

PLRA



Property Law Reform Alliance

The Case for Property Law Reform

"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."

The Hon Robert McClelland MP, Federal Attorney-General, 16 May, 2008

The Attorney-General's comments are as relevant to the need for real property law reform as they are to international trade.

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.

If Australia is to continue to be attractive to international investors, our antiquated approach to property law needs to be overhauled.

The Federal Government's desire for a "seamless, national economy" must be underpinned by tangible reform to property law.

Institutionalised Parochialism

Although the Torrens Title system is widely recognised as one of the world's best approach to land titling, we have eight markedly different versions of it. This affects trade and commerce.

Property procedures and leasing practices are similarly variable.

Moves towards reform are often frustrated by fiercely guarded vested interests which have more to do with bureaucratic control than the delivery of good public policy – in a country of 20 million people, we can't even get national consistency on whether a property title should be registered or on the information required for any property transaction.

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

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

Precedents for Reform

Australia has already recognised the benefits of introducing uniform laws.

Corporations Law

Corporations operating in our region have a tremendous disincentive to expand their Australian operations.

While they can register as a company under a single regulatory system, any property transactions, such as leases, are treated differently in each jurisdiction.

Monday, 11 August, 2008

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

Australia would benefit from taking a similar approach to property law.

Personal Property Law

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."

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.

Rather than limiting themselves to personal property, authorities have a unique opportunity to extend reform to real property transactions.

Real property involves substantially larger sums 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 means that they face potential variations in the quality of legal advice they receive, increased costs, and a lack of certainty in the outcomes.

Similarly, lawyers working on cross-border deals may have to subcontract refer work to local firms, adding to the costs and timeframes faced by their clients.

Real Property Reform

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 Property Law Reform Alliance (the "Alliance"), a national coalition of peak legal and industry associations, has recognised this problem and is working to resolve it.

The Alliance has drafted a Table of Contents for a model Real Property Act to identify the main features needed from nationally consistent legislation.

The purpose of this is to help governments to adopt reform strategies.

However, for this work to be successful, we will need government champions.

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 the National Legal Market creates a system where practitioners can be recognised in different jurisdictions, and 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.