



Property Law Reform Alliance

CONVEYANCING PRACTICE OPTIONS PAPER

The Property Law Reform Alliance ('the Alliance') established a Working Party to consider current conveyancing practice in each jurisdiction and propose a preferred approach within a harmonised or uniform property titling system.

Conveyancing is a process which permits a transaction relating to a parcel of land, usually from a vendor to a purchaser. It is recognised that generally this one transaction does not happen in isolation and that generally at least one mortgagee is involved in the process. A contract is created in each of those major transactions.

Conveyancing practices have evolved separately in each jurisdiction. These were underpinned by legislation and subsequently amended through the introduction of the Torrens titling system.

Australia's property law needs to be reformed, and the movement towards a uniform conveyancing system is an essential first step towards greater national consistency in titling.

METHODOLOGY

The Conveyancing Working Party developed a series of questions that followed the process taken within a general conveyancing transaction.

The questions sought to determine the requirements of each jurisdiction and then to use the answers to develop a preferred position.

Following the decision made by the Alliance to develop a Uniform Torrens Title Act for use by all jurisdictions, the Working Party developed a matrix that examined practices and information requirements in each each jurisdiction.

Each question asked in the matrix and relevant responses are attached to this report. The Working Party came to a preferred position based on those answers.

Laws relating to the practice and procedure were identified where they prescribe the material required at the time that a property is to be/or is sold. There was general agreement that the conveyancing process would need to change within the existing frameworks of various legislative requirements.

As a first step towards a system that would be capable of use in each jurisdiction, which allowed for the various legislative requirements, the Working Group agreed that a separate cover page should be developed to be included with each contract.

This cover page would set out the elementary information required in each transaction, including:

- vendor;
- vendor's agent (all details necessary plus name of any co-agent);
- vendor's lawyer or conveyancer;
- completion date (settlement date);
- description of subject property including legal description;
- description of improvements;
- description of inclusions;
- purchaser;

- purchaser's lawyer or conveyancer;
- consideration, including break-up of deposit;
- date of making of contract; and
- execution by the vendor and purchaser.

This paper will be used as background material for the work of the Alliance to develop uniform property laws and procedures.

CONVEYANCING MATRIX, PREFERRED SOLUTIONS

Who is involved in the process?	Lawyers, licensed conveyancers and real estate agents
At what stage are they involved?	<p>VENDOR:</p> <ul style="list-style-type: none"> ▪ a real estate agent enters a sales agreement with the vendor; ▪ a lawyer/ licensed conveyancer prepares the contract; and ▪ a lawyer/ licensed conveyancer attends to the execution or exchange (where not exchanged) then undertakes all necessary activity to settlement and post-settlement. <p>[where state legislation permits, a real estate agent will prepare and attend to the execution or exchange of contract for sale]</p> <p>PURCHASER:</p> <ul style="list-style-type: none"> ▪ a real estate agent is involved up to the execution or exchange of the contract, a lawyer/licensed conveyancer from the acceptance of offer to settlement and post-settlement; and ▪ lawyers/licensed conveyancers attend to the execution or exchange (where not exchanged) then undertake all necessary activity to settlement and post-settlement. <p>[where State legislation permits, a real estate agent will attend to the execution or exchange of contract for sale and forward it to the lawyer/licensed conveyancer]</p>
What is the principal legislation?	Ideally, a uniform or harmonised Conveyancing Act and Real Property Act.
Who prepares a contract?	Lawyers and licensed conveyancers, and in some cases real estate agents.
What is the form of the contract?	<p>Minimum contract content should be prescribed.</p> <p>Different contracts may be used provided that prescribed content requirements are met.</p>
Is there compulsory disclosure?	There should be compulsory disclosure in respect of a consistent set of prescribed matters. Warranties should be given in respect of matters which may detrimentally affect the property on the basis that an affectation must be disclosed.

When are parties bound?	Parties should be bound on exchange of a written contract and subject to continuing adherence by the parties to contract terms.
Is there a cooling off period?	A cooling off period should be available for all sales excluding those conducted by auction or tender. The cooling-off period should represent the period required to obtain finance.
When are searches done?	Searches must be done at a time when remedies such as: cooling off, not proceeding to exchange or allowances provided for in contract, are available to the purchaser.
Are there any requisitions on title?	Any questions (commonly referred to as requisitions) should be either subject of matters for disclosure or asked and answered prior to the exchange of the contract.
What happens with insurance risk?	Insurance risk should pass to the purchaser on settlement or occupation, whichever occurs first.
When should stamp duty be paid?	The time for payment of stamp duty should be uniform and in accordance with the re-write of the Stamp Duty Acts undertaken by all the States and Territories.
Is there registration?	Registration should be compulsory in all jurisdictions for transactions where the ownership of the land is changed. This should be complied with by the purchaser's mortgagee or the Lawyer/Licensed Conveyancer acting for the purchaser.
What mandatory fees are charged?	Costs and fees of lawyers and licensed conveyancers should not be regulated.