



Minister for Planning

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The Hon Peter Slipper MP
Chairman
House of Representatives
Standing Committee on Legal and
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Parliament House
CANBERRA ACT 2600

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Dear Mr Slipper

INQUIRY INTO HARMONISATION OF LEGAL SYSTEMS

I write in relation to your Committee's inquiry into harmonisation of the legal systems of Australia. While land administration and conveyancing practice is essentially a State matter, I would like to take this opportunity to acquaint you with a project which has commenced to review land titles legislation in each jurisdiction with a view to pursuing national harmonisation.

In October 2004 the Registrars of Titles in Australia agreed to commence a project to develop harmonised national titles legislation. Initiation of this project was in response to representations from the legal profession, property developers and the banking sector. The project's importance to the Australian economy is reflected in the fact that total national land and property sales in 2003-04 were \$220 billion and an increasing proportion is for inter-State transactions. Differences across the jurisdictions restrict inter-State work for lawyers and conveyancers and create inefficiencies for banking institutions. These costs to the community will be reduced under a harmonised system and it will further facilitate inter-State trading of land and interests in land.

This project is also closely linked to other national initiatives to develop a national electronic conveyancing system and any legislative change which is proposed would aim to take maximum advantage of technology in achieving consistency of conveyancing practice across Australia. For information of Standing Committee members, further detail on this project is provided in the enclosed submission.

Yours sincerely

ROB HULLS MP
Minister for Planning



Inquiry into Harmonisation of Legal Systems

Submission
to the Standing Committee of Legal & Constitutional Affairs

from

Department of Sustainability and Environment
Victoria

Inquiry into Harmonisation of Legal Systems
Submission by the State of Victoria
To the Standing Committee of Legal & Constitutional Affairs

The State of Victoria welcomes the opportunity to contribute to the Standing Committee of Legal and Constitutional Affairs' *"Inquiry into the harmonisation of legal systems"* ("the inquiry").

This submission focuses on a very significant part of the economy of Australia, that of the land market, and a proposal to increase the harmonisation of the law that supports and underpins this market.

The Land Market in Australia

The size and economic significance of the land market in Australia is of great importance to the health of the Australian economy, to the funding of State and Territory services and to the wealth and financial capacity of Australian households. The impact of this land market is reflected in the following statistics –

- Total national land and property sales in 2003-2004 were \$220 billion.
- Total national land and property sales in 2003-2004 were the equivalent of 28% of GDP.
- Total mortgage advances outstanding at June 2004 are estimated as \$370 billion.
- Total value of real estate protected by State and Territory title registration systems is estimated at \$3 trillion.
- Annual State and Territory duty collections total \$9 billion on transfers and \$1 billion on mortgage advances.
- Duty collections on transfers and mortgage advances constitute 28% of all jurisdictions' tax collections.
- Housing constitutes over 60% of household wealth and, at 32% of income, is the most significant single item of household expenditure.

This land market is supported by and relies upon the Torrens system of land registration.

The Torrens System

The Torrens system of land registration is an Australian concept which was first introduced in South Australia by the *Real Property Act*, which came into force on 1 July 1858. The system quickly spread to all other Australian States and subsequently to the Territories. Similar legislation and concepts also exist in Canada, New Zealand and the United Kingdom and is seen by agencies such as the World Bank to be a model for land administration systems world wide.

The Torrens system vastly simplified the existing "deeds based" system under which agreements between the parties, which might be registered, were used to transfer the ownership of land. The validity of a current owner's title depended on the validity of earlier owners' titles and hence "chains" of documents were required to validate title.

Under the Torrens system, the legal ownership of land is not changed by private agreements between buyers and sellers, but only by the act of registration on a public register by a jurisdiction's Registrar of Titles. Thus, the title of a registered owner is independent of previous owners' titles, because it is the act of registration by government, not the private agreement, that confers title.

Increasing Differences across Australia

Although based on South Australian legislation, the Torrens legislation in other jurisdictions was developed and modified to accommodate their particular day-to-day work practices and requirements. Each jurisdiction was responsible for its own legislation and hence its own particular practices, procedures, and processes. Thus, over the years, legislation in each jurisdiction has evolved independently.

Consequently, variations now exist from state to state, however they appear to be more related to the application of the Torrens principles rather than to the principles themselves. These differences mean that the complexity of undertaking lending and conveyancing services for land across jurisdictional borders make the transactional cost of the land market more expensive than necessary. This is particularly true for organisations that conduct business nationally and in the areas that border two States or Territories.

Electronic Conveyancing

Over the last ten years, the paper-based Torrens registers of all Australian jurisdictions have given way to digital land databases. However, paper-based instruments are still used by all jurisdictions to update these digital databases.

By implementing Electronic Conveyancing, the Victorian Government, through its Land Exchange (LX) program, will offer electronic lodgement of dealings in the Victorian jurisdiction in the near future. The Electronic Conveyancing system due to go into pilot during 2006, will provide electronic lodgement for the Victorian Land Registry, as well as offering substantial national benefits and efficiencies to the conveyancing and financial sectors.

The main benefit Electronic Conveyancing holds for the national conveyancing and financial sectors is its electronic settlement module. Use of this process will eliminate the need for settlement parties to arrange and attend a physical venue to complete a property transaction. Electronic Conveyancing will offer financial settlement with multilateral electronic funds transfer into nominated bank accounts, self-assessment and payment of duty, and lodgement of electronic instruments with Land Registry for registration, electronically and remotely in one consecutive process. The settlement process is managed by the Electronic Conveyancing system and, from end to end, will be completed in approximately one hour.

Although Victoria is the most advanced in this area, other jurisdictions, in particular New South Wales, South Australia and Queensland have also been actively progressing similar initiatives through consultation with industry stakeholders. Electronic Conveyancing as being developed in Australia (with the inclusion of financial settlement) is a completely

new concept not attempted anywhere else in the world. Independent cost-benefit studies in New South Wales and Victoria suggest that this offers annual national savings of \$150 million per year, plus any further savings brought by changes and increased efficiencies in the way conveyancing is undertaken.

New South Wales and Victoria have drawn up a roadmap to move to a national system and this has been jointly signed by the two jurisdictions. This agreement, which also has in principle support from all other Australian jurisdictions, is designed to implement a National Electronic Conveyancing System. As part of this national implementation, it is important to avoid, as far as possible, the ongoing maintenance cost of complex differences between jurisdictions. Anything that can be done to minimize this cost will have a significant impact on the adoption and success of Electronic Conveyancing and achieve further savings for the conveyancing and mortgage industry, for business and the community at large.

Because the practices and procedures of Land Registries across Australia currently vary significantly, it is therefore important to simplify the conveyancing process in order to facilitate the national introduction of Electronic Conveyancing using the common features where possible, but respecting jurisdictional differences where necessary.

An New Approach to Harmonisation

Previous attempts at harmonisation of Torrens land registration systems focused on the different practices and procedures within each jurisdiction with a view to developing a single set of national practices. Such an approach required high levels of uniformity if it were to work successfully. With differing practices in force across jurisdictions, this approach tended to concentrate and founder on those very differences.

At the 2004 Australian Registrars' Conference, the Australian Registrars of Titles resolved on commencing a project to provide greater harmonisation of the Torrens land registration systems. This initiative is supported by the Property Law Reform Alliance which is a joint forum of the Law Council of Australia and the Property Council of Australia to promote and achieve uniformity of property law.

In undertaking the national harmonisation of legislation project, the aim will be to design model legislation which takes maximum advantage of electronic technology to assist in managing differences which would be hard to reconcile with paper documents. The project will be greatly aided by other technology projects completed as part of the development work done for Electronic Conveyancing and by other jurisdictions as they move down a path that takes greater advantage of an electronic environment.

The national harmonisation of legislation project is being designed in three stages.

Two stages are technology based project initiatives, being –

1. Simplify all instruments and applications to reflect the legal basis of the transactions and outcomes intended by the transacting parties.
2. Simplify the content of conveyancing forms so that they are capable of being completed in an electronic environment.

The completion of these two components will enable the accommodation of jurisdictional differences through a common front-end for the transacting parties regardless of what jurisdiction they are in. However, the back-end will deliver the data to each State Registrar in the format that is appropriate to meet the requirements of the particular jurisdiction.

3. Principles and template for model national legislation.

The third stage of the project involves the harmonisation of the concepts and outcomes by gaining agreement to the articulation of the underlying principles that are common to all Australian Torrens legislation. This will provide a template that can be used for the creation of model national legislation.

Benefits of a Harmonised Torrens System

This national harmonisation of legislation project should allow Australians and their legal and conveyancing advisers the opportunity to undertake conveyancing across Australia in one common form with simple common instruments.

For the increasingly centralised lending business of major banks and financial institutions and national legal firms, this will eliminate the need to train staff in the conveyancing and legal systems of eight different jurisdictions.

It also opens interstate borders to a far greater extent by allowing the trans-jurisdictional trading of land and interests in land.

The advantages and benefits of this project are significant in an area of property law which is critical to the economic health of Australia. This project for the national harmonisation of land titles legislation is in keeping with the original rationale for introduction of the Torrens system – to provide a common simple, authoritative and inexpensive means of dealing with land.

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