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Update Summary

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CONVEYANCING MANUAL QUEENSLAND

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UPDATED COMMENTARY

Author Professor Sharon Christensen has added or updated the following annotations:

Property Law Act 2023 to commence 1 August 2025

A commencement date of 1 August 2025 has been set for the *Property Law Act 2023* allowing a period of close to 12 months for education of the legal profession and real estate agents for mandatory seller disclosure. To assist in education the *Property Law Regulation 2024* and the amendments to the various regulation Modules under the *Body Corporate and Community Management Act 1997* were released in September.

A copy of the regulations can be found on the OQPC website at:

- *Property Law Regulation 2024* - <https://www.legislation.qld.gov.au/view/html/asmade/sl-2024-0211>
- *Body Corporate and Community Management (Body Corporate Certificates) and Other Legislation Amendment Regulation 2024* at <https://www.legislation.qld.gov.au/view/html/asmade/sl-2024-0210>

A short summary of the seller disclosure framework is at [ND.1.140].

[1.1180] Frustration of leases

The appeal decision of *Cao v ISPT Pty Ltd* [2024] NSWCA 188 is added to the commentary. The NSW Court of Appeal agreed with the reasoning of the trial judge concluding that the lease was not frustrated because:

- a. The pandemic restrictions did not radically change the value of the lease to the tenant who was still able to operate takeaway from the premises, but chose not to;
- a. The tenant received support through government schemes such as JobKeeper and State government support requiring lessors to negotiate rent reductions during the period;
- b. The condition requiring the tenant to remain open for trading did not require the tenant to trade unlawfully; and
- c. the allocation of risk of disruption to the tenant's business by external events was allocated to the tenant under the lease. On this basis the lease was not frustrated by the government action during the pandemic, see [52]–[59].

Subject to formal contract

The decision in *Bull v Cooldawinda Pty Ltd* [2024] NSWSC 1011 is added to the commentary as a further example of the relevance of commercial practice on whether the parties intended to enter into a binding contract prior to signing an agreement. The

court also considered and denied the applicant's alternative claim to sufficient acts of part performance based upon the payment of a deposit and creation of a special purpose vehicle for the purchase, see [1.201], [1.390].

Short lease

The commentary in relation to the short lease exception in Land Title Act 1994, s185(1)(b) is updated to include reference to *Taboref Pty Ltd v Acquest Property Pty Ltd (in liq)* [2024] WASC 313. In this case the short lease exception was not applied in favour of the lessee, see [5.307].

Claim for specific performance against a guarantor

The decision in *Evangelakos v UPG 318 Pty Ltd* [2024] NSWC 1179 is added to the commentary. In this case the seller of land claimed specific performance against the buyer and guarantor. The court refused specific performance against a guarantor who guaranteed "the observance by the purchaser of the terms of this contract" because the court drew a distinction between use of the word 'observe' and 'perform', at [19]. This case demonstrates the importance of the drafting of a guarantee where the intention is for the guarantor to perform the contract in place of the buyer, see [16.490].

