

Section 110(1) allows claimants to obtain compensation from the Registrar where they have sustained loss or damage through:

- (a) the bringing of any land under the Act;
- (b) a legal practitioner's failure to disclose, in the legal practitioner's certificate, a defect in title or the existence of an estate or interest in land;
- (c) any amendment of the Register Book;
- (d) any error, omission or misdescription in the Register Book, or the registration of any other person as proprietor;
- (e) any payment or consideration given to another person on the faith of any entry in the Register Book;
- (f) the loss or destruction of any document lodged at the Office of Titles for inspection or safe custody, or any error in an official search;
- (g) any omission, mistake or misfeasance of the Registrar or any officer in the execution of their duties;
or
- (h) the exercise by the Registrar of any power conferred where the person sustaining loss has not been a party or privy to the application or dealing in connection with which the power was exercised.

Section 110(3) – no indemnity is payable:

- (a) where the claimant, or their legal practitioner, conveyancer or agent, caused or substantially contributed to the loss by fraud, neglect or wilful default, or derives title (otherwise than under a registered disposition for valuable consideration) from a person who, or whose legal practitioner, conveyancer or agent, has been guilty of such fraud, neglect or wilful default (the onus rests on the applicant to negative any such fraud, neglect or wilful default);
- (b) on account of costs incurred in taking or defending legal proceedings without the consent of the Registrar, except costs awarded against the Registrar in proceedings to which the Registrar is a party;
- (c) in consequence of the Registrar not inquiring whether a power of attorney was in force when something purporting to be done under the power, and falling within its scope, was done; or
- (d) where the Registrar, under s22(1AC) of the Subdivision Act 1988, has treated a consent or request made on behalf of a person whose consent to registration is required as that person's consent, where that consent or request was given without lawful authority.

Limitation periods:

- a. Section 5(1)(d) of the Limitation of Actions Act 1958 (Vic) may apply: an action "to recover any sum recoverable by virtue of [an] enactment, other than a penalty or forfeiture" must be brought within six years of the date the cause of action first accrues.

Corrections of the register of title are very limited.

Inconsistent Legislation

Define: the title of a registered proprietor may be set aside where subsequent legislation overrides it (*Pratten v Warringah Shire Council*).

- In determining whether this exception arises, courts assess whether the Act was "plainly intended to repeal", expressly or by implication, the indefeasibility provisions (*Horvath v Commonwealth Bank of Australia*).
 - This intention will be present where the Acts cannot operate in their own broad spheres (*Horvath per Ormiston JA*).

1. **Identify:** the main issue is whether [section X of the Y Act] is inconsistent with s42 TLA.

- a. **Define:** whether there is an inconsistency sufficient to set aside the title of the registered proprietor will depend on the proper construction of both Acts.
2. **Also ask:** is the inconsistency one that could be rectified via registration? (*Horvath*)

Cases

Pratten v Warringah Shire Council

- Street J: indefeasibility “will not avail” where it has been displaced by an overriding legislative provision.
- **Facts:** registered title subsequently came under s398 of the Local Government Act 1919 (NSW), which vested title to a 10-foot-wide drainage reserve in the Warringah Shire Council in September 1920. The Council did not enforce immediately; rather, it sought to enforce its rights against a third party who later became registered.
- The absolute indefeasibility ordinarily flowing from registration will not avail where the fee simple has, by an overriding statute, in effect been removed from the registration system.

Horvath v Commonwealth Bank of Australia [1999] 1 VR 643

- Ormiston JA noted a “strong presumption that Parliament does not intend to contradict itself, but rather intends both Acts to operate within their relevant spheres”. Where possible, courts will interpret legislation as consistent with s42 TLA.
- This is more likely where the subsequent provision is procedural and relates to documentary compliance (personal obligations).
- However, as outlined in the later case of *Hillpalm*, the presumption has little effect where the direct conflict is with an Act that confers an in rem right.

Calabro v Bayside City Council [1999] 3 VR 688

Hillpalm v Heaven’s Door Pty Ltd (2004) 220 CLR 472

- **Key issue:** determine whether the legislation is for a public or a private purpose.
 - Where it is private, it does not affect subsequent registration.

Kogarah Municipal Council v Golden Paradise (2005) 12 BPR 23,651

- **Facts:** Golden Paradise (GP) was RP of land in Blakehurst. In 1985 the Council consented to allow an adjacent owner to build, subject to dedicating a 6-metre strip of land to the Council as a public laneway. The Council became registered over the laneway in 1987. In 2002 the Council reconveyed the land to the adjacent owner, Blakehurst Properties P/L (BP). GP sought an order that the transfer was in breach of s45 LG Act, but BP had become registered.
- In obiter (the issue not being directly raised), Tobias JA: the conveyance was void but this was rectified upon registration (per *Breskvar*). Once registration occurred, the land ceased to be community land and Blakehurst could use it for its own private purpose.
- Cf Basten JA’s contrary opinion: s45 “speaks in unequivocal terms”. If, by providing a transfer in registrable form, the Council could avoid what it clearly should not do, there would be a “wholesale abrogation” of s45. It is arguable that s45 has, by “necessary implication”, amended s42 RP Act.

City of Canada Bay Council v Bonaccorso Pty Ltd (2007) 71 NSWLR 424

- **Facts:** the City of Canada Bay Council sold land (“Chapman Reserve”) to the respondent. The court considered, first, whether the land was “community land” within the LG Act; and second, if it was, whether s45(1) conflicted irreconcilably with the paramountcy provisions in the RP Act, or whether both provisions could be read sequentially.
- **Held:** there are rare circumstances where rights will trump registered interest holders. The court recognised *Pratten* as an example where the inconsistency effectively amounted to a continuing public right to a drainage reserve. The question is whether the later provision is so inconsistent with the indefeasibility provisions of the RP Act that it must prevail.
- The court endorsed the sequential interpretation of Kirby J in *Hillpalm* and held that, until registration, the transfer was null and void, but upon registration a clean title was created (per *Breskvar v Wall*).

Pike v Tighe (2018) 262 CLR 648

- Where a personal obligation “runs with the land by virtue of a statutory provision to that effect”, registration will not extinguish it.
- The natural and ordinary meaning of the words is that the obligation attaches to all land the subject of the application.