

Crown Law  
QUEENSLAND

# Property Law Update

Angela Murphy

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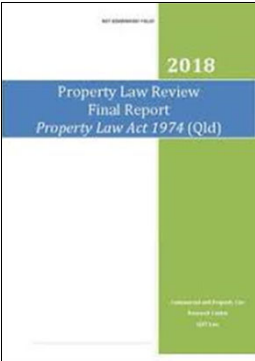
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## Background

- **Review by QUT**  
Recommended the modernisation, simplification, clarification and reform of Queensland's property law – 2013 to 2018.



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## Legislative reforms

- **Reforms facilitating electronic land transactions**
  - Electronic signing – 2022
  - eConveyancing – early 2023
- **Other recent amendments – late 2023**
  - *Body Corporate and Community Management Act*
  - *Residential Tenancies and Rooming Accommodation Act*
  - *Land Sales Act*
- **Upcoming reforms**
  - New Property Law Act – anticipated 2024
  - Statutory Seller Disclosure Regime – anticipated 2024.

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## Reforms facilitating electronic transactions

- Land contracts
  - Statute of frauds (s 11, s 59 of *Property Law Act 1974*)  
... no interest in land can be created or disposed of except by **writing signed** by the person creating or conveying the same ...
- Deeds
  - common law requirements - written on paper, signed sealed and delivered
- Titles office requirements
  - documented on paper, signed and witnessed.

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## Reforms facilitating electronic transactions

- Electronic Land Contracts
    - In electronic form and signed electronically
      - Case law - *Stellard Pty Ltd v North Queensland Fuel Pty Ltd*
      - *Acts Interpretation Act 1954, Electronic Transactions (Queensland) Act 2001, Corporations Act 2001 (Cth)*
  - Electronic Deeds
    - *Justice and Other Legislation Amendment Act 2021* amended *Property Law Act 1974*
      - no requirement for paper or sealing. Electronic signatures and no witness. Delivery by words or conduct.
- Note: Titles registry forms still on paper .

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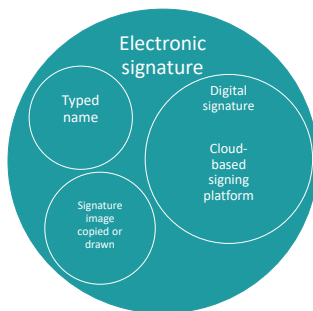
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## Electronic signatures



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### Reforms facilitating electronic transactions

- Mandatory eConveyancing
  - from February 2023
    - documents electronically prepared, signed, settled and registered through an ELNO
  - required instruments and exemptions
    - *Land Title Regulation 2022*.




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### Other reforms in 2023

- *Body Corporate and Community Management Act 1997*
  - smoking, animals, towing vehicles on scheme land
  - facilitating termination of schemes for economic reasons
- *Residential Tenancies and Rooming Accommodation Act 2008*
  - strengthening protection for residential tenants
- *Land Sales Act 1984*
  - strengthening consumer protection for buyers under 'off the plan' contracts.

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### Upcoming reforms

- Queensland's new *Property Law Act 2023*:
  - modernises the *Property Law Act 1974*
  - updates to reflect current property practice
  - introduces major reform
  - changes to long-standing property law concepts.

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### Modernisation

- Removing obsolete sections
- Simplifying the language
- Clarifying certain sections.

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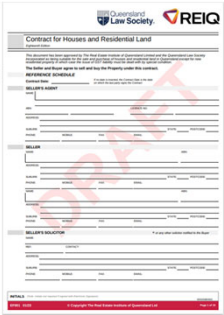
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### Updates

- Further facilitating electronic land transactions
  - electronic service of notices (s 233)
- Reflecting current conveyancing practice:
  - extensions of time (s 79-81)
- Updated REIQ contract to be released.



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### Major Reform – seller disclosure scheme

- *Property Law Act 2003* introduces a statutory seller disclosure regime for freehold land in Queensland (s 99)
- Current position: Disclosure required from various sources. Otherwise, buyer to do its own due diligence
- New position: Consolidate into a single seller disclosure statement and adds some new disclosure requirements. Cannot 'contract out' (s 98)
- Intent is to assist buyers to make informed decisions about purchasing land.

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### Seller disclosure scheme - application

- Section 99 *Property Law Act 2023*
- Seller to give buyer:
  - a disclosure statement
  - prescribed certificatesbefore a contract is signed
- The disclosure statement must:
  - be in the approved form
  - include any information prescribed by a regulation.

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### Seller disclosure scheme - exceptions

- No application to:
  - gifts or exchanges of land
  - non freehold land (eg *Land Act 1994* leases)
- Exemptions (s 100):
  - related parties
  - the State or a statutory body buying land
  - the State selling land to a long-term tenant and has given a notice to the tenant
  - sale price more than \$10 million (or other amount in the regulation).

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### Seller disclosure scheme – the disclosure

- Disclosure statement
  - in the approved form
  - containing information prescribed by regulation
- Prescribed Certificates
  - each document prescribed by regulation
- Waiting for the Regulation.

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### Disclosure statement

- Matters to be disclosed include (among other things):
  - unregistered encumbrances
  - zoning of lot
  - information about contamination or environmental protection
  - transport infrastructure proposal or notice of intention to resume
- Up-front searches may be necessary at a cost to the seller.

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### Prescribed certificates

- Certificates to be provided include (among other things):
  - title search and registered plan of survey
  - body corporate certificates
  - pool compliance certificates
  - notices given to seller by an authority.

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### No disclosure of certain information

- Flooding (at this stage)
- The physical state of the building
- Current or historical use
- Current or historical building approvals
- Limits under planning laws
- Services connected.

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### Consequences of non-compliance

- Failure to disclose
- Incomplete or inaccurate in relation to a material matter
- Termination before settlement
- No entitlement to compensation or damages.

(s 104)

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### Special cases – auctions and options

- Auctions
- Options.

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### Prepare for implementation

- Waiting for Regulation for further detail
- Waiting for the updated REIQ contract
- Who will prepare seller disclosure statements – in-house, solicitors or real estate agents?
- Seller to conduct searches prior to contract
- Review 'as is, where is' special conditions
- Seller disclosure statements to be updated periodically to ensure accuracy.

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### Changes to property law concepts

- Leases
  - covenants that touch and concern the land (s 140 & s 143)
  - release on subsequent assignment of lease (s 144)
  - consent to dealings with leases (s 142)
  - termination of leases ( s 153)
- Update leasing precedents.

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### Changes to property law concepts

- Easements
  - covenants run with the land (s 65)
  - statutory right of user (s 180)
  - power to extinguish or modify easements (s 181)
- Sales
  - instalment contracts (ss 87-94).

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## Questions?

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