

# **International Real Estate Society Conference '99**

**Co-sponsors: Pacific Rim Real Estate Society (PRRES)  
Asian Real Estate Society (AsRES)**

**Kuala Lumpur, 26 - 30 January 1999**

**A CASE FOR TORREN'S SYSTEM OF TITLE REGISTRATION**

**TREVOR MILLS**

International School of Business, University of South Australia  
Adelaide, South Australia

Phone: 61 8 8302 0526, Facsimile: 61 8 8302 0512, E-mail: [trevor.mills@unisa.edu.au](mailto:trevor.mills@unisa.edu.au)

**Keywords:** old system, Torrens title, title registration, conveyancing, Asia, Australia

## A Case for Torren's System of Title Registration

### Introduction

This paper is meant to show how the Torrens system can work and some of the criteria that needs to exist to enable it to function properly. It is not suggested that this system can be directly applied to other countries without an analysis of the needs of that country, the purpose of its registration system, the conditions that have existed and do exist, and the economy of that country. Rather this paper is meant to identify at least main points. Firstly how some of the criticisms of the title registration system can be, or have been, overcome and secondly, to suggest that at the very least the Torren's system has the credentials to form the basis of a practical and workable registration system in many areas.

### Background

In assessing the benefits and means of converting Old System Titles to the Torrens system in New South Wales, it was observed that:

"...title registration is ..... an efficient bookkeeping system that facilitates conveyancing. It is a system of record, not of land tenure, and is readily adaptable to any form of land tenure. Many tenures may be handled at the one time as long as the tenure systems are accepted by society" (Holstein & Williamson 1984)

It was further observed that "the qualities of a Registration of Title system are :

1. The title document must give an unambiguous record of ....the parcel of land.....the nature of the rights of the proprietor and others.....the persons involved with the title, estates and interests.
2. The title depends on registration of an instrument....
- 3 ....record systems must be kept up-to-date, secure and purged of dead material...
4. The system should be controlled by central government ....
5. It is an advantage ... that the state guarantees the contents of the title document.
6. The administrative processes of bringing land under into the system should be kept separate from the running of the system" (ibid . p.3)

Although the authors were writing in reference to New South Wales they could well have been referring to the system that operates in South Australia, since it has all of those qualities

Much has been written by very eminent people about the importance for countries to have an efficient and updated land register, and the benefits that accrue from such land registration. This paper adds to those by presenting a case for the Torren's title system, based on the present practices in South Australia, where Robert Torrens was Registrar General for a short time.

Perhaps one of the strongest confirmations of the importance of appropriate land registration systems is in a paper, from Maine University, which makes a number of important statements including:

"Improvements to land-registration systems and the establishment of land-information's systems, are basic reforms which are a prerequisite for efficient human settlements development" (Department of Spatial Science and Engineering, University of Maine, c1991)

This paper goes on to succinctly record the benefits of such a register as follows:

"Land-title registration is a critical starting point in the continuum of this modernization, as it has ramifications for many other aspects of land management. Registration of title to land identifies ownership of the parcel or plot of land, as well as other forms of tenure and interests on it, it simplifies, cheapens and expedites land transactions and conveyancing and improves credit flow to land development, as well as facilitates more effective settlements planning" (ibid p.1)

And again, identifies one important element of a good land tenure system by stating "One key to smoothly functioning system of land tenure is land registers supported by cadastral surveys" ( ibid p 21 )

Many other papers have identified the land tenure problems of various countries and given general suggestions as to what is needed to resolve them. The merits of the registration of deeds versus the registration of title systems have also been reported at length without necessarily reaching a definitive conclusion. Other people have acted as consultants to countries engaged upon some form of land reform or introduction of a land register system, often with the help of the World Bank.

While much fruitful work has been done in this regard it also seems that the results are not necessarily commensurate with the time, money and effort expended.

A disturbing thing to read is the statement "The World Bank admits that nearly all its rural titling programs have achieved poor results, producing satellite maps and databases but not many useful registries" ("A Matter of Title" - Economist, December 9, 1995)

The need for an efficient form of title registration system, particularly in those countries which are categorised as developing countries, is reinforced by the statement that "the prevailing land-tenure system in most developing countries is still largely a mixture ... resulting in a situation where ownership, land tenure and usage rights and interests are largely ill-defined, undocumented and untransactable..."

(Dept. of Spatial Science and Engineering, University of Maine)

In view of these statements it seems appropriate to review the benefits of the system, which incorporates many of the characteristics referred to above, that has operated successfully in South Australia for 140 years, and in the whole of Australia for over 130 years. The identification of the component parts of this system, and their practical application, may assist anyone who is looking to implement a system of land title registration in another country.

## **Systems of Registration**

The two main systems of registration that exist today are the registration of title and the registration of deeds.

In the new British colony of South Australia, in the mid 1850's, Robert Richard Torrens (later Sir Robert) compared the method of registration of ships with the English system of registration of deeds which had been introduced at the settlement of the colony. He decided that there must be a better and easier way of registering not only the ownership of land, and interests in land, but also recording any transactions that were undertaken by those with an interest in that land.

## **Torrens and the Torren's System**

He is credited with a system of land title registration that still bears his name, the Torren's System of Title. It seems that he was ably helped by Hubbe a lawyer from Germany who was probably the one who told Torrens of the 600 year old system that operated in the Hanseatic towns of Germany, especially Hamburg. Torrens also had the help of friends who discussed his ideas, and presumably criticised or otherwise contributed to their final acceptance. In any event the parliament of the day, at the instigation and persistence of Torrens, passed the Real Property Act (RPA) to give effect to a land title register system which, in some key areas, was substantially different from the deeds system.

Torrens set out to overcome what he saw as the five main deficiencies of the old system :

1. by reason of complexity the community is firmly bound to use a solicitor
2. heavy costs are thereby imposed no matter how simple the transaction may be
3. "losses and much perplexity" are occasioned to purchasers and mortgagees by reason of the uncertainty of title
4. the time involved in the legalities of the transaction is unsuited to the needs of a progressive community
5. the operation of this law (the English Law of Real Property) diminishes the value of land as a secure and convenient basis of credit

Torrens reasoned that any substitute system must at once be simple, secure, certain, inexpensive, able to be applied without necessarily engaging a solicitor and allow every transaction to be effected quickly.

He considered that three important and fundamental principles were necessary for this system. In keeping with his aims of simplicity and effectiveness he concluded that the three most important principles were that:

- \* All properties were to have one document, a certificate of title, to evidence ownership
- \* All interests in every property had to be registered on that certificate of title
- \* The certificate of title had to be guaranteed by the government.

In his view his proposed system corrected all of these faults. It is true that his initial legislation had to be amended soon after it was promulgated but, with the only other amendments being caused by changing practices and technological advances in society, it has withstood the test of time substantially in its early form.

### **Features of the Torren's System**

In the event, the legislation that was introduced and the practices that evolved included not only recognition of the principles as listed above, but also other significant features.

All freehold land granted after 1858 was issued under the Torren's system although it did not become compulsory for land grants made before that time to change to the new system until 1945.

Other features of the legislation included:

1. Retrospective investigation was not required
2. An Assurance Fund was commenced to provide substance to the government guarantee.
3. Mortgagees only obtained a charge on the land and not a transfer of the fee
4. Prescribed forms were introduced to simplify procedures
5. Registered conveyancers, initially known as Land Brokers, who were not solicitors but specifically trained in land conveyancing, were provided for under the Act.
6. All transactions had to be registered to obtain the protection of the Real Property Act. There was some provision for protecting unregistered interests through the registration on the title of a caveat, but otherwise unregistered documents could be defeated.
7. The register, which included not only the certificate of title but also the documents that were registered or used to create the title, was available to the public.

Probably the most significant changes have been brought about with the advent of the growth of medium and high density living in the form of home units (condominiums) and with the introduction of computers to assist in registration of transactions, the recording of data and the issue of titles.

### **Principles of the Torren's System**

The main principles of the Torren's system that underscore its success are :

- \* Every estate in freehold is represented by a certificate of title
- \* Title to land is exhibited by registration
- \* Every certificate of title is guaranteed by the government
- \* Every registered proprietor named on the certificate of title can be treated, so far as third parties are concerned, as possessing an indefeasible title.
- \* Any person who contemplates a dealing with a registered proprietor must be quite sure that they are in fact dealing with that person.
- \* Registration may correct a defect in title for bona fide purchasers.
- \* The certificate of title is the place where the general public is entitled, and expected, to look for interests affecting a property.
- \* Knowledge, or notice, of an unregistered or outstanding interest in a property is not considered of itself to be evidence of want of good faith.
- \* No trusts may be registered on the certificate of title

### **Criticisms of the Torren's System**

Some of the criticisms that have been levelled at the Torren's System and which seem to have been largely overcome by the South Australian experience, include the following:

- \* It has failed to cope adequately with multiple ownership, especially shares in land.
- \* It had great difficulty in coping with ownership of high rise flats and apartments
- \* It cannot cope with multiplicity of titles
- \* It has ignored customary tenure..
- \* It is impossible to tell who owns unregistered land
- \* The records do not contain all relevant data, eg zoning status, required for a transfer of an interest
- \* It has failed to cope with the rapid urban expansion.
- \* It provides minuscule support for land management and taxation purposes. (Dale 1992)

Another criticism is in the suggestion that the Torren's system "was perceived (sic) as a support for the conveyancing process" (ibid). This seems to only be true in so far as one of the greatest benefits of this basic system of registration of title is that it makes the conveyancing process so simple and effective. Without a simple system of registration it would be almost impossible not only to determine ownership of interests in land but also to even attempt to deal with those interests with any degree of certainty or security.

### **The South Australian Experience**

Relating these criticisms to the South Australian system it appears that some of them are not entirely valid, or alternatively solutions can be provided by relatively minor amendments.

It is necessary in any recording or registration system to be able to identify the quantum of any person's interest in land. Torrens system allows for multiple ownership of land through the use of joint tenancies (even between Companies and individuals), tenancies in common or the appointment of trustees, notwithstanding that trusts are not permitted to be registered on the title.

A variety of ownerships can be combined using any or all of these facilities and should be able to cater for most people's needs. The underlying ability for both parties to easily deal with interests and to enable prospective purchasers to be protected is for the proprietors of an interest to be readily identifiable, have the authority to enter into a transaction and to be as few in number as possible. The use of a "trustee" who appears to the world at large as the owner, but who is bound by the terms of a trust on behalf of other beneficiaries, is a convenient and common way to achieve the required protection. Naturally more than one trustee can be used for additional protection if that is warranted. This method in the Torrens system, places the onus for acting properly squarely on the trustee but allows for beneficiaries to protect themselves with a caveat. The notion that every beneficiary to land should be registered, or noted somehow, on a title instead of only having a representative or small representative group registered would be difficult if not impossible, to control and maintain.

The original Real Property Act (RPA) did not contemplate having to provide specific regulations for multiple holdings in the form of medium and high-density living and thus attempts to make amendments to cover the issue of separate titles for these interests became wieldy and cumbersome. This led to abandoning the attempt to use the RPA for this purpose and the creation of a specific act, The Strata Titles Act, to simplify the creation, issue and use of separate certificates of title for these types of development. These titles are still "Torren's" titles with all of the same benefits, characteristics and implications as those issued under the RPA. This form of development has recently been superseded by the Community Titles Act that expands the use and operation of medium and high density living to better cater for the needs of a modern society. The result remains a secure, safe, up-to-date and simple system with indefeasible and government guaranteed titles for developers, vendors, purchasers, and mortgagees.

The criticism regarding "customary tenure" is well founded in Australia, as in many other countries, and certainly wasn't contemplated in the Torren's system of title registration. That doesn't mean that the system cannot cope with whatever is set to evolve from the current court cases and negotiations regarding Native claims. Given that the whole of the State is either freehold, leasehold or unalienated crown land it would not be a difficult process to issue new titles, replace or amend existing titles, or to endorse registrations on existing titles for successful claims. Even though there are many issues affecting the final outcome (and in this it is a little incongruous that the claims are being judged according to the law of the usurper), the registering of the interests of everybody indigenous people included, comes down to the fact that these interests can be recorded in the Torren's system in the same manner as other encumbrances, court orders, easements or caveats.

An important issue is to define what the interests are exactly. AMEC in its response to Commonwealth Discussion Paper "Towards a More Workable Native Title Act, 18th June 1996 has already suggested that Native Title interests could be treated, and recorded, in the same way as caveats and easements are in our Torren's system.

It is difficult to argue that it is impossible to determine who owns unregistered land, but that must be the same in any system that relies on registration of deeds or titles or other records. Anything that is not recorded will always be difficult to determine. If the criticism is that it is difficult to determine the true owner or whether there are any outstanding interests that haven't been registered (where an applicant is endeavouring to convert from a deeds to a titles registration system), and thus giving the present occupier some difficulty in establishing a chain of title, then even that can be resolved practically and satisfactorily. It may be that the evidence available can only establish the validity of the claim on the balance of probabilities, or as often happens, subject to some possible but highly unlikely event. A title, albeit with restrictions more designed to protect the government than the likely claimant, can be issued and thereafter treated for all intents and purposes as a complete title. After an appropriate period of time the limited title can then be formerly accepted as an unconditional title.

It is unlikely that any single recording or registration system will ever be able to display every conceivable charge or interest against the land. At least not without a substantial departure from present circumstances. Many of these charges are likely to be originated in a government department under the authority of appropriate legislation. Unless the number of pieces of legislation and the government departments, or other Authorities, is substantially reduced the cost in time, effort and resources to implement such a move, weighed against the usefulness of the outcome will prohibit even its serious consideration. However, it raises the question as to what justification exists of the need for such a "complete" system anyway. How many people need that level of information on a property on a continual basis? Would it improve the current system, the quality of information or level of protection? Is there really a problem with having the main information available on a continuous basis but having the resources to obtain other details on a need to know basis.

People always have the opportunity to obtain more detailed information by reference to those qualified to obtain and interpret it, in much the same way as one refers to the law through a solicitor when it is necessary.

No other part of law has a "complete" source of every conceivable regulation affecting a particular circumstance so why should titles be any different when existing practices seem adequate.

In South Australia there seems to be parallel systems that work to achieve the same ends. Take for example the sale of a property; legislation requires a notice of disclosure by the vendor as regards specific charges and encumbrances and by the Agent (if one is involved) which reveals any known notices regarding the land, specific inquiries of both the Vendor, nominated government departments and other likely sources of claims that could affect the property. This includes (inter alia) any matters that will or may affect the ownership of that property such as zoning, caveats, mortgages, liens, court orders, road widenings, rates and taxes, building matters, development matters and adjoining fences. Properties generally change ownership infrequently and this amount of detail is only required for the protection of the purchaser. Thus it is only required on an infrequent need to know basis.

Everybody who deals in the conveyancing and financing industries are aware, through their training, that higher interests such as rating and taxing Authorities having a first charge on the land may exist even though it is not evidenced on the title. In practice, in the relatively rare occasions that these Authorities intend to exercise their rights, affected parties are given ample opportunity to protect their interests.

Included in the disclosure statement referred to above is a current search of the title that reveals not only registered, but also unregistered, documents that are in the system and may thus have priority. This information, together with the requirements of the Lands Titles Office as regards documents and with accepted conveyancing practices work to ensure little or no chance of any problem either with the settlement or the continuing ownership of the property.

The South Australian system consists of two parts. The one is the Land Ownership and Tenure System (LOTS) and the other is the Automated Registration Indexing and Enquiry System (ARIES) These systems are able to quickly give accurate and current data regarding any piece of land under the RPA even where the land is the subject of a development approval which is still being considered. The computerised system allows an instant search of the title, documents lodged but unregistered, a trace of the passage of those documents, and plans of land division, through the Lands Titles Office. It can show which department has the documents or plans and the date received, forwarded and approved. The only reason that this system would be unable to keep up with the speed of development would be if insufficient resources were allocated to maintain the flow. Other countries of the world have decentralised Land Titles Offices, notably in Canada, that have the capability to process registration work from any office, regardless of where the documents were lodged. Thus sufficient resources can overcome backlogs if required.

Within the Torren's system there is in Australia, and Canada, the facility to use the computer for an increasing number of activities in the settlement (closing), the lodgement of documents and the recording of data processes.

While all of the latest facilities are not necessarily to be found in any one office, it is clear that progress is being made towards the ultimate of effecting remote settlements and lodgements with instant registration. Many of the elements of such a system exist already. For example, a system that allows settlements to be effected remotely and documents lodged electronically is being trialed in one of the Counties that is totally under the Torren's system ; many Land Titles Offices register documents and issue certificates of title electronically ; many others have a the ability to scan documents for ease of checking ; electronic records can almost instantly produce plans showing any or all of survey data, location of services, neighbourhoods, allotment layout, title and plan references, street and locality names and other data necessary for the service and rating Authorities; and of course, electronic transfer of funds has been a reality for many years. Although a complete system involving computers would be highly desirable the costs may also be prohibitive in the first instance. It may be necessary, given specific limitations or needs, to introduce the scheme as it has been operated for many years provided there is adequate numbers of trained staff available.

The South Australian system consists of many connecting parts as shown in Appendix 1. Shown diagrammatically are the essential elements of this system that allow rating authorities to use the data which the government collects through its registration system for maintaining a current record (usually within one month of the signing of the contract of sale and purchase) of land values and sale prices.

A further adjunct to the data available from the South Australian government has been through the development of a computer program known as Upmarket (c) by Rossini, Kooymans and Kershaw of the University of South Australia. It has the capacity to analyse the government valuation and sales information to the extent that it can be used to extract data helpful to planning and managing land resources as well as for any valuation purpose.

Another criticism aimed at the Torren's system has been the large costs associated with the initial change from (say) a deeds registration system. It cannot be denied that there can be a large expense incurred in establishing the chain of ownership to the satisfaction of the government that is to end up guaranteeing the title. It should be recognised that it is a once only cost and from then on transaction costs, including financing will not only be easier but cheaper. On the other hand,



where the ownership of the land to be the subject of the title registration system is vested in one entity (eg the governing body of the province or state) then there is no additional cost. This would be the ideal circumstance under which the Torren's system should be implemented. There may still remain the question of who is entitled to own or occupy a particular parcel of land but that would need to be quite a separate issue and one which would have to be undertaken regardless of the type of registration system to be used. It would need to be a process that may have to include documentary evidence as well as parole evidence from local identities and officials. In considering the cost factor one must also compare the costs involved in different people repetitively searching the same chain of documents every time there is a transaction under the deeds system. These people give their opinion as to the validity of the chain but it is not done with a high degree of certainty and a purchaser must rely on other guarantees, such as Insurance protection.

So while the South Australian version of the Torren's system may not be a panacea for the problems of title registration it shows many signs of an ability to be adjusted to practically overcome problems of others.

### **The Real Property Act 1886 - South Australia**

An overview of this Act of Parliament will serve to illustrate the general content and the extent to which regulations have been applied in the title registration in system South Australian.

Not surprisingly, in view of Torren's stated principles, the RPA gives as its objects " to simplify the title to land and to facilitate dealings therewith, and to secure indefeasibility of title to all registered proprietors ..." (s10) and to that end "the Act is always to be construed in such a manner as shall best give effect to those objects" (s11)

An outline of the other provisions of the Act is as follows :  
It provided for:

*The Lands Titles Registration Office* to continue at Adelaide and for the Act to be administered by a Registrar General.

*The functions of the Lands Titles Office* can be summarised as

- \* Issue titles
- \* Record transactions
- \* Maintain a record of transactions
- \* Provide the public at large with access to the records (s65)

*The means by which "old system" land could be brought under the provisions of the RPA :*

This procedure was voluntary at first but made compulsory in 1945. In effect the person claiming ownership must provide evidence of the chain of title that created their interest. The application also covers possible outstanding interests, possible claims to ownership through legitimate adverse possession and that all documents are tendered with the application.

*The creation and maintenance of a Register Book*

This was the book (volume), referred to as "the register", in which the original title (folio) was kept in a bound volume. The Act has since been amended to allow electronic records to be kept. There is a duplicate title that is held by the registered proprietor, or other entitled party. A significant feature of the South Australian system is the requirement to produce the duplicate title with every (almost) document lodged for registration. This requirement acts as an additional safeguard against fraudulent transactions since no documents, forged, fraudulent or otherwise, can be registered without it. Indeed the document will not be accepted for registration. It is more of an inconvenience than a real problem that the duplicate title may not in fact be a true "duplicate".

Some documents will be registered without the duplicate title, notably caveats and discharge of second mortgages. Where a registered proprietor creates an equitable mortgage by handing the duplicate title to someone who lends he/she money then this will not be recorded. Under the Torren's system the mortgagee in this case must lodge a caveat, thereby giving notice that the charge exists, or else run the risk of having the interest defeated by someone who searches the title and finds no record of the charge. This means that practitioners in conveyancing or related fields know that at best the duplicate title is technically only an indication of the state of the register, but in reality and in most cases a true copy anyway. One of the first principles of the Torren's system is that one can rely on the register only if one makes a search and deals with the registered proprietor so this inconvenience is not a practical problem. Not all systems based on Torren's idea include duplicate title and Canada actively discourages issuing them.

*Form of instruments, priority of instruments and effect of registration*

The Registrar General has the authority to set the form of documents/instruments to be used by conveyancers and can accept documents in any form if the circumstances warrant it. All forms are designed with computerisation in mind and thus designed to simplify data capture.

Documents/instruments are noted with the time of lodging for registration, to the nearest five minutes of the hour, and receive priority according to the time received. The date of the document is not considered in determining priority, the one document over another.

"No instrument shall be effectual to pass any land or to render any land liable as security for the payment of money, but upon the registration of an instrument ... s67. Thus, until registration occurs, a person only has an equitable interest in the land. In reality, in the ordinary course of business, the system is that all settlements occur in the Lands Titles Office and instruments/documents are, in almost all cases, lodged for registration immediately after settlement has been effected. The practices of the Lands Titles Office are such that once the documents are lodged they are to all intents and purposes registered, and everyone accepts this i.e. mortgagees control the title, vendors move out, purchasers move in etc. There is provision in the practices for documents to be sent out for correction, while retaining their priority, in case of errors. In extreme cases, and after an appropriate time lapse, documents may be rejected, the fees forfeited and priority lost.

*Indefeasibility of title for registered proprietors,*

Except in certain cases of fraud and forgery and other specific but rare events once the party is registered as the proprietor of an estate that party has an indefeasible title, guaranteed by the government. There is also a provision for rights of Sheriffs, Courts, Bankruptcy proceedings, contracts, trusts and deed polls to have priority over even the registered proprietor. Leases for terms of less than one year will also prevail, whether registered or not, as against a purchaser. Purchasers are specifically protected from other unregistered estates by s71 which states "Provided that no unregistered estate, interest, power, right .....shall prevail against the title of a registered proprietor taking bona fide for valuable consideration ...."

*Certificates of title* are issued for all estates of freehold i.e. any number of joint tenants share one title, each tenant in common can have a separate title, and likewise registered proprietors of a life estate and a remainder estate are entitled to a separate title. Each such title is given a volume and folio number and is clearly marked where it is not for an estate as joint tenant. All certificates of title, except Strata titles, must have a diagram showing the extent of the land in that title. A substitute title may issue where the duplicate is lost or destroyed. Certificates may be rectified, on application by the affected parties, to the Registrar General.

Titles may be cancelled, eg where it is subdivided into smaller allotments, and new titles issued. An historical search, which traces all dealings, is possible for all freehold land, back to the original grant from the Crown. The computerised titles only show current data since a new edition of the original is issued after every dealing.

*Title by possession*

Where the registered proprietor, or any descendants or beneficiaries, of the fee simple of freehold land cannot be found then a person in possession may, after complying with certain requirements, apply for a title through possession.

*Easements*

Easements and rights of way can be created and transferred by any registered proprietor, even to themselves in cases of division of their land. Easements for service utilities and government authorities may be created automatically through the division of land process while others are generally created by express grant. Once created the easement forms an integral part of the register and cannot be dealt with separately.

*Crown Leases*

While these leases are not Torrens titles, they are able to be dealt with in a similar manner but subject to the consent of the responsible Minister of the Crown.

Crown leases are issued in duplicate, given a volume and folio number, the original is retained in the Lands Titles Office, and endorsements are recorded in the same manner as certificates of title. The authority for dealings with, and control over, crown leases is with the Minister and not with the Registrar General.

*Transfers*

Transfers of any interest in property must be on an approved form. This is the means by which life and remainder estates can be created, fractional interests can be created, tenancies changed, whole interests be transferred and one of the means by which easements can be created.

As with most documents submitted for registration the signatories must be appropriately identified as being the correct persons entitled to sign and the document itself must be certified as being correct for the purposes of the RPA. This requirement reinforces the Government's ability to guarantee indefeasibility.

Transfers of mortgaged property occurs with the implication that the purchaser will indemnify the vendor as regards the mortgage obligations.

Although part interests in land may be transferred without restriction, no portion of land may be transferred without development approval.

*Leases and surrenders*

The content of leases is specified and provision made for standard leases to be registered. Leases are not binding on mortgagees or encumbrancees unless consented to.

Leases may be transferred by the lessor, assigned by the lessee, mortgaged, extended or surrendered.

*Mortgages and Encumbrances*

Two types of Encumbrance are in general use.

One is to protect an annuity and the other is to protect the standard of development in a specific location. The protection of the standard of development is in addition to the zoning and building regulations in that local district.

Provision is made for these charges to be transferred, mortgaged, discharged or extended and appropriate forms of documents and procedures are described. The powers of a mortgagee and procedures to adopt to exercise them are set out. The main power is that of a sale of the property to satisfy the outstanding amount. This is an action that the mortgagee can take quite simply and is very common where the mortgagor defaults in the terms of the mortgage. Another, but less desirable action, is for the mortgagee to foreclose and actually take possession of the land.

Provision is also made for the discharge of a mortgage where the mortgagee is dead, cannot be found, is incapable of executing a discharge or has refused to execute a discharge

### *Powers of Attorneys*

Copies of powers of attorneys, where a dealing with land is contemplated, must be lodged with the Registrar General who must keep them on record until revoked.

### *Trust and Transmissions*

Although details of trusts cannot be recorded on the title, various evidence is available on the title that will show that a trust exists e.g. if a person is described as "the executor of ....." it clearly shows that the person is in a trustee relationship. In addition, details of a trust deed may be able to be either recorded in the General Registry Office (separate from the Lands Titles Office) or in some cases as an attachment to an RPA document, the contents of which are registered, but not the contents of the attachment.

The main provisions regarding trustees are found in s180 which says in part " any person registered in place of a deceased registered proprietor .....or as trustee of a registered proprietor ....shall for the purpose of any dealing with such land be deemed to be the absolute proprietor thereof" and in s 186 "No person contracting or dealing with, or taking of proposing to take a transfer or other instrument from the registered proprietor of any estate or interest in land shall be required, or in any manner concerned, to inquire into or ascertain the circumstances under, or the consideration for, which such registered proprietor or any previous registered proprietor of such estate or interest is or was registered, or to see to the application of the purchase-money, nor be affected by notice direct or constructive of any trust or unregistered interest, any law or equity to the contrary notwithstanding."

An important principle of this provision is in its contribution to the success of the system by the "development of companies and trusts under which the company or the trustee would be registered as proprietor and any complicated individual interests would be dealt with under the trust or within the company".(The Honourable Mr Justice Young, c1987)

These confirm the principle that the registered proprietor shown on the title is the only one that a purchase need deal with and can be taken on face value as having the authority to deal with the land, notwithstanding that the purchaser may know that a trust exists.

To prevent anyone who sees this provision as a means to easily take advantage of someone, s187 makes sure that there is no protection to any person who acts fraudulently or is a party to fraud.

### *Caveats*

Anyone with an equitable interest, generally meaning an interest in land that could itself be the subject of a registrable document, may lodge a caveat to protect that interest. If a caveat is wrongly lodged the caveator may be liable to damages. The caveat only stops all dealings that are lodged subsequently to the caveat and then only until the caveator proves the claim. Time limits apply after which the caveat may be removed and not lodged again for the same reason as first claimed. There is provision for "absolute" caveats that prevent all dealings and "permissive" caveats that allow some dealings provided they are made subject to the caveators claim. One caveat will not prevent the registration of another caveat from a different person, thus a title may be affected by many caveats at the same time.

### *The Assurance Fund*

This fund is set up to compensate "any person who is deprived of land in consequence of fraud,..... or by the registration of any other person as proprietor of such land, or in consequence of any error, omission or misdescription in any certificate, or in any entry or memorial in the Register Book..." (s203) It was originally funded through a levy on all registration fees.

### *Special powers of the Registrar General*

In keeping with the objects of the Act and to ease administration difficulties the Registrar General has wide ranging authority in pursuit of his charter. Amongst other things the Registrar General may, in certain circumstances, compel production of documents, examine person interested, administer oaths, summon people, reject instruments, correct errors, enter caveats, alter forms of instruments, require surveys to be made, vary procedures and destroy documents

### *Division and Amalgamation of Allotments Land Division provisions*

The RPA provides for land to be surveyed before it can be subdivided into smaller allotments. This work is undertaken by private surveyors who also certify their work to be correct. New titles will issue from these plans after approval from the Development Assessment Commission, as regards planning and zoning matters, and the Registrar General, as regards survey data.

The approval process includes consideration of such matters as the economical servicing of the area, the effect on the environment, traffic, community needs, minimum allotment size, minimum allotment frontage, road reserve widths, standard of road construction and supply of services and other matters.

No conveyance of a new allotment can take place until the Registrar General has approved the plan and deposited it in the Lands Titles Office. The issue of what degree of accuracy is required to identify land is one that has been addressed by many surveyors. It does seem however that a tolerance of about 5 millimetres in the boundaries of a residential house allotment is a much less than necessary.

The plans not only set out the distances and bearings of all boundaries to land contained in the land division but also describe in words what easements or rights of way are being dealt with. Each allotment receives its own unique identifier and roads, service easements, reserves and road widenings all automatically vest in the appropriate Authority at the moment the plan is deposited by the Registrar General. Other dealings that are a consequence of these plans, which affect mortgages and other interests of the registered proprietors can, in many circumstances, be incorporated in the one document to simplify the administration procedures.

### *Procedures and Penalties*

Various penalties are prescribed for breaches of the Act or non compliance with the directions of the Registrar General

### *Miscellaneous*

General administrative procedures and requirements are set out, specifically with reference to the certification, by either solicitors or registered conveyancers, of all documents lodged under the RPA.

S 246 specifically states that "Every instrument signed by a registered proprietor ... purporting to pass an estate or interest in land .....shall, until registered be deemed to confer upon the person intended to take under such instrument...a right or claim to the registration of such estate or interest..." Again reinforcing the principle that registration confers title, not the document.

### *Schedules*

Various Schedules show pro forma caveats, court procedures in matters of caveats, detailed interpretations of short forms of descriptions of types of easements, rights of way and mortgage terms and a special schedule for procedures in a transition period.

## Conveyancing under the Torren's system

One of the main attractions of the Torren's system must be the relative simplicity in preparing documents for registration and in the settlement process. Torrens provided for the licensing of land brokers (now conveyancers) in opposition to solicitors who had strenuously opposed the introduction of his registration of title system. These were to be people who had been especially trained to prepare documents contemplated by the new Act and who did not need to be a solicitor.

For over 130 years these people have been licensed or more recently registered to operate as conveyancers. Indeed today, over 85% of all transactions are processed by conveyancers. Conveyancers can qualify for registration in South Australia by completing either a diploma course at the TAFE College or the degree of Bachelor of Business (Property) at the University of South Australia.

The job of conveyancer is made easier by the publication of the book "Jessup's Lands Titles Office Forms and Practices" first written by G.A.Jessup a former Registrar General in Adelaide. This book contains an example of nearly all of the types of forms, together with notes on their use and application, that are likely to be encountered by a conveyancer.

This reference, together with the title information readily available by way of computer and through the Lands Titles Office enables settlements to be quickly and efficiently carried out.

It is true that the system is so simple in some application of the Act that lay persons, perhaps with a little help from the Lands Titles Office could even attend to their own simple transactions. This practice is a reality in parts of Canada where the Lands Titles Office even provide the necessary forms as well as advice. This would only seem to apply to the very simple matters of registering deaths, noting change of name or things of a similarly uncomplicated nature.

## Torren's system in Other Countries

One might well ask why didn't many others embrace the Torren's system if it was so good. Among others who adopted this system were Singapore, Saudi Arabia, The Philippines, Fiji, New Zealand, Canada, and Thailand. A curious reaction was observed in USA where 21 states authorised the use of the Torren's system and all but one of those enacted enabling legislation between 1895 and 1915. (Schick and Plotkin 1978). Of these, six states repealed the legislation, and nine others used it infrequently and ceased altogether in the mid -30's. Only Massachusetts, Hawaii, Illinois (Cook County) and Minnesota, have a significant experience with Torrens. (ibid p.2) although it is also used to some degree in Colorado, Georgia, New York, North Carolina, Ohio, Virginia and Washington.(Miceli and Sirmans 1997)

The curious aspect of the USA experience is that while the Torrens system was not seen as desirable as a permanent method of registration it had much to commend it in special circumstances. For example, it was used "for purposes associated with elimination of historical title defects" ; as a facilitator of rapid development of urban land "that was the subject of unclear title histories or boundaries or that lacked provable records"; "to cure unmarketable titles ... that prevent the sale of land. This has been and continues to be the primary use of Torrens in the United States"; "for the establishment and clarification of precise boundary lines"; for a developer of land containing multiple parcels of land to obtain a unified (consolidated) title (ibid, pps. 2 - 5) And just as curious at that time was the recognition in the US that the private title insurance industry, a substantial feature of its recording system, owed much of its existence "to the inefficiencies and non-conclusiveness of the current public records system" (Onsrud, 1989)

If the system had these advantages, in addition to being at least as good as any other system of registration, why then was it not adopted as THE system?

Maybe its failure to be embraced by practitioners in the USA, could have stemmed from 3 main reasons.

Firstly, it was not compulsory.

Secondly, many parties with vested interests actively worked against it.

Thirdly, in some parts of the country the deeds system may have taken to much of a hold.

Those circumstances, coupled with other contributing factors such as the vast distances, rapid immigration and too few properly trained staff, might well have prevented any new system no matter how good, from getting established.

### **Benefits and Failures of a registration system**

The benefits of land registration have been stated to include :

- \* Certainty of ownership
- \* Security of tenure
- \* Reduction in land disputes
- \* Improved conveyancing
- \* Stimulation of the land market
- \* Security for credit
- \* Monitoring of the land market
- \* Facilitation of land reform
- \* Management of State lands
- \* Support of land taxation
- \* Improvement in physical planning
- \* Recording of land-resource information
- \* Supporting environmental management

(Williamson., 1986)

A comparison of the justification for these being the benefits with the elements of the existing South Australian system will show that all of them are catered for in degrees varying from adequately to completely. (see also Appendix 1)

This same comparison also goes a long way to refuting the suggested failures, of a system of registration of title, some of which have been reported as generally being a failure to:

- Reveal the behaviour of property markets
- Monitor fluctuations in land prices
- Provide clear information for tax gatherers
- Indicate the availability of land for development
- Determine the existing use of the land
- Identify the potential for other forms of land use\*
- Reveal areas of dereliction of the land\*
- Indicate costs for land acquisition projects
- Monitor the environmental impact of development\*

(Dept. of Spatial Science and Engineering, University of Maine c1991)

With the exception of those items marked with \* the South Australian system either has that information available or has it in raw form able to be extracted if needed. The other items seem to need a specialised input by appropriate personnel who would need to make educated judgements and decisions based on various data forms. Insofar as those judgements are made using ownership, sales, availability of services and zoning data, the Torren's system can already provide this information. Refinement of the presentation of this information for specific purposes could be undertaken as required.

Other criticisms, which were based on observations "in the real world" of the four major surviving Torrens systems in the United States, were published in 1978. (Shick & Plotkin 1978) The assumption is that what was introduced to the United States was an interpretation of Torren's principles since there are small but significant differences between practices in South Australia and USA.

This study found that the Torrens concept had not found a lot of acceptance in the United States. Specific reasons given include: inadequate administration has contributed to the failure of many past Torrens systems; failure to attract the interest of landowners; failure to recognise and carry out administrative and financial obligations inherent in operating a complex system affecting important legal interests; failure to fulfil original expectations. Of the twentyone states to adopt the system only four were using it significantly by 1978. Criticisms of these existing systems may be an indication as to why it failed in other states.

A summary of the findings of this study not only includes some of these criticisms but also identifies some advantages:

1. Landowner use of the system was voluntary. (a distinct handicap to the success of the system)
2. The system was useful where land had unclear histories or boundaries, to cure "unmarketable" titles, to establish and clarify boundary lines . (an advantage)
3. Torrens precludes title by prescription or adverse possession (in SA title by adverse possession is possible)
4. Significant disputes have diminished (probably because of the Torrens system ! )
5. Homeowners only look to Torrens where title, or title boundaries may be defective (an advantage)
6. Torrens is "perceived as a way of correcting deficiencies ..... the mandatory recording on the Torrens certificate of various outstanding interests ....is viewed as a substantial improvement in record keeping" (an advantage)
7. Legislation and judicial decisions which place other interest ahead of the owner's interest means that Torren's certificate is not conclusive evidence of ownership.(can be overcome)
8. The certificate does not determine priority amongst liens or other nonownership interests (it was not designed to but could cater for this if required)
9. Torrens does not protect lenders and others from risks arising from failures in current transactions (division of responsibilities amongst participants in the settlement process is quite clear)
10. The full import of the title search is not self explanatory nor does the registration assure a potential buyer of peaceful and exclusive enjoyment of the property.(not so in South Australia)
11. Title insurance is purchased for registered and unregistered land (while this may be the practice in the United States, it is unnecessary in the Torrens system and unheard of in Australia)
12. The registered proprietor incurs certain risks and costs because the validity of the ownership interest is determined by a public office (it could easily be argued that any such administrative costs are part of the maintenance that gives the system credibility and acceptance)
13. Public insurance funds are not available to compensate loss because of a failure in a transaction giving rise to a transfer. What funds do exist are small in quantity. (in a compulsory system this would not be a problem )
14. Obtaining initial registration is expensive (this would be the same expense as incurred to get the benefits of a marketable title or to correct defects and is a once only expense)
15. The system requires high quality administration therefore they are expensive to operate and limitations inherent in a bureaucratic system often slow down transactions. (certainly it needs trained people but again that gives it even more credibility)
16. Torrens produces no significant reduction in title related residential closing costs, because Torrens does not obviate the need for professional assistance for search and examination of title and for title insurance and because registration filing costs are greater than comparable deed-recording fees. There is however a potential saving in professional time required for search and examination of a registered title. (this is not the Australian experience is totally against one of the main principles and objectives of the Torrens system.)

(comments by the author)



Not surprisingly one of the conclusions reached in this study is that the total American experience with the Torrens approach "is essentially negative". Another is that "Torrens is not a sound concept for implementation in the United States today".(ibid p.10). This statement was probably quite true for 1978 since by then a vast system and enormous industry existed and the benefits would be outweighed by the prohibitive cost to change.

## **Costs**

While the cost of maintaining the system, and even setting it up, can be substantial it can be paid for by the users according to their needs or means. The world has moved to a concentration of "user pays" for almost everything and this concept permits something like property transactions to be easy targets for imposing charges, fees, and taxes at the time of the transactions. Fees are generally charged according to the value of the interest being dealt with, with mortgages and leases being a much lesser amount. It seems to be on the principle that if one can afford an expensive property then one can afford a higher fee imposition. With this in mind, the system should be easily self supporting and most likely, profitable.

## **Centralised or de-centralised system**

Although South Australia has a centralised system, there is really no reason why it cannot be decentralised so that records of tenure and transactions in a designated area are kept in that designated area. If the system is computerised it is easy to connect all of the areas too each other, as in Canada where different areas assist each other in times of overload.

## **Public acceptance**

The system is held in such high regard by the public that it is there to serve, that a common headline in sales advertisements even dating back 100 years, often includes the words "Torren's title" as a positive attraction of the property.

The fact that 800 registered non-solicitor conveyancers share approximately 80% of the total conveyancing work in a State where there are approximately 1500 solicitors capable of doing the same work speaks volumes for the high degree of public acceptance, not only of the conveyancers themselves but also for the registration system.

## **Summary of systems**

It is probably true that almost any system will work if the users are aware of what the rules are and everyone really wants it to work. It has been reported that even in the US Real Property Records System "regardless of its perceived or real shortcomings, the conveyancing system of the US works" (Onsrud, 1989) Nevertheless there is still a strong case for having a system that is functional, reliable and economical, especially if it is the first system to be implemented.

It is not so much a question of anyone asking "can we afford to have this system" but rather "can we afford not to have it". Apparently there seems to be plenty of money available for consulting and advising but maybe it could be more efficiently used to obtain the systems suitable for a particular country's needs. The Torren's system can be seen to be one that should certainly be considered every time.

It would be virtually impossible to implement any perfect system immediately so maybe it is better to start with a good base that gives acceptable results immediately and with the promise of improvement over time as the true extent of the problem becomes clearer. Such an approach must still be better than no system, or an unworkable system. To paraphrase Neil Armstrong, even the longest journey starts with a small step.

It seems foolish to put off doing something just because it seems too big now. The problem will surely only get bigger and almost impossible to correct without a substantial increase in initial costs; time put into establishing a solid and proven basis from which to work will be rewarded in the long term. In other words, it is better do something especially with a tried and tested system, than not to anything as this will only compound the problem

## **Conclusion:**

### **The case for Torren's title system**

1. It promotes public confidence because it is government guaranteed.
2. It gives certainty to anyone dealing with the land, provided the basic principles are followed
3. It gives security since it is readily accepted by the general public and the business and legal worlds
4. It is simple, efficient and effective not only to record and maintain a central register, but also to effect transactions by conveyancers and in simple cases by the public themselves.
5. It permits government to manage land resources by providing the raw data of land sales and development activity
6. It gives a basis for revenue raising by providing market values and ownership details of all properties.
7. It makes it easy to borrow money for almost any purpose, using land as security since the tenure is secure.
8. Can provide statistical information of activity in the property industry and locations of possible development sites for planning and development purposes
9. Generates activity in trading land thus creating a whole central property industry and supports ancillary industries.
10. Land owners have an incentive to develop their land to maintain the value of their asset either to pass on to their families or for investment purposes.
11. Promotes investment in property because of the continued growth in value and the availability of data to use in feasibility studies.
12. Can co-exist with another system or it can replace it either directly or gradually, depending on the existing system. In South Australia it was introduced when the deeds system was already in existence. A simple change over provision ensured that all land alienated from the crown would be under the provisions of the RPA and a mechanism was implemented to eventually convert all land to the one system.

13. It can exist with differing interests e.g. in South Australia it exists with crown leasehold, freehold, native title (although the details of this existence are still being worked out) and reserves

14. Registration can correct defects in title

15. It can be kept current to within minutes

**Characteristics of an effective system:**

1. *It must be compulsory for all land.*

One of the main reasons that the Torren's system failed in the USA was because it was a voluntary decision of the proprietors.

2. *It needs supporting legislation*

e.g. planning, development - It is difficult to believe that there can be one system of registration that records every possible claim against property. Maybe that was possible 100 years ago, but in this day and age where there is so much consumer protection, a proliferation of government departments able to implement varying rights against property interests and so many pieces of legislation which have the potential to affect property interests it would be unrealistic to expect that a title could contain current details at any given time. In South Australia there are over 100 Acts of Parliament, and probably a corresponding number of departments to apply those Acts, that can impinge upon land ownership.

3. *Parcels of land must be identified to appropriate standards of accuracy.*

Maybe it is not necessary to be able to identify land to the nearest 5 millimetres but rather something more in keeping with the scale of the site, its location and possibly its value.

4. *There must be an Assurance Fund , possibly funded by the transactions themselves*

5. *It does require a reasonable level of specialist training* to be effective but that training need not be as extensive as that of a solicitor. So long as it is specialist training in the system and its application then it can fall short of other unrelated parts of the law.

6. *It is most suitable in an environment of free trading* of standard freehold interests in property. It is an ideal system where there is only one owner (or a very small number) and there is a property market in existence or being implemented.

7. *It needs to be accessible to the public*

It has also been suggested (by the US Dept of Agriculture and US Dept of Commerce, 1974). that any system must also be sensitive to local needs such as:

- \* Security of records
- \* Accuracy of records
- \* Accessibility to information
- \* Uniformity of standards, definitions and quality
- \* Speed and simplicity of retrieval
- \* Economy in development and operation

*As can be seen from this paper, the Torrens system is able to satisfy all of these requirements.*

## Land Records in Asia:

### Thailand:

A modified version of the Torren's title system was introduced between 1901 - 1910. However, by 1985, when about 4 million of the approximate total of 18 million parcels were registered under this system, it was realised that it may take another 200 years to register all of them. It is estimated that 90% of all property owners in Thailand do not have proof of ownership of their properties.

The Land Titling Project was introduced to rectify the situation. Its objectives were to accelerate the issue of title deeds, improve land administration, produce cadastral maps and improve methods of valuation of real estate.

The reasons for introducing this project were based on the Government's belief that with secure title the rural sector in particular would have easier access to credit. Therefore they would have an incentive to invest in developing the land and to increase efficiency, thus increasing productivity for the benefit of themselves and the country. It was also seen as a means to limit or reduce land disputes. (Land Titling Project - Brochure by Dept of Lands et al)

Thus they were retaining the Torren's system but making it apply to the whole country, ie to issue a secure certificate of title to every land -owner, sooner rather than later.

Thailand application of the Torren's system has three distinct features which makes it quite unique when compared with Australia.

*Firstly* each public servant in the Land Department is personally responsible for any errors that they make in assessing duty or issuing defective titles.

*Secondly* registration of dealings are effected immediately and by hand. Although the registration process does take time, and in this the customers must be prepared to allocate much of the day in the Land Dept office, the purchaser can leave with the title in hand.

*Thirdly* there are at least 5 types of title issued by the Land Dept (Feder et al 1988 reported by Jeffress and Onsrud 1989). These were provided for by the introduction of a Land Code in 1954 which made differences in land rights more distinguishable while maintaining the Torrens register. Included in these different levels of land rights were titles known by the following codes. NS-4 the equivalent of the fee simple title known to Australians; NS-3 which is a certificate of use; NS-3k known as an Exploitation testimonial; NS-2 to authorize temporary occupation of land and SK-1 which is a claim to ownership based on possession or use of land.

These titles contain information of varying degrees of accuracy and may be dealt with, and in some cases converted to a more secure title, providing certain procedures are followed.

Another area that would be difficult to improve, but would be advantageous if overcome, is the public's apparent tendency to not cooperate with anyone from the government or to provide accurate details of land transactions for taxing purposes.

The land owners are practically involved in adjudication of boundaries and are thus encouraged to believe in, and therefore use, the system. The Land Department has 800 land offices spread over 73 Provinces of Thailand thus making it relatively easy for all land-owners to use the facilities and to cooperate in the maintenance of the register as their circumstances change. Studies by Feder et al 1988 show positive results in that giving full legal status to farmers brings a high economic return in most of the areas studied.

Importantly, the Land Code and the Titling Project have shown how the Torren's system can be adapted to suit local conditions as well as give an economic benefit through the registration of title.

If there is a failing in the application of this project it may be through a lack of a sufficient number of appropriately qualified people to cope with the amount of work involved.

### **Indonesia**

Indonesia, in 1960, while recognising the Indonesian customary title and those titles that were based on Western civil law, provided for a certification process under which land was to be identified, mapped and registered. Any unclaimed land reverted to Government ownership.

Although this seemed like a good move it seems that one essential characteristic of a successful registration system was overlooked, that of making it compulsory. Thus the implementation of the new process was unnecessarily protracted and in 1992 it was estimated that it will take about another 100 years to complete the registration of the whole of 55 million parcels. This assumes that the same sporadic system applies.

Some of their difficulties may include insufficient finance available, lack of appropriately educated or skilled people and perhaps an error in having many different forms (at least 10 rights) of tenure which all have to be recorded in separate books.

### **Malaysia**

Malaysia has a system of registration of title, similar to the Torren's system, to evidence ownership.

One apparently significant difference from the Australian system is the frequent lack of title available to purchasers of new condominiums, apartments or buildings in new housing estates. In some cases it may be 2 or more years before these become available. In South Australia the system provides for the issue of title before the final plan can be lodged at the Titles Office and before settlements can occur. It is thus in the developer's best interests to make sure that the new titles area available as soon as possible as the income from the development depends upon settlements being effected. In this regard there are plenty of private surveyors who can prepare the plans from the finished (or almost finished) buildings and thus meet the development, local council and title requirements. The purchaser would be more secure, and their financiers would be happier, if they did not have to rely on a "chain" of unregistered documents pending the issue of a separate title.

Another problem that may exist in Malaysia in adopting modern technologies and process, despite having an adequate educational system may be a shortage of appropriately educated people to handle their rapidly developing land market and thus their land recording system.

### **Singapore**

Singapore has two systems in place, one governed by the Registration of Deeds Act (the equivalent of our "old system" of deeds) and the other governed by the Land Titles Act (the equivalent of our Torren's system but modified to suit the local circumstances).

Singapore seems to be well advanced not only in converting all land to the Land Titles Act but also in providing a computerised service for the registration of documents, issue of titles, issue of notices and for Public search.

Singapore, as a developed country with an efficient land market, has the ability to use the latest technology in business, has adequately educated and trained professionals to operate the system and has the money to support their chosen system

On the face of it they do not seem to be likely to have problems that they could not deal with.

### **Other Asian Countries**

Vietnam, Laos, Myanmar and Cambodia are countries that are still developing in the area of land registration and cadastral mapping and surveying.

Land in Vietnam and Myanmar is owned by the state and thus do not need the sophisticated legal apparatus that accompanies the Torren's system. To achieve the same results as, or aspire to the same economic heights as Thailand, each of these countries, while not necessarily needing a Torren's system, do however need records to identify land use, existing rights, customary rights, farming rights or leasehold interests.

For these countries to have even a basic system that is efficient they need not only money but also the expertise to set up a workable system to meet their needs. While it is possible that some of this could be available quite quickly in the short term the long term must be provided for as well.

Facilities must be available, training and supervision must be continually undertaken, both government and citizens must be educated in the use and acceptance of a system and government must make proper use of the records that are kept.

### **Summary of the Torren's System:**

The Torrens system can be seen to have many advantages, other than those envisaged by Torrens himself, thus making it worthy of serious consideration by any jurisdiction looking to implement a reliable and practical method of title registration. The people to advise on its application and appropriate practices should ideally be those who are experienced and familiar with its operation.

The qualities of the Torrens system are confirmed many times over by the very country that did not take it seriously when it had the opportunity. A statement from the United States acknowledged that "history, politics and the voluntary nature of the system contributed to the failure of the Torrens system to thrive in the US, despite a legal expert's view that someone without knowledge of traditional practices would identify registration as the best system." (Miceli and Sirmans 1997) . Professor Barnett said " It is a baffling fact that the United States is rapidly becoming the only country in the world whose land title system is not founded upon Torrens-type principles" (The Honourable Mr Justice Young c.1987).

Further comments include "it is the best method of title assurance yet devised; "is considered to be the wave of the future in various parts of the world" and "title registration is an obvious improvement over recorded titles" . (Cribbet and Johnson 1989)

Also to come out of the US is the statement that "as a rule, the land registration system is far more reliable and less costly to users than the recordation systems" (Onsrud, 1989).

### **References :**

Bradbrook Adrian J., MacCallum Susan V., Moore Anthony P., "Australian Real Property Law", Law Book Co. 1991

Butt Peter., "Introduction to Land Law", Law Book Co. Ltd., 1980

Challenge Magazine June 1996, "Watch out for the Stars", URL address: <http://www.gov.sg/ps21/challenge/96june/mlawstar.html>

Choosup Dhavee and Angus-Leppan, "The Thailand Land Titling Project: Access to a Secure Title", Policy Seminar, Bali, Indonesia 1988

Cribbitt and Johnson., "Principles of the Law of Property", 3rd Ed. Foundation Press, 1989

Dale P.F., "Let the Users Speak", Proceedings of the International Conference on Cadastral Reform '92, 29 June - 1 July, Melbourne, Australia, pp. 1 - 6

Harta.net, Property Helpline, URL address <http://www.cyberweb.com.my:80/hartanet/help2.htm#8>

Jeffress Gary A. and Onsrud Harlan J., "The Thailand Land Titling Project - An Overview", Survey and Mapping Vol 49., No.1, 1989 pp 17 - 20

JLW Property Consultants Pty Ltd Singapore, "Property Tenure/Ownership", July 1996

Holstein, L.C., and Williamson, I.P., "Conversion of Deeds Registration Titles to Torrens Title - A Review of the Situation in N.S.W.", Aust.J.Geod.Photo.Surv., No.40, June 1984, pp 1 - 28.

Land Titles Registry, Singapore, "Titles Conversion", URL address:  
<http://www.gov.sg/molaw/rotd/tc.html>

Miceli, Thomas J., Sirmans, C.F., "Torrens vs Title Insurance: An Economic Analysis of Land Title Systems", Illinois Real Estate Letter, Office of Real Estate Research, University of Illinois at Urbana-Champaign, 1997

Mills.T.F., "The Development and Effect of the Torren's System of Land Titles in South Australia", Fourth European Real Estate Society Conference, Berlin, June 25 - 27 1997.

Onsrud, Harlan J., "The Land Tenure System of the United States", 1989

Shick., Blair C; Plotkin., Irving H., "Torrens in the United States", Lexington Books `1978.

South Australian Government., "The Real Property Act 1886", Government Printer

Supranowa, "A Challenge to Accelerate the Land Registration Implementation in Indonesia", c1992

Thailand Department of Lands et al, "Thailand Land Titling Project," Brochure undated

Torrens, Robert R., "The S.A System of Conveyancing by Registration of Title", 1859 ., S.A Facsimile Edition No.33, Public Library of S.A., Adelaide 1962.

Torrens, Sir Robert K.C.M.G ., "An Essay on the Transfer of Land by Registration.", c1881., Cassell & Company Limited.

Unattributed article , "Indonesia - Land Use and Ownership", at URL address  
[http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:2:./temp/~frd\\_IJLR](http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:2:./temp/~frd_IJLR)

Unspecified Manual ., Internet address :

URL : <http://www.umseve.maine.edu/guidelines.html>

Department of Spatial Information Science and Engineering, University of Maine

US Dept. of Agriculture and US Dept. of Commerce., "Land Title Recording in the United States: A Statistical Summary", State and Local Government Special Studies No.67, 1974

White, R.J., "Jessup's Land Titles Office Forms and Practice.", Seventh Ed., Law Book Society

Williamson I.P., "Cadastral Systems in the Asia-Pacific Region - Experience and Lessons", FIG Land Records Conference, Fredericton, Canada 1994

Williamson I.P., "Cadastral and Land Information Systems in Developing Countries", The Australian Surveyor, vol.33 (1986). No.1, pp 27 - 43

Young, The Honourable Mr.Justice., "Why did the Torrens System Succeed in Australia yet fail in North America?", The Conveyancer, Australian Institute of Conveyancers, c 1987

**Author:**

Trevor Mills, Lecturer in Conveyancing, University of South Australia.  
Pacific Rim Real Estate Society Conference, Kuala Lumpur, Malaysia , 26 - 30 January 1999