



# THE REAL PROPERTY ACT IN AUSTRALIA

On a road paved with resistance, a proponent of change champions a new title system

BY ALAN HARTLEY

**South Australia was originally founded on a colonial model based on the belief that existing Australian colonies were suffering from the chaotic granting of free land. Without control of their own land policy, titles would remain insecure. The ownership of land was fundamental to economic life from the outset, and disputes over title to land quickly emerged.**

## Breaking New Ground

The title system in South Australia is unusual in that it can be traced back to one individual—Sir Robert Richard Torrens. I have an interesting connection with Torrens, as I live in Adelaide, South Australia, just five miles from the former home of the heralded creator of the Torrens Title System. And as a property practitioner for over 40 years, I have been long aware, and quietly proud, that Robert Richard Torrens chose to strongly support, and subsequently live and work in Adelaide at a crucial time in its early history. The principles he introduced regarding land title in the mid-1800s have been embraced across all of Australia and in a range of jurisdictions across the world.

Torrens was the son of a founding father of the colony of South Australia, Colonel Robert Torrens, who was Chairman of the South Australian Association and was charged with founding the colony, managing the sale of land and emigration. The elder Robert Torrens had actively promoted emigration, particularly from Ireland to Australia. Born in Ireland himself, the younger Robert Torrens joined his father in South Australia in 1840 at the age of 26. His business education and training formed a solid basis for his appointment as Collector of Customs for South Australia. In a colony only four years old, this would call for a very practical outlook.

Torrens was an able speaker—fluent and forceful. He stamped himself as a man of action, and was often both unconventional and controversial. He had a wide knowledge of economic and political matters, and whatever view he took, he was prepared to hold to it most tenaciously. In 1852, he was appointed Registrar General and Colonial Treasurer, where he oversaw the registering of deeds under the Registration of Deeds Act 1841. It was in this field that he was destined to break new ground.

South Australia became a self-governing colony in 1856 with an established constitution and a Parliament. Torrens was elected to Parliament as a member for the City of Adelaide and sat in Cabinet as Treasurer. In 1858, he wrote to the Governor of South Australia stating his intention to introduce a law reform measure regarding real property. In his note, he included two copies of the bill he had drafted with the intention of presenting it to the Legislative Assembly.

### A Joint Effort

Torrens certainly did not work alone on the bill he introduced, and the input and support of Dr. Ulrich Hübbe in particular was considered indispensable. Dr. Hübbe was a Doctor of Civil and Canon Laws of the Kiel University, and had worked with the Prussian Judicial Service before seeking freedom in South Australia in 1842. His education and ability to speak eleven languages led to the establishment of a school, and eventually his appointment as an interpreter in the South Australian Supreme Court.

When Torrens introduced the bill in June 1857, it was apparent that Dr. Hübbe assisted him greatly and provided much advice on land rights by educating him on pros and cons of the title system that had been in place in areas of Germany for over 600 years. In his book, *Voice of Reason*, published in 1857, Dr. Hübbe refers to Torrens as the author of the Real Property Act. This book dealt very fully with the various continental systems of land registrations, and revealed that Dr. Hübbe truly possessed a wide range of knowledge. The purpose of his book was to convince the people of South Australia that antiquated methods had no place in the economy of a young country, and that the opportunity to adopt the simplistic and sound scheme

of the Real Property Act should be seized. It must have made a valuable contribution to the fight between the legal profession on the one hand and the settlers, land agents and businessmen on the other, as South Australian legal practitioners were against the concept of title reform from the start.

There is also very little doubt that the fundamentals of the system, as Torrens himself admitted, came from the method of dealing with shares in ships. Torrens, possibly influenced by various other suggestions that had accumulated, conceived in a rough manner the adoption of the shipping laws. Knowing that his working ideas may have been a little crude, he took into his confidence those who were already openly in the fray, including Dr. Hübbe and various newspaper writers. With these men on his side, and with the support of the press, a bill emerged. He was therefore not the actual author of the bill, but rather the author of the idea as presented in that bill. Still, it is clear that his leadership in advancing the whole matter was such that it could justify the use of the word “author.”

### The Inevitable Controversy

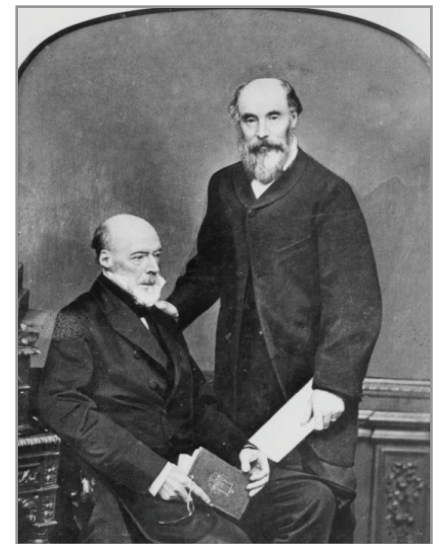
Although the South Australian government was not a sponsor of the bill, Torrens’ allies in the press had whipped up popular opinion, and the people were determined to affect change. Since land was considered the Colony’s core currency, the public had long suffered from the effects associated with title uncertainty. There are recorded cases where Colonists had to spend several times the value of their property just to prove it was theirs. But it was exactly this uncertainty that earned certain parties significant income. It’s no wonder that Torrens became the sworn enemy of those who profited from deals and uncertainties.

Torrens became recognized as the champion of the real property owners, and this public support enabled him to push forward, despite fierce and powerful opposition. By January 1858, a petition signed by 2,700 people was presented to the Legislative Council asking that the bill be passed before the end of the session. Those who signed the petition represented the majority of landowners and had tasted the process of forcing fundamental change, so the timing was good. Eventually, the supporters had their way, and it became

law. Small property owners, in particular, regarded Torrens as a hero and that led to the acclaim he eventually received.

After The Real Property Act had been passed, various comments were made claiming that the theory behind it and the language used in the Act was not new, and except for two instances, was in accordance with the 1857 report of the English Commissioners, a copy of which had recently been received in Adelaide. Torrens did not refute these allegations or the similarities, and conceded that while he was not a lawyer, he studied the principles of British and Continental law when composing the original bill and consulted numerous lawyers throughout the process. In his view, any similarities were inevitable and forgivable.

The bill, which was hastily put together, had the indelible mark of a layman. Even in committee, so much was added that many members objected. So much so that the following year, this Act of 1858 was altered in many respects, primarily because the initial bill had more enthusiasm and political pressure behind it than legal precision. Relative to the 1859 amendment, the Governor referred to the “palpable haste” in which the 1858 Act had been passed.

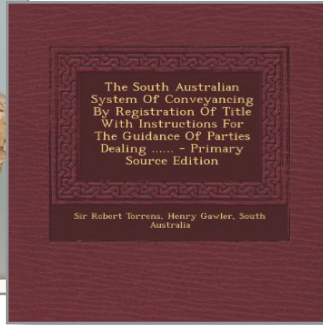


Sir Robert Richard Torrens (standing), became Premier and Registrar General and founded the Real Property Act in South Australia, which resulted in the spread of the Torrens Title System. His father, Colonel Robert Torrens (seated) was Colonization Commissioner and encouraged investment of property in South Australia.

*Photo courtesy of the State Library of South Australia, B7557.*



A bust of Robert Torrens by the sculptor John Dowie is located in the Land Titles Office in Adelaide.



In 1859, Torrens published The South Australian System of Conveyancing, which addresses the evils associated with the general law and covers the principles of the new Act.

### Licensing Land Brokers

Despite the amendment, when the act was passed, many members of the legal profession sought to render the measure ineffective. In fact, it is alleged that some practitioners advised their clients not to deal with any land that fell under the Act.

In June 1858, Torrens received a letter from the Legislature's Chief Secretary requesting that Torrens once again accept the position of Registrar General to administer the new law he had created. He happily accepted and resigned his seat in Parliament. All the circumstances surrounding the introduction of the bill, the passing of the Act, popularizing the measure, its administration in the face of active opposition and the like, would have deterred most men. Torrens, however, was made of sterner stuff and submitted a suggestion to license land brokers.

No doubt Torrens must have known the stormy road that lay ahead. Having already tasted the bitter opposition of the legal profession, it's possible that he welcomed the opportunity to finally crush all resistance. The idea, of course, was to permit a type of person to operate—one who was solidly behind the reform and who would enter into spirited competition with the legal profession. The state government consented to this suggestion, and thus in 1860, the power was given to the Registrar General to license land brokers.

### Acceptance at Last

The Real Property Act had come to stay, and although there were many questions to be resolved, the general principle was eventually accepted. The news spread rapidly that transactions in land were cheap, simple and secure, and gradually people began to acknowledge the man who had been responsible for this boon.

Torrens had capacity beyond most people, and although the fight in his own colony was fierce, necessitating visits to country centers, he still found time to visit other colonies to promote his title system. His influence was marked, and within 16 years, the system was adopted by the whole of Australia and New Zealand. From there it has spread to many other parts of the world, including several areas within the United States.

In 1862, he travelled to the United Kingdom to lecture and advocate the adoption of his system throughout England, Scotland and Ireland. Torrens paid tribute to the people who had helped him. In particular, he mentioned the press and pointed out how valuable was the freedom which citizens enjoyed of airing their view through the medium of the newspaper. He left no doubt that, without the aid of the press, the Real Property Act would most likely have not survived, given the harsh opposition he encountered.

While in the United Kingdom, Torrens introduced the Real Property Act to his country of birth, Ireland. At a meeting of land proprietors, bankers and other professionals in 1864, a resolution was passed commending Torrens and urging the Government to adopt his system, and the Act was passed.

### Long-Due Recognition

Later that same year, petitions signed by nearly 14,000 people were made to both Houses of Parliament of South Australia requesting that Torrens' services be recognized. He received two British knighthoods for his work in connection with Registration of Titles to Land Act and for the introduction of The Real Property Act.

In South Australia, Torrens remains a household name among the business and professional community. Due to his early guidance and strong support, the administration of the Real Property Act still remains probably the most simple of all the Australian statutes. The spirit of the act has been carried out fearlessly throughout the years. From start to finish, the system is simple, and the process is widely regarded as efficient.

The name of Torrens is revered because his system has enabled a single indisputable Certificate of Title to be filed in the Lands Titles Office, with an identical one held by the owner. Methods may have changed and continue to evolve and adapt, but the basic principle remains the same. The Torrens Titling system is a perpetual memorial to a truly great man. ★

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