

Article Information

Authors: Amelia Kramer, Kylie Maxwell

Service: Property & Development, Property Development, Property Transactions, Strata & Community Title

Sector: Real Estate

Proposed Seller Disclosure Regime - Exposure draft of Property Law Bill 2022 Released

The Queensland Government is seeking feedback on a proposed statutory seller disclosure scheme for Queensland. Feedback from interested parties may be provided until 31 August 2022. Developers, selling agents and solicitors will need to comply with the changes, should the final draft bill be introduced to Parliament and become law later this year.

Consultation Draft Bill

An exposure draft of the proposed *Property Law Bill 2022* (**Exposure Draft**) and the following related documents have been released for community feedback:

- Draft Seller Disclosure statement;
- Draft Body corporate Certificate: *Body Corporate and Community Management Act 1997*; and
- Draft Body Corporate Certificate: *Building Units and Group Titles Act 1980*,

(Consultation Documents).

Intent of the proposed scheme

If implemented, the proposed statutory seller disclosure scheme (**Disclosure Scheme**) will make it mandatory (with some limited exceptions) for a seller to produce a pre-contractual disclosure statement in the prescribed form and the required attachments to a proposed buyer.

This Disclosure Scheme would be similar to seller disclosure schemes in other states, such as New South Wales, where the seller is required to provide basic searches and relevant information regarding the property (including the title search, survey plan, body corporate certificate, etc.) before the proposed buyer enters into the contract.

Of note is that the Consultation Documents will also require a seller to state that *"To the seller's knowledge there are no current orders, notices or transport infrastructure proposals affecting the land issued by a State or local government or other relevant authority that may affect the title to or use of the land after settlement, except as disclosed"*.

Currently, there is no general contract Disclosure Scheme in Queensland (except those prescribed by the *Body Corporate and Community Management Act 1997* & the *Land Sales Act 1994*) and the seller's disclosure obligations can be found in a mix of contractual, legislative and common law sources.

The general intent of the Disclosure Scheme is to:

1. ensure that a buyer is able to make a more informed decision before entering into a contract for the purchase of a property; and
2. consolidate the seller's disclosure obligations into a single prescribed form.

Failure to disclose

A seller's failure to comply with the statutory disclosure obligations may result in a buyer being able to terminate the contract or claim damages from a seller, depending on the circumstances. Therefore, it will be important that sellers, selling agents and solicitors ensure that the pre-contractual disclosure obligations are strictly complied with.

What should the industry do?

The transitional provisions of the Exposure Draft (sections 27 & 36) suggest that the existing disclosure regime applying under the *Body Corporate and Community Management Act 1997* and the *Building Units and Group Titles Act 1980* will apply to contracts entered into before commencement of the disclosure regime.

However, sellers, developers, selling agents and solicitors should become familiar with the proposed Disclosure Scheme and Consultation Documents in readiness for legislative change.

Feedback is vital in ensuring that the proposed scheme reflects the needs of sellers and industry stakeholders, as well as implementing increased protections for proposed buyers.

The Queensland Government is calling for written feedback on the Exposure Draft and Consultation Documents from the industry before **5pm on 31 August 2022**.

Find out more about how to submit a written response at:

<https://www.justice.qld.gov.au/community-engagement/community-consultation/current/statutory-seller-disclosure-scheme-in-queensland>

Recommendation for developers

Upon introduction to Parliament, we recommend that all developers, including off the plan developers, and sellers who have template contracts and special conditions that are used regularly, promptly engage solicitors to review and update the template disclosure documents and contracts, so they are ready to comply with the new disclosure requirements.

If you have any questions about the Disclosure Scheme, or your template disclosure statement and contracts, please contact Piper Alderman.