

Coffs Harbour Regional Day

NSW land title reforms

Opening address

Jeremy Cox, NSW Registrar General

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Introduction

I would like to acknowledge this day is being held on Aboriginal land and I want to pay respects to the current and past Aboriginal people from this area.

Thank you Chris Tyler for inviting me today. We're very grateful for the close relationship we have with the AIC and the insights and knowledge this brings to our own work.

This morning I'd like to discuss the Government's recent structural reform of the land title area. This includes creating a new regulator operator model and the upcoming move to a private operator of LPI.

But first, it's great to be on the north coast and in Coffs Harbour.

One of my colleagues suggested Coffs Harbour should in fact be called 'Korff's Harbour' after a Captain John Korff, who sheltered here in 1847. Apparently the name was misspelt in Sydney. I hope that doesn't eventually come through as a TAF claim!

Regulator operator model

Let me now turn to the new regulator operator model.

On 1 July, the old Land and Property Information—LPI—was separated into four bodies. One of these four bodies is the land title business. A second one became a new regulator—the Office of Registrar General.

This change alone is a substantial reform, intended to improve the integrity of the system with a focus on the customer—the conveyancer,

solicitor and surveyor who directly interact with land title dealings, and the people of NSW who benefit from a stable, accurate and accessible system.

This new regulator-operator model is different from how LPI operated in the past. Hence I would like to spend a few minutes on this structural change—and how it benefits NSW.

In the past, the operations of LPI and the Registrar General were entwined in one public sector organisation (LPI). That is, one government agency was responsible for both being, and regulating, the land titles service provider for NSW.

Under this old structure, an LPI staff member would find themselves walking into one meeting as ‘an operator’, and the next ‘as a regulator’. The boundaries were less defined and independent decision making about performance more difficult.

The Government has now reformed this structure to set apart the operations of LPI, in a stand-alone entity, while establishing a new and independent regulator to oversee LPI’s performance.

Let me give an example of how this has worked, and how it will work.

- In the past, where there was a delay in a dealing or plan being processed by LPI, it created an obvious inconvenience to a customer.
- It might have meant someone not being able to move into their house, or a developer not being able to settle sales of new apartments.
- While the LPI had good ways in which to manage such delays, these were internally managed within the same organization.
- Under the new regulator-operator model, the operator will have set KPIs in such things and report to the regulator where such KPIs are not met.
- Now, there is a much stronger focus on holding the operator to account over performance. There is now an independent oversight body built into the system.

Private operator

With this structure now settled, the next step is to move to a private operator under a 35 year concession. A 'concession' is when a private business pays the government to operate a public asset for a specified period of time.

The Government is in the midst of discussions with several bidders. We expect a new operator will be announced in the next few months.

With a move to a private operator, the Office of Registrar General will continue to regulate the operator's performance. Only, this time, by way of a contract with the private operator—so that the Government can ensure the operator is accountable to all its customers.

The private operator will not own the registry, or the data that comes with it. Rather, a private business will buy the rights to operate the core services of LPI, and receive the revenue that comes with these services, for up to 35 years.

The framework to oversee this arrangement is I think pretty simple—and also quite similar to the current arrangements. That is:

- The government is still responsible for the administrative, legislative and regulatory framework of land titling and conveyancing
- The Minister still has policy and portfolio responsibility for the Registry and Concession and retains statutory powers under the Legislative Framework, including the TAF
- The RG still has responsibility for monitoring and overseeing the operation of the Concession and the operator's dealings with Customers

The main difference between the current model, and a move to a private operator, is that the operation of core services are leased to a private operator.

In doing so, the private operator must comply with the Real Property Act 1900, the Conveyancing Act 1919, the Strata Schemes (Development)

Act 2015, associated regulations, Lodgement Rules and other various guidelines and legislation.

While the Office of the Registrar General won't have any direct role in the operations, the RG's directions will continue to form the operating rules with which the operator must comply.

This will mean no material changes in titling processes under the private sector operation. You can expect business as usual to some extent. In fact, from your day-to-day dealings with the LPI, you may not notice much of a difference.

Importantly, any changes to the RG's directions will come by the RG and if we think it necessary, they could be subject to public consultation.

And I want to make it clear that land titles will continue to be guaranteed by the State, backed by the Torrens Assurance Fund.

That is, all applications for compensation from the Torrens Assurance Fund will continue to be made to the Registrar General. This will ensure the continued strong backing of the Torrens system by the State's guarantee of title. There will be no change in this arrangement under a private operating concession.

What does the regulator expect from a private operator

A lot of people have asked what the regulator expects of a new private operator? It's a good question.

And I think the answer is pretty straight forward. We want the same as now—a highly performing titles registry.

Property rights are a hallmark of our modern economy. With titles—and the laws that support them—we can look beyond our homes as being solely for shelter, but also security for credit to start or expand a business.

Indeed, it is often said that buying a house is considered the biggest and by most accounts the best investment any one can make in their lives

And for all these reasons, we have to know that the operator of the system underpinning our property—the Torrens system in NSW—is highly effective. That we continue to have a simple but strong system to certify land transactions and ownership.

From a regulator’s perspective, I think this is most likely achieved if we keep our focus on the customer. The individuals who use the system. The mums and dads buying a house. The conveyancer who has to interact directly with LPI. The surveyor who is submitting a new development plan. And so on.

This is how we will frame our decisions on the operator’s performance. How are its actions, proposals, results affecting services for NSW customers.

With the customer in mind, the Government has made it very clear what it expects from a new operator.

The operator must maintain the confidence of customers and the NSW public. This means keeping the security, integrity, performance and availability of the system. It means keeping the system accurate and up-to-date, while bringing innovation and greater efficiency.

This is how we will look to build our relationship with the operator.

That is, through the customer. While a private operator will make decisions based on commercial outcomes, we will regulate in a manner that keeps the focus also on customer outcomes.

For example, an operator may invest in systems to improve efficiency. To bring innovation. To deliver continuous improvement. This might be good for its business. But it has to be good for NSW too.

I read a great quote the other day that went something like ‘if we want our regulators to be better, we have to embrace a simple idea: regulation isn’t an obstacle to thriving markets, it’s a vital part of them’.

I think that’s the spirit to come at this arrangement.

And our stakeholders are telling us what they are concerned about. To this end, I think it is important—as the Office of Registrar General—to reassure the public now that we do have some good controls to manage these risks. For example—stakeholders are worried:

- The new approach will undermine the TAF. In response, I can assure you the TAF will continue to operate as it does today. That is, the NSW Government will continue to guarantee the Torrens titles and maintain the Torrens Assurance Fund.
- People are also worried a private operator will increase prices. I can confirm prices can only rise by CPI each year over the term of the concession. A set price path is designed to provide more certainty than under the previous LPI arrangement where prices were changed with less consistency and time to plan.
- Stakeholders have suggested a private operator will be less respectful of privacy and that individual data might be mis-used. I note that the operator must comply with obligations contained in Commonwealth and NSW privacy legislation, just as it has to now. And the operator will only be able to use data to perform its obligations to deliver core services.
- Some stakeholders have suggested to me that the quality of services will go down. The important point I want to make here is that under these new arrangements, if core services are not delivered in way that is meeting performance standards, we as the regulator can impose various penalties (these are our regulatory controls). This does not exist in any other land titles office in Australia, nor in most overseas.
 - The approach is the same as other concessions in NSW—where the private operator pays a penalty for not meeting agreed services standards for customer safety, timeliness and availability of services.
 - The new arrangements also include step-in powers. These can be exercised where there is a threat or a likely threat to the

integrity of the register and will allow the Government to operate the business if this becomes necessary in emergency circumstances.

- There is also the question of maintaining skills and knowledge. The system is complex and to deliver core services, there will be a need for qualified staff to ensure the day to day services are met: whether it be complying with the law that underpins our land system, or reviewing survey plans to ensure they meet the standards required before being registered.

A regulatory approach

Of course, there are a lot of varying views on how to best regulate a sector. Our stakeholders are interested in the sort of regulatory approach we'll take, from the day a private operator starts.

To start with, it's fair to say the Office of Registrar General wants to come at this optimistically.

That is, how can we take private innovation and a source of new capital funding—and balance that with really good regulation ('best practice')—with the shared objective of developing NSW's land title system to be the best in the world.

A new private operator is purchasing an asset that has been in public hands for a while

And we know LPI has done a great job for a long time. Staff at LPI have deep knowledge about the land title system, which is ultimately underpinned by legal settings. Let's combine this knowledge with new ideas, new capital, and with a focus on the customer.

Moving forward, particularly when it comes to performance, we will focus on what matters. The material stuff. Where an operator hasn't behaved in the spirit of the deed—such as under-investing in people or systems, and this shows itself as a lower quality of services, then that's a problem.

Instead we want the operator to be open about mistakes and work on continuous improvement. And we will make it clear the scenarios we think are important. No surprises. We'll be clear upfront what matters, what we think is important.

This is how we will behave: we will be fair, customer focused, and optimistic but we will also exercise a critical mindset when it comes to defending the integrity of the system.

Technology and innovation

As the regulator, one thing that we will need to think about is the long-term nature of the concession. A lot can happen in 35 years. In much less time the internet was born and the mobile phone emerged.

The Government has made it clear that it wants a future operator to invest in significant improvements to the system to benefit consumers.

We will be working with the operator to ensure its technology continues to be current and maintained in line with industry practice.

This point is critical. The world never stands still. And technology is driving more rapid change than ever before.

People expect to be able to arrange their lives using technology in new ways, rapidly and with confidence that online methods are accurate and secure. For example, we already conduct almost all of our banking transactions online, in a secure environment.

Under the new arrangements, people also ask about what the Office of Registrar General thinks about technology/innovation to make processes more efficient?

When it comes to innovation, I think practically this means 'if there's a way to do it better, find it'.

So for us, and the Government, the priority, to start with, is the e-conveyancing reform.

This week the Minister for Finance, Services and Property, Minister Dominello, announced more detailed timeline to paperless

conveyancing by mid-2019. With these timeframes the Government wants to provide certainty for industry to plan.

Participating in the digital revolution requires all sorts of change; acquiring new skills and knowledge; new systems and processes; new partnerships; new forms of collaboration and investment in people, programs and technologies.

The timeframes provide certainty for business to adjust systems and move toward the bulk of dealings being transacted electronically in the next few years.

We've worked closely with the AIC on this reform, which has given us a much better sense of how industry needs to prepare and adapt to e-conveyancing.

And we will continue to provide information sessions for conveyancers across NSW so you are familiar with the timeframes and processes involved.

Please contact the Office of Registrar General directly if you would like to discuss this reform further. This is a priority for us and a really exciting reform. We're always happy to talk further about it.

Under the new regulator operator arrangements, the private operator will need to make sure the Government's timeframes can be met. This reform makes business for everyone more efficient and our understanding is a private operator will embrace this reform.

From a customer's perspective, the e-conveyancing reform will deliver lots of benefits. For example:

- It brings a quicker process: In most cases, settlement and lodgment will occur simultaneously. This reduces the risk of another party lodging a document against the title before it is lodged.
- Buyers may also save money as e-conveyancing eliminates the need for bank cheques, which cost around \$10 each, and can currently involve up to 5 cheques per settlement.

- Vendors get money faster as funds are disbursed securely in real-time. This particularly benefits vendors who want to purchase another property the next day.
- And parties can lodge documents 24/7, creating greater flexibility for everyone.

This is the type of innovation we're after.

Beyond e-conveyancing, an operator might then look at the broader Integrated Title System, which underpins the land title system. Our sense is what LPI has now is one of the best in Australia. And while it may not need fixing right away it will pretty soon. After all, this is a 35 year concession and apparently with the pace of technological change, most systems go through a fundamental change every seven years.

We won't be prescriptive—the private sector can bring the innovation and insight to best-practice systems. But we can set expectations, again based on how the system affects customers.

In this case, we'd expect things like an operator to move to digital, to focus on systems back-up, to more easily allow for 24/7 accessibility across the system etc.

As I mentioned earlier, all of this would still need to keep a balance between investing in people and technology.

Conclusion

To conclude I want to thank you again for having me today. An important role of the Registrar General is to maintain the public confidence in the NSW land title system. And hopefully today I was able to explain a bit more the recent changes going on.

Of course, one of the biggest changes in this state occurred on 1 January 1863, when the Torrens System came into effect in NSW. And this system has proved to be enormously successful. It has underpinned the success of our economy. And our colleagues in LPI—and the equivalent agencies since then—have worked effectively to make the system a success.

Now, 154 years later, this new regulator operator model is not going to take away from the fundamentals of this system. The legislative framework will continue to support it.

And LPI itself has been through many big changes before. For example, the shift to automated dealings in the mid-1980s. This was the first and still the largest automated project in the world. And by the end of the 1980s ninety-five per cent of dealings affected automated titles.

As the regulator, we want to work with a new operator to make the system even better, with the customer in mind. This is what the Government has asked us to do. This is what the Minister wants us to achieve. This is what you expect of us.

And I know the Office of Registrar General will benefit substantially from working closely with you as NSW conveyancers.

I am happy to take questions.

Thanks