

Challenges facing land registries into the 21st century – an Australian perspective

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Overview

This paper looks at—from an Australian perspective—challenges confronting land registration authorities into the 21st century. It also discusses emerging opportunities to ensure the long-term viability, relevance and importance of land registries and their strategic capabilities to governments, industry and the communities they serve.

Land registries should seek to work together to adapt their strategic outlook and traditional role to meet the needs of the 21st century. Potentially, we will need to address misguided perceptions that traditional land registries are less relevant in the digital age. We must be key players in satisfying the growing demand in our communities for improved and integrated information services. We must also be ready to capitalise on opportunities around one of the greatest challenges facing mankind today – climate change.

Introduction

A key theme for this conference has been discussion on issues and impacts associated with the introduction of electronic conveyancing (E-conveyancing).

We know there are significant challenges ahead for the many jurisdictions yet to fully embark down the E-conveyancing path. E-conveyancing and the potential for automated registration will dramatically change the way we conduct business with our customers. Increasing the automation of current titling operational processes will reduce our resource requirements and some of our hands-on role.

There is a risk that this may in turn project a distorted outward image that our role and responsibilities are lesser. There is a consequential threat that land registries could mistakenly be perceived as less relevant to the community. This potentially raises issues concerning the long-term viability and importance of land registries to the community.

To properly address these risks we will need to consider realigning our strategic focus, capitalising on our proven best practice methods and operations, and promoting our strategic capabilities and the value of these to governments and in turn the community at large.

I am sure this group of delegates here today would acknowledge that a secure, effective and efficient land registration system is the cornerstone that underpins the economic framework of its jurisdiction. Put simply, much economic development and associated growth occurs because financiers are prepared to lend money at reasonable interest rates to property owners, investors and developers because they have confidence in the titling system and the range of safeguards that it provides.

However, that level of understanding is often lost on the community at large. Members of the public generally do not appreciate the finer points of the titling system and often take for granted the security of their registered interests in land.

One of our key challenges into the 21st century is to ensure that land registries continue to be—and that we are clearly seen to be—relevant to both the community at large and to governments. To meet this challenge we will need to critically assess our strategic role and examine more broadly the contribution that land registries could make to address and resolve contemporary concerns within society and emerging issues in the new millennium.

Notably, there are two factors that, potentially, will turn this challenge into a timely opportunity for us to cement the long-term viability, relevance and importance of land registries to society and to government decision makers.

Firstly, there is the growing importance—to the community, industry and governments—of ready access to well managed and accurate information to help inform wise decision making.

Secondly, there is growing concern in communities all around the world about the effects of, and the need to address, climate change. Information is vital in managing our limited natural resources and for ensuring a sustainable environment and prosperity for future generations.

The information age

The Torrens system of land registration—which has been embraced by governments of all the Australian states and territories—has provided Australians with security and certainty in land ownership for more than 140 years. The respective state and territory land registers are, without dispute, the authoritative sources of accurate title related information about land in those jurisdictions.

Fundamentally, the Torrens system was designed and introduced to simplify and streamline the process of buying and selling land. However, over time, the introduction of different pieces of legislation in various jurisdictions has effectively unbundled information about the range of rights, obligations and restrictions (RORs) which attach to land.

This includes traditional information about interests such as ownership, mortgages, leases, easements, covenants and profits-a-prendre, as well as zoning classifications, local planning requirements, development approvals and other land use restrictions or obligations on property owners.

It is becoming more apparent all the time that industry and the community expect government to continually improve their information service delivery capacity in order to satisfy changing patterns of demand and trends in commerce.

If we commit to tackle this challenge head-on, by taking a broader outlook, realigning our focus, and by being prepared to share information, experiences and strategies as well as thinking outside the traditional square, we can capitalise on new and emerging opportunities.

An integral part of this process will be our collective commitment and ability to promote the strategic capabilities of land registries to the key players and decision makers.

It is widely recognised, but all too often taken for granted, that we perform our current role extremely well and that land registries have significant strategic capability which can be utilised to help meet a number of government priorities and key objectives.

In Australia, some of these challenges and opportunities will revolve around:

- ◆ Establishing miscellaneous registers or integrated access to information about rights, obligations and restrictions;
- ◆ Integrating land registers to include all land tenures within a jurisdiction;
- ◆ Addressing the effects of climate change, including managing environmental offsets and carbon credits trading, and potentially carbon sub-terrain geo-sequestration;
- ◆ Managing water reform and tradeable water entitlements;
- ◆ Consolidating records on mining tenure leases; and
- ◆ Managing native title rights;

Miscellaneous rights, obligations and restrictions

Nowadays, more and more information about RORs is managed by numerous stakeholders and stored in siloed systems outside of the land registers. So, when someone intends to purchase, develop or use land they must first search multiple registers and systems across a wide range of authorities and government agencies. This increases the chance of pertinent information being inadvertently missed, overlooked or incorrectly disregarded.

It has now become common for prospective purchasers to search only what they consider to be the most relevant registers in order to save time and money. This has been a key factor in the gradual decline in a streamlined land administration regime that the early Torrens visionaries established.

Increasingly, industry and the community want governments to provide accessible, integrated and accurate information that is relevant to various fields of commerce and to daily life in the 21st century.

Traditionally, land registries have remained custodians of the two foundation land data sets. Namely, the spatial data recorded on survey plans to identify the location and extent of land parcels, and information about legal title to ownership and other interests in land.

In conjunction with growing demand from within the Australian land administration industry for improved access to land related information held by various State Government agencies, local governments and other instrumentalities, it has been suggested that a single system could be created which discloses all pertinent information, including about RORs, relating to the land contained in a title.

The general consensus among stakeholders who support this approach is that land registries should and are best placed to provide this service within their respective jurisdictions.

This appears quite feasible. It is widely accepted that prospective purchasers and investors should always conduct a land registry information search—or title search—as part of their due diligence process. In fact, in Australia, even when a property is to be sold by auction it is general practice for a title search statement to be available for inspection by potential purchasers prior to the sale.

Accordingly, there has in recent times been debate in Australia questioning whether the land registers could in fact be expanded beyond their traditional role of recording legal title to land. Two key methodologies are being examined. The first would involve the inclusion of ROR references in title records. The second would involve the land registry playing a pivotal role in providing an online portal to ROR information maintained by other agencies in their respective systems.

The first proposal involves opening up the registers to effectively allow them to be used as a noticeboard by key agencies associated with land administration. The term Miscellaneous Information Register (MIR) has been put forward as a possible name for such a system. There are a number of alternatives for how this could be implemented in practice.

One option would be to allow for an “above the line” title record which—in the case of Australian jurisdictions—would continue to be subject to the government guarantee as is currently the case under the Torrens system. A new “below the line” section in a title could be a noticeboard where, for example, a local government could record planning or development approvals which by law would apply to the heirs and successors in title to the land.

“Below the line” noticeboard records would not attract indefeasibility or a government guarantee. Potentially, noticeboard entries could be recorded through secure portal access available only to authorised government or statutory agencies. This could allow direct data entry onto the title noticeboard in a set format. For example:

“Administrative Noting – Brisbane City Council Development Approval BC78421 applies to the land and requires all residences on the land to have an approved storm water drainage system in place. More detailed information is available from BCC offices.”

Alternatively, a MIR could be established as a separate register which aligns closely with the existing land registers. In either case, the MIR or “below the line” title would act as a noticeboard but not be the authoritative source of the detailed particulars regarding RORs.

For example, MIR may refer to a vegetation management plan over a parcel of land enabling the plan to be searched at the issuing agency. System integration would mean that upon creation of a new record in MIR, the relevant indefeasible title could be flagged to show that MIR data is available for searching. The MIR record could be searched in a similar manner to current title searches with a comparable fee.

The land registry would not be responsible for checking the accuracy or validity of the data entered in MIR by authorised agencies. Data could be entered free of charge with system development and maintenance costs funded from search fee revenue.

The second methodology being examined would see the land registry act a hub or portal allowing online access to ROR information in systems managed by other agencies. This would require system architecture enabling real-time connection to those registers and systems. Potentially, when a title is searched, existing RORs would be noted in the title search statement with a reference to the relevant agency.

In either case, there are a range of issues that would need to be resolved before any such systems could function effectively. These would include suitable accountability arrangements with originating agencies to ensure the accuracy and currency of ROR data or information.

Clearly, opening up the land registers in this manner would allow improved access to key information, promote better decision making, and provide significant efficiencies and other benefits to our customers.

It is easy to see that there is a great opportunity here for Land Registries to take an active and lead role in improving access to comprehensive, accurate and consistent information about RORs that attach to land.

In Australia, concern over this issue has been researched by academics and government agencies for almost a decade. Australasia's Spatial Information Council (ANZLIC) is a peak intergovernmental organisation which provides leadership in the collection, management and use of spatial information in Australia and New Zealand. A consulting brief for a national project was recently released through one of ANZLIC's sub-committees to further look at means of discovering and accessing information about RORs relating to land in Australia and New Zealand.

The project will seek to identify a high level legal and administrative framework for defining, categorising, recording and prioritising ROR's. It is anticipated the project will establish a clearly defined and nationally consistent framework for managing information about ROR's which could be implemented across Australia and New Zealand.

Queensland's "*one land register*" project

In Queensland, we identified that to be effective in meeting community and government expectations, we had to be able to provide a big picture covering all land parcels within the state. I'd like to share an example of how we adopted a broader outlook to establish a single land register for all land in the state. We now have around 2.1 million titles in our system.

Notably, Queensland comprises about 1.7 million square kilometres of land. This is almost one quarter of Australia's total land mass. There are a wide range of land tenure types that are administered by different agencies. These include:

- ◆ Freehold;
- ◆ A range of leasehold tenures over State land such as perpetual leases, special leases, and freeholding leases;
- ◆ Unallocated State land;
- ◆ Community purpose land and trust lands including reserves and deeds of grant in trust;
- ◆ Infrastructure land vested in various statutory authorities for roads, railways, airports, marine ports, industrial development and State housing;
- ◆ Forests estates such as State forests and timber reserves; and
- ◆ Protected area estates such as national parks, conservation parks, resource reserves and forestry reserves.

In simple terms, completion of the “one land register” project means that every parcel of land in Queensland is now depicted on a plan. All those plans have been imaged and are readily accessible. Every parcel has a unique identifier and “title” record in our Automated Titles System which now provides the point of truth for tenure details.

Traditionally, and perhaps disturbingly and embarrassingly, the situation prior to the “one land register” meant there was no way of definitively providing an accurate and complete picture of Queensland's land make-up, or land bank, or the value of all lands administered by State Government agencies.

Previously, the nearest way to make such assessments was based on data stored in the department's Digital Cadastral Database (DCDB). However, some DCDB data was not always current and its accuracy relied on the rigour of manual updates.

Interestingly, during the data validation phase of the project, over 35,000 inconsistencies and errors were discovered, investigated and rectified in the relevant databases.

I acknowledge that execution and completion of this project was not a simple thing. It required a steady resolve and strong commitment by many players in order to overcome the obstacles that arose. It also required considerable staffing allocation over time. However, there is absolutely no question that the investment in time, money and effort was well directed and extremely worthwhile.

Completion of the “one land register” project has provided a range of benefits to the government, our customers and other stakeholders. Effectively, we have launched into a new era where for the first time we can accurately and readily determine the tenure and extent of every land parcel within our vast state. The government can now accurately identify its collective land assets for purposes such as valuation and infrastructure planning.

In addition, our Automated Titles System allows for a variety of reporting processes. For example, to ensure there are checks and balances and that timely follow-up on necessary procedures such as the gazettal of certain actions, actually occurs.

Water Allocations

As we all agree, our land titling systems help to facilitate efficient operation of real property and mortgage markets which are of significant value to our respective economies. In the same way, land registries—through our strategic capability—are well credentialed to support and add value to our respective governments’ management of high profile contemporary policy initiatives of great importance to various sectors of our communities.

In Australia, we live in one of the driest continents on the earth. We are experiencing our worst drought on record. In Queensland, the land registry now performs an integral role in the critical water reform agenda and the burgeoning tradeable water allocations market.

Water is one of our most valuable natural resources. In Australia, water is owned and regulated by government with usage on rural properties strictly licensed and controlled. In some areas, it is common for the value of a water license to exceed the value of the land to which it attaches and which it is used to irrigate.

Currently, in line with water reform initiatives to help to increase water use efficiency, water licences which attach to specific land parcels are being converted to water allocations which are less restrictive.

Once they are established through the release of a regionally based Resource Operations Plan, water allocations may be bought, sold, mortgaged, and sub-divided. From a policy perspective, this provides a financial incentive encouraging land holders and investors to implement best practice water management. The resultant efficiencies provide capacity for subdivision of excess entitlements, for sale to users who wish to expand their operations.

Water allocation titles are managed under similar legislative provisions as freehold land titles. However, water titles are not subject to a government guarantee or statutory indefeasibility provisions. Nonetheless, registered proprietors and other stakeholders benefit from the same principles of priority and certainty in resource ownership that applies to interests recorded in the freehold land register.

In Queensland, from a land registry business perspective, the transition has been reasonably painless. Water allocation titles are recorded in the Water Allocations Register on a title similar to a land title. The register forms part of our Automated Titles System. We use the same prescribed forms to record transfer and mortgage transactions, we apply the same basic fee structure to lodgements and searches, and we adopt principally the same practices, procedures and processes as we do for other titling business.

Carbon credits

An increasingly important and high profile contemporary issue for communities all over the world is climate change. Governments almost everywhere now recognise the importance of addressing the effects of climate change and are considering a wide range of policy responses to achieve greenhouse gas abatement in transitioning to a carbon emission constrained future.

Addressing the environmental impacts of climate change presents some significant challenges for the commonwealth and state and territory governments of Australia.

Coal-fired power stations are Australia's primary source of electricity. Coal exports—a key factor in our current resources and mining boom—contribute significantly to our gross domestic product and balance of trade. Coal mining is vital to our economy and prosperity. In order to address the impact that coal burning is having on climate control, governments and mining industry stakeholders are examining clean coal options and are investing heavily in carbon dioxide geo-sequestration research and technology. At the same time, government is examining the legislative and tenure administrative requirements for sub-terrain areas which would potentially be used for carbon dioxide storage.

From a Queensland land registry perspective, we are looking at how we would potentially register sub-terrain storage areas. For example, through volumetric surveys and volumetric titles and ensuring access rights through innovative reciprocal easement arrangements.

Carbon trading is also a topical issue world wide. We know the European Union has already established an emissions trading scheme. However, the Commonwealth Government of Australia is still at the investigation stage.

I would like to briefly discuss two similar but differing paths taken by two of the Australian jurisdictions, namely the Queensland and Western Australia state governments.

Western Australia introduced new legislation, the *Carbon Rights Act 2003*. This allows for creation of a new interest in land which is called a carbon right. A carbon right is the right to the benefits and risks arising from carbon sequestration and release on a specified parcel of land. These carbon rights are being promoted as a potential new source of income for land owners. Carbon rights are registered on the respective land title as a separate interest in land. Registration relates only to the benefits and liabilities of carbon sequestration from the land and gives no guarantee as to the quantity of carbon stored, its values, or whether it will remain on the land.

On the other hand, Queensland introduced legislation that has allowed land owners to enter into agreements for environmental offsets with third parties in relation to natural resource products such as trees and vegetation on subject parcels of land. Unlike Western Australia's approach, the vesting of the natural resource product under the agreement does not create an interest in land. However, the agreement can be registered on title as a profit-a-prendre, thereby providing a level of certainty and security for traders in the carbon credit market.

Clearly, land registries of all the Australian states and territories can play an important role in the broader implementation and management of any emissions offset and carbon credits trading initiatives. Exactly how that role will evolve over time, remains to be determined.

Mining

In Queensland, yet another industry sector that could potentially benefit from the application of land registry systems and practice is mining. Mining is one of Queensland's biggest industries. It is a key factor in our economy and is driving major growth in regional areas of the state. The Western Australia economy is also experiencing enormous growth through the minerals and resources boom.

Managing the registration of mining leases, which are spatially based, aligns with our current role and could quite easily be integrated into our existing system.

Currently, there are around 3,000 mining leases in Queensland, covering about 730 kilometres. This is a relatively small number in terms of our lodgement and title search statistics—currently 3.1 million searches and over 1.03 million lodgements annually—and is a role that we could manage effectively with little impact on budget and human resources.

Similarly to our Water Allocation Register, we would perform only a registry role. Responsibility for the policy, management and administration of mining tenures, which are not an interest in land, would remain as they are with the Department of Mines and Energy.

Native Title

Another opportunity for Australian jurisdictions to use capitalise on our strategic capability, expand our operational relevance, and meet the needs of government, industry and the community comes from the statutory recognition afforded to Native Title rights. There is increasing activity in this arena and an ever-growing number of Indigenous Land Use Agreements being drafted and authorised.

As background, it was not until 1992, through the High Court of Australia decision in *Mabo v Qld (No 2)* that the legal framework was set for Native Title determination in Australia. Prior to this time, the Australian authority indicated that upon acquiring sovereignty, the Crown acquired full beneficial ownership of colonial land in a manner which was inconsistent with the continued existence of any Native Title. Several legal and political developments since the *Mabo* decision ensure that the principles of Native Title are now well established in Australian property law.

Formal assessment of Native Title claims and the making of determinations is a protracted process. However, once a determination is made it is entered onto a national Native Title Register. These determinations of “rights” are not registrable interests in land and are not recorded in state and territory land registers.

Native Title determinations are a good example of how the unbundling of rights, obligations and restrictions that attach to land could potentially impact individuals searching a land register in an attempt to ascertain exactly what restrictions apply to a specific parcel of land.

Although the spatial extent of Native Title claims rarely aligns with any precise cadastral boundary, there is a valid argument to support the recording on title of a notification about the existence of any Native Title claim or Native Title determination that affects a parcel of land.

Conclusion

I trust that from the examples I have put forward, it can be seen that there are some significant opportunities for land registries to expand their role into the 21st century.

Making the most of these opportunities will take resolve and a collective commitment to share our experiences, work smarter, and look outside the traditional square when examining possible ways forward. While strategies that could work well in one jurisdiction may not always be appropriate for other jurisdictions, there is no doubt that working together will collectively identify possible changes and improvements that will allow for flow-on benefits.

This conference is an important part of establishing the framework and networks that will help us to ensure the long-term viability, relevance and importance of land registries to governments, industry and our communities.