

Land Title Regulation 2022

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Scott Stewart MP, Minister for Resources provide this human rights certificate with respect to the *Land Title Regulation 2022* (Land Title Regulation) made under the *Land Title Act 1994* (Land Title Act).

In my opinion, the Land Title Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Land Title Act was enacted to consolidate and reform the law regarding the registration of freehold land and interests in freehold land. This statute performs functions including defining the rights of persons with an interest in registered freehold land, outlining the functions and powers of the registrar of titles and assisting the keeping of the registers in the land registry.

The Land Title Act also serves to govern and improve the system for registering title to and transferring interests in freehold land. In accordance with this legislative object, the Land Title Regulation has been proposed under the regulation-making power in section 199(2) of the Land Title Act.

The Land Title Regulation will achieve this object by furthering the use of the existing national eConveyancing system in Queensland. The practice of eConveyancing entails the use of an Electronic Lodgement Network (ELN) to prepare, lodge, process and register instruments and other documents (required instruments) for the purposes of the Land Title Act. The Land Title Regulation mandates the use of eConveyancing in Queensland by ensuring that the prescribed required instruments must be lodged via an ELN, unless exempted.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I consider that the following human rights are either of relevance to, or engaged by, the Land Title Regulation:

- Property rights (section 4(1))
- Recognition and equality before the law (section 4(1))
- Privacy (section 4(1))

Of those human rights, I consider that only the right to privacy is engaged and limited. Property rights and the right to recognition and equality before the law are of relevance. Property rights are relevant as the ability to obtain ownership of property is the fundamental purpose of

conveyancing. However, the Land Title Regulation will not detract from or otherwise affect one's ability to own property. Similarly, the Land Title Regulation will not result in the arbitrary deprivation of one's property. Instead, it will provide uniformity to the process used by legal practitioners when lodging or depositing required instruments.

Furthermore, the right to recognition and equality before the law may be relevant to the extent that the mandated use of an electronic system, as opposed to its paper-based counterpart, may pose a disproportionate level of risk to specific demographics. If the individuals themselves were subject to this risk, this could be construed as discriminatory. However, under the Land Title Regulation, these risks are managed entirely by trained legal practitioners and not by the individuals engaging them on a commercial basis.

Significantly, individuals who are unable to or do not wish to seek legal representation will retain the existing right to self-represent utilising the paper-based conveyancing system. This ensures that one's right to own property is not affected by the Land Title Regulation, while also maintaining the existing measures which provide recognition and equality before the law. Therefore, the Land Title Regulation does not engage the right to property or the right to recognition and equality before the law.

Privacy

The Land Title Regulation will mandate the use of eConveyancing for the lodging and depositing of certain required instruments. A notable aspect of this process is that it will require both the collection of personal information within the ELN and the storage of personal information in the freehold land register. As a result, the right to privacy will be engaged and limited.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the rights

The right to privacy, per section 25 of the *Human Rights Act 2019*, ensures that an individual's family, home, or correspondence are subject to privacy which cannot be unlawfully or arbitrarily interfered with. The Land Title Regulation limits this right in two ways. The first is that the performance of eConveyancing requires the collection and storage of personal information in an ELN. The second is that, in accordance with the Land Title Act, information pertaining to fee simple transactions will be stored within the freehold land register. The Land Title Act also provides persons with the ability to search the freehold land register upon payment of a relevant fee. The particulars recorded within the freehold land register include identifying information, such as the name or date of birth of all individuals who hold or have held a registered interest in a lot under the Land Title Act. These two factors will engage and limit one's right to privacy.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitation with regards to the storage of information within the ELN is an intrinsic requirement for all eConveyancing transactions. Due to this, the limitation contributes to the furthering of a seamless national eConveyancing economy. This is achieved by ensuring that

Queensland's conveyancing practices are contemporary and consistent with other state jurisdictions which have introduced eConveyancing mandates including New South Wales, Victoria, Western Australia and South Australia. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom as it is within the public interest to achieve these objectives and allow both the conveyancing industry and the state to realise the full benefits of eConveyancing.

The freehold land register is a pivotal component of the right to property. As the database within which one's freehold interest in property is registered with the state, the freehold land register allows for individuals to be recognised for their freehold interest in property and the rights entwined to that interest. While the public's ability to search the freehold land register engages and limits the right to privacy, it simultaneously allows individuals the ability to seek and receive publicly held information which is a key aspect of the right to freedom of expression. Therefore, this engagement and limitation to the right to privacy is consistent with a free and democratic society based on human dignity, equality and freedom as it significantly contributes to both the right to property and the right to freedom of expression.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The engagement and limitation which the Land Title Regulation presents to the right to privacy is necessary to achieve the purposes as outlined. The collection and storage of personal information onto an ELN is an integral aspect of the correct and proper performance of eConveyancing. Due to this, the limitation performs a critical role in furthering a seamless national eConveyancing economy. Equally, although the freehold land register presents an additional engagement and limitation of the right to privacy, it remains a key component of contemporary property ownership. Its existence is required for the right to property to exist, and the ability to search the freehold land register bolsters freedom of expression by ensuring that publicly held information is not subject to unnecessary restriction.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

A significant attribute of the Land Title Regulation is that it will further a seamless national eConveyancing economy, aligning Queensland practices with those of other state jurisdictions which have implemented equivalent eConveyancing mandates. As a result, the purpose cannot be achieved in a less restrictive way. Furthermore, there are existing safeguards which lessen the impact of the engagement and limitation.

The scope of information required to be stored on an ELN is not arbitrary and is restricted to that which is necessary for the required instrument to be lodged or deposited. Once stored on the ELN, the subscriber's conduct must then be compliant with legislation and the associated Queensland Participation Rules established under section 23 of the *Electronic Conveyancing National Law (Queensland)*. The Queensland Participation Rules also outlines protection measures which subscribers must uphold to protect the system and the process which must occur in the event of a security breach. The freehold land register is maintained by the Queensland Government and is subject to stringent information security policies and standards. These are reinforced by legislative requirements such as those under the *Information Privacy Act 2009* and the *Public Records Act 2002*.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The limitation imposed on the right to privacy by the Land Title Regulation is considered reasonable and balanced based on the significant benefits gained in furthering a seamless national eConveyancing economy, the promotion of separate human rights and the existing safeguards ameliorating the risk and impact of the limitation. In pursuing a seamless national eConveyancing economy, it is ensured that Queensland's conveyancing practices remain modern and consistent with other state jurisdictions. Similarly, the limitation promotes both the right to property and the right to freedom of expression. To the extent that this limitation presents risks to individuals, these risks are accounted for by safeguards within legislation and associated rules which govern security processes. Based on these factors, the limiting law strikes a fair balance between the purpose of the limitation and the preservation of the human right.

Conclusion

I consider that the Land Title Regulation is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

SCOTT STEWART MP
MINISTER FOR RESOURCES

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