

Accepting Our Responsibilities



ISV Professional Development Seminar
Presented by David Boyle
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If we get time



- Three topics
 - Disclaimers on Plans
 - Matters of interest to the Victorian Law Reform Commission
 - S.102 Transfer of Land Act 1958
 - Land parcel Boundary Alteration

Disclaimers on Plans



- The scene
 - Comments based on an RE Plan received by OSGV
 - Prepared in good faith in accordance with Sch. 4 and Reg.16 of the Surveying Cadastral Surveys Regulations 2005 (Tick).
 - Certified in accordance with Sch. 2 and Reg.14(1) of the Regulations (Tick).
 - Concede that the surveyor has 'inadvertently' used a standard template
 - » One notice attempts to provide bona fide warning
 - » The other attempts to defray responsibility – by using a 'standard' disclaimer provided on legal advice.

Disclaimers on Plans



- **Bona Fide Warning**

- “Where occupation is **greater than 15 years old** encroaches on to the site, the builder should not build past the occupation without written agreement from the neighbour who may have gained possessory rights.

- Some good aspects
- If the fence is 10 years old – what is the builder to think?
- Who is responsible if the builder removes the fence?
- Should the surveyor indicate on the plan the age of the fence ?
 - *s. 8 Limitation of Actions Act 1958*
 - » inability to recover land after 15 years
 - » What is the capacity of people to protect their rights – accrued or otherwise?

Disclaimers on Plans



- Defraying Responsibility

- “This is a re-establishment of title boundaries completed on ...and, as such, is **not examined** in the Land Titles Office. No responsibility can therefore be accepted for any difference in boundary definition which may result from re-surveys of adjoining lands or the subsequent registration in the Land Titles Office of new plans.”

- Overlooking “Land Titles Office”
- Not examined because of the date?
- The lack of examination infers an LV responsibility
- The impact of, an responsibility for later surveys and plans subsequently ‘registered’

- Reliance upon the disclaimer

- Certification accepts responsibility but contradicts the disclaimer
- Does the surveyor have the protection he/she is seeking?
- Why does the SRBV license surveyors?

Disclaimers on Plans



- Examples of other disclaimers/notations

- » Provided by Andrew Lovelock, Speedie Development Consultants.

- This is a preliminary plan prepared from architectural drawings and is subject to verification by survey
 - This survey re-establishes title boundaries in accordance with the certificate of title dimensions and does not attempt to determine possessory rights of any occupied land.
 - This plan has been specifically prepared for [a purpose] and is not to be used for any other purpose whatsoever.
 - This plan has been prepared to support an application for a town planning permit and is subject to survey and consent of statutory authorities.

s.102 Transfer of Land Act 1958



- Victorian Law Reform Commission review of the Property Law Act 1958
 - Recommendations 13 and 14 – guidelines for boundary adjustment
 - Rec.13 - After consultation with the SG, publish in the Gov.Gaz. Guidelines for the re-establishment ... and adjustment of boundaries caused by error of measurement in original survey/subdivision (wrt title)
 - Rec.14 - Consequential amendment to s.273 PLA 1958 (dealing with Crown boundaries) to enable dealings with:
 - TLA land – which it currently does (?)
 - s.102 of the TLA
 - The Government is in the process of responding to the VLRC

s.102 Transfer of Land Act 1958



- Direction from the Minister to the Surveyor-General.
 - Develop appropriate boundary adjustment guidelines
- Direction from the Attorney-General to the SG
 - Update the Survey Practice Handbook
 - The AG does not see the necessity to include the recommendations in a revised PLA
 - A view supported by the SG and the Registrar
- Action by the Surveyor-General
 - Begins today

s.102 Transfer of Land Act 1958



- Background

- Submission to VLRC – P Davies (and others)

- Differences from early surveys - pattern of occupation
 - A review of s.270 PLA to include an appraisal of s.102 TLA
 - s.102 philosophy is used in some applications made under s.103 TLA

s.102 Transfer of Land Act 1958



- Transfer of Land Act 1928 – ss.201-215
 - s.201 – surveys to be performed by a licensed surveyor
 - s.202 - surveys to be tied to a `general or local survey (datum)
 - s.203 - Commissioner (Registrar) may disregard errors that are within the margin of error (s.272 PLA)

 - s.204 – apportion excess areas – including roads, bona fide occupation
 - s.205 – cause a survey and apportion excess and/or deficiency to be recorded if subdivision is >15yo and fenced/unfenced; published in Gov.Gaz (s.209)

 - s.213 – The lands so affected can be described by its abutments

s.102 Transfer of Land Act 1958



- Transfer of Land Act 1958 – s.102
 - ss.(1). – erroneous measurement – amend records to accord with marks on the ground or adjust as equitable
- Comments
 - s.102 does not discuss the age of occupation
 - Age of the surveys – how many remain with this type of difficulty?
 - Tottenham, Footscray, Golden Beach
 - Unfenced, marks found – what is practical
 - “Best-fit survey”
 - Is it possible to apportion excess (or shortage)?
 - The implications of s.8 Limitations of Actions Act 1958
 - Land defined in a title by connection to a street corner etc
 - Does the situation currently exist to warrant applying this section?
 - Do the other TLA provisions suffice eg, s.15(5), s.26P, s.60, s.99 and s.103

s.102 Transfer of Land Act 1958



- Transfer of Land Act 1958 – s.102
 - ss.(2)(a) – distribution of surplus area
 - ss.(2)(b) - >15yrs possession, include an area not in excess of the owner’s area attributable to the “allotment”
 - ss.(2)(c) – in any case – make adjustments as equitable or expedient
- Comments
 - Does not discuss age of occupation
 - Regarding ss.(2)(a) – distribution of surplus area - ? In accordance with physical boundaries (see *Symes v Pitt [1952] V.L.R 412*)
 - Regarding ss.(2)(b) – confusing?
 - Regarding ss.(2)(c) – how does the Registrar determine equitable or expedient

Subdivisions without subdividing?



- Proposal to the Victorian Law Reform Commission
 - Directed to Hon Ryan Smith, Minister for Environment and Climate Change
 - To provide certainty in boundary positioning and public confidence in the Victorian land title register
- Outside planning and subdivision provisions
 - Neighbours solve boundary discrepancies by agreement
 - Avoid complexity and include potential for more efficient urban density
- Some support from industry
 - Could be a mechanism to deal with hiatuses
 - Driven by the need for a NICO subdivision for $>30\text{m}^2$

Subdivisions without subdividing?



- The current situation
 - Hiatuses and/or differences between fencing can be efficiently and effectively dealt with under the TLA
 - There will always be a “worst case” scenario
 - Planning Scheme provisions –
 - Clause 62.04 – subdivisions not requiring a permit
 - The example provided for a NICO is over-complicated
 - What is the problem?
 - Is it caused by the actions of land holders (honest or coercive)?
 - “No proofs” are required - does this lend itself to improving the cadastre and the public’s reliance upon it and the Register?
 - Will it create situations for minor claims – indiscriminate attempts to rectify “discrepancies”
 - Will it decrease legal and survey fees/costs?
 - Will it create downstream planning issues, erode the integrity and certainty in boundary positioning?