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THE FIJI ISLANDS LAND TITLES REGISTRY:

**THE NEED FOR ELECTRONIC OR ONLINE
SEARCHES AND REGISTRATION**

**CHAITANYA SAGAR CHETAN ANAND
LAKSHMAN**

**THE FIJI ISLANDS LAND TITLES REGISTRY:
THE NEED FOR ELECTRONIC OR ONLINE SEARCHES
AND REGISTRATION**

by

Chaitanya Sagar Chetan Anand Lakshman

A thesis submitted in partial fulfilment for the degree of
Master of Laws.

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March, 2013

DECLARATION

Statement by Author

I, Chaitanya Sagar Chetan Anand Lakshman, declare that this thesis is my own work and that, to the best of my knowledge, it contains no material previously published, or substantially overlapping with material submitted for the award of any other degree at any institution, except where due acknowledgment is made in the text.

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The research in this thesis was performed under my supervision and to my knowledge is the sole work of Mr. Chaitanya Sagar Chetan Anand Lakshman.

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¹ Formerly Associate Professor of Law at the University of the South Pacific (USP), Suva and Acting Director of the Institute of Justice and Applied Legal Studies (IJALS) in 2005.

ABSTRACT

This thesis reviews the functions of the Fiji land titles registry and considers the need for electronic or online registration and searches in Fiji. It also analyses the results of questionnaires administered seeking the opinion of the users of the land titles registry on a number of issues. This thesis also reviews the current developments of electronic conveyancing in other jurisdictions and the advantages, and challenges that it poses for Fiji. The findings reveal a number of challenges and the need to take incremental steps towards the computerisation of the Land Titles Registry.

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Chapter One - Introduction

A. Introduction

At the outset it would be prudent to state that in the USP region,² none of the USP Member States have in place or have taken any steps towards electronic or online Land Titles searches and Land Registration. This is a new area and it is envisaged that this area which has a great impact on real estate and legal work will develop over time in the USP region. A lot of research has been carried out in jurisdictions outside the USP region and materials from other jurisdictions were quiet useful, in the absence of USP regional materials. In this paper, I have examined the models advanced, researched and developed in other countries.

The introduction of computers and the advancement in information and communication technology has over the years resulted in remarkable changes in the way people and communities organise and conduct their affairs.³ There is no doubt that one of the key features of conveyancing in the 21st century is the use of information and communication technology, or computers to search and locate records, lodge data, register dealings and to record changes to land titles.⁴

It is noted from Professor Whitman's⁵ paper that more than 150 years has passed since English solicitors expressed their vision of land registration system in which land transactions are quickly and smoothly registered at the same manner in which securities are transferred in the stock exchange. This vision has largely led to the development of the Torrens system and to its expansion in numerous countries.⁶ Yet the reality of land conveyancing in many countries is far from accomplishing this vision. The process of registration in many jurisdictions has suffered from bureaucratic delays and was, and in

² Member countries being: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu

³ See generally: Mohammed L Ahmadu, 'Legal, Technical and Policy Aspects of Electronic Land Registries in Pacific Island Countries: Fiji Land Information System' (Paper presented at the Real Property Teachers Conference, University of Canterbury, Christchurch, New Zealand, 2004).

⁴ Land dealing - involving Title searches, and Land Title Registration.

⁵ Whitman D.A. (1999), Digital Recording of Real Estate Conveyances, 32 J.Marshall L.Rev.

⁶ Supra n.5

many jurisdictions still is, based on analogical paper-based documentation system.⁷ Indeed in the twentieth century many systems had gone through computerization process.⁸ Yet it deals with the presentation of manually entered information rather than direct and automatic registration of digital applications.⁹ There was a significant use of microfilm and microfiche and there was a move towards digitalization and electronic preservation of registration documents.¹⁰

It is noted that during the last decade the idea of complete electronic registration has been widely developed. Professor Dale Whitman¹¹ suggested in 1999 to develop a comprehensive electronic system of registration according to which the whole process, from the generation of the documents through the application until the recordation or registration, will be automatic. His proposal included very detailed vision. He suggested storing information in text-characters system (ASCII-American Standard Code for Information Interchange).¹² He further suggested enabling delivery of applications in electronic format.¹³ Professor Dale Whitman¹⁴ noted that the advantages of such system are enormous and which include the saving of manpower and time, auto indexing, enabling easy full text searches and better supervision of the registration process. In general such system will see a simpler and will use standard forms.¹⁵ Thus it will enhance the accessibility of the general public to land registration. It may enable in the future consolidation of registration offices and centralization of the registration.¹⁶ One of the results of full computerization may be the creation of central registration office that is available electronically from every place.¹⁷

⁷ Supra n.5

⁸ Supra n.5

⁹ Supra n.5

¹⁰ Supra n.5

¹¹ Supra n.5

¹² Supra n.5

¹³ Supra n.5

¹⁴ Supra n.5

¹⁵ Supra n.5

¹⁶ Supra n.5

¹⁷ Whitman D.A. (1999), Digital Recording of real estate conveyances, 32 J.Marshall L.Rev.

In Fiji, the Land Titles Registry regulates land dealings and over the years there has been a substantial increase in the volume of land dealings.¹⁸ One of the main services of the Registry is the provision of photocopied documents which is referred to as searches and also copies of previous dealings, which includes documents like the previous last transfer. Manual searches usually take hours and the users of the Registry normally spend a considerable time at the Registry for searches. Title Registration which normally takes between 4 to 6 weeks takes between 4 to 6 months. The Legal Practitioners,¹⁹ who are the principal users of the Registry, have for a considerable period of time been calling for a more expeditious and less stressful system of land dealing in Fiji.

When we consider the volume and number of repetitive functions the Land Titles Registry performs, we can hardly think of any better or suitable application of information and communication technology and when we consider the enormous advances made in information and communication technology in Fiji since independence, it is inconceivable that the Fiji Land Titles Registry, which carries out a major public function, has been able to avoid this new technology.²⁰ Many jurisdictions have successfully developed and implemented a range of electronic systems for searches, lodgements and registration processes.

This research, which is in six parts, intends to review the functions of the Fiji Land Titles Registry and consider the need for electronic or online registration and searches in Fiji.

The first part introduces the topic and gives an outline of the topic. The first part also looks at land, economic factors, ITC, government programmes and the land tenure system. The second part analyses the Land Transfer Act and examines the Torrens

¹⁸ Ministry of Justice, Annual Report -1997-2002, Suva, Fiji, (2003).

¹⁹ The writer has attended a number of meetings of the Fiji Law Society where these concerns have been raised. A delegation from the Fiji Law Society has convened meetings with the Registrar of Titles and the CEO- Justice to address delays in Registration and breakdown of photocopiers (which have resulted in searches not being available for number of days, even weeks at times).

system and the Title registration process. The third part deals with the Land Titles Registry, its composition, functions and the appointment, role and duties of the Registrar of Titles. The fourth part analyses the results of questionnaires that were administered, seeking the opinion of the users of the Land Titles Registry on a number of issues. The fifth part deals with the challenges of electronic conveyancing and the critical issues to consider in the Fijian context. The conclusion then follows.

B. Land

Land is the single most valuable commodity²¹ for Fijians and in Fiji land has sentimental, customary and cultural value attached to it. Land is the most valuable resource and the means of existence for the Fijian people. It is very important to the Fijian people that land records and dealings are carefully preserved and managed and accurately described and recorded.²²

Land is a fundamental resource for human activities such as agricultural production that is directly linked to food security and livelihood of many people, manufacturing, shelter and commercial activities.²³ Land is also a primary source of security or collateral for securing credit from banking and financial institutions and other informal loan providers. Security of tenure provides a foundation for economic development of a nation as security is an important aspect for investors.

Fiji has had its share of land related issues which have affected relations between the communities living in Fiji. Numerous actions including coups of 1987, 2000 and 2006 have been blamed for unresolved land issues.²⁴

²⁰ See Generally: Rouhshi Low, 'Maintaining the integrity of the Torrens System in a digital environment: a comparative overview of the safeguards used within the electronic land systems in Canada, New Zealand, United Kingdom and Singapore', January 2005, Volume 11, 2005 APLJ LEXIS 4.

²¹ Given that it provides source of income and a place to build homes for families. Freehold land is scarce and therefore there is a great demand for freehold land which has a good value attached to it.

²² Stated by Former Minister for Lands, Ratu Mosese Volavola in 1990.

²³ Palmer, D., & McLaughlin, J. (1997). *Integrated Land Administration: Institutional and Technical Challenges*.

²⁴ See Generally: Shah. K, 2004, *Facilitating Property Developments in the Fiji Islands: the Legal Mechanisms*, A review of ALTA and NLTA: Reforms, Tenth Annual Conference, Pacific Rim Real Estate Society, Bangkok, Thailand. Reddy. M and Naidu V, *Land Tenure System in Fiji: The Poverty Implications of*

Land taxes²⁵ are a significant source of state government revenue. It is seen that a lot of effort has been devoted worldwide to developing systems to administer land rights through effective land administration systems and effective application of information and communication technology (ICT)²⁶.

C. Economic Factors

Any discussion on electronic title searches and conveyancing cannot be looked at in isolation but as of necessity is linked to other factors affecting land in Fiji. Land is one of the most valuable economic resources in Fiji. Apart from providing people space to cultivate and grow crops and build houses, land has over the years been the principal source of revenue earner for the economy. Sugar cane and the tourism industries that are the principal income generators in Fiji largely depend upon utilisation of land for its related purposes as a major source of its economic activity.²⁷

D. Information Technology and Computing (ITC)

At present there is no comprehensive ITC policy in place by the government. However, departmental level initiatives support a number of government information portals. There is a properly equipped and functional government ITC centre that services the IT needs of the government. The Southern Cross fibre-optics communications cable linking Fiji with the United States of America, Australia and New Zealand has been completed, allowing for high-speed data exchange and digital communications between these countries. The cabinet had in 2001 also discussed a paper on e-governance. There is a copyright law²⁸ in existence and e-commerce and ITC-related laws are being formulated and it is the governments priority that it will be promulgate relevant laws in the not too distant future.²⁹

expiring Land leases – (<http://devnet.anu.edu.au/online%20versions%20pdfs/55/10Reddy55.pdf>) - last accessed 1st April 2012. The Economist, 2006 – (<http://www.economist.com/node/8381823>)- last accessed 1st April 2012

²⁵ Previously there used to be Land Sales Taxes this has now been replaced by Capital Gains Taxes.

²⁶ Bennett, R., Wallace, J., & Williamson, I.P.(2008). Organising land information for sustainable land administration, *Land Use Policy*, 25 (2008), pp. 126 – 138.

²⁷ <http://www.cia.gov/cia/publications/factbook/geos/fj.html#Econ> (last accessed January 20 2006).

²⁸ Copyright Act 1999

²⁹ <https://www.egov.gov.fj/default.aspx> (last accessed 12th March 2012)

E. The Current Fiji e-Government Programme

The Fiji Government³⁰ recognises the following critical issues as success factors or e-governance strategic thrusts that are needed to achieve the national objectives:

- (a). Implement financially sustainable service delivery models.
- (b). Reinvent services delivery model to provide citizen-centric outcomes.
- (c). Enhance operational efficiencies within and across government agencies.
- (d). Enhance ICT skills competency of government employees at all levels.

The current e-Services online provides Government Services over the internet. There are 3 Clusters in which the Government provides services.

(a) Government to Government Cluster: This cluster focuses on the exchanging of data between Government Ministries and other Departments where necessary. The services in this cluster are only available to government officers. These include:

- (i) Case management for all the business cluster services.
- (ii) Case management for all the citizen cluster services.
- (iii) Resource and Transport bookings for Section of National Planning.
- (iv) Case management for back office scholarship processing.
- (v) Executive outcome monitoring system for government agencies
- (vi) Social Welfare Management System, electronic registration and assessment of cases and voucher printing.
- (vii) People Hub- Data bank for persons information to be shared within various government agencies.

(b) Government to Businesses Cluster: This cluster focuses on providing Online Services to Investors and businesses that need approval from the relevant Government Departments. These free online services require business user registrations and login. The services include the following:

³⁰ <https://www.egov.gov.fj/default.aspx> (last accessed 12th March 2012)

- (i) Foreign Investment Approval and Tracking [IATS] – provision for foreign investors to apply online to start up a business in Fiji.
- (ii) Company and Business Registration [RCBS] - Facilitates business registrations for local and foreigners.
- (iii) Person Search [e-BDM] - A prepay search for persons data as per the births, deaths and marriage registry records. This service is available to selected agencies only.
- (iv) Forestry Licences [e-Forestry] - Allows agents to apply for Forestry Licence.

(c) Government to Citizen Cluster: This cluster focuses on providing Government Services online to the Fiji Citizen. Where by citizens will be able to access and extract the required information from the Government Departments. The citizens are able to submit applications online to relevant authorities. These services which are free, require citizen to register and then login. These include:

- (i) Exam Registration & Results Publishing [EXMS] - allows the schools or students to register for external examinations administered by Ministry of Education (MOE) as well and view their results.
- (ii) Online Scholarships [SCHS] - Online scholarships application and administration by Department of Indigenous Affairs (DIA), Multi-Ethnic Affair (MEA), and the Public Service Commission (PSC).
- (iii) Electronic Geographical Information [e-GIS] - an online map shop for the Department of Land and Survey
- (iv) Births, Deaths & Marriages [e-BDM] - online services for marriage registration (special license) and request for births, deaths and marriage certificates.
- (v) Statistics Online [e-BOS] - Citizens access to sale of Statistical Information, reports and releases from the Fiji Islands Bureau of Statistics.
- (vi) Forestry Licences [e-Forestry] - Allows public to apply for Forestry Licence.

(vii) Property Development [e-Property] - allows public to apply for Property development licence.

The above-mentioned e-services show that Fiji has capability to set up and provide electronic and online services to citizens and other as well.

F. The Land Tenure System

In Fiji, there are three main categories of land holdings:³¹ i-Taukei³² land³³, state land³⁴ and freehold land³⁵. i-Taukei land, which is land owned by the indigenous people of Fiji, account for almost 83% of the total land area, while the state land³⁶ and freehold land, which is land, held individually or corporately in fee simple account for 9% and 8% of the total land area, respectively.³⁷

The i-Taukei Land Trust Board (TLTB) is a statutory body set up under the i-Taukei Land Trust Act. It administers and deals with all i-Taukei land. All i-Taukei Land belongs to village groups or 'land-owning units'. Typically a portion of each land area is set aside for the site of the village, and the rest is i-Taukei Reserve. Land within the native reserve may be made available for use and for development by others through short- or long-term lease. In order for development to take place on i-Taukei Land, the developer must obtain a lease.

The i-Taukei land is not owned by an individual but rather by the communal unit, the basic of which is the Mataqali (clan). The customary landowning unit originated from a well established network of Fijian communal units, so closely related they can trace their

³¹ Don Paterson and Stephen A Zorn, 'Fiji' in Micheal A Ntomy (Gen Ed), *South Pacific Legal Systems*, University of Hawaii Press, Honolulu (1993).

³² The Bainimarama Government in 2011 made some changes which included all Fiji citizens being called as Fijians and all natives or indigenous Fijians are referred to as I-Taukei.

³³ i-Taukei Lands Act, Cap 133.

³⁴ Crown (State) Lands Act, Cap 132.

³⁵ Land Transfer Act, Cap 133.

³⁶ This was previously referred to as the Crown Land, following the 1987 coup and the declaration of Fiji as a Republic; it is now referred to as State Land.

³⁷ Josevata N. Kamikamica, 'Fiji: Making Native Land Productive' in R.G.Crocombe (Ed), *Land Tenure in the Pacific*, IPS, USP, 1987.

origin to one source. The largest of these communal units is the Yavusa (tribe). A Yavusa consists of direct male descendants of a single Kalou Vu (ancestral god) and every Yavusa traces its origin in this way. The sons of the original founder established separate Mataqali. The head of the Yavusa is the Turaga ni Yavusa. The first family of sons in each Mataqali form the various Tokatoka (family units).³⁸

Leases of i-Taukei Land are available through the i-Taukei Land Trust Board (TLTB), a statutory authority which administers all such lands on behalf of the Fijian owners. All applications for leases of i-Taukei Land are made to the TLTB. Any agreement or dealing concerning i-Taukei Land made with any other person or group has no legal standing. Once a TLTB lease has been issued, the land must go through a process of de-reservation before development can take place. Any application for development permission, subdivision, or rezoning³⁹ of i-Taukei Land must be accompanied by a copy of the lease document(s) as evidence of the applicant's legal right to the land, and the TLTB's consent to the land's development. Development leases are issued for particular types of development (residential, commercial, tourism, etc) and if a lessee wishes to carry out a different type of development, the agreement of the lessor must first be sought and obtained.

The i-Taukei Land under the customary land tenure system work on the principle of communal ownership of a land parcel that has already been topographically surveyed, charted on i-Taukei Land Commission Maps, and registered in the Register of i-Taukei Lands. Under this system land and communal land owners are registered, with no individual titles being issued. Ownership of land is vested in the *mataqali* or tribal group as registered in the Register of i-Taukei Lands. Individual membership of the land owning *mataqali* or tribal group is recorded in the *Vola ni Kawa Bula* (VKB). The Register of i-Taukei Lands records the names of the *mataqali* or land-owning units, the

³⁸ From Para [7] of the judgment by Justice Inoke, *Kanakana and Others v State* [2010] FJHC 563; HBC116.1999S (22 December 2010).

³⁹See generally: <http://www.townplanning.gov.fj> (last accessed 11th January 2012)

i-Taukei Land Commission Map reference, and the size and lot number of the land parcel. The Register of i-Taukei Lands is maintained by the Register of Titles.

The i-Taukei lands cannot be sold; and any dealings or works to be done on or with respect to the land requires the approval of the majority of the members of the *mataqali* that are over 21 years of age. Legally the final approval or decision rests with the TLTB. Although i-Taukei Lands cannot be sold, they can be officially leased out, with the consent of the *mataqali* landowners, through the TLTB. Once released out they naturally come under the 'western' system of land tenure for the duration of the lease, as previously mentioned.

The main advantages of the customary tenure system for the *taukei* is that it has firstly, prevented outright land sales and land speculation, and thus has ensured that i-Taukei have not become landless people in their own land. Secondly, it has helped the *taukei* to maintain their land-based customs and traditions, which are based fundamentally on the maintenance of family and kinship ties, and ultimately on the basic principles of sharing and caring. This is my view is a stand out feature of the I-taukei community as compared to other communities who mainly are self minded and mainly involved in individual pursuits. Ironically however, it has been noted that the concept has not worked for the benefit of the common man and woman of the I-taukei community as some within the I-taukei community have taken larger shares and there has always been unfair distribution of the lease monies that has been collected from the tenants to the I-taukei.⁴⁰ This has been one of the major stumbling blocks in the i-taukei's quest for economical progress in Fiji.

The basic administration of the i-taukei lands held under the i-taukei system lies with the following:

⁴⁰ See Generally Article headed: Government directs NLTB to implement new distribution formula http://www.fiji.gov.fj/index.php?option=com_content&view=article&id=3233:government-directs-nltb-to-implement-new-distribution-formula&catid=71:press-releases&Itemid=155 (Last Accessed on 25th March 2012)

- (i) i-Taukei Land Trust Board - for all matters relating to their land, whether it is for leasing, for acquisition for public purposes, for improvements to be made to the land through major capital projects, or for compensations for any loss of land or damages sustained;
- (ii) i-Taukei Land Commission - for all land and fishing rights disputes;
- (iii) i-Taukei Affairs Board - in so far as their rules and legislations affect the i-Taukei land customs.

The state land, which includes land, held by the State for public purpose,⁴¹ leasing⁴² and all land below high water mark⁴³ are administered by the Lands Department, while the Registrar of Titles is in charge of the administration or dealing of all freehold land. The Department of Lands and Survey⁴⁴ is responsible for the administration and oversight of all development on State Land in Fiji under the State Lands Act.⁴⁵ As the principal survey authority in Fiji under the Surveyors Act,⁴⁶ it is responsible for the regulation of all land surveys undertaken in Fiji by registered surveyors. It also develops, provides and maintains the network of survey controls nation-wide. A major and growing role is that of land information, and the Department produces and updates all national maps of Fiji. The Valuation Division of the Department undertakes all negotiations and acquisitions of land for public purposes including assessments of rentals. The specific functions of the State Lands Department include the following:

- Administration of State Land in accordance with the State Land Act. It deals with all aspects of the land leasing process commencing from the initial receipt of an application through to the preparation and registration of lease and subsequent follow up on the compliance of development clauses of the lease. It also ensures that State land is put to the best possible use.

⁴¹ For roads, reservoirs, dams and drains.

⁴² For either residential, commercial, industrial or agricultural.

⁴³ Includes mangrove swamps and all foreshores.

⁴⁴ <http://www.lands.gov.fj/about.shtml> (last accessed 29th March 2012)

⁴⁵ Chapter 132 Laws of Fiji

⁴⁶ Chapter 260 Laws of Fiji

- Preparation and administration of letting agreements of all buildings and houses rented or leased by Government and the administration of all i-Taukei and other Leases to the State.
- Regulating and checking of all land surveys attended by registered surveyors (whether private or Government) in accordance with the Surveyors Act.
- Develop and provide the network of survey control system nation-wide that integrates the many isolated surveys carried out by individual surveyors on behalf of their clients throughout the country.
- Production and upgrade of Maps and Plans including the various national maps of Fiji that are sold to the public and for the maintenance of a computerized land information system (Fiji Land Information System).
- Undertaking aerial photography of Fiji and the derivation of maps, plans and other products from these.
- Undertaking preliminary searches and investigations for land acquisitions for all Government projects such as major roads, water supply, government office sites, etc.
- Maintaining and recording of all survey data captured throughout the country.
- Negotiation and acquisitions of land required for public purposes such as roads, water supply, government facilities, etc.
- Assessments and periodic reassessments of rentals on State Leases, verification of rentals on i-Taukei Leases to the State besides being the official valuers for proclaimed Towns and Cities for the assessments of property rates.
- Collation and analysis of land sales data from throughout the country which is used as a basis for property valuation.

The Fiji Land Information System⁴⁷ (FLIS) is a major government project for the Lands Department which has been designed to create a coordinated system for storing and providing 'core' information about land in the Republic of Fiji. Established in 1991, the FLIS project has progressed with funding and manpower assistance by the Fiji and New Zealand Governments. The FLIS project is managed by the Fiji Land Information Council, chaired by the Permanent Secretary for Lands and Mineral Resources. The council consists of the heads of key government and non government organisations. The council reports to Cabinet through the Minister for Fijian Affairs. The Council is serviced by the FLIS Support Centre, which manages day-to-day operations, the computer networks, supports individual Land Information Systems and provides technical expertise and staff training to departments.

The FLIS Support Centre is administratively, under the Mapping and Land Information Division of the Department of Lands and Survey. The Support Center's responsibilities encompass all agencies represented in the Fiji Land Information Council (FLIC) and other organisations that regard land as the common denominator in their daily work.⁴⁸

The responsibilities include:-

- Provide and maintain quality land and geographic information to assist and improve decision making and promote the sustainable use and management of land, sea resources and Government limited assets,⁴⁹
- Ensure that the fundamental land information datasets (database systems) are provided, maintained, kept up-to-date, and secured from disasters,⁵⁰
- Develop policies and standards to support the maintenance and management of the FLIC Member agencies Database systems, Land Information Systems [LIS] and Geographical Information Systems [GIS],⁵¹

⁴⁷ <http://www.lands.gov.fj/flis.shtml> (last accessed 30th March 2012)

⁴⁸ Supra n.46

⁴⁹ Supra n.46

⁵⁰ Supra n.46

⁵¹ Supra n.46

- Maximise community access to land and geographic information with due regards to issues of privacy, confidentiality, liability and national security,⁵²
- Support the FLIS training program to ensure that the management and development of FLIS projects whether in Land Information System (LIS), Geographic Information System (GIS), Remote Sensing (RS), and related technologies are in the hands of local personnel with little reliance on overseas expertise.⁵³

In addition to FLIS, the Lands Department has Vanua-View⁵⁴ which is a viewing package customized for viewing and printing of graphical land information. It allows users to access the cadastral, topographic or i-Taukei Lands data for all areas of Fiji. Vanua-View has many advantages over traditional paper based maps.⁵⁵ It allows easy location of map features by automatic searching and allows combining theme layers. Maps can also be produced on any scale. The Versions available are:

(a) Topographic – which contains maps that show topographical information including contours, man-made features, vegetation, reefs, etc. A topographical map can be used in a wide variety of applications i.e., regional planning and management through agriculture and forestry to hiking.⁵⁶

(b) Cadastral -Contains maps that show legal boundaries of individual properties as on the ground with their land appellation. This includes lot and plan numbers with area, title reference and land names. A cadastral map is compiled from approved survey plans. Cadastral maps are widely used by land related Government, Statutory and Private Agencies for locality and base data to overlay their data for their use and services.⁵⁷

⁵² Supra n.46

⁵³ Supra n.46

⁵⁴ <http://www.lands.gov.fj/vanuaview.shtml> (last accessed 30th March 2012)

⁵⁵ Supra n.53

⁵⁶ Supra n.53

⁵⁷ Supra n.53

(c) i-Taukei Lands Commission (TLC) - Allows viewing of native Lands and Fisheries Land Owning Unit Boundaries.⁵⁸

(d) Custom - In addition to the standard versions of Vanua-View the Department of Lands and Surveys is able to create customized versions to suit most business applications. Clients in forestry, utilities and Government and property sectors receive customized versions incorporating their assets and property with Fiji's land and information data sets.

It is noted that the establishment and functioning of FLIS and Vanua-View have shown that Fiji has the ability to create suitable databases and electronic systems for land usages in Fiji.

While the i-Taukei land accounts for 83% of the total land available in Fiji, it is the freehold land that is scarce, more valuable and much more in demand. The dealings of freehold land are more frequent given the fact that the owners are at liberty to sell the property as they choose. However, where more than one (1) acre freehold land is sold or leased to a non-resident of Fiji then the approval of the Minister of Lands is required.⁵⁹

The multitude classes of land holdings, and the volume of freehold transactions conducted including the complications brought about by native title ownership now more than ever before necessitate the use of electronic processing systems to deal with searches, lodgement and disposal. The implications of these will be highlighted later.

G. Conveyancing Procedures

Any person that buys property, mainly for the first time has two concerns.⁶⁰ The first is that the vendor of the property is really entitled to sell the land or the property. The purchaser usually insists that the vendor prove that his title to land is good and that the

⁵⁸ Supra n.53

⁵⁹ Section 6 of Land Sales Act, cap 137.

⁶⁰ Personal Experience and also as a Conveyancing Solicitor for over 10 years in Fiji.

vendor can pass on to the purchaser the estate which the vendor is offering to sell. Secondly, the purchaser wants to know whether any third parties have rights to the land which might interfere with the purchaser's intended use of it. The common third party rights might include covenants restricting use, right of way and mortgages requiring the owner of the estate to make payments to a creditor. The concerns about these matters lead to the purchaser or his representative making extensive enquiries and searches before the purchase of the estate is finally concluded.

In Fiji, the conveyancing is conducted in two stages:

- (a) contract; and
- (b) conveyance (or transfer).

Before a contract is entered into between the parties. The vendor upon a request or own volition should provide certain information about the property to the purchaser or the representative or lawyer. The information sought and that is required to be provided include the following; local authority or town rates, whether price includes fittings and fixtures, such as carpets, the boundary and pegs of the property, if there is a house on the property whether it has engineers and cyclone certification.

Once the purchaser is satisfied with the answers to the preliminary enquiries and has received satisfactory information and has made necessary arrangements to finance the transaction and has a surveyor's report of the property (if he/she wishes), the point will have been reached at which the parties are ready to conclude a legally binding agreement. A contract for the sale of a property is just like any other contract. It must comply with the basic requirements for a contract not under seal.⁶¹

After the contract is concluded the Purchaser and the Vendor execute a Transfer and Land Sales Declaration together with a statutory declaration which is then lodged for stamping with the Commissioner for Stamp Duties. At this office the Fiji Islands Revenue and Customs Officers vet the documents and check if land sales tax is to be

levied on the dealing. Once the document is cleared and released from the Stamp Duties Office the documents are ready for settlement which means that the Vendor will produce the Title for exchange of the consideration sum, usually by way of a bank cheque. Following settlement the Transfer and any charges or mortgage are lodged with the Title deed for registration at the Titles Office.

⁶¹ Section 4 Property Law Act.

CHAPTER TWO – THE LAND TRANSFER ACT

A. The Land Transfer Act

The principal legislation dealing with conveyancing in Fiji is the Land Transfer Act.⁶² The LTA regulates the following freehold and leasehold land subject to the provisions of the Act:

“(a) all land which has already in any manner become subject to the provisions of the Land (Transfer and Registration) Ordinance;

(b) all leases hereafter alienated or contracted to be alienated from the Crown⁶³ in fee;

(c) all leases of crown land granted pursuant to the provisions of the Crown Lands Act, all leases of native land granted pursuant to the provisions of the i-Taukei Land Trust Act and all mining leases, special mining leases, special site rights and road access licences granted pursuant to the provisions of the Mining Act;

(d) all land in respect of which any order is hereafter made under the provisions of any Act now or hereafter in force which has the effect of vesting that land in any person in freehold tenure.”⁶⁴

The LTA, which is modelled on the South Australian Law, was passed in 1971 to introduce the Torrens System of land registration and to set up the office of the Registrar of Titles to administer the provisions of the LTA in Fiji.

⁶² Hereinafter referred to as LTA.

⁶³ Now referred to as State.

⁶⁴ Section 5, Land Transfer Act, Cap 133.

Section 2 of the LTA defines land as including “land, messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description, together with all buildings and other fixtures, paths, passages, ways, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals and quarries, and all trees and timber thereon or there-under lying or being unless any such are specially excepted.”

The establishment or introduction of online title searches and processes would require some amendment to this law or its complete replacement.

In 2011, the Cabinet approved the Land Transfer (Amendment) Decree 2011.⁶⁵ This Decree is to commence on the date of its publication in the Gazette. In presenting the Decree before cabinet the Attorney– General⁶⁶ said that Part 23 of the Land Transfer Act empowers registered proprietors of any land in Fiji to sub-divide such lands and to transfer or lease smaller sub-divided lots for residential, industrial or other purposes. He also stated that using these provisions of the Act, “a large number of lands in Fiji have been sub-divided and sold as smaller lots, with sub-divisions carried out on a large scale by the Director of Lands (with respect to State lands), by the iTaukei Land Trust Board (for iTaukei lands), and by the Housing Authority of Fiji (with respect to housing sub-leases).”⁶⁷

The Attorney General further stated that “any registered proprietor proposing to sub-divide the land is required to lodge a plan or a map of the sub-division with the Registrar of Titles following necessary approval from the Department of Town and Country Planning. “These deposited plans contain actual details of the sub-division, including the creation of roads, road reserves, restrictive covenants, easements and other encumbrances.”⁶⁸ and that “following approval and lodgement, the deposited plans are then used to create separate instruments of title for the smaller sub-divided lots, and any

⁶⁵ Decree available on this site - http://www.paclii.org/fj/promu/promu_dec/ltd2011234.pdf

⁶⁶ Published in http://www.fiji.gov.fj/index.php?option=com_content&view=article&id=5072:251011-cabinet-approves-land-transfer-amendment-decree-2011&catid=49:cabinet-releases&Itemid=166 (last accessed 26th March 2012)

⁶⁷ Supra n. 65

⁶⁸ Supra n.65

encumbrance with respect to any sub-divided lot in the deposited plan is required to be recorded on the instrument of title for that sub-divided lot.”⁶⁹

The Attorney General also said that “in a number of cases, the instruments of title of sub-divided lots have been created fraudulently or erroneously, as the legal encumbrances outlined in the deposited plans have not been entered into the instrument of title. “This has resulted in many owners of sub-divided lots in a number of subdivisions not having any proper access to the main Government or municipal roads. Conversely, these errors have also meant that some lot owners have abused their position at the expense of the legally vested interests of other lot owners.”⁷⁰ He also added that “Unfortunately, the Registrar does not have the requisite powers to rectify these errors in the instruments of title, without the consent of all parties, which, in almost all cases, has been impossible to obtain.” The Attorney General said that in view of this, there is an urgent need to amend the Act to empower the Registrar to be able to correct such errors, so that the proper intention of the sub-division is reflected in the respective instruments of title, and that any issues with respect to rights of way are amicably resolved by the Registrar.”⁷¹

The Land Transfer (Amendment) Decree 2011⁷² amends section 159 of the Act by providing the Registrar with the power to create easements and to enter the same on any instrument of title of a sub-divisional lot, only if the Registrar is satisfied that the deposited plan of the sub-division had provided for such an easement to be created.⁷³ The Registrar is required to promptly notify the registered proprietors upon the creation of the easement, but is not required to obtain the consent of any proprietor of any sub-divisional lot, before exercising the powers to create the easement.⁷⁴ Consequentially, the amendment provides that the decision of the Registrar shall not be challenged in a

⁶⁹ Supra n.65

⁷⁰ Supra n.65

⁷¹ Supra n.65

⁷² Supra n.65

⁷³ Inserted as subsection (6) to Section 159 of the Land Transfer Act.

⁷⁴ Inserted as subsection (9) to Section 159 of the Land Transfer Act.

court of law. However, any person who is aggrieved by the decision of the Registrar may appeal to the Minister, whose decision on appeal shall be final.⁷⁵

The Registrar will not be liable to compensate any proprietor or any person affected by the creation of easement on any sub-divisional lot.⁷⁶

B. The Torrens System

“Torrens Title” is named after its inventor, Sir Robert Richard Torrens who was instrumental in the implementation of this unique and efficient system of dealing with land in 1858. Sir Robert Torrens drew on his background and experience in merchant shipping law to devise a revolutionary system of land ownership, based on the methods of registering ownership of, and dealings with, ships under long-established merchant shipping law.⁷⁷

Sir Robert Torrens was a business man who had been a Collector of Customs in charge of shipping. In this position he became familiar with a law under which ships were registered, under the practice of which the registry showed the name or names of the owners of the vessel and all liens and encumbrances against it. It was required that all liens or claims be noted on the registry, so that any inspection would show briefly and simply the condition of the title. Later Sir Robert Torrens became Registrar-General of South Australia. His experience with shipping led him to believe that the principle of registration of titles could be applied to land as well as ships. In 1857 he introduced a bill providing for the registration of land titles. This bill became a law in South Australia January 27, 1858, and went into effect on July 1, 1858. The idea spread rapidly. British Honduras in Central America passed a Land Registering Act the same year, 1858. Queensland, Tasmania and Victoria followed in 1861. New South Wales in 1862, New

⁷⁵ Inserted as subsection (10) to Section 159 of the Land Transfer Act.

⁷⁶ See Generally - <http://chestofbooks.com/real-estate/Real-Estate-Principles-Practices/Chapter-XVII-The-Torrens-System-Of-Land-Title-Registration.html> (last accessed – 16th March 2012)

⁷⁷ <http://www.aussielegal.com.au/informationoutline~topicid~43~subtopicid~24935~subtopicdetailsid~795.htm> (last accessed June 20th 2011).

Zealand in 1870, West Australia in 1874, Fiji in 1876. Other British colonies also adopted the system.⁷⁸

Sir Torrens, innovation resulted from a desire to do away with the complexity of the old English land law which was a system of conveyancing by deeds based on medieval concepts and made conveyancing, or the transfer of properties cumbersome, time consuming and expensive.⁷⁹

The Torrens system of land registration that is used in Fiji is also widely used in many other countries. In fact, it is one of Australia's most famous legal service exports. The system is one where the title or ownership right, to the property is actually created by the very act of registration, or recording in a central (usually governmental) register or record. In Fiji, the system is largely governed by the Land Transfer Act, 1971⁸⁰ and the Property Law Act, 1971.⁸¹

The main object of the system is to make the register conclusive without a transferee or purchaser having to look behind the register as was the case in the "old title" system inherited from age-old English legal practice and procedure. Once a name is registered or recorded on the title register under Torrens title that person becomes the owner of the property to the exclusion of all others, by the very fact of registration. Hence that person therefore obtains "title by registration", which is the pivotal concept of Torrens Title.⁸²

Under the Torrens system, no document such as a transfer or a mortgage is effective to pass the title or give rise to an interest in a property unless and until it is recorded at the

⁷⁸See Generally - <http://chestofbooks.com/real-estate/Real-Estate-Principles-Practices/Chapter-XVII-The-Torrens-System-Of-Land-Title-Registration.html> (last accessed – 16th March 2012)

⁷⁹ Supra n. 19

⁸⁰ Chapter 131 Laws of Fiji.

⁸¹ Chapter 130 Laws of Fiji.

⁸² See, supra n.19

centralised registry. The Land Titles Office prescribes the form and content of documents, which must be used to effect title charges.⁸³

It is also important to note that stamp duty⁸⁴ will generally need to be paid on most documents that are to be registered.

Normally, the person who is ‘recorded’, as the owner of a parcel of land cannot have his title challenged or overturned. This concept is known as “indefeasibility” of title. There are, however, exceptions to this general rule⁸⁵. The main ones being:

- if a dealing is registered fraudulently⁸⁶ – this is a very complex area of law;⁸⁷
- if any existing easement⁸⁸ has been wrongly left off the title or mis-described by the Land Titles Registry; and
- wrong boundary descriptions;⁸⁹

As indefeasibility of title is state-guaranteed under the Torrens system a person who suffers loss as a consequence of fraud or the omission of some legal interest relating to the title may in some cases have a right to bring a claim against the Registrar of Titles.⁹⁰

The four main features of the Torrens system⁹¹ are:

(a) A basis of land and not people – is the main feature of the system where the unit of land is the basis of record. The system is based upon the permanent and immovable nature of the unit of lands itself; land units are substituted for persons

⁸³ Section 177 (c) Land Transfer Act, Cap 131.

⁸⁴ Governed by the Stamp Duties Act, Cap 205.

⁸⁵ *Frazer v. Walker* 1967, 1 AC 569.

⁸⁶ Section 40, Land Transfer Act, Cap 131

⁸⁷ Section 131, Land Transfer Act, Cap 131

⁸⁸ *Ram Nandan v. Shiu Datt* [1984] FJCA 1; Abu0029.82 (21st April, 1984).

⁸⁹ Section 131 Land Transfer Act, Cap 131.

⁹⁰ As provided under Section 140, Land Transfer Act, Cap 131 and pronounced in *Registrar of Titles v Prasad* [2002] FJCA 42; ABU0031U.2001S (15 November 2002).

⁹¹ S Birrell, J Barry, D Hall, & J Parker, 'Is the Torrens System suitable for the 21st Century?' and L Griggs, 'Torrens Title in a Digital World' (2001) 8(3) Murdoch University E Law Journal, [6].

and the persons are registered against record as proprietors of interests in that unit of land.⁹²

(b) The register – the register consists of individual grants, certificates or folios contained within it at any given time. Together with these are documents that may be deemed to be embodied in the Register upon registration.⁹³

(c) Security of registered proprietor – is the keystone of the system, that if one becomes a registered proprietor of an interest in good faith, then that interest will be subject only to those notified on the Register as having priority over those interests and will be unassailable so long as one remains registered as proprietor.⁹⁴

(d) Guarantee by the state of compensation for loss – where a person is deprived of any estate or interest in land by the operation of the system or suffers loss through any omission, mistake or misfeasance of the Registrar or an act of his officer, the person who sustains the deprivation or loss will be entitled to compensation for his loss.⁹⁵

Any suggestion for electronic conveyancing could have an impact on the continued relevance of some of the above-mentioned features of the Torrens system. In particular, the changes to lodging and registration processes may have an impact on the security of Title and therefore the principles of certainty, integrity and reliability. One obvious factor that has contributed to the reluctance in the move towards electronic conveyancing in some jurisdictions is the desire to maintain a paper certificate as evidence of ownership and mechanism of minimising fraud.⁹⁶

⁹² Whalan, J, *The Torrens System in Australia*, Law Book Co Ltd, Sydney, 1982.

⁹³ *Supra* n.91

⁹⁴ *Supra* n.91

⁹⁵ *Supra* n. 91

⁹⁶ Christensen, S, 'Electronic Land Dealings in Canada, New Zealand and the United Kingdom: Lessons for Australia' (2004) 11 (4) *Murdoch University Electronic Journal of Law*, - also available at <http://www.murdoch.edu.au/elaw/issues/v11n4/christensen114nf.html>. (Last accessed 3rd March 2012)

However, it is enlightening to note that “it is possible to maintain a Torrens based electronic registration system provided safeguards aimed at minimising the opportunity for electronic based fraud to occur are implemented”⁹⁷ and that the electronic system can retain the “hallmarks of the Torrens system as originally conceptualised.”⁹⁸

C. Title Registration

The procedures for registration in Fiji are very formal. Instruments presented for registration or for filing with the Registrar of Titles office are required to be clearly and legibly written, printed or typewritten.⁹⁹ Regulation 3 of the Land Transfer Regulations provides that, “all documents shall be lodged manually at the public counter of the Titles Office. No documents shall be received through the post.”

The Torrens system of registration that is used in Fiji is a system of title registration where the law guarantees that the person shown on the title displayed in a public register is the registered proprietor. The folio of the register is conclusive evidence that the person named in the folio, as the proprietor of an interest in the land is the legal owner of that interest. Once the registration process is completed no search behind the register is needed to establish a chain of title to the property, for the register itself is conclusive proof of title.¹⁰⁰

Section 44 (1) of the LTA provides that the “proprietor of any land subject to the provisions of [the LTA], or of any estate or interest therein, may transfer the same by executing a transfer in the prescribed form, which transfer shall, for description of the land intended to be dealt with, refer to the instrument to the land, with such further description as may be necessary, and shall contain a precise statement of the estate or interest intended to be transferred.”

⁹⁷ Supra n. 95

⁹⁸ Supra n. 95

⁹⁹ Regulation 2 (2) Land Transfer Regulations, 1971.

The Transfers shall be registered in the prescribed manner and transferees shall have priority according to the date and time of registration.¹⁰¹ Upon the registration of a transfer, the estate and interest of the transferor as set forth in the instrument of transfer, with all rights, powers and privileges thereof belonging or appertaining, shall pass to the transferee, and the transferee shall thereupon become the proprietor thereof and shall be subject to and liable for all requirements and liabilities to which he would have been subject and liable if he had been the former proprietor of such estate or interest.¹⁰²

¹⁰⁰ Section 38, Land Transfer Act, Cap 131. Also refer generally to: *Caldwell v Mongston* [1908] FJSC 1; [1908] 2 FLR 1 (21 November 1908).

¹⁰¹ Section 44 (2) LTA.

¹⁰² Section 44 (3) LTA.

CHAPTER THREE – THE LAND TITLES REGISTRY

A. The Registry

The Minister for Justice who is also the Attorney General is the Minister responsible for the Land Titles Registry in Fiji. The Permanent Secretary of Justice is operationally responsible for four Government Registries; the Administrator Generals Office, Registrar of Titles Office, the Stamp Duties and the Registrar General's Offices.

In respect of the physical office layout in Fiji, the Land Titles Registry has separate service counters, one for lodgements and another for searches and other general enquires. The Assistant Registrar of Titles, who mainly deals with Deeds, the Computer Operators, Clerks and the Secretary share an open office space. The Registrar of Titles has a separate office. The Administration Clerks dealing with requests for new Certificates of Titles and finance are located out of user's view.

The Registry lacks space as most the documents are piled on tables and on the floor. The 1997-2002 Annual Report of the Ministry of Justice,¹⁰³ acknowledges that the Registry lacks "space for records, under the Land Transfer Act which requires that all records should be kept in such fireproof safes and storage rooms."

The Registrar of Titles, who is the Principal Administrative Officer, is in charge of the Titles office is required to ensure full compliance with the registration procedures with the Land Transfer Act and the Property Law Act.

The Registrar of Titles Office has a total of 17 staff of which 15 are established and 2 un-established.¹⁰⁴ The other senior positions within the Office of the Titles Registry are the positions of Assistant Registrar of Titles and Deputy Registrar, who are Senior Administrative and Administrative Officers, respectively.

¹⁰³ Supra n. 17

¹⁰⁴ Supra n. 17

The Land Titles Registry, apart from registration of land titles under the Torrens system also registers deeds under the general law system pursuant to the Registration Act of 1879. The instruments registered as deeds include those that are governed by s the Bill of Sale Act,¹⁰⁵ the Crop Lien Act,¹⁰⁶ The Wills Act,¹⁰⁷ and the Agricultural Landlord and Tenant Act¹⁰⁸.

The Land Titles Registry which is a public office also makes available copies of documents filed in the Registry upon payment of prescribed fees. Statistics obtained from the Annual Report for the period 1997-2002 for the office shows that in 2001, 14,176 completed documents were lodged with the Registrar of Titles Office, while in 2002 the number was 23, 393.¹⁰⁹

B. The Registrar of Titles

The Registrar of Titles is charged with the administration of Land Transfer Act and the current Registrar is a legal practitioner admitted to the High Court of Fiji.

The primary role of the Registrar of Titles is to maintain a register of land titles for all land registerable under the provisions of the LTA¹¹⁰. In reality, the role of the Registrar of Titles is much wider in terms of statutory responsibilities under various other laws currently in force in Fiji. The Registrar is also referred to as the Registrar of Deeds under the Deeds Act and Registrar of Charitable Trusts under the Charitable Trusts Act, 1945. In this capacity the Registrar also deals with deeds and charitable trusts, which are additional responsibilities.

The special powers and duties of the Registrar of Titles include the following:

(i) Call for documents - the Registrar may require the proprietor of or any other person interested in any land or any estate therein in respect of which any

¹⁰⁵ Cap 225.

¹⁰⁶ Cap 226.

¹⁰⁷ Cap 59.

¹⁰⁸ Cap 270.

¹⁰⁹ Supra n. 17

¹¹⁰ Section 19, Land Transfer Act, Cap 131.

instrument is about to be registered under the LTA to produce any grant, certificate of title, mortgage, lease or other instrument in their possession.¹¹¹

(ii) Enter caveats, to correct certificates and to destroy documents - The Registrar has power to enter caveats on behalf of the Crown, or on behalf of any person who is under disability, to prohibit any transfer of, or other dealing with, any land, or any estate or interest therein, belonging or supposed to belong to the Crown or to any such person, and also to prohibit any dealing with any land or any estate in which it appears to the Registrar that an error has been made by mis-description of such land or for the prevention of any fraud or improper dealings.¹¹²

The power of the Registrar to correct errors¹¹³ is limited. It mainly exists in two situations. The first is when the error is a minor one of a clerical nature, which does not affect the interests in land. Such errors can be rectified at any time. The second one is when the error does affect interest in land. The Registrar may rectify such error only when the person benefiting from that error is still the registered proprietor. The Registrar may amend the register to prevent that person obtaining an unfair advantage.

The limitation of the Power on the Registrar to rectify errors was established in **Attorney General v. Vijay Kumar and Everett Riley (1985) 31 FLR 23** where the Court stated that, “... *no express power is given to the Registrar to cancel or correct the original instrument retained in the register. In the case of an “error” in a certificate such power is expressly given by Section 131 (2) but in Frazer v. Walker that has been held to apply as a “slip” section and not of substantive importance. It appears to us that a very real doubt emerges as to whether the Registrar can of his own volition alter the Register in cases where he may believe a fraud has occurred – albeit he has that power under Section 166 in the case of the issued duplicate.*”

¹¹¹ Section 129, Land Transfer Act, Cap 131.

¹¹² Section 131, Land Transfer Act, Cap 131.

The LTA protects the Registrar or any person acting under the Registrar's authority from being individually liable for any action, suit or proceedings for in respect of any act or matter bona fide done or omitted to be done in the exercise or supposed exercise of the powers conferred on the Registrar under the LTA.¹¹⁴

Under the current system the Registrar of Titles manually records and stores data that is submitted. This process is very time consuming and cumbersome. The Land Transfer Act which is the primary law dealing with registration of title to land requires that all documents be manually lodged.

The challenge for us in Fiji is as with many other countries that use the Torrens system is that *“to think both within and outside the present system for appropriate ways of achieving its principles in a rapidly changing technological and business environment.”*¹¹⁵

¹¹³ Section 131 (2), Land Transfer Act, Cap 131.

¹¹⁴ Section 139 Land Transfer Act, Cap 131.

¹¹⁵ See Generally: Supra n.19 and n.90

CHAPTER FOUR – THE EXISTING SYSTEM – USERS ANALYSIS

A. Users Views

As a part of this paper questionnaires were administered to ascertain the views of the current users of the Land Titles Registry on the services of the Land Titles Registry, the availability of documents, the standard of present system of manual searches and manual registration and the respondent's views on online/electronic searches and registration.

B. Research Methodology

The questionnaires were administered primarily on a random sample, relying on the input from a targeted group of users of the Land Titles Registry.

C. Survey Design

The questionnaires were administered to ascertain the views of the users of the Land Titles Registry. The main users of the Land Titles Registry are Legal Practitioners who through their Law Clerks use the Registry for searches and registration. According to the Fiji Law Society Secretariat, there are about 90 law firms.¹¹⁶ As the target respondents of the survey were the primary users of the Registry, the main respondents were law firms, who responded through their conveyancing clerks and other regular users.¹¹⁷

The 90 law firms and 12 financial institutions gave a number of 102, which gave an approximate number of regular users of the registry. It was expected that between 50-55% of the regular users of the Registry would be a representative sample for the survey. It therefore meant that between 55-60 respondents would be a fair representation of the survey. Any number less than 55 was considered too small for a meaningful survey.

The total number of questionnaires administered was 65, of which 59 actually responded. The remaining 6 (about 9% of the sample group) did not respond despite numerous personal attendance, which was by calling into the law firms and making

¹¹⁶ Personal Communication Council Members of the Fiji Law Society.

¹¹⁷ Banks, Real Estate Officers, Financial Institutions and some business people.

reminders over the phone and sending email requests. This number was excluded from the resultant analysis of the findings.

D. The Questionnaire

The structure of the questionnaires was developed to ascertain the views of the users of the Land Titles Registry.¹¹⁸

The questionnaire sought the views of the respondents on the following:

- The respondents (occupation, frequency of use of Registry, and the time period they had been using the Registry)
- Types of dealings they had with the Registry,
- How they rated the services of the Registry,
- Availability of documents on searches and what they thought of the present method of manual searches,
- Electronic /online conveyance searches and registration, and,
- Specific and general views on the operation of the Land. Titles Registry.

E. The Findings of the Questionnaire

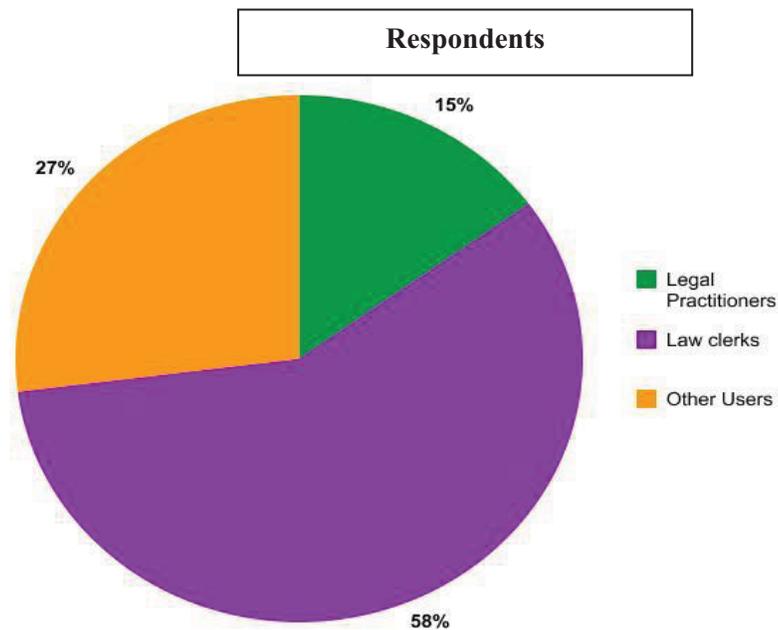
Analyses of the response received are as follows:

(i) Respondents, Frequency of Use of Registry and Duration of Use of Land Titles Registry

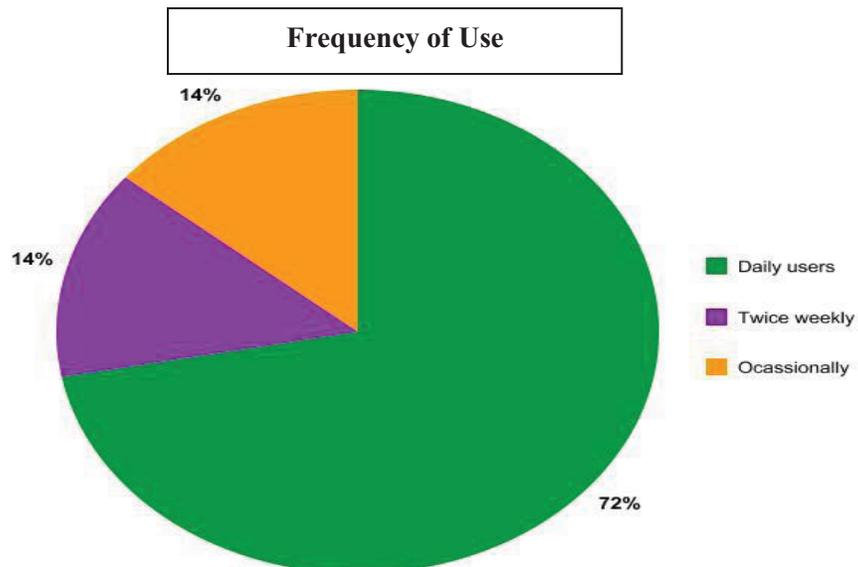
Of the 59 respondents, 9 (15%) respondents were Legal Practitioners, 34 (58%) conveyancing (Law) clerks and the remaining 16 (27%) included other regular users. The breakdown of the respondents was a representation of the primary users of the Land Titles Registry, with the major users being conveyancing (Law) clerks, followed by

¹¹⁸ The Questionnaire was developed in consultation with Dr Mohammed Ahmadu (the initial Supervisor of this Research Paper, Who was in 2006 the Acting Director, IJALS, USP, Suva, Fiji Islands, where this writer was employed for 8 years – 1998 to 2006)

other regular users and legal practitioners. The breakdown can be depicted on a pie chart as follows:

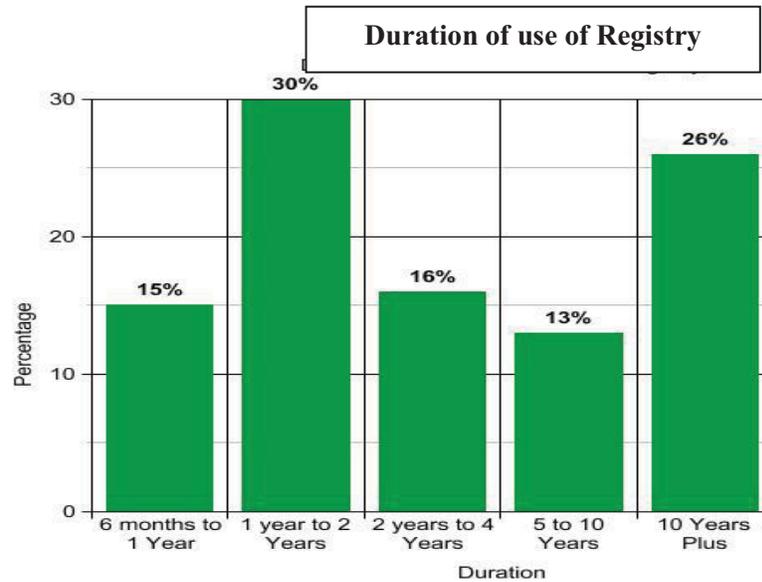


The survey data shows that 72% of the respondents were daily users of the Registry, while 14% used it once or twice a week and the remaining 14% used the Registry occasionally.



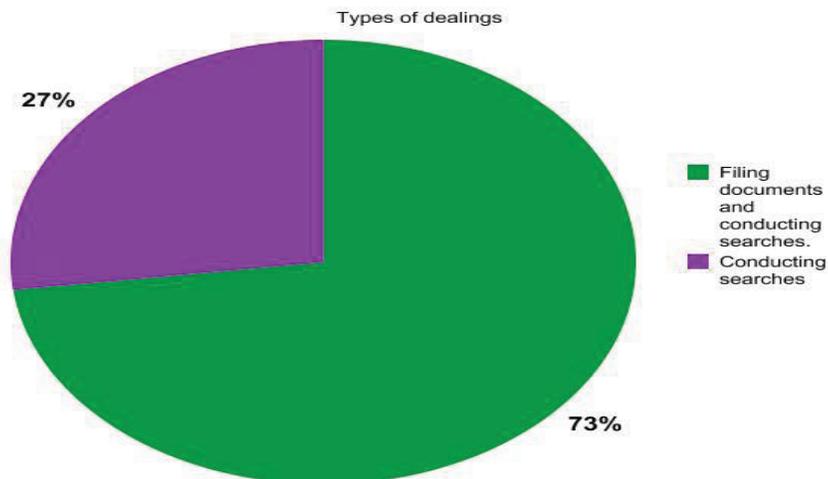
Those who had been using the Registry for a period between 1-2 years (30%) and those using it for over 10 years (26%), accounted for 56% of the users of the Registry. Those

who had been using the Registry between 6 months to 1 year (15%), 2 years to 4 years (16%) and 5 years to 10 years (13%) each accounted for the remaining 44% of the respondents.



(ii) The Types of dealings

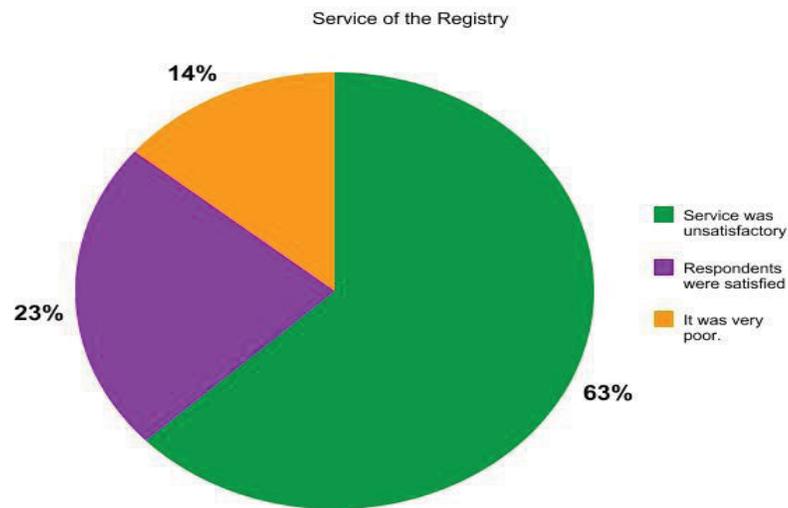
A majority of the users (73%) of the Registry used the Registry both for filing documents and for conducting searches, while the remaining 27% used it only for conducting searches.



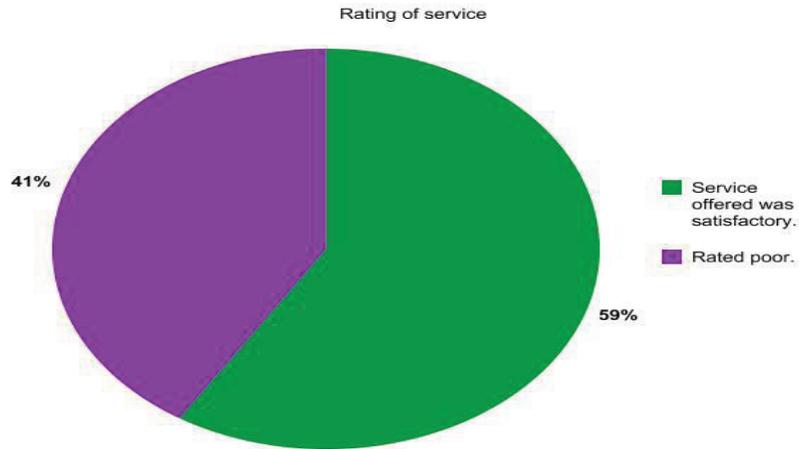
(iii) The Services offered by the Land Titles Registry

A benchmark for the efficiency of any service is user satisfaction. The respondents were asked to state how satisfied they were with the service of the Registry and how they rated the services offered by the Registry.

An overwhelming number (63%) of the respondents stated that the service was unsatisfactory. 23% of the respondents stated they were satisfied with the services of the Land Titles Registry and the remaining 14% felt it was very poor.

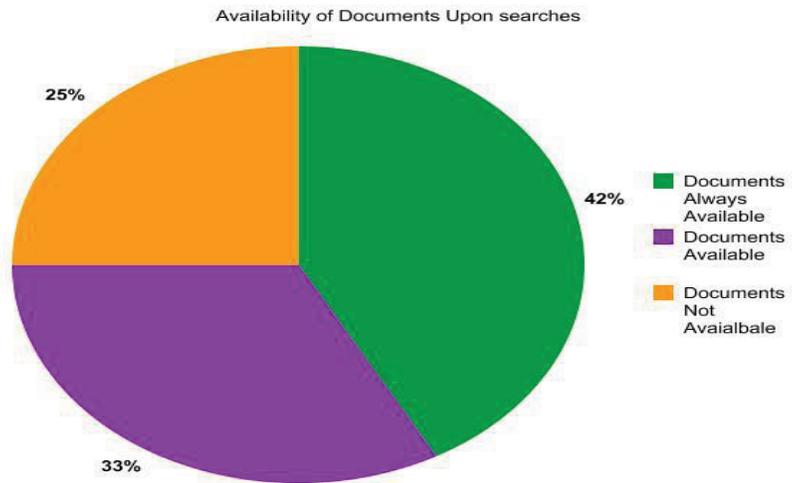


Upon further enquiry on how they rated the services offered by the Land Titles Registry, none of the respondents rated the service as being excellent or good. 59% of the respondents stated that the service offered by the Registry was satisfactory, while 41% rated it as poor.



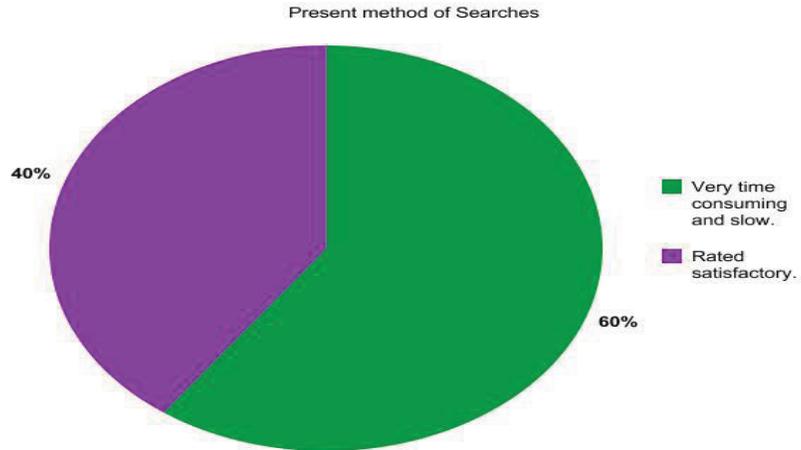
(iv) Availability of documents upon searches

Less than half the respondents (42%) stated that the documents were always available upon searches. Those respondents who stated that documents were available accounted for 33%, while 25% stated that documents might not be available for a while when searches were conducted. None of the respondents claimed that documents were not available for 3 months or more when they conducted searches at the Registry.



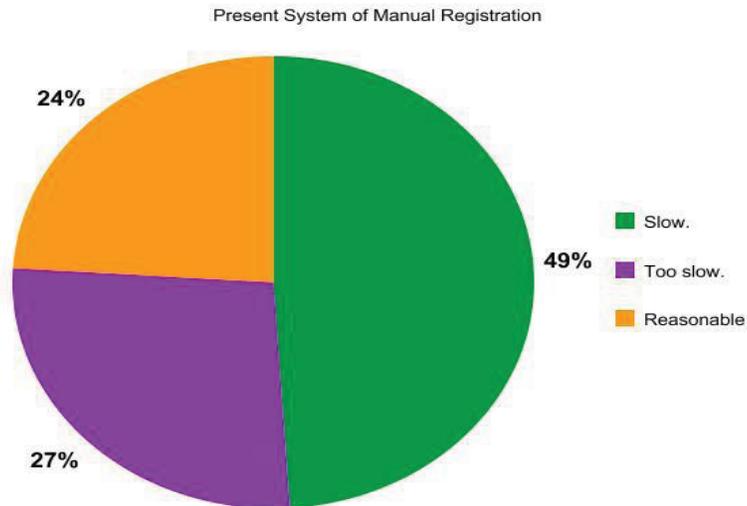
(v) The Present Method of Searches

Upon enquiry about the present system of manual searches, an overwhelming 60% of the respondents thought it was very time-consuming and slow. 40% of the respondents thought it was satisfactory. Not a single respondent stated that it was very efficient.



(vi) The Present System of Manual Registration

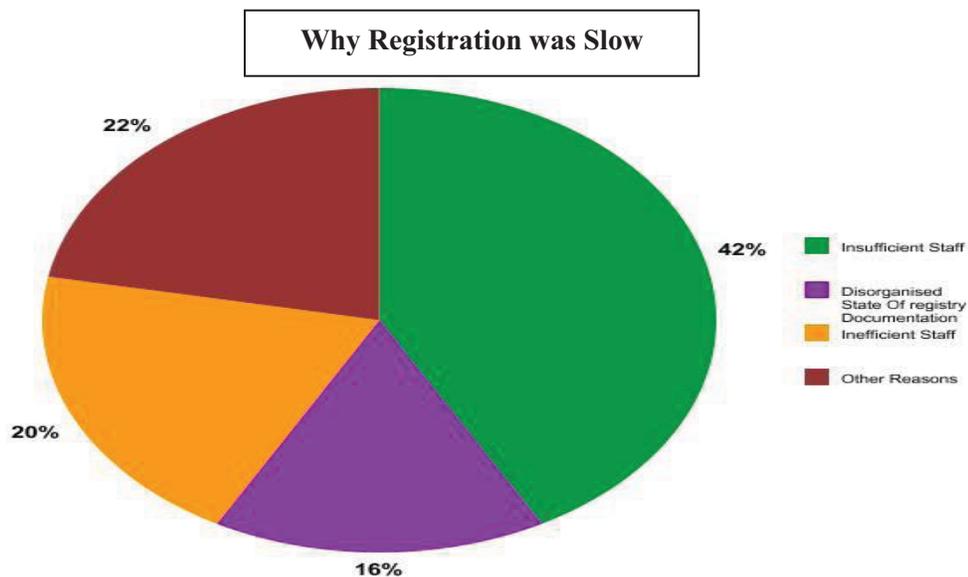
None of the respondents stated that the present system of manual registration was good. Almost half of the respondents (49%) felt it was slow, while 27% felt it was too slow. 24% of the respondents felt it was reasonable.



The respondents were also asked why they thought that Registration was slow or too slow. A number of reasons were given which included the following:

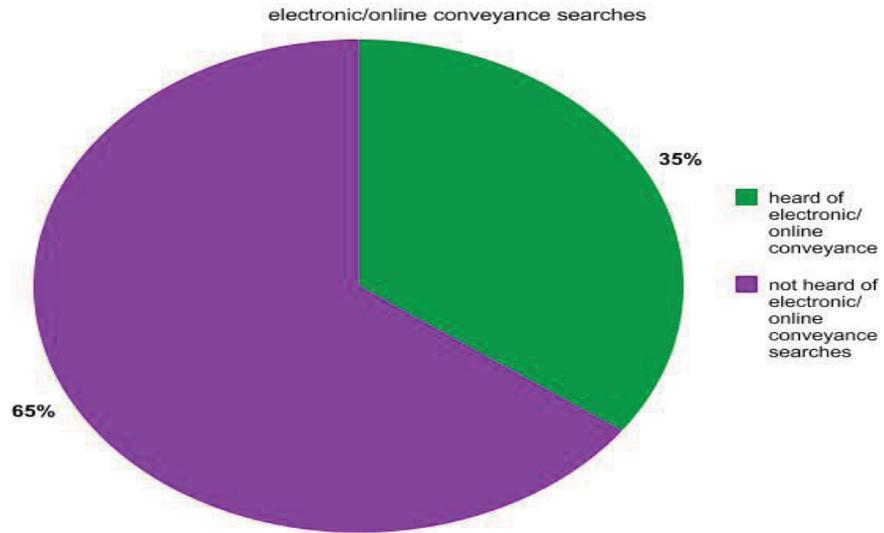
- very few staff served at the service counters;
- manual searches slowed down the processes;
- laid back and unprofessional attitude of the Registry staff;
- disorganised state of all documents ;
- more than one officer should be signing documents;
- land registration need be separated from other work of the Land Titles Registry: and
- Staffs were not efficient.

The respondents who mostly gave multiple responses stated that insufficient staff (42%) disorganised state of Registry documentation (16%) and inefficient staff (20%) was the major contributors to slow and delayed Registration process.

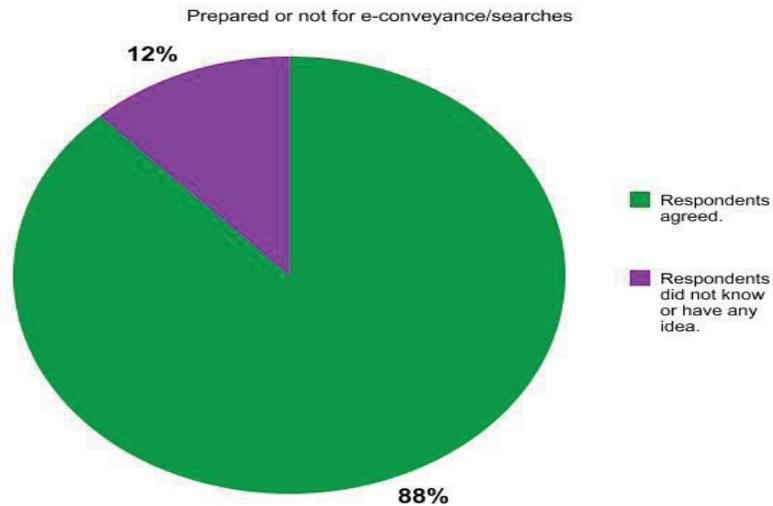


(vii) Electronic/Online Conveyance Searches

Only 35% of the respondents had heard of electronic/online conveyance searches. A majority of the respondents (65%) had not heard of electronic/online conveyance searches.



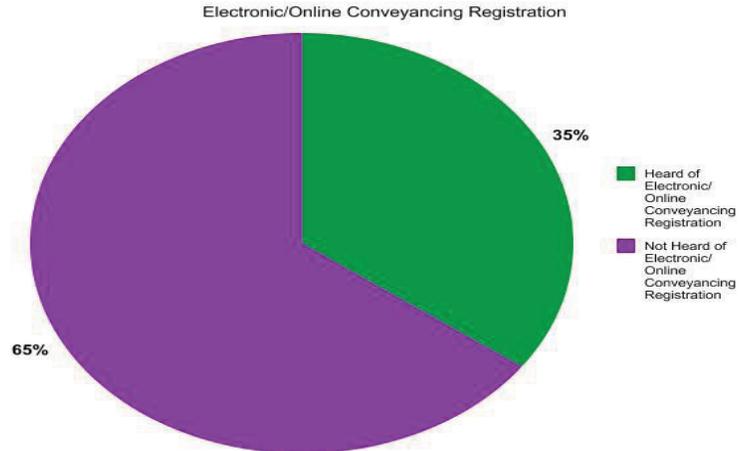
When the respondents were asked if they thought they were ready for electronic/online conveyance searches, if it was set up, 88% agreed that they were, while 12% did not know or have any idea. Those who agreed that they were ready for electronic/online conveyance searches stated that it would assist them efficiently retrieve documents online/electronically without having to wait hours in queues for documents.



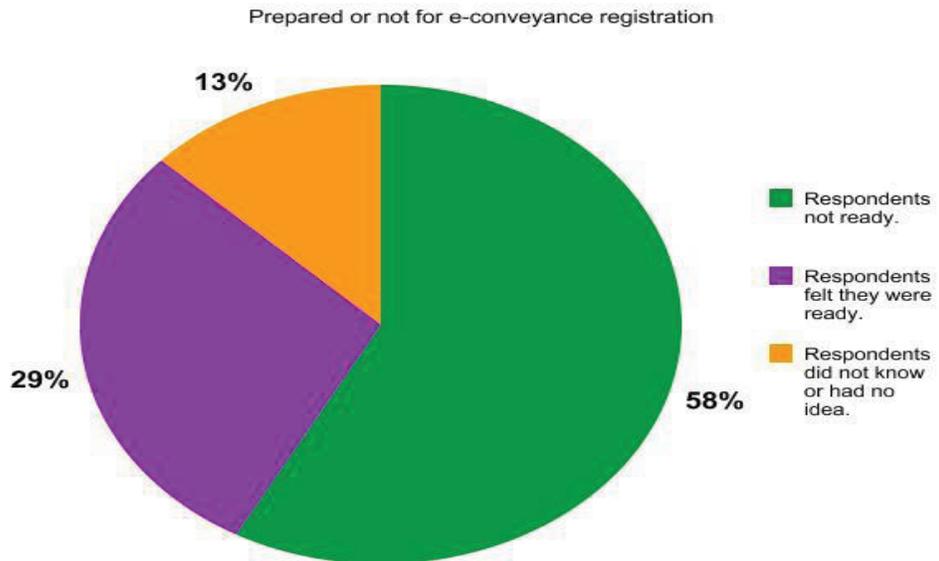
The support for a proposed electronic/online conveyance searches could largely be due do to the user's dissatisfaction over the length of time spent waiting in queues at the Registry counter for searches.

(viii) Electronic/Online Conveyance Registration

As with the response to electronic/online conveyance search, only 35% of the respondents had heard of electronic/online conveyance registration. A majority of the respondents (65%) had not heard of electronic/online conveyance registration.



A majority (58%) of the respondents did not think they were ready for electronic/online conveyance registration, if it was set up, while 29 felt they were ready and the remaining 13% did not know or have any idea.



(ix) Specific Comments about the Land Titles Registry

When the respondents were asked if they had any specific comments about the Land Titles Registry, multiple responses were received from the respondents, some of the comments are as follows:

- the service of the Registry is good compared to the ratio of staff and lodgements;
- the Registry staff should be multi-skilled and more training should be provided to the staff;
- Staff of the Registry need to follow procedures;
- Staff of the Registry need to value time and service of Registry's users should take priority; and
- The Registry needs more photocopying machines to cater for the increase in volume of searches.

(x) General Comments about the Land Titles Registry

When the respondents were asked if they had any general comments about the Land Titles Registry, multiple responses were received, some of which were as follows:

- The Registry needed more office space and staff;
- Better filing cabinet and filing rooms;
- Need spacious offices;
- Registry needed to improve customer services;
- Computer online searches should be available in office (in Registry) and from remote locations; and
- The Registrar of Titles should be changed every five years.

The conclusions that can be drawn from the views of the respondents are that they were generally unhappy with the current services and state of the Land Titles Registry. While

most (58%) of them were sceptical of online/electronic registration a majority (88%) of them supported online/ electronic searches.

F. What the findings collectively illustrate

The results of the survey reveal that the users of the Registry want prompt Land Title search service. The main complaints by the users of the Land Titles Registry are that searches are very time consuming with the users at times spending a number of hours before they are able to acquire photocopies of searches. Another major complaint is that at times when the photocopier breaks down, no searches are available for weeks. It is vital that this service be improved, as most of the conveyancing cannot proceed unless Title searches are concluded.

One practical way of overcoming the difficulties associated with the manual system is the introduction of an electronic alternative. This proposed system will not be without its own problems especially in the context of Fiji. However, given the results of the survey it is a process worth trying. It is against this background that the challenges and prospects of electronic conveyancing will be discussed.

CHAPTER FIVE – CHALLENGES OF ELECTRONIC CONVEYANCING

A. The Developments

The developments and introduction of electronic conveyancing in various jurisdictions¹¹⁹ have shown that electronic automation has made possible new ways of contracting, registering and settling transactions. In essence, computers and technology has enabled the mechanisation of many tasks performed by conveyancers when preparing and authenticating contracts and communicating with each other and with the registries. Many registries' tasks have also been mechanised, including not only communication and archiving but also some routine compliance checks.

Benito Arrunada aptly in his paper on electronic titling: potential and risks¹²⁰ states that “the least problematic changes are the use of information technologies for archiving and accessing information, by keeping the register in digital form and providing online access to the elements of the register that are open to conveyancers, parties or the general public. A second step is to make it possible for users and/or professionals to lodge documents at the registry electronically. In principle, these documents could be the digital version of those in the paper system. However, to fully exploit the potential of the new technologies, electronic lodgement is often accompanied by substantial standardization of documents and transactions. To this effect, the structure of the transactions has to be carefully examined and forms preapproved by the registry. For these standardized transactions, parties themselves or their legal representatives complete the forms in an electronic workspace by entering the specific data on the transaction they want to contract and register (e.g., the identity of the buyer or mortgagee, the name and incorporators of a new company), often “pre-populating” them with data from registry’s databases that identify each property and its owner or identify each company in subsequent filings. If necessary, documents in the workspace can be

¹¹⁹ Canada, New Zealand and Singapore – see generally n.19 Supra.

¹²⁰ New Zealand Law Journal, 2010, April, 115-120.

electronically shared by parties and their representatives for review, amendment and approval, which is useful in conveyancing. After all parties have granted their consent, the document is submitted electronically for registration. The most ambitious systems also provide for transferring funds between parties.”

It is noted that in the current e-driven world, electronic commerce offers new ways of undertaking and conducting commercial transactions. The “changes in the way commerce is undertaken nationally and internationally has placed greater reliance on technology and increased the use of the Internet as an interactive medium”¹²¹ and “improvements in computer technology and the advent of the Internet have led to a push for computerisation of the land registration process. This can be seen in several jurisdictions which include: New Zealand, Canada, Singapore and the United Kingdom.”¹²²

The aim of looking at these jurisdictions though comparatively more advanced than Fiji is to review the current developments in this area by pointing out the relevance for even a small jurisdiction as Fiji.

There is no doubt that one of the most challenging features of legal practice and more so for conveyancing practices now is the use of electronic system to submit data to register dealings and to record changes to land title. Cocks and Barry¹²³ state that “*when one considers the mammoth advances made in relation to information technology over those last 30 years, it is incredible that a public function which records and stores millions of transactions a year has been able to avoid any substantial uptake of this new technology.*” While Cock and Barry’s view is on the need for use of technology in Australia their arguments are very pertinent to Fiji as over the years the volume of work

¹²¹ Supra n. 119

¹²² Supra n. 119

¹²³ “Electronic Conveyancing – Challenges for the Torrens System”, March 2001, Volume 8, 2001 APLJ Lexis 4.

for the Land Titles Registry has doubled¹²⁴ as a result of unprecedented growth in property and related mortgage activity generating the demand for improvements to the current land registration services.

B. What is Electronic Conveyancing?

At its simplest, electronic conveyancing enables conveyancing transactions to be completed electronically.¹²⁵ The concept, however, embraces more than the transfer of property or land at the click of a mouse. It is a concept that guides the progress of land transactions, from the moment when instructions are received, through the process by which due diligence and searches are undertaken to contract, payment of stamp duty, transfer of title and finally, registration at the Land Registry.¹²⁶

C. Electronic Conveyancing in Other Jurisdictions

Many Torrens jurisdictions have developed and implemented a range of electronic systems for the lodgement and registration process. One of the most advanced is the one developed in Ontario, Canada.¹²⁷ In this paper we will also look at the electronic searches and conveyancing systems developed in New Zealand, South Australia, Victoria, UK and Malaysia.

(i) Ontario, Canada¹²⁸

In September 2002 “the first ever self-serve, electronic land registration system in the world” was launched in Toronto, Canada, which offers faster, easier access to Ontario’s land registration system. The electronic system provides for land registration documents

¹²⁴ Personal Communication with Mr CD Singh, Legal Practitioner of over 35 years standing – 15th July 2005. (Mr C D Singh was a respected conveyancing lawyer, who was very knowledgeable in land dealings and who time and again guided me. Sadly he passed away few years back.)

¹²⁵ http://www.egi.co.uk/properte_info.asp?propertepage=faq (last accessed – 20th December 2010).

¹²⁶ Supra n. 125

¹²⁷ Supra n. 125

¹²⁸ Information for this part was obtained from numerous sources which include the following web sites: Law Society of Upper Canada, Practice Guidelines for Electronic Registration of Title Documents - as approved by Convocation June 28, 2002, Practice Guideline 6 'Use of Compliance with Law Statements', http://www.lsuc.on.ca/news/pdf/july08_ereguidelines.pdf, Law Society of Upper Canada, 'Electronic registration: Making it work for you - procedures and practice standards for electronic real estate conveyance', August 2000, 9, http://www.lsuc.on.ca/pdf/e-reg_p_and_pstds_rep1.pdf (last accessed 20th August 2005).

to be created, signed, submitted and receipted electronically without ever having to be printed on paper.¹²⁹

The system includes an automated land registration database and a web-based gateway for registration hosted by a third party provider, Teranet. The web-based system allows its users (lawyers, banks, conveyancers and members of the public) to register dealings electronically provided they have an account with Teranet. The user must identify the type of document they want to create and register (for example, transfer, mortgage, discharge or document general). After preparing the document, the lawyer makes it available electronically to the lawyer representing the other party. Once the authority of the client is obtained, the lawyer for each party certifies the information as complete by attaching their electronic signature.¹³⁰

All fees and stamp duty is paid electronically from nominated accounts. Once the documents are ready to be released for registration the lawyer must sign the document for release. The transfer of funds at settlement occurs electronically and then documents are electronically submitted for receipt by the system. The registrant is provided with the registration number and a copy of the document.¹³¹

The Ministry of Government Services (MGS) began building the Province of Ontario Land Registration Information System (POLARIS)¹³², in the late 1980s, with the objective of automating Ontario's land registration system. POLARIS consists of two databases: the title database with its abstracts of title information; and a database of maps that depicts approximately 5.7 million land parcels in the province. A separate database of digitized copies of instruments attached to land parcels has also been created

¹²⁹ “Electronic Land Registration Improves Service in Toronto”, 23rd September 2002- Source: Ministry of Government Services – News Release - <http://www.cbs.gov.on.ca/mcbs/English/5E9QVA.htm> Last accessed 20th August 2005).

¹³⁰ Supra n. 128

¹³¹ Supra n. 128

¹³² POLARIS is the registered trademark of the land registration system.

as part of the electronic land registration system. Automated records are currently available in 54 land registry offices in Ontario.¹³³

It is stated¹³⁴ that as the system is automating records, it is also converting parcels registered under the Registry System to the newer Land Titles system. Under the *Land Titles Act*, the province guarantees title to property, subject to certain exemptions, removing the requirement to search titles back 40 years at the time of a transaction. The automation of the records and conversion of the Registry system to land titles is being done by Teranet for the Ministry of Government Services in accordance with rules developed by the Ministry.¹³⁵

The electronic land registration system was launched in Middlesex County in 1999 and since then has now been implemented in the majority of counties and districts across the province.¹³⁶ Up to date information on the availability of electronic search and registration can be found at the following its website.¹³⁷ Electronic land registration documents rely on encrypted digital signatures identifying the party submitting the document for registration. Documents are created and modified “on-line” on behalf of the vendor and purchaser with a property's legal description and ownership information retrieved from Ontario's land titles database automatically inserted. Electronic land registration provides enhanced security, improves the accuracy and integrity of the database and has an electronic audit trail identifying transaction activity leading back to the user to further protect the system. Currently, registration volumes are approximately 2 million per year and over 99 percent of registrations are being received electronically.¹³⁸

¹³³ Supra n. 128

¹³⁴ Supra n. 128

¹³⁵ Supra n. 128

¹³⁶ Supra n. 128

¹³⁷ www.teraview.ca/automation/auto_coverage.html.

¹³⁸ Supra n. 128

(ii) New Zealand¹³⁹

In 1998, Land Information New Zealand (LINZ) initiated Landonline, which converted millions of title records, title instruments, survey plans, parcels and geodetic survey marks into electronic formats. These are accessed by those holding Landonline licences via the Internet from their own PCs.¹⁴⁰

Landonline provides land professionals with secure access to New Zealand's only authoritative titles register and digital cadastral maintained by LINZ. The functionally smart system enables registered users to conduct secure electronic title and survey transactions in real time, automating and speeding up traditional (and sometimes prolonged and complex) manual processes. Landonline is not designed for public access or use, though visitors to public counters may use its *e-search* functions. Its survey and title lodgement and registration functions can only be accessed by authenticated, registered users, ensuring the integrity of the titles register and digital cadastral is maintained at all times.¹⁴¹

Landonline was designed in close collaboration with all stakeholders including surveyors, lawyers, conveyancers and local authorities.¹⁴² This ensured their needs were incorporated into development and provided opportunities for users to review and improve their workflows and service to their clients.¹⁴³ In a process spanning over five years, LINZ converted over seven million physical records into digital records that are now held in Landonline.¹⁴⁴ These include titles, title instruments, plans, parcels and geodetic survey marks dating back over 150 years.¹⁴⁵

As the core national land information repository, Landonline has also enabled LINZ to streamline its own business functions, resulting in faster processing of both manual and

¹³⁹ Source of information is the Landonline web site (<http://www.landonline.govt.nz/content/general/news-introduction.asp>) and Land Information New Zealand (LINZ) web site – (<http://www.linz.govt.nz/rcs/linz/pub/web/root/home/index.jsp>).

¹⁴⁰ *Supra* n.138

¹⁴¹ *Supra* n.138

¹⁴² *Supra* n.138

¹⁴³ *Supra* n.138

¹⁴⁴ *Supra* n.138

¹⁴⁵ <http://www.landonline.govt.nz/about-landonline/introduction> (last accessed 30th March 2012)

electronic survey and title lodgements and registration.¹⁴⁶ Today, all lodgements are processed straight into Landonline.¹⁴⁷ Only documents or records which are too fragile or large to convert to digital records, or which are too infrequently accessed are unavailable in Landonline.¹⁴⁸

The move to 100% electronic lodgement of all land title and survey plans via Landonline and the withdrawal of paper-based lodgements has been phased in gradually since the Government announcement on 8 February 2006.¹⁴⁹ The final milestone was reached on 23 February 2009 when e-lodgement of title transactions became mandatory, with the exception of those where original signatures are required, e.g. court orders.¹⁵⁰

The benefits of Landonline are stated to be the following:

(a) Saves time and hassle - Online, real time access to Landonline's digital records eliminates time spent waiting for search results. Converted records are easy to read, reducing the time and hassle of deciphering old handwriting or faded, worn documents.¹⁵¹

(b) Improves the quality, consistency and accuracy of data - Landonline enables LINZ to provide better customer service and more consistently accurate documentation. The quality of information available to users has improved, with the distinction between historical and current documents clearly identified. Built in functions, such as pre-validation of survey lodgements, have resulted in more accurate records being lodged and held in Landonline.¹⁵²

(c) Better security - LINZ's technical and access security layers guard against threats to the integrity of the titles register and digital cadastre.

¹⁴⁶ Supra n. 144

¹⁴⁷ Supra n. 144

¹⁴⁸ Supra n. 144

¹⁴⁹ Supra n. 144

¹⁵⁰ Supra n. 144

¹⁵¹ Supra n. 144

Landonline's system design and technical security ensures LINZ securely backs up all survey and title records on a regular basis. This reduces risk to the titles register and digital cadastre.¹⁵³

(d) Easy to use - Landonline's screens and help functions are designed specifically to meet the needs of registered users. A built-in Help tool, quick reference cards and user guides for *e-search*, *e-dealing*, *e-survey* and *TA e-certification* are available to help users become familiar with using the system. A number of online training resources are also available.¹⁵⁴

(e) Enables easier access to records - As 98 percent of records are accessed from electronic land information held in Landonline, users are able to search and locate records outside their region or area and bulk search more easily.¹⁵⁵

(f) Real time updating of records - Survey and title lodgements are processed directly into Landonline. That means whenever users log on, they receive the most up-to-date information available.¹⁵⁶

(g) Simplifies lodgement - Duplicate instrument lodgements are no longer required. Titles are clean documents with live information only – blocks such as expired covenants, have been removed. Lodgement processing is now simpler and faster than before.¹⁵⁷

(h) Reduces rework, improves service - Landonline enables LINZ to provide faster, more efficient customer service. All users benefit from the

¹⁵² Supra n. 144

¹⁵³ Supra n. 144

¹⁵⁴ Supra n. 144

¹⁵⁵ Supra n. 144

¹⁵⁶ Supra n. 144

¹⁵⁷ Supra n. 144

system's automated checks which reduce the risk of delays caused by the need to resubmit. Users are presented with opportunities to review and improve their own workflows, enabling resources to be used in more profitable parts of their business.¹⁵⁸

Landonline provides access to services under three main areas which include: *e-search*, *e-survey* and *e-dealing*.¹⁵⁹ In addition to this, Landonline also offers Territorial Authority Online Certification - a service specific to local authorities which allows them to certify survey data online. Firms buy licences to use Landonline services.¹⁶⁰

Licences are currently available for the following Landonline services:¹⁶¹

(i) *e-search* - This is the most commonly used service, particularly for search agents, lawyers and conveyancers. It provides access to the titles register, survey data in image format and supporting documents. It does not include access to spatial data.

(ii) *e-search plus* - This service provides all of the functions of *e-search* and, in addition, enables users to conduct and view spatial searches of land information. This enhanced service is designed for use by surveyors, search agents, real estate agents and valuers.

(iii) *e-dealing* - This service allows lawyers and conveyancers to register title instruments and changes to titles electronically, including transfers of ownership, and registration and discharge of mortgages. The *e-dealing* licence also includes all the features of *e-search*.

(iv) *e-dealing plus* - This licence adds the spatial search capability of *e-search plus* to the *e-dealing* licence.

¹⁵⁸ Supra n. 144

¹⁵⁹ Supra n. 144

¹⁶⁰ Supra n. 144

¹⁶¹ Supra n. 144

(v) *e-survey* - This is the electronic submission service designed for use by surveyors. The service allows surveyors to submit cadastral surveys electronically.

(vi) *TA e-certification* - Local Authorities can certify cadastral surveys online. This system allows flexibility between electronic and manual lodgements. Councils may certify online regardless of whether surveyors have submitted manually or online using *e-survey*. The manual option is possible because LINZ captures plans submitted on paper into Landonline. *TA e-certification* includes all the features of *e-search plus*.

In 2002, the Land Transfer Act 1952 was amended by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, to enable information technology to be used for registering instruments, dealings, recording and storing particulars of instruments, dealings, and other matters relating to land and title to land registered and preparing and lodging electronic instruments.¹⁶²

(iii) Australia

In the mid 1980's land titles around Australia were progressively moved to electronic records. Although some titles remain in a paper format, the majority of records today are held in an electronic format.¹⁶³ Every day over 3000 transactions occur that involve changes to land titles across Australia.¹⁶⁴ It involves buying or selling a property, re-financing a mortgage or verifying an interest in your land, or if a change is to be made to the land title.¹⁶⁵

In Victoria, Queensland and NSW commenced work towards separate systems for electronic conveyancing. However, there is a growing trend in jurisdiction governments for harmonization of processes across the whole of Australia. There is also a move

¹⁶² Supra n. 144

¹⁶³ <http://www.nationaleconveyancing.com.au/whatisconveyancing> (last accessed 12th April 2012)

¹⁶⁴ Supra n. 162

¹⁶⁵ Supra n. 162

towards a national approach to issues, such as progress towards national recognition of legal qualifications and the issue of a national practising certificate. Banks and large legal firms operate nationally. The four major banks in Australia made a submission to the NSW Government in 2004 and stated that:

“The Banks operate their businesses on a national basis. The introduction and increasing use by the Banks of information technology and outsourcing functions

(such as mortgage processing) means that a national approach to electronic settlement and conveyancing is inevitable...., the Banks' support of a move to an

electronic conveyancing system is predicated on the introduction of an effectively operationally seamless national system. If the introduction of electronic conveyancing and settlement results in 7 different, operationally inconsistent, systems, then the Banks (or national businesses) would not favour the move to an electronic environment on that basis. The interaction between the Banks (and other users) and the electronic system needs to be governed by a standardised national process which clearly defines the entry and exit points. This interaction needs to fully incorporate bank to bank automation using common data standards, processing standards, messaging standards and system interfaces.

A national approach to electronic conveyancing would allow the Banks to operate their businesses across the various jurisdictions in a seamless way and avoiding double handling costs and the need to enter data more than once.”¹⁶⁶

¹⁶⁶ Generally See paper by Simon Libbis, Executive Director, National Electronic Conveyancing Office - “E-Conveyancing Sans Frontiers – The Development Of An Electronic Conveyancing System For Australia ” - <http://www.landregistry.ie/uploadedfiles/conference20071/papers/s3p1.pdf> - (last Accessed

It seen from the experience of other countries that it was considered imperative to involve major stakeholders from the outset in the move towards electronic conveyancing. As a result of these factors a National Steering Committee (NSC) was established with a commitment to define provision and implement a National Electronic Conveyancing System (NECS).

The National Electronic Conveyancing Development Limited (NECDL) is the body charged with delivering e-conveyancing in Australia.¹⁶⁷ The National E-Conveyancing Development Ltd (NECDL) was incorporated in January 2010 to develop a new single national e-conveyancing system based on the work of Electronic Conveyancing Victoria and the National Electronic Conveyancing Office.¹⁶⁸

The NECDL has been established under a Governance Agreement between the Victorian, NSW and Queensland Governments.¹⁶⁹ The agreement provides for other States and Territories to join the system that is to be developed. The NECDL is a company limited by shares. This structure allows the shareholding in NECDL to reflect the funding and intellectual property contributed by different parties. NECDL is majority Government owned.¹⁷⁰

The national e-conveyancing platform which is to be known as PEXA, which is short for “property exchange Australia” entered into a detailed design phase in August 2011.¹⁷¹ This followed NECDL's agreement with Accenture to design, build, test and deploy Australia's national e-conveyancing system. The design phase is expected to continue to March 2012 and includes the defining of system requirements and the solution architecture for PEXA. The views of key user groups are playing a critical role in this phase.¹⁷²

15th April 2012) where it refers to Australian Bankers’ Association Submission to the Department of Lands NSW Public Consultation Process in 2004

¹⁶⁷ Supra n. 165

¹⁶⁸ Supra n. 165

¹⁶⁹ Supra n. 165

¹⁷⁰ Supra n. 165

¹⁷¹ Supra n. 165

¹⁷² Supra n. 165

(a) South Australia

The South Australian¹⁷³ system consists of two parts. The first one is the Land Ownership and Tenure System (LOTS) and the other is the Automated Registration Indexing and Enquiry System (ARIES) These systems are able to quickly give accurate and current data regarding any piece of land under the Real Property Act even where the land is the subject of a development approval which is still being considered. The computerised system allows an instant search of the title, documents lodged but unregistered, a trace of the passage of those documents, and plans of land division, through the Lands Titles Office. It can show which department has the documents or plans and the date received, forwarded and approved.

(b) Victoria, Australia

Land Exchange was a \$24 million Victorian Government funded program that began in August 2002. Land Exchange is part of Land Victoria, a division of the Victorian Government's Department of Sustainability and Environment (DSE). The purpose of the Land Exchange is to enable people to exchange land related information and conduct transactions via the Internet.¹⁷⁴

The Key features of the Land Exchange projects include:¹⁷⁵

Electronic Conveyancing (EC)- Electronic Conveyancing¹⁷⁶ is a world first online settlement and lodgement system developed by the Victorian Government in collaboration with the conveyancing industry. EC is used by conveyancers, solicitors and financial institutions on behalf of their clients (vendors and

¹⁷³ Information from (<http://www.scribd.com/doc/39645027/A-Case-for-Torrens-System-of-Title-Registration>) (last accessed 20th March 2012) and also see http://www.prrs.net/Papers/MillsA_Case_for_Torren%27s_system_For_Title_Registration.pdf (last accessed 10th April 2012).

¹⁷⁴ Source of information is Land Exchange Australia. <<http://www.landexchange.vic.gov.au/index.html>> (last accessed 24th July 2011).

¹⁷⁵ Supra n. 173

¹⁷⁶ <http://www.ec.land.vic.gov.au/ec/> (last accessed 25th March 2012).

purchasers) to conduct electronic financial property settlement and the electronic lodgement and registration of conveyancing transactions and electronic payment of duty and land tax.

The Electronic Conveyancing (EC) system has been developed in conjunction with the State Revenue Office, legal, conveyancing and financial institutions to ensure that all land transfer notification requirements are met in one simple process. Electronic Conveyancing works the same way as the paper process has done for the past 140 years. The only difference is the information will be available electronically when the conveyancing process is online.

The electronic conveyancing that has been developed in Victoria allows:¹⁷⁷

- an efficient and cost-effective conveyancing process for solicitors, conveyancers and financial institutions;
- that there is no need to store certificate titles, saving time and space for financial institutions;
- no manual drawing or depositing of bank cheques, due to the direct EFT option, saving on bank clearance time for sellers;
- a transparent system accessible to all subscribers any time, anywhere in the world; and
- no need for face-to-face settlement, eliminating time and reducing costs for solicitors, conveyancers and financial institutions.¹⁷⁸

In the Electronic Conveyancing system, vendors and purchasers engage registered Subscribers to act on their behalf. The Subscriber uses the online EC system on behalf of their clients to settle land transactions, including the payment of duty to the relevant state tax or revenue office, and lodge documents electronically from their personal computers. The current EC Release 6.1 was launched on 25 February 2012.¹⁷⁹

¹⁷⁷ Supra n.

¹⁷⁸ <http://www.landexchange.vic.gov.au/ec/about/benefits.html> (last accessed 4th October 2005).

¹⁷⁹ (http://www.ec.land.vic.gov.au/ec/a_about.html) (last accessed 25th March 2012).

The Benefits¹⁸⁰ of using Electronic Conveyancing system in Victoria are stated to be the following:

- Buyers and sellers of property can reduce the cost of their transaction by using EC.
- Estimated savings of \$235-\$395 per typical four party settlement
- Estimated \$70M per annum in annual industry and community savings by 2012
- Lower statutory fees than those charged under the paper system
- Improved housing affordability
- Removal of physical settlement and manual lodgement processes
- Substitution of bank cheques with multi-lateral electronic funds transfers
- Elimination of most paper documents and associated red tape
- Greater certainty - reduced incidence of delayed and failed property settlements and lost or incorrect documentation
- EC is designed to be as safe as the existing paper-based conveyancing and lodgement system, which will continue to operate alongside Electronic Conveyancing for those who wish to continue to transact in paper.

Victoria also has the Streamlined Planning through Electronic Applications and Referrals (*SPEAR*)¹⁸¹ electronic lodgement, referral, tracking and payment of subdivision applications and consolidations, planning applications and building permits. *SPEAR* is a ground-breaking Internet system, which was inaugurated in August 2002 as one of the key components of the Land Exchange program.¹⁸² The *SPEAR* allows subdivision applications to be compiled, lodged, managed, referred and tracked online

¹⁸⁰ Supra n.178

¹⁸¹ <http://www.spear.land.vic.gov.au/spear/pages/about/what-is-spear/overview.shtml>

¹⁸² Supra n.180

anytime, anywhere.¹⁸³ The SPEAR is used by all parties involved in the subdivision process, but in differing capacities.¹⁸⁴ Applicants use SPEAR to lodge their application and track its progress as well as to get them approved.¹⁸⁵

In Victoria the Land Exchange systems run parallel to the conventional paper based land transactions by providing a secure online regulated environment for parties who choose to use the systems.¹⁸⁶

Victoria is the first state in Australia to pass laws¹⁸⁷ enabling electronic lodgement and registration of electronic documents. Many Australian legal commentators¹⁸⁸ believe that the Victorian model will be “adopted on an Australia-wide basis”.

(iv) United Kingdom

In 2001 the Law Commission and HM Land Registry worked jointly to create the necessary legal framework in which registered conveyancing can be conducted electronically. The work produced a report titled “Land Registration for the Twenty-First Century - A Conveyancing Revolution.”¹⁸⁹ This report was prepared for Parliament. The Report aimed to move from a paper-based system of conveyancing to one that is entirely electronic which is a major one and it also aimed to transform fundamentally the manner in which the conveyancing process is conducted.¹⁹⁰

The e-conveyancing Land Registry Consultation¹⁹¹ identified six key requirements for the conveyancing system which is as follows:

¹⁸³ Supra n. 180

¹⁸⁴ Supra n. 180

¹⁸⁵ Supra n. 180

¹⁸⁶ Supra n. 180

¹⁸⁷ The Transfer of Lands (Electronic Transactions) Act 2004 – Commenced on 18th May 2004.

¹⁸⁸ Including Russell Cocks, John Barry and Sharon Christensen.

¹⁸⁹ http://lawcommission.justice.gov.uk/docs/lc271_land_registration_for_the_twenty-first_century (last accessed 25th March 2012)

¹⁹⁰ Supra n. 188

¹⁹¹ Land Registry, 'e-conveyancing: A Land Registry Consultation Report', 17 March 2003, 40, <http://www.landregistry.gov.uk/publications/other/consultations/eccir.pdf>

“(a) Paperless - It is unrealistic to imagine that one can escape paper completely, as there will always be some clients who cannot be contacted by email. However, it is envisaged that almost all communication between practitioners, the Land Registry and other organisations will be electronic, as will all exchanges of formal documentation.¹⁹²

(b) No ‘registration gap’ - Most property in England and Wales is now registered at the Land Registry and it is only once a buyer of land becomes ‘registered’ that he or she is legally the owner. This does not happen automatically upon completion of a sale. In fact, because of the way the current system works, registration takes place several days after completion, and this delay often stretches into weeks. The reasons for the delay are mostly logistical. The use of postal or DX systems to transfer documents means it may be days after completion before the paperwork arrives. Other factors can cause an even longer delay before the new owner can be registered. Delays can occur while:

- (i) waiting for evidence that the seller’s mortgage has been redeemed and discharged;
- (ii) presenting documents to Inland Revenue Stamp Taxes and paying duty;
- (iii) registering a mortgage by a company at Companies House.

And even once an application has been made to the Land Registry there can be further delays and problems.¹⁹³

(c) Allow for ‘chain transparency’ - most residential transactions are part of larger dependent chains and it is suggested that there be a creation of a ‘linked transaction matrix’ for each chain. This would mean that every transaction in the

¹⁹² Supra n. 190

¹⁹³ Supra n. 190

chain could be linked through the electronic highway. The matrix would serve two purposes:¹⁹⁴

(i) To provide information to other parties in the chain as to the progress of individual transactions. This transparency would allow everybody in the chain to follow the progress of all the other transactions and to see where there were delays, bottlenecks or where a party was ready to proceed but was, for some reason, stalling.¹⁹⁵

(ii) To allow for instant and simultaneous exchange of contracts throughout the chain. The current system of undertakings and telephone discussions works, but it is not without risk or uncertainty, and relies on the trustworthiness of the conveyancer. Under the electronic system it should be possible, once the parties to the slowest transaction in the chain are ready to complete, for all the contracts for each transaction to be exchanged electronically and simultaneously.¹⁹⁶

(d) Include a permanent connection between practitioners and the Land Registry- An electronic highway will connect all parties involved in conveyancing. This means information will flow both ways. As a result, practitioners could view the register of a particular property at any time and also check the Registry's 'day list', a logbook of applications pending. The Registry itself will be able to cross-check and validate details as documents are submitted (returning anything with errors immediately) and create a 'notional register' showing the expected result of a particular transaction.¹⁹⁷

(e) more secure and fraud-resistant than the present system - many practitioners have particular concerns about security in an electronic system. Some of those concerns are certainly justified, since electronic systems raise many security

¹⁹⁴ Supra n. 190

¹⁹⁵ Supra n. 190

¹⁹⁶ Supra n. 190

¹⁹⁷ Supra n. 190

issues very different from traditional paper systems, to which – as in any other area of electronic commerce – solutions which command the confidence of the public, of conveyancers, and of their insurers must be found. But electronic systems also offer wholly new ways of protecting the security and integrity of data and transactions. We shall be seeking the levels of security which wholly match the needs of the business. It is unlikely that the e-conveyancing system will be internet-based. It will almost certainly be a system available only to those authorised under network access agreements, and with state-of-the-art arrangements for checking who was responsible for which activities, and when and where they were working. This will provide an audit trail which far surpasses what is possible on paper.¹⁹⁸

(f) Allow for automatic simultaneous money transfer - An electronic payments system must be able to handle all the payments necessary to complete a transaction and indeed a chain of transactions.”¹⁹⁹

Following the Law Commission and HM Land Registry work the Parliament enacted The Land Registration Act 2002 which empowered the Land Registry to deal with “the business of registration under this Act” and this is the Land Registry’s primary governing statute.²⁰⁰

The HM Land registry supports The National Land Information Service (NLIS) which offers commercial services for online searches and enquiries to solicitors and licensed conveyancers throughout England and Wales. Searches are sent electronically and results received via the NLIS hub, which acts as the gateway for information and services from a number of data providers.²⁰¹

¹⁹⁸ Supra n. 190

¹⁹⁹ Supra n. 190

²⁰⁰ http://www1.landregistry.gov.uk/upload/documents/Annual_Report_1011.pdf (last accessed 25th March 2012)

²⁰¹ Supra n. 199

The HM Land Registry offers many of its services electronically (e-services).²⁰² Some services have been designed for use by members of the public and others have been developed for use by businesses. The members of the public can get electronic copies of title registers, title plans and Flood Risk Indicator results for more than 23 million registered properties in England and Wales. Electronic copies can be purchased and downloaded in PDF format through Land Registry's 'Find a property' service. Businesses and other corporate bodies can access a range of electronic services. They are collectively known as Business e-services and are accessed through the Land Registry portal. They are divided into three service groups each governed by an agreement: Information Services; Lender Services; and Network Services.

(v) Malaysia

The Computerized Land Registration System (CLRS or SPTB) was introduced in early 1995, in stages, to land offices at all states and districts in Malaysia.²⁰³ The system was developed by the Department Director General of Land and Mines (DGLM) in a mission to automate the procedures of land registration systems in order to benefit from both manual and computerized work processes.²⁰⁴ The objective of the system was to provide a cost effective and secure land registration system through the computerization of procedures and dealings within the scope of land registration functions.²⁰⁵ Several versions of the system was updated with the current version is SPTB version 3.²⁰⁶ Improvement to the systems was continuously done to enhance the security features, which, at the early stage was highly vulnerable to frauds. Using Oracle as a platform, the system provides eight service areas or modules to the users. Such modules are registration (dealing or non-dealing), title registration, search, registration notes, application, payment, and utility features. CLRS (SPTB) was introduced as an effort by the DGLM to automate the registration functions of the administration. In addition to

²⁰² <http://www.landregistry.gov.uk/> (last accessed 25th March 2012)

²⁰³ Shukri, I.M. (2010), 'Electronic Land Administration in Malaysia: The need for new enabling provisions', Jabatan Ketua Pengarah Tanah dan Galian Persekutuan, Putrajaya – accessed from www.kptg.gov.my/ms/component/docman/doc_download/385 (last accessed - 25th March 2012)

²⁰⁴ Supra n. 202

²⁰⁵ Supra n. 202

²⁰⁶ Supra n. 202

CLRS, other isolated and independent systems were also developed to support separate functions within land administration.

The e-Tanah²⁰⁷ was introduced as part of the Malaysian e-Government flagship to fully benefit from the widespread use of the Internet. The e-Tanah System is a computer system and a set of supporting rules and business practices within a legal framework that provides a reliable means of completing conveyancing and other land related transactions electronically. The system was envisioned to be highly integrated and interoperable.²⁰⁸

The e-Tanah is expected to improve the working methods in the Land Office and Registry in order to make it simpler and more efficient, to provide the economics of scale through efficient cheaper delivery of services cost, data sharing and system integration.²⁰⁹ e-Tanah was introduced to overcome the problem of SPTB's stand alone system to provide effective and efficient e-government services to both administrators and users (general public) by utilizing the benefit of the Internet. e-Tanah is expected to provide links and integrations of all land administration processes and databases within a single system.²¹⁰

D. The Need to Build the Right System – The Considerations

In formulating the proposals for an e-conveyancing and searches system and having looked at ideas from around the world. It seems that many jurisdictions have taken advancing steps which are similar but unique to their needs. However, we should not be overly sure that we have not overlooked a system that would better suit our needs and those of the real estate dealers, the lawyers or agents. There are a number of questions that come to mind that need to be considered in developing a suitable system for Fiji.

Some of the questions that need to be borne in mind and considered are:

²⁰⁷ Supra n. 202

²⁰⁸ Supra n. 202

²⁰⁹ Supra n. 202

²¹⁰ Supra n. 202

(a) Are we aware of any system of e-conveyancing that we consider an enhancement on the one outlined in this paper?

(b) What flexibilities should be built into the system to enable us more easily to add in or adapt to improve the systems as they develop?

(c) What changes would the current land Titles Registry need to undertake to use an e-conveyancing system?

(d) How can we make those changes?

(e) Should a certified electronic signature be sufficient proof of the authentication of a conveyancing document? If not, what other evidence should be required? For example, should confirmation be obtained from an authorised user of the system that an electronic signatory signed the document in their presence?

E. Why there is a need to move to Electronic Conveyancing

Under the present system of conveyancing in Fiji when a disposition of registered land is made, the following steps are adopted—

(1) a document in the form prescribed by the Land Transfer Regulations 1971 is executed by which the transaction is effected (whether it be a transfer, or the creation of some right or interest in land);

(2) that document is lodged with the Commissioner of Stamp Duties for assessment of stamp duty;

(3) upon clearance of document from Stamp Duties the document is lodged with the Registrar of Titles Office; and

(4) when the transaction is processed the appropriate entry is made on the register.

It is emphasized at this stage—

(a) that there is a significant lapse or period of time utilised, usually between four to eight weeks and sometimes even more, depending on a number of factors (including volume of work, staff availability and availability of Title Registers) - between the completion of the transaction and its entry on the register; and

(b) the duplication of effort²¹¹ and the risk of error that flows from the present system.

The main reason the users of the Land Titles Registry are seeking changes and a move towards the online or electronic conveyancing is the time factor. A lot of time would be saved and there would be no duplication of work of the Registrar of Titles and the staff from the Titles office.

F. Critical issues for the Fijian Context – Some Challenges

The experiences from other jurisdictions are useful and provide an insight into how they developed their systems and how it functions. A number of the key issues need to be examined in light of the Fijian context if we are to move towards electronic/online search and registration.

It is very interesting to note the comments and papers of various exponents on the area and their views on the move towards electronic conveyancing and registration.

²¹¹ Transferring information from documents filed by the users into Register by the Registrar.

According to Benito Arrunada,²¹² a leading exponent in the area the experiences from other jurisdictions “provide a rich catalogue of the possibilities and difficulties of developing electronic systems of conveyancing and registration. In particular, they illustrate the possibilities for substitution between the tasks performed by humans and computers in different titling systems and the tradeoffs involved in these reforms.”

Arrunada further states that “a registry of rights is made up of a registry of deeds (the lodgement or presentation diary) and the register of rights *stricto sensu*, in which only purged, clean titles are entered. Automatic lodgement, allowing conveyancers or subscribers to the electronic system to file their application without human intervention by registry staff, is relatively easy to accomplish, whatever the type of registry. Conversely, given that the registration decision involves checking that no other property rights are affected by the intended transactions, automating such a decision, that is, substituting the human registrar by computer software, is much more difficult. It is costly in terms of both the effort to develop the system and the additional contractual constraints which will be imposed if a stricter *numerus clausus* is necessary to make the system viable. It is also risky in terms of fraud.”²¹³

In supporting a move to automation of records of deeds and conveyancing, Arrunada argues that “it is easier to fully automate a recording of deeds because it lacks a register of rights. Automating it is equivalent to automating the lodgement or presentation book in a registry of rights. It is important to keep this in mind in reforms. Otherwise, the introduction of electronic registration may inadvertently interfere with the broader decision about the choice of titling system, given that registration of rights or its main attribute, indefeasibility, would be endangered by granting registration rights to conveyancers.”²¹⁴

For Fiji some of the issues worth noting emanates from Arrunada warning that the “risk is compounded in the case of a registry of rights with genuine deficiencies in terms of

²¹² Electronic Titling: Potential and Risks, *New Zealand Law Journal*, 2010, April, 115-120.

²¹³ *Supra* n.211

²¹⁴ *Supra* n.211

productivity, delay, registration gaps and, often, poor security. A benefit of agent registration is the immediacy of results. However, this benefit may be illusory because it is likely that agency registration will debase a registry of rights into a recording of deeds. Granting conveyancers the right to directly alter the register should speed up “registration”, but would inevitably reduce the legal quality of such rights—properly speaking, rather than speeding up registration it would most likely suppress it. This transformation of the title system might be a sensible move in itself but, whatever its merits, it should be decided on broader grounds, considering many other factors, instead of as an unintentional by-product of introducing electronic technology. The alternative course of action to debasing the system is to tackle the deficiencies of the registry head-on. This requires changing the incentives of registrars by linking their compensation to performance in terms of both speed and risk.”²¹⁵

On the reforms, investments and developments on electronic conveyancing it is crucial that we should be mindful that “... in these reforms registries often invest heavily in order to reduce their future variable costs and transfer them to conveyancers. These tradeoffs should be carefully examined. For instance, savings at the registry are not necessarily good if they are obtained by lowering quality or increasing the costs incurred by conveyancers. And both of these effects are likely when the chosen option is agency registration, moving the titling system from a registry of rights to a registry of deeds. Conveyancers’ costs would increase in two ways: first, because they would bear more responsibility for the transaction being filed; second, because they would need to search the title by examining the chain of deeds for the parcel.”²¹⁶

One of the foremost considerations for Fiji is which type of system is to be developed. This decision will have a significant impact on the solutions proposed for a range of other issues raised by an electronic system. Each of the jurisdictions we have looked at in this paper has systems with different levels of complexity, functionality and access requirements.

²¹⁵ Supra n. 211

²¹⁶ Supra n. 211

Some of the other important considerations are related to issues of cost of infrastructure, efficiency of system, security of data and access issues, manpower and expertise, adaptability of technology together with consideration of; the necessary changes to conveyancing practice; the IT user requirements for the system; legislative changes to the current laws; whether access to the registration process electronically should be restricted to legal practitioners and financial institutions; whether the system should be voluntary or mandatory, and should a dual paper system of paper and electronic be operated.²¹⁷ All these issues would need to be addressed in a comprehensive study to ascertain the requirements in the Fiji context.

The maintenance of the integrity and security of title is crucial to the success of an electronic/online land titling system. To achieve this, safeguards will need to be developed to minimise the opportunity for electronic-based fraud to occur and it must be implemented within the electronic land system.²¹⁸

Any proposal to move to electronic search and conveyancing must be in light of the foregoing considerations. If we are to move towards electronic searches and registration it is vital that an educational and enlightenment exercise be carried out for the users of the system, to inform them and prepare them for electronic search and conveyancing.

The other key issue and discussion should be on the retention of the tried and tested Torrens system of registration if and when electronic registration is introduced. A number of key features that are required of an electronic land registry and that of maintaining the Torrens system was discussed in a paper²¹⁹ by Sharon Christensen.²²⁰

²¹⁷ See Generally: YF Lim, "Digital signature, certification authorities and the Law" (2002) 9 (3) Murdoch University Electronic Journal of Law - <<http://www.murdoch.edu.au/elaw/indices/author/229.html>> (Last accessed 20th December 2005) and McCullagh A, Caelli, Little P, 'Signature Stripping: A Digital Dilemma' 2001 (1) Journal of Information, Law and Technology – <<http://elj.warwick.ac.uk/jilt/01-1/mccullagh.html> > (Last accessed 20th December 2005).

²¹⁸ J Murray, 'Public Key Infrastructure, digital signatures and systematic risk' (2003) (1) Journal of Information, Law and Technology- <http://elj.warwick.ac.uk/jilt/03-1/murray.html> (last accessed 15th December 2005).

²¹⁹ Electronic Land Dealings in Canada, New Zealand and the United Kingdom: Lessons for Australia.

²²⁰ LLB (Hons), LL.M., Gadens Professor in Property Law, Queensland University of Technology Faculty of Law

She states the crucial features of the Torrens system which we have discussed in the earlier chapter of this paper as that: “The Torrens system of land registration possess five qualities: certainty and integrity of title, reliability, simplicity and ease of use and economy. The fundamental principle that registration confers an indefeasible title guaranteed by the State arises from the keystone quality of certainty and integrity of title. Thus once title is registered, absolute security of that title is guaranteed to the registered owner. Operating in conjunction with the State guarantee of title is the principle which Ruoff refers to as the "mirror principle". This principle arises from the use of a central register where each parcel of land is recorded in a separate folio in the register. The register should therefore operate as a mirror to accurately and completely reflect all interests in the land material to the owner's title. This provides the other qualities of reliability, simplicity and ease of use by allowing any person to discover all the interests or encumbrances to which the land is subject by searching the registry.”

Christensen²²¹ further states that “A number of the suggested proposals for electronic lodgement of instruments in the Titles Office impact on the continued relevance of those qualities to the land registry system. In particular the changes to lodging and registration practices may have a fundamental impact on the security of title and therefore the principles of certainty, integrity and reliability. Allowing internet access to a lodging system that provides a gateway to the land registry system opens greater possibilities for computer related fraudulent practices and potentially threatens the security and integrity of the title. It is acknowledged that fraudulent practices have developed in a paper based Torrens system but the use of technology opens opportunities not only to commit the same types of fraud as appear in the paper system but also to invent new methods for defrauding individuals particularly through identify fraud.”

Christensen²²² also highlights the issue of fraud and identity theft which is referred as unlawful taking of another person's details without their permission". It "generally involves a person falsely representing himself or herself as either another person or a fictitious person" and using that assumed identity to commit a crime. In the paper world,

²²¹ Supra n. 218

²²² Supra n. 218

identity theft relies on information obtained from stolen wallets, stolen mails etc. An important element required for the perpetration of identity fraud in the paper world is the physical proximity between the victim and the thief. With the Internet and electronic data storage systems, the ease in which an individual can 'steal' such personal information is increased as the necessity of physical proximity is no longer an issue. The problems of identity fraud and the security and integrity of electronic databases are particularly pertinent to an electronic registration system where all dealings are done online and the titles are held in a computerised format in an electronic database. These two problems have the potential to undermine the underlying premise of State guarantee of title. As remarked by Graycar and Smith: In the past, sophisticated paper-based systems were present to reduce the opportunities for fraud involving conveyancing transactions. As we move into on-line registration of titles and electronic transactions, new opportunities arise for people within organisations as well as for external customers to misrepresent themselves and to manipulate electronic transactions for financial gain.”

Finally on the Torrens System, Christensen²²³ states that “it should be noted that the growth of identify fraud presents a potent reason for close examination of the critical features necessary to uphold the existing Torrens qualities. As the register forms an integral part of the Torrens system it is crucial that in a move from a paper based land transactions to an electronic one, the integrity and security of the register is maintained and that the electronic system contains a robust security infrastructure that minimises fraud. The critical features proposed for maintaining security and integrity of the registry will be considered and the experience of other jurisdictions discussed. The proposed features for an Australian system are:

1. Access limited to registered professionals with appropriate indemnity
Insurance;
2. Identification and validation of identity of users through a digital signature system;

²²³ Supra n. 218

3. Certification by users of the system to the Titles Office in relation to the identity and authority of the parties involved in the transaction;
4. Requirements for archiving and retention of paper documents needed to support registration for specified period.”

G. How Fiji can prepare for these challenges?

The challenges that stand in the way of electronic searches and conveyancing are enormous, but not insurmountable and work on this need to commence immediately if we are to incrementally move towards electronic searches and conveyancing.

There are a number of important issues that need to be addressed to prepare us for electronic searches and conveyancing. A few of these issues will now be considered.

(a) e-Governance

This perhaps is single most important issue in considering the move towards electronic searches and conveyancing. Government initiative and direction will easily facilitate the move towards electronic searches and conveyancing. In order for a successful electronic searches and conveyancing to operate there is a need to have successful e-governance system and government support and leadership with the following:

(i) Support of Senior Management - commitment and vision – Governance related initiatives are very often started by top management of the organisation, hence they certainly have the initial support of senior management. It is important that this support is sustained, and that Governance for e-Government is part of the strategic e-Government vision of Government leaders. Through this continuous support, expressed by regular follow-up, adequate available resources and support for good IT Governance practices during conflict situations, e-Government Governance arrangements will have substantially better chances for success. This

is especially true within the context of establishing IT Governance to support e-Government goals, ensuring senior management support across various Agencies with varying degree of IT maturity, which has been an on-going challenge for ITCS.²²⁴

(ii) Communication and change management – In most cases when stronger Governance practices are introduced, some level of resistance will be encountered. It needs all levels of support and collaboration. In instances where e-Government Governance has succeeded, all paid great attention to continued communication, especially when strong resistance was encountered or when exceptions needed to be dealt with.²²⁵

(iii) Focus, execute and enforce – Introducing or improving e-Government Governance practices requires a well defined plan. Success will only be achieved if focus is maintained and agreed practices are executed as planned. If technology standardisation is introduced as one of the cornerstones of e-Government Governance, it is important to stick to this measure against any resistance. Set up a strict exception management process for relevant deviations from standards. This can be seen as a documented and structured mechanism for stakeholders (e.g. project sponsors or business unit management) to state their case and request exceptions.²²⁶

(iv) Define a benefit management system and set achievable targets/expectations – IT Governance for e-Government is about improving the value of IT as a means for improving service delivery for the public sector and reducing risk. It is only natural to define the targets of the new or improved IT Governance practices and to measure whether they are achieved or not. Introduction of e-Government Governance practices without having a system that

²²⁴ Supra n. 29

²²⁵ Supra n. 29

²²⁶ Supra n. 29

includes definition of expected benefits and how to measure them is a contradiction in terms.²²⁷

(v) Evolution, as opposed to revolution – Introducing or improving e-Government Governance arrangements takes time. Quite often, cultural changes or significant changes in procedures (e.g. more formal measures and processes, less discretionary power, more centralisation) have to be introduced, and these require time. It is important to plan carefully and to allow adequate time for the implementation of such measures, as well as to allow sufficient time for the organisation to absorb the changes.²²⁸

(vi) Don't over-engineer e-Government Governance – e-Government Governance measures are key to the success of IT within the public sector. However, it is important not to overdo the effort with elaborate multiple committees, overkill in terms of monitoring and reporting, and overly complicated processes and templates. An over-engineered solution may create more resistance and ultimately be circumvented and consequently less effective. This is especially true for Fiji where currently many Ministries still do not have a full fledged IT environment and strong IT culture.²²⁹

If we can confidently say that we have the appropriate e-governance structure and positively tick of each of the 6 above-mentioned concerns and or issues then we have a start. The next step would be a comprehensive study.

(b) Comprehensive Study

The starting point should be a comprehensive study addressing the following issues:

- type of system that is to be developed,
- issues of cost of infrastructure,
- efficiency of proposed system,

²²⁷ Supra n. 29

²²⁸ Supra n. 29

- security of data and access issues,
- manpower and expertise,
- adaptability of technology together with consideration of the necessary changes to conveyancing practice,
- the IT user requirements for the system,
- legislative changes to the current laws,
- whether access to the registration process electronically should be restricted to legal practitioners and financial institutions,
- whether the system should be voluntary or mandatory, and
- Should a dual paper system of paper and electronic be operated.

There is also a need for a study (discussion paper) covering the above-mentioned issues setting the framework for further deliberation on the proposed electronic searches and conveyancing system. It will also give an opportunity for the stakeholders to evaluate the information in detail.

There is a lot of material available from studies carried out in other jurisdictions which will be quiet helpful. For a start the UK Law Commission Reports²³⁰ which has been cited in this paper will be a guide on the mode of discussion and study.

(c) Stakeholders Involvement and User Education

It is vital that all parties (including Governments, the Law Society, financial institutions, legal practitioners, law clerks and other regular users) are involved from the beginning and throughout the process.

The users of the system who will be the ultimate beneficiaries of electronic searches and conveyancing will need to be enlightened and enticed about the features of the proposed

²²⁹ Supra n.29

²³⁰ Joint Report by The Law Commission and Land Registry: 'Land Registration for the Twenty-First Century: A Conveyancing Revolution'. <http://www.lawcom.gov.uk/docs/lc271.pdf> (last accessed 31st January 2006 and <http://consultations.landregistry.gov.uk/gf2.ti/f/52226/1146565.1/pdf/-/econ%20consultation%20FINAL.pdf> (last accessed 30th March 2012)

system. Some users will still be comfortable with paper. They will have to be convinced of the value of time saving, efficiency and accuracy of the electronic availability of documents.

(d) Technology/Infrastructure and Personnel Requirements

The development of the electronic search and registration system would require the use of appropriate technology and highly skilled personnel. This would be a costly affair for the State.

The Government would need to start identifying and setting aside funds that could be made available for the work. The government can also start dialogue with appropriate stakeholders and donors on financial and technical assistance.

CHAPTER SIX – CONCLUSION

The computerisation of land registration systems and online searches is an expected corollary of the worldwide incursion of computers into everyday communication and dealings. This expertise has already been introduced in many Commonwealth and Torrens system countries. It is envisaged that only time will dictate when Fiji makes a move towards online/electronic searches and registration.

It has been noted from the experiences from other jurisdictions that the overarching aim of the e-conveyancing programme is to make conveyancing easier for all, with an electronic system that makes buying and selling property less challenging for the public, conveyancing professionals and the other parties involved. It is also noted that e-conveyancing can transform the conveyancing process. As part of that transformation Fiji Land Titles Registry will need to introduce new services and change the way it delivers its current services. However we also must realise that conveyancing involves extremely difficult processes that cannot easily be transformed from paper into an electronic system overnight.

The creation of an electronic/online search and registration system in Fiji could be an exciting and challenging development for the Land Titles Registry and present a significant state investment in electronic commerce. The introduction of electronic/online searches and registration would also enable the Land Titles Registry to readily be attended to in an electronic/online searches and registration and dispense with labour intensive and time consuming tasks.

There are many advantages to e-conveyancing. It has been proven in those jurisdictions that have implemented this system that such systems shorten the time of registration from days to minutes.²³¹ It saves manual work. It is physically and geographically more accessible. Conveyancing can be attended to from any location and remote areas in Fiji would be linked and have access to the system. Use of electronic signatures and other

electronic identification tools (like pin-tokens or biometric equipment) can reduce the danger of fraud and forgery. A clever electronic system can supervise the process and detect typical patterns of fraud and either automatically prevent them or make an alert. While it is noted that an electronic system might be more vulnerable for electronic fraud or disruption. This makes the accessibility to the system crucial to its vitality.²³²

The introduction of electronic registration would assist the Land Titles Registry to enhance electronic service delivery to customers in accordance with both the Government initiative and the E-governance strategy.²³³ Electronic registration is therefore an essential enabler to achieving the goal of making land transactions easier for all, and will see the development of a service which enables the legal profession and mortgage lenders to lodge documents online.

The development of this service should lead to a number of possible benefits including:

- (i) Reductions in the cost of processing applications, which may lead to reduced fees for customers who opt for electronic registration.
- (ii) Improved quality of submitted documentation, leading to fewer rejections and less duplication of effort for Land Registry staff and the staff in solicitors practices.
- (iii) The potential for faster registration.
- (iv) Reduced storage costs for customers who opt to obtain electronic documents.

Fiji already has a very appropriate system of land registration system which has served the country's needs for land registration for over 100 years. The move now should be towards incorporating an electronic system. We are fortunate that the Torrens system has served our needs unlike in other countries where they are still grappling with the system. It should be noted that in Quebec, Canada where there was enormous expectations of the Internet and new information technologies.²³⁴ Computerization of land use planning data

²³¹ Supra n. 229

²³² E-Land Conveyancing and Registration – Vision and Risks, Haim Sandberg, Israel http://www.fig.net/pub/fig2009/papers/ts03b/ts03b_sandberg_3178.pdf (last accessed 23rd May 2011).

²³³ Supra n. 231

²³⁴ Supra n. 127

was often presented, and perceived, as a panacea. In reality, having access to technology was not as vital as was the political will to make the changes needed to provide citizens with a land registry system that guarantees reliability and accuracy. The Internet helped to make deep changes to the practice of real property law.²³⁵

I firmly believe that the introduction of an electronic registration system over a period of time would enable the Titles Office to dispense with the labour intensive and time-consuming checking and collating of matters such as lot numbers, the numbers of companies, trusts and close corporations, the names of persons whether natural or judicial as well as the numbers of state, i-taukei and freehold estates, tourism sites and farms, the extent of these properties as well as their title numbers. These are all matters that can be attended to in an electronic environment without human intervention.

The updating of the records of the Titles Office will occur instantaneously with the registration of each and every transaction. The present expensive procedure in terms whereof the information received by the Titles Office in paper format, can only be converted into electronic format by data operators (leaving room for errors) after registration, would no longer apply. This will inevitably result in the records of the Titles Office being more accurate and up to date as the present system does not necessarily reflect the actual position by reason of the time-lapse occasioned by the conversion of paper-based data into electronic format.

The labour saving consequences that the electronic registration would bring about in the Titles Office should then allow the Office to be able to handle and examine substantially larger volumes of titles/deeds and other documents that is lodged for registration and execution with its present staff complement. The other plus for the Electronic

²³⁵ Brochu, ' The Internet's Effect on the Practice of Real Property Law: A North American Perspective', 2003 (2) The Journal of Information, Law and Technology (JILT) http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2003_2/brochu/#fn87 (last accessed 28th March 2012).

registration may also enable the Deeds Office, which is with the Land Titles Registry is to create additional revenue streams such as:

- (a). establishing and maintaining security registers for commercial banks and other financial institutions; and
- (b). establishing and maintaining comprehensive property and ownership registers for local authorities and services councils.

In the survey carried out of the users of the Land Titles Registry an overwhelming 88% of the users agreed that they were ready for Online/electronic searches. One of the first steps that can be taken by the relevant authorities is the introduction of online/electronic searches, which would involve putting into electronic format and making available Land Titles documents online and in electronic format. Once this process is completed a detailed study on online/electronic conveyancing should be made to evaluate the process and see how best we can make a move towards electronic/online conveyancing.

If any changes are made from the current processes the Land Transfer Act which is the principal law dealing with land registration and the Property Law Act would need to be amended and a new law dealing with electronic conveyancing would need to be introduced for electronic registration and searches to be undertaken.

The experiences from other jurisdictions which have taken onboard electronic registration and searches and the lessons learned from their experiences would greatly assist the Land Titles Registry in Fiji. There is a legitimate expectation by the regular users of the Land Titles Registry in Fiji that changes to an electronic-based system for searches and registration will produce clear and demonstrable benefits. The general perception in many jurisdictions is that “dealings in land cannot remain unaffected by the general development of electronic commerce.”²³⁶

²³⁶ Joint Report by The Law Commission and Land Registry: ‘Land Registration for the Twenty-First Century: A Conveyancing Revolution’ - <http://www.lawcom.gov.uk/docs/lc271.pdf> (last accessed 31st January 2006).

As the current trend now is for greater efficiency in legal transaction, reduction in legal cost and prevention of fraud the move towards electronic/online searches and registration is inevitable. It can be prudently argued that eventually we would move towards computerisation of the Land Titles Registry, it would only be wise if incremental steps are taken now. For if we continue to hold back development and fail to introduce new technology we are surely likely to slow down the progress of our society.²³⁷

²³⁷ Supra n.235

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Appendix

This questionnaire is being administered to assist the Interviewer in gathering data from the users of the Titles Registry for a paper that he is writing on the Land Titles Registry. You would not be identified in any way or any information that you give will be disclosed without your prior approval.

1. Occupation?
 - (a) Solicitor.
 - (b) Law Clerk.
 - (c) Other (please specify) _____

2. How often do you attend the Land Titles Registry?
 - (a) Daily.
 - (b) Once/Twice a week.
 - (c) Sometimes.

3. How long have you been using the Land Titles Registry?

4. Types of land dealing you have had with the Land Titles Registry?
 - (a) Filing Documents.
 - (b) Conducting searches.
 - (c) Both.

5. How satisfied are you with the services offered by the Land Titles Registry?
 - (a) Absolutely satisfied.
 - (b) Reasonably satisfied.

- (c) Satisfied.
 - (d) Not always satisfied.
 - (e) Very unsatisfactory.
6. How do you rate the services offered by the Land Titles Registry?
- (a) Excellent.
 - (b) Good.
 - (c) Satisfactory.
 - (d) Poor.
7. What do you think of the availability of the documents upon searches?
- (a) Always available.
 - (b) Sometimes available.
 - (c) May not be available for a while.
 - (d) Not available for 3 months or more.
8. The present method of manual searches is?
- (a) Very efficient.
 - (b) Satisfactory.
 - (c) Very time consuming/slow.
- 9 (i) The present manual registration system is?
- (a) Good. (Goto Q.11)
 - (b) Reasonable. (Goto Q.11)
 - (c) Slow. (Goto Q.10)
 - (d) Too slow. (Goto Q.10)

10. Why do you think it is slow or too slow?

11. Have you heard of electronic/online conveyance searches?

- (a) Yes. (If yes, from where) _____
- (b) No (Goto Q.12)

12. Do you think we are ready for electronic/online conveyance searches, if it is set up? (Give reasons for your answers)

13. Have you heard of online/electronic conveyance registration?

- (a) Yes (If yes, from where) _____
- (b) No (Goto Q.14)

14. Do you think we are ready for online/electronic Registration, if it is set up? (Give reasons for your answers)

15. Any other specific comments about the operations of the Land Titles Registry?

16. Any general comments about the Land Titles Registry?

**Thanks a lot for taking out some of your valuable time to fill this questionnaire.
The information you have provided me will greatly assist me in my Masters (LLM)
Paper. Vinaka Vakalevu, Dhanya Baad and Thanks.**