



Property Law Reform Alliance

31 March, 2005

Ms Joanne Towner
Secretary
House of Representatives
Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Towner,

Harmonisation of Legal Systems

On behalf of the Property Law Reform Alliance, I would like to thank you for your request for a submission to the Standing Committee on Legal and Constitutional Affairs.

The Property Law Reform Alliance

The Property Law Reform Alliance ('the Alliance') is a coalition of legal and industry associations committed to bring about uniformity and the reform of property law and procedures in Australia.

The purpose of such a goal is to ensure efficiency and cost-effectiveness for all stakeholders in property law transactions.

The Alliance aims to achieve this outcome both through discussions with government representatives and the development of a model Real Property Act, which will outline leading practice regulation and processes for possible adoption by States and Territories.

Members of the Alliance include:

- Australian Institute of Conveyancers,
- Australian Property Institute,
- Australian Property Law Group of the Law Council of Australia,

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- Law Society of ACT,
- Law Society of NSW,
- Law Society of SA,
- Master Builders Australia,
- Mortgage Industry Association of Australia,
- Property Council of Australia (including the Shopping Centre Council of Australia),
- Real Estate Institute of Australia,
- RICS Oceania, and
- Urban Development Institute of Australia.

The Benefits of Uniformity

Australia has already recognised the benefits of introducing uniform laws.

The success of Corporations Law has demonstrated the benefits to the nation of introducing a uniform system, particularly when it helps to ensure good business practices and to encourage greater investment.

From a business perspective, these laws have made it easier for companies to invest and operate across Australia by reducing inefficiencies and removing red tape.

Unfortunately, the disparate laws and procedures relating to property transactions across state and territory borders mean that any companies investing in property still face significant barriers to efficient business practices.

This discourages international investment and makes property a less attractive investment vehicle for Australian companies, such as superannuation funds managers.

However, it should not be seen that problems stemming from a lack of uniformity only affect business. Any individual who moves or invests interstate also faces a completely different set of legal requirements when purchasing (or selling) a property.

The Property Law Reform Alliance argues that the time is right for the comprehensive reform of Australia's property laws.

We believe that the eight different systems are contributing to greater inefficiency and prevent leading practices from being adopted nationally.

Inefficiencies can be found in a wide range of areas such as:

- Titling;
- Conveyancing;
- Stamp duty charges and processes;
- Registration;
- Mortgages and financial procedures;
- Leasing;
- Powers of attorney;
- Professional standards, including the licensing of real estate agents and property managers; and
- Documentation.

The Property Law Reform Alliance has established a number of working groups that are looking at inconsistencies in the areas listed above. We envisage that the model Real Property Act, when drafted, will help to further the cause of uniformity.

Other organisations, too, have been examining inefficiencies and working towards uniformity in property laws and procedures.

To put the large burden of the disparate regulatory regimes covering property into context, I have attached an outline of some of the key pieces of legislation affecting property. This is by no means an exhaustive list, but an example of some of the regulations controlling property transactions.

These differences mean that any organisation operating in more than one state or territory must abide by a variety of different requirements, which affects the timing of property deals and necessitates the use of a range of legal representatives.

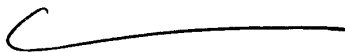
The Property Law Reform Alliance believes that a move towards uniformity of property laws and procedures:

- will enable states and territories to introduce leading practice reforms to ensure the most efficient, rigorous, and fair system is in place for property transactions.
- will make it easier for individuals, companies, and professionals to move and operate in different jurisdictions; and
- will place property investment on a level playing field with other asset classes.

The Alliance hopes that the information contained in our submission is of interest to the Committee and encourages members to look in more detail at the need for uniformity.

If you wish to discuss our comments further, please do not hesitate to contact Murray McCutcheon on (03) 8602-9204 or Paul Waterhouse on (02) 9033-1956.

Yours sincerely,



Murray McCutcheon
Chairman

Australian State and Territory Key Pieces of Property Legislation

Australian Capital Territory

- [Land Titles Act 1925](#)
- City Area Ordinances 1936
- [Land \(planning and Environment\) Act 1991](#)
- [Land Titles \(Unit Titles Act\) 1970](#)
- Community Title Bill 2001 (not yet gazetted)
- Leases (Commercial and Retail) Act 2001 (notified in Government Gazette 19th April 2001)

New South Wales

- Conveyancing - [Conveyancing Act 1919](#) and Regulations
- Title and registration - [Real Property Act 1900](#) (and Registration of Deeds Act 1897).
- Home units - Strata Titles Act 1973. Now known as [Strata Schemes\(Freehold Development\) Act 1973](#) and Regulations. (Also [Strata Schemes Management Act 1996](#)).
- Rural - [Crown Lands Act 1989](#) (also [Western Lands Act](#) and [Rural Lands Protection Act 1990](#)).
- Planning - [Local Government Act 1993](#) and [Environmental Planning and Assessment Act 1979](#) (and [Swimming Pools Act 1992](#) and [Contaminated Land Management Act 1997](#)).
- Leasing - [Retail Leases Act 1994](#) and various Regulations (and [Residential Tenancies Act 1987](#) and Regulations 1989 and [Agricultural Tenancies Act 1990](#)).
- Revenue - [Stamp Duties Act 1920](#) (and [Land Tax Management Act 1956](#)).
- Finance - Consumer Credit (NSW) Codes and Regulations.

Queensland

- [Retail Shop Leases Act \(1994\)](#)
- [Residential Tenancies Act \(1975\)](#)
- [Land Title Act \(1994\)](#)
- [Land Act \(1994\)](#)
- [Body Corporate and Community Management Act \(1997\)](#)
- [Building Units and Group Titles Act \(1994\)](#)
- [Property Law Act \(1974\)](#)

Northern Territory

- [Law of Property Act 2000](#)
- [Land Title Act 2000](#)
- [Unit Titles Act](#)
- [Real Property \(Unit Titles\) Act](#)
- [Residential Tenancies Act](#)
- [Commercial Tenancies Act](#)
- [Planning Act 1999](#)

South Australia

- [Real Property Act 1886](#)
- [Law of Property Act 1936](#)
- [Retail & Commercial Leases Act 1995](#)
- [Landlord and Tenant Act 1936](#)
- [Community Titles Act 1996](#) (and the [Strata Titles Act 1988](#), in respect of the strata title developments undertaken prior to the commencement of the Community Titles Act)
- [Land & Business \(Sale & Conveyancing\) Act 1994](#)
- [Development Act 1993](#)
- [Residential Tenancies Act 1997](#)
- [Crown Lands Act 1928](#)

Tasmania

- [Land Titles Act 1980](#)
- [Conveyancing and Law of Property Act 1884](#)
- [Strata Titles Act 1998](#)
- [Local Government Act 1993](#)
- [Landlord and Tenant Act 1935](#)
- [Residential Tenancies Act 1997](#)
- Retail Tenancies Code of Practice (under the [Fair Trading Act](#))
- [Land Acquisition Act 1993](#)
- [Partition Act 1869](#)
- [Perpetuities and Accumulations Act 1992](#)
- [Limitation Act](#)
- [Trustee Act 1898](#)
- [Sale of Goods Act 1896](#)
- [Powers of Attorney Act 2000](#)
- [Administration and Probate Act 1935](#)
- [Duties Act 2001](#)
- [Access to Neighbouring Land Act 1992](#)

Victoria

- [Sale of Land Act](#)
- [Subdivision Act](#)
- [Transfer of Land Act](#)
- [Property Law Act](#)
- [Land Act](#)
- [Planning & Environment Act](#)
- [Retail Tenancies Reform Act 1998](#)
- [Landlord & Tenant Act](#)

Western Australia

- [Land Administration Act 1997](#)
- [Transfer of Land Act 1893](#)
- [Property Law Act 1969](#)
- [Sale of Land Act 1970](#)
- [Strata Titles Act 1985](#)
- [Stamp Act 1921](#)
- [Real Estate and Business Agents Act 1978](#)
- [Town Planning and Development Act 1928](#)
- [Commercial Tenancy \(Retail Shops\) Agreements Act 1985](#)
- Various rating and taxing type acts.