

18 January 2017

Your ref Agriculture & Environment Committee

Our ref WD: Property Committee

Research Director
Agriculture and Environment Committee
Parliament House
BRISBANE QLD 4000

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

Dear Research Director

Land and Other Legislation Amendment Bill 2016

Thank you for the opportunity to provide comments on the Land and Other Legislation Amendment Bill 2016 (the **Bill**). Queensland Law Society (**QLS**) appreciates being consulted on this important legislation.

This response has been compiled with the assistance of the Property & Development Law Committee who have substantial expertise in this area.

QLS is the peak professional body for the State's legal practitioners. We lead a profession of more than 9,500 members throughout Queensland. QLS is comprised of several specialist committees who provide policy advice to the QLS Council on law reform and areas of concern to the profession.

The following submission relates to the part of the Bill dealing with the introduction of the priority notice mechanism. By not commenting on the full scope of the provisions of the Bill, QLS does not express endorsement or otherwise of the draft legislation.

QLS broadly supports the introduction of legislation which supports the implementation of a nationally consistent eConveyancing system. However, QLS suggests the following clarifications to the draft legislation to reduce the risk of unintended consequences arising from the specific drafting of the priority notices provisions.

Scope of proposed new section 139 of the *Land Title Act 1994*

The new section 139 of the *Land Title Act 1994* provides that a priority notice can be deposited by or for a person who is, or will be, a party to an instrument that:

- (a) is to be lodged; and
- (b) will affect the lot or an interest in the lot.

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Section 140 of the *Land Title Act 1994* currently only permits a “transferee” to lodge a settlement notice. “Transferee” is defined in section 138 as:

- “(a) a purchaser for valuable consideration of an interest in a lot that is capable of registration by an instrument of transfer; or
- (b) a person who is entitled to an interest in a lot under an instrument of transfer or an instrument of mortgage.”

It is therefore clear that, at present, in order to support a settlement notice a person must have an equitable interest in the property either as purchaser or mortgagee (that is, there must be a contract, transfer or mortgage executed by the registered owner in favour of the transferee).

The proposed section 139 permits a person who “is, or will be, a party to an instrument ...” to lodge a priority notice. QLS submits it is unclear from this whether a party must have an interest in the property in order to lodge a priority notice or whether a party need only have a bona fide intention to do so.

Our concern is that priority notices may be misused, for example, by a prospective buyer during negotiations to gain a tactical advantage over the owner and other prospective buyers or by an owner attempting to frustrate the exercise of a power of sale by a mortgagee.

Whilst acknowledging that the current wording of section 139 is not appropriate as priority notices are intended to apply to dealings in addition to transfers and mortgages, QLS submits that the wording of proposed section 139 should be amended to make clear that a person must have an interest in a lot in order to lodge a priority notice, for example:

“A person who has an entitlement to a legal or equitable estate or interest in a lot and who intends to lodge an instrument to give effect to that interest may lodge a priority notice with respect to the proposed instrument ...”.

Lodgement of Repeat Priority Notices

Section 146(2) of the *Land Title Act 1994* currently prevents lodgement of multiple settlement notices in regards to the same transaction without leave of the court. There is no equivalent provision in the proposed new Part 7A.

The effect of a priority notice is to prevent the registration of any other instrument affecting the lot until the notice lapses (new section 140). Priority notices lapse after 60 days, subject to a right to extend for a further 30 days (sections 140 and 141).

The lack of a prohibition on lodging repeat priority notices creates the risk of mischievous or improper use of the priority notice mechanism, for example by an aggrieved owner / mortgagor who is seeking to prevent dealings with the property by a mortgagee entitled to exercise power of sale. Although new section 144 allows for the removal of a priority notice by court order and new section 145 contemplates compensation be paid for improper priority notices, pursuing a Court process is both costly and time consuming and in most cases would not be commercially feasible.

QLS submits that the existing section 146 should be retained.

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If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Wendy Devine on (07) 3842 5896 or w.devine@qls.com.au

Yours faithfully

A handwritten signature in cursive script that reads "Christine Smyth".

Christine Smyth
President