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Update Summary

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UPDATE 100

APRIL 2024

WOODMAN AND NETTLE

**THE TORRENS SYSTEM IN
NEW SOUTH WALES**

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Currently updated by
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UPDATE COMMENTARY

Jennifer Stuckey-Clarke has drafted new case summaries.

Torrens Assurance Fund – Causation of Loss

Claim for compensation from Torrens Assurance Fund

In *Back v Registrar-General of NSW* [2023] NSWSC 1567, the plaintiff sought compensation from the Assurance Fund on the basis of inter alia development of a neighbour's property in breach of two private covenants the registration of which had been rejected. See [RPA.39.90], [RPA.129.400], [RPA.134.20] and New Content Locator: Update 100.

Claim for compensation from Torrens Assurance Fund for omitted easement

In *JEA Holdings (Aust) Pty Ltd v Registrar-General of NSW* [2024] NSWSC 85 the Registrar-General accepted that the failure to record the easement on the title to the land was a relevant 'omission' for the purposes of s 129(1) RPA but denied that any compensation was payable from the Assurance Fund. See [RPA.129.410], [RPA.132.50] and New Content Locator: Update 100.

Adverse Possession

Indigenous land dispute

In *Anderson v Indigenous Land and Sea Corporation* [2024] NSWCA 9, the respondent statutory corporation had granted land to the appellant, Ngurampaa Ltd, on condition that no winding up order could be made of Ngurampaa Ltd. Ngurampaa Ltd remained in control of the land at all times until its liquidator surrendered the land to the respondent although the appellant and other board members of Ngurampaa Ltd remained in occupation. Since the respondent withdrew its permission to occupy well within the 12 year limitation period, adverse possession could not be established. See [RPA.45C.40], [RPA.45D.120] and New Content Locator: Update 100.

Adverse possession established in circumstances where claimant believed he was the legal owner

In *Cooper v McLennan* [2023] NSWSC 1385, plaintiff registered proprietor of rural grazing land sought declarations in response to the defendant's application for possessory title. The defendant established possession of the relevant land by himself and his family since 1996 as a result of grazing cattle and maintaining fences on the land but it was also accepted that the defendant believed himself and his family to be the legal owners of the land for much of that time. See [RPA.45D.130] and New Content Locater: Update 100.

Caveats

Caveatable interest in nature of equitable charge entitling real estate agents to judicial sale of units in development

In *Property Investors Alliance Pty Ltd v C88 Project Pty Ltd (in Liq)* [2023] NSWCA 291, appellant real estate agents sought to uphold caveat on basis of equitable charge to protect its commission. See [RPA.74F.200], [RPA.74MA.110] and New Content Locater: Update 100.

Removal of caveat to enable refinancing to occur: Balance of convenience

In *Finlayson v Bagala* [2024] NSWSC 94, a caveat to protect a debt owed was removed on terms to enable refinancing by the defendant of the caveated property. See [RPA.74K.120] and New Content Locater: Update 100.

