



Australian Banking
Association

15 December 2022

Property Law Act Review
Strategic Policy and Legal Services
Department of Justice and Attorney-General
Via email: PropertyLawActReview@justice.qld.gov.au

Dear Leighton and Imelda

Seller disclosure scheme – flood history information

The Australian Banking Association (**ABA**) welcomes the opportunity to provide further feedback on the Queensland Government's consultation on the Property Law Bill 2022 (**Consultation Bill**) and Property Law Regulation 2023 (**Consultation Regulation**).

On 28 October 2022, the ABA provided a submission to the first draft of the Consultation Bill, which set out matters for the Queensland Government's consideration on the assumption the next draft of the Consultation Bill would be updated to include the flood history data in the seller's disclosure statement.

The ABA supports some of the revisions to the latest draft of the Consultation Bill but remains of the view that flood history data should be contained within the seller's disclosure statement, particularly in light of repeated flooding events across Australia. It also has concerns with directing prospective buyers to the FloodCheck Queensland and Australian Flood Risk Information portals, where information may be incomplete or incorrect, to understand the flooding history of a property.

The ABA would welcome an opportunity to participate in further discussions with the Queensland Government as it continues to consider the disclosure of flood information in the disclosure statement.

In the appendix, the ABA has highlighted a series of points for the Government's consideration to refine the policy. If any further information is required, please contact me

Yours sincerely

.....
.....

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.



Appendix

Overview

The ABA provided feedback on the exposure draft of the seller disclosure scheme provisions released in August 2022. The substance of these provisions has now been incorporated into the Consultation Bill.

The ABA supports some of the revisions made to the latest draft of the Consultation Bill and the additional provisions contained within the Consultation Regulation. In particular, the ABA supports the inclusion of provisions relating to greater certainty about the matters that must be contained within the disclosure statement and improved clarity with respect to the drafting as to the details that must be disclosed.

The ABA notes the Consultation Regulation proposes to include an alert in the disclosure statement to the buyer that they should enquire with the relevant local government whether the property is affected by flooding or within a flood planning overlay and directs the buyer to the FloodCheck Queensland portal or the Australian Flood Risk Information portal.

While the FloodCheck Queensland portal is a useful tool that may support a greater level of awareness regarding flood information, FloodCheck requires user to acknowledge that it may not include all of the flood related information relevant to any given area and recommends users to contact their council for further information.

Similarly, although the Australian Flood Risk Information Portal provides access to a broad catalogue of flood information, there is uncertainty in the ownership of the flood study information, which may be provided by third parties who are not verified. It is also noted the Portal’s purpose is to allow access to data to help emergency managers, rather than prospective buyers, raise awareness on current flood hazards around Australia.

As a result of these gaps in data, the ABA notes there may be risks associated with directing a prospective buyer to use these portals to assess the flooding history of a property on the basis of incomplete or incorrect information. The ABA maintains that having reliable flood history information in an easily accessible, standardised document is the preferred outcome for prospective buyers.

Detailed comments

The ABA provides further feedback on the Consultation Bill and Consultation Regulation below:

Clause	Comments
Consultation Bill	
Clause 80	<p>Clause 80 provides for inoperative computer systems on the day of settlement for an e-conveyancing transaction. An inoperative system may affect parties’ ability to settle, which can result in negative consequences for the buyer, such as unnecessary additional cost and stress and an inability to occupy the property.</p> <p>The ABA supports the inclusion of a provision that expressly provides that parties to the contract are not taken to be in breach of the contract in these circumstances and parties must do everything required to enable the contract to be settled on the next business day.</p>
Clause 99 (Former clause 5)	<p>Former clause 5(2)(b) required the disclosure statement to be in a form that was substantially completed. The ABA raised concerns that the term “substantially” was unclear.</p> <p>The ABA welcomes the removal of this term and the added requirement for the form to include information prescribed by the regulation in new clause 99(2)(b), as well as containing warnings and other statements prescribed by the</p>



Clause	Comments
	<p>regulation in new clause 99(3), which will provide the seller with greater certainty as to the contents of the form.</p> <p>The ABA also welcomes the removal of the exemption contained in former clause 5(2)(b), which had the potential to encourage people to disclose information that may not be accurate. To this end, new clauses 99(2)(c) and 101(4) are also supported.</p>
Clause 100(1) (Former clause 7)	<p>Clause 100 sets out exemptions to the disclosure statement requirement. Clause 100(1)(a)(i) provides that a buyer of a lot and a seller of a lot are exempt if they are related and before the contract for the sale of the lot is signed by the buyer, the buyer gives notice to the seller waiving compliance with the disclosure requirement.</p> <p>The ABA maintains its position that given a prospective buyer may be a member of the public, it would be reasonable that they are eligible with the same protections and disclosures as they would be should they purchase for any other private citizen.</p> <p>In absence of these protections, the ABA seeks for the notice requirement to be in written form to support greater transparency for prospective buyers. This same feedback also applies to clause 100(1)(c)(ii), (d)(ii) and (k)(ii).</p>
Consultation Regulation	
Schedule 1, clauses 1 and 3(2)	<p>The ABA notes its comments regarding the inclusion of flood history information in the overview section above.</p> <p>Ensuring access to appropriate information to enable buyers to make an informed decision is critically important and the banking industry remains supportive of the inclusion of flood history information within mandatory seller disclosures.</p>