

Housing Legislation Amendment Bill 2022

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Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
[REDACTED] | F 07 3221 9329 | [REDACTED] | qls.com.au
Office of the President

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Our ref: WD:MC

Committee Secretary
Community Support and Service Committee
Parliament House
George Street
Brisbane Qld 4000

By email: cssc@parliament.qld.gov.au

Dear Committee Secretary

Housing Legislation Amendment Bill 2022

Thank you for the opportunity to provide feedback on the Housing Legislation Amendment Bill (Bill).

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been prepared with input from the QLS Property and Development Law Committee whose members have substantial expertise in this area.

Executive summary

We raise a number of technical drafting points in relation to the proposed Part 8, Division 2C (Charitable donation deeds) to be inserted into the *Housing Act 2003* (Housing Act).

We recommend these issues be clarified before the Bill is passed, to achieve the objectives of the legislation in relation to the charitable donation deed model and to clarify that subsequent owners can easily remove the administrative advice if they are not parties to the arrangement.

Proposed section 94J - When existence of charitable donation deeds must be recorded on titles

Under proposed s 94J an administrative advice can be placed on the title by the non-profit organisation if there is a charitable donation deed.

We recommend the drafting clarify whether, before an administrative advice is entered by the registrar:

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- a. evidence of the existence of a binding deed will be required to be lodged (for example, a copy of the deed); or
- b. some other assurance or declaration will be required from the lodging party?

Interaction of proposed section 94K of Housing Act and land titles processes - removing the administrative advice from title

Section 94J indicates that the administrative advice will remain on title unless removed under s 94K or s 29A *Land Title Act 1994* (LTA). Under s 94K, removal can be requested by a party to the deed, which includes a successor or assign of a party to the deed.

We understand the intent of section 94J(3)(a) is that the administrative advice will not prevent registration of a transfer to a new owner.¹ It appears this is the case even if the new owner is not a successor assign of a party to the deed.

Clarity is required about several issues arising from this approach to the administrative advice:

1. What evidence will be required of a person making a request under s 94K to remove the record of the existence of a charitable donation deed from the title:
 - a. Will the requesting party need to prove they are a party to the deed? If a copy is lodged originally this request could be compared to that copy, but if a copy is not required, further information is required as to how the requesting party proves their right to make such a request.
 - b. If the party is an assignee of the original party, will evidence of a valid assignment be required?
 - c. Can a party lodge a request to remove even if the deed is still on foot? And if so, can this request be made without the consent of the other party to the deed?
2. Under s 29A LTA, the registrar can remove the administrative advice if:
 - a. the registrar no longer considers the thing should be recorded to ensure the freehold land register is an accurate, comprehensive and usable record of freehold land in the State; and
 - b. the removal of the thing will not prejudice the rights of the holder of an interest recorded in the register.

These requirements in s 29A LTA are in conflict with the seemingly unrestricted right in s 94K for a party to request removal.

While s 94K(2) states that the registrar 'must' record if a request is lodged, it is unclear how this might be reflected in the requirements of the Land Title Practice Manual. Section s 29A does not expressly state that it is subject to other authorising legislation, such as this amendment to the housing legislation. If s 94K is intended to be an unrestricted right to request removal, subject to the point below, it is unclear why there is a reference to s 29A of the LTA in s 94J of the amended Housing Act. The reference

¹ Explanatory Notes to the Bill at page 12.

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to s 29A of the LTA has the potential to create uncertainty about the process for removing an administrative advice under s 94K.

3. If the land is transferred to a new owner but the charitable donation deed is not assigned to the new owner², how can the new registered owner, who is not a party to the deed (as defined) have the administrative advice removed?

QLS strongly recommends that the definition of “party” in the proposed definition in section 94I be amended to include the “registered owner of the land”. Otherwise, the new owner will not be eligible to exercise the right under s 94K.

QLS also suggests consideration be given to requiring the registrar to remove the administrative advice on the registration of a transfer, given:

- The administrative advice does not prevent the registration of a transfer;
- It is unclear under the current drafting whether a new owner can exercise the rights under section 94K; and
- The deed will not bind a new owner, unless it has been assigned to a new owner.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED].

Yours faithfully

[REDACTED]

Kara Thomson
President

² The rights and obligations under the charitable donation deed will not automatically transfer to the new owner. The deed would need to be assigned to the new owner under s 199 of the *Property Law Act 1974*.