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PARLIAMENT OF TASMANIA

AUDITOR-GENERAL SPECIAL REPORT NO 22

Land Information and Adverse Possession

No. 6 of 1997 - November 1997

*Presented to both Houses of Parliament in accordance with the provisions of Section 57 of the
Financial Management and Audit Act 1990*

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11 November 1997

President
Legislative Council
HOBART

Speaker
House of Assembly
HOBART

Dear Mr President
Dear Mr Speaker

**PERFORMANCE AUDIT NO 22 - LAND INFORMATION AND
ADVERSE POSSESSION**

This report has been prepared consequent to examinations conducted under section 44 of the Financial Management and Audit Act 1990, for submission to Parliament under the provisions of section 57 of the Act.

Performance audits seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, thereby identifying opportunities for improved performance.

The information provided through this approach will, I am sure, assist Parliament in better evaluating agency performance and enhance Parliamentary decision making to the benefit of all Tasmanians.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A J McHugh'.

A J McHugh
AUDITOR-GENERAL

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List of Acronyms

F/R	Folio of the Register (The registration of a Certificate of Title which is a legal parcel of land that can be bought and sold)
DELM	Department of Environment and Land Management
PID	Property Identifier (A rateable or taxable property)
SRO	State Revenue Office
RPL	Rate Paying Lessee
UPI	Unique Parcel Identifier
 COMPUTER SYSTEMS	
LISA	Land Information Systems Access
NOS	Notice of Sale System
TARGIS	Taxation and Revenue Gaming Information System (Used by SRO)
TASFOL	Tasmanian Folio (Registration of Torrens Title Properties)
VALTAX	Valuation and Taxation (Former valuation system)
VISTAS	Valuation Information System Tasmania (Used by Valuer-General)

INTRODUCTION

Under the provisions of Section 44(b) of the *Financial Management and Audit Act 1990 (FMAA)* the Auditor-General may “carry out examinations of the economy, efficiency and effectiveness of Government departments or public bodies”.

This report relates to the performance audit of land information conducted by the Tasmanian Audit Office (the Office) during the period April 1996 to May 1997.

During recent audits of Councils, the Office noted a number of instances where properties were recorded with owners being unknown. This motivated the Office to check similar records kept by the Recorder of Titles, the Valuer-General and the State Revenue Office to determine what information was available in respect of land. In the course of this process, the Office found a number of inconsistencies and discrepancies between these offices in relation to the recording of “unknown owners” and other information. This observation led to a review of the extent of other mismatches and the need for reconciliation.

The Office examined whether the existence of records with “unknown owners” could result in a loss of revenue to the State or Councils and how the doctrine of adverse possession operated in some of these cases.

It should be noted that this report is not intended to be a review of or in any way, a criticism of the doctrine of adverse possession.

The Recorder of Titles has pointed out that there are clear advantages to the community when someone steps in and puts abandoned land to productive use, husband the land and pays municipal rates and state land tax.

He has also advised that extensive work is being undertaken to review the law of adverse possession, and that Cabinet has approved the drafting of legislation to implement the recent Report of the Land Reform Commissioner on adverse possession. It is anticipated that a Bill will be introduced into Parliament in 1998.

It is also acknowledged that those Government agencies responsible for the management of land information have, in recent years, made substantial investments in land management systems. Particular reference is made to the more significant developments on pages 5 and 6.

A draft of this Report was circulated to the Department of Environment and Land Management, Local Government Office, State Revenue Office and the Local Government Association. Where considered appropriate, adjustments have been made to reflect the responses received.

SUMMARY OF RECOMMENDATIONS

RECORDING OWNERS OF PROPERTY

That any record held by the Valuer-General, the State Revenue Office and various Councils to the effect that an individual property has an unknown owner should be checked against the records of the Land Titles Office to ascertain the name and address of that owner.

(Page 8)

That a timetable be developed for the reconciliation of the discrepancies between the land information held by the Recorder of Titles, the Valuer-General, the SRO and Councils.

(Page 8)

That notations regarding Rate Paying Lessee should be consistent between Councils and the Valuer-General.

(Page 8)

That no notation for a rate or land tax paying lease should be made unless appropriate written evidence, such as owner's advice, is provided.

(Page 8)

CONSISTENCY OF LAND INFORMATION

That action be taken to ensure that information within TARGIS reconciles with VISTAS and when that reconciliation is achieved, regular checks be carried out in future to ensure the integrity of the data.

(Page 10)

That, in future, the SRO reconciles the total number of properties and the total taxable value of those properties being issued land tax notices to ensure that all properties recorded in TARGIS are correctly taxed prior to issuing land tax demands.

(Page 10)

OBTAINING LAND UNDER THE DOCTRINE OF ADVERSE POSSESSION

That the reviews of the *Tasmanian State Service Act 1984* and the *Local Government Act 1993* consider the question of the use of information gained during the course of employment or duty by employees of State and Local Government and by the elected representatives in Local Government.

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RECORDING OWNERS OF PROPERTIES

VALUATION AND RATING INFORMATION ON PROPERTIES

The statutory duty for recording the names of owners of properties in Tasmania rests with the Recorder of Titles, a statutory position originally created under the *Real Property Act 1862* and now given recognition under the *Lands Titles Act 1980*.

As well as the details maintained by the Recorder of Titles in respect of individual properties, information is also compiled by the Valuer-General.

The *Land Valuation Act 1971* requires the Valuer-General to make a valuation of all properties (excluding certain Crown properties) and to provide each local rating authority and the State Commissioner of Taxes (State Revenue Office) with a certified list of such valuations.

The Act also specifies that each notice of valuation should contain certain information including the description of the property and the name and address of the owner. This information is used as the basis of council rates and charges and state land tax.

In essence, the Valuer-General enters details of all valuations into a computerised system. When a complete revaluation of a Council area is done, usually on a five year basis, a new computer listing, containing the details of the revaluation is sent to the relevant Council. Information held by the SRO is updated at the same time.

In 1982 the Valuer-General developed a data base system to record details of each property valued under the *Land Valuation Act 1971*. The system known as VALTAX (Valuation and Taxation) was also used by the SRO and local government.

CHANGES TO THE LAND INFORMATION SYSTEM

Since 1993 there have been a number of changes affecting the recording of information in respect of the ownership and valuation of properties. These changes include amendments to the *Land Titles Act 1980* and other Statutes, the development of new computer systems and the restructure of DELM in respect of the areas of land information and registration.

The State has committed itself to the creation of a coordinated land information system. Following the Premier's Directions Statement of 10 April 1997, the Government has allocated substantial funds for the development of the system.

The *Land Titles Amendment Act (No. 21 of 1996)*, amended the *Land Titles Act 1980* to provide for changes in the manner forms are lodged at the Land Titles Office. One of these changes relates to the lodgment of the notice of sale of property. As from 1 November 1996 notices of sale are lodged with the Recorder of Titles at the same

time as the lodgment of the instruments to transfer title. The Recorder of Titles is responsible for notifying the Valuer-General, the SRO and municipal councils of details of change of ownership.

This replaces the previous system whereby the vendor notified these bodies separately and there was no procedure in place to ensure that notices of sales and instruments of transfer agreed.

The Valuer-General and the SRO have both introduced new computer systems known as VISTAS and TARGIS respectively. The Recorder of Titles has also implemented systems known as TASFOL (Tasmanian Folio) and NOS (Notice of Sale). TASFOL records details of titles issued under the Torrens system. NOS provides the mechanism for the Recorder of Titles to notify the Valuer-General and the SRO of changes of ownership. The Recorder of Titles also notifies the respective Council of the changes.

These procedures should ensure that the records of SRO, Councils and the Valuer-General are updated with any change in the name of the registered owner as recorded by the Recorder of Titles.

Another new feature of the Recorder of Titles' database is LISA (Land Information Access System) which allows enquiry by dial in access by the legal profession and other users of the land information system. LISA has direct links with TASFOL and VISTAS.

Whilst the new arrangements will assist in ensuring the integrity of property information in respect of future land transfers, there are a number of issues in relation to the information already recorded.

EXTENT OF PROPERTIES RECORDED AS "UNKNOWN OWNER"

A valuation listing obtained from the State Revenue Office in November 1995 showed that approximately 440 individual properties contained the following entry in respect of the name of the owner:-

"owner unknown"

In some of these cases, a person's name has been entered as the "rate paying lessee" (RPL). This may have been noted only on the Council's copy, or in other cases, also on the copies maintained by the Valuer-General and the SRO.

There should be no cases of unknown owners, as the owners' names are recorded at the Land Titles Office. At two municipal councils, officers of the Office were told by staff members that properties had been marked as "unknown owner" because Council could not locate the address of the known owner. In other words "unknown owner" was a substitute for address unknown.

In a number of cases where properties were recorded with unknown owners, a name was listed as the rate paying lessee. The claim that a rate paying lessee can exist for a property where the owner is listed as unknown appears to be invalid. For a

ratepaying lessee to exist implies that there is a lessor who is known and is the other party to a lease. The Recorder of Titles has suggested that the term "rate paying occupier" should be used rather than RPL.

This information was compared with the records of the

- Valuer-General, and
- a number of individual Councils

In May 1996, according to the records of the Valuer-General, there were approximately 350 properties with an "unknown owner", that is, some 90 less than the number registered at the SRO.

Comparison with relevant Councils also indicated that there were variances between the SRO and those Councils. Some properties listed by the SRO as unknown owners had the names of owners recorded on Council records and others which had names recorded at the SRO were shown as "owners unknown" on the Council records.

The following information was held by the relevant Councils in respect of a sample of properties noted by the SRO as being "unknown owner":-

- the owner's name noted including cases of the owner being the estate of a deceased person,
- the Crown or Council being the owner,
- the property being Public Open Space,
- the land being in fact part of a public road,
- no record of the property,
- the property no longer existed as it had been subdivided and spread over new ownership, or been subject to Stratum Title development.

Section 43 of the *Land Valuation Act 1971* provides for the SRO and a rating authority (Council) to notify the Valuer-General of any alterations which they desire in a valuation list. Any such alteration requires the written consent of the Valuer-General. However, this section does not require the SRO or Councils to either notify change of ownership or address or have the approval of the Valuer-General or the Recorder of Titles to change information on their records. Consequently it is possible for the SRO and Councils to alter the names of owners of property. The SRO has advised that it has introduced controls to prevent unauthorised change. As the Recorder has statutory responsibility for recording the registered owners of properties, change of ownership should not occur without his consent. This will also ensure consistency of ownership details between Land Titles Office, Valuer-General, SRO and Councils.

The prevention of unauthorised changes to the valuation roll is dependent on the Valuer-General retaining control over alterations to any details on the roll, and the non-notification of changes in ownership and addresses by the SRO and Local Government has led to the situation where the records of the three bodies do not agree on the number of occasions stated.

It would be desirable that these discrepancies be reconciled over time.

In those cases where the name of the owner is recorded as unknown and a person's name has been entered as the "rate paying lessee" (RPL), or as now suggested by the Recorder of Titles, Rate Paying Occupier, appropriate evidence, such as advice from the owner, should be provided before a Council, the SRO or Valuer-General records a party as a RPL.

It would be desirable to have complete consistency between the SRO, the Valuer-General and Councils regarding the notation of parties as RPLs. However, it is possible for a lease to have different parties responsible for the payment of state land tax and municipal rates and consequently for a Council and the SRO to record different names as rate paying lessees. There should be agreement on notation of RPLs between Councils and the Valuer-General.

POTENTIAL FOR LOSS OF REVENUE

There is the potential for loss of revenue to State and Local Government through the non-payment of land tax and municipal rates where a property is incorrectly recorded as having an unknown owner. The SRO has indicated that the loss to the State is less than \$5 000 p.a. No calculation has been made of the loss to Local Government.

RECOMMENDATIONS

That any record held by the Valuer-General, the State Revenue Office and various Councils to the effect that an individual property has an unknown owner should be checked against the records of the Land Titles Office to ascertain the name and address of that owner. (The SRO has advised that this process has commenced).

That a timetable be developed for the reconciliation of the discrepancies between the land information held by the Recorder of Titles, the Valuer-General, the SRO and Councils. (SRO has advised that it anticipates its records will be reconciled by mid-1998).

That notations regarding RPL should be consistent between Councils and the Valuer-General.

That no notation for a rate or land tax paying lease should be made unless appropriate written evidence, such as owner's advice, is provided.

CONSISTENCY OF THE LAND INFORMATION SYSTEMS

As already indicated, information on land within the State is held by the Department of Environment and Land Management (DELM) on two computer systems.

VISTAS records Property Identification Numbers

TASFOL records Folios of the Register

In addition, DELM has developed a computerised mapping system (Digital Cadastral Map Base) by which individual properties are recognised by a Unique Parcel Identifier (UPI).

The successful implementation of the changes to the land information systems referred to on pages 3 and 4 is dependant upon the integrity of the data contained in those systems. DELM has undertaken cross checks of information on PIDs, F/Rs and UPIs.

The result of cross checks undertaken in April 1997 was:-

Link	Completeness of Check	Accuracy of match
UPI - F/R	95%	65%
UPI - PID	95%	70%
PID - F/R	75%	95%

According to advice provided by DELM, the substantial proportion of mismatched data relates to either:-

- minor errors such as the initials of the name of the owners not agreeing, or
- absence of the number of the Folio of the Register on the properties listed in VISTAS.

DELM has created a number of positions to both finalise the cross checks and make any subsequent amendments to records. The eventual aim is to have an accurate cross reference between PIDs, UPIs and F/Rs.

It is emphasised that it is the information within these records that is being matched. The actual number of records within the various systems will not agree, for example, one valuation (PID) may refer to a number of folios of the Register.

As at June 1995, there were 230 054 live rateable properties (ie PIDs) on VISTAS. As at November 1996, there were 291 400 folios recorded at the Land Titles Office.

The matching of F/Rs to PIDs will eventually determine if there are valid reasons for any variations.

RECONCILIATION OF SYSTEMS

As previously indicated, DELM has compared VISTAS against TASFOL to reconcile details of the respective data bases. The Office has been advised that those discrepancies identified are being corrected, however the time frame for completion is unclear at this stage.

The SRO has not reconciled its database TARGIS against VISTAS to ensure that both systems have the same information including the number and taxable valuations of properties in the State. When the SRO developed its own system TARGIS, it transferred information from VALTAX which it had shared with the Valuer-General. As a consequence, the errors that existed in the old VALTAX system may still be evident in the new system. An initial check highlighted a 40% mismatch with TASFOL, although not all of these would have revenue consequences. Many of these errors were of a minor nature, eg spelling mistakes, incorrect initials. Advice from Officers in the SRO is that alignment with both TASFOL and VISTAS should be completed by mid 1998 with a substantial level of matching already achieved.

In addition the SRO had not reconciled the total number of rateable properties or the total taxable values of those properties before issuing land tax demands to ensure that the number and value of properties actually taxed agree with the information recorded in TARGIS. This is seen as an important control to ensure that properties are correctly taxed.

RECOMMENDATIONS

That action be taken to ensure that information within TARGIS reconciles with VISTAS and when that reconciliation is achieved, regular checks be carried out in future to ensure the integrity of the data.

That, in future, the SRO reconciles the total number of properties and the total taxable value of those properties being issued land tax notices to ensure that all properties recorded in TARGIS are correctly taxed prior to issuing land tax demands.

WEST COAST ISSUES

For a number of years, the West Coast has been highly dependent on the mining industry. Because of the speculative nature and long term uncertainty of the industry, a number of properties have effectively been abandoned by their registered owners.

A number of issues arising out of this review had particular relevance to areas on the West Coast, namely:-

- high incidence of properties listed as “unknown owners”.
- large number of adverse possession claims for the Strahan area.

LARGE INCIDENCE OF UNKNOWN OWNERS

In the West Coast Municipal area some 302 properties were identified by the SRO in November 1995, as having an “unknown owner”. This compared with 276 recorded by the Valuer-General. These properties are distributed in the areas of the following former Municipalities:-

	SRO	Valuer-General
Zeehan	135	116
Lyell	150	149
Strahan	<u>17</u>	<u>11</u>
	302	276

These compare with 303 properties listed by the West Coast Council with unknown owners. The closeness of this figure with that recorded by the State Revenue Office appears to be coincidental, as for example, in the Strahan area Council had only three properties listed with unknown owners, compared with 17 by the SRO.

There should be a direct link between property information held by the Council and the Valuer-General. A comparison of the two was done using the PID, a number unique to a particular property in the valuation system.

This comparison discloses that there were:-

- 60 properties listed by Council, and not by the Valuer-General with unknown owners.
- 33 properties listed by the Valuer-General and not by Council, with unknown owners.

As a full check of all properties in the area was not done, it is possible for these numbers to reduce if there have been any clerical errors in recording property identification numbers.

It is noted that in the Strahan area, Council has three properties recorded as unknown owners compared with 11 by the Valuer-General and 17 by the SRO. An examination of these properties listed by the SRO but not the Valuer-General indicated that these properties either did not exist on the records of the Valuer-General or were owned by the Commonwealth, State or Local Government or in private ownership.

According to Council, it has been able to reduce the number by the identification of the owner names as recorded at the Land Titles Office and noting this name on the valuation roll.

It should be noted that in addition to these properties listed with “unknown owners”, there are a number of properties where the owner’s name has been recorded but the property has effectively been abandoned.

ADVERSE POSSESSION IN STRAHAN AREA

According to a sample of records checked at the Titles Office, there have been at least 10 claims for adverse possession in Strahan in the past five years, i.e. 2 per annum. This compares with an annual average of less than 35 for the State over recent years.

However, advice obtained from the West Coast Council indicates that there are at least 40 properties in the Strahan area that are either subject to adverse possession claims or where rates are being paid by rate paying lessees with an apparent view to a claim to adverse possession.

OBTAINING LAND UNDER THE DOCTRINE OF ADVERSE POSSESSION

THE DOCTRINE OF ADVERSE POSSESSION

The rule of adverse possession was discussed by the Law Reform Commissioner in his “Report on Adverse Possession and Other Possessory Claims to Land” (Report No 73 of 1995 - Parliament of Tasmania).

On page 15 of that Report he indicated that:-

“The rule of adverse possession can be traced back to its roots in the English common law, which based title to land largely on possession. The application of the rule of adverse possession extinguishes both the remedy of the former owner to recover the land, and also the title of that owner. The adverse possessor gains a new title to the land.

Application of the adverse possession rule requires:-

- an intention by the occupier to possess the land to the exclusion of, and inconsistent with the title of the owner;
- possession of the land in question by an appropriate degree of exclusive physical control;
- that the possession is open, continuous and not based upon agreement or force.”

The Commissioner also outlined the considerations for an application for adverse possession. These include:-

- statutory declarations of applicant and two disinterested parties describing the nature of the possession;
- evidence as to the payment of rates and taxes.

In respect to the payment of municipal rates and taxes the Commissioner stated that:

“Such payment of rates and taxes raises vexing issues in relation to the motivation of the payer. Some submissions advised that it is not unknown for a person to gain information that rates or taxes have been unpaid for a number of years. That person then pays the back rates and taxes (thus avoiding the land reverting to the Crown as abandoned land), and undertakes the minimum acts necessary to satisfy the Recorder of Titles in relation to possession of the land. Following the required period of possession the person is able to claim title to the land under the rule of adverse possession.”

Since the release of the Commissioner's Report, extensive work has been undertaken by state agencies to re-work the statute and substantive law on adverse possession. Reforms include amendments to procedures for lodging claims and a non-litigious procedure for registered proprietors to protect themselves from adverse possessors. Cabinet approval has been obtained for the drafting of the Land Titles (Law Reform) Amendment Bill to give effect to these reforms. It is anticipated that the Bill will be introduced into Parliament early in 1998.

EVIDENCE FOR ADVERSE POSSESSION

Evidence of appropriate possession over the required period necessitates declarations from the claimant and two disinterested parties.

The Recorder of Titles has an approved form for the lodgement of an application for a vesting order. Where an alternative format is used a requisition would usually be raised.

As previously noted, the Law Reform Commissioner referred to submissions he received indicating that claims were made that people could back pay municipal rates for a number of years and then lodge a claim for adverse possession.

Evidence provided to the Office suggested that there may have been occasions where the requirements to possess and occupy the land and exclude the owner may not have been fully satisfied.

The availability of records that indicate that the owner is unknown coupled with less than ideal procedures enabling a person to establish the status of a RPL may invite such claims.

However, when the circumstances warrant, the Recorder of Titles intends to use the services of field officers of a Government Agency to inspect properties subject to a claim which will provide evidence of possession by the claimant.

Whilst rate paying history can be used as evidence in a claim for adverse possession, the Recorder of Titles has emphasised that the critical question is evidence of adverse possession by the claimant.

The Office found that that a number of people had obtained adverse possession after ascertaining that particular properties were held as "unknown owner", being noted as a rate paying lessee and then paying the rates.

These people included those associated with:-

- a then Council, both elected representatives and staff, and
- persons in government agencies who would have access to information as to what properties had been recorded as unknown owners.

During the review it was also noted that there were some unusual features in respect of properties listed as “unknown owners”. For example:-

- one RPL was just a Post Office box, without any name having been quoted,
- one RPL quoting an address as the Northern Territory, and
- a then Council approving a development application for the building of a residence on a property where according to rating records, the owner was unknown.

Three cases of adverse possession were referred by the Office to Tasmania Police for investigation. The Commissioner of Police has advised that the actions of the persons involved did not amount to a breach of the Criminal Law.

The question of how people associated with State or Local Government use information that they may obtain in the course of their work is a complex one. It may be argued that some of the information that has been obtained, such as properties listed with “unknown owners” could be available to any members of the public making an enquiry.

Nevertheless, the fact remains that those persons in either State or Local Government having access to Council information would have the benefit of knowing that information was available. It is not so much access to information by State or Local Government employees that provides the difficulty, rather the conflict of interest that may arise from being able to alter records such as property rating information and rate notices.

Currently reviews are being undertaken of the Local Government and the State Service Acts. In these reviews it would be opportune to consider the duties of state and local government employees, and local government elected representatives in respect of their position to maintain information.

RECOMMENDATION

That the reviews of the *Tasmanian State Service Act 1984* and the *Local Government Act 1993* consider the question of the use of information gained during the course of employment or duty by employees of State and Local Government and by the elected representatives in Local Government.

PREVIOUS REPORTS TO PARLIAMENT

1992	SPECIAL REPORT NO 1	REGIONAL HEALTH SUPPORT SERVICES
1992	SPECIAL REPORT NO 2	STUDENT TRANSPORT
1993	SPECIAL REPORT NO 3	EDUCATION INSTITUTIONS CLEANING SERVICES
1993	SPECIAL REPORT NO 4	STANDARD OF ANNUAL REPORTING BY GOVERNMENT DEPARTMENTS
1993	SPECIAL REPORT NO 5	MUNICIPAL SOLID WASTE MANAGEMENT
1994	SPECIAL REPORT NO 6	ADMINISTRATION AND ACCOUNTABILITY OF GRANTS
1994	SPECIAL REPORT NO 7	REGIONAL HEALTH MEDICAL REVIEW
1994	SPECIAL REPORT NO 8	WASTEWATER MANAGEMENT IN LOCAL GOVERNMENT
1995	SPECIAL REPORT NO 9	HERITAGE COLLECTION MANAGEMENT
1995	SPECIAL REPORT NO 10	OFFICE ACCOMMODATION MANAGEMENT
1995	SPECIAL REPORT NO 11	RECORDING AND REPORTING BY GOVERNMENT DEPARTMENTS OF THEIR NON-CURRENT PHYSICAL ASSETS
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1997	SPECIAL REPORT NO 21	SPECIAL INVESTIGATION INTO ADMINISTRATIVE PROCESSES ASSOCIATED WITH PRESERVATION AND MAINTENANCE OF THE PORT ARTHUR HISTORIC SITE