

**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a)**

Submission No. 144

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**SUBMISSION TO THE SELECT SENATE COMMITTEE
ON SUPERANNUATION AND FINANCIAL SERVICES**

1. My name is Gillian M Maguire. I live at 26 Princes St Launceston. I am currently writing a historical account of problems in Tasmanian land titles.
2. The story of my particular problems with Tasmanian land titles is told, in an amateur fashion, in my various court cases, in particular in a special application for leave to appeal to the High Court in the case *Maguire v the Recorder of Titles and the Commonwealth Bank*.
3. I also have a collection of land title documents which show problems in the processes within the Tasmanian Land Titles office and can provide these to the committee on request. I can also refer the committee to other individuals who have had problems with their land titles if their consent can be obtained.
4. The basic thrust of this submission today is that the Tasmanian land titles system is malfunctioning. I believe that this has resulted from a historical problem of multiple titles for the one parcel of land. Another historic problem appears to be that certain powerful vested interests and families may have maintained a stranglehold on land mainly through complex conveyancing causing clear title to be unobtainable. A hidden problem in Tasmania is the aggressive landlocking of land and resources by powerful property interests through the deliberate location of roads in the wrong place.
5. My impression of the present situation in Tasmania is that when a computerized system was placed over this problematic historical register this situation of multiple

titling and competing mortgages over the same parcel is likely to have become apparent.

6. I believe that it may have then suited mortgagees and various other parties to be wilfully blind about this issue probably because the issue would have led to the professions involved being held in disrepute.

I also believe that it may have suited the various groups involved to have the land title register become even more dysfunctional and uncertain in order that this problem should not become apparent to the general public, in particular potential purchasers and investors.

7. There is evidence in my documentation before the courts that mortgagees are not interested in looking at the priority notices upon which their security depends. The only possible reason that this could be occurring is because they are concerned that there may be other interests which may affect their priority and that investors would not want to place money on a second mortgage

8. During my in-person court case against the Commonwealth Bank and the Recorder of Titles, the Bank's solicitor argued that the Recorder of Titles could change the folio of register number between contract, settlement and registration without any notice to the parties. The bank's lawyer persisted in this argument despite the fact that under these conditions the bank would not be able to obtain a legally binding priority notice as it would not know which folio of the register to search. All judges appealed to supported this dubious proposition.

9. This induced uncertainty in the Land Title register has serious implications for investors. While the register is dysfunctional several problems can occur:

- i) Irregular subdivisions can proliferate due to loopholes in the system which allow the illegitimate creation of land titles. The more lots are created, the higher the valuation as the value increases with each subdivision. These valuations are not dependent on actual sales but only on the issuing of the title.
- ii) Professionals such as lawyers, valuers, the Law Society of Tasmania and others who might be expected to police the land title register will tend to turn a "blind eye" to problems in the register as no one can afford to point out that processes in the LTO are chaotic. Any professional who expressed concerns about the operation of the register would probably never be employed again. This could be termed the "Emperor's new clothes" syndrome.
- iii) The proliferation of new subdivisions engendered by a malfunctioning register causes existing homes to lose value as more investor funds are placed on irregular subdivisions and more house and land packages are released thereby diminishing the value of established homes.
- iv) Those charged with investing in mortgages, such as solicitors, bank officers and investment advisors will tend to avoid looking at the documents of title which comprise the land as in a malfunctioning register it may be impossible to remove existing mortgages. If the intending mortgagee has notice of the other mortgage then the new mortgage will have to become a second mortgage. It is better therefore to be blind and not look at the title in the first place. This puts the innocent investor at risk of investing in a bogus title, land with

an artificially high valuation or land with no access road or some other problem.

- v) I believe that the situation where potentially undisclosed interests can arise on a particular parcel can cause serious conflict between proprietors. These clashes tend to manifest as serious neighbourhood disputes or arguments about access roads. This is a dangerous situation which under certain circumstances could lead to criminal events. There are other worse problems which could potentially arise I will attempt to describe these if required.
10. At present there is no official auditing of the Land Titles system to make sure that there is only one folio of the register for each parcel of land and to ensure that only approved dealings are placed on these folios. Auditing is impossible because the Recorder of Titles is able to change the folio numbers whenever he feels like it therefore there is no stable series of file identifiers by which an audit could possibly be accomplished.
11. I complained to the Law Society in 1996 that a solicitor had refused to look into problems with my land titles - my complaint was investigated but not upheld. Other solicitors and judges have been made aware of my concerns through my court cases from 1996 to 1999. These included judges of the Federal Court, Family Court, Supreme Court of Tasmania and two High Court judges. The lawyers involved included two DPP's, two senior barristers and lawyers from approximately 5 law firms. It is inconceivable that these individuals could not have been aware of two of the more striking anomalies in my land titles as shown in my documentation. As far as I am aware no representations have been made to the authorities about these anomalies by these

practitioners. When the Recorder of Titles was asked to explain one of the anomalies he failed to do so. I believe that the failure of these individuals to express formal concern to authorities about any anomaly in the land title system is seriously negligent and request that this failure to act should be investigated.

12. I believe that the malfunctioning land titles system has the potential to seriously compromise both lawyers, judges and regulators such as the Law Society of Tasmania and ASIC. If a land title register has malfunctioned over many years then it is quite possible that many lawyers and judges and in-house lawyers for the various regulators, at some stage in their legal careers, have been required to participate in the kind of systemic fiddling which is needed to produce a land title when a land title system is malfunctioning.

In many cases a malfunctioning register can only be made operable through systemic filing fraud and in some cases identity fraud - the kinds of activities which would attract serious consequences if effected in the Department of Social security for instance. This potential fallout over past behaviour, even if innocent behaviour, could cause those administrators and regulators charged with upholding prudential systems to later be unwilling to look at or deal with matters relating to problem registration systems in general and the land title system in particular.

13. I believe that one of the reasons why the cost of copies of land titles documents is kept high - some \$40.00 for a complete folio with plan - is to prevent the general public from seeing some of these visible rorts on the register and to preserve the impression that there is no problem with land title registration in this state. These computerized documents could be printed out for 20c per copy. Investors would be

able to more closely investigate the security offered if land title documentation were cheaper.

14. I must also express concern that as the law is at present people can have more "land" transferred to them than they ask for. This "land" in the Torrens system includes mortgages, easements and leases. A person can be registered as proprietor of other parcels and lots than the parcel they have agreed to purchase due to problems relating to the numbering of folios of the register. Existing laws need to be enforced in order to ensure that purchasers can only be transferred land that they actually ask for by making vendors and mortgagees specify a particular folio number in the description of land panel in the transfer or mortgage deed and by making the Land Titles Office comply with that specification exactly.
15. Any problems in the recording of interests in land would make effective conduct of any sort of legal process difficult. For example much of the law of property arises from land law. If there is any uncertainty in identifying ownership or responsibilities affecting land then certain chaos must be expected in the legal system generally and lawyers would experience difficulty in carrying out their professional functions.
16. Any form of external regulation, by ASIC or an independent commissioner would be similarly constrained by a malfunctioning land title register.

I am prepared to make further documentation held by me available to the Select Committee on request at reasonable notice.

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