

**Institution of Surveyors NSW Inc
Australia Day Seminar 2017**

**‘The structural separation of the NSW land title system’
Jeremy Cox, NSW Registrar General**

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Introduction

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

Thank you Michael for inviting me today to talk about the ‘structural separation of the NSW land title system’.

This is an important topic and obviously very relevant to the surveying industry.

NSW surveyors have always underpinned the success of NSW’s land title system. To be exact, probably since the first officially recorded grant to James Ruse in Parramatta on 22 February 1792, over 200 years ago.

Of course the roles of Registrar General and Surveyor General have been working together in NSW for much of this time and that will continue.

This morning I’m going to focus on the recent structural changes to the Land and Property Information office—or LPI—and the new role of the Office of Registrar General. This separation is, in itself, a substantial reform, designed to further improve the integrity of the system, putting the customer front and centre.

By separating the operator from the regulator, this model makes the operator more accountable and the land title process more transparent—regardless of whether the operator itself is in public or private hands.

However, I will also take some time today to explain how we expect a move to a private operator will work.

Before I get to the detail of this, I'll speak about the wider context.

I think it's worth reflecting on some of the big past changes to our land title system. That is, I suppose it is sometimes useful to know the past to understand the future.

And in looking at our past, it is obvious surveyors have been part of important land reforms—many with a significant bearing on our overall development—that have shaped NSW.

It was the earliest surveyors who helped define property boundaries from the 1790s when Governor Phillip was in the habit of granting acres and acres of land to ex-convicts to try to keep them here – on direction from London who didn't want them back.

Also, in the 1800s, when there was great tension over access to land among squatters, gold diggers, and pastoralists, under the Government's free selection of land policy, it was the surveyors who had to 'very quickly' draw plans to define boundaries to ease some of these tensions.

And your predecessors were there when the Torrens System itself was introduced in NSW in 1863—over 150 years ago.

Interestingly, the Torrens System while so easy to celebrate now, was considered by some as controversial at the time. Parliamentary committees and other stakeholders worried that NSW would be taking on too big a change, with no proof of success. Now of course, the Torrens System is regarded an innovation that Australia has taken to the rest of world.

In many ways NSW surveyors have also shaped how we see NSW, access places and conduct business.

You opened up the great roads of this state, including Victoria Pass, that allowed carriage from the Blue Mountains to the western plains beyond. I particularly like that example because that road was built under the supervision of William Cox, who, by namesake, is an ancestor of mine. So, I can claim to have some surveying blood after all!

Of course your profession will continue to affect our road system, cadastral fabric and construction industry. Indeed the roads your predecessors originally surveyed for the horse and cart in the 1800s might soon be transporting driverless cars. On this point—accuracy becomes even more important—given satellite guidance software will use your maps to tell a car’s computer if there is a building in the way or not.

No pressure there!

All of this, I think, reflects the fundamental pillar of our land title system, which is title to parcels of land depends on plans prepared by a professional, registered surveyor. It is by defining parcel boundaries – and issuing titles for land parcels after plans are registered - that we ‘commodify’ land. And this is what distinguishes a strong, confident economy.

Regulator operator model

Coming back to the present it is fair to say the NSW land titles sector is subject to some pretty big changes right now.

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

This new regulator-operator model is quite different from how LPI has been operating in the past. I would like to spend a few minutes on this—and particularly the benefits to the customers who use LPI services—as a result of this separation.

You could say that, generally speaking, an important role of government is to set the right conditions for business to prosper. This means having good planning, regulatory and market structures to ensure the most efficient delivery and use of the limited resources we have.

In the case of the NSW land title system, a monopoly arrangement is the most efficient way to deliver the titles service. The alternative, dealing with multiple land registries across NSW, would obviously be inefficient.

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

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

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

To give an example of how this has worked, and how it will work: in the past, where there was a delay in a dealing or plan being processed by LPI, it created an obvious inconvenience to a customer. It might have meant someone not being able to move into their house, or a developer not being able to settle sales of new apartments.

While LPI had good ways in which to manage such delays, under the new regulator-operator model, there is a much stronger focus on holding the operator to account over performance. There is now an independent oversight body built into the system.

And, more broadly, under this new separation, surveyors or other customers can come to us, the Office of the Registrar General, with any concerns about LPI's performance. This includes via existing industry liaison meetings.

As a new independent body, we can look at things like how long it takes to register plans, how frequently the system is down, and the accuracy of what is going onto the register.

And we will report on this publically, on a regular basis.

This separation of a land titles office is the first to take place in Australia. It is similar to what already exists in New Zealand.

Government objectives

Whether or not the operator is under public or private ownership, the Government has some specific objectives for this new regulator-operator arrangement. These include to:

- maintain the confidence of customers and the NSW public
- ensure the security, integrity, performance and availability of the Register
- ensure the Register is accurate and up-to-date
- promote innovation and greater efficiency.

As the Office of Registrar General, we will aim to oversee an efficient system, with the customer in mind and security intact.

We will look very closely at the accuracy of data. For example, an operator will continue to maintain a register of all errors and report to us with recommendations to avoid or minimise such errors in the future.

The integrity and security of data is also our primary concern. We require the operator to manage security of data in a manner that at the very least is no less rigorous than maintained by LPI before the structural separation. And we will continue to have regular discussion with the operator about the safeguards it has put in place to manage all foreseeable risks.

Similarly, the operator will need to continue to replicate all data in real-time on various systems in separate locations with substantial backup copies of core data stored elsewhere.

Critically, under this new regulator operator structure, an effective monopoly operator requires effective regulation. And this is where the Office of Registrar General will play its part.

I believe an independent, credible, stable and well mandated regulatory framework will give confidence to customers and the business itself. That is, it cuts both ways.

Customer interests are served by a strong regulator to ensure the monopoly operator is not letting down consumers. But equally, the

operator will benefit from stability and the knowledge that it can use its expertise to make decisions without unwarranted government intervention.

A move to a private operator

I'll now spend a couple of minutes on what a move to a private operator might look like. That is, under a concession with a private operator, there will be some differences.

To clarify, a 'concession' is when a private business pays the government to operate a public asset for a specified period of time.

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

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

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

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

The difference is that the provision of core services, and the investment in the core systems that support these services, are leased to a private operator. In doing so, the private operator must comply with the Real Property Act 1900, the Conveyancing Act 1919, the Strata Schemes

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

A key point is that the Office of the Registrar General won't have any direct role in the operations. But the RG's directions will continue to form the operating rules with which the operator must comply.

This will mean no material changes in titling processes under the private sector operation. You can expect business as usual to some extent. In addition, any changes to the RG's directions will come by the RG and if we think it necessary, they could be subject to public consultation.

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

In terms of the concession deed itself, there are some pretty important requirements of the operator. For example:

- the operator will only be able to use data to perform its obligations and must comply with obligations contained in Commonwealth and NSW privacy legislation
- if core services are not delivered in way that is meeting performance standards, we as the regulator can impose various penalties (these are our regulatory controls).
 - This is what you would expect under such a model and is the same as other concessions in NSW, such as the Sydney ferries—where the private operator pays a penalty for not meeting agreed services standards for customer safety, timeliness and availability of services.
- The new arrangements also include step-in powers. These can be exercised where there is a threat or a likely threat to the integrity

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

- And prices can only rise by CPI each year over the term of the concession.
 - A set price path is designed to provide more certainty than under the previous LPI arrangement where prices were changed with less consistency and time to plan.

As you'd expect, a lot of people have asked me what outcome does the Office of Registrar General want from this new arrangement.

My job—the Office's job—is to protect the State and the interests of the people of NSW. That is, the customer who uses the system. To this end, the outcome we want—whether the operator is in public or private hands—is an efficient titles system with its integrity and security maintained.

Investing in technology

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

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

Indeed, the Government has made it clear that it wants a future operator to invest in significant improvements to the system to benefit consumers. We expect to see accelerated digital capabilities and efficiencies from more investment in new technology.

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

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

The surveying industry itself has always been changing. I read with interest that Stonehenge was set out by prehistoric surveyors using peg and rope geometry. And in medieval Europe, surveyors set boundaries by 'beating the bounds' to maintain village or parish borders. A group of residents would walk around the village to establish a communal memory of the boundaries, including young people to ensure the memory lasted as long as possible.

In NSW, your predecessors used circumferentors and theodolites to map the big roads and the survey cadastre. Over time technology such as trig surveys, invar bars, EDMs (Electronic Distance Mapping), computer plotting systems, orthophotography and geodetic surveys all played its part. Now you too have shifted toward digital survey systems

The idea is that a private sector operator will be well positioned to ensure LPI is at the forefront of technology, and this will be overseen by a regulator who makes sure that the digital improvements support improved service delivery.

Importance of relationship with industry

With all this in mind, my sense is that while our relationship with the surveying industry has always been strong, in some ways, under this new regulator operator arrangement, it will become even more important. We will want to know how you think the operator is performing.

So, through the industry liaison meetings for example, ORG wants to continue to strengthen its engagement with the surveying industry.

We have a very clear purpose: to ensure the integrity of the Torrens system is maintained. Our role is to make sure citizens and industry have access to a modern and effective title system that underpins a prosperous NSW.

This is no different to now. Except we have the independence to ensure the operator is delivering services at a level that reflects what customers need. It will be held accountable for this.

And I believe this is an opportunity for you to raise with the regulator your views on the sorts of reforms that are needed for the surveying sector.

This could go to the important but challenging work needed to reduce existing requisition rates and, in your words, deal with the 'question of consistency' over requisitions. This issue of requisitions has been talked about for some years and is an area that needs resolving. This new structure might provide an opportunity for us all to work on the reforms that are needed, of course in partnership with the operator and the SG.

Conclusion

I want to finish by again saying how it is well recognised that the surveying sector underpins the land title system in NSW

I am reminded by ORG's surveyor team that NSW surveyors were (and perhaps still are) explorers and expeditioners.

And I was recently told by David Job who heads up our surveying team, that in the US, three previous presidents started their careers as surveyors—George Washington, Abraham Lincoln and Thomas Jefferson.

I'm not sure if the current president was ever a surveyor though.

I know the Office of Registrar General will benefit substantially from working closely with you as NSW surveyors. You have been front and centre of land title changes for a long time and are a large part of the next chapter in NSW land titling business.

I can also assure you that we in the Office of Registrar General have a team of very proud, smart and devoted officers—some lawyers, some surveyors, even an economist—who will work with the customer's interest in mind.

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

I look forward to working with you on these challenges.

I am happy to take questions. Thanks.