

Introduction to the Land and Water Allocation Registries

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Introduction to the Land and Water Allocation Registries

The Land Registry

¹Early History of Titling in Queensland

[0-0000]

To establish ownership of land in Australia, it is necessary to have some form of proof of ownership which is recognised by law. The systems adopted in the past to provide evidence of ownership were based on the method known and accepted at the time.

When Australia was first settled, the English method of recording land dealings was adopted. This method was contained in the *Registration of Deeds Act 1843*. Land under this Act is referred to as 'Old System' land.

Under this system, land was granted to a subject of the Crown by issue of a deed of grant to the 'grantee'. This was the only deed ever issued for the land and it was written on long lasting parchment. When the original grantee sold the land, he/she had his/her solicitor draw up the lengthy and costly deed of conveyance necessary to legally transfer the land to the purchaser. This, together with the deed of grant, was given to the purchaser, who was required to keep them safe, as they were his/her 'title' of ownership.

No copy of the deed was maintained in a government register. It was up to the owner to prove ownership.

All land in Queensland identified as previously being under the *Registration of Deeds Act 1843* has now been brought under the *Land Title Act 1994*.

Queensland became a state in its own right in 1859 by separating from New South Wales. By the creation of the State, the Crown in the right of the State of Queensland owned all the land in the State except that which had previously been granted to individuals. Where a grant had taken place, an estate in fee simple (freehold title) was conveyed to the grantee. That is, the Crown passed outright ownership to the individual and, in legal terms, the land had been alienated from the Crown, subject to any stated reservations.

A separate title issued for each owner when the land was brought under the provisions of the *Real Property Act 1861*, now the *Land Title Act 1994*, under the Torrens System of registration.

¹What is Land?

[0-0010]

The legal definition of 'land' in the *Macquarie Dictionary* is:

'Land is any part of the earth's surface which can be owned as property, and everything annexed to it, whether by nature or by the hand of man.'

For the purposes of land ownership, 'land' can include earth, water and airspace.

Land forms the basis of most economic, social and environmental development in a region, State or country. As a precious and limited resource, it provides society with most of our

material needs such as food, water, minerals and recreation, and is administered by governments all over the world in two basic ways:

- (1) by recording ownership and interests in land; and
- (2) for future planning in land use, ie ensuring a balanced approach to development which takes into account economic, social and environmental issues.

From a titling perspective, land may be described as a particular piece or part of the surface of the earth (including what is above and below the surface), contained within defined boundaries or limits.

A home or business unit that comprises:

- part of a building, commonly known as a ‘building unit’; or
- part of a building and part of adjacent land, commonly known as a ‘group title unit’,

is also referred to as land (see ¶[0-0390] to ¶[0-0410] for further information regarding building and group title units).

How is Land Identified?

¹Location

[0-0020]

To enable equitable administration, parcels of land have always been allocated a unique description, ie no two parcels have the same description.

At the time of European settlement all land was considered vacant Crown land (now ‘unallocated State land’). Queensland was divided into parishes. Parishes were divided into portions. Portions were divided into subdivisions (‘subs’). Subdivisions were divided into resubdivisions (‘resubs’) and so on.

Therefore, a particular parcel of land could be described as, eg ‘Resub 3 of Sub 2 of Portion 1 in the Parish of Enoggera, County of Stanley’. Parcels of land in towns were sometimes described differently as ‘subs of allotments of Section ..., Town of ...’.

In 1965, because many of these descriptions had become extremely lengthy and complex, a new method of uniquely identifying land was devised. From that time on, all freehold land was identified as a lot on a survey plan, eg ‘Lot 3 on Registered Plan (RP) 102396’.

In 1985, the Lot on Plan method of identifying land was adopted for land administered by the State.

All land, except for unallocated State land that has not been surveyed, now has a Lot on Plan description.

¹Description

[0-0030]

Over the years, land has basically been described by two methods, ie by its dimensions or by the extent of the boundaries of the parcel of land.

¹The Present System – Survey Plans

[0-0040]

Boundaries of parcels of land are defined by ‘survey plans’.

A survey plan shows:

- the description of lot/s, bearings (angles measured in relation to true North), distances and area of the land described on the plan; and
- location in relation to other land boundaries.

It may also show:

- natural monuments or features, such as a lake, stream or cliff; and
- artificial monuments, such as a survey peg, fence or building.

Plans of survey enable the development of land to proceed in an orderly manner. They provide an effective base for those engaged in property related professions to accurately identify the extent, location and value of individual pieces or parcels of land.

¹Land Boundaries Prior to Survey Plans

[0-0050]

Under the ‘Old System’ (ie under the *Registration of Deeds Act* 1843, prior to the Torrens System), plans of survey did not exist. A reference to the boundaries of a property was made by a metes and bounds description (a series of compass bearings and distances from and to an identified reference point).

¹System of Plan Records

[0-0060]

The system of recording Cadastral (survey plan) details is maintained. These records enable a client to establish the legal land description and location of a parcel of land and provide references to individual plans of subdivision.

¹Who Deals With Land?

[0-0070]

Land can be dealt with by a wide variety of individuals, bodies, corporations, etc, but those who usually deal with land do so in the capacity of one of the following categories:

- natural person;
- company;
- trustee;
- personal representative;
- attorney; or
- legal representative.

¹How is Land Held?

[0-0080]

Land can be held in any one of the following ways:

- Sole tenancy – by one person or corporate body.
- Joint tenancy – by two or more persons without each having a separate or distinct title or share and there is a right of survivorship i.e. on the death of a joint tenant the interest of the deceased vests in the surviving joint tenant/s.
- Tenancy in common – by two or more people in shares determined by the tenants. On the death of any of them, their interest passes in accordance with their will or the laws of intestacy. Transfers of part shares are possible under a tenancy in common.

¹Land Tenures

[0-0090]

Land tenure is the means of identifying who has the right to use and occupy land in accordance with the varying degrees of ownership.

Security of tenure is a term which is commonly used to differentiate between the ‘value’ of certain tenures. For example, freehold is considered a more ‘secure’ and valuable tenure than State leasehold.

The following is a brief description of the various tenure types.

¹Non-Freehold Land

[0-0100]

Apart from freehold titles, the remainder of Queensland is State land administered by the Department of Environment and Resource Management under the provisions of the *Land Act* 1994. The *Land Act* 1994 is an Act consolidating all previous Acts relating to the administration, alienation, leasing and occupation of non-freehold land.

Non-freehold land is land that has not been freeholded and includes:

- (1) all land in Queensland, including land below the high-water mark (in the sense that while the *Land Act* 1994 generally applies to non-freehold land, most freehold land contains a reservation to the State for minerals); and
- (2) all other unallocated State land.

¹‘Unallocated State Land’

[0-0110]

A separate Act of Parliament in England gave Queensland letters patent and in that Act, the borders between Queensland and New South Wales, South Australia and the Northern Territory were established. Islands off the coast are generally considered part of the State.

‘Unallocated State land’ means all land in Queensland that is not:

- (a) Freehold land or land contracted to be granted in fee simple by the State.

- (b) A road or reserve, including national parks, conservation parks, State forests and timber reserves. A reserve contains land required for a community purpose and includes:
- beach protection areas;
 - cemeteries;
 - parks;
 - racecourses;
 - showgrounds; and
 - public amenities.

These are the more familiar public purposes and are indicative of purposes for the benefit of members of the community.

- (c) Subject to a lease, licence or permit issued by the State.

Many government departments have the authority to deal with State land and, by specific Acts of Parliament, are able to deal with land by issuing a lease or licence over that land. Where a lease or licence has been issued, by the issuance of that lease or licence the land in question is then no longer unallocated State land for the purpose of the *Land Act* 1994.

Every parcel of unallocated State land has a title reference in the Automated Titles System commencing at 47000000. The details of each parcel are entered against the respective title.

Where State land is not required for public purposes, either now or in the future, the land can be offered to the public in a number of ways, by offer, auction, tender or ballot. It is necessary to establish the area and the means of making the land available. Having these choices, a tenure is decided. Tenures vary from occupation through leases for a term or in perpetuity (forever) (see ¶[0-0120]) to a freeholding tenure (see ¶[0-0130]). Some land is sold outright (see ¶[0-0140]).

¹State Leasehold

[0-0120]

Apart from the leases or licences issued by other government departments, all State land is controlled by the *Land Act* 1994, and the Department of Environment and Resource Management issues a number of types of leases and licences under that Act.

In all such tenures, the State gives the lessee exclusive use of the leased land and the lessee is able to use the land within the conditions imposed. The lessee has basically the same ability to deal with leasehold land as he/she has for freehold land, including the right to raise money by mortgage, to sell the lease, to sublease and to enter into an arrangement which can be registered as a charge over the lease, such as an easement.

¹Freeholding Tenure

[0-0130]

A freeholding tenure is a lease which has been issued by the State that will convert to freehold tenure once all conditions of the lease have been complied with and the money owing on the purchase has been paid. Following these prerequisites, a deed of grant will issue.

¹Freehold Land

[0-0140]

Outright freehold title is where the land has been alienated from the State and the ownership rests with the individual owner for an estate in fee simple. This simply means that the State has no right or claim to the land and, should the State require the land, it must acquire it from the owner either by negotiation or by resumption and payment of compensation. However, with very few exceptions, all minerals and petroleum are reserved to the State. These reservations were extended to include quarry material as from 31 December 1991.

Freehold land is held by way of an indefeasible title recorded in the Freehold Land Register (see ¶[0-0200]).

A deed of grant issues when the land is alienated from the State, the particulars of which are recorded in the Freehold Land Register to create an indefeasible title. Owners of such land may request a Certificate of Title, being a paper copy of the indefeasible title, however, if the lot is mortgaged the consent of any mortgagee is required.

¹Native Title

[0-0150]

In the 1992 *Mabo* case (*Mabo v Queensland (No. 2)* (1992) 107 ALR 1), the High Court of Australia recognised the existence of indigenous title to land. In doing so, it brought Australian law into line with the law in some other countries in this regard (eg Canada, New Zealand and the USA).

Native title is not 'land rights legislation'. It is a form of proprietary rights governed by the laws and customs of indigenous peoples. The significance of the *Mabo* decision is that native title is now legally recognised.

The High Court *Mabo* decision defines native title as follows:

‘The rights and interests possessed under traditional laws acknowledged, and the traditional customs observed, by Aboriginal and Torres Strait Islander peoples.’

The details and mechanisms to establish the extent of native title and how it can be claimed became law in Queensland and the Commonwealth in December 1993 (*Native Title Act 1993* (Cth)).

¹How is Land Administered?

[0-0170]

When a parcel of land is alienated (ie, no longer held by the State), it is converted to freehold and ownership is granted in fee simple or reserved for public purposes with specified reservations to the State.

The lease or title that issues for each parcel contains the Lot on Plan description and is part of the Land Registry. It is given a title identifier reference for identification which consists of eight digits.

All transactions or dealings with the land are recorded on the relevant title.

¹Torrens Title System

[0-0180]

The Torrens Title System is the system of land administration which applies in Queensland.

The main architect of the land titling system which now bears his name was Robert Richard Torrens, who was born in Cork in 1814 and educated in Dublin. He arrived in South Australia in 1840 and was appointed Collector of Customs. In 1852, he became Registrar General and pursued, amongst others, the reform of the land title registration system.

Despite bitter opposition, the *Real Property Act* 1858 (SA) was proclaimed in South Australia. Queensland was the first State to follow the lead of South Australia in introducing the Torrens System by the proclamation of the *Real Property Act* 1861.

The Torrens System was probably based on an amalgam of concepts from the English *Merchant Shipping Act* 1854, registration systems in the Hanseatic towns (a group of towns in Northern Germany) and the report of English Royal Commissioners of 1857.

¹The Principles of the Torrens System

[0-0190]

The main concern that prompted Torrens to devise the System was the need to ensure that a person purchasing land would be able to acquire a secure title to that land in a process that facilitated land dealings for the community. The Torrens System, through the provisions of the *Land Title Act* 1994 in Queensland, ensures that the interests of registered owners, and other registered proprietors, of land are protected.

This system was implemented in Queensland with the proclamation of the *Real Property Act* 1861. Under the Torrens System, the State guarantees title to land on registration of instruments.

The Torrens System basically enables transactions over land to be recorded in a government managed register. However, it is important to note that the system is 'title by registration', and not 'registration of title'. That is, you must register your interest to have legal title.

A record of the indefeasible title is held by the Registrar of Titles in the Land Registry by way of the computerised Automated Titles System. The *Land Title Act* 1994 does not make provision for the automatic issue of a duplicate title (referred to as a certificate of title); this must be the subject of an application by the registered owner.

A register of State leasehold tenures parallels the Freehold Land Register to the degree possible. A procedure of issuing lease tenure documents was discontinued from 8 March 2000.

¹Freehold Land Register and Indefeasible Title

[0-0200]

The Registrar must record in the Freehold Land Register details of every lot and of every interest in a lot (ss 27 and 28 of the *Land Title Act* 1994). Upon the recording of particulars of a lot in the Freehold Land Register, an indefeasible title for that lot is created (s 37 of the *Land Title Act* 1994). The Registrar must register instruments which comply with the *Land Title Act* 1994 and, upon doing so, such instruments form part of the Register (ss 30 and 31 of the *Land Title Act* 1994). The indefeasible title of a lot is the current particulars for the lot within the Freehold Land Register (s 38 of the *Land Title Act* 1994).

Upon payment of the fees prescribed by regulation, any person may search and obtain a copy of:

- the indefeasible title of a lot;
- a registered instrument;
- a lodged instrument which has not been registered, provided the instrument has not been withdrawn on the basis that it should not have been lodged (s 159(2) of the *Land Title Act 1994*); or
- other information kept under the *Land Title Act 1994*,

(s 35 of the *Land Title Act 1994*).

¹Certificate of Title

[0-0210]

The *Land Title Act 1994* relies upon the particulars in the Freehold Land Register, and not the particulars on a Certificate of Title, for evidence of ownership. Therefore a Certificate of Title is not automatically created. On application by the registered owner in a Form 19 – Application for Title, the Registrar must issue a Certificate of Title. However, if the lot is subject to a registered mortgage, the consent of any mortgagee must be endorsed on the Form 19 (ss 42(1) and (2) of the *Land Title Act 1994*).

Certificates of Title are certified by the Registrar as an accurate statement of the Freehold Land Register (s 43 of the *Land Title Act 1994*). On issuing a Certificate of Title, the Registrar must make a note in the Freehold Land Register that the Certificate has been issued and may issue a second Certificate only if the first Certificate is cancelled (s 44 of the *Land Title Act 1994*). Unless the Registrar otherwise directs, a Certificate of Title deposited in the Titles Office is cancelled (s 45 of the *Land Title Act 1994*).

¹Transferring and Creating Interests

[0-0220]

It is the act of registration which transfers or creates interests in lots. Until that time, an instrument does not transfer or create an interest in a lot at law (s 181 of the *Land Title Act 1994*). Upon registration of an instrument that by its terms transfers or creates an interest in a lot, the interest is transferred or created and vests in the person identified in the instrument as the person entitled to the interest (s 182 of the *Land Title Act 1994*). Upon lodging an executed instrument and any other required documents and otherwise complying with the *Land Title Act 1994*, a person to whom an interest is to be transferred or in whom an interest has been created has a right to have the instrument registered (s 183 of the *Land Title Act 1994*).

The Registrar registers an instrument by recording its details in the Register (s 173 of the *Land Title Act 1994*). It is from then that the instrument is taken to be registered. However, the instrument forms part of the Register from the time when it was lodged (ss 174 and 175 of the *Land Title Act 1994*). Instruments have priority according to when each of them was lodged, not according to when they were executed (ss 177 and 178 of the *Land Title Act 1994*).

¹Indefeasibility

[0-0230]

Notwithstanding actual or constructive notice of an unregistered interest affecting a lot, the registered proprietor of an interest holds that interest subject only to other registered interests and free from all other non-registered interests (ss 184(1) and 184(2)(a) of the *Land Title Act 1994*). Accordingly, a registered proprietor is only liable for a proceeding for possession of the

lot or an interest in the lot if such proceeding is brought by the registered proprietor of an interest affecting the lot (s 184(2)(b) of the *Land Title Act* 1994). As a result of ss 184(1) and (2) of the *Land Title Act* 1994, a registered proprietor has indefeasibility of title.

¹Exceptions to Indefeasibility

[0-0240]

There are, however, some exceptions to indefeasibility. These exceptions can be found in ss 184(3)(b) and 185 of the *Land Title Act* 1994.

In certain circumstances where an exception to indefeasibility applies, the Registrar may correct the indefeasible title (s 186(1) of the *Land Title Act* 1994). The person affected by the correction may apply to the Supreme Court within one month after receiving notice of the correction for an order that the correction be amended or set aside (ss 186(2) and (3) of the *Land Title Act* 1994). Pursuant to s 187 of the *Land Title Act* 1994, the Supreme Court may make any orders which it considers just.

The Titles Office

A Brief History

¹1861

[0-0250]

Proclamation of the *Real Property Act* 1861 (now repealed) on 7 August 1861 marked the introduction to Queensland of the Torrens System of registering interests in land. Freehold land granted by the Crown prior to that time was dealt with under the 'Old System' of titling under the *Registration of Deeds Act* 1843. Unlike other States, all identified 'Old System land' in Queensland has now been converted to Torrens Title.

The most relevant element of the Torrens System is that purchasers and other parties acquiring interests in land 'gain their interest on registration', as opposed to simply registering an interest they have already acquired. In other words, at law, until an interest is registered by the Registrar of Titles, there is no legal interest.

¹1884

[0-0260]

Administration of the Titles Office (and associated responsibilities and authority) was moved to the Registrar of Titles by the *Registrar of Titles Act* 1884 (now repealed).

¹1887

[0-0270]

Semi-autonomous district Registries, centred at Townsville (Northern District) and Rockhampton (Central District), each under the control of a Deputy Registrar of Titles, were authorised by the *Real Property (Local Registries) Act* 1887 (now repealed). Brisbane remained as the Registry for the Southern District.

¹1988

[0-0280]

It was recognised that a freehold title Land Information System was unique and provided industry important information about a natural resource. As a result, the Titles Office changed from a sub-department of Justice to the Department of Freehold Land Titles in July of this year.

¹1990**[0-0290]**

On 7 December 1989, Cabinet decided to amalgamate portfolios with similar responsibilities. As a result of this decision, the Department of Freehold Land Titles was amalgamated with the Departments of Land Management, Geographic Information and the Valuer-General to form the Department of Lands early in 1990.

¹1994**[0-0300]**

On 24 April 1994 the *Land Title Act 1994* was proclaimed. This Act provided for the implementation of a computerised register (the Automated Titles System (or 'ATS' as it is known) to replace the existing paper-based Register.

Another major change resulting from that Act was the abolition of the automatic issue of Certificates of Title. Owners of land may apply for a Certificate of Title (by lodging a Form 19 – Application for Title) providing the consent of any mortgagee is endorsed. All Certificates of Title (whether they existed prior to or were issued after 24 April 1994) are still valid and must be deposited for cancellation with any further dealings.

With ATS, registration of ownership of interests are recorded on the indefeasible title (ie the computer file held in ATS). ATS was first introduced in Rockhampton on 26 April 1994. Townsville and Brisbane followed soon after on 9 and 30 May 1994 respectively.

The *Land Title Act 1994* repealed all of the previous *Real Property Acts*.

¹1995**[0-0310]**

The project of converting all current title information (from 2.6 million paper titles) to computer data in ATS was completed (in just 18 months).

¹1996**[0-0320]**

In February 1996, new departments were formed and as a result land titling became part of the Department of Natural Resources since renamed the Department of Natural Resources and Water.

¹1998**[0-0325]**

Early in 1998 the Land Registry adopted the use of imaging technology for the examination and registration of documents. The imaging of all documents lodged for registration eliminated the need for the physical movement of the paper throughout the state to the offices where registration could be affected. This has enabled a document lodged in any office to be examined and registered in any of the registration offices. It has also assisted in reducing the time taken for a document to be registered.

Historical Land Register**[0-0330]**

Parcels of land that were not unallocated State land had a title on which ownership and other detail were contained. A search of an historical title is available by obtaining a print of the digital image.

Titles were produced in original form (Titles Office copy of the Register) and in duplicate (the client's copy), and are held over:

- freehold land (deed of grant or Certificate of Title);
- State leasehold (leases, licences and permits); and
- other tenures, such as Queensland Housing Commission leases.

Over time, these titles have been produced in a variety of ways.

Freehold titles (D/G or C/T) were either in a bound book format or a loose leaf format.

Registrations made on titles stored in bound book format were endorsements made by affixing a stamp and hand writing the details. Registrations appeared in chronological order.

Registrations on titles stored in loose leaf format were made by typing the latest details and ruling through superseded endorsements.

Deeds of grant and Certificates of Title provide the following information:

- reference to the title or deed by Volume and Folio;
- estate or interest held (eg fee simple, life estate, estate in remainder);
- the legal description of the land (identified by a Lot on Plan description and including location by County and Parish);
- chronological record of ownership based on time of lodgement of instruments (names and tenancy of registered proprietor/s); and
- chronological record of various transactions affecting the land, based on time of lodgement of instruments (eg mortgages and easements).

Further to these details:

- deeds of grant contain details of Crown rights, such as mineral rights; and
- State leases include details of lease conditions.

The Automated Titles System

[0-0340]

The Automated Titles System (ATS) is the electronic registries for:

- freehold land;
- State land under the *Land Act* 1994;
- water allocations; and
- powers of attorney.

It also hold records for land that was formerly in registers held by other authorities and includes:

- land leased from the Department of Housing;
- land owned by Queensland Rail;
- land known as National Park, Conservation Park, Forest Reserve and State Forest, Timber Reserve;
- land owned by the Port of Brisbane Authority, Townsville Port Authority, Cairns Port Authority and Ports Corporation of Queensland;
- land identified as industrial land;
- land owned by the Commonwealth;
- land owned by Sunwater; and
- access rights under the *Sugar Industry Act 1999*.

ATS not only creates legal electronic registers, but automates, through computerisation, the registration process, which provides significant benefits for the community and the real property industry.

ATS provides the capability for searching the registers from a client's own office environment and allows registration service times and resource efficiencies superior to a manual environment.

ATS enables all titling functions to be provided from any location using one register for the entire State.

ATS provides a level of security that is not possible in a paper based environment. The registers are fully backed up to electronic media and stored offsite for recovery purposes in the event of a disaster. Data recovery can occur within a short time frame, which would minimise the impact on the business if such an event occurred.

¹Conversion of Title References in the Automated Titles System

[0-0350]

The method of converting an existing Volume and Folio reference to an ATS title identifier is as follows:

(1) prefix the four Volume digits with the code digit:

- 1 for Brisbane;
- 2 for Townsville; and
- 3 for Rockhampton;

(2) combine (1) with the Folio digits (must be three digits, if not, prefix with 0); ie:

code digit + 4 digits VOL + 3 digits FOL = 8 DIGITS

eg:

VOL 1234 FOL 56 = 11234056

VOL N1234 FOL 56 = 21234056

VOL C1234 FOL 56 = 31234056

¹Conveyancing in Queensland

[0-0370]

The conveyancing industry prepares and lodges the necessary documentation in the Land Registry to record real property transactions. When all legislative and practice requirements have been satisfied, the interest is registered. Registration updates the register by including the details of the transactions and guarantees title under the *Land Title Act 1994*.

When a house property or a home site is bought, the purchaser owns everything within the boundaries of the property. However, when a unit is bought the purchaser owns the dwelling area itself, but only shares ownership of the common areas like corridors, stairways, gardens, driveways and car parking areas. The commonly owned property is administered, managed and controlled by the body corporate (a body made up of registered owners). This also applies to group titles, which can include land outside buildings.

Later Developments

¹Home Units

[0-0380]

The post-war growth in demand for accommodation posed a new problem for the real property industry. At that time it was not possible to obtain a separate Certificate of Title for a home unit, and developers of these buildings could only give a purchaser a long term lease. This created difficulties for intending purchasers obtaining finance for purchase.

¹Building Units

[0-0390]

In 1965, Queensland adopted legislation, the *Building Units Titles Act 1965*, which provided for a multi-storied building to be subdivided floor by floor and further subdivided within those floors, and for Certificates of Title to issue for the lots created. The Certificates of Title had exactly the same standing as those for other land, and dealings with them are registered in the same way.

¹Group Titles

[0-0400]

The *Group Titles Act 1973* allowed an area of land to be subdivided and occupied as a group project. That is, all the areas within the boundaries of the subdivision are privately owned including roads, footpaths, parks, playground or other recreation or service areas. Areas used by all owners are referred to as 'common property'. The owners of individual lots within the group subdivision share both ownership in the common area as tenants in common and the maintenance obligations.

¹Combination of Building Units and Group Titles Legislation

[0-0410]

The *Building Units and Group Titles Act 1980* amalgamated the *Building Units Titles Act 1965* and the *Group Titles Act 1973* into one piece of legislation. Interests in building units titles and

group titles follow the Torrens System of registration and may be dealt with in the same manner as 'traditional' land (that is, they may be transferred, leased or mortgaged).

¹Body Corporate and Community Management Act 1997

[0-0411]

The *Body Corporate and Community Management Act 1997* supersedes the *Building Units and Group Titles Act 1980* and provides flexible and contemporary arrangements for community title schemes over freehold land. The Act provides for the creation of a community titles scheme and incorporates a comprehensive management and dispute resolution structure.

The Water Allocation Registry

Establishment of the Water Allocation Register

[0-0500]

The *Water Act 2000* among things, provided for the creation of a new right called a 'water allocation' and for their administration through the establishment of the Water Allocation Register (WAR). The WAR is maintained in the Automated Title System (ATS) and allows central recording of ownership, and interests and dealings in, water allocations. It is modelled on, but maintained separately from the Land Registry. A Registrar of Water Allocations is appointed to administer the WAR.

What is a Water Allocation?

[0-0510]

The *Water Act 2000* provides the legislative framework for a comprehensive planning process which better defines the availability and security of water. As part of this process, an existing entitlement may continue or be converted to a water allocation.

Water allocations are an entitlement created under the *Water Act 2000*. Water allocations once created and recorded in WAR are assets that are owned separately to land. They may be owned by non-landholders and traded. This is in contrast to both water licences and interim water allocations that generally attach to land and are not recorded in WAR.

It is important to note that the water allocation title is not indefeasible. It is also of particular relevance to legal practitioners that a water allocation is personal property, not real property, thus affecting the formulation of a Last Will & Testament, and subsequently the preparation of a Transmission by Death.

Comparison of the Land Registry and the Water Allocation Registry

[0-0520]

The *Water Act 2000*, with the exception of those dealings and interests referred to in s 150(1)(e) of the *Water Act 2000*, allows for an interest or dealing that may be registered under the *Land Title Act 1994*, to be registered for a water allocation. As such, interests in water allocations may be dealt with in the same manner as 'traditional' land (that is, they may be transferred, leased or mortgaged etc).

Most dealings to be registered under the *Water Act 2000* are dealt with similarly to instruments under the *Land Title Act 1994*, in that they are lodged, attract similar fees, and are registered in ATS.

All dealings under the *Water Act 2000* require a title reference at lodgement.

Water allocations are dealt with by any individual or entity that can deal with land (see ¶[0-0070]).

Tenancies used to describe ownership of land apply to water allocations (see ¶[0-0080]).

Some dealings (other than mortgages and related dealings) with water allocations require the deposit of a 'Dealing Certificate' or a 'Notice to the Registrar' to signify compliance with requirements relating to the 'resource related elements' of the water allocation.

A subdivision of a water allocation does not involve a Survey Plan, rather it is a request to create two or more smaller water allocations, the sum of which equals the total of the previous water allocation. Dealings affecting the new water allocations cannot be lodged before the subdivision has registered.

For further information see part 49 – Water Allocations.

How is a Water Allocation identified?

[0-0530]

To enable a water allocation to be given a unique lot/plan identifier it was necessary to provide water allocations with a plan number. As it is not possible to physically survey a water allocation it was determined that with the implementation of each new water scheme all the allocations within that scheme would be allocated a common administrative plan number. The associated water allocations become 'lots' on that plan.

The plan prefix for an administrative plan is always 'AP'. As an example, for the Fitzroy scheme the plan number is AP6829, for all allocations (or 'lots'). Therefore, water allocation 40 in the Fitzroy Scheme would be described as Lot 40 on AP6829 (or 'WA on Plan' or 'Water Allocation on Plan'). A water allocation does not have a county or parish as a part of the description.

Although a water allocation is described in the same manner as a lot of land, the plan is an administrative plan as mentioned earlier, and does not represent a defined physical location, or show any dimensions. Maps of the various scheme areas have been captured in ATS as the relevant administrative plan.

To facilitate the management of the 'resource related elements' of the water allocation by the Department of Environment and Resource Management, water allocations also bear additional identifiers (where applicable) of:

- the 'zone' where the water is actually drawn from,
- the name of the 'scheme area', and
- an identifier of the Resource Operations area and/or Licensee.

Allocation Types

[0-0540]

There are two types of water allocation, which differ in the way the Department manages the 'resource related elements':

- Resource Operations Licence or ROL (including Private ROL or Water Agreement)
- Non Resource Operations Licence or NRL.

Resource Operations Licence or ROL (including Private ROL or Water Agreement)

[0-0550]

A water catchment or water supply area that has been the subject of a Water Management Plan (WAMP) becomes an area that is the subject of a Resource Operations Licence.

The Licence holder is responsible for managing the day to day supply, or taking, of water to or by holders of water allocations. The ability to manage supply is assured by the requirement for transfers of a water allocation (and some other dealings) to be accompanied by a Notice to the Registrar of the Existence of a Water Supply Contract (ROP 13).

Non Resource Operations Licence or NRL

[0-0560]

A water allocation in these schemes is not subject to the same control by a Resource Operations Licence holder, and so has additional requirements relating to the circumstances under which water may be taken.

An example of these additional requirements is a condition specified in the water allocation that water is not taken unless the river is flowing at a specified rate, at the time and place where the water is to be taken.

There may also be a requirement for equipment used to take such water to have a sealed meter installed, which could be subject to inspection by authorised officers of Water Management and Use area of the Department of Environment and Resource Management.

Transfers of these water allocations (and some other dealings) are to be accompanied by a Dealing Certificate issued by Water Management and Use area.

How is the Water Registry administered?

[0-0570]

The management of 'resource related elements' and issue of either Dealing Certificates or Notices to the Registrar are dealt with by the Water Management and Use area of the Department of Environment and Resource Management. All matters relating to lodgement and registration of instruments are dealt with by Titles Lodgement and Titles Registration staff under the authority of the Registrar of Water Allocations, a position that is currently held by the Registrar of Titles.

¶[0-0800] deleted

Legislation

[0-8000]

The Acts or parts of Acts administered in the titling function are:

- the *Land Title Act* 1994
- the *Land Act* 1994

- the *Building Units and Group Titles Act 1980*
- the *Body Corporate and Community Management Act 1997*
- the *Foreign Ownership of Land Register Act 1988*
- the *Aboriginal Land Act 1991*
- the *Torres Strait Islander Land Act 1991*.

Registration of all dealings with freehold and State tenure titles is in accordance with these Acts and other legislation which impacts.

Some of the other Acts which impact on the titling function are as follows:

- the *Trusts Act 1973*
- the *Property Law Act 1974*
- the *Surveyors Act 2003*
- the *Public Trustee Act 1978*
- the *Coastal Protection and Management Act 1995*
- the *Survey and Mapping Infrastructure Act 2003*
- the *Integrated Planning Act 1997*
- the *Water Act 2000*.

Cross References and Further Reading

[0-9000]

Nil.

Notes in text

[0-9050]

Note ¹ – This numbered section is not applicable to water allocations or the Water Allocations Register.