



Review of the *Real Property Act 1886 (SA)*

Summary List of Consultation Discussion Questions

Fact Sheet 2 – Indefeasibility and Registrable Interests

1. Should the Torrens system explicitly adopt immediate indefeasibility in the *Real Property Act 1886 (SA)*? Why or why not?
2. Should indefeasibility apply to historical implied/unregistered easements (i.e. when they are no longer shown on title but have not been extinguished)?
3. How should the assurance fund operate to provide compensation for those parties who suffer loss because of reliance on the Register?
4. Should the *Real Property Act 1886 (SA)* contain a provision which defines a registrable estate or interest? Why or why not?
5. What types of estates or interests should be registrable?

Fact Sheet 3 – Equitable Interests

1. Should historic Torrens policy concerning the place of equity with the *Real Property Act 1886 (SA)* be reconsidered? Why or why not?
2. How should equitable interests be treated within the Torrens system pursuant to the *Real Property Act 1886 (SA)*?
3. Should some equitable interests be admitted to the class of registrable interests under the *Real Property Act 1886 (SA)*? Why or why not?
4. What role should a caveat play in protecting the interests of equitable estate or interest-holders?

Fact Sheet 4 – Restrictive Covenants

1. Is the current position with respect to the notation and protection of a restrictive covenant under the *Real Property Act 1886 (SA)* suitable? Why or why not?
2. How should a restrictive covenant be treated by Torrens—as an equitable interest excluded from the Register in its own right or as one of the class of estates and interests capable of registration?
3. How should a restrictive covenant be removed from the Register once its purpose has lapsed or once the original covenantee has ceased to exist?
4. Should a restrictive covenant be included among those interests that are registrable under the *Real Property Act 1886 (SA)*? Why or why not? If yes, should the restrictive covenant be registerable on the restricted land, the benefitting land, or both?

Fact Sheet 5 – Bringing Land Under the *Real Property Act 1886 (SA)*

1. Should all land currently not under the Torrens system be mandatorily brought under the application of the *Real Property Act 1886 (SA)*? Why or why not?
2. If non-Torrens land continues to exist, how should it be treated when it interacts with Torrens system land? Should the *Real Property Act 1886 (SA)* address explicitly the interaction of Torrens and non-Torrens land? Why or why not?
3. If non-Torrens land is mandatorily brought under the *Real Property Act 1886 (SA)*, how should that be done? (E.g. legislatively within the *Real Property Act 1886 (SA)* or through a process established by the *Real Property Act 1886 (SA)* but managed by a responsible authority, such as the Registrar-General?)
4. How should matters of compensation be dealt with if land is brought under the *Real Property Act 1886 (SA)*, causing loss to non-Torrens system landholders?



Fact Sheet 6 – Exceptions to Indefeasibility

1. Are the current exceptions to indefeasibility sufficient for modern needs? Why or why not?
2. Should the existing exceptions be consolidated in one provision within the *Real Property Act 1886* (SA)? Why or why not?
3. Should forgery remain a separate exception or be brought within the ambit of the fraud exception? Why or why not?
4. Is the proviso or the exception to the exception a concept that should be retained? Why or why not?
5. Are there new exceptions that should be added to the current list?

Fact Sheet 7 – Electronic Conveyancing

1. What transactions, in addition to those currently available, should occur by electronic conveyancing?
2. Should the *Real Property Act 1886* (SA) explicitly mandate the operation of electronic conveyancing? Why or why not?
3. How should the practices of Electronic Lodgement Network Operators be regulated?
4. Should interoperability be expanded to permit the entry of new Electronic Lodgement Network Operators? Why or why not?
5. What, if any, further amendments should be made to the *Real Property Act 1886* (SA) to help facilitate electronic conveyancing?
6. What, if any, changes need to be made in practice to better facilitate and promote electronic conveyancing?

Fact Sheet 8 – Encumbrances (including Caveats)

1. Should the *Real Property Act 1886* (SA) define what can be a caveatable interest? If so, what interests should be included in this definition and why?
2. Are the current caveating provisions appropriate for the protection of unregistered or unregistrable interests?
3. Should the role of the caveat be expanded to operate as a lesser form of registration, providing greater protection to the interest claimed than currently exists?
4. Should the range of interests which may be caveated be expanded?

Fact Sheet 9 – Loss of Property

1. Should adverse possession continue to exist pursuant to the *Real Property Act 1886* (SA)? Why or why not? If yes, in what circumstances should adverse possession be allowed?
2. If Torrens land may be adversely possessed, what process should be established by the *Real Property Act 1886* (SA) for that purpose?
3. If adverse possession is abolished, should the change to the law be retrospective or prospective? Why?
4. If a person, in the process of adversely possessing a property, makes improvement to the land, should this be recognised even if the land is not, ultimately, adversely possessed? If yes, how should this interest in the land be protected?
5. Should the operation of compulsory acquisition pursuant to the *Land Acquisition Act 1969* (SA) be integrated with the *Real Property Act 1886* (SA)? Why or why not?

Fact Sheet 10 – Interaction with Powers of Attorney and Family Law

1. What safeguards should be in place to protect people, such as Principals under a Power of Attorney or parties to family law matters, from fraudulent transactions? Is it appropriate for the *Real Property Act 1886* (SA) to be the source of these safeguards?
2. What obligations should there be on those acting in conveyancing and family law matters to advise clients of their potential entitlements and the risks associated with a transaction? To what extent should those obligations extend to another party where such party is known to be self-represented?
3. Should a right to bring an application in the FCFCOA for property settlement or enforcement of a debt be a caveatable interest under the *Real Property Act 1886* (SA)? If yes, at what point should this interest become and cease being caveatable?



Fact Sheet 11 – Interaction with Bankruptcy Law and Commercial Proceedings

1. How should the exercise of the powers for sale be noted on the certificate of title for the benefit of an interested third party (ie potential purchaser)?
2. What oversight should there be to the exercise of the powers for sale?
3. What considerations should be made by a court when making an order under a partition application?

SALRI's consultation process will open on 8 July 2024 and close on 4 October 2024.

Please note: SALRI does not, and cannot, provide legal advice to individuals. If you are in need of legal advice, we encourage you to speak to a lawyer and/or contact a community legal service.

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