

# THE SHARED LAND INFORMATION PLATFORM IN WESTERN AUSTRALIA: A BLUEPRINT FOR SUSTAINABLE MANAGEMENT OF LAND?

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## I INTRODUCTION

Since the latter part of the 20<sup>th</sup> century, Ecologically Sustainable Development (ESD) has underpinned environmental law and policy developments at the international, national and local levels. ESD is defined as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.<sup>1</sup> This effectively requires governments to ensure that resources are used in a sustainable way to ensure that they are not depleted.

To this end, Australian governments have enacted volumes of legislation regulating land use. This legislation commonly places either positive obligations,<sup>2</sup> or negative restrictions upon landholders.<sup>3</sup> While this regulation is arguably warranted by the need to promote ESD, the large number of Acts impacting on land use has led to an information crisis. In all Australian states, information about these obligations and restrictions on land use is

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<sup>1</sup> The World Commission on Environment and Development, *Our Common Future* (Oxford University Press, New York, 1987) 43.

<sup>2</sup> Such as maintaining a reserve. See, eg, the Queensland *Nature Conservation Act 1992* (Qld), under which landholders can enter into agreements to maintain a nature refuge.

<sup>3</sup> Such as a prohibition on tree clearing. See, eg, the New South Wales *Native Vegetation Act 2003* (NSW).

fragmented across a number of separate and unconnected information sources.<sup>4</sup> This large number of information sources means that a correspondingly large number of enquiries must be made during the conveyancing process, with a risk of some searches being omitted.

A novel solution to this problem has been developed in Western Australia. The Western Australian government uses two separate but complementary systems to provide information on land. First, there is a land title register, which serves its traditional function of registering details concerning ownership and restrictions on title. In addition, there is a new spatial information platform called the 'Shared Land Information Platform' (SLIP), through which users can obtain information from government departments concerning obligations and restrictions on land use by undertaking a search called 'Interest Enquiry'. Although SLIP is still in a development phase, the intention of the government is to gradually expand the information available through SLIP so that it will eventually be comprehensive, and cover all obligations and restrictions on use.

This article does not purport to give a comprehensive overview of all land information systems and services in Australia, and the author acknowledges that there are other good models in operation (for example, mandatory disclosure regimes in South Australia<sup>5</sup> and Victoria<sup>6</sup>). Instead, this article examines the Western Australian model as a case study to demonstrate how automated information systems can provide land information, and promote sustainable management of land.

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<sup>4</sup> Eg, in Queensland there are approximately 32 Acts which create restrictions or obligations affecting land title and use. Three require information to be registered on title, 15 require information to be recorded on title, 11 establish separate registers, and the remaining Acts do not use any information system. In this case, enquires must be made with the relevant government agency.

<sup>5</sup> *Land and Business (Sale and Conveyancing) Act 1994* (SA) s 7.

<sup>6</sup> *Sale of Land Act 1962* (Vic) s 32.

This article will begin by tracing the law reform process which led to the development of SLIP. It will then discuss the operation of SLIP, highlighting both the positive and negative features of the system. It will conclude with recommendations for modifications to SLIP, which may be used as a blueprint for sustainable management of land in other Australian states.

## II EARLY APPROACHES TO INFORMATION MANAGEMENT IN WESTERN AUSTRALIA

Prior to the development of SLIP, the Western Australian government introduced amendments to the *Transfer of Land Act 1893* (WA) (TLA) to allow land use information to be recorded on title, which is the approach used by a number of other Australian states.<sup>7</sup> The TLA requires the Registrar to maintain a register of titles,<sup>8</sup> and the register was initially designed to serve the traditional function of recording details of ownership, as well as allowing for registration of a limited range of interests over title. Historically only a narrow range of interests have been registrable on the land title register, including mortgages<sup>9</sup> and leases.<sup>10</sup>

As ESD became a driving force behind government action, the scope of the land title register was expanded to allow for more information to be placed on title. A recent example is the creation of carbon rights and covenants which are registrable on title.<sup>11</sup> These instruments allow one party to obtain a legal right over the carbon sequestered in trees on another party's property.

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<sup>7</sup> Eg, forestry covenants in New South Wales: *Conveyancing Act 1919* (NSW) s 87A, and forest agreements in Victoria: *Conservation, Forests and Lands Act 1987* (Vic) s 72.

<sup>8</sup> *Transfer of Land Act 1893* (WA) s 48(1).

<sup>9</sup> *Ibid* s 105(1).

<sup>10</sup> *Ibid* s 91.

<sup>11</sup> *Carbon Rights Act 2003* (WA); *Transfer of Land Act 1893* (WA) s 104B.

Additionally, there have been several legislative amendments made to allow information to be *recorded* on title – this is, placed on title without the benefits of registration. These amendments include:

- A 1996 amendment to the TLA to allow factors affecting use and enjoyment of land to be recorded on title. Section 70A of the TLA states that when the local government authority for the area where the relevant parcel of land is situated considers it desirable that proprietors or prospective proprietors of the land be made aware of a factor affecting the use or enjoyment of the land or part of the land, the local government authority may lodge a notification with the Registrar.<sup>12</sup> The objective of this amendment was to reduce the instances where purchasers of land were unaware of restrictions unless they did ‘a lot of detailed homework’.<sup>13</sup> It was suggested that s 70A ‘provides an effective means of alerting purchasers to any limitations on the land being purchased’,<sup>14</sup> and examples of the use of these notifications includes information about zoning controls, contaminated land warnings, and landfill warnings;<sup>15</sup> and
- A 2003 amendment to allow the government to record a broader range of interests on certificates of title using a digital title system. This allowed the then Department of Land Administration (DOLA) to ‘use its own considerable datasets in relation to land and link them to the title for the relevant land...[and] to link to other datasets in State and local government to enable the title to become the ‘one stop shop’ for all interests and information about particular parcels of land’.<sup>16</sup> This essentially extended the purpose of the certificate of title to allow it to contain information on land use. The certificate of title will contain this information, or at the very least state where it can be found.<sup>17</sup> This additional information is exempt from the State guarantee of title,<sup>18</sup> and the title is clearly divided into two parts.<sup>19</sup>

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<sup>12</sup> *Transfer of Land Act 1893* (WA) s 70A(1).

<sup>13</sup> Western Australia, *Parliamentary Debates*, Legislative Council, 22 May 1996, 2224 (Mark Nevill).

<sup>14</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 29 August 1996, 4862 (Graham Kierath, Minister for Lands).

<sup>15</sup> *Ibid.*

<sup>16</sup> Explanatory Memorandum, *Transfer of Land Amendment Bill 2001* (WA) 1.

<sup>17</sup> *Ibid.* 3.

<sup>18</sup> The State guarantee of title is contained in the *Transfer of Land Act 1893* (WA) s 201.

<sup>19</sup> *Ibid.* 4.

The amendments made to the TLA in 1996 and 2003 allowed the land title register to be used for a potentially broader range of purposes. Restrictions and obligations created by environmental law statutes could, in many instances, be placed on title. However despite these amendments, there were still a number of interests which could not practically be incorporated on a title search using these provisions. In particular, it was apparent that obligations and restrictions affecting multiple blocks of land, such as zoning and tree clearing restrictions, were administratively difficult to record on title due to the need for individual notations. Thus, the Western Australian government explored the use of spatial databases for recording land information, as a single entry can span across multiple parcels of land.<sup>20</sup> Advances in technology meant that more sophisticated databases could be used to provide land information, so the Western Australian government moved away from the recording of information on title, and began design of a new system.

### III SEARCH FOR AN ALTERNATIVE APPROACH: THE LAW REFORM PROCESS IN WESTERN AUSTRALIA

To determine how obligations and restrictions could be most effectively managed, the government commissioned a Standing Committee inquiry to consider options for reform. The Standing Committee published its findings in 2004, in a report titled 'Report on the impact of State government actions and processes on the use and enjoyment of freehold and leasehold land in Western Australia'.<sup>21</sup> From the outset, the report noted that there are a myriad of ways in which the government can and does impact upon the use and enjoyment of land.<sup>22</sup>

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<sup>20</sup> Interview with Bruce Roberts, Registrar of Titles, Western Australia (Perth, 7 May 2009).

<sup>21</sup> Standing Committee on Public Administration and Finance, Western Australia Legislative Council, *Report on the impact of State Government actions and processes on the use and enjoyment of freehold and leasehold land in Western Australia* (2004).

<sup>22</sup> *Ibid* 35.

In the report, the Committee paid particular attention to submissions made by the now defunct Department of Land Administration (DOLA).<sup>23</sup> In a 2001 submission, DOLA made the following observation, which is worthy of full repetition:

[I]n Western Australia there is no one agency that oversees land administration and in most cases a single activity is managed by a number of differing government agencies. From a stakeholder and customer perspective, the continued introduction of new land related legislation is increasing the complexity of land administration in this State, and this has a significant impact upon the recording of all rights, restrictions and responsibilities on the land titles (Torrens) register.

It is a fundamental part of this submission that the efficiency and integrity of the land registration system (through the Torrens system) is being eroded because many of the limitations and prohibitions affecting land and interests in land are not collected and are not centrally available for access by everyone.<sup>24</sup>

DOLA also noted that search costs had increased substantially because purchasers had to search for interests operating outside of the Torrens register.<sup>25</sup> DOLA recommended that a central portal be established, where customers could find all information on obligations and restrictions affecting land. However, they recommended that the Torrens register remain in its current state, with all other obligations and restrictions collated elsewhere.<sup>26</sup> This is because it would be administratively difficult and cost prohibitive for everything to be noted on the certificate of title.<sup>27</sup>

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<sup>23</sup> Land is now administered by the statutory authority 'Landgate'.

<sup>24</sup> Standing Committee on Public Administration and Finance, above n 21, 524-525.

<sup>25</sup> Ibid 526.

<sup>26</sup> Ibid 524-525.

<sup>27</sup> Ibid 526.

The report took account of DOLA's submissions, and made two recommendations in this area:

- In the short term, the Department of Land Administration should continue to implement its aim of establishing itself as a 'one stop shop' database of all interests affecting land as an urgent priority; and
- In the long term, the Department of Land Administration should introduce, as soon as practical, an electronic three dimensional certificate of title which records all interests affecting the land described on the certificate of title.<sup>28</sup>

These recommendations differed from DOLA's submissions, as they suggested expanding the scope of the land title register for recording obligations and restrictions, rather than establishing a separate database.

The State government issued a response to the Standing Committee Inquiry in 2004. The government supported the first recommendation, that DOLA establish themselves as a 'one-stop shop' for information in land, commenting that 'the system will enable interested parties to source a wide range of government land information including key details about rights, restrictions and obligations associated with a land parcel or certificate of title'.<sup>29</sup>

The government did not support the second recommendation, which was that the certificate of title should be expanded to record details of all interests affecting land. The government expressed the following rationale for this decision:

[A] certificate of title has the benefit of a State guarantee as to its accuracy. With the recording of all "possible" interests affecting land on the certificate of title, it would not be feasible to extend this

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<sup>28</sup> Standing Committee on Public Administration and Finance, above n 21, 530.

<sup>29</sup> Western Australian Government, *Response to the Report on the impact of State Government actions and processes on the use and enjoyment of freehold and leasehold land in Western Australia* (2004) 29-30.

guarantee to all items and this may have the effect of eroding the integrity and indefeasibility of the certificate of title.

The significant costs of such a proposal ultimately would need to be passed on and may have the effect that obtaining a copy of an absolute certificate of title would be cost prohibitive.<sup>30</sup>

In summary, the government supported the introduction of an integrated system, but did not support the expansion of the Torrens register for this purpose. To give effect to this, it was necessary for a system to be established whereby obligations and restrictions on use are managed in an integrated manner, but externally to the land title register. This Standing Committee inquiry was the main impetus for the development of SLIP.<sup>31</sup>

#### IV THE SHARED LAND INFORMATION PLATFORM

Development of SLIP began shortly after the 2001 state election, and intensified following the Standing Committee findings. Government reviews conducted in 2002 and 2003 found that the mechanisms used by agencies at the time for sharing of information were ‘cumbersome, resource intensive, and the data is prone to becoming out-of-date’.<sup>32</sup> Reviews also showed that SLIP would provide economic benefits, and that the technology required for such a system was available.<sup>33</sup> Following these reviews, and the Standing Committee Inquiry, the government began developing SLIP.

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<sup>30</sup> West Australian Government, above n 30.

<sup>31</sup> Interview with Bruce Roberts, Registrar of Titles, Western Australia (Perth, 7 May 2009).

<sup>32</sup> Government of Western Australia, *Shared Land Information Platform Implementation Plan: Final* (2004) Landgate, 2  
<[http://www.landgate.wa.gov.au/docvault.nsf/web/SLIP\\_ImpPlanFinRepVol1\\_271004/\\$FILE/SLIP\\_ImpPlanFinRepVol1\\_271004.pdf](http://www.landgate.wa.gov.au/docvault.nsf/web/SLIP_ImpPlanFinRepVol1_271004/$FILE/SLIP_ImpPlanFinRepVol1_271004.pdf)> at 6 February 2009.

<sup>33</sup> Grahame Searle and D Britton, ‘The Western Australian Shared Land Information Platform and Modern Land Administration Systems’ (Paper presented at the Expert Group Meeting, Sustainability and Land Administration Systems, Melbourne, 9-11 November 2005) 120-121.



The objective of SLIP was to ‘streamline the government’s land and property information by providing the infrastructure and services necessary to link individual agencies together so customers can better access the range of information available’.<sup>34</sup> It was anticipated that SLIP could simplify access to land information, and improve efficiency of obtaining information.<sup>35</sup>

The aim of SLIP is to draw all land information together through one single platform. This was considered essential, because obligations and restrictions on land title and use in Western Australia are managed by 26 different government agencies, and there are as many as 6,100 government employees using this information in their work.<sup>36</sup>

Importantly, SLIP does not function as a complete register of information. Rather, it is a mechanism for providing access to information held by numerous government agencies. Instead of assembling all information in one place, SLIP draws upon data that remains in control of the relevant government department. The aim of SLIP is allow for this information to be accessed through a single search by ‘providing the infrastructure and services necessary to link individual agencies together’.<sup>37</sup>

SLIP is a technology, and an ‘Interest Enquiry’ is a search which may be conducted using SLIP.<sup>38</sup> The Interest Enquiry search<sup>39</sup> was

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<sup>34</sup> Kylie Armstrong, ‘Shared Land Information Platform – a Cost Effective Spatial Data Infrastructure Supporting Sustainable Development’ (Paper presented at the GSDI 10 Conference, Trinidad, 25-29 February 2008) 2.

<sup>35</sup> Government of Western Australia, above n 32, 3.

<sup>36</sup> Ibid 4.

<sup>37</sup> Searle and Britton, above n 33, 120-121.

<sup>38</sup> Emergency management, natural resource management, interest enquiry and land development.

<sup>39</sup> Initially called the ‘Register of Interests’.

developed because ‘repeatedly individuals and businesses find their dreams and development plans curtailed due simply to not knowing what interests exist over a parcel of land’.<sup>40</sup> Prior to the Interest Enquiry search function becoming operational, a landholder or prospective purchaser needed to contact the relevant government departments directly to obtain information. Given that there were up to 26 different departments in control of land data, this was a lengthy and cumbersome process.<sup>41</sup>

To alleviate this, it was anticipated that users could undertake an Interest Enquiry search, through which information on obligations and restrictions on use (termed “interests”) could be found.<sup>42</sup> The intended purpose of Interest Enquiry was to reduce the number of searches which must be undertaken to obtain an accurate picture of obligations and restrictions affecting land.<sup>43</sup>

The Interest Enquiry search function requires the searcher to select the land parcel of interest on a map. The system then automatically accesses government agencies’ individual datasets to determine whether any interests affect that parcel of land. The system will then generate a report telling the searcher what interests affect their land. The searcher can then select these interests and order reports concerning them from the relevant government agencies.<sup>44</sup>

Although only one search is required, this search draws upon numerous datasets maintained by individual government agencies to provide this information. This process is best described by the following passage from the SLIP Implementation Plan:

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<sup>40</sup> Government of Western Australia, above n 32, 6.

<sup>41</sup> Ibid 49.

<sup>42</sup> An ‘interest’ is defined as ‘anything that may affect the use or enjoyment of an area of land, sea or air. It must have some form of legislation or regulation governing the interest and have a defined custodian for the provision of that interest information’: Government of Western Australia, above n 32, 8.

<sup>43</sup> Armstrong, above n 34, 5.

<sup>44</sup> Government of Western Australia, above n 32, 50.

[T]he SLIP Enabling Framework takes advantage of current internet-based technologies and standards so that data can be accessed transparently as a single, integrated land information system while data remains within the control of custodial agencies. Agencies retain accountability for their data; information security is improved; access to data is opened up; and there are opportunities to automate many land-related processes, currently considered labour intensive.<sup>45</sup>

Consequently, the data stays within the control of the government department responsible for administering the legislation, but is drawn together through a single search. Thus the Western Australian model has not required any significant reorganisation of government structures or legislative reform; rather it has developed a system which works within the confines of established systems.

## V LESSONS LEARNED FROM THE IMPLEMENTATION OF SLIP

SLIP was designed to solve land information deficiencies in Western Australia. Although the system is still very much in its infancy, there are some interesting lessons emerging from the Western Australian experience. While SLIP provides a number of clear benefits, it is also apparent that there are some issues with the system which require resolution.

### A *Benefits of the Interest Enquiry function*

By providing information through an Interest Enquiry search, the risk of undiscovered interests is reduced.<sup>46</sup> Furthermore, providing information from multiple government agencies through a single search lowers transaction costs for landholders and prospective

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<sup>45</sup> Government of Western Australia, above n 32, 4.

<sup>46</sup> Ibid 52.

purchasers.<sup>47</sup> Interest Enquiry can also contribute to sustainable management of land by ensuring that information about controls on land use is readily available,<sup>48</sup> which promotes compliance with environmental laws. Therefore the benefits of Interest Enquiry are essentially twofold – it serves an economic purpose by providing better information to facilitate the trade of property, and it also serves an environmental purpose by providing better information to facilitate sustainable management of resources.

Although SLIP is still in a development phase, it has the potential to provide greater security to prospective purchasers or developers of land. In turn, this promotes compliance with environmental laws by ensuring that decision-makers are apprised of any environmental obligations or restrictions affecting land.

Another potential benefit of the Western Australian approach is that it has developed alongside the land title register, and has not resulted in any significant expansion of the title register. The land title register in Western Australia has largely retained its traditional role of registering only a limited range of interests which affect title,<sup>49</sup> while SLIP can record everything else. This addresses the concern regarding extension of the state guarantee of title.

Although information must be obtained from two sources rather than a single source, arguably this is preferable to the situation in other Australian states, where numerous searches and enquiries are necessary.<sup>50</sup> Furthermore, it may be preferable to mandatory

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<sup>47</sup> Government of Western Australia, above n 32, 52.

<sup>48</sup> Ibid 14.

<sup>49</sup> Eg, mortgages and leases. The only major extension has been creation of carbon rights and covenants.

<sup>50</sup> Eg, in Queensland a prospective purchaser needs to undertake a title search, search up to 11 separate registers, consult legislation to determine what other restrictions may apply, and then contact government departments to find out whether they in fact do apply.

disclosure regimes<sup>51</sup> as the information comes from the responsible government agencies directly, rather than from the vendor, who may omit information, inadvertently or otherwise. Additionally, as discussed above, it may be the case that the land title register is not the appropriate place to record information on land use, especially where obligations or restrictions apply to many individual lots. Thus having these two separate sources of information may in effect allow the government to provide more accurate and complete data than if they attempted to use the land title register alone for this purpose.

### B *Potential problems and legal issues associated with SLIP*

Although SLIP does provide the benefits discussed above, there are several issues and risks associated with the system which require attention. These are:

- Problems with the format of data accessible by SLIP;
- Potential liability arising from leaving data in the control of government departments; and
- Potential liability arising from incomplete information.

Although the Western Australian government have taken some steps to mitigate these risks, these measures are arguably problematic in themselves. Each of these issues will be discussed in turn.

#### 1 *Problems with data format*

Unless agency data is held in a particular form, it may not be readily accessible by SLIP. The situation is not problematic where agencies have their data represented on their own spatial database. In this case, these datasets are accessible via SLIP Enabler. SLIP enabler uses the coordinates to compare a property selected in Interest

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<sup>51</sup> Eg, the systems used in South Australia and Victoria pursuant to the *Land and Business (Sale and Conveyancing) Act 1994* (SA) s 7 and *Sale of Land Act 1962* (Vic) s 32 respectively.

Enquiry against each agency's spatial dataset. The process is best described by a representative of Landgate:<sup>52</sup>

[W]e use the coordinates of the property (as defined in Landgate's cadastral data) to make a shape for comparison against agencies data. If you can imagine that an interest may visually cross into the boundary of a property – we essentially are looking for any lines or points from that agencies dataset that fall within the properties boundary. If we locate something inside the boundary, this results in a 'yes' response'. If we do not find any overlapping data then this results in a 'no response'.<sup>53</sup>

The situation is more complex where agencies do not have existing spatial datasets. In some cases, agencies have created new datasets which are accessible by the SLIP Enabler.<sup>54</sup> This can potentially lead to problems with accuracy and currency of material. If an agency creates these datasets purely for SLIP, and then uses different datasets within the agency's day-to-day operation, there is a risk that information on the dataset created for SLIP may not be updated.

To this end, Landgate are also looking at other methods to use if agencies do not want to provide access to the spatial dataset via SLIP Enabler, or if they do not use spatial data. It is anticipated that Interest Inquiry could be expanded to do the following:

- Text Query into databases - Landgate could use an identification number to locate information in tables of data. Examples would include title number, address or other common identifier to locate information;
- Web services – Landgate could use web services to gain access to 'reports' already provided by an agency's existing website. The SLIP enabler would essentially access their existing system and the user would be delivered information in the same format as the agencies system supplies it; and
- Agency Notification - Landgate could send through an email (or similar) to an agency enquiring whether a property has any interests affecting it. It is likely that this would be suitable for

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<sup>52</sup> Landgate is the statutory authority responsible for administering land.

<sup>53</sup> Email from Natasha Bowler, Senior Project Officer, Landgate, to Justine Bell, 19 October 2009.

<sup>54</sup> Ibid.

those agencies whose data needs to be investigated manually and/or in the case of agencies which have limited technical know-how or support. Landgate would then act as a conduit for manual enquiries in place of phone calls, enquiry forms and so on.<sup>55</sup>

These methods are only possibilities at this point in time, and are not yet used in Western Australia. At present there are some restrictions on the type of agency data that can be accessed by SLIP, which is a barrier to the system being truly comprehensive.

## *2 Potential liability issues arising from leaving data in control of government departments*

Although an Interest Enquiry search will eventually provide information on all interests affecting land, it will not be collated in one place, and will remain with the relevant government agency. An Interest Enquiry search effectively searches all of these agencies' data simultaneously. Therefore, it is not a central repository of all information concerning land.

The rationale for leaving data in control of the administering government department was explained by a SLIP representative in an interview:

[SLIP] delivers the most up-to-date data available from participating organisations because when users connect to SLIP, they connect directly into the source data hosted and maintained by the custodian agency. 'If you centralise data, taking it away from the owners, it just doesn't work,' says Landgate's Robin Piesse, Manager Market Development. The data must reside with the owners because they are the people who know their data the best. SLIP ensures that the data stays with the owner so that the end user gets the right data from the right people at the right time," she said.<sup>56</sup>

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<sup>55</sup> Email from Natasha Bowler, Senior Project Officer, Landgate, to Justine Bell, 19 October 2009.

<sup>56</sup> Geoconnexion, 'A new information era: the Australian Shared Land Information Platform (SLIP) development' (2008/2009) 8(1) *Geoconnexion International Magazine* 46, 46.

Thus the objective of keeping the data with the relevant agency is in fact to increase security, as the government departments are seen as better equipped to handle their own data.

It appears unlikely that this will cause any major problems. Provided that the technology allows for all obligations and restrictions to be ascertained through this single search, it probably is immaterial that the data remains in control of the relevant government departments. Indeed leaving the data in the control of the government department may allow for the provision of more accurate and up-to-date information.

### *3 Potential liability issues arising from incomplete information*

Another problem with Interest Enquiry is that, at present, not all information on interests is available through this search. Currently Landgate estimate that there are 54 different interests affecting land title and use.<sup>57</sup> In 2009, information on only approximately 18 of these interests was made available through SLIP. These 18 interests included Aboriginal Heritage sites, acid sulphate soil risk areas, mining titles, regional planning schemes, threatened species and ecological communities, and tree plantation agreements.<sup>58</sup>

An Interest Enquiry search will alert the customer where any of these potential interests affect their land. The customer is then able to order individual reports in relation to these interests. For example, the search may alert the customer to a potential risk of acid sulphate soils. A report can then be obtained from the relevant agency, which is the Department of Environment and Conservation. The report will advise the owner of the relevant level of acid sulphate soil risk in relation to their property, and the corresponding impacts upon development.<sup>59</sup>

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<sup>57</sup> Interview with Natasha Bowler, Senior Project Officer, Landgate (Perth, 7 May 2009).

<sup>58</sup> Landgate, *Interest Dictionary Report* (2009).

<sup>59</sup> Landgate, *Sample Acid Sulphate Soil Risk Interest Report* (2009).



Although a number of interests can be ascertained through an Interest Enquiry, it is clear that a number can not. Interests not available include contaminated sites, declared plants, national parks, conservation parks, nature reserves, native vegetation, and information about salinity.<sup>60</sup>

To determine whether any of these interests affect a parcel of land, it is still necessary for the landholder or prospective purchaser to make their own enquiries with the relevant government department or agency. Regardless, an Interest Enquiry search will tell the purchaser that these interests are not covered, which at least provides the purchaser with some guidance in relation to what enquiries must be made. Furthermore, as Interest Enquiry does not yet cover all interests, independent enquiries are necessary to ascertain whether there are any other relevant interests impacting on title or use. Unfortunately though, as these interests are often created by legislation, without any requirement for consent of the landholder, new interests may arise subsequent to purchase.

Additionally, these 54 interests that have been identified are only those that Landgate are aware of – there may well be other interests which have not yet been identified. Landgate are reliant upon information provided by other agencies, so there is a risk that Landgate may not be made aware of interests.<sup>61</sup> As a result, while this list of interests purports to be complete, there may well be other restrictions which are not yet identified.

To alleviate this problem of incomplete information available through Interest Enquiry, a search will also provide a list of what information is not covered.<sup>62</sup> This does make it easier for a landholder or prospective purchaser to ascertain what interests could

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<sup>60</sup> Landgate, *Interest Dictionary Report* (2009).

<sup>61</sup> Interview with Natasha Bowler, Senior Project Officer, Landgate (Perth, 7 May 2009).

<sup>62</sup> *Ibid.*

potentially affect their land. However, as Interest Enquiry gives no information on whether these interests affect a given parcel of land, it is necessary to make numerous enquiries with different agencies to gain a complete picture of obligations and restrictions affecting land. The list merely gives the landholder or prospective purchaser some parameters for these further enquiries. Furthermore, Landgate have specifically acknowledged that there could be additional interests which they have not been made aware of, therefore the existence of these will not be shown through an Interest Enquiry search.

Although Interest Enquiry presently covers only a relatively small number of interests on land use, it is the intention of Landgate to eventually extend to scope of Interest Enquiry to include all interests affecting land. This is dependent upon the co-operation of all government departments in the future. Progress may be hindered where agencies are protective of their data, and are reluctant for it to be available through Interest Enquiry. However this attitude is beginning to change as the SLIP project gains increasing government, business and community support.<sup>63</sup> Given this support, it seems likely that the scope of interests covered by SLIP will grow in the future.<sup>64</sup> If this barrier can be overcome, and information on all interests is made available through an Interest Enquiry search, the system will obviously provide a greater level of security to landholders and prospective purchasers. This could perhaps be achieved through legislative reform, and the enactment of a provision obliging government departments to make data available.

#### 4 *Mitigation of risks*

Landgate have recognised that this lack of complete information could lead to litigation, but have reached the view that it is better to have some information available through a central repository than to have none at all.<sup>65</sup> The issue of risks was canvassed in the SLIP

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<sup>63</sup> Interview with Natasha Bowler, Senior Project Officer, Landgate (Perth, 7 May 2009).

<sup>64</sup> Ibid.

<sup>65</sup> Interview with Bruce Roberts, Registrar of Titles, Western Australia (Perth, 7 May 2009).

Implementation Plan, which noted that as SLIP is an automated system, it may provide incorrect or incomplete information. The government noted that this may lead to liability issues, but thought this was unlikely due to the following:

- The degree of automation will be managed according to types of interests and the associated risk levels. The system provides for manual validation of responses to enquiries; and
- The system will provide information on interests using existing government information. This is no different from the current situation.<sup>66</sup>

Because an Interest Enquiry search will not provide any information which was not previously available, there is no greatly increased risk. This was further elaborated upon later in the Implementation Plan, where the possible legal liability for misinterpretation of datasets was discussed. The authors noted that ‘with increased access and availability of land and geographic data, there is increased potential and risk that data could be used and misinterpreted, which could lead to litigation’. This risk of litigation was downplayed though, with the authors noting that ‘risk levels are commensurate with current uses of land and geographic data. While some legal and regulatory issues remain, they are less significant than originally perceived. Current systems already handle the legal and regulatory issues. Most of the data to be included in SLIP is already available in digital form’.<sup>67</sup>

Therefore, although there is a risk of liability for misrepresentation, the government is of the view that this risk is not any greater than it was prior to the introduction of Interest Enquiry. This is because SLIP merely draws together data that was previously available. Furthermore, as the data remains in control of the agency, any liability will likely attach to the agency rather than to Landgate.

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<sup>66</sup> Government of Western Australia, above n 32, 53.

<sup>67</sup> Ibid 101.

There are two steps which have been taken to mitigate legal risks associated with the Interest Enquiry, namely the use of disclaimers, and memorandums of understanding between Landgate and the agencies providing data.

First, there are a series of disclaimers which users are alerted to. The memorandum of understanding entered into between Landgate and each government department obliges Landgate to provide a web display of a disclaimer for customers including the following information:

- General – a disclaimer that Landgate and other government agencies will not be liable ‘for any loss or damage, however caused (including through negligence, error, omission or otherwise) which may be directly or indirectly suffered in connection with the use of SLIP’;
- Good faith – the materials available through SLIP are provided ‘in good faith and are considered true and correct at the time of publication’. The disclaimer further states that changed circumstances after publication may affect accuracy of material;
- No warranties – all warranties are disclaimed, and Landgate and other agencies ‘do not warrant or accept any liability for the information as to its quality, suitability, completeness, availability or accuracy’; and
- No reliance – ‘customers using SLIP information remain responsible for making their own assessment of it and should verify all information with their own professional advisers or the relevant government agency sources’.<sup>68</sup>

This disclaimer will be visible when conducting an Interest Enquiry search. This essentially conveys to the customer that the information available through SLIP is provided merely for informational purposes, and is not intended to be relied upon solely.

The general Landgate website also provides the following disclaimer:

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<sup>68</sup> Landgate, Memorandum of Understanding Template (2009) clause 4.1(b).

[T]he information and materials presented at this web site are distributed by Landgate as an information source only. While every effort has been made to ensure the accuracy and completeness of the information, no guarantee is given nor responsibility taken by the Landgate for errors or omissions in the database.

The information is provided solely on the basis that readers will be responsible for making their own assessment of the matters. Readers are advised to verify all relevant representation, statements and information with their own professional advisers.

The Landgate does not accept any liability for any loss or damages for the information or advice provided at this web site or incorporated into this web site by reference, or which is incurred as a result of the use of, or reliance upon, the information and advice contained at this web site.

In addition to locally mounted information, the Landgate web server provides links to other Internet sites. These external information sources are outside the Department's control and it is the responsibility of the Internet users to make their own decisions about the accuracy, reliability and correctness of information found.<sup>69</sup>

This disclaimer emphasises that data is given purely for informational purposes, and Landgate do not undertake to guarantee the accuracy or completeness of the data. It also states that users should verify information with their own advisers. It is doubtful that advisers would be in a position to know more about government data than the government themselves. Given that Landgate are in a superior position and have effective control of the data, it is unclear whether a court would uphold these disclaimers given the opportunity.

Additionally, each government agency includes its own disclaimer within their Interest Enquiry report. For example, the Department of Environment and Conservation provides the following disclaimer with their Acid Sulphate Soil risk report:

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<sup>69</sup> Landgate, *Disclaimer of Liability* (2009),  
< <http://www.landgate.wa.gov.au/corporate.nsf/web/disclaimer+of+liability>>  
at 22 July 2009.

[T]his Interest Report has been prepared by Department of Environment and Conservation (DEC). While DEC makes every effort to ensure the accuracy, currency and reliability of this information at the time it was prepared, circumstances may have changed since the information was originally provided. Users must exercise their own skill and care when interpreting the information contained within this Interest Report and, where applicable, obtain independent professional advice appropriate to their circumstances. In no event will DEC, its agents or employees be held responsible for any loss or damage arising from any use of or reliance on this information. Additionally, this Interest Report must not be reproduced or supplied to third parties except in full and unabridged form.<sup>70</sup>

This echoes the disclaimer required to be provided by Landgate, in that it discourages the customer from relying on the information provided. However, it is unlikely that recipients could obtain information from any other source, as government departments effectively have a monopoly over their own data. This may be a factor a court would consider in determining whether to uphold a disclaimer.

Additionally, even where disclaimers are used, liability may still arise. Writing about aggregated data, Christensen and colleagues noted that ‘the majority of consumers who obtain information through an official government website will expect that the provenance of the data has been checked for accuracy both in the original information and in the way in which the aggregated data is represented’.<sup>71</sup> Thus even where a disclaimer is used, there is the risk that users will rely on the information. Furthermore, it is evident from Australian case law that courts will not necessarily uphold disclaimers; they are merely one of the factors relevant to a discussion of liability.<sup>72</sup>

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<sup>70</sup> Landgate, Sample Acid Sulphate Soil Risk Interest Report (2009).

<sup>71</sup> Sharon Christensen, Bill Duncan and Amanda Stickle, ‘Shifting Paradigms of Government Liability for Inaccurate Information’ (2008) 15(2) *Murdoch University Electronic Journal of Law* 185, 205.

<sup>72</sup> See, eg, *MLC v Evatt* (1968) 122 CLR 556, 570; *Mid-Density Developments Pty Ltd v Rockdale Municipal Council* (1993) 44 FCR 290, 301;

The disclaimers used in SLIP may be effective to transfer liability from Landgate to the relevant government agency, but it is doubtful whether the agency themselves would be immune from liability.

The second step taken to mitigate liability in Western Australia is memorandums of understanding entered into between Landgate and the agencies providing data. This is important because data provided via an Interest Enquiry is not maintained by Landgate, but remains in the control of the government agency. Christensen and colleagues discussed this situation, and stated that ‘as the government agency responsible for releasing the information may not be the agency statutorily responsible for the truth of the information consideration should be given to the protocols put in place for obtaining quality information from multiple agencies and to the use of the disclaimer’.<sup>73</sup>

Landgate have put in place protocols in an effort to ensure that information provided by agencies is quality information. Landgate have entered into separate memorandums of understanding with each of the agencies, which ensure that the agencies provide information responsibly. In the template memorandum of understanding, the government agency is specifically obliged to provide ‘the best information or datasets available, at the time of their publication’.<sup>74</sup> Therefore although all information provided is heavily disclaimed, agencies are obliged to essentially use their best endeavours to provide accurate material. As discussed above, it is likely that any liability for negligent misrepresentation will attach to the agency rather than Landgate itself, providing a good incentive for agencies to ensure that their data is complete and accurate.

Although the Western Australian approach does not provide complete certainty to landholders and prospective purchasers, it does appear to have made good progress in endeavouring to make information on interests available through two searches.

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<sup>73</sup> Christensen, Duncan and Stickley, above n 71, 205.

<sup>74</sup> Landgate, Memorandum of Understanding Template (2009) clause 4.1(a).

## VI IS THE WESTERN AUSTRALIAN MODEL A BLUEPRINT FOR SUSTAINABLE MANAGEMENT OF LAND?<sup>75</sup>

It is too early to draw any definitive conclusions regarding the operation of SLIP, as it is still in a development phase. Regardless, it appears that SLIP already provides an effective mechanism for drawing together government data, and the range of data available should continue to grow in the future. It is also particularly well-suited to obligations and restrictions imposed on a regional basis, which affect numerous parcels of land. Therefore SLIP may be a useful blueprint for other Australian states wishing to provide better information to landholders, prospective purchasers and developers.

Despite these benefits, there are also some problems and risks associated with the Western Australian experience. It is suggested that the Western Australian government, and any other governments contemplating use of a similar system, take account of the following suggestions:

- Although the land title register and the spatial platform are intended to operate separately, it may be advisable to link the two systems. This could be easily achieved by placing a note on all titles directing searchers to the spatial platform for further information on obligations and restrictions affecting land. This could possibly even be done under s 48A of the TLA, as amended in 2003. This reduces the risk that relevant searches are not conducted;
- Before implementing a system such as SLIP, governments should first ensure that each government department's data is in a format which is accessible by the spatial platform. A preliminary step should be to invest resources in upgrading this data. If data is not accessible by the spatial platform, the searcher will not be obtaining all relevant information;

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<sup>75</sup> With regard to information which is not yet available via an Interest Enquiry, it is necessary to contact the agency directly for details of obligations and restrictions. Thus the relevant agency will be responsible for the accuracy of information. As a result, the question is asked: is the Western Australian model a blueprint for sustainable management of land?



- At present some government agencies in Western Australian are reluctant to make information available through an Interest Enquiry search. This problem could potentially be addressed through legislative mandates requiring agencies to make data available. This would ensure that SLIP can provide a complete picture of all obligations and restrictions affecting land;
- While disclaimers may be useful while the system is under development, it may well defeat the underlying purpose of the system if searchers are unable to rely on information provided. A disclaimer warning the searcher that the information provided is not complete may be necessary during development of the system, but once all data is available, disclaimers should be abandoned. Instead, governments should take steps to ensure that the data provided is accurate, so that it can be relied upon. This could also be supplemented by a legislative requirement to regularly review the accuracy and currency of data. Indeed, the threat of liability may well serve as an incentive for agencies to ensure that information given is correct.

If these issues are addressed, it is possible that a system such as SLIP could provide a useful blueprint for sustainable management of land in Australian jurisdictions.

## VII CONCLUSION

While the Western Australian approach does not yet provide landholders and prospective purchasers with a complete picture of all obligations and restrictions on land title and use, it has made significant progress in this area. Additionally, the government is taking steps to increase the range of information concerning obligations and restrictions available through SLIP, which will hopefully remedy this issue.

Given the worsening environmental crisis and the ever-increasing number of statutory obligations and restrictions affecting land, it is time for Australian governments to seriously consider new systems to manage this information. A system such as SLIP may be a very useful blueprint for other Australian states, particularly if the issues and risks discussed above are addressed.