



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

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

Process

All land in South Australia transferred (or 'alienated') in fee simple by the Crown following the introduction of the Torrens system is subject to the *Real Property Act 1886 (SA)* ('**RPA**'),¹ while land transferred in fee simple by the Crown prior to this date is held under general law title.

SALRI understands that some general law parcels of land remain in South Australia.² Transactions involving such land are complex and time consuming.

Part 4 of the *RPA* makes provision for non-Torrens land to be brought within the Torrens system. Pursuant to Part 4, the Registrar-General not only has the power, but the obligation, to bring all general law titles under the *RPA*.³

Part 4 divides land into two classes:

1. Land hereafter alienated in fee from the Crown (lands granted on or after the day on which the *RPA* commenced); and
2. Land heretofore alienated in fee from the Crown (lands granted before the day on which the *RPA* commenced).⁴

Lands hereafter transferred in fee simple from the Crown become subject to the *RPA* immediately upon transfer.⁵ Lands heretofore transferred in fee simple from the Crown may be brought under the *RPA* in accordance with the provisions of Part 4.⁶

Schedule 2 of the *RPA* provides a prescribed form of application for bringing land into the Torrens system. An applicant must provide a description of the land, its value, all documents evidencing the chain of title, a note of any encumbrances over the land and the details of the owners and occupiers of the neighbouring lands.⁷ The description of the land should reflect the survey plan rather than the descriptions in the relevant deeds.⁸

The Registrar-General also has the power to require the applicant to deposit with the Registrar-General a map or plan, verified by a Licensed Surveyor, of the land.⁹ Failure to comply with the Registrar-General's request can result in the Registrar-General's refusal to proceed with the application.¹⁰

Upon a successful application, land is brought under the *RPA* by the Registrar-General issuing a certificate in the applicant's name, or to the person applying in the applicant's name or on the applicant's behalf.¹¹ Notably, where land is held as tenants in

¹ Brendan Edgeworth, *Butt's Land Law* (Thomson Reuters, Seventh Edition, 2017) [12.1490].

² Such land may be a disused well or laneway. One estimate to SALRI was in the region of 300 to 400 old law land parcels remain in South Australia. Local lawyers told SALRI such parcels are still common in the Clare Valley.

³ *Real Property (Registration of Titles) Act 1945 (SA)* s 3(1); Anthony Moore, Scott Grattan and Lynden Griggs, *Australian Real Property Law* (Thomson Reuters, 7th edition, 2020) [4.530]. Any transaction involving general law land is subject to a convoluted system through showing a chain of deeds in relation to any dealings for that land. The complexity of this system was a main reason for the introduction of the Torrens system.

⁴ *Real Property Act 1886 (SA)* s 25.

⁵ *Ibid* s 26.

⁶ *Ibid* s 27.

⁷ *Ibid* sch 2; Anthony Moore, Scott Grattan and Lynden Griggs, *Australian Real Property Law* (Thomson Reuters, Seventh edition, 2020) [4.495].

⁸ Don Mackintosh and R J White, Thomson Reuters, *Jessup's Lands Titles Office: Forms & Practice SA* (at Service 10 August 2024) [402] and [402.4].

⁹ *Real Property Act 1886 (SA)* s 220(j).

¹⁰ *Ibid*.

¹¹ *Ibid* s 37.



common, all tenants must join in the application.¹² Additionally, a mortgagor cannot bring land under the *RPA* without the mortgagee's consent.¹³ The reversion of a leasehold estate is also not extinguished by virtue of the land being brought under the *RPA*.¹⁴

An applicant may withdraw an application at any point prior to issuance of the certificate.¹⁵ In the case of an applicant who dies before the certificate is issued, the certificate is to be issued in the deceased applicant's name and it takes effect as though the certificate was issued prior to death.¹⁶

Notice

Upon receiving an application to bring land under the *RPA*, the Registrar-General must publish a notice of the application in the *Government Gazette* as well as in a 'conspicuous place' in the Lands Titles Office.¹⁷ Where the applicant was not originally granted the land by the Crown, the Registrar-General must bring the land under the *RPA* after at least one month, but no longer than 12 months, from the date the notice is published.¹⁸ Where the applicant's evidence of title is imperfect (for instance, where a document contains an error or is incomplete), that notice period is extended for another month, meaning the land cannot be brought under the *RPA* until it has been at least two months since the notice was published.¹⁹

Caveat to Prohibit Land from Being Brought Under the RPA

A person with some interest in the land subject to an application under Part 4 can lodge a caveat to prohibit the land being brought under the *RPA*.²⁰ The caveat, in the form contained in Schedule 3 of the *RPA*, serves to maintain the status quo until any relevant issues have been resolved by the Supreme Court.²¹

A caveat lapses one month after the date it was lodged unless the caveator commences Supreme Court proceedings and gives the Registrar-General notice of them, or has obtained an injunction from the Supreme Court restraining the Registrar-General from bringing the land under the *RPA*.²² Once lapsed, the caveat cannot be renewed, unless the Supreme Court permits it.²³ For further information regarding caveats, see Fact Sheet 8.

Consultation Questions

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? (Eg 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?)

¹² Ibid s 28.

¹³ Ibid.

¹⁴ Ibid s 46.

¹⁵ Ibid s 41.

¹⁶ Ibid s 43.

¹⁷ Ibid s 35.

¹⁸ Ibid s 33.

¹⁹ Ibid s 34.

²⁰ Ibid s 39; Anthony Moore, Scott Grattan and Lynden Griggs, *Australian Real Property Law* (Thomson Reuters, 7th edition, 2020) [4.500].

²¹ See Don Mackintosh and R J White, Thomson Reuters, *Jessup's Lands Titles Office: Forms & Practice SA* (at Service 10 August 2024) [516] and [516.1].

²² Ibid [516] and [516.6]; *Real Property Act 1886* (SA) s 45.

²³ *Real Property Act 1886* (SA) s 45.



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?

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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