

Report of the Registrar General

The office of the Registrar General, first established in 1844, has a significant role in relation to the economic development of New South Wales. Property rights in land represent a large proportion of the wealth within the State. A formal process of legally recognised property rights enables the proper functioning of the land market, a fundamental aspect of any market economy.

The Torrens title system provides landowners, and those who wish to deal with land, with proof and security of ownership. The Torrens titling system also provides a level of protection against uncertainty and fraud, enabling the transfer of land assets within a sound legal environment.

Not all land in New South Wales is held in Torrens title. The Registrar General has established, through Land and Property Information, an accelerated program for the conversion of all manual and Old System or deed based titles, to Torrens title. This will not only provide holders of Old System titles with the certainty and guarantees associated with the Torrens System, but will continue to improve the completeness of the land titles information system for the State. This process, which is aimed to be substantially completed by December 2006 will increase the accuracy and completeness of the NSW cadastre and will also assist in the acceleration of electronic conveyancing initiatives and enhance land ownership and security.

A significant achievement over the past year has been the development by NSW, through Land and Property Information of a business model for a National Electronic Conveyancing System. The project currently being accelerated builds on considerable development and public consultation in both NSW and Victoria. This work has now been brought together to form the basis of a national approach. With a national annual property market in excess of \$220 billion, this work represents an important undertaking under the direction of the Registrar General, within the national framework provided by the Australian and New Zealand Land Information Council (ANZLIC).

The Registrar General has the responsibility to provide the people of New South Wales with prompt, accurate, cost effective and guaranteed services for the registration of dealings with land, plans of subdivision, the issue of Certificates of Title and the provision of land information. This includes the undertaking of significant audits and field checks to ensure the accuracy is maintained.

The Registrar General also has a duty to undertake boundary determinations in accordance with Part 14A

of the Real Property Act 1900 upon the application of an owner of land, a purchaser under contract or public or local authority or head of a Government department. During the past year 16 boundary determinations have been resolved. This process provides the landholder with some surety about the location of their property boundaries.

During the year, following the policy decision to separate the water rights from the land or property right the Registrar General designed and established the new Water Property Register. This will facilitate the accurate recording of the individual water rights and their trading in the market place. This additional register forms part of a more holistic understanding within the community about "rights", their definition, recording and subsequent use and a willingness by the Registrar General to establish registers and record rights which can be spatially referenced and for which there is a market or community benefit.

Together with Registrar Generals from other Australian jurisdictions work is being undertaken to describe and record more fully the "rights, restrictions and obligations" on land, outside of those currently recorded on the Torrens title. Such a holistic approach will create a more informed market place and increase the knowledge of land for purchase, use and development purposes. In that regard, work will proceed within NSW on expanding the scope and completeness of the Central Registrar of Restrictions, which provides a statutory base for the recording of this information.

An important task is the continuous review of the legislation, to ensure that the legislation remains current and relevant. One example of this work is the proposed Security Interests in Goods Bill, which is being prepared for submission to Parliament. The proposed legislative amendments will provide a more modern regime and it is anticipated to be a welcome change for the rural and small business community, replacing the Bills of Sale Act 1898 and the Liens on Crops and Wool Stock Mortgages Act 1898. Other legislative changes during the year are outlined later in this report.

The retention and continued development of the core legal skills in land law within the Department, to support the Registrar General, is a key element in the development of the statutory program, matters related to the Torrens Assurance Fund and the resolving of complex land law based issues for clients. More information about the Fund is provided later in Land and Property Information section of this report.

During the reporting year, the following legislation was enacted:

Legislation and legal change

1. Surveying Amendment Act 2005

This Act made a number of amendments to the Surveying Act 2002 including:

- Inserting a definition of “spatial information” in the Surveying Act;
- Allowing a requirement to be made for the correction of an error in a land or mining survey;
- Permitting the appointment of another surveyor to satisfy requisitions on a plan that is lodged with the Registrar General, where the original surveyor cannot complete the task;
- Requiring the earlier payment of a surveyor’s annual registration fee;
- Allowing disciplinary action to be taken against surveyor who has removed his or her name from the register of surveyors to avoid investigation;
- Broadening the class of nominations that may be made from the spatial information industry for inclusion on the Board of Surveying and Spatial Information.

2. Civil Procedures Act 2005

The Department assisted in the drafting of this Act, particularly with regard to Writs against land. This Act resulted in cognate amendments to the Real Property Act 1900 and the Conveyancing Act 1919 regarding registration of Writs.

3. Statue Law Revision

The Statue Law (Miscellaneous Provisions) Act (No. 2) 2004 amended the following Acts:

- Real Property Act 1900 and Conveyancing Act 1919 regarding payment and collection of fees;
- Valuation of Land Act 1916, to standardise the form used for objecting to a valuation; and
- Community Land Development Act 1989 to make it easier to terminate a community scheme where all owners consent.

The Statute Law (Miscellaneous Provisions) Act 2005 amended the following Acts:

- Community Land Development Act 1989 to allow creation of positive covenants;
- Strata Schemes (Freehold Development) Act 1973 and the Strata Schemes (Leasehold Development) Act 1986 to correct anomalies regarding, among other things, subdivision of lots or common property, the requirement to lodge a strata development contract and what happens to easements when a scheme is terminated.

Significant decisions by the Courts

The following matters were litigated before the Supreme Court of NSW or settled.

Perpetual Trustees Victoria -v- Tsai **Supreme Court - Judgment 5 August 2004**

The plaintiff’s property was affected by an allegedly fraudulent mortgage that was part of a scheme involving various counterfeit documents, including a counterfeit Certificate of Title. The mortgagee, sought to enforce the mortgage by an action for default judgment in the Supreme Court.

The Court initially granted the application for default judgement and Mr Tsai appealed.

On Appeal, judgment was given to Mr Tsai and the default judgment set aside (*Perpetual Trustees Victoria Ltd v Tsai* [2004] NSWSC 745).

The appeal Judge stated that while the registered mortgage was protected by indefeasibility, the loan agreement that was purportedly secured by the mortgage did not itself bring with it any concept of indefeasibility and as there was an issue between the parties as to whether or not it was ever signed by the plaintiff or merely signed by a person impersonating him, there is not the material to demonstrate to the required standard that there was a loan. If there was no loan to the plaintiff he could not be in default and, therefore, the mortgagee was not entitled to possession.”

While the judgment was not determinative of the action, the parties negotiated to end the matter, which was discontinued on 18 March.

As most mortgages are in a format similar to that considered in this case, this judgement may have a significant affect in future claims on the Torrens Assurance Fund (TAF).

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All of these claims involve a similar loan structure to the Tsai case. As a result, the Registrar General sought Counsel's advice concerning the applicability of the decision in *Perpetual Trustees Victoria Ltd v Tsai* [2004] NSWSC 745 to the above claims.

Counsel's advice indicates that all of the matters are essentially similar. The effect of the Tsai judgement is that, in these cases where the forged mortgage is of a similar type to that in the Tsai case the debt will not be enforceable, as the loan agreement is not protected by the State Guarantee. The result is that while there is a mortgage on the various titles involved, nothing is payable under the mortgages and the registered proprietors are entitled to have them discharged.

The Registrar General wrote to all parties advising that, on the basis of the Tsai decision, there is no claim on the TAF and the mortgages should be discharged. To date no mortgages have been discharged. To date no proceedings have been instituted.

Liberty Funding v Malaxos & Ors; Cross-Claim Malaxos v RG & Ors

In a cross claim the plaintiff claimed damages from the TAF resulting from the fraud of her husband who had forged Mrs Malaxos' signature on a series of mortgages. The husband is now a bankrupt and the current mortgagee took proceedings for possession of the land. The plaintiff cross-claimed against the TAF. A number of other cross claims have also been filed against various parties, brokers and accountants, involved in facilitating the mortgage.

The TAF was exposed to a risk of compensating the plaintiff's loss of her half interest in the property as well as her costs. The liability of the TAF was not clear as this matter is affected by the decision in the Tsai case. Ultimately settlement was reached.

Re: Maclean - Costs

In this matter LPI omitted a notation of a road widening resumption from a title to land owned by the plaintiff. She was in the process of subdividing and developing the land, in conjunction with her company.

Some work had already been carried out on the development before the plaintiff discovered the resumption. She claimed compensation from the TAF for lost expenses for work, which had to be re-done. The department admitted liability but disputed the amount claimed, which was over \$375,000.00. The case went to a hearing on the measure of damages only.

Judgment was delivered on 3 October 2003. Damages were awarded to the First Plaintiff, of \$19,250.00 and to the Second \$126,378.00, making a total of \$145,628.00. Interest was payable on this amount and the Registrar General was to pay the Plaintiffs' costs.

The amount of \$146,759.43 was the total amount payable by the Registrar General to both Plaintiffs and took into account that the Registrar General had already paid the sum of \$40,000.00 as an expression of good faith on 22 December 2000.

Torrens Assurance Fund

During 2004/05 financial year the Registrar General made several payments in response to claims against the Torrens Assurance Fund totalling \$308,000.00. This sum includes compensation payments and disbursements, such as Counsel's fees.



Warwick Watkins
Registrar General