



GOVERNMENT OF  
WESTERN AUSTRALIA



Office of the Chief Executive

Your Ref: A761673  
Our Ref: 3977-2019  
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The Committee Clerk  
Standing Committee on Public Administration  
Legislative Council  
Parliament House  
PERTH WA 6000

Attention: Ms Kristina Crichton

**BY EMAIL:** [lcpac@parliament.wa.gov.au](mailto:lcpac@parliament.wa.gov.au)

Dear Ms Crichton,

### **INQUIRY INTO PRIVATE PROPERTY RIGHTS – SUBMISSION**

Thank you for your letter dated 5 July 2019 inviting submissions on the following Terms of Reference referred by the Legislative Council to the Standing Committee on Public Administration (**the Committee**) for Inquiry:

“That *the House* —

- (a) *recognises the fundamental proprietary right of private property ownership that underpins the social and economic security of the community;*
- (b) *recognises the threat to the probity of the Torrens Title system, that guarantees disclosure, and re-establish the necessity for registration of all encumbrances that affect land including Environmentally Sensitive Areas (ESAs), bushfire prone areas and implied easements for Western Power which currently sit behind the certificate of title;*
- (c) *recognises the property rights of government issued licenses and authorities including commercial fishing;*
- (d) *asserts that fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit; and*
- (e) *directs the Public Administration Committee to conduct an enquiry into the matters described above (as its terms of reference) and to report to the House within nine months of the date of the referral.”*

## Submission

This submission focuses upon Real Property Interests, also known as interests in land, and whether the Certificate of Title is the correct vehicle to ensure effective disclosure of all interests in land.

Central to the Terms of Reference is that all interests and implied rights and obligations affecting land do not appear on certificates of title.

The Torrens land titles system operates throughout Australia. The *Transfer of Land Act 1893* implements the Torrens system in Western Australia to ensure the accuracy and integrity of land ownership records under independent statutory officers.

The purpose of the Torrens system of title by registration is not to record 'all' interests and factors affecting the use and enjoyment of land on the certificate of title. Entering all such factors and estates and interests onto the land Titles Register alone would not ensure they receive the protection of registration granted under the Torrens system, and would be complex and difficult to practically maintain.

A real property interest gives rights to a landowner but also restricts or imposes responsibilities which may impact on their use or enjoyment of the land. Landowners are not free to use their land in an unrestricted manner. There are a range of factors that affect a proprietor's use of land which include both registered interests in land as well as non-registered interests. Other factors such as planning regulations also place restrictions on the use of land.

While not all of these impacts are listed on the certificate of title, it is recognised in legislation that transparency of all interests and implied rights and obligations affecting land is important in providing modern land registry services. Under the *Transfer of Land Act 1893*, those interests and implied rights not registered on the certificate of titles may be identified and can be connected or linked to the certificate of title for the land. This enables a more wholistic view of the rights, responsibilities and restrictions affecting the use and enjoyment of a land parcel.

In this regard, Landgate developed the Shared Land Information Platform (**SLIP**) to enable data sets from the numerous agencies with interests affecting land to be linked to the title and made publicly available through a Property Interest Report (**PIR**). The PIR currently covers 76 interests in land and was built with the understanding that further interests in land would exist in the future. The PIR can accommodate further interests and is an appropriate, effective and inexpensive means by which a landowner or any member of the public can access detailed information relevant to a land parcel.

The Terms of Reference also cover fair and reasonable compensation for property owners where the value of property is diminished by a government encumbrance or resumption for public benefit.

Including all interests in land on the Certificate of Title would not alone ensure they receive the protection of registration granted under the Torrens system. Relevant legislation exists for landowners to seek compensation outside of the Torrens system guarantee where the value of their property is negatively impacted by government actions.

Each of the Terms of Reference (a), (b) (c) and (d) is addressed below:

**(a) That the House recognises the fundamental proprietary right of private property ownership that underpins the social and economic security of the community;**

The fundamental importance of our Western Australian Torrens land titles system to support the economic and social prosperity of Western Australia is strongly supported. WA's Torrens regime delivers a strong, accurate, efficient and reliable land titles system, upon which financial investment and development in land, for commerce, housing and agriculture can occur with confidence. It provides certainty and security of land titles through these three key legal principles:

1. Certainty (known as indefeasibility) of registered title;
2. Guarantee of that registered title by the State Government; and
3. Compensation payable by the State in certain circumstances, including fraud and error.

The system is simple, efficient and relatively inexpensive. It recognises the fundamental right of land ownership through the maintenance of a robust land titles system.

Western Australia's system of real property law is based on the State owning all land at the outset. The Crown (the State) grants an interest in land, with freehold title being the type of grant that is considered closest to absolute ownership. So private ownership of the fee simple in freehold land is what is commonly referred to as "private real property ownership". Even with the grant of freehold, some rights are reserved to the State and the Commonwealth of Australia, most obviously the rights to minerals.

Land ownership rights in Western Australia are subject to restrictions that the Government may determine are appropriate, at any time through the making of relevant legislation.

**(b) That the House recognises the threat to the probity of the Torrens Title system, that guarantees disclosure, and re-establish the necessity for registration of all encumbrances that affect land including Environmentally Sensitive Areas (ESAs), bushfire prone areas and implied easements for Western Power which currently sit behind the certificate of title;**

The *Transfer of Land Act 1893 (TLA)* implements the Torrens system of land title by registration in Western Australia. It created the Western Australian Land Titles Register (**the Register**), primarily to record property interests on a central, publicly accessible Register of certificates of land title. There have always been limited exceptions, which do not appear on the land title. Implied easements, such as those for access by necessity; do not appear on the certificate of titles.

The Torrens title system does not guarantee full disclosure on the certificate of titles of everything that may possibly affect the use and enjoyment of the land contained in the titles. An interest recorded on the WA land Register is only one way by which the rights and interests of owners of land can be lawfully affected.

The Western Australian land system does not exist in isolation to the rest of real property law. It is part of a broad legal framework of rights and responsibilities to land, including those determined by general law and the Courts. In addition, land ownership rights in Western Australia are subject to restrictions that the Government may determine are appropriate at any time through the making of legislation.

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The existence of interests that affect land and are not shown on the certificate of title is recognised. So that these interests affecting land do not impact on the effectiveness of the land title system, amendments were made to the TLA to enable information about the land contained in a certificate of title to be linked to the certificate of title, rather than physically registered upon it.

Landgate developed SLIP, which enables the government agencies that hold statutory interests in land to place those datasets on the platform. SLIP has enabled Landgate to create its PIR. The PIR for the land contained in a certificate of title includes the interests that affect the use and enjoyment of that land including, but not limited to declared bushfire prone areas, environmental protection policies, aircraft noise and groundwater salinity.

Anyone can purchase a PIR on any property online or by contacting Landgate. A PIR costs \$60.00 and provides a list of interests tailored to the land title. The PIR explains each interest and offers directions to where on where further information can be obtained. An example PIR is provided at **ATTACHMENT A**.

Currently there are 76 interests that may appear on a PIR for land contained in certificate of title (**ATTACHMENT B**). Landgate estimates that there are currently about 86 interests in total, although this will change over time. Given the potential number of interests that may apply to a parcel of land, it would be both inefficient and impractical to require all interests to appear and be maintained on the certificate of title.

Statutory easements such as those that benefit Western Power and other essential utility providers do not appear on certificates of title, and there is no requirement to do so to be legally effective. Such statutory easements are part of a considered Government policy and strategy for the provision of essential services to the community.

A bushfire notification may be placed on a certificate of title at the request of the Western Australian Planning Commission (WAPC) under section 165 of the *Planning and Development Act 2005*. The WAPC may also require other notices to be recorded on titles for hazards and other factors seriously affecting the use and enjoyment of land.

If all other interests affecting land appeared on the certificate of title, it would clutter the title with information and make the certificates of title more difficult for people to understand. The PIR complements a title search and provides a richness of information and detail on interests that affect the land, and interests that do not apply to the land, that could not be practically replicated on a certificate of title. Landgate encourages anyone looking to purchase a property to obtain a PIR to help them fully understand what other interests may affect their future use of the land. It is equally useful for current owners to be up to date if they are considering any changes to their property.

The complexity and expense of seeking to integrate all this information into certificates of title is contrary to the essence of the underlying principles of WA's Torrens titles system of simplicity, efficiency and cost effectiveness.

**(c) That the House recognises the property rights of government issued licenses and authorities including commercial fishing;**

Generally, licences are not real property legal estates nor legal interests in land.

There are no certificates of titles for water. So, it would not be possible to link information about fishing licences or any other water licences to land titles, or through the PIRs.

**(d) That the House asserts that fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit.**

There are various legislative regimes that provide compensation for Government decisions impacting upon land. Landgate makes no further submission on this Term of Reference.

## **Conclusion**

Landgate submits that there are existing means by which an interested person or landowner can readily obtain information regarding their property. There are also various established mechanisms by which a landowner can seek compensation for detriment as a result of government decisions.

Landgate would be pleased to assist the Standing Committee on Public Administration with any further queries or clarification about our Western Australian land titles system or this Submission, and we request an appearance before the Committee, if a hearing is held.

Please contact me on 9273 7003 if we may be of further assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graeme Gammie'.

Graeme Gammie  
**CHIEF EXECUTIVE**  
31 July 2019

Att-

1. Sample Property Interest Report
2. List of current interests on Property Interest Report