Queensland Law Society

Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001
Tel +61 7 3842 5904 Fax +61 7 3221 9329
president@qls.com.au
ABN 33 423 389 441

Office of the President

Our ref: Industrial Law Committee

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Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

By post and email to: thlgc@parliament.qld.gov.au

Dear Research Director

QUEENSLAND RAIL TRANSIT AUTHORITY BILL 2013

Thank you for the opportunity for the Queensland Law Society to provide comments to the Inquiry into the *Queensland Rail Transit Authority Bill 2013* ('the Bill').

1. **Short consultation timeframe**

While we acknowledge that the setting of reporting dates is not within the control of the Committee, we wish to note the Society's deep concern over the exceptionally short reporting timeframes. This Bill was introduced on 16 April 2013, with submissions due by 20 April 2013 for a 26 April 2013 reporting date for the Committee.

Only three business days are available for responses to this Bill. This is deeply concerning as the Explanatory Notes to the Bill state that there has been no public consultation on the amendments in the Bill, nor was Queensland Rail Limited consulted.

In the Society's view, the appropriate time for consultation is prior to the introduction of legislation into the House, not after. It is not the measure of an inclusive Government when legislation has been drafted and presented to the House without any prior public consultation, and is then the subject of exceedingly short periods for public and Parliamentary scrutiny thereafter.

Given that there is a severely truncated opportunity for review of the Bill, an in-depth analysis has not been possible. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. That is a common by-product of legislation that is hurriedly drafted, and then introduced and passed without proper public consultation and scrutiny.

2. **Clause 90 – Decisions not reviewable**

In the short period of time we have had to analyse this Bill, one issue stood out as being particularly concerning for the Society, which is proposed clause 90 in relation to decisions not being reviewable. We are seriously concerned with this attempt to oust the jurisdiction of the Supreme Court from decisions made under this Act, including through the *Judicial*

Review Act process. We note the case of *Kable v Director of Public Prosecutions for NSW* (1996) 189 CLR 51; [1996] HCA 24 and consider this provision may possibly give rise to issues of unconstitutionality as the provision may be inconsistent with the traditional roles and functions of the Supreme Court. It is also possible that the legislation cannot effectively oust the inherent jurisdiction of the Supreme Court. The severely limited timeframes have not permitted a detailed consideration of these issues to be undertaken.

We note that the Explanatory Notes explain the breach of fundamental legislative principles presented by the provision (although the Explanatory Notes reference clause 89 rather than clause 90) as needed to "ensure possible legal proceedings do not unreasonably delay implementation". We acknowledge Government's desire for a speedy transition but are not convinced that this should come at the cost of compromising due process, external oversight and the jurisdiction of the courts. These are fundamental tenets of the balance in our democratic system.

Due to the broad nature of the drafting of clause 90 it appears that the provision will relate to any decision under the Act, including:

- Appointment of members to the board (s17)
- Appointment of senior executives (s35)
- Modifications of strategic or operation plan (s52)
- Directions about equity and dividends (Chapter 2, Part 5)
- Acquisition and disposal of assets and subsidiaries (Chapter 2, Part 7)
- Disposal of public records (Chapter 3, Part 6)

As a matter of fundamental principle it is inappropriate for any decision-maker to be provided with an unreviewable discretion as this promotes poor internal processes, poor decision-making practices and also provides fertile ground for inappropriate conduct of officials. The interests of good administration and transparent decision-making are furthered by there being accessible review processes close to the original decision-maker.

Given the severely short timeframe, we have not had the opportunity to assess all of the consequences of this provision. However, we consider the implications of this provision should be considered closely.

It may be that the provision:

- is inconsistent with the traditional role of the Court and should be removed from the Bill, or
- it can be appropriately limited to better give effect to the Government's intention of preventing unreasonable delays to implementation of the desired reforms.

We note that there already exists processes within the Court to deal with vexatious and unmeritorious litigation, which could be employed to avoid unreasonable delays.

3. Transitional provisions

We note that the Rail Industry Award 2010 is to be treated as a state award under the legislation. We consider that there should also be provision enabling the Fair Work Commission and federal courts to continue dealing with any matters currently before them and for any decisions in which Queensland Rail is currently the respondent to be recognised as binding on the state of Queensland.

Thank you again for the opportunity to provide these comments on the Bill.

Yours Faithfully,

Annette Bradfield
President