

Property Law Regulation 2024

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Property Law Regulation 2024* (the Regulation) made under section 235 of the *Property Law Act 2023*.

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Property Law Act 2023* replaces the *Property Law Act 1974* with new property legislation to simplify, streamline and modernise Queensland's property laws. The Act also implements a statutory seller disclosure scheme for sales of freehold land in Queensland.

The objectives of the Regulation are to:

- prescribe subordinate legislation that can render voidable or unenforceable a contract or disposition of property (section 71 of the Act);
- prescribe various matters to support the operation of the seller disclosure scheme, including the information and certificates which must be disclosed by the seller of a lot before a contract for the sale of the lot is signed by the buyer (section 99 of the Act);
- prescribe matters that are not a 'material matter' for the purposes of having a termination right under the seller disclosure scheme (section 104 of the Act); and
- prescribe the types of mortgages that impose additional duties on a mortgagee when selling a property (section 116 of the Act).

The Regulation achieves these objectives by replicating the provisions of the *Property Law Regulation 2013* relating to prescribed subordinate legislation and prescribed mortgages, and by prescribing the following matters relating to the seller disclosure scheme:

- the information which must be included in the disclosure statement for a lot;
- the documents (prescribed certificates) applicable to a lot which must be given to the buyer;
- when a seller is not required to give a body corporate certificate for a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997* or a plan under the *Building Units and Group Titles Act 1980* (BUGTA scheme);
- the warnings and other statements to be included in the approved form for a disclosure statement; and
- matters that are not material matters for a disclosure statement for the sale of a lot.

In its 2017 *Final Report: Seller Disclosure in Queensland* (Seller Disclosure Report), the Commercial and Property Law Research Centre at the Queensland University of Technology 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:

- 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;
- 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;
- information should be in an accessible form, easily understood and capable of being relied on by the buyer; and
- 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 information prescribed by the Regulation to be disclosed under the seller disclosure scheme has been determined in line with these guiding principles and is broadly in accordance with the recommendations in the Seller Disclosure Report.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights relevant to the Regulation are property rights (section 24 of the *Human Rights Act 2019*).

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

All persons have the right to own property alone and in association with others and to not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

The right includes the protection from the deprivation of property. Deprivation in this sense has been held to include a substantial restriction on a person's use and enjoyment of their property. Property generally includes all real and personal property interests recognised under general law (including but not limited to interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation.

The seller disclosure scheme established by the Act potentially limits the property rights of the seller by providing a right of termination for a contract for sale of land to the buyer where the seller fails to give disclosure or gives inaccurate disclosure. The scheme alters the seller's property rights by obliging the seller to make accurate disclosure about prescribed matters and may permit the buyer to terminate the contract for sale if disclosure is not given, or is inaccurate or incomplete and relates to a material matter affecting the lot.

The Regulation supports the operation of the seller disclosure scheme, and therefore the limitations on a seller's property rights, by prescribing the information and certificates which must be disclosed to the buyer prior to the buyer signing a contract to purchase land.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the seller disclosure scheme established by the Act is to provide a more certain, coordinated and transparent regime for the sale of land in Queensland by promoting consistency and clarity of disclosure obligations for sellers. It will also place buyers in a more informed position prior to signing a contract to purchase land with a view to minimising disputes that currently arise if defects are discovered after the contract is signed, thereby avoiding or minimising future litigation and associated costs.

The seller disclosure scheme is consistent with a free and democratic society based on human dignity, equality and freedom because providing information to the buyer, including information impacting on title to property or ongoing financial liability of ownership, assists the buyer to be more comprehensively informed in exercising the buyer's property rights.

As set out above, the Regulation supports this purpose by prescribing the information and certificates which must be disclosed to a buyer prior to the buyer signing the contract.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitations on a seller's property rights imposed by the seller disclosure scheme help to achieve the scheme's purpose, which is to provide a clear and consistent set of precontractual disclosure obligations for sellers, and to ensure that buyers are appropriately informed about a property prior to signing a contract for the sale of land.

Importantly, a seller's obligation to disclose, and the potential termination rights of the buyer if disclosure is not given, or is given inaccurately or is incomplete, is tempered appropriately by exceptions to disclosure and by restricting the buyer's rights to terminate for inaccurate or incomplete disclosure unless the inaccurate disclosure relates to a material matter affecting the land. The Regulation also prescribes the matters which are not material matters. In this way, the Regulation appropriately balances the competing rights of buyers and sellers.

The Regulation further supports this balance by prescribing the warnings and other statements which must be included in a disclosure statement, in particular, warnings about what information is not included in the statement (for example, information about flooding or other natural hazard history, structural soundness of the building or pest infestation, and current or historical use of the property).

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available ways to achieve the purpose of the Regulation.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, I consider that the importance of the purpose of the seller disclosure scheme, which is to provide a clear and consistent set of precontractual disclosure obligations for sellers and to ensure that buyers are appropriately informed about a property prior to making a decision to purchase, outweighs any limitations imposed by the scheme on a seller's property rights.

Accordingly, I consider that the purpose of the Regulation, which supports the operation of the seller disclosure scheme by prescribing the information and certificates which must accompany a disclosure statement, similarly outweighs any limitations imposed on a seller's property rights.

Conclusion

I consider that the Regulation is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence

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