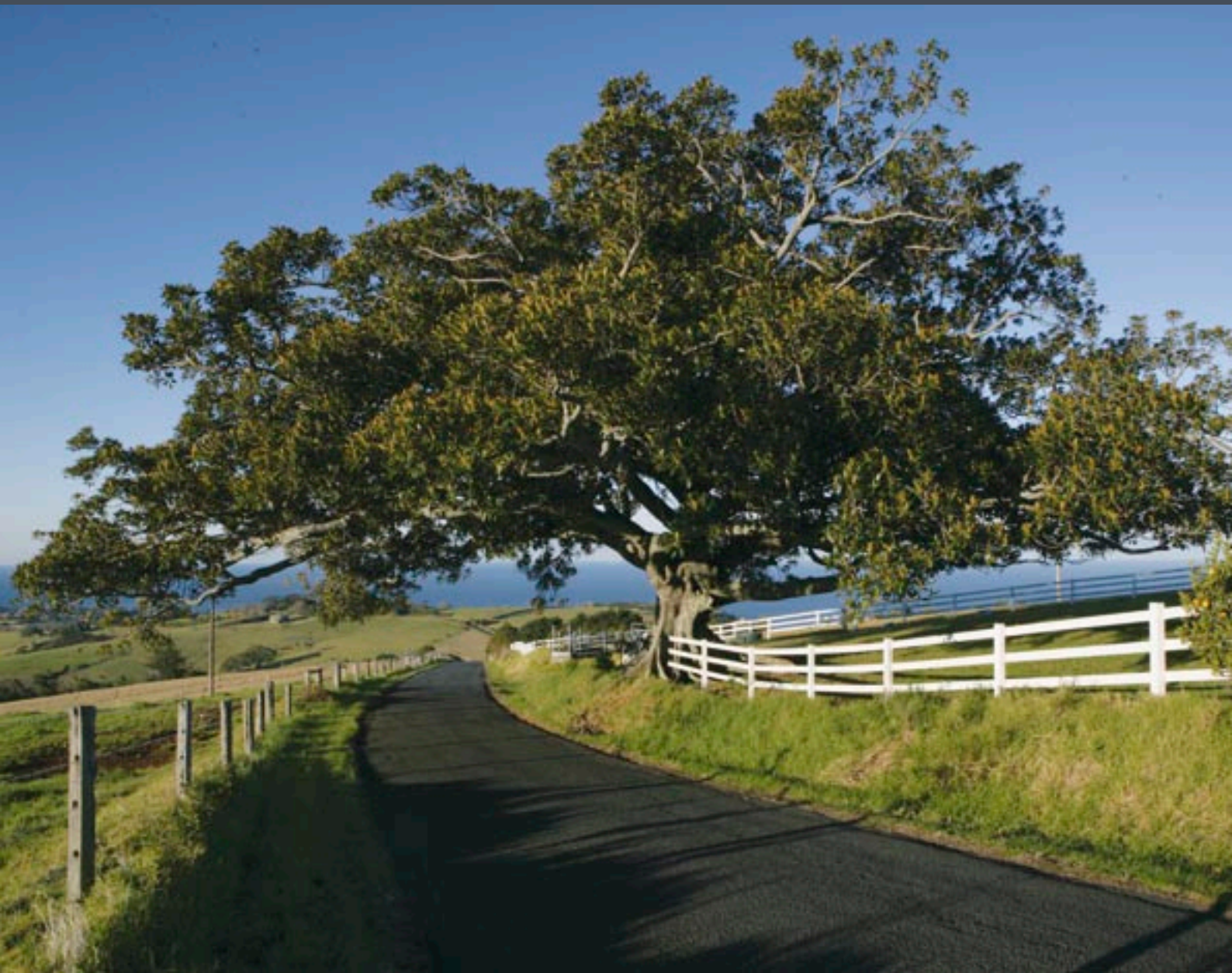


REPORT OF THE REGISTRAR GENERAL

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Safeguarding the
process of property
transaction and legal
ownership



This year marks the 150th anniversary of the appointment of the first NSW Registrar General, Christopher Rolleston, in 1856. While the state has evolved enormously since that time, the essential role of the Registrar General has remained unchanged; namely, to safeguard the process of property transaction and legal ownership as a fundamental basis of the 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.

The great majority of land parcels in New South Wales are registered in the electronic Integrated Titling System (ITS) and the remaining old system and paper-based Torrens title are expected to be converted to the ITS before the end of 2007. This will include the creation of separate titles for leaseholders of individual shops within some 500 commercial and shopping complexes held under paper-based title.

NSW will then have a single fully-digitised land title system and all landowners will have the benefit of state government guaranteed title to their land under the Torrens system.

Of course, such a valuable asset as property attracts the interest of those who would seek to defraud rightful owners. Lands has made great progress in recent years in its efforts to combat attempts at property fraud through tightened security procedures, strengthened identity verification and other measures.

Much of the work undertaken by Lands has been done in recognition of Commonwealth initiatives for combating money laundering and terrorism financing and Lands has consulted the conveyancing and finance industry practitioners affected by procedural changes.

The National Electronic Conveyancing System (NECS) is a proposed national system for lodging and settling property transactions electronically. It will provide a single interface for national property transactions with tremendous flow-on benefits for both consumers and industry.

NSW, along with other Australian state and territory governments, is funding NECS which over the past year has established a national office and published a detailed business model and implementation strategy.

This is the most significant development in conveyancing in the 150 year history of the Registrar General and its benefits will be especially appreciated by consumers and practitioners in the more remote parts of the state.

The Registrar General has the responsibility to provide the people of NSW 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 audits and field checks to ensure 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 15 boundary disputes were resolved; 13 in the Sydney metro area and two in other regions of the state.

All of the determinations were resolved to the satisfaction of the parties as there were no appeals to the Land and Environment Court.

This year saw a new Act of Parliament covering property matters and a number of amendments to other Acts aimed at bringing the legislation into line with modern practices.

Legislation and legal change
2005/06 saw significant activity in the development of legislation with the introduction of new Acts and amending legislation affecting a variety of Lands' areas of responsibility. During the year, the following legislation was enacted:

Property Legislation Amendment Act 2005

This Act introduced a number of practical and important reforms to various property related Acts, including the *Real Property Act 1900*, the *Conveyancing Act 1919* and the *Local Government Act 1993*. Some of the amendments introduced include:

- A requirement that an identification survey report accompany any application made to cancel a caution from a qualified folio on the basis of an official search. The survey will disclose whether there are any encroachments by or on the property that need to be addressed before the caution is removed.
- Authorisation for the Registrar General to record a note on a folio of the Register indicating that the land has the benefit of a licence or permit to use or occupy adjoining Crown land.
- Enabling the creation of easements, profits à prendre and restrictions where the same person is the owner of the parcels to be burdened and benefited by them by a dealing rather than only by registration of a plan.
- Where an old system lease is recorded on a Torrens Folio, further dealings with the lease may be effected by way of Torrens dealing rather than by deed lodged in the old system register.

- Enabling land to be vested in a local council as public reserve or drainage reserve by registration of a transfer rather than only by registration of a plan.

Security Interests in Goods Act 2005

This Act repealed the *Bills of Sale Act 1898* and the *Liens on Crops and Wool and Stock Mortgages Act 1898* and replaced them with modernised, simplified legislation which:

- removed the distinction between trader's bills and ordinary bills of sale and introduced the concept of a 'security interest in goods'
- made registration of security interests in non-agricultural goods optional rather than mandatory
- removed the limit on registration so that registration of a security interest need not be renewed after five years
- introduced a priority regime that generally confers priority on registered security interests over unregistered interests
- allows for the creation of mortgages over existing and future crops and wool
- widened the definition of 'stock' to permit a stock mortgage to be granted not only over sheep, cattle and horses but also goats, poultry, or other animals
- enables a person to grant an aquaculture fish mortgage over farmed fish.

Review of the NSW Access to Neighbouring Land Act 2000

Lands undertook a review of the Act to determine whether its terms and objectives remain relevant and appropriate. A discussion paper was circulated for public comment and after reviewing the submissions received it was recommended that no changes were needed to the objectives of the Act. A Report was tabled in Parliament to this effect and it was recommended that further consideration be given to a number of minor amendments to improve the Act's operation.

Statute Law Revision

The *Statute Law (Miscellaneous Provisions) Act 2006* amended the following Acts:

- *Conveyancing Act 1919* regarding the waiver or refund of fees
- *Real Property Act 1900* to clarify powers of delegation and options available to the Supreme Court in directing and cancelling computer folios of the Register, and registration requirements for dealings pursuant to or affected by a writ

Litigation

On 21 October 2005 the High Court handed down decisions on two personal injury cases involving diving accidents, one at Coffs Creek and the other at Soldiers Beach. In both instances the Court dismissed the plaintiff's appeal, emphasising that each case depended on its own facts and that in these cases the council's and the department's duties of care, as occupier and owner respectively, did not extend to the erection of signs advising that because the water depth was variable it was unsafe to dive.

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While no other significant matters were litigated there were several instances where settlements were reached with a resultant saving in costs and avoidance of delay.

One example concerned proceedings before the Supreme Court for damages resulting from fraud by the plaintiff's husband. It was considered that the possible exposure of the Torrens Assurance Fund (TAF) was approximately \$130,000. The matter was settled for \$75,000.

In a second case the claim arose out of the alleged fraudulent transfer by company directors, thought to be overseas, of two properties which were subsequently mortgaged. The claim was for damages in the order of \$600,000. However, there was evidence of contributory negligence on the part of the plaintiff. Settlement was negotiated for \$55,000 inclusive of costs.

Torrens Assurance Fund

During the 2005/06 financial year the Registrar General made several payments in response to claims against the Torrens Assurance Fund totalling \$164,150. This sum includes compensation payments and disbursements, such as Counsel's fees.



Warwick Watkins

Registrar General