

Why property law should be the next reform target

On 16 May, 2008, the Hon Robert McClelland MP declared:

"I am looking at ways to make our legal system more user friendly to corporations that operate in our region. It is inappropriate that they should have to spend thousands on advice about competing State and Federal jurisdictions even before a remedy is considered."

Although the Federal Attorney-General's comments related to international trade, they are just as relevant to the need for real property law reform.

The property sector is a multi-billion dollar industry which, by quirk of history, faces markedly different regulatory regimes.

This frustrates investment and makes Australia less competitive internationally.

In an age of globalisation and instant communications, the inevitable delays, red tape, and cost to trade and commerce caused by discrepancies in property law can no longer be justified.

To keep the country as an attractive destination for national and international investment, Australia's antiquated approach to property law must be overhauled.

Institutionalised Parochialism

Although the Torrens Title system is widely recognised as one of the world's best approach to land titling, Australia has eight markedly different versions of it. Property procedures and leasing practices are similarly variable.

Habitually, moves towards reform have often been frustrated by fiercely guarded vested interests which have more to do with bureaucratic control than the delivery of good public policy.

Traditional 'states rights' arguments against property law reform have created untenable artificial barriers to greater growth and prosperity.

These inefficiencies lead to exacerbated costs for both vendors and purchasers of property and increase the time that it takes to complete transactions.

In the new millenium it should no longer be acceptable to have divergent property laws simply because the states "do things differently".

The Federal Government has expressed a desire for a "seamless, national economy", but for this to occur there must be a uniform approach to property law.

Precedents for Reform

Australia has already recognised the benefits of introducing uniform laws.

- The success of the **Corporations Act** has proven the benefits to the nation of introducing a uniform system that facilitates good business practices and encourages investment.

Yet, while corporations can register as a company under a single regulatory system, any property transactions they may carry out, such as signing a lease or purchasing a building, are treated differently in each jurisdiction.

- The Commonwealth, State, and Territory Governments have recognised inefficiencies in **personal property** laws, with the Federal Attorney-General going so far as to say that this is:

"... the kind of financial activity that needs to be certain, seamless, and efficient."

Yet, it makes no sense to work towards 'a legal framework for a modern competitive economy' without reforming one of the major areas of business and private investment.

Real property transactions involve considerable amounts of money, with far more significant potential consequences for stakeholders arising from confusion, delays, or fraud.

It should therefore be at the forefront of the COAG reform agenda.

Legal Certainty

The Federal Government has expressed a desire for a national legal market to allow lawyers to be recognised in any state or territory.

Yet merely giving lawyers (or for that matter, property professionals such as valuers, agents and property managers) the right to "practise seamlessly across all jurisdictions" does not necessarily give them the capacity to deal confidently or competently with disparate property laws.

Despite moves towards a national accreditation system, a purchaser cannot be sure that someone they have instructed in Brisbane, for example, will know the intricacies of WA's property laws.

Companies dealing with property transactions – whether as vendors or purchasers, lessors or lessees – will still need to employ practitioners with local knowledge to ensure that they are properly protected under state law.

This will lead to increased costs and a lack of certainty in the outcomes or the quality of the legal advice they receive.

The Property Law Reform Alliance

In the absence of tangible government commitment to reform, organisations representing the legal and property industries have formed a coalition to drive the reform agenda.

The Property Law Reform Alliance (the "Alliance") is a national coalition of peak legal and industry associations.

Its members are committed to the introduction of uniform property laws, using Corporations Law as a model, to remove the inefficiencies affecting transactions.

Uniform property laws would:

- enable states and territories to establish the most efficient, rigorous, and fair system for managing property transactions;
- make it easier for individuals, companies, and professionals to move between and operate within different jurisdictions; and
- place property investment on a level playing field with other asset classes.

The Alliance has drafted a Table of Contents for a Uniform Torrens Title Act to identify the main features needed from nationally consistent legislation to help governments adopt reform strategies.

It's the first step in a long road to property law reform.

For more information about the Property Law Reform Alliance or the draft Uniform Torrens Title Act, please visit www.plra.com.au.

Ten Reasons for Pursuing Property Law Reform:

1. it will deliver on the Federal Government's commitment to remove hindrances to business activity, because every company either owns or rents property;
2. it will ensure that a world-class 19th century system can be made relevant and effective for 21st century businesses;
3. it will enable states and territories to establish the most efficient, rigorous, and fair system for managing property transactions, making the Australian property industry internationally competitive;
4. it will enable local and overseas companies to expand their Australian operations beyond one state, opening up the possibility of increased investment and more jobs;
5. it will reduce the costs and transaction timeframes for vendors, purchasers, lessors, and lessees and create a nationally consistent system under which they can operate;
6. it will overcome a constitutional anachronism where companies are covered by national legislation, but their property transactions are beset with different state-based regimes;
7. it will continue the business regulation reform agenda that started with Corporations Law and the review of personal property, helping to deliver a seamless, national economy;
8. it will ensure that national markets for legal and property professionals allow practitioners are not only recognised in different jurisdictions, but also have the capacity and knowledge to represent interstate clients effectively;
9. it will ensure that the National Electronic Conveyancing System does not merely codify existing differences, but works to remove anomalies; and
10. it will put property investment on a level playing field with other asset classes.