



Review of the Property Law Act 1958

Submission by Peter Leitch

BACKGROUND

Peter Leitch retired from Land Victoria last year after 37 years in the land surveying areas. Many years were spent on deciding on the acceptability of title boundaries that were subject to survey. Comments are restricted to Part VII of the Property Law Act.

Part VII - Survey Boundaries

Part VII of the Property Law Act concentrates on Crown surveys and boundaries. The discussion paper points out that Part VII was introduced in 1885. The technology used, and the training of surveyors has changed considerable since then. There have been many changes in survey practice since Wallace wrote her review in 1984.

Part VII should also include lot boundaries created by plans of subdivision.

Section 269 should apply to lots on a plan of subdivision. This would allow title boundaries, be they created by Crown or private subdivisions, to move if occupation is used to define the boundary. The change would complement the discussion papers proposed changes to adverse possession which I would support.

Section 270 should be amended to include lots on a plan of subdivision, and possible from more than one plan. It should be extended to include how to deal with any shortage within the Section or block. It may be possible to recognise the effect on the street frontage in any adjustment of the parcels area.

PREVENTION OF BOUNDARY DISPUTES

A disappointing aspect of the discussion paper is the lack of discussion on how to prevent adverse possession and building overlaps. Prevention is better than trying to cure a situation where a person is trying to gain an advantage.

My understanding is that if a person wishes to build on or next to a title boundary, then a survey is required to determine where the title boundary is before a building permit is issued. From the information in the discussion paper the New South Wales model has advantages. No adverse possession claims and apparently limited building encroachment provisions. Perhaps New South Wales prevents many potential adverse possession claims as a survey is often required by financial institutions as part of the conveyancing process.

Transitional arrangements could be similar to that contained in Section 7B of the Statute of Limitations Act.