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The Requirements of Writing for Electronic Land Contracts – The Queensland Experience Compared with Other Jurisdictions

Authors: [Sharon Christensen LLB \(Hons\), LLM](#)

Gadens Professor in Property Law, Queensland University of Technology Faculty of Law

[William Duncan LLB, LLM](#)

Professor, Queensland University of Technology Faculty of Law

[Rouhshi Low](#)

Senior Research Assistant, Queensland University of Technology Faculty of Law

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Introduction

1. The application of contractual principles to electronic contracts where the particular contract is not required to be in writing does not require any substantial distortion of the traditional rules. Where a contract is required by legislation to be in writing before it is enforceable the ability of an electronic contract to comply with these requirements is less clear. There are several important aspects of an electronic contract, which are inconsistent with the objectives of legislation that requires formalities such as writing. A digital contract may appear on a computer screen to consist of words in a written form but in reality this is merely a representation of the information stored by the computer in electronic form. The electronic form does not consist of words but strings of numbers and symbols and therefore doubt arises as to whether it is in written form.
2. The increasing use of electronic methods in contract formation provides a unique opportunity to revisit the modern relevance and vitality of the Statute of Frauds provisions. The central focus of this article is whether an electronic contract which does not fit the traditional view of what it means to be "in writing" is valid under the current law, or whether a further layer of legislative regulation is necessary. While there are undoubted advantages to undertaking transactions in an electronic medium, even if security of the documentation can be assured, many people will remain unwilling to enter transactions using the internet, particularly where property rights are concerned, if there is some doubt about the validity of the transaction.

Electronic Data as Writing

Why does the Statute of Frauds require writing?

3. Under the equivalent legislation to the Statute of Frauds in the majority of common law jurisdictions, a contract for the disposition of an interest in land will only be enforceable if the contract is in writing or a memorandum of the contract is in writing and the contract or memorandum is signed by the party to be charged.^[1]
4. The requirement for writing in land contracts is traced back to the Statute of Frauds 1677 (UK). In 1677, the laws of evidence were in a comparatively undeveloped state, particularly the rules relating to the reception of oral evidence. The Statute of Frauds gave some certainty in relation to evidence of specified transactions where it prescribed writing and a signature, to some extent, overcoming the idiosyncratic responses of medieval juries.^[2] However in recent times, a number of writers have questioned the worth of the continuing application of these requirements, one noting that "after some three centuries of general abuse and judicial evasion" its survival may perhaps now be justified only by the comparative complexity of the land transaction rather than by reference to fraudulent practices.^[3] In the United Kingdom, judicial criticism of the Statute continued to such an extent that it has now been repealed and replaced.^[4] However, the new legislation, Law of Property (Miscellaneous Provisions) Act 1989, continues to require land contracts to be in writing and signed by the parties or their authorised agents. The importance of maintaining the Statute of Frauds in some guise is linked to the purpose of the writing requirement. Even modern policies point to certain imperatives in the enforcement and validity of land transactions:
 1. The need for certainty within contractual relationships;
 2. The importance of the parties giving serious deliberation to a decision to enter a land transaction;
 3. The need to memorialise the agreement for later reference; and
 4. The importance of authentication of the contract to inhibit the likelihood of fraud.

5. The original purpose of the writing requirement as a memorial of the bargain emphasises the need for the writing to be permanent and capable of being referred to by the parties at a later date. It protects against the impermanence of oral promises and the vagaries of individual memories.[\[5\]](#)

Traditional meaning of "in writing"

6. An examination of the judicial authorities demonstrates that courts in the past have primarily been concerned with whether a paper document has contained all of the necessary terms to sufficiently evidence an agreement in writing rather than the nature of the media in which the terms have been evidenced. The fact the document was in writing has been assumed as obvious in the circumstances. "Writing" is generally defined in interpretation statutes in England, the United States and Australia as including "any mode of representing or reproducing words in a visible form".[\[6\]](#) This traditional definition of writing is couched broadly and it is possible to argue that both a tangible and intangible document may satisfy the definition. The reported cases indicate that the courts will be satisfied where the contract between the parties has been reduced to a tangible form which can later be relied upon as a record of the bargain between the parties, such as the creation of a document or some other printed version of the agreement.
7. The use of the phrase "some memorandum or note of the contract" to be in writing in the Statute of Frauds and its descendents emphasises the existence of a paper and ink document. This has been interpreted broadly to contemplate an entire agreement being in one document and also to instances where the memorandum may be contained in more than one document or circumstances where the contract may be partly oral and partly in writing.[\[7\]](#) Where there are two or more documents relied upon to evidence a note or memorandum, these may be constituted, for example, by a receipt containing sufficient particulars,[\[8\]](#) a series of letters signed either by the parties to the contract or a lawfully authorised person,[\[9\]](#) a cheque,[\[10\]](#) or a combination of such documents.
8. Within Australian and English jurisdictions the courts have readily accepted a variety of physical media to be "in writing" for the purposes of the Statute of Frauds.[\[11\]](#) Assuming the parties have reached a concluded agreement and all of the terms are evidenced in the documents the types of media which has been accepted as writing in England and Australia are:
 - A recital in a will[\[12\]](#)
 - An affidavit [\[13\]](#)
 - Letters[\[14\]](#)
 - A reply to a requisition[\[15\]](#)
 - A statement in a rent book[\[16\]](#)
 - A recital in a settlement [\[17\]](#)
 - A receipt[\[18\]](#)
 - A cheque[\[19\]](#)
 - Telegrams[\[20\]](#)
 - Bills of exchange[\[21\]](#)
 - Facsimiles[\[22\]](#)
9. In the United States a similar list of physical media has been accepted as being writing for the purposes of the Statute of Frauds.[\[23\]](#) Additionally, several decisions demonstrate that US courts are prepared to hold that an email is a sufficient writing for the purposes of the Statute of Frauds provided the email evidences the agreement between the parties and is signed.[\[24\]](#) Although emails are accepted within the United States as being writing, the next question is whether the acceptance of emails as writing translates by analogy to a web based electronic

document which may never be printed.

Is Electronic Data the same as Written Words?

10. The issue in an electronic environment is whether an electronic document which may never take a physical form but could be permanently retained by the parties in electronic form should be considered to be "in writing" as required by the Statute of Frauds. This difficulty arises because in reality an electronic document is a series of numbers stored in the computer's memory. What is seen on the screen is a translation of the numbers by the computer after application of a coding convention, into a form of words for the reader.^[25] Similarly information on a website is hypertext markup language (HTML) which is transformed into binary code packets that are transferred to a person's computer and reassembled. In either case the binary code which represents the electronic information is not stored on the computer as one document but in a series of numbers which is only understandable to a person once the appropriate software has read and translated the numbers into words.
11. An electronic contract, therefore, by its nature has a dual form. In an electronic sense the contract is a series of numbers and code stored on the hard drive of a computer or disc, but the contract also takes on a visible form as a translation of the numeric code when transmitted to a computer screen. This dual nature has caused a conflict in the views presented by various commentators^[26] and contributes to the uncertainty surrounding whether an electronic contract can be regarded as in writing.
12. The Statute of Frauds provides for a contract for the sale or other disposition of land or some memorandum or note of the contract to be "in writing". The primary question is whether a document consisting primarily of a series of electronic bits in a computer's memory will satisfy this requirement? As discussed, the term is well understood to include paper and ink writings which have a physical form. The physical form satisfies the legislation's original purpose of creating a permanent memorial of the bargain. The question in an electronic environment is whether something which may never take a physical form but could be permanently retained by the parties satisfies that same objective. The use of the phrase "in writing" will present difficulties for electronic contracts if it is determined that "in writing" requires not only words but a physical presence. Little guidance can be obtained from reported decisions concerning the Statute of Frauds itself as little consideration is given to the question of whether a document is in "writing". This fact is usually assumed as being obvious in the circumstances. As a general principle, the reported cases indicate that the courts will be satisfied where the contract between the parties has been reduced to a tangible form which can later be relied upon as a record of the bargain between the parties. Until recently, the only method used by most parties of reducing a document to tangible form has been the creation of a physical contract or some other printed version of the parties' agreement. Obviously, the situation where a document is created on a computer and printed for execution does not present any significant jurisprudential issues. Once the document is printed it will be readily accepted as being in writing. The fact it was created using a computer and printer instead of a pen and ink will not prevent the printed document from being considered writing. The difficulties arise, however, in stretching the current jurisprudence developed within a legal framework premised on the creation of physical documents, to a situation where an intangible electronic series of bits which convey no meaning without a computer and software to interpret has the same legal effect.
13. Judicial pronouncements in a variety of jurisdictions although not directly related to the Statute of Frauds are instructive of the issues. In England, evidence for the view that an electronic document which is visible on the computer screen is in writing is found in the interpretation of court rules providing for the service of a document by facsimile transmission. In *Anson v Trump*,^[27] the court held that a paper document required to be served as part of

the litigation process could be served by facsimile transmission. The court recognised that between the time that the document was copied into the fax machine and the time that it was received in paper form at the recipient's machine, it underwent a conversion which constituted the transmission process, and the fact that it remained in the facsimile machine's memory in digital form before being printed or read was irrelevant.^[28] Similar analogies have been drawn by United States' courts between sending a facsimile and sending an email. The prevailing view being that as an email, similarly with a faxed message, is broken into analogue tones which are carried over a communication line to another computer where the tones are reassemble it should be viewed in the same way as a facsimile. This is clearly exemplified in the many decisions which accept emails and facsimiles as containing evidence of the bargain between the parties

14. While the analogy with a facsimile transmission may in some ways be valid, the main difference between the use of a fax and that of a computer is that a fax document needs to be printed in order to be read whereas a document on a computer does not. The electronic document may never be printed and therefore never take on a physical form. The fax is merely a conduit for transmitting a paper document from one place to another whereas a computer serves the additional function of actually creating the document which is then stored on the computer.
15. In other contexts, United States' courts have also been willing to interpret legislative provisions widely to accommodate changes in business practices as a result of the advent of the computer age. For example, an Iowa Court has held that a requirement to keep a written record of an insurance contract was satisfied by the insurer keeping records in its computer system.^[29] Similarly, in relation to a web based licence agreement which was required to be in writing under the Federal Arbitration Act and the Washington Arbitration Act, the District Court of Illinois^[30] found that the contract in question was in writing as its easily printable and storable nature was sufficient to render it written for the purposes of the legislation. However, the court was not prepared to find that all electronic communications would be found to be in writing despite the fact that the ordinary meaning of writing did not exclude electronic communication.
16. A contrary view advanced by some commentators is that an electronic document is not writing because digital information is a series of electronic bits in a chip or some other recording medium and it not a visible representation or reproduction of words as required by the definition.^[31] As the emphasis of the Interpretation Acts in each jurisdiction^[32] is on visibility, the argument is that an electronic document in its digital form does not qualify as writing. This view was rejected by the Law Commission for England and Wales ("Law Commission") in their paper, 'Electronic Commerce: Formal Requirements in Commercial Transactions - Advice from the Law Commission',^[33] stating that while an electronic document may not be in writing, the screen display will satisfy the definition of writing.^[34] The Commission refers by analogy to the cases involving faxes and telexes and discounts the criticism that electronic messages should be read. In that respect, an electronic message is no different from a message contained in a document which could easily be delivered but not read. The fact that it remained unread would not affect its validity.^[35]
17. This examination demonstrates that courts are prepared to give effect to current concepts in an electronic environment where the actual result of the use of the technology was the same as it would have been had the document been physically served^[36] and the central policy objectives of the writing requirement are not significantly distorted.

Are electronic contracts consistent with the policy objectives of the Statute of Frauds?

18. If an electronic document is to be accepted as "writing" for the purposes of the Statute of Frauds without further legislative regulation it is important to examine any consequences this has for the policy objectives of the Statute of Frauds. The policy objective of the writing requirement in the Statute of Frauds has two limbs. First the objective is to promote certainty and deliberation in transactions. The second objective is to memorialise the agreement in a reliable form which could be referred to later by the parties and if necessary, produced as evidence in court proceedings.
19. In relation to the first policy objective it could be argued, consistently with the definition of "writing",^[37] that an electronic document promotes the objective of certainty and deliberation as the parties will still need to give consideration to the drafting of terms of the agreement as in formal documents. This serves the same purpose as writing the terms in ink on a piece of paper, provided the document is recorded or stored in a form which is capable of retrieval and conversion into readable form.^[38] This analysis is supported by the view that a definition of writing as a "mode of representing or reproducing words in a visible form"^[39] applies to the visible representation of electronic data as words on a computer screen. In other words if a party can see it and read it, the document is in a visible form. However, what is viewed on the screen is only a reproduction or copy of the electronic information stored in the computer memory.
20. In relation to the second objective, a contract in paper form, especially one that is signed, is considered to provide clear proof of the terms of a contract, and is usually preferred in court proceedings. Central to this view is the assumption that words on a paper document cannot be altered without detection. A court will need to be satisfied that an electronic document containing the terms of a land transaction is authentic and has not been altered from the terms agreed before reliance can be placed on such a document. If this cannot be achieved then one of the primary objectives of the Statute of Frauds will disappear in an electronic environment. As in physical media the signature of a party acts as an authentication of the document.
21. In order to satisfy this policy objective, the parties should chose a method of creating the electronic contract that is reliable and assures the integrity of the document is maintained. For example, digital signature using public key infrastructure as it will allow the parties to identify if the document has been altered after the digital signature is attached.

Conclusions on common law position

22. It is at best arguable that an electronic contract for the disposition of an interest in land will be a valid writing under the current law. It is probable that this uncertainty without further legislative intervention will act to inhibit the use of electronic mediums for the formation of land transactions. This is consistent with the view of the Australian Electronic Commerce Export Group who after considering issues concerning writing and signatures, determined that the best way of dealing with the uncertainties produced by an electronic environment was to legislate. The legislative approach to resolution of the difficulties experienced in grafting the existing legal principles has been adopted in other jurisdictions. The success or otherwise of each of the frameworks used is examined.

Comparisons of Regulatory Frameworks

Australia- Electronic Transactions Acts

23. Section 11 of the Electronic Transactions (Queensland) Act 2001(Qld) aims to give an electronic document the same functional equivalence as a paper document by providing that a State law requiring the giving of information in writing may be satisfied by the giving of the

information by way of an electronic communication.[40] The intention of the legislation is to facilitate a move by commerce to electronically based contracts and purports to validate transactions made electronically where existing legislation or common law may require a particular form for the documentation.

24. The term 'electronic communication' is defined widely and would include communication using cables and wires, radio waves, visible light, microwaves, infrared signals and other energy in the electromagnetic spectrum. This section is broad enough to allow requirements of writing to be met for an electronic land contract provided the requirements of the section are satisfied.
25. These are:
 - Giving of information
 - Information must be readily accessible
 - Consent

Giving of information

26. The first requirement for the operation of the section is that a person "is required to give information in writing". Section 10 provides some examples of giving information[41] but none of the examples given would suggest that the expression "give information" could include the creation of a "contract or memorandum".
27. Another issue to consider is whether the Statute of Frauds actually "requires" a contract or memorandum to be in writing. Section 59 of the Property Law Act 1974 (Qld)[42] simply provides that a contract will not be enforceable unless it is in writing, but it does not actually "require" that the contract be in writing.[43] To overcome this problem the word "require" would need to be broadly interpreted to include not only a positive obligation but also a where failure to comply will result in an invalid transaction. This view was suggested by Sneddon that it is possible to take a wide view of requirement as being either a command or the provision of negative consequences if the document is not signed.[44] This will bring the Property Law Act 1974 (Qld) within the application of the Electronic Transactions (Queensland) Act 2001 (Qld).

Readily accessible

28. Section 11 of the Electronic Transactions (Queensland) Act 2001(Qld) requires that the information must continue to be readily accessible so as to be useable for future reference.[45] This requirement means that information must be able to be accessed, retrieved and read and also be capable of being interpreted. Provided the parties to the contract store the information in such a manner that it is capable of being accessed, retrieved and read, this requirement is likely to be met.

Consent

29. The last requirement is that the recipient of the information consent to being given information by means of an electronic communication. It is suggested that both parties need to consent to the contract being formed electronically. Consent is defined to include "consent that can reasonably be inferred from the conduct of the person concerned".[46] Possible situations where consent may be inferred include:
 - Previous course of dealings where electronic communication was used;
 - A person commenced correspondence or makes an offer via electronic communication

and the other party responds in kind;

- A person hands to another a business card with an email address indicating the card included contact details.

30. Less clear are situations where an email address appears in a contract, which forms the basis of an offer or on a company's letterhead used in correspondence. In each case the person's conduct would be considered in the light of their express statements.^[47]

Effectiveness of the ETA in terms of the Property Law Act

31. It is doubtful whether, with the current wording of s 11 of the Electronic Transactions (Queensland) Act 2001(Qld) referring to a law requiring a person "to give information in writing", that the Act could apply to the formality requirements for contracts concerning the creation or disposition of interests in land.^[48]
32. With regard to contracts for the sale of residential land or units, the Property Agents and Motor Dealers Act 2000 (Qld) requires a warning statement in a particular form to be placed as the first sheet of the contract. This Act is currently excluded from the operation of the Electronic Transactions (Queensland) Act 2001 making the entry into an electronic contract for that type of property impossible without amendment to that Act.

New Zealand

33. The Electronic Transactions Act 2002 (NZ)^[49] is based on the UNCITRAL Model Law on Electronic Commerce, but also includes provisions similar to the UNCITRAL Model Law on Electronic Signatures. Section 20, which deals with the legal requirements for information to be given in writing, has the same requirements and is drafted in the same terms as s 11 of the Electronic Transactions (Queensland) Act 2001 (Qld). Section 18, however, applies to legal requirements for information to be in writing.^[50]
34. The definition of "information" in s 5 of the Act as including "information that is in the form of a document, a signature, a seal, data, text images, sound or speech" is wide enough to include a land contract either in paper or electronically. The difficulties with the word "requirement" are overcome by a definition in s 15 that includes a provision in an enactment that provides consequences if the provision is not complied with.^[51] This would extend the meaning of legal requirement to a provision such as s 59 of the Property Law Act 1974 (Qld) which does not require writing but makes the contract unenforceable without writing.
35. Like s 11 of the Electronic Transactions (Queensland) Act 2001 (Qld), an electronic document will only fall within the provision if:
- The information is readily accessible so as to be usable for subsequent reference (s 18);
 - The parties have consented to the use of the electronic form and consent may be inferred from the person's conduct (s 16).
36. The comments made in respect of s 11 of the Electronic Transactions (Queensland) Act 2001 (Qld) will apply to the elements of accessibility and consent under the Electronic Transactions Act 2002 (NZ).
37. It is the writer's view that the New Zealand approach of making separate provision for the different types of writing requirements for the purpose of creating functional equivalence between an electronic document and a paper document will be more effective than the Australian approach.

United Kingdom

38. The two relevant pieces of legislation are the Land Registration Act 2002 (UK) and the Electronic Communications Act 2000 (UK).
39. The Land Registration Act[52] will repeal the Land Registration Act 1925 and replace it with a new set of provisions relating to registered land and dealings with unregistered land in England and Wales that trigger first registration. Chapter 8 deals specifically with electronic conveyancing.
40. Section 91(1) provides that Chapter 8 would apply to a document in electronic form only if:
 - the document effects a disposition falling within s 91(2); and
 - the conditions in s 91(3) are met.

A disposition will fall within s 91(2) if it is:

- a disposition of a registered estate or charge, or
- a disposition of an interest which is the subject of a notice in the register, or
- a disposition which triggers the requirement of registration.

The conditions in s 91(3) are as follows:

- a. the document makes provision for the time and date when it takes effect
 - b. the document has the electronic signature of each person by whom it purports to be authenticated
 - c. each electronic signature is certified
 - d. such other conditions as rules may provide are met
41. The Land Registration Act refers to the definitions in ss 7(2) and 7(3) of the Electronic Communications Act 2000 (UK)[53] to identify what would qualify as an electronic signature and what constitutes a certification.
 42. Section 91(4) of the Land Registration Act then goes on to provide that a document satisfying the above requirements would be regarded as "in writing and signed by each individual, and sealed by each corporation, whose electronic signature it has" and that the document is also to be regarded for the purposes of any enactment as a deed.[54]

Effectiveness of the Land Registration Act

43. The Land Registration Act, unlike the Electronic Transaction (Queensland) Act, applies specifically to electronic conveyancing. So long as parties ensure that the electronic document states the time and date when it takes effect, contains the electronic signature of both parties and each electronic signature is certified, the Land Registration Act deems the electronic document to be in writing. Thus the Land Registration Act does not suffer from the same language difficulties as the Electronic Transaction (Queensland) Act as seen above.
44. According to the explanatory memorandum to the Land Registration Act, "the section does not disapply the formal statutory or common law requirements relating to deeds and documents but deems compliance with them. When the section applies, the electronic document is therefore to be treated as being in writing, having been executed by each individual or corporation who has attached an electronic signature to it, and, where appropriate, as a deed". [55] This approach is similar to the Electronic Transactions (Queensland) Act which deems an electronic communication to be in writing if certain criteria are fulfilled. Adopting this same

approach but clearly applying s 11 to contracts or documents would provide greater certainty to conducting land transactions electronically.

United States

45. The relevant legislation in the United States is the Uniform Electronic Transactions Act ("UETA").^[56] It was drafted to conform closely to the UNICTRAL Model Law on Electronic Commerce. The following discussion is limited to the UETA and its provisions. It assumes that the various states in the United States have or will be adopting the UETA without any changes to its provisions.^[57]
46. The conditions necessary for the UETA to apply to a contract or memorandum for the disposition of an interest in land are:
 - o There must be a transaction;
 - o The parties must consent to transacting electronically;
 - o There must be an electronic record or an electronic signature within the meaning of the Act.^[58]

Transaction

47. The UETA applies to electronic records and signatures "relating to a transaction".^[59] The term 'transaction' is defined as an action or set of actions, occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.^[60] It is wide enough to cover an electronic conveyancing process, where the parties communicate and exchange documents electronically.

Consent

48. The UETA applies only to transactions between parties where both have agreed to conduct transactions by electronic means.^[61]
49. The courts are encouraged to interpret the parties' words and actions liberally in order to determine whether the required agreement exists. A party's agreement can be drawn from all surrounding circumstances, including the parties' conduct. In the context of an electronic conveyance, a party's consent could be implied from an electronic communication in the form of an offer or an electronic acceptance.^[62]

"Electronic record"

50. The UETA applies only to electronic records and signatures relating to a transaction. The Act defines an electronic record as "a record created, generated, sent, communicated, received, or stored by electronic means".^[63] The term "electronic" is defined widely so as to include information processing systems, computer equipment and programs, electronic data interchange, electronic mail, voice mail, facsimile, telex, telecopying, scanning, and similar technologies.^[64] According to the commentary to the UETA, the definition of "record" is designed to embrace all means of communicating or storing information except human memory.^[65] So a record may be on paper, on a disc or cassette or stored in digital memory.
51. Accordingly, the definition of "electronic record" is broad enough to cover information or a transaction stored on a computer hard drive or floppy disc, facsimiles, voice mail messages, messages on a telephone answering machine, audio and video tape recordings, among other records.^[66]

Effectiveness of the UETA

52. Where the UETA does apply, UETA s 7 provides that:
- a. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form".[\[67\]](#)
 - b. A contract[\[68\]](#) may not be denied legal effect or enforceability solely because an electronic record was used in its formation
 - c. If a law requires a record to be in writing, an electronic record satisfies the law.
 - d. If a law requires a signature, an electronic signature satisfies the law.
53. Sections 7(b) and (c) when read together should apply to ensure that a land transaction formed by one or more electronic records is in writing for the purposes of the Statute of Frauds. Use of the word "record" removes the difficulties encountered in applying the phrase "give information" under the Electronic Transactions (Queensland) Act 2001 (Qld) to a contract. Nevertheless the requirement under section 7(c) (if a law "requires" a contract or record to be in writing) may present similar difficulties as the writing requirement under section 11 of the Electronic Transactions (Queensland) Act 2001 (Qld). As discussed above this could be overcome by interpreting the word "require" in section 7(c) to include not only a positive obligation but also where a failure to comply will result in an invalid transaction.[\[69\]](#)
54. Being a procedural Statute, the application of the UETA to an electronic conveyancing transaction will act to ensure that the transaction would not fail simply because the documents comprising the transaction are not written on paper or that an electronic signature was used instead of a manual signature. However, the validity and enforceability of the electronic contract will still have to be evaluated under existing substantive contract law.[\[70\]](#)

Conclusion

55. The main problem identified in the operation of the Electronic Transactions (Queensland) Act 2001 (Qld) is that the phrase "to give information in writing" casts doubt on whether the Act as it stands could apply to the formality requirements for contracts concerning the creation or disposition of interests in land.[\[71\]](#) The language of the Uniform Electronic Transactions Act overcomes this problem by adopting the concept of an electronic record. The electronic records can relate to a transaction, and the word 'transaction' is defined widely enough to cover the making of a contract for the disposition of an interest in land.
56. Despite the possible operation of the Uniform Electronic Transactions Act in a land transaction context the terms of s 7(c) suffer from some of the same inadequacies of the Electronic Transactions (Queensland) Act 2001 (Qld) by applying to a law that "requires" a record to be in writing. As discussed above the section would only apply to s 59 of the Property Law Act 1974 (Qld) if the word "require" is construed to include not only a positive obligation but also where a failure to comply results in an invalid transaction.[\[74\]](#) An alternative approach to defining the word "requirements" or "require" can be seen in the New Zealand legislation where it is given both a positive and negative meaning.
57. The application of the Uniform Electronic Transactions Act to an electronic conveyancing transaction will act to ensure that the transaction would not fail simply because the documents comprising the transaction are not written on paper. However, the validity and enforceability of the electronic contract will still have to be evaluated under existing substantive contract law. In that sense the Uniform Electronic Transactions Act is similar to the Electronic Transactions (Queensland) Act 2001 (Qld) in that they are both are procedural statutes - the aim of both legislation is to ensure that requirements for paper or manual signatures may be satisfied electronically but the validity or otherwise of the transaction itself is still subject to

substantive rules of law.

58. It is clear that the experience in Queensland will be repeated in other Australian jurisdictions where the legislative regime is very similar, if not identical. Naturally at the time of writing, there had been no legislative change in Queensland, however, as can be seen we respectfully suggest that it be undertaken as soon as practicable.

Bibliography

Farrand J T (1983), *Contract and Conveyance* (London: Oyez Longman)

Kidd D L & Daughtrey W H (2000), 'Adapting Contract Law to Accommodate Electronic Contracts: Overview and Suggestions', *Rutgers Computer & Technology Law Journal* 215

Law Commission for England and Wales (2001), 'Electronic Commerce: Formal Requirements in Commercial Transactions - Advice from the Law Commission' (<http://www.lawcom.gov.uk/>)

Macdonald E & Poyton D (2000), 'A Particular Problem for E-Commerce: Section 3 of the Unfair Contract Terms Act 1977', *WebJCL*

Rainie L, et al (2001), 'More Online, Doing More', *The Pew Internet & American Life Project* (<http://www.pewinternet.org/reports/toc.asp?Report=30>)

Reed C (1996), *Digital Information Law - Electronic Documents and Requirements of Form* (Center for Commercial Law Studies)

Sneddon M (1998), 'Legislation to Facilitate Electronic Signatures and Records: Exceptions, Standards and the Impact of the Statute Book', *University of New South Wales Law Journal* 334

Williams J (1932), *The Statute of Frauds*, 'Section 4 - In Light of its Judicial Interpretation' (Cambridge: Cambridge University Press)

Witte D (2002), 'Comment: Avoiding the Un-Real Estate Deal: Has the Uniform Electronic Transactions Act gone too far?', *John Marshall Law Review* 311

Wright B (1996), 'EDI Implementation' in Ruh J (ed) *The Internet and Business: A Lawyer's Guide to the Emerging Legal Issues* (Virginia: The Computer Law Association)

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AUTHOR

TITLE

MURDOCH