any other interested party at least 30 days before exercising the power of sale so that principles of natural justice are satisfied.

*Court may order sale of mortgaged property in proceeding for redemption or foreclosure started before commencement (clauses 253 and 134 of the Bill)*

While the clause could be considered retrospective in that it allows a court to order sale of mortgaged property in a proceeding seeking sale, redemption, foreclosure or raising or payment in any way of mortgage money irrespective of whether the proceeding was started before or after the Bill commenced, the effect of this clause is identical to the equivalent provision in section 99 of the PLA. In any event, the retrospective operation of this clause allows the court to make orders as the court determines appropriate which is in the interests of the administration of justice.

*Realisation of equitable mortgage in proceeding started before commencement (clauses 254 and 135 of the Bill)*

While the clause could be considered retrospective in that it allows the court to make an order for sale in relation to an equitable mortgage of land providing for the equitable mortgage to be dealt with as if it were a legal mortgage, irrespective of whether the proceedings started before the commencement of the Bill, the effect of this clause is identical to the equivalent provision in section 100 of the PLA. In any event, the retrospective operation of this clause allows the court to make orders as the court determines appropriate which is in the interests of the administration of justice.

*Dealings with leases entered into before commencement (clause 255 and part 9 division 4 of the Bill – excluding clause 144)*

This division sets out a procedure that requires a lessor, where consent has been sought by a lessee to deal with the lease, to not unreasonably withhold consent. It requires the lessor to comply with a timeframe and provides reasons for any decision. This division (other than clause 144) applies to any dealing occurring after commencement of the Bill, regardless of whether the lease was entered into before or after commencement.

While the relevant provisions may be considered retrospective in that they could apply to a lease entered into before commencement, the provisions are aimed at a dealing with the lease where the dealing happens after commencement. This approach provides certainty of the timeframe for a decision and a formal process for parties to a lease and in related commercial dealings including, for example, sales of business which include an assignment of a lease. This is in the public interest.

Clause 144, which excludes a lessee from any liability under a lease, on a subsequent assignment by an assignee, where the lease was previously assigned to the assignee by the lessee, only applies to a lease entered into after the commencement. Therefore, this clause does not have any retrospective application.

*Relief in relation to leases entered into before commencement (clause 256 and Part 9, division 5 of the Bill)*

Part 9 division 5 of the Bill allows the court to provide lessees and a designated person for the lease with relief against forfeiture of the lease or sublease, and relief against the lessor's refusal to renew, or extend term of, or sell the reversion of, the lease.

This provides rights and protections are in the public interest and allow the court to make orders as the court determines appropriate which is in the interests of the administration of justice.

Part 9 division 5 may be considered retrospective in that it applies to leases entered into before commencement. However, the division applies to the decision of the lessor to forfeit the lease, or refuse to renew, or extend the term of, or sell the reversion of the lease where the decision is made after commencement. Further, the PLA contains provision that give the lessee a right to seek relief in certain circumstances, although the rights in the Bill have been simplified and modernised to reflect commercial practice and expectations. It is necessary for the new division to apply to existing leases to ensure that all lessees are able to benefit from the simplified and modernised provisions in the Bill with respect to such relief.

*No interest created by prescription before commencement (clauses 257 and 182 of the Bill)*

No interest can be created by prescription or through the doctrine of lost modern grant under the *Land Title Act 1994* of the *Land Act 1994* whether the interest is created before or after commencement of the Bill.

While this provision may be considered retrospective, it is consistent with current section 198A of the PLA. Continuing the provision in the Bill provides certainty as to interests which can be created. This is in the public interest as it protects the indefeasible rights to land under the land titling system in Queensland.

*Disposition with intent to defraud creditor before commencement (clauses 258 and 193 of the Bill)*

Where a disposition is made with the intention to defraud creditors, unless to a purchaser for valuable consideration, in good faith and without notice, that disposition will be voidable by creditors or those with an interest affected by the disposition, irrespective of whether the disposition happens before or after the commencement of the Bill.

While this provision may be considered retrospective, it is consistent with current section 228 of the PLA. Continuing the provision in the Bill protects the interests of creditors and purchasers, where appropriate, and also allows the court to make such orders as it considers appropriate. This is in the public interest and the interests of the administration of justice.

*Power of appointment over property created before commencement (clause 259 and Part 12 of the Bill)*

Part 12 of the Bill modernises the existing part 13 of the PLA. While this may be considered retrospective, because the new part applies to powers of appointment over property whether created before or after commencement, the new provisions are consistent with the current PLA which ensure continuity of treatment between powers of appointment created under the PLA and the Bill.

- Provides for compulsory acquisition of property only with fair compensation

The Bill makes provision for fair compensation in relation to an acquisition of property or an interest in property including where the court is able to make orders for:

- (a) compensation where there is a difference in the value of the parcels or shares of land after physical division of the property by the court (clause 36 of the Bill);
- (b) imposition of a statutory right of use (clause 180 of the Bill);
- (c) an easement or covenant to be modified or extinguished (clause 181 of the Bill);
- (d) a building encroachment on land (part 10, division 3 of the Bill);
- (e) an improvement under mistake of title (part 10, division 4 of the Bill).

### **The Institution of Parliament**

- Provides for subordinate legislation that shows sufficient regard to the institution of Parliament

The Bill gives regulation-making powers for disclosure statements and body corporate certificates in relation to the seller disclosure provisions. A regulation under the Bill will set out the specific requirements for the disclosure documents, prescribed certificates, prescribed information and the warning and other statements under the seller disclosure scheme. The Bill provides for the contents of the approved form for the body corporate certificate for a lot included in a community titles scheme under the BCCM Act or a lot included in a plan under the BUGT Act (which are prescribed certificates) to be prescribed by the regulation modules under the BCCM Act and the regulation under the BUGT Act. This approach may arguably be viewed as not having sufficient regard to the institution of Parliament, as it could effectively amend the Bill by regulation.

However, the regulation making powers are consistent with the policy objectives of the Bill, which include prescribing particular information and documents that the seller of a lot must provide to the buyer of a lot. Providing for these matters in by regulation allows flexibility to ensure that relevant matters may be prescribed for the seller disclosure scheme. This acknowledges that the required disclosure may change from time to time with changes to standard conveyancing practice, availability of appropriate information and/or technological advances.

The Bill authorises the making of transitional regulations, during a transitional period of two years: where necessary to enable or facilitate the transition from the

PLA to the Bill; or for which the Bill or a regulation does not make sufficient provision. A regulation must be declared as a transitional regulation and may have retrospective operation to a time that is no earlier than the day the Bill commences. A transitional regulation will expire two years after the commencement of the Bill.

Given the range and breadth of issues in the Bill, the period of two years is established to recognise that implementation of new and re-drafted provisions in the Bill may take some time to flow through to changes to industry practices in relevant areas.

Expiry of a transitional regulation at any lesser period could compromise the effectiveness of transitional regulatory arrangements to expeditiously deal with issues that may arise, resulting in lengthy and expensive litigation to resolve any such issues. The transitional-regulation making power is essential in the event that unanticipated transitional or implementation issues arise that have not been contemplated during consultation with key stakeholders and peak bodies. The transitional-regulation making power is an important tool to be able respond to, and provide commercial certainty for, such unanticipated issues, should any arise.

## **Consultation**

Key government and non-government stakeholders across a range of sectors that either have direct involvement with, or an interest in, property law in Queensland were consulted. Targeted stakeholder consultation was undertaken with peak bodies in the property and legal industry. Public consultation was also undertaken on an exposure draft Bill.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state. The amendments in the Bill do not impact on other jurisdictions or the Commonwealth and are not affected by any national legislation or work plans through the Council for the Australian Federation.

Notwithstanding this, in preparing the PLA Report, the comparable property law in other jurisdictions (including Australian and overseas jurisdictions) was reviewed and considered in making the final recommendations in the PLA Report which have been broadly adopted in the Bill.

# Notes on provisions

## Part 1 – Preliminary

### Division 1 – Introduction

*Clause 1* states the short title of the Act as the *Property Law Act 2023*.

*Clause 2* provides for the Act to commence on a day fixed by proclamation.

### Division 2 – Purposes and applications of Act

*Clause 3* provides that the Act binds all persons, including the State and, where possible, the Commonwealth and the other States but does not make the State, the Commonwealth or any other State liable to be prosecuted for an offence against this Act.

*Clause 4* provides that the Act applies to: land in Queensland; property other than land, whether in or outside Queensland; and documents, whether executed in or outside Queensland, to the extent that the general law of Queensland applies to that property and those documents.

*Clause 5* provides that the Act applies subject to other Acts and in the event of any inconsistencies between those other Acts and the Act, the other Acts will prevail. The other Acts are the *Land Title Act 1994*, the *Land Act 1994*, the *Mineral and Energy Resources (Common Provision) Act 2014*, and any other Acts listed in section 9 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

### Division 3 – Interpretation

*Clause 6* refers to the dictionary in Schedule 2 which defines particular words used in the Act. It also notes that particular words used in the Act are defined in schedule 1 of the *Acts Interpretation Act 1954*.

## Part 2 – General rules affecting property

### Division 1 – Requirements for writing

*Clause 7* provides that a contract for the disposition of land is not enforceable in a proceeding unless it is in writing and signed by the party it is to be enforced.

*Clause 8* provides that the creation of a legal or equitable interest in relation to land, or a trust relating to land, must be in writing and signed by the person created the interest or creating or declaring the trust.

*Clause 9* provides that an interest in land created by parol, and not in writing or signed by the person creating the interest, has the effect of an interest at will only.

Clause 10 provides that part 2 division 1 does not affect particular matters, including: the creation of a short lease; the application of the law relating to part performance; the making or operation of a will; and the disposition of land by operation of law.

## **Division 2 – Other rules**

*Clause 11* permits a transfer or lease of property from a person to themselves, or to themselves and others.

*Clause 12* provides that an estate does not merge by operation of law with another estate unless the person acquiring both estates intends the estates to merge.

## **Part 3 - Freehold estates**

*Clause 13* provides that the only freehold estates capable of being created are an estate in fee simple and a life estate.

*Clause 14* abolishes the rule in *Shelley's Case* and provides that an estate tail and a quasi-entail cannot be created. In a document, words that would have created an estate tail are deemed to create an estate in fee simple.

*Clause 15* abolishes any incident of tenure for the benefit of the State on any granting of an estate in fee simple with such grant in free and common socage.

*Clause 16* abolishes any quit rent to the State out of the land and releases the land from quit rent.

*Clause 17* abolishes escheat for dissolved corporations or corporations that have ceased to exist, subject to the *Corporations Act 2001* (Cth), with the State entitled to take as *bona vacantia* any of the corporation's property that would have been liable to escheat if escheat had not been abolished.

*Clause 18* provides a process by which a person may seek that the State waive its rights to property by escheat, devolution or *bona vacantia* on the death intestate of a person by application to the Minister. The Minister may waive the State's rights on terms the Minister considers appropriate and must publish the details of the waiver in the gazette.

*Clause 19* provides that a life tenant who commits any voluntary or equitable waste in relation to land is liable in damages to the person entitled to the remainder in the land on the life estate ending, unless: in the case of voluntary waste, there is an express or implied term in the document creating the life estate permitting the voluntary waste; or in the case of equitable waste, there is an express term in the document creating the life estate permitting the equitable waste. Clause 19(2) allows a trustee to bring a proceeding on behalf of the remainder person.

*Clause 20* allows a person who is entitled to an interest in property immediately after a life estate in the property ends, to make an application to court for possession, damages or an account of rent or profits if a third person continues in possession of the property

after the life estate ends, or continues receiving rent or profits from the property. Clause 20(3) provides that if the life tenant or third person has been absent for at least 7 years, the court may presume that the life tenant or third person has died.

*Clause 21* provides a penalty for holding over after a life estate ends. If the person in possession does not give vacant possession within 30 days, that person is liable for the market rent for the land from the date the life estate ends until the date vacant possession is given.

## **Part 4 – Future Interests**

*Clause 22* provides that a future interest takes effect as an equitable interest rather than a legal interest and that, notwithstanding the *Land Title Act 1994*, any interest in remainder must not be registered on the freehold register.

*Clause 23* provides that an interest in property that can be created or disposed of may be created or disposed of by an individual by will or during the individual's lifetime.

*Clause 24* provides circumstances where an interest in property that is subject to a gift over to another person stops being capable of taking effect.

## **Part 5 – Co-ownership of Property**

### **Division 1 – General rules**

*Clause 25* provides that property may be held by two or more persons as joint tenants or as tenants in common.

*Clause 26* provides that a corporation may acquire and hold property in joint tenancy in the same way as if it were an individual, and establishes other rules that apply when a corporation becomes entitled to property as a joint tenant with any other co-owner, including the conditions and restrictions that apply to the acquisition and holding of property by a corporation in severalty.

*Clause 27* provides that a co-owner who receives more than that co-owner's just or proportionate share according to the co-owner's interest in the property is liable to account to each other co-owner of the property.

*Clause 28* provides that, subject to some exceptions, a disposition of an equitable interest in property to two or more persons together beneficially takes effect as a disposition to the persons as tenants in common, not joint tenants.

*Clause 29* provides that tenants in common of an equitable interest in property who become entitled to a legal interest in the property that is equal to and coextensive with their equitable interest in the property, hold the legal and equitable interests in the property as tenants in common, unless otherwise agreed.

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## **Division 2 – Sale and division of co-owners’ property**

### **Subdivision 1 – Preliminary**

*Clause 30* provides for definitions for the division.

*Clause 31* provides that nothing in the division affects or prevents the severing of a joint tenancy under: a provision of the Act other than under this division; or another Act or law.

*Clause 32* provides that despite any contrary provision in a document creating or related to a security interest, the severing of a joint tenancy under this division does not breach the terms of the document, and does not affect any existing powers, rights or interest of a person who holds a security interest over the property to which the severance relates.

### **Subdivision 2 – Sale and division**

*Clause 33* provides for application to the court for sale or division of co-owned property.

*Clause 34* allows the court to make any order the nature of the case requires to ensure a just and fair sale or division of the co-owned property.

*Clause 35* provides that the court must make an order for the sale and division of the co-owned property unless it considers an order for physical division or an order for a combination of sale and division would be more just and fair.

*Clause 36* allows the court to make an order varying the entitlements of co-owners when physically dividing the property and order compensation to be paid by a co-owner to another to compensate for any difference in the value of the divided property.

*Clause 37* provides that the court may order the appointment or removal of a trustee for the sale or physical division of the property and make any order the nature of the case requires when appointing a trustee for sale or physical division of the property. Subclause 37(2) provides that an order appointing a trustee for the sale of property does not by itself sever any joint tenancy.

*Clause 38* provides that if an order is made appointing a trustee for the sale or physical division of the property, the property vests in the trustee in the same way as a vesting order under section 90 *Trusts Act 1973* .

*Clause 39* provides for other orders that the court may make, including orders relating to sale by private sale or an auction, obtaining a valuation, about the timeframe of the sale and how the costs of the sale are to be met.

*Clause 40* provides that the court may make orders about compensation, accounting to another co-owner or varying the co-owner’s interest in the property. Subclause (2) lists factors that the court must consider when making an order. Subclauses (3) and (4) set out when a court may make an order requiring payment of an amount equivalent to rent for an owner who is not occupying or using the property.

### **Subdivision 3 – Accounting of amounts received by co-owners**

*Clause 41* provides that a co-owner of property may apply to the court for an accounting under clause 42 irrespective of whether or not an application has been made for sale and/or division of the co-owner property under subdivision 2 (in part 5).

*Clause 42* provides that the court may make any order that the nature of the case requires to ensure a just and fair accounting of amounts received by the co-owners in relation to the property.

### **Subdivision 4 – Miscellaneous matters**

*Clause 43* provides that the court may stay or adjourn any proceeding under subdivision 2 or 3 (in part 5) if a co-owner starts, or has started, or to allow a co-owner to start, a proceeding under the *Family Law Act 1975* (Cth) in relation to the property.

## **Part 6 – Deeds and covenants**

### **Division 1 - Deed**

#### **Subdivision 1 – Preliminary**

*Clause 44* provides definitions for the Division.

*Clause 45* defines ‘*counterpart*’, for a document.

*Clause 46* provides that the division does not apply to an enduring document under the *Powers of Attorney Act 1998*.

*Clause 47* provides how the division applies to a general power of attorney made under the *Powers of Attorney Act 1998*, or given under a deed.

*Section 48* provides that the division does not affect the way in which documents are validly executed under the *Land Act 1994* or the *Land Title Act 1994*.

#### **Subdivision 2 – Form and execution**

*Clause 49* provides how a document takes effect as a deed.

*Clause 50* provides that a document has effect as a deed even if it is an electronic document and electronically signed.

*Clause 51* provides how a deed may be executed by an individual.

*Clause 52* provides how a corporation may execute a deed.

*Clause 53* provides how a partnership or an unincorporated association may execute a deed.

*Clause 54* provides how the State may execute a Deed.

*Clause 55* provides for signing a counterpart or true copy of a document that is to have effect as a deed.

### **Subdivision 3 – Miscellaneous matters**

*Clause 56* provides how delivery of a deed is effected.

*Clause 57* provides that a receipt for consideration in the body of the deed is sufficient discharge for the consideration to the person giving the consideration.

*Clause 58* provides the requirements for a deed made under the division to be deposited in the registry in support of another document lodged or deposited in the registry.

*Clause 59* provides the circumstances when a person may assume that a document has been duly executed by a corporation.

*Clause 60* abolishes the rule in *Pigot's* case.

## **Division 2 - Covenants**

*Clause 61* provides for the construction of expressions used in deeds or other documents.

*Clause 62* provides that a covenant, power or term implied in a document under the Act or by an Act may be enforced in the same way as if it were expressed in the document, and may be negated, varied or extended by the express terms of the document or another document.

*Clause 63* provides that covenants and agreements by a person with themselves and others are enforceable.

*Clause 64* provides that a covenant relating to land binds the covenantor, covenantee, and their respective successors in title or anyone deriving title from each of them. Restrictive covenants will also bind the owners and occupiers of the land for the time being burdened by the covenant.

*Clause 65* provides that a covenant in a registered easement burdening land for the benefit of other land, which imposes a positive or negative obligation in relation to the use, ownership or maintenance of the burdened land, binds the grantor and the grantee of the easement, and their respective successors in title, unless the covenant is expressed to be personal to the grantor or the grantee of the easement.

*Clause 66* provides that the Act does not confer a right to register a restrictive covenant.

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## **Part 7 – Contracts, sales of land, instalment contracts and seller disclosure for sales of lots**

### **Division 1 – Contracts**

*Clause 67* provides when a joint promise takes effect and when a joint liability is discharged.

*Clause 68* provides: when a contract containing a promise for the benefit of a third party is enforceable by the third party; when that promise may be varied or terminated by the parties to the promise; and how an obligation imposed by the contract on the third party may be enforced against that party.

*Clause 69* provides that a guarantee (which includes an indemnity), is not enforceable unless: it is in writing, or its terms are recorded in writing; and the guarantee or written record is signed by the party against whom the guarantee is sought to be enforced. Subject to the *National Consumer Credit Protection Act 2009* (Cth), a guarantee that is an electronic document or that is digitally signed, may comply with the writing requirement.

*Clause 70* provides that if a contract of other document provides that a certificate of a person is conclusive evidence of a fact, the certificate is evidence, but not conclusive evidence, of the fact except in limited circumstances as set out under subclause (2).

*Clause 71* provides for the effect of non-compliance with a statutory instrument on a contract or disposition concerning property and a contract for the sale of land. Unless the statutory instrument is prescribed subordinate legislation, the statutory instrument does not and cannot render the contract or disposition voidable or unenforceable or, for a contract for the sale of land, give a party to the contract the right to terminate the contract for a failure by another party to the contract to comply with the statutory instrument.

*Clause 72* provides that if an Act requires a certificate to be obtained or given before or when entering into a contract for the disposition of property or on making a disposition of property, the requirement will be complied with if the certificate is obtained or given before settlement of the contract or disposition, unless this Act or another Act expressly provides otherwise.

*Clause 73* provides that a stipulation in a contract as to time or otherwise, that under the rules of equity is not of the essence of the contract must be construed and has effect at law under the rules of equity.

### **Division 2 – Sales of land**

*Clause 74* provides definitions for the division.

*Clause 75* provides that, unless this Act or another Act expressly provides otherwise, a reference in the Act or another Act to the settlement, however described, of the sale of land, or a contract for the sale of land, using e-conveyancing, is a reference to the

electronic workspace for the e-conveyance recording the financial settlement for the sale, or, if there is no financial settlement for the sale, the acceptance by the registrar for electronic lodgement of the documents necessary to transfer title.

*Clause 76* provides that particular conditions are implied into a contract for the sale of land unless the contract provides otherwise. Implied conditions relate to caveats, objections, encumbrances, payment of money and the location of settlement.

*Clause 77* provides that, a buyer may rescind a contract for the sale of land, if the residential dwelling is so damaged or destroyed as to be unfit for occupation as a residential dwelling. *Clause 77(3)* allows the seller to restore the residential dwelling to the condition it was in immediately before it was so damaged or destroyed, and *clause 77(4)* allows the buyer to inspect the residential dwelling after receiving notice of the restoration.

*Clause 78* provides that where a contract for the sale of land provides that the day of settlement of the contract is a day that is not a business day the settlement date will be a day as agreed by the parties or otherwise the next business day after the settlement date.

*Clause 79* applies if the land registry computers are inoperative on the date of settlement of a contract for the sale of land, and the buyer is unable to verify the seller's title, so that time ceases to be of the essence until after the computers becomes operational again. Either party may give a notice to the other to complete the contract on a day determined in accordance with the provision.

*Clause 80* applies if computers of various entities (e.g. an office of the Commissioner of State Revenue under the *Taxation Administration Act 2001*, the Reserve Bank of Australia, or a financial institution) are inoperative, including because the entity is closed for business, on the day for settlement of a contract for the sale of land, the settlement date is taken to be the next business day, unless otherwise agreed.

*Clause 81* provides that if a party is unable to complete settlement of the contract for the sale of a lot on the day and time of settlement due to an adverse event, time stops being of the essence until the parties agree on a new settlement day or the party unable to complete settlement gives a notice to the other party to complete the contract in accordance with the clause.

The imminent threat of a cyclone, fire, flood, storm or other seriously disruptive event, where it causes serious disruption to a community, such as via an evacuation, could satisfy the definition of an adverse event, if that threat causes serious disruption to the community, even if, for example, the cyclone does not ultimately pass through that community.

*Clause 82* provides that a written direction by a seller's authorised agent given to the buyer, or the buyer's authorised agent, regarding the payment of money under a contract for the sale of land is sufficient discharge of the buyer in relation to payment of the money.

*Clause 83* provides that the rule in *Bain v Fothergill* is abolished in relation to the contract for the sale or other disposition of land and the court may award damages for loss of bargain against a seller who cannot perform a contract for the sale or other disposition of land because of a defect in the seller's title.

*Clause 84* provides that if a seller's defect in title does not entitle the seller to specific performance of a contract for sale of land against a buyer but the defect does entitle the buyer to rescind the contract, then the buyer is entitled to recover any deposit and instalments paid by the buyer under the contract and is relieved from all liability under the contract, unless the contract disclosed the defect and contained a term precluding the buyer from objecting to the defect.

*Clause 85* provides that a seller may forfeit a deposit of no more than 20 % of the purchase price if the buyer breaches the contract for the sale of a proposed lot.

*Clause 86* provides that, for an e-conveyance, a statutory right of termination in relation to a sale of land or a contract for sale of land, that is expressed to end on settlement, ends on settlement and cannot be exercised during any period the electronic workspace for the e-conveyance is locked for the purposes of settlement.

### **Division 3 – Instalment contracts for sale of land**

*Clause 87* provides definitions for the division.

*Clause 88* provides that the division: applies to an instalment contract despite any agreement to the contrary; does not bind the State, the Commonwealth or any other State; and does not apply in relation to a contract for the sale of land by the public trustee (as defined under section 6 of the *Public Trustee Act 1978*).

*Clause 89* defines an *instalment contract*.

*Clause 90* provides that if a contract for the sale of land may, at the election of the buyer, be performed as an instalment contract, the contract is not an instalment contract unless and until the buyer gives the seller a notice stating that the buyer is electing to perform the contract as an instalment contract.

*Clause 91* provides that, under an instalment contract, a seller cannot terminate a contract because of the buyer's default in payment of an instalment of the purchase price of the land, or in payment of any other sum of money, other than a deposit, until 30 days after the seller gives the buyer notice about the default in the approved form. If the buyer pays the instalment or sum of money within 30 days after the seller gives the notice to the buyer, the buyer is no longer in default and the seller no longer has any right to terminate in respect of that default.

*Clause 92* provides that a seller under an instalment contract must not sell or mortgage the land the subject of the contract without the buyer's consent.

*Clause 93* provides that a buyer under an instalment contract may lodge a caveat under the *Land Title Act 1994* preventing the registration of any document affecting the land

the subject of the contract until settlement of the contract. Subclause (4) sets out when the registrar or court may remove the caveat.

*Clause 94* provides that a buyer under an instalment contract, who is not in default, may require the seller to transfer the land on a stated day in exchange for payment of the balance of the purchase money. The notice must be given to the seller at least 3 months before the stated day.

## **Division 4 – Seller disclosure for sales of lots**

### **Subdivision 1 – Preliminary**

*Clause 95* provides definitions for the division.

*Clause 96* sets out when a buyer of a lot and a seller of a lot are related.

*Clause 97* provides that a thing required or permitted to be done by the buyer or seller of a lot under the division may be done personally or through an authorised agent.

*Clause 98* provides that the division applies despite any agreement to the contrary.

### **Subdivision 2 – Disclosure requirement**

*Clause 99* provides that before a contract for the sale of the lot is signed by the buyer, the seller must give the buyer the disclosure statement and each prescribed certificate.

*Clause 100* provides when the seller of a lot is not required to comply with clause 99. The exceptions in this clause will not exempt a seller from making any disclosure required under another Act including, for example, under section 408 of the *Environmental Protection Act 1994*.

*Clause 101* provides how the disclosure documents may be given, noting that additional requirements for compliance are outlined in clause 103 for circumstances where the buyer was not registered as a bidder until after the start of the auction.

*Clause 102* provides for giving the disclosure documents by way of an electronic link or electronic communication.

*Clause 103* provides how a seller of a lot may give a buyer of the lot the disclosure documents for a lot sold by auction where the buyer registered as a bidder after the start of the auction and had not already received the disclosure documents pursuant to clauses 101.

### **Subdivision 3 – Termination by buyer**

*Clause 104* provides when and how the buyer of a lot may terminate the contract for the sale of the lot for the seller's non-compliance with disclosure requirements.

*Clause 105* applies if a buyer terminates a contract for the sale of a lot under clause 104 and provides for the repayment of any amount paid towards the purchase of the lot.

*Clause 106* provides that where the seller gives the buyer a prescribed certificate that is a true and complete copy of the information given to the seller by a body corporate or statutory body, and the information in the prescribed certificate is inaccurate, the buyer's sole remedy in relation to the inaccurate information is under this division. The clause also clarifies that a reference in the section to information given to a seller by a body corporate includes a reference to information given by a body corporate manager or other person authorised by the body corporate. The clause further notes the section does not limit the *Body Corporate and Community Management Act 1997*, chapter 5, part 3 (Implied warranties).

#### **Subdivision 4 – Miscellaneous matters**

*Clause 107* modernises and moves section 211 of the *Body Corporate and Community Management Act 1997* (dealing with disclosure requirements for an original owner when the buyer gives the original owner a power of attorney to act for the buyer) into the Act. It is intended that clause 107 is effectively the same in its scope and remedy as the original section.

The clause provides that, in relation to a contract for the sale of a lot included in a community titles scheme, if the seller is the original owner for the scheme and the buyer gives the seller a power of attorney, the power may be exercised only in ways and only for purposes disclosed in a statement given to the buyer before the power is given. The power of attorney expires one year after it is given.

## **Part 8 – Mortgages**

### **Division 1 – Preliminary**

*Clause 108* provides a definition of 'term' for the part.

*Clause 109* provides for the application of the part.

### **Division 2 – General rules**

*Clause 110* provides that a mortgage over land by an instrument of mortgage may be varied by an instrument of variation.

*Clause 111* deals with the effect of an advance out of a joint account.

*Clause 112* provides how a written and signed document that is on the same terms as an electronically lodged mortgage may be given, produced or used for a purpose and relied on as evidence of that mortgage.

### **Division 3 – Powers and rights of mortgagees**

*Clause 113*, subject to any agreement to the contrary, implies powers for a mortgagee into a mortgage of land, or over land and other property.

*Clause 114* places conditions on a mortgagee's exercise of a power of sale over mortgaged property including that a default notice must have been given to the mortgagor and the default has not been remedied within 30 days after the notice is given to the mortgagor.

*Clause 115* provides when the mortgagee's power of sale may be exercised if the property the subject of the registered mortgage has been disclaimed by a trustee in bankruptcy under the *Bankruptcy Act 1966* (Cth) or a liquidator under the *Corporations Act 2001* (Cth).

*Clause 116* provides that a mortgagee exercising a power of sale must take reasonable care to ensure that the property is sold at market value. Subclause 116(3) sets out additional duties on the sale which apply if the mortgage is a prescribed mortgage.

*Clause 117* provides protection for the buyer of a property which was sold under a mortgagee's exercise of a power of sale.

*Clause 118* provides for the application of sale proceeds on the sale of a property by a mortgagee exercising a power of sale.

*Clause 119* sets out other matters relating to a mortgagee's exercise of power of sale under this Act.

*Clause 120* provides that the receipt in writing of a mortgagee is sufficient discharge for any money arising from sale under a power of sale given by this Act or any money or securities comprised in, or arising under the mortgagee's mortgage.

*Clause 121* provides when a mortgagee may insure a property or require a mortgagor to insure a property.

*Clause 122* provides for the application of money received under an insurance of mortgaged property.

*Clause 123* allows a mortgagee to appoint an appropriately qualified person as receiver of property if the mortgagee is entitled to take or enter into possession of the property.

*Clause 124* provides that a court judgment in favour of the claimant for payment of a debt secured by a mortgage over the property does not entitle the claimant to take the property the subject of the mortgage in execution of the judgment.

*Clause 125* provides that granting a second or subsequent mortgage over property is not a breach of the first or subsequent mortgage, does not occasion any forfeiture or penalty and does not accelerate the time for payment of an amount that would not have been payable. The clause applies despite any agreement to the contrary.

*Clause 126* provides when a further advance ranks in priority to a subsequent mortgage.

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## **Division 4 – Obligations and rights of mortgagors**

*Clause 127* provides that, other than clause 128, the division applies despite any agreement to the contrary.

*Clause 128* implies certain obligations on a mortgagor under a mortgage over property as set out in the clause, subject to any agreement to the contrary.

*Clause 129* provides a mortgagor with a right to obtain copies of, or inspect documents in the possession of the mortgagee that relate to the property.

*Clause 130* provides a mortgagor with a right to relief against payment of an accelerated sum for default under the mortgage if the mortgagor remedies the default before the mortgagee exercises a power of sale or starts a proceeding to enforce the mortgagee's rights for the default. Subclause (3) allows the mortgagor to apply to the court for an order for relief in a proceeding brought by the mortgagee. Subclauses (4), (5) and (6) set out when a court may make the relief order, the matters the court must take into account in making the relief order and other orders that the court may make as it considers appropriate.

*Clause 131* provides that where a mortgage term has expired but the principal amount has not been repaid, but the mortgagee has not entered into possession of the property, not appointed a receiver and accepted interest repayments for at least three months after the end of the mortgage term, the mortgagee cannot call up the principal amount before the expiry of three months after the mortgagee gave the mortgagor a notice.

*Clause 132* provides that if the mortgagor is entitled to discharge a mortgage, the mortgagor may require the mortgagee to transfer the mortgage to another person rather than discharge the mortgage.

*Clause 133* continues the abolition of the doctrine of the consolidation of mortgages. The effect (of the continuation of the abolition) is that a mortgagee cannot call up debts payable in relation to other mortgages owned by the mortgagee when: the mortgagor has granted separate mortgages securing separate debts; and a mortgagor pays out a specific mortgage over a specific property.

## **Division 5 – Proceedings**

*Clause 134* provides when a court may order the sale of mortgaged property.

*Clause 135* provides for orders that the court may make if it makes an order for sale of property that is subject to an equitable mortgage of land.

*Clause 136* provides when the court may make orders facilitating redemption of land the subject of a mortgage where the mortgagee is absent or unknown.

## **Part 9 - Leases**

### **Division 1 – Preliminary**

*Clause 137* provides a definition of ‘*term*’ for part 9.

## **Division 2 – General rules**

*Clause 138* provides that a lease for a term of years may take effect at law and in equity without entry into possession of the land.

*Clause 139* provides that, subject to any agreement to the contrary, this Act and any other Act, a lease of land includes the standard terms mentioned in schedule 1 of the Act.

## **Division 3 – Transfer of reversion of lease**

*Clause 140* provides the effect of a transfer of the reversion of a lease by the lessor.

*Clause 141* applies if a lessor transfers the reversion of the lease to another person and the lessee pays rent or another amount to the lessor without actual notice of the transfer.

## **Division 4 – Dealings with leases**

*Clause 142* applies if the lessee is required to obtain the lessor’s consent to assign the lease or take other action as set out in subclause (1). Subclause (2) provides for the lessee to give the lessor a proposal notice, seeking the lessor’s consent to the assignment or other action. Subclause (3) provides that the lessor’s consent must not be unreasonably withheld. Subclauses (4)-(7) establish a process, including timeframes, by which the parties can come to an agreement about the outcome of the proposal. Subclause (8) provides the lessee with a right to apply to court if the lessee believes that consent is refused unreasonably, or consented to on unreasonable, unnecessary, or onerous conditions, or if no response is received to the lessee’s proposal within the required time.

*Clause 143* provides for the effect of the assignment of a lease by a lessee to an assignee on and from the assignment taking effect.

*Clause 144* provides that, despite any agreement to the contrary, if the lessee assigns the lease of land to another person (*the assignee*), and, after the assignment of the lease, the assignee assigns the lease to another person (*the subsequent assignee*), the lessee, and any guarantor of the lessee, are released from liability to the lessor for a breach of the lease by the subsequent assignee.

*Clause 145* provides that if a lease of land is surrendered or merged with another interest in the land, then the person entitled to the reversion of the lease has the same rights and obligations in relation to the lease as the person who, but for the surrender or merger, would have been entitled to the reversion.

*Clause 146* provides for the apportionment of rights and obligations under a lease of land if the land is reconfigured and two or more persons become entitled to the income of the land.

*Clause 147* provides that a head lease may be surrendered and a new head lease granted without affecting other rights and obligations.

*Clause 148* provides that a transmission of the lease by the lessee does not breach a term of the lease which prohibits the lessee from transferring the lease.

## **Division 5 – Relief**

### **Subdivision 1 – Preliminary**

*Clause 149* defines “lease” for the division.

*Clause 150* provides for the application of the division.

*Clause 151* provides that the division applies despite any agreement to the contrary.

### **Subdivision 2 – Relief against forfeiture for breach of term of lease**

*Clause 152* provides definitions for the subdivision.

*Clause 153* requires the lessor to take certain steps, including serving a notice to remedy breach on the lessee, before exercising a right to re-enter land for a breach of a term a lease.

*Clause 154* provides that a lessor must give a copy of a notice to remedy breach to each designated person for the lease whose name and address is known to the lessor. Subclause (2) provides that the lessor’s failure to give a copy of the notice to each designated person does not prevent the lessor from exercising a right to terminate the lease, re-enter the land under a term of the lease or make an application to the court for any form of relief in relation to the lease.

*Clause 155* provides that, subject to any agreement to the contrary, acceptance of rent paid by a lessee in possession, after the lessor has issued the lessee with a notice to remedy breach, is not a waiver of the lessor’s right to forfeit the lease because of the breach.

*Clause 156* provides that the lessor may exercise a right to re-enter the land without giving the lessee a notice to remedy breach or applying to the court for recovery of possession of the land provided that the lessor reasonably believes that the lessee has given up possession of the land. However, subclause (3) provides the lessor must give each designated person for the lease, whose name and address is known to the lessor, a notice stating the lessor has exercised the right of re-entry as soon as practicable re-entering the land.

*Clause 157* provides how a lessor may exercise a right of re-entry if the lessee fails to remedy a breach or pay an amount of reasonable compensation required under a notice to remedy breach.

*Clause 158* sets out orders that a court may make if the lessor applies to the court for recovery of possession of the land, in exercise of a right to forfeit the lease because of a breach by the lessee of a term of the lease.

*Clause 159* provides that the subdivision does not affect a claim by the lessor for damages for a breach of a term of the lease or another obligation owed by the lessee to the lessor.

*Clause 160* sets out the process by which a lessee or a designated person for a lease may apply to the court for relief against forfeiture, or proposed forfeiture, of a lease because of a breach by the lessee of a term of the lease.

*Clause 161* provides that an application to the court under clause 160 is not an admission about stated matters.

*Clause 162* provides for orders that the court may make if the lessee or a designated person applies to the court under clause 160.

### **Subdivision 3 – Relief against refusal to renew, or extend term of, or sell reversion of, lease**

*Clause 163* provides definitions for the subdivision.

*Clause 164* provides when a lessor may refuse to renew, or extend the term of, or sell the reversion of, a lease and when and how the notice of refusal must be given to the lessee.

*Clause 165* provides the lessor must also give a copy of the breach notice to each designated person for the lease whose name and address is known to the lessor. Subclause (2) provides that the lessor's failure to give a copy of the breach notice to each designated person for the lease does not limit or affect any right of the lessor to refuse to renew, or extend the term of, or sell the reversion of, the lease.

*Clause 166* provides that the lessee or a designated person for a lease may apply to the court for relief against the lessors' refusal to renew, or extend the term of, or sell the reversion of, the lease.

*Clause 167* provides for the powers of a court in making an order for relief under clause 166.

### **Division 6 – Apportionment of rent**

*Clause 168* provides for apportionment of rent in respect of time.

*Clause 169* provides when an apportioned part of rent is payable and recoverable.

### **Division 7 – Termination of particular leases**

*Clause 170* provides definitions for the division.

*Clause 171* provides that the division applies subject to any agreement to the contrary.

*Clause 172* provides when a lease of land is a lease terminable at will.

*Clause 173* defines a termination notice.

*Clause 174* provides for the termination of a lease terminable at will.

*Clause 175* provides the minimum required notice period which must be given by one party to the other party before a periodic tenancy may be terminated.

*Clause 176* provides for a reasonable notice period to terminate other tenancies.

## **Division 8 – Miscellaneous matters**

*Clause 177* provides for the effect of a waiver by the lessor of the benefit of the term of a lease.

*Clause 178* provides a limit on an award of damages for breach of an obligation to keep or put premises in good repair during the lease term or when the lease ends.

## **Part 10 – Neighbouring land**

### **Division 1 – Support for Land**

*Clause 179* provides for a reciprocal duty of care between the owner of supporting land and the owner of supported land and abolishes any right at common law to bring a proceeding in nuisance in relation to acts or omissions that adversely affect the support provided by supporting land to supported land.

Subclause (3) provides that the duty of care may be excluded or modified by express agreement between the owners and, if the agreement is embodied in an easement registered under the *Land Title Act 1994*, the agreement will bind the parties and their successors in title.

### **Division 2 – Easements and rights of use**

*Clause 180* allows a person, having an interest in land (the benefited land) to apply to court for an order imposing a statutory right of use over other land (the burdened land), which may be by way of easement, licence or another right of use, if the statutory right of use is reasonably necessary for the effective use and development of the benefited land.

Subclause (2) allows person having an interest in land (also the benefited land) to apply to court for an order imposing a statutory right of use over other land (the burdened land) in the form of an easement in gross relating to a utility, in favour of the public utility provider providing the utility, if the statutory right of use is reasonably necessary for the effective use and development of the benefited land.

The court must be satisfied of the matters set out in subclauses (5) and (6) before making the order.

*Clause 181* provides when a court may order that an easement, including an easement in gross, or covenant burdening land, including a building management statement, may be modified or extinguished. Subclauses (3) to (5) set out the matters the court must be satisfied of, or take into account, before making the order.

*Clause 182* provides that no interest under the *Land Act 1994* or the *Land Title Act 1994* can be created by prescription or through the doctrine of lost modern grant.

### **Division 3 – Encroachment of buildings**

*Clause 183* defines terms for the division.

*Clause 184* provides that the division applies despite any other Act.

*Clause 185* allows an application to court for relief in relation to encroachment to be made by either the encroaching owner or the affected owner. The court may make an order granting or refusing to grant the relief.

*Clause 186* provides for the minimum amount of compensation if the court makes an order under clause 185 that compensation be paid by the encroaching owner to the affected owner as compensation for loss or other damage arising from the encroachment.

### **Division 4 – Improvements under mistake of title**

*Clause 187* provides that the division applies despite any other Act.

*Clause 188* provides for an application to the court for relief in relation to a lasting improvement on land made under a mistake of title.

## **Part 11 – Transactions**

### **Division 1 – Assignment of debts or things in action**

*Clause 189* provides definitions for the division.

*Clause 190* sets out the requirements for an absolute assignment of a debt or legal thing in action.

*Clause 191* provides for the discharge of a debt or legal thing in action assigned under clause 190 or in equity when the debtor, trustee or other person liable for the debt of has actual notice of the assignment, and when the debtor trustee or other person does not have actual notice of the assignment.

*Clause 192* provides when a voluntary assignment of property in equity takes effect.

## **Division 2 – Dispositions to defraud creditors**

*Clause 193* provides when disposition of property with the intention to defraud creditors will be voidable.

## **Part 12 – Powers of appointment**

*Clause 194* provides when an exercise of a power of appointment is valid.

*Clause 195* provides when the exercise of a power of appointment amongst two or more objects is valid.

*Clause 196* provides protection for a buyer who purchases property that was invalidly appointed to another person in a purported exercise of a power of appointment.

*Clause 197* provides how a release or disclaimer of power may be exercised and the effect of that release or disclaimer of power.

## **Part 13 - Perpetuities**

### **Division 1 – Preliminary**

*Clause 198* defines terms for the part.

*Clause 199* provides when a disposition in a will is made for the purposes of the part.

### **Division 2 – General rules**

*Clause 200* abolishes the common law rule known as the rule against perpetuities.

*Clause 201* defines *perpetuity period* for a disposition of property under a trust.

*Clause 202* provides that a disposition of property under a trust to a person is valid only if the property vests in the person before the end of the perpetuity period for the disposition.

*Clause 203* provides that a disposition is not invalid under clause 202 merely because the property may vest in the person after the end of the perpetuity period for the disposition provided it is possible the property may vest in the person before the end of the perpetuity period.

### **Division 3 – Trust saving devices**

*Clause 204* allows a stated age to be reduced to not less than 18 years to cause a disposition to be valid under clause 202.

*Clause 205* allows potential members of a class to be excluded from a disposition to ensure the disposition vests within the perpetuity period.

*Clause 206* allows for the acceleration of a prior disposition to ensure that a subsequent disposition is valid under clause 202.

## **Division 4 – Ambit of perpetuity period**

*Clause 207* provides that a non-charitable purpose trust, or a trust for the benefit of a corporation that is not a charity, if either trust is not otherwise invalid, the property must be applied for the purposes of the trust before the end of the perpetuity period for the disposition of property under the trust. Subclause (2) provides that division 2 applies to a trust mentioned in subclause (1).

*Clause 208* sets out when the perpetuity commences for special and general powers of appointment.

*Clause 209* provides for the application of the perpetuity period for where a document limits property in trust so as to create an interest in property subject to a condition precedent or a condition subsequent.

*Clause 210* applies if the terms of a trust allow the disposition of property under a right of reverter on the determination of a determinable fee simple or a resulting trust on the determination of a determinable interest in property so that, if the determinable interest in property is not determined and vested before the end of the perpetuity period, the determinable interest becomes absolute.

*Clause 211* provides that if property is held on trust and the trust terms confer a power or impose a duty on the trustee to accumulate income of the property, the power or duty is valid to the extent the disposition of accumulated income is otherwise valid under the part.

*Clause 212* provides that the perpetuity period does not apply particular trusts, powers and funds.

*Clause 213* provides that the perpetuity period does not apply in relation to particular dispositions of property including particular options and a right of pre-emption given for valuable consideration or in a will in relation to property.

*Clause 214* provides that the perpetuity period does not apply to a gift over from one charity to another charity.

*Clause 215* provides that, to remove any doubt, the perpetuity period does not apply to particular matters relating to land as set out in that clause.

## **Division 5 – Variation of vesting date**

*Clause 216* provides for a variation of a trust to opt in to the 125 year perpetuity period if the trustee has power, under the terms of the trust, to vary the vesting date of a disposition of property under the trust.

*Clause 217* provides for a variation of a trust to opt in to the 125 year perpetuity period if the trustee does not have the power, under the terms of the trust, to vary the vesting date of a disposition of property under the trust.

## **Division 6 – Applications to Court**

*Clause 218* provides that a party interested in a disposition of property may apply to the court for a declaration about the validity of a disposition under part 13.

*Clause 219* allows an application to the court for an order that a disposition of property under the terms of a trust, settled before the commencement of the Act, vest within 125 after the creation of the trust.

## **Part 14 – Corporations sole and particular bodies corporate**

*Clause 220* provides that a corporation sole is a body corporate with perpetual succession which may sue and be sued in its corporate name.

*Clause 221* provides that a corporation sole is constituted by the person who holds the appointment to the office of the corporation sole.

*Clause 222* provides for the effect of a temporary vacancy in particular bodies corporate.

*Clause 223* provides for the powers of particular corporations.

*Clause 224* provides for the appointment of an administrator if particular corporations are incapable of acting.

## **Part 15 – Unregistered Land**

*Clause 225* provides that the registrar must give public notice where a person asks the registrar to register to an instrument relating to unregistered land.

*Clause 226* provides that the registrar must give public notice if the registrar believes land is unregistered land and a request has not been made under clause 225.

*Clause 227* provides that the registrar may hold an inquiry under part 2, division 4 of the *Land Title Act 1994* if an issue arises in relation to unregistered land mentioned under clause 225 or 226.

*Clause 228* sets out obligations on the registrar following the public notification in clause 225 or 226, or following an inquiry under clause 227.

## **Part 16 — General**

### **Division 1 – Service**

*Clause 229* provides for the application of the division.

*Clause 230* sets out the relationship of the division with other matters, such as the *Acts Interpretation Act 1954*, part 10 or the *Electronic Transactions (Queensland) Act 2001*.

*Clause 231* provides how documents may be served on a person including an individual and a corporation.

*Clause 232* provides how service may be affected where a person who is an individual is absent from the State or deceased.

*Clause 233* provides how service may be effected on a person by way of electronic communication.

## **Division 2 – Miscellaneous**

*Clause 234* provides that the chief executive may approve forms for use under this Act.

*Clause 235* provides a power to make regulations under the Act.

*Clause 236* provides a power to make a regulation of a saving or transitional nature.

## **Part 17 – Repeal**

*Clause 237* repeals the PLA.

## **Part 18 – Savings and transitional provisions**

### **Division 1- Preliminary**

*Clause 238* provides that the part does not limit or otherwise affect the operation of section 20 or section 20A of the *Acts Interpretation Act 1954*.

*Clause 239* provides definitions for the part.

### **Division 2 – Savings provisions**

*Clause 240* provides for saving of abolition or modification of common law provided for in the PLA, as set out in the clause.

*Clause 241* saves the abolition of the common law rule that an alien cannot take, give, buy or sell property in PLA section 15A.

*Clause 242* provides that particular provisions do not apply in relation to matters that happened before 1 December 1975, the commencement date of the PLA.

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### Division 3- Transitional provisions

*Clause 243* provides that a person may apply under clause 18 for a waiver of the right of the State to property by escheat, devolution or *bona vacantia* on the death intestate of a person whether the death happens before or after the commencement of the Act.

*Clause 244* provides that a co-owner of property is liable to account under clause 27 to another co-owner of the property whether the interest in the property arose before or after commencement of the Act.

*Clause 245* provides that the abolition of the rule in *Pigot's case* in clause 60 applies in relation to a material alteration of a deed whether the alteration is made before or after the commencement of the Act but does not apply in relation to a proceeding started before the commencement of the Act.

*Clause 246* provides that clause 63 applies in relation to a covenant or agreement entered into by a person with the person's self or one or more other persons, whether the covenant or agreement is entered into before or after commencement of the Act. However, clause 63 does not apply to an order of the court made before commencement of the Act.

*Clause 247* provides that clause 65 applies in relation to a covenant contained in a registered easement over land for the benefit of other land whether the easement is created or registered before or after commencement of the Act.

*Clause 248* provides that clause 79 applies in relation to a contract for the sale of land whether the contract was entered into before or after the commencement of the Act.

*Clause 249* provides that clause 80 applies in relation to a contract for the sale of land whether the contract is entered into before or after the commencement of the Act.

*Clause 250* provides that clause 81 applies in relation to a contract for the sale of land whether the contract is entered into before or after the commencement of the Act.

*Clause 251* provides that part 7, division 4 applies in relation to a contract for the sale of a lot only if the contract is entered into after the commencement of the Act. However, if a contract for the sale of a lot arises from the exercise of an option, part 7, division 4 applies in relation to the contract only if the option is granted after the commencement of the Act.

*Clause 252* provides that a mortgagee may sell under clause 115 land subject to a registered mortgage that has been disclaimed by a trustee in bankruptcy or a liquidator whether the registered mortgage is entered into, or the disclaimer happens, before or after commencement of the Act.

*Clause 253* provides that a court may order in a proceeding a sale of mortgaged property under clause 134 whether the proceeding is started before or after the commencement of the Act.

*Clause 254* provides that a court make an order under clause 135 in a proceeding brought in relation to an equitable mortgage whether the proceeding is brought before or after the commencement of the Act.

*Clause 255* provides that, other than for clause 144, part 9, division 4 of the Act applies in relation to a dealing with a lease if the dealing happens after the commencement of the Act, whether the lease is entered into before or after the commencement of the Act. Clause 144 applies only if the lease was entered into after the commencement of the Act.

*Clause 256* provides that part 9, division 5 of the Act applies in relation to a lease as mentioned in clause 150 whether the lease was entered into before or after the commencement of the Act.

*Clause 257* provides that clause 182 applies whether the interest is alleged to have been created before or after commencement of the Act.

*Clause 258* provides that clause 193 applies in relation to the disposition of property whether the disposition happens before or after the commencement of the Act.

*Clause 259* provides that part 12 applies in relation to a document giving a person a power of appointment over property, including but not limited to an appointment, or purported appointment, of property under a document, whether the document, or the appointment or purported appointment, is made before or after the commencement of the Act.

## **Part 19 – Amendment of Acts**

### **Division 1 – Amendment of this Act**

*Clause 260* provides that the division amends the Act.

*Clause 258* amends the long title of the Act.

### **Division 2 – Amendment of Body Corporate and Community Management Act 1997**

*Clause 262* provides that this division amends the *Body Corporate and Community Management Act 1997*.

*Clause 263* amends section 205 of the *Body Corporate and Community Management Act 1997* to remove the requirement for a body corporate to provide a body corporate information certificate within 7 days of receiving a written request from an interested person accompanied by the prescribed fee.

In its place, new subsection 205(4) provides that an interested person may ask a body corporate for a *body corporate certificate* giving financial and other information about a lot included in the scheme.

New subsection 205(5) provides the request for a body corporate certificate must be made in writing and accompanied by the fee prescribed by the relevant regulation module. New subsection 205(6) provides that the certificate must be provided within 5 business days after receiving the request, with a maximum penalty of 20 penalty units for failure to do so.

New subsection 205(7) provides a person who obtains a body corporate certificate under section 205 may rely on the certificate or information against the body corporate as conclusive evidence of the matters stated in the certificate, other than to the extent to which the certificate contains an error that is reasonably apparent.

New subsection 205(8) also provides an interested person may ask a body corporate for stated financial information about a lot included in the scheme of the type included in the approved form for a body corporate certificate. This provision clarifies that a buyer or another interested person may obtain up-to-date financial information about a lot from the body corporate for the purpose of settling a contract of sale, without needing to obtain a body corporate certificate.

New subsections 205(9), (11) and (12) provide the same requirements for the financial information as those outlined for the certificate in subsections 205(5) to (7). New subsection 205(10) also provides that the fee required by the body corporate for the information must not be more than the amount payable for a request for the certificate.

New subsection 205(13) outlines who constitutes an ‘interested person’ for a lot included in the scheme.

*Clause 264* inserts new section 205AAA into the *Body Corporate and Community Management Act 1997*. New section 205AAA provides that the approved form for a body corporate certificate for a lot included in a community titles scheme must include provision for information about the matters prescribed by the regulation module applying to the scheme and may include other matters.

*Clause 265* amends section 205A of the *Body Corporate and Community Management Act 1997* to replace the definition of *disclosure statement*. The new definition removes reference to a disclosure statement for an existing lot. This is a consequential amendment, as the Act provides seller disclosure requirements for contracts for the sale of existing lots in a community titles scheme in the new *Property Law Act 2023*.

*Clause 266* amends section 205C of the *Body Corporate and Community Management Act 1997*, to refer to the new 213(3)(fa) being inserted by clause 269.

*Clause 267* omits sections 206 to 209 from the *Body Corporate and Community Management Act 1997*. These provisions are no longer required as the Act provides seller disclosure requirements for contracts for the sale of existing lots in a community titles scheme in the new *Property Law Act 2023*.

*Clause 268* omits section 211 from the *Body Corporate and Community Management Act 1997*. Section 211 provides restrictions on the exercise of a power of attorney given by a buyer to a seller who is the original owner for the community titles scheme. Section 211 has been relocated to clause 107 of the *Property Law Act 2023*.

*Clause 269* amends section 213 of the *Body Corporate and Community Management Act 1997*. Section 213 requires the seller of a proposed lot to give the buyer of the proposed lot a disclosure statement before a contract is entered into by the seller with the buyer, and outlines information the disclosure statement must include and documents that must accompany the statement. The clause amends section 213 to require that the disclosure statement for a proposed lot must be accompanied by a copy of any building management statement, proposed to be registered under the *Land Title Act 1994*, that would apply to the scheme land after establishment of the scheme or after the scheme is changed.

*Clause 270* inserts a new section 214A into the *Body Corporate and Community Management Act 1997*. New section 214A provides that chapter 5, part 2, division 3 applies as if a reference in section 214 to a disclosure statement included a reference to a copy of any building management statement given to the buyer under section 213(2)(fa).

*Clause 271* inserts a new part 15 in chapter 8 of the *Body Corporate and Community Management Act 1997* (Transitional provision for *Property Law Act 2023*). New section 447 provides that chapter 5 of the *Body Corporate and Community Management Act 1997*, as in force immediately before commencement, continues to apply to the sale of a lot under a contract entered into before the commencement, despite the amendment of chapter 5 by the *Property Law Act 2023*.

*Clause 272* amends schedule 6 of the *Body Corporate and Community Management Act 1997* to omit the definition *body corporate information certificate* and insert the definition *body corporate certificate*.

### **Division 3 – Amendment of Building Units and Group Titles Act 1980**

*Clause 273* provides that this division amends the *Building Units and Groups Titles Act 1980*.

*Clause 274* amends section 40 of the *Building Units and Group Titles Act 1980* to omit the following, to remove the existing requirements for provision of a certificate:

- ‘certificates’ from the section 40 heading;
- section 40(1)(c); and
- section 40(4).

*Clause 275* inserts a new section 40AA into the *Building Units and Group Titles Act 1980*.

New subsection 40AA(1) provides an interested person may ask a body corporate for a *body corporate certificate* giving financial and other information about a lot.

New subsection 40AA(2) provides the request for a body corporate certificate must be made in writing and accompanied by the fee prescribed by regulation. New subsection 40AA(3) provides that the certificate must be provided within 5 business days after receiving the request, with a maximum penalty of 20 penalty units for failure to do so.

New subsection 40AA(4) provides the person may rely on the certificate against the body corporate as conclusive evidence of matters stated in the certificate, other than to the extent to which the certificate contains an error that is reasonably apparent.

New subsection 40AA(5) provides that the approved form for a body corporate certificate must include provision for information about matters relating to a lot that are prescribed by regulation and may include other matters.

New subsection 40AA(6) provides an interested person may ask the body corporate for stated financial information about a lot of the type included in the approved form for a body corporate certificate. This provision clarifies that a buyer or another interested person may obtain up-to-date financial information about a lot from the body corporate for the purpose of settling a contract of sale, without needing to obtain a body corporate certificate.

New subsections 40AA(7), (9) and (10) provide the same requirements for the financial information as those outlined for the certificate in subsections 40AA(2) to (4). New subsection 40AA(8) also provides that the fee required by the body corporate for the information must not be more than the amount payable for a request for a body corporate certificate.

New subsection 40AA(11) outlines who constitutes an 'interested person' for a lot the subject of a plan.

*Clause 276 amends the heading of part 4, division 3 of the Building Units and Group Titles Act 1980 to make clear that this division applies only to the sale of proposed lots. This is a consequential amendment resulting from the Act, which provides seller disclosure requirements for existing lots under the Building Units and Group Titles Act 1980 in the new Property Law Act 2023.*

*Clause 277 amends section 48E of the Building Units and Group Titles Act 1980 to remove reference to existing lots so that the provision only relates to proposed lots. This is a consequential amendment resulting from the Act, which provides seller disclosure requirements for existing lots under the Building Units and Group Titles Act 1980 in the new Property Law Act 2023.*

*Clause 278 amends section 48F of the Building Units and Group Titles Act 1980 to remove reference to existing lots so that the provision only relates to proposed lots. This is a consequential amendment resulting from the Act, which provides seller disclosure requirements for existing lots under the Building Units and Group Titles Act 1980 in the new Property Law Act 2023.*

*Clause 279 amends section 49 of the Building Units and Group Titles Act 1980. Section 49 sets out duties of an original proprietor to give a purchaser a disclosure statement before a contract is entered into between the original proprietor and the purchaser for the sale of a lot or a proposed lot. The amendments remove requirements in relation to the sale of a lot so that the provision relates only to proposed lots. This is a consequential amendment resulting from the Act, which provides seller disclosure requirements for*

existing lots under the *Building Units and Group Titles Act 1980* in the new *Property Law Act 2023*. The clause also undertakes some minor restructuring of the section.

*Clause 280* inserts a new division 6 into part 7 of the *Building Units and Group Titles Act 1980* (Transitional provision for *Property Law Act 2023*). New section 150 provides that the part 4 division 3 of the *Building Units and Group Titles Act 1980*, as in force immediately before commencement, continues to apply to the sale of a lot under a contract entered into before commencement, despite the amendment of that division by the *Property Law Act 2023*.

## **Division 4 – Amendment of Land Title Act 1994**

*Clause 281* provides that the division amends the *Land Title Act 1994*.

*Clause 282* provides an amendment to section 54E of the *Land Title Act 1994* to refer to section 181 of the Act.

*Clause 283* provides an amendment to section 54H of the *Land Title Act 1994* to refer to clause 181 of the Act.

## **Division 5- Amendment of Limitation of Actions Act 1974**

*Clause 284* provides that the division amends the *Limitation of Actions Act 1974*.

*Clause 285* amends section 10 of the *Limitation of Actions Act 1974* to reduce the limitation period for a deed to 6 years.

*Clause 286* amends the *Limitation of Actions Act 1974* to apply the new limitation period to deeds entered into after the commencement of the Act.

## **Division 6 – Amendment of Property Occupations Act 2014**

*Clause 287* provides that the division amends the *Property Occupations Act 2014*.

*Clause 288* provides that a new section 229A is inserted before the existing section 230 in the *Property Occupations Act 2014*. This new provision provides that a seller can only bid at an auction if the conditions of sale that are notified to prospective bidders include a condition stating that the sale is subject to the seller's right to bid at the auction. The contract is voidable by the buyer before settlement if this requirement is not complied with. Clause 288 implements recommendation 65 of the PLA Report that section 60 of the *Property Law Act 1974* should be repealed on the basis that the same or similar provision is inserted in the *Property Occupations Act 2014*. It is intended that clause 288 is effectively the same in its scope and remedy as section 60 of the *Property Law Act 1974*, with modernisation of the drafting style.

## **Division 7 – Minor and consequential amendments**

*Clause 289* provides that schedule 3 amends the legislation mentioned in the schedule.

## **Schedule 1 – Standard Terms**

*Schedule 1* sets out the standard lease terms which will apply under clause 139 of the Act.

## **Schedule 2 - Dictionary**

*Schedule 2* provides a definition of the terms used in the Act.

## **Schedule 3 – Legislation amended**

*Schedule 3* sets out the consequential amendments to legislation across the statute book as a result of the Act.