

Recent Developments in the Law Relating to the Torrens System in Australia

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This paper will focus on three specific developments in the law relating to the Torrens system in Australia over the last decade or so. Because Australia, by virtue of its federal system, has in effect eight separate Torrens systems, it is difficult to analyse the developments as operating evenly, or uniformly, across all the jurisdictions. But the emergent trends are nonetheless widespread.

The first of these developments concerns a progressive abandonment of the principle of immediate indefeasibility, specifically in the case of mortgages of Torrens title land. The three most populous states (New South Wales, Queensland and Victoria) have recently enacted legislation to withdraw indefeasibility of title for mortgagees who do not take reasonable steps to identify the mortgagor of land. This effectively takes the law back to pre-*Frazer v Walker* times in those jurisdictions.

Second, there appears to be some evidence of a general judicial trend at the appellate level of taking a more restrictive approach to legislation purporting to override the Torrens system. The result is arguably a more robust resistance to public law inroads of the Real Property Acts.

Finally, and belatedly, e-conveyancing is being established across Australia. Of its many revolutionary features, one of the more welcome is that it holds out the prospect of a truly national conveyancing system. Yet recent experience suggests that it provides novel opportunities for fraud, while closing off some of the traditional mechanisms for fraudulent behaviour under the paper-based system.