

# Part 60 – Miscellaneous

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## Part 60 – Miscellaneous

# Legislation

### Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, the Land Title Act applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the Land Title Act:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

### <sup>1, 3</sup>Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the Land Act relating to the keeping of registers are carried out by the Registrar of Titles under delegation given under s. 393 of that Act.

# Requisitions

## General Law

[60-0000]

### Requisition pursuant to s. 156(1) of the *Land Title Act 1994* or s. 305(1) of the *Land Act 1994*

The Registrar may, by written notice (the 'requisition'), require a person who has lodged an instrument or other document (or another person who reasonably appears to the Registrar to be relevantly associated with the instrument or other document) to re-execute, complete or correct the instrument or document, or to provide specific information (s. 156(1) of the Land Title Act or s. 305(1) of the Land Act).

If the requisition is not complied with within the time specified in the requisition or as extended by the Registrar, the instrument or document may be rejected with a consequent loss of priority (ss. 157(1) and (2) of the Land Title Act or ss. 306(1) and (2) of the Land Act). It is at the Registrar's discretion whether the time to comply with the requisition will be extended (s. 156(4) of the Land Title Act or s. 305(4) of the Land Act).

A rejected instrument or document other than an electronic conveyancing document (see below) may be relodged after the requisition has been complied with (s. 157(6) of the Land Title Act or s. 306(6) of the Land Act).

### Electronic conveyancing document

A document that is lodged as an electronic conveyancing document, and is subsequently requisitioned, will be printed as a rendered version of the electronic registry instrument (with a dealing number attached) and forwarded to the lodger of the document in case changes are required to address any deficiencies identified in the requisition notice.

Once the requisition has been complied with, the rendered paper form must be returned to a Titles Registry lodgement office even if no changes have been made to the form.

The rendered paper form must meet the relevant requirements of an instrument or document that is lodged in paper form including the requirements relating to alterations or minor amendments (see 59-2040) when the document is returned to a Titles Registry lodgement office. However, the document does not require a fresh execution (i.e. wet signatures) by the parties to the instrument or document.

An electronic conveyancing document that has been rejected cannot be relodged (s. 157(5) of the Land Title Act).

### Requisition pursuant to s. 156(7) of the *Land Title Act 1994* or s. 305(7) of the *Land Act 1994*

The Registrar also has the power to give a written notice (also a 'requisition') to a person who has lodged an instrument or other document (or another person who reasonably appears to the Registrar to be relevantly associated with the instrument or other document) where the Registrar is satisfied that:

- the instrument or document is not capable of registration; and
- the reason the instrument or document is not capable of registration is not a matter for which a requisition may be given under s. 156(1) of the Land Title Act or s. 305(1) of the Land Act.

The requisition will state that the instrument or document is not capable of registration and why it is not capable of registration (s. 156(7) of the *Land Title Act 1994* or s. 305(7) of the *Land Act 1994*).

## Practice

[60-0030]

All documentation is returned to the lodger of the instrument or document that has been requisitioned. When the instrument or document is to be returned to the registry all the documentation originally lodged and any additional documentation requisitioned for must be deposited.

If an instrument or document that has been returned to the lodger is lost or misplaced, the lodger must seek the approval of the Registrar to use a copy that has been certified by the Registrar in place of the original. The request for approval must be made in writing and once approval is granted, the lodger can order and use a certified copy of the instrument or document from the Titles Registry in place of the original. The regulated fee for a certified copy is payable.

The details of a requisition will only be disclosed by the Registrar to a person to whom the requisition was issued.

Usually, the time to comply with the requisition in the first instance will be eight weeks, however, the requisition period for caveats and priority notices will usually be four weeks. All requests for extension must be in writing and contain substantive reasons including:

- the details of actions being undertaken to comply with the requisition; and

- the reasons inhibiting the lodger or other parties from complying with the requisition within the prescribed time.

Where an instrument or document is to be rejected all instruments or documents dependent on registration of the rejected instrument or document will also be rejected.

If an instrument or document is rejected, the fees that have already been paid for lodging the instrument or document are forfeited. The lodgement fee payable on relodgement of an instrument or a document is set out in s. 6 of the Land Title Regulation 2015, s. 87 of the Land Regulation 2020, or s. 130 of the Water Regulation 2016.

### Requisition of a caveat or writ or warrant of execution

If a caveat or writ or warrant of execution is requisitioned pursuant to s. 156(1) of the *Land Title Act 1994* or s. 305(1) of the *Land Act 1994* and the requisition is not complied with by the end of the period stated in the requisition, a notice of intention to reject is generally given by the Registrar, allowing seven days for the lodger to respond to the rejection (see part 11 – Caveat, esp [11-2010] and part 12 – Writ or Warrant of Execution, esp [12-2110]).

## Fee for a Requisition

[60-0040]

Every requisition that is issued attracts the prescribed fee unless there is a statutory exemption applicable to the lodger or the transaction. The legislative authority for the exemption may be required to be provided.

Fees payable to the Titles Registry are subject to an annual review. See the current:

- <sup>1,2</sup>Land Title Regulation;
- <sup>2,3</sup>Water Regulation; or
- <sup>1,3</sup>Land Regulation.

# The Registrar's Powers of Correction

## General Law

### Error in Lodged Instrument or Document

[60-0050]

The Registrar may correct an obvious error in:

- a lodged plan of survey (s. 155(1) of the *Land Title Act 1994* or s. 304(1) of the *Land Act 1994*) by:
  - a) drawing a line through the error without making the original words illegible; and
  - b) writing in the correct information; and
  - c) dating and initialling the correction.

or

- a lodged instrument or document (s. 155(2) of the Land Title Act or s. 304(1) of the Land Act) by making the correction under the provisions of s. 155(2)(b) of the Land Title Act or s. 304(1)(b) of the Land Act. That is, the error is treated as if there was no error, an electronic notation is made in the register and the face of the instrument or document is left as it was lodged.

An obvious error may only be corrected if the Registrar is satisfied that the instrument or document is incorrect and the rights of a person will not be prejudiced (s. 155(3) of the Land Title Act or s. 304(2) of the Land Act). An instrument or document so corrected has effect as if the error had not been made (s. 155(4) of the Land Title Act or s. 304(3) of the Land Act).

**Note:** an error in an instrument will not be considered an obvious error if the face of the instrument or document may, in the future, lead to ambiguity, even though it may at the time of examination appear to be an obvious error within the meaning of the above provisions. For example, it would be unclear from the face of a registered mortgage which property the mortgage applies to where the mortgage shows an erroneous title reference (even if there is only one incorrect digit) and this was treated as an obvious error.

## Error in the Register

[60-0060]

The Registrar may correct an error in the register or an instrument or document forming part of the register if satisfied that the Register is incorrect and the rights of a holder of an interest recorded in the register would not be prejudiced (ss. 15(1), (2) and (5) of the *Land Title Act 1994* or ss. 291(1) and (2) of the *Land Act 1994*).

<sup>2</sup>If the holder of an interest recorded in the register has acquired or dealt with the interest with actual or constructive knowledge that the register was incorrect, then the rights of that holder are not prejudiced (s. 15(8) of the Land Title Act).

<sup>2,3</sup>Section 151 of the *Water Act 2000* allows the Registrar to make any necessary corrections to the name of an existing water entitlement holder if it has been recorded incorrectly when a water allocation has been created.

The Registrar may correct an error in the Register, whether or not the correction will prejudice the rights of the holder of an interest recorded in the register, only if:

- the register to be corrected is the freehold land register or leasehold land register and the correction is to show, in relation to a lot, an easement the particulars of which have been omitted from or misdescribed in the register; or
- the Supreme Court has ordered the correction under s. 26 of the Land Title Act.

Upon making the correction, the Registrar must record the state of the Register before the correction and the time, date and circumstances of the correction (s. 15(6) of the Land Title Act or s. 291(3) of the Land Act). The Register so corrected has the same effect as if the error had not been made (s. 15(7) of the Land Title Act or s. 291(4) of the Land Act).

The Registrar only corrects errors that the Titles Registry has made. The Registrar does not use this section to correct errors that are the result of errors made in the preparation of registered instruments or documents, except pursuant to a court order.

## Practice

[60-0090]

The examiner may register an instrument or document that contains an error, provided the error is obvious and there is no ambiguity. An internal dealing note is entered against the instrument or document to indicate the error did not impede registration of the instrument or document. If the intent is not clear, the lodger will be requisitioned to resolve the matter.

<sup>2,3</sup>In the case of a water allocation where an administrative error has occurred that caused the name to be recorded incorrectly when a water allocation was created the Registrar will require information to show that the correction will not prejudice the rights of the holder of an interest in the water allocation. This information may be in the form of a consent from an interest

holder, such as a mortgagee, and evidence that the Resource Operations Licence (ROL) holder has been consulted where the water allocation is managed under a ROL. The Registrar also requires a statutory declaration signed by the Director Water Allocations that includes:

- facts that caused the change to be requested;
- facts regarding consultation with registered interest holders, where appropriate; and
- facts regarding consultation with existing allocation holders, where appropriate.

If it is determined from evidence produced that an incorrect entry has been made in the register, the Registrar may prepare and lodge an internal dealing to effect a correction, provided the correction does not prejudice any party.

## Standard Terms Document

### General Law

[60-0095]

Many instruments or documents require the inclusion of covenants, e.g. leases, mortgages, and easements etc. which are generally incorporated in the instrument or document by a Form 20 – Schedule.

If a class of instrument or document has a standard set of covenants, a standard terms document may be lodged and registered.

Any subsequent instruments or documents may then refer to the dealing number of the standard terms document in lieu of including covenants, however, a schedule may be included in the instrument or document to insert additional terms if required.

### Practice

[60-0097]

A standard terms document may be used to define the provisions that are treated as the terms that relate to an instrument or document.

A standard terms document must be lodged for registration with a Form 14 – General Request.

A standard terms document may be amended by lodging a further standard terms document, however, additional terms may be incorporated in an instrument or document by also including a schedule.

If there is a conflict between the provisions in the schedule to the instrument or document and the standard terms document, the instrument or document will prevail (s. 171(2) of the *Land Title Act 1994* and s. 320(2) of the *Land Act 1994*).

No lodgement fees or duty are payable.

For information on withdrawal or cancellation of a registered standard terms document, see [60-0110].

# Withdrawing an Instrument or Document

## General Law

### Withdrawing Lodged Instrument or Document Prior to Registration

[60-0100]

The Registrar may withdraw an instrument or document or permit an instrument or document to be withdrawn if satisfied that:

- a) the instrument or document will not give effect to intention expressed in it or a related instrument or document because of the order in which the instrument or document has been lodged in relation to other instruments or documents; or
- b) the instrument or document should not have been lodged (s. 159(1) of the *Land Title Act 1994* or s. 308(1) of the *Land Act 1994*).

An instrument or document so withdrawn, unless it is of a type that should not have been lodged, remains in the registry (s. 159(2) of the *Land Title Act* or s. 308(2) of the *Land Act*). The Registrar may relodge an instrument or document that has been withdrawn by the Registrar and may, on the written application of the lodger, relodge an instrument or document that the Registrar has permitted to be withdrawn (ss. 159(3) and (4) of the *Land Title Act* or ss. 308(3) and (4) of the *Land Act*).

Except in the case of plans of subdivision, an instrument or document that is withdrawn from registration loses its priority and is taken to have been lodged on the date and at the time endorsed on it by the Registrar at the time of its relodgement (ss. 159(5) and (6) of the *Land Title Act* or s. 308(5) of the *Land Act*).

### Withdrawing or Cancelling Registered Standard Terms Document

[60-0110]

On application of the lodger, the Registrar may withdraw a registered standard terms document as defined in s. 168 of the *Land Title Act 1994* (s. 172(1) of the *Land Title Act*) or s. 317 of the *Land Act 1994* (s. 321(1) of the *Land Act*).

After giving one month's notice in the *Gazette*, the Registrar may cancel a registered standard terms document lodged by the Registrar (s. 172(2) of the *Land Title Act* or s. 321(1) of the *Land Act*).

The Registrar must keep, and if asked produce for inspection, a copy of a standard terms document cancelled or withdrawn pursuant to s. 172 of the *Land Title Act* (s. 172(3) of the *Land Title Act*) or s. 321 of the *Land Act* (s. 321(3) of the *Land Act*). Withdrawal or cancellation of a standard terms document does not affect an instrument that is already registered or one that is executed within seven days after its withdrawal or cancellation (s. 172(4) of the *Land Title Act* or s. 321(4) of the *Land Act*).

## Practice

### Withdrawing Lodged Instrument or Document Prior to Registration

[60-0150]

A request under s. 159 of the *Land Title Act 1994* or s. 308 of the *Land Act 1994* by a lodger to withdraw an unregistered instrument or document is made in writing and not by another document.

The lodgement fees paid on a lodged instrument or document that has not been registered and is withdrawn, are forfeited, other than any additional fee paid under Item 3 of Schedule 1 of the

Land Title Regulation 2015 for a transfer of fee simple. An administrative fee will be deducted from any fees refunded.

For the requirements for withdrawing an unregistered Caveat see part 11 – Caveat, esp [11-2070] or for withdrawing an unregistered Warrant of Execution see part 12 – Request to Register Writ or Warrant of Execution, esp [12-2100].

The requirements for removing a lot/interest from a lodged instrument or document are in [59-2040].

## Imaging Instruments or Documents

### Practice

[60-0160]

An electronic image is held permanently of each instrument or document (and associated documentation) lodged in the registry since July 1998.

Section 166 of the *Land Title Act 1994* or s. 315 of the *Land Act 1994* authorises the Registrar to destroy an original instrument or document, in accordance with the State Archivist's standards. However, original wills are not destroyed.

Retrieval of registered instruments or documents not already imaged requires the original to be imaged. This is normally processed within three business days.

## <sup>2</sup>The Registrar's Power of Inquiry

### General Law

[60-0170]

The Registrar has the power to hold an inquiry to decide whether the Register should be corrected, to consider whether a person has:

- (a) fraudulently or wrongfully obtained, kept or procured an instrument affecting land in the Register; or
- (b) procured a particular in the Register or an endorsement on an instrument affecting land (s. 19 of the *Land Title Act 1994*).

The Registrar also has power to hold an inquiry in circumstances prescribed by regulation under s. 19(e) of the *Land Title Act*. No such circumstances, nor procedural rules for such inquiries as contemplated by s. 21(2) of the *Land Title Act*, have been prescribed.

When conducting such inquiries, the Registrar:

- must observe natural justice;
- must act as quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues;
- is not bound by the rules of evidence;

may inform himself/herself in any way he/she considers appropriate;

- may decide the procedures to be followed at the inquiry;
- may act in the absence of a person who has been given reasonable notice;

- may receive evidence on oath or affirmation or by statutory declaration;
- may adjourn the inquiry;
- may disregard a defect, error or insufficiency in a document;
- may permit or refuse to permit a person to be represented at the inquiry; and
- may administer an oath or affirmation to a person appearing as a witness before the inquiry (ss. 20, 21 and 22 of the Land Title Act).

A person may be required, by written notice given by the Registrar, to attend an inquiry as a witness to give evidence or to produce specific documents or things (ss. 23(1) and (2) of the Land Title Act). Witnesses required to appear before an inquiry are entitled to witness fees (s. 23(3) of the Land Title Act).

Witnesses may commit an offence by:

- not attending without reasonable excuse;
- not continuing to attend without reasonable excuse;
- failing to take an oath or make an affirmation as required by the Registrar;
- failing, without reasonable excuse, to answer a question asked by the Registrar; and
- failing, without reasonable excuse, to produce a document or thing (ss. 24(1) and (2) of the Land Title Act).

In any of the above circumstances, the Registrar may apply to the Supreme Court for an order to compel the person to comply with the notice or requirement and the Supreme Court may make any order to assist the Registrar as the Supreme Court considers appropriate (s. 25 of the Land Title Act). A person may fail to answer a question or produce a document or thing if doing so would tend to incriminate that person (s. 24(3) of the Land Title Act).

## Declarations

### Practice

[60-0260]

When a statutory declaration is required with a form under the *Land Title Act 1994*, *Land Act 1994* or *Water Act 2000*, it may be made on a Form 20 – Declaration.

The Registrar will accept a statutory declaration taken by the following—

- (a) a person authorised by the *Oaths Act 1867* (Qld) to take a declaration, even if taken outside Queensland, provided the declaration is in the form provided for by that Act, for example:
- a justice of the peace, a commissioner for declarations or a notary public under the law of the State, the Commonwealth or another State; or
  - a lawyer; or
  - a conveyancer, or
  - another person authorised to administer an oath under the law of Queensland; or

- \*another person authorised to administer an oath under the law of the Commonwealth or another State, for example:
  - an Australian Consular Officer or authorised employee under the *Australian Consular Officers' Notarial Powers and Evidence Act 1946* (Qld).

\*To clarify, persons who are not authorised by law of the Commonwealth or another State to administer an oath (for example, take a sworn affidavit) must not take a statutory declaration on a form under the *Oaths Act 1867*.
- (b) a person authorised to take a declaration by an Act of another State, the Commonwealth or another country provided the declaration complies with the relevant law, for example:
  - one of the various classes of persons authorised under the *Oaths and Affirmations Act 2018* (Vic) and the declaration is taken on the relevant form under that legislation;
  - one of the various classes of persons authorised under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) and the declaration is taken on the relevant form under that legislation;
  - one of the various classes of persons authorised under the *Statutory Declarations Act 1959* (Cth) and the declaration is taken on the relevant form under that legislation.
- (c) a notary public.
- (d) another person if the lodger substantiates the authority of the person to take declarations in another jurisdiction by providing a reference to the authorising legislation and the declaration is taken on the relevant form under that legislation.

The above also applies to the declarations contained in Forms 5A and 6 – Transmission Applications.

Where there is insufficient space on the declaration for all declarants to execute on the same page as the declaration, separate declarations must be completed and executed.

Where a declaration is made on the wrong form a statutory declaration in the proper form may be required. For example a Victorian police officer incorrectly takes a declaration on the form under the *Oaths Act 1867* (Qld) rather than the form under the *Evidence (Miscellaneous Provisions) Act 1958* (Vic).

It is not appropriate to amend a statutory declaration after execution by the declarant. If further matters are required to be declared, a supplementary statutory declaration should be made.

Where a statutory declaration is made by an attorney for a person who is a party to an instrument or a document, the declaration must be made by the attorney in their own right, under the attorney's own name and the statement of facts declared to must be based on the attorney's own knowledge and belief. The declaration must also state the attorney is an attorney for the party. The power of attorney must be registered before the instrument or document to which the declaration relates may be registered.

[60-0280] to [60-0350] deleted

Witnesses to Executions – General Law [60-0360] moved to [61-1000]

Witnesses to Executions – Practice [60-0390] moved to [61-2000]

[60-0710] deleted

# Compensation

## 1, 2 General Law

[60-0720]

In certain circumstances a person is entitled to be indemnified by the State if that person is deprived of an interest in a lot or suffers loss. The circumstances are set out in ss. 188, 188A and 189A of the *Land Title Act 1994*.

Circumstances in which there is no entitlement to compensation are set out in ss. 188AA and 189 of the *Land Title Act*.

Pursuant to s. 190 of the *Land Title Act*, the State has a right of subrogation against any other person in relation to the deprivation or loss. However, if the State receives an amount greater than that paid to the claimant, the difference must be paid to the claimant less the State's costs.

# Public Notice – Advertising

## General Law

[60-0760]

The Registrar, under s. 18 of the *Land Title Act 1994*, by written notice, may require an applicant to give public notice before doing any of the following things:

- <sup>2</sup>register a transmission application
- <sup>1, 2</sup>register a person as an adverse possessor.

<sup>1, 3</sup>The Chief Executive, under s. 294(1) and (2) of the *Land Act 1994*, by written notice, may require an applicant to give public notice before registering a transmission application. The Chief Executive has delegated all responsibility relating to administration under Chapter 6 of the *Land Act* to the Registrar.

There is no stipulation in the above Acts as to the manner or vehicle for publication. If the Registrar determines that public notice is warranted, the content, time and place of advertisements will be specified in the notice given (s. 18(4) of the *Land Title Act* or s. 294(3) of the *Land Act*).

The applicant must satisfy the Registrar that the Registrar's requirements as to public notice have been met (s. 18(5) of the *Land Title Act*). A person claiming an interest in a lot may lodge a caveat pursuant to s. 122(1)(a) of the *Land Title Act* or s. 294(4) of the *Land Act*.

In addition to the Registrar requiring public notice to be given in the above circumstances, the court may order that a person advertise in a specified form, content or way where an application is made that a named person be registered as a proprietor of a lot (s. 114 of the *Land Title Act*).

## Practice

[60-0830]

Registry staff will prepare a written notice to the lodger requiring the applicant to give public notice usually within one calendar month of the date of the notice. The registry notice specifies what must be included in the public notice and how and when the public notice is to be published. All advertising is done by and at the expense of the applicant.

To satisfy the Registrar that the public notice has been given, the applicant must provide a tear sheet of the newspaper. A tear sheet must, as well as displaying the advertisement, show the

name of the newspaper and the date of publication. No affidavit or statutory declaration confirming that the notice was advertised is required. Where the newspaper provides a tear sheet by e-mail to the lodger, that email may be attached to an email by the lodger and forwarded to the registry. The dealing number and the position of the notice on the tear sheet (e.g. column 2 notice 6) should be included in the e-mail.

[60-0840] to [60-0890] deleted

## Statutory Exemption from Lodgement Fees

[60-0892]

An instrument or document may only be exempted from the payment of lodgement or deposit fees where the exemption is authorised by an Act or Regulation. It must be noted that just because a legislative provision for an exemption exists the exemption may not extend to all instruments or documents in a transaction.

For the purpose of this practice, lodgement fees include all fees payable when an instrument or document is lodged or deposited. Where an instrument or document is exempt from payment of a lodgement fee it is also exempt from payment of a requisition fee.

Due to the extent of legislation, an exemption will only be considered if reference to the authorising provision is provided:

- A by a letter; or
- B on the face of the submitted document where the form permits – for example in item 6 of Form 14 – General Request.

Some examples where a letter is required are:

- a plan of survey signed by the registered owner, subdividing a lot as part of a transaction to transfer to the State of Queensland, by agreement, part of a former lot, and not accompanied by a transfer to the State
- a document under the *Criminal Proceeds Confiscation Act 2002* to give effect to a Queensland or an interstate forfeiture or restraining order
- a transfer to an entity with the privileges and immunity of the State

Reference to instruments or documents lodged previously without payment of a fee is not a basis for considering an exemption.

The above requirement may be waived in cases where the Registrar is reasonably satisfied that a document is part of a common transaction and the face of the document provides information sufficient to readily identify that a legislative exemption exists.

### Examples:

- a transfer pursuant to an order made under the provisions of the *Family Law Act 1975* (Cth) provided this is clearly stated in item 4.
- a transfer where the transferee is ‘The State of Queensland’

However, to facilitate timely lodgement processing and registration of instruments or documents that may come within the above scope, a letter may still be provided.

## Examples where there is an Exemption from Lodgement Fees

### Example A

Under s. 6(7) (a) or (b) of the Land Title Regulation 2015 or s. 87(5)(a) or (b) of the Land Regulation 2020 a fee is not payable for the lodgement and registration of:

- an acquisition by the State of any interest in land; or
- the release or surrender by the State of an interest in land, other than a fee simple interest.

Under Schedule 1, Item 6 of the Land Title Regulation 2015 or Schedule 6, Item 17 of the Land Regulation 2020 a fee is not payable for:

- the deposit or removal of an administrative advice by the State.

An acquisition by the State mentioned in s. 6(7) of the Land Title Regulation 2015 or s. 87(5) of the Land Regulation 2020 includes:

- a resumption or an absolute surrender of land; and
- the taking by agreement or a resumption of an easement.

The above provisions extend to an entity that has the privileges and immunity of the State (for example, the Coordinator-General) and also includes instruments or documents that are considered an integral part of the transaction, for example:

- a notice of intention to resume or a plan of subdivision for an acquisition action;
- a plan of survey for a lease of part of the land.

However, the above provisions do not provide an exemption from fees payable on a plan of survey or another instrument or document for any purpose lodged by the State where the State is already the registered proprietor.

Section 6(7) of the Land Title Regulation 2015 and s. 87(5) of the Land Regulation 2020 do not apply to similar instruments or documents involving a local government.

### Example B

Under the provisions of s. 90(1) of the *Family Law Act 1975* (Cth) instruments or documents executed for the purpose of, or in accordance with an order made under Part VIII are not subject to any duty or charge under any law of a State or Territory. Similar provisions exist also in Part VIIIA and Part VIIIAB.

These provisions give complete exemption from all fees for any instrument or document to give effect to an order or a financial agreement made under the abovementioned parts of the *Family Law Act 1975* (Cth). For example, if the order or agreement also states 'the property is to be refinanced' the exemption would extend to a release of the existing mortgage and to a new mortgage.

### Example C

Under the provisions of s. 154(a) of the *State Penalties Enforcement Act 1999* no fee is payable by the State Penalties Enforcement Registry for lodging any order or instrument or document

under that Act or any instrument or document lodged to transfer property to the State under the Act.

### Example D

The provisions of s. 114 of the Commonwealth Constitution prohibit a State, without the consent of the Parliament of the Commonwealth, from imposing any tax on property of any kind belonging to the Commonwealth.

The above provision exempts the Commonwealth from the payment of only the additional fee specified in Schedule 1 item 3 of the Land Title Regulation 2015. All other lodgement fees for a transfer or another instrument or document, and requisition fees, must be paid.

## Overpayment of Fees

[60-0895]

When a person lodges instruments or documents in the registry they are expected to pay the correct regulated fee at the time of lodgement. Where a previously prepared cheque is presented for an amount which is not the same as the assessed fee, the Registrar may refuse to accept the instrument/s or document/s for lodgement.

However, where due to extenuating circumstances, a lodger wishes to complete the lodgement by presenting a previously prepared cheque that exceeds the assessed fee and the Registrar agrees to accept the incorrect amount; an administrative charge will be deducted from the overpaid amount. The lodger must complete and sign a form acknowledging payment of the administrative charge. A refund of the remaining amount overpaid will only be given, if requested in writing by the lodger.

Where a paid fee is subsequently found to be in excess of the sum of the regulated fees (overcharge by the department), the refund of the full amount in excess of the regulated fees will be made on request by the lodger.

Where an Electronic Lodger pays an amount for lodgement of a document that exceeds the regulated fees, a refund will only be given if requested in writing. An administrative fee may be deducted from the overpaid amount.

**Execution of Instruments or Documents [60-0900] moved to [61-3000]**

**Execution by Public Trustee [60-0910] moved to [61-3100]**

**Execution by Local Government – General Law [60-0920] moved to [61-3210]**

**Execution by Local Government – Practice [60-0970] moved to [61-3220]**

**Execution by Local Government – Practice – Style of Local Government Name [60-0980] moved to [61-3230]**

**[60-0990] deleted**

**Execution by Local Government – Practice – Local Government Reform [60-1000] moved to [61-3240]**

**[60-1010] deleted**

## Translation of Instrument or Document in Foreign Language

[60-1020]

Translations of supporting documentation or parts of instruments or documents (including any details relating to witnessing) from another language to English will be considered on the merits of the competency of the person who made the translation.

Translations of supporting documentation must be of the complete document and not merely an extract of some relevant details.

Translators considered acceptable include, for example:

- a person who holds an accreditation or a qualification (for example by the National Accreditation Authority for Translators and Interpreters Ltd (NAATI)) to make translations; or
- a person of ethnic origin who was educated in their country of origin, migrated to Australia and continued to study in the English language may well be competent to translate from their native language to English.

The following is required to be provided with the original document and translation.

A for an accredited/qualified translator:

- a statement explaining or evidence of (stamp) their accreditation/qualification; and
- a statement that clearly identifies the document being translated and that the entire document was translated. For example, 'I have translated the entire document appearing as attachment 'A' into the English language, which translation appears as attachment 'B'.

B for a non-accredited or non-qualified person, a statutory declaration that includes statements about the following:

- the basis of his/her competency; and
- the circumstances under which his/her competency was acquired; and
- the identity of the document being translated. For example, 'I have translated the entire document appearing as attachment 'A' into the English language, which translation appears as attachment 'B'.

For information about depositing supporting documentation see [60-1030].

## Deposit of Supporting Documentation

[60-1030]

In many instances it is necessary for documentary evidence to be deposited to support an instrument or document. Each instrument or document submitted for lodgement must be complete regarding its supporting documentation. The following are some examples of evidence that may be required:

- (a) a death certificate issued by the Registry of Births, Deaths and Marriages with a Form 4 – Request to Record of Death or with a Form 5A or Form 6 – Transmission Application;
- (b) a birth certificate or marriage certificate issued by the Registry of Births, Deaths and Marriages with a Form 14 – General Request to Change Name;
- (c) a grant of representation issued by the Supreme Court of Queensland with a Form 5 or 6 – Transmission Application;
- (d) a search from the Australian Securities and Investments Commission;
- (e) a trust deed and other trust documentation with a Form 1 – Transfer to Trustees;

- (f) a sealed order made by a court with a Form 1 – Transfer or with a Form 14 – General Request;
- (g) the court proceeding sealed by the court with a Form 14 – General Request notifying the Registrar of a commencement of a court action (for example an Originating Application or Claim and Statement of Claim);
- (h) a writ of execution/enforcement warrant with a Form 12 – Request to Register Writ/Warrant of Execution;
- (i) a contract of sale or an agreement with a Form 1 – Transfer.

For information about the requirements for a certified copy of a power of attorney under s. 14 or s. 45 of the *Powers of Attorney Act 1998* for deposit with a Form 16 – Request to Register Power of Attorney see [16-0195].

Where a contract of sale or an agreement is required to be deposited only to support the calculation of the lodgement fee for a Form 1 – Transfer, a photocopy without certification will also be acceptable.

Where a will of a deceased is required (for example with a Form 5A or Form 6 – Transmission Application) the original will must be deposited. An original will is retained in the Titles Registry.

## Options for Deposit

The options below are available to lodgers when depositing documentation, which is **not** an original will, a power of attorney, or a revocation of a power of attorney.

**\*Office copy** means the actual certificate or document issued from the issuing agency and certified or otherwise authenticated by the agency where this is the agency's practice. Office copy includes an order or court proceeding of the Federal Circuit Court of Australia or Family Court of Australia which has been stamped or sealed electronically and downloaded from the Commonwealth Courts portal.

A **good quality photocopy** produced from the original, must meet the following criteria:

- it must be of sufficient quality to allow for subsequent reproduction or imaging;
- it must be on one side of A4 paper only; and
- it must not have black marks, including along the top, bottom or sides, as a result of photocopying or facsimile processes.

## Options for a Lodger other than an eLodger

1. a good quality photocopy of the original office copy\* (or other original documentation) submitted with the original documentation for comparison with the photocopy by a Titles Registry officer. The original documentation will be returned immediately to the lodger; or
2. a good quality photocopy of the original office copy\* (or other original documentation) that has been properly certified as a true copy of the original; or
3. the appropriate item of a form may provide a reference to a prior lodged instrument/s or document/s (other than an instrument or document rejected under s. 157 of the *Land Title Act 1994* or s. 306 of the *Land Act 1994* or an instrument or document withdrawn before registration under s. 159(2) of the *Land Title Act* or s. 308(2) of the *Land Act*) with which

the documentation was deposited (the reference may be provided in a supplementary letter instead of in the form); or

4. the original office copy\* (or other original documentation) may be deposited. However, this option is not available for a document creating or amending a trust (e.g. deed of trust).

**Note:** The original evidence deposited **will not be returned**.

The certification of a copy of an electronically stamped or sealed order or court proceeding should include words to the effect that:

- it is a true and correct copy of an electronic order or court proceeding made by the applicable court on the applicable date; and
- the electronic order or court proceeding was downloaded from the relevant portal.

### Options for a Lodger that is an eLodger

An eLodger may deposit supporting documentation by:

- scanning one of the copies listed below; and
  - entering an appropriate message (dealing note) against the relevant instrument or document, for example 'ORIGINAL TRUST DEED SIGHTED P/COPY DEPOSITED' or 'CERTIFIED COPY OF ORIGINAL TRUST DEED DEPOSITED'.
1. a good quality photocopy that an employee of the eLodging firm has compared with the original office copy\* (or other original documentation); or
  2. a good quality photocopy of an original office copy\* (or other original documentation) where the photocopy is properly certified as a true copy of the original; or
  3. the original office copy\* (or other original documentation).

Alternatively the form may, in the appropriate item, provide a reference to a prior lodged instrument/s or document/s (other than an instrument or document rejected under s. 157 of the *Land Title Act 1994* or a an instrument or document withdrawn before registration under s. 159(2) of the *Land Title Act*) with which the documentation was deposited (the reference may be provided in a supplementary letter instead of in the form).

### Certification by Qualified Witness

For a copy mentioned in item (2) above to be properly certified, a qualified witness mentioned in Schedule 1 of the *Land Title Act 1994* or s. 73 of the *Land Regulation 2020*, who is not a party to the lodged document, must sign a certification clause to the effect that the document is an identical copy of the original, which has been sighted by them. The clause must contain information necessary to clearly identify the signatory; for example, a Justice of the Peace (Qualified) must legibly print their full name or registration number while a solicitor must legibly print their full name. The completed clause must be on the face of the copy and comply with regulatory requirements that provide for forms to be able to be reproduced by photocopy.

The following certifications are provided as a guide for documents other than a certified copy of a general power of attorney made under s. 14 of the *Powers of Attorney Act 1998* or a certified copy of an enduring power of attorney made under s. 45 of the *Powers of Attorney Act* (see [16-0195] for certifications of powers of attorney).

**Endorsement on a copy of single-page document is as follows:**

This is to certify that this is a true copy of the original, which I have sighted.

Date  
Signed  
Full name (or registration number, if applicable)  
Title/Qualification

**Endorsement on a copy of a multi-page document is as follows:**

If the original document has more than one page the witness must either (a) certify each page or (b) sign or initial each page, number the page as 1 of 40, 2 of 40 and so on (if the pages are not already numbered) and make the following certification on the last page:

This is to certify that this [number of pages]-page document (each page of which I have numbered and signed) is a true copy of the original [number of pages]-page document that I have sighted.

Date  
Signed  
Full name (or registration number, if applicable)  
Title/Qualification

**Sensitive or Confidential Information in supporting documentation**

A party to an instrument or document or their solicitor may request that the Registrar suppress in the public register, certain sensitive or confidential information deposited to support an instrument or document. Only sensitive or confidential information not directly relevant to examination or other processing of the instrument or document may be approved for suppression.

The Registrar's discretion to suppress sensitive and confidential information is generally exercised to suppress personal information. Requests made to suppress information on grounds of commercial sensitivity will not generally be approved.

Some examples of the type of sensitive and confidential information which the Registrar may suppress are:

- a person's medical or health information;
- details of minor children contained in agreements or orders made under the *Family Law Act 1975* (Cth);
- a person's bank account details.

Some examples of information that will not be suppressed are:

- names of registered owners or holders of an interest and other information required for the register because of the operation of s. 28 and s. 35(1)(a) of the *Land Title Act 1994* or s. 278 and s. 284(1)(a) of the *Land Act 1994*;
- address of a person or party in an instrument under the Land Title Act or document under the Land Act as a requirement of the form or law e.g. an applicant in a Form 14 or request to record death or a caveator in a caveat;

- the amount paid or details of other consideration as required under s. 61(1)(c) of the Land Title Act;
- any part of a will or a grant of representation.

A request to suppress sensitive or confidential information must be made in writing to the Registrar before the instrument or document is lodged and must contain substantive reasons for the suppression.

If supporting documentation must be deposited to satisfy a requisition, a request to suppress sensitive and confidential information must be made in writing to the Registrar before the supporting documentation is deposited. In both cases, the requesting party must allow a reasonable timeframe before lodgement for the request to be considered and responded to. To clarify, a request will not be considered if it is made immediately before lodgement.

The following must be provided with the request:

- a copy of the completed instrument or document;
- a complete copy of the supporting documentation; and
- a copy of the supporting documentation that otherwise complies with requirements for deposit, with the relevant information removed.

The request must be addressed to the Registrar and together with supporting documents must:

- be sent by email to [Titlesinfo@dnrme.qld.gov.au](mailto:Titlesinfo@dnrme.qld.gov.au); or
- be sent by post to GPO Box 1401, Brisbane QLD 4001; or
- be deposited by hand on Level 11 at 53 Albert Street Brisbane QLD 4000. The request must be contained in a sealed envelope and clearly marked as a request to the Registrar and not for lodgement.

The information may be removed by either:

- removing pages; or
- overlaying text with white paper before photocopying; or
- obliteration by black marking pen, if the information is in only one or two lines.

Where approval is given, the letter or email of approval must be deposited with the instrument or document at time of lodgement. If approved while the instrument or document is under requisition, the letter or email of approval must be deposited with the instrument or document when returned from requisition.

All supporting documentation deposited with a lodged dealing, including the letter or email of approval, will be imaged and form part of the publicly searchable registers.

# Dealing with or Disposing of an Interest Held by the State

[60-1040]

## 1, <sup>2</sup>Disposing of freehold land

Where government controlled land or interest in land is being disposed of, the following will be acceptable:

- the form shows, in the relevant item, The State of Queensland in the same style name recorded on title; or
- the form shows, in the relevant item, ‘The State of Queensland (represented by [current name of department] formerly [previous name of department])’. Because of a Machinery of Government change, a former department name shown on title is not current; or
- the form shows, in the relevant item, ‘The State of Queensland (represented by [current name of department])’ and the title shows the style name as ‘The State of Queensland’ without the name of the representing department.

However, it is not acceptable where the title shows ‘The State of Queensland (represented by [name of department])’ and the form shows another style or departmental name but without the words ‘formerly [previous name of department]’. This may indicate there has been a transfer of administrative responsibility without being recorded on title. The style name shown on title must first be changed by lodging and registering a Form 14 – General request to change the administrative details (department representing the State). (See [14-2420]).

## 1, <sup>2</sup>Dealing with freehold land

Where government controlled land or interest in land is being dealt with (e.g. plan of subdivision, lease or easement) and the interest is remaining in the control of the government, the style name of The State of Queensland shown on title must be the same as that shown in a lodged instrument. In these instances, a Form 14 – General request to change the administrative details shown on title (department representing the State or Act) must be lodged prior to registration of the lodged instrument/s. (See [14-2420]).

## 1, <sup>3</sup>Unallocated State land (USL)

Where USL is recorded in the style name of:

- ‘The State of Queensland’; or
- ‘The State of Queensland (represented by [name of department])’;

the style name may be changed to:

- ‘The State of Queensland (represented by [name of new or different department])’; or
- ‘The State of Queensland (represented by [name of department] – [name of Act])’

by lodging and registering a Form 14 – General request to change the administrative details shown on title. (See [14-2420]).

Verification of Identity Standard [60-2000] moved to [61-2700]

## Cross References and Further Reading

[60-9000]

Nil.

### Notes in text

[60-9050]

Note <sup>1</sup> – This numbered section, paragraph or statement does not apply to water allocations.

Note <sup>2</sup> – This numbered section, paragraph or statement does not apply to State land.

Note <sup>3</sup> – This numbered section, paragraph or statement does not apply to freehold land.