

**Opening address to the Australian Institute of
Conveyancers
(AIC NSW) annual conference**

**‘Change matters’
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Introduction

I would like to acknowledge that this meeting is being held on Aboriginal land and I'd like to pay respects to the current and past Aboriginal people from this area.

Thanks to Chris Tyler for inviting me to today. It is an honour to be giving the opening address to this year's annual state conference on the important topic of 'Change matters'.

I should confess upfront I am not a conveyancer, nor a lawyer, nor a surveyor. I'm an economist. But hopefully it reassures you that Robert Torrens' father was an esteemed economist. At least that's my claim to the Torrens system.

It is fair to say the NSW land titles sector is going through some important changes right now.

On 1 July, this involved separating the old Land and Property Information—LPI—into four bodies. Out of this came a new regulator—the Office of Registrar General—to oversee the land titles business.

One of these four bodies, the land title and registry business, remains in Government. However, the Government recently called for expressions of interest from the private sector to operate LPI under a 35 year concession.

The Office of Registrar General is also supporting a number of other big Government reforms. For example, to improve the functioning of strata legislation and the e-conveyancing work.

In considering these changes, why they matter—and perhaps to better understand them—it might help to reflect on the many changes in NSW's land title policies in the past few centuries.

The truth is everything is changing all the time. It's how we deal with change that matters. That might depend on the pace of change.

Sometimes you can feel the stones as you cross the river to find the best way. Other times, you just have to jump.

As an economist I am attracted to change. Perhaps it's because we build models of how a perfect world could be—occasionally based on a few imperfect assumptions—and then we use these models to try to change the world...(And if it doesn't go so well, we change the assumptions...)

Of course big, important change is not easy. It's those people and organisations involved in change that affect their success.

As Machiavelli said “there is nothing more doubtful of success, nor more dangerous to manage than a new system. For the initiator has the enmity of all who would profit by the preservation of the old institution and merely lukewarm defenders in those who gain by the new ones”.

Today I want to look at some big changes in legislation and technology, past and present, that have shaped NSW's land title system over time.

I'll then finish on current changes to the land titles office. If you like, this is our turn to help deliver what are really important changes for NSW's economy.

From this, the most compelling observation I think is that the status quo will tend to always run its course because social, economic and technological pressures demand new ways of doing things. However, this does not mean positive change is guaranteed. What matters is we bring leadership, energy and persistence to make sure we capture the great things that can come from change.

Legislation and change

Let me start with legislation. And move straight to one of our most important drivers of change – Robert Torrens.

Because of Torrens, registration creates title, and that title is indefeasible.

On 1 January 1863, the Torrens System came into effect in NSW—over 150 years ago. But in NSW it didn't come easily. Many were against it. Parliamentary committees and other stakeholders worried that NSW would be taking on too big a change, with no proof of success.

Nevertheless the case for change was powerful.

For too long it had been difficult for property owners to mortgage, sell and buy property. People interested in buying land had to employ lawyers to

track backwards through previous transactions, often as far back as the original land grant. This process was tedious and expensive and could be inconclusive. The need for conveyancing reform was acknowledged even in England.

The cause of this problem was rooted in the very beginnings of the NSW colony.

In the 1790s Governor Phillip had been in the habit of granting lots of land—up to 30 acres—to ex-convicts to try to keep them here because London didn't want them back! And he granted marines and free migrants up to 100 acres each also as an incentive to stay.

Unfortunately there was no way of recording any of this. Grants were supposed to pass under the seal of the territory, but someone forgot to pack the seal... Can you imagine. The First Fleet of 11 ships, carrying more than 1,000 convicts, marines and seamen, and a vast quantity of stores, but no seal! [You could ask 'where were the NSW conveyancers when the ships were being packed!?']

Finally a seal arrived in September 1791. But until then land was given away without record. The first ever officially recorded grant was to James Ruse dated 22 February 1792. That's 214 years ago.

However, even with the seal, there was no official record of land transactions. And grants continued to be given away quickly. Apparently soldiers were passing land to ex-convicts with nothing more than a scrap of paper with the words "AB has my permission to settle". These informal land deals led to land disputes—which were quickly clogging the colony's civil court system.

Finally, on 13 November 1800, Governor King created the first public record of land transfers. For a short time, four books were kept at Sydney, Parramatta and the Hawkesbury, signed each week by the principle magistrate of each locality. These eventually became what is now the Old Register.

A small change, important but not enough. Problems remained. Many buyers and sellers continued to take the risk and not register as it was not compulsory. This went on for many years. With time it became more and more difficult to track a chain of ownership, which made land dealings risky, slow, and tedious.

By the mid 1850s, NSW had the worst of the old and new worlds. It had long chains of title and because, unlike England, land did not remain in the same families from generation to generation, it made sub-division so much more complex.

By 1862, NSW was the only colony apart from WA which had not adopted the Torrens system.

Interestingly, the Torrens System while so easy to celebrate now, was considered by some as controversial at the time. It was new and untested. Many had greater interest in preserving the status quo.

Now of course, the Torrens System is regarded an innovation that Australia has taken to the rest of world. People talk about the hills hoist as being a great invention. But without the security of land ownership, backed by the state, the hills hoist may not have taken off!

The lesson perhaps is that change that matters takes time—but hopefully common sense prevails in the end. I suppose the question is what is the cost to individuals or society by not delivering change in a timely way

For NSW, Torrens did a number of things. It helped deal with many of its sick titles leftover from the early days of colonisation. It also helped subdividers ready to cash in on Sydney's rising population feel more secure. More broadly most recognise the Torrens System is now a key pillar supporting democracy and development in NSW.

Almost one hundred years later, NSW underwent the next most substantial legislative change to the way we administer the land title system.

In the 1960s the demand for housing was sustained by high levels of immigration and the baby boomers were coming of age.

The emergence of Sydney as a financial centre increased demand for office space and high-rise projects. Apartment buildings also seemed a good solution to post-war housing shortages.

But surprisingly few blocks were being built. Red tape was tying things up. The only adequate method of dividing ownership was company title, which had a number of defects, such as the difficulty of instituting mortgages.

In 1961, NSW introduced new strata legislation that gave the owners of flats, offices and professional chambers a title which equated, as far as possible, with Torrens title. It became possible to register a strata plan which specified the separate lots and units contained in the apartment building. Their boundaries were defined by reference to floors, walls and ceilings.

This change resulted from an interesting alliance between private enterprise and government expertise. The developer, Civil and Civic Pty Ltd was pressing for a secure form of title for flat buyers. The Registrar General then helped devise the solution.

This uniquely NSW—and then Australian—innovation worked well. Apartment buildings grew rapidly. And it has now been exported to other parts of the world.

Interestingly, around 50 years later, the strata approach is being further refined. More change, more innovation. Only this time, the aim is different.

The *Strata Schemes Development Act* and *Strata Schemes Management Act* will commence on 30 November 2016. The new laws make around 90 reforms to the existing strata legislation, much of which is over 50 years old. They will impact on around 30 per cent of people living and working in strata schemes in Sydney.

The reforms to the Management Act will improve and modernise the way strata schemes are managed, reducing unnecessary red tape and making running a strata scheme easier. For example, owners corporations will now be able to use modern forms of communication for meetings and voting, it brings a common-sense approach to owner renovations and makes it easier for schemes to enforce their by-laws, including repeat offences.

Perhaps the most significant issue in the reform is under the Development Act.

Currently owners who wish to renew or redevelop their scheme could be blocked by just one individual who does not want to participate. Application may be made to the Supreme Court but this process is costly, time consuming, adversarial and does not encourage negotiation.

The strata reforms introduce a mechanism for termination of a strata scheme with the approval of not all, but at least 75 per cent of owners. It is designed to provide a fair and transparent process through several stages, with a number of significant safeguards to ensure the interests of owners are protected, particularly those who don't wish to sell.

The strata renewal regime recognises the need for urban renewal and allows for the future growth of Sydney and surrounding areas. This is the underlying driver of change.

NSW has an ageing stock of strata buildings. Over 30 per cent of strata schemes are now over 30 years old. Some of the buildings themselves are nearing 100 years old. Many do not meet current building standards or are unable to retrofit environmental features that would make the building more energy efficient.

And current renewal processes are inadequate. Of the approximately 72,000 strata schemes in NSW, there have been only 826 strata

terminations. This is mostly because of the difficult process required to terminate a strata scheme.

Freeing up potential sites for new housing supply is in the public interest. An older strata complex on a small block of land could be replaced by a larger, higher density building, with more lots, meeting the ongoing demand for more affordable residential housing.

Importantly, the new scheme, which allows for a less than unanimous agreement of owners, has built-in safeguards and protections for lot owners.

Technological change

Let me move to technological change.

Drivers of technological change in the land titles area has been in response to growing volume in dealings, a need to be more responsive to customers and because the Queens Square office was quite literally running out space to store paper records.

By the early 1970s only the computer could save title staff from being drowned in a rising tide of dealings in the peak of the property boom.

The first attempt to automate registration began with the Torrens Registration Automation Project. By 1985 initial registration, subsequent dealings, and searches for all new parcels deriving from subdivision, including strata, were being done on computers. This was the first and still the largest automated project in the world. By the end of the 1980s ninety-five per cent of dealings affected automated titles.

By the mid-1990s, remote access to this central database was widespread with 40 per cent of searches involving computer to computer links with the likes of banks, building societies and law firms.

What had started with four books kept at Sydney, Parramatta and the Hawkesbury several hundred years early was now an automated Torrens Register, the first in the World.

And now, more than one quarter of a century later, we are introducing a new substantial change in the form of e-conveyancing. Let me talk about this for a few minutes.

The e-conveyancing reform positions the Government as a leader in digital innovation. It aims to minimise manual processes and paperwork

associated with property settlement. Lawyers, conveyancers and financial institutions will be able to transact together online.

This reform is designed with the customer in mind. It should reduce costs—for example, no more fees for bank cheques and couriers. And it will reduce settlement delays.

This reform takes place as digital transformation is affecting entire industries and economies. E-conveyancing is the conveyancing industry's version of the digital revolution.

It is also an opportunity to lead. At my local cafe I pay for a coffee by waving my iPhone, which is directly linked to my bank. While I drink my coffee, I can book a plane and invest in a rallying share market, all using the same phone. These are examples of the digital world involving secure data and personal identity.

With e-conveyancing, you can lodge documents and complete financial settlements electronically. Perhaps one day with your phone? Why not, who would have thought driverless cars would be possible.

This project is a model of the public sector and industry working closely together. It was born from COAG and driven by each state in partnership with financial institutions, conveyancers, lawyers and the Reserve Bank of Australia. It is ambitious because it involves the entire federation. E-conveyancing is currently live in five states. This is a testament to those involved when you consider how many COAG projects involving multiple jurisdictions have not made it very far.

Nevertheless, take-up of e-conveyancing is still modest. Less than 10 per cent of transactions are lodged electronically. This is why the Government is consulting industry on a set timeframe. The aim of having clear timeframes is to provide certainty for business to adjust systems and move toward the bulk of dealings being transacted electronically in the next few years.

Participating in the digital revolution requires all sorts of change; acquiring new skills and knowledge; new systems and processes; new partnerships; new forms of collaboration and investment in new people, programs and technologies.

Change on this scale can create uncertainty and doubt, which if not managed well can themselves create other real or perceived barriers to progress. For this reason, the Government is consulting closely with stakeholders to ensure the reform is well planned and industry has time to make the necessary adjustments.

My colleague Greg Channell, who has over three decades of experience in the land titles legal and conveyancing sector has been chairing consultative meetings, which some of you are part of. Greg will provide more detail on this reform later this morning.

But also please feel free to contact ORG directly or via Chris or Greg. This is a priority for us and a really exciting reform that we are leading. We're always happy to talk further about it.

Structural change

I'd like to finish by talking about structural change.

As I mentioned to start with, the Government is proceeding with a 35 year concession of the titling and registry services business of LPI.

In some ways this is not a surprise given throughout its long history, the Office has mostly earned more than it has cost. By the 1980s it had outgrown the public sector and was designated as a commercial operation in the outer budget sector. Now it is to be run by the private sector.

I think the drivers of this change are several-fold.

Australia's regulatory maturity has developed to better align public interest with financial incentives without requiring public ownership. A concession of LPI ten years ago might not have been possible. We didn't have the regulatory know-how to manage such an arrangement. Now we have a much more sophisticated understanding of how to effectively regulate a privately operated titles system. This draws on the many lessons we have learnt as a country since the broader National Competition Policy reforms of the 1990s.

The concession will also attract private sector investment in new technology to update the titles system. The Government has made it clear that it wants a future operator to invest in significant improvements to the system to benefit consumers. We expect to see accelerated digital capabilities and efficiencies from more investment in new technology.

The other external driver of this change is to fund state infrastructure.

Briefly, some aspects of the new concession arrangement are:

- Land titles will continue to be guaranteed by the State, backed by TAF
- The State will retain ownership of all data
- Physical records, primary copies of electronic data and back up copies will be kept in Australia
- Property sales information will continue to be offered by the State under its open data policy
- Price increases will be capped by CPI.

The Office of the Registrar General won't have any direct role in the operations. But the RG's Directions will continue with which the Operator must comply. To some extent this will mean no material changes in titling processes under the private sector operation. You can expect business as usual to some extent.

Nevertheless, there will be scope for the Operator to innovate. This is of course one of the reasons for going to the private sector.

With regards to information, the Operator will be responsible for providing access to intermediaries and online conveyancing providers. We will have oversight arrangements.

This is a change that matters and the Office of Registrar General is looking forward to taking on our new role to maintain public confidence in the system.

My sense is that while our relationship with the conveyancing industry has always been strong, in some ways, under this new arrangement, it will become even more important. We will want to know how you think the Operator is performing.

As a new regulator, we will be thinking about things like: are the registrations accurate and timely? Is the data safe? Will the dealings and plans be accurate? Can e-conveyancing connect with the Operator? Is the Operator investing in ICT technology? What about access to information downstream?

We have a very clear purpose: to ensure the integrity of the Torrens system is maintained. Our role is to make sure citizens and industry have access to a modern and effective title system that underpins a prosperous NSW.

Conclusion

To conclude, there has been a lot of change since 1792 when Governor Macquarie first registered Mr James Ruse's land in Parramatta.

Perhaps the single consistent driver behind the most impressive changes has been leadership, energy, a nerve to drive change and a persistence to make it work.

Some drivers have been slow-burning, others rapid, whether it be too many disputes in the courts, a lack of space for paper records, too slow a registration process in a property boom, a need to renew our urban centres, the introduction of a computers, a digital revolution and the list goes on.

LPI currently registers around 940,000 dealings a year with a largely manual process. Within three years, most dealings could be largely done online, with many being registered by an automated process.

We can be sure that change will continue after that. And by embracing important change, or even leading it, we force ourselves to try harder, to look for solutions, to peer around the corner a little more often.

I know the Office of Registrar General will benefit substantially from working closely with you as NSW conveyancers. You have been front and centre of the changes for a long time and are a large part of the next chapter in NSW land titling business.

We're in this together! And I very much look forward to it.

Thanks.