

KELLEHERS AUSTRALIA

In-House Memorandum

Centralized Land Information

The Certificate of Title is the single most important document recording transactions and restrictions on land. It is the first point of call for information as to ownership and restrictions for any single unit of property.

Despite its importance as a central repository of information, for any individual parcel of land, significant land use restrictions are still not routinely recorded on title in Victoria, including long term planning restrictions on land use, foreign investment limits and tenancies.

The Torrens principle of indefeasibility of title is that the Certificate of Title is the ultimate record, with priority to registered interests. Information that is unregistered may ultimately not bind third parties for value without notice.

With e-conveyancing, it becomes easier, and certainly advantageous, to centralise land information onto Title. There have been frequent calls for more integrated land management:

“The effectiveness of any system concerning the conveyance of land and the dealing with interests in land depends largely upon the provision and promotion of security and certainty of title and the existence of a simple, speedy and inexpensive method of such dealings.”¹

No Australian jurisdiction has found the means of providing a wholly integrated approach to recording or registering restrictions and obligations governing the use of private land but:

‘an essential feature of an integrated approach is the integration of information systems and legal frameworks in which they operate to achieve not only better access to information about environmental restrictions but also a clear understanding of the legal effect of those restrictions on the private property rights of the landowner in the use of their land’².

A recent recommendation of the House of Representatives Economics Committee, inquiring into Foreign Investment in Residential Real Estate, recommended the establishment of:

“a national register of land title transfers that records the citizenship and residency status of all purchasers of Australian real estate.”³

Leases are registered interstate, but not in Victoria unless a Caveat is lodged protecting the interest.

Victorian planning legislation links the Title Register with planning controls, by enabling registration of a s173 agreement either as part of a planning scheme amendment or permit condition. However, this is only used in limited circumstances.

Kellehers Australia believes there is an opportunity to more effectively use the Title Register to ensure that notice of specific restrictions applicable to land is easily available to interested parties for the small cost of a title search.

Cameron Algie and Michael Griffiths
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¹ Bradbrook and Neave, *Bradbrook and Neave’s Easements and Restrictive Covenants* (LexisNexis Butterworths, 3rd ed., 2011), 183.

² Bradbrook and Neave, *Bradbrook and Neave’s Easements and Restrictive Covenants* (LexisNexis Butterworths, 3rd ed., 2011) at [14.59].

³ *Report on Foreign Investment in Residential Real Estate*, House of Representatives Standing Committee on Economics (The Parliament of the Commonwealth of Australia, November 2014), p.xviii

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KELLEHERS AUSTRALIA: www.kellehers.com.au / e: kellelegal@kellehers.com.au

497 Swan Street, Burnley, 3121, Victoria, Australia

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