

31st July 2019

Ms Kristina Crichton
Committee Clerk
Standing Committee on Public Administration
Parliament House, 4 Harvest Terrace West Perth WA 6005
lcpac@parliament.wa.gov.au

Dear M Crichton,

Re: Inquiry into Private Property Rights

The Australian Institute of Conveyancers WA Division Inc (AICWA), the peak body representing Licensed Settlement Agents and Conveyancers in Western Australia, welcomes the opportunity to provide preliminary feedback to the “Committee” tasked with the inquiry into Private Property Rights.

In Western Australia it is estimated that somewhere between 94% - 98% of all property transfers are facilitated by licensed settlement agents and conveyancers (lawyers). With such an overwhelming number of property transfers being managed by property professionals, the task of searching and advising on information relevant to the use and enjoyment of a property is vital in consumers making informed property purchasing decisions.

The following are some considerations worth noting in the inquiry into private property rights:

Disclosure

Disappointingly, Western Australia has some of the poorest and least evolved disclosure requirements of any state or territory in Australia. This is only made worse by an absence of a “cooling off period” in which a purchaser’s settlement agent can undertake further necessary enquires to assist their client make an informed decision.

While the “cooling off period” may be seen as counterproductive in expediting a sale, the current practice lends itself to placing undue stress on a potential buyer and exploiting the principle of “caveat emptor”. Given that some encumbrances and notifications are not easily searchable or are only done so and understood post signing of a contract, the current disclosure process does not instil confidence or investment in the WA property market.

The “cooling off period” is simply a finite number of days in which a buyer has to satisfy themselves there are no additional concerns and it is typically not a “get out clause” for those who experience “cold feet”.

Erosion of confidence

The AICWA concurs that the omission of various notifications and encumbrances threatens the fabric of the economic security by lessening the confidence the community has in property ownership. Furthermore, the omission erodes the benefit, protections and purposes for which they (the notifications and encumbrances) have been created when they are largely ignored or unknown.

Lack of care taken

Information relevant to the purchaser's use and enjoyment of a property is generally contained on the Certificate of Title (CT), but, as is apparent, there are other important notifications and encumbrances that are not captured and that only become known after a buyer agrees to the purchase, or at a much later date. While Landgate's Property Interest Report (PIR) is an exceptional resource of the 76 different interests it currently captures, the use of PIR's is neither mandatory nor a requirement of the disclosure process when listing a property or prior to a buyer agreeing to purchase.

The current lack of care taken to centralise notifications and encumbrances either on a CT or within a PIR does not support the intent of the Torrens Title system.

Cost

In exploring the broadening of notifications for registering on a Certificate of Title, consideration will eventually be given to the cost of performing such a task. While single notifications on a single or several CT's is relatively affordable, blanket notifications over 100's or 1,000's of properties can be cost prohibitive. Additionally, such registrations can be time consuming, being both labour intensive and in some cases requiring specialised expertise in both preparing and registering.

In exploring cost reduction ideas, thought must be given to the practicalities of automating or expediting lodgement and registration of notifications electronically or seek alternative disclosure methods such as Landgate's PIR.

Mandate PIR's

In addressing the cost issue, where multiple (blanket) notifications are required, the consideration must be given to utilising Landgate PIR's and mandating their use, either at the point of listing a property or at a time prior to the signing the contract of sale.

Revenue generated by Landgate (The State Government) from the sale of PIR's could be used to offset the cost of lodging and registering encumbrances or managing the notifications to land owners.

Having encumbrances centralised, easily searchable and mandated as part of the disclosure process provides a benefit to all parties and ensures the ongoing sustainability for future notifications and encumbrances to be managed.

Consumer expectations

Whether notifications are placed on the CT or appear on the PIR, thought must be given to managing customer expectations in understanding the nature of the notification and the impacts they have.

Consumer expectations can be adequately managed by providing appropriate resources as well as educating licensed settlement agents through the compulsory professional development (CPD) regime.

There is an assumption that consumers will invariably look to property experts such as Real Estate Agents and Licensed Settlement Agents for advice. It is for this reason that Real Estate Agents should be required to provide CT's (as they currently are) and PIRs. It is then anticipated that Licensed Settlement Agents would naturally provide support to their client (the buyer) should they have additional questions.

Another consideration of note is that of how to manage communication in the event a new notification/encumbrance is introduced. There are several options, all of which can best be facilitated by Landgate.

Compensatory Models

Consumer confidence in providing for adequate compensatory models is essential. There are many aspects of note and given more time the AICWA would be pleased to provide greater context to what we believe are considerations the "Committee" tasked with the inquiry should review.

The AICWA in support of its members provides education and advocacy that result in positive consumer outcomes, it is for this reason that we welcome an inquiry into private property rights and offer our considerable expertise and experience to the "Committee".

Exploring opportunities such as mandating PIR's or improving consumer disclosure rights that are backed by a "cooling off period" demonstrate workable solutions worthy of further consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Fran Andrews', written in a cursive style.

Fran Andrews
President
Australian Institute of Conveyancers WA Division