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Office of the President

15 April 2021

Our ref: [PD-WD]

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane QLD 4000

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

Dear Committee Secretariat

Debt Reduction and Savings Bill 2021

Thank you for the opportunity to provide feedback on the Debt Reduction and Savings Bill 2021 (the **Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law and help protect the rights of individuals. 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 compiled by the QLS Property and Development Law Committee, whose members have substantial expertise in this area.

QLS considers that the Titles Registry is a vital service to the Queensland public. For this reason, we welcome the commitments made when introducing this Bill that the Titles Registry will remain in public hands, as we have watched with concern as other states have sold or licenced their titles registries.

The Titles Registry is the safeguard of the integrity of land ownership for all Queenslanders as registration of title gives legal ownership under our Torrens system. The considerable data about land and individuals held by the Titles Office must continue to be held securely for the benefit of the public.

QLS particularly acknowledges that the Bill will continue "unchanged the underlying statutory compensation regime, in that the State will hold the statutory obligation to make compensation payments to persons affected by fraud. The State and the registrar will have the ability to appoint the operator as an agent to manage any claims (subject to conditions)."¹

¹ Explanatory Notes, page 3

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We support the following aspects of the Bill which are consistent with the ongoing operation of the Titles Registry for the benefit of the Queensland public:

- The specific acknowledgement in clause 3 of the Bill that the entity to whom functions relating to the land registry or water allocations register may be delegated will be an entity in which the State has a financial interest;
- Clause 3(3) of the Bill which provides that the purposes of the legislation include:
 - ensuring that the operator properly performs the functions delegated to the entity under an Act; and
 - ensuring the accuracy, availability, integrity and security of each register in the land registry and the water allocations register are not compromised by the delegation of functions to the operator;
- The arrangements in Part 3 of the Bill which support the regulatory arrangements for Titles Registry fees, including that the operator is authorised to decide registry fees up to a specified cap linked to changes in the consumer price index (CPI);
- The ongoing role of the 'official' (the Registrar of Titles) to monitor and review the performance of the titles registry function by the operator in the way and to the extent the official considers appropriate, as outlined in clause 31 of the Bill. Clause 33 and the power to give directions is a critical part of this model and we note that clause 33(5) provides that an arrangement entered into between the State and the operator may deal with the consequences of noncompliance with a direction given to the operator under this section.
- The power of the Minister in clause 34 to step in and appoint an administrator to act in place of the operator for performing the operator's functions under clause 8(1) for a period of time, if the Minister is satisfied the appointment is necessary to ensure the proper performance of titles registry functions delegated to the operator or to ensure the accuracy, availability, integrity or security of a titles register.

Clause 30 – Use of official's title

We are concerned that clause 30 "Use of official's title" could potentially cause confusion for those dealing with the operator.

Clause 30(1) provides that "For performing the titles registry function, the operator, or a person to whom the operator has subdelegated the titles registry function under the titles registry Act, may act under the title of the official."

However, clause 30(2) then provides that clause 30(1) "does not prevent the operator, or a person to whom the operator has subdelegated the titles registry function under the titles registry Act, from acting under the name of the operator."

This drafting permits the operator to operate under the name of the official. If this is to occur, it would be misleading.

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The section should be expressed that when the operator is performing the titles registry function, the operator is acting for the official, so it is transparent when the official is acting and when the operator is acting.

The rise of automated decision-making and the need for legislative review

QLS also takes this opportunity to foreshadow that with the increased use of automated systems to make decisions, there will be a need to review and update legislation such as the *Land Title Act 1994 (LTA)* to ensure that it is current and responds properly to new developments in technology and system changes.

It is recognised that to ensure legality of a public power exercised by a person that an express authority to exercise that power is required. Where the power is exercised through a computer system, particularly where the computer system is making the decision, an express power for the person to use an automated system should be included.²

In the land titling context, one of the functions of the registrar is the duty to register an instrument under section 30 of the LTA if the document meets the requirements of the relevant legislation.³

Where an instrument is lodged through an Electronic Lodgement Network Operator (ELNO) the decision to register the instrument is made by a land registry computer system according to business rules set by the Registrar. In most cases the automated registration system is used to check accuracy of the data and assess compliance with business rules after which the Land Register is updated automatically to reflect the dealing, all without the intervention of a human examiner.

The automated registration of documents must be a permitted "decision" to ensure that the framework around review and correction of decisions will operate appropriately under the LTA.

Arguably, the computer system used by the Land Registry falls within the category of a "complete automation, so the computer has to be regarded as the decision-maker" for the purpose of registering an instrument lodged through an ELN.⁴

We are aware that more commonly, Commonwealth legislation includes express authority to allow a public servant to make the decision through automated systems. For example [s 495A\(1\)](#) of the [Migration Act 1958](#) (Cth) ([Migration Act](#)) provides that the Minister may "arrange for the use, under the Minister's control, of computer programs for any purposes for which the Minister may, or must, ... make a decision; or exercise any power ..." The section also makes it clear that a decision by the computer system is a decision of the Minister.

² There is debate about whether this is actually a delegation or some other form of authority is required. See Perry, Justice Melissa --- "iDecide: Digital pathways to decision" (FCA) [2019] FedJSchol 3 ([available on Austlii here](#))

³ Only WA has included specific authority for the Registrar to use electronic means to register an instrument. See *Transfer of Land Act 1893 (WA)*, s 14.

⁴ Andrew Le Sueur, 'Robot Government: Automated Decision-making and its Implications for Parliament of Law' published in A Home and A Le Sueur (eds) *Parliament: Legislation and Accountability* (Oxford, Hart Publishing, 2016) 11. See also The Hon Justice Melissa Perry and Alexander Smith, 'iDecide: Administrative Decision-Making in the Digital World' (2017) 91 ALJ 29, 29 and 30.

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In the absence of legislative authority, uncertainty about the validity of a decision made by a computer system can arise.⁵

This will be a broader issue across other contexts, not only the land titling system.

QLS recommends that Government commence a review of legislation where automated decision-making might be employed to ensure that the legislation is appropriately updated and responsive.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) [REDACTED]

Yours faithfully



Elizabeth Shearer
President

⁵ For example, in *Pintarich v Commissioner of Taxation* in 2018, a letter had been created by a process involving “deliberate interactions between [an officer of the ATO] and an automated system designed to produce, print and send letters to taxpayers”. Despite the taxpayer paying the lump sum on the letter, the ATO continued to charge interest and indeed sent a further letter with increased liability. A majority of the Federal Court considered there was no ‘decision’ allowing the ATO to renege on the letter.



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29 April 2021

Our ref: [PD-WD]

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane QLD 4000

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

Dear Committee Secretariat

Debt Reduction and Savings Bill 2021 – supplementary submission

Thank you for the opportunity to appear before the Committee on 27 April 2021 for the public hearing on the Debt Reduction and Savings Bill 2021 (the **Bill**).

At the hearing, Queensland Law Society (**QLS**) representatives were asked about the privatisation of the New South Wales land titles registry. In the limited time available, we have not been able to obtain comprehensive comments from colleagues in New South Wales.

However, in light of the question, we have given further consideration to some of the challenges which might arise when transitioning a registry service from a government agency to a new operator. We are aware that there was considerable disquiet amongst the legal profession when other States have privatised their registries.

To manage stakeholder concerns throughout this process, we highlight two strategies for particular consideration by the Committee.

The first is the critical importance of retaining the corporate knowledge of current registry employees.

We understand the intention is to transfer eligible public service employees of the Registry to the operator and we recommend further consideration be given to strategies for long-term retention of key staff after the transfer. The retention of knowledge will ensure continued high levels of service. In turn, this will help to maintain the confidence of those who utilise Queensland's registry service that the transfer will not adversely affect the operation and integrity of the registry.

The second strategy is to implement a stakeholder reference group to work with the Department and the new operator during the transition process.

A stakeholder reference group will provide the opportunity for early identification and resolution of concerns. Open and transparent consultation with representatives of key stakeholders in this

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type of forum will not only give all parties a clear mechanism for raising concerns but will engender confidence in the transition process, provided that there is a genuine commitment to addressing and resolving issues.

QLS has participated in similar reference and advisory groups in other contexts and we find that these can be extremely beneficial in helping to mitigate industry and stakeholder concerns. In this context, the group could also be consulted on policy development and reform.

If the Committee was to recommend the formation of such a group, QLS would be keen to participate. Our members are frequent users of registry services on behalf of their clients and are well-placed to identify any emerging issues with the transition process.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) [REDACTED].

Yours faithfully



Elizabeth Shearer
President