

Australian Property Law Journal (APLJ)
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(articles included in this part are linked to the two LexisNexis platforms)

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Articles

- The use and abuse of caveats
— *Robert Hay QC and Brett Harding* 1

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Caveats are essential for the protection of unregistered interests in real property. However, in recent times they have been used as bargaining chips, delay tactics and in some cases harassment. This article re-examines the fundamentals of caveats, and considers ancillary issues such as disciplinary consequences for practitioners who improperly lodge caveats and claims for compensation for the lodgment of a caveat 'without reasonable cause'.

- The Commonwealth tenancy disputes legislation: A bad vibe
— *Chris Martin* 15

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The Commonwealth tenancy disputes legislation may seem obscure, but is remarkable for two reasons. First, it is legislation with respect to residential tenancies, an area of law previously left entirely to the states and territories. Second, the Commonwealth tenancy disputes legislation appears to have been enacted not to address a clear problem in the law, but to legally disadvantage a group of tenants ahead of the development of Sydney's second international airport. However, the Commonwealth tenancy disputes legislation in fact opened up numerous fronts for legal dispute, with echoes of the film *The Castle* (1997). The litigation ended less happily for the residents, while also substantially increasing the time taken, and the expense incurred, in terminating the tenancies. Meanwhile, an important legal issue that could usefully have been addressed by Commonwealth legislation was missed.

- The problem of perfection: Can equity provide a solution?
— *Christopher Pearce* 26

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There were always bound to be teething problems with the introduction of a system designed to revolutionise the priority rules applying to security interests. After 5 years of operation, it is clear that practitioners are still coming to terms with the intersection of the *Personal Property Securities Act 2009* (Cth) and the common law principles, as well as the flexibility or perhaps, lack thereof, of the *Personal Property Securities Act's* provisions. This article will consider perfection, which is a central tenet of the

Personal Property Securities Act 2009, and the mechanism by which parties guarantee the priority of their security interest. This article begins with a discussion of some key *Personal Property Securities Act* decisions which have demonstrated the inflexibility of the Act's perfection requirements. This article then turns to consider the consequences that will flow from a failure to perfect a security interest in accordance with the provisions of the *Personal Property Securities Act 2009*. This article will then examine whether any relevant equitable exceptions may exist which could be utilised by parties to ameliorate the harsh consequences that would otherwise flow from a failure to perfect under the *Personal Property Securities Act 2009*.

Care-givers and property claims: An underutilised statutory jurisdiction
— *Susan Barkehall Thomas*

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This article looks at the legislation which permits property claims to be made by carers in non-couple relationships. While property distribution on the breakdown of a de facto relationship is now governed by the *Family Law Act 1975* (Cth), property claims by carers who are not de factos are governed by state legislation. Legislation in five jurisdictions permits claims to be made for property distribution on the breakdown of a close personal or caring relationship, as distinct from a de facto relationship. Australian statistics show that such care relationships are prevalent, however the property distribution provisions are underutilised. It will be demonstrated that the legislation is not fit for purpose and that reform is essential. Being a carer comes at clear personal cost to the carer. Having a consistent, simple national framework for property claims may reduce some of the economic inequalities that flow from a caring relationship.

A land transfer registration revolution? Exploring the opportunities and limitations for implementing the blockchain in electronic land transfer transactions in Australia
— *Elizabeth Mary Petsinis*

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The following article discusses the possibility of implementing blockchain technology in the land transfer registration domain in Australia. In order to examine the potential of blockchain technology, the article will undertake a comparative analysis of blockchain protocols being piloted in Sweden, Ghana and Honduras. Based on the case study analysis undertaken, it was found that the implementation of blockchain technology in land transfer procedure may assist governments, together with service providers and users, in ensuring that the doctrine of indefeasibility imputed by the Torrens title system remains paramount. Australia has recently implemented an electronic protocol in order to facilitate the land transfer registration process. The primary significance of this article is to discuss the current protocol, together with longstanding legislative requirements under the Torrens title system, and the doctrine of indefeasibility to exemplify that blockchain technology may provide unprecedented opportunities to ensure that land title registration transactions occur in a protected and systematic manner whereby data is publicly accessible to the nation.

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With the imminent introduction of mandatory electronic conveyancing, it is important to consider how incomplete gifts of Torrens land will be treated under the electronic system. This article considers how standalone transfers (transfers without an underlying contract) are currently treated in PEXA, and how the process differs from paper-based transfers. The impact of the differences on whether a gift is complete in equity is then considered, both in relation to transfers where parties are separately represented, and transfers where the same solicitor or conveyancer acts for both parties. It is concluded that differences between a paper-based transaction and an electronic transaction will have a substantial impact upon the treatment of incomplete gifts.