

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 ss 150(1) and 151 of the *Water Act 2000*, subject to the exceptions provided in ss 150(2) and 151(1) of the *Water Act 2000*, the *Land Title Act 1994* applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act 2000* an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act 1994* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act 1994*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act 2000*; 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) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

^{1, 3}Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the *Land Act 1994* 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]

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 1994* or s 305(1) of the *Land Act 1994*).

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 1994* or ss 306(1) and (2) of the *Land Act 1994*). 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 1994* or s 305(4) of the *Land Act 1994*). A rejected instrument or document may be relogged after the requisition has been complied with (s 157(4) of the *Land Title Act 1994* or s 306(4) of the *Land Act 1994*).

Practice

[60-0030]

All documentation is returned to the lodger of the instrument or document 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 re-lodged.

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 settlement notices will 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 a dealing is rejected, the fees that have already been paid are forfeited. The fee payable on re-lodgement of a form under s 157(4) of the *Land Title Act* 1994 or s 306(4) of the *Land Act* 1994 is half of the fee stated in schedule 2, item 2 of the *Land Title Regulation* 2005 or schedule 11, item 2 of the *Land Regulation* 2009 for lodging (s 4(2)(b) of the *Land Title Regulation* 2005 or s 63(2) of the *Land Regulation* 2009), together with any fees which remain unpaid from the original lodgement (eg short fees, requisition fees). Section 63(3) of the *Water Regulation* 2002 is a similar provision.

If a caveat or writ or warrant of execution is requisitioned and the requisition is not complied with, 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 land registry are subject to an annual review. See the current:

- ^{1,2}*Land Title Regulation* 2005 – Schedule 2, item number 13; and
- ^{2,3}*Water Regulation* 2002 – Schedule 16, item number 24; and
- ^{1,3}*Land Regulation* 2009 – Schedule 11, item number 4.

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 or a lodged instrument or document (ss 155(1) and (2) of the *Land Title Act* 1994 or s 304(1) of the *Land Act* 1994). 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* 1994 or s 304(2) of the *Land Act* 1994). An instrument or document so corrected has effect as if the error had not been made (s 155(4) of the *Land Title Act* 1994 or s 304(3) of the *Land Act* 1994).

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).

²If 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* 1994).

^{2,3}Section 126 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* 1994.

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* 1994 or s 291(3) of the *Land Act* 1994). The Register so corrected has the same effect as if the error had not been made (s 15(7) of the *Land Title Act* 1994 or s 291(4) of the *Land Act* 1994).

The Registrar only corrects errors that the registry has made. The Registrar does not use this section to correct errors made by the conveyancer.

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.

^{2,3}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, eg leases, mortgages, and easements etc which are generally incorporated in the dealing 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 the order in which the instrument or document was lodged will not give effect to the instrument's or document's intention or that of a related instrument or document, or if 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 1994* or s 308(2) of the *Land Act 1994*). 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 1994* or ss 308(3) and (4) of the *Land Act 1994*).

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 relodgment (ss 159(5) and (6) of the *Land Title Act 1994* or s 308(5) of the *Land Act 1994*).

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 (s 172(1) of the *Land Title Act 1994*) or s 317 of the *Land Act 1994* (s 321(1) of the *Land Act 1994*).

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 1994* or s 321(1) of the *Land Act 1994*).

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 1994* (s 172(3) of the *Land Title Act 1994*) or s 321 of the *Land Act 1994* (s 321(3) of the *Land Act 1994*). 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 1994* or s 321(4) of the *Land Act 1994*).

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 by letter 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 2 of the *Land Title Regulation 2005* 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 dealing 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 either a microfilm copy or the original to be imaged. This is normally processed within one working day.

²The 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 1994*. No such circumstances, nor procedural rules for such inquiries as contemplated by s 21(2) of the *Land Title Act 1994*, 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 1994*).

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 1994*). Witnesses required to appear before an inquiry are entitled to witness fees (s 23(3) of the *Land Title Act 1994*).

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 1994*).

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 1994*). 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 1994*).

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 *Evidence (Miscellaneous Provisions) Act 1958* (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 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).

Where a statutory declaration is made by an attorney for a person who is a party to an instrument or a document, the statement of facts relevant to the person may only be made in the third person. The declaration must also state the attorney is an attorney for the party and be signed by the attorney in the manner set out in [60-0900] under subheading Execution by Attorney. The power of attorney must be registered before the dealing to which the declaration relates may be registered.

¶[60-0280] to ¶[60-0350] deleted

Witnesses to Executions

General Law

[60-0360]

²An instrument under the *Land Title Act* 1994 is validly executed by an individual if it is executed in a way permitted by law and the execution is witnessed by a person mentioned in Schedule 1 of the *Land Title Act* 1994 (s 161(2) of the *Land Title Act* 1994).

^{1,3}Section 46 of the *Land Regulation* 2009 provides that documents may be witnessed by similar persons as mentioned in Schedule 1 of the *Land Title Act* 1994.

The provisions of s 162 of the *Land Title Act* 1994 or s 311 of the *Land Act* 1994 require that witnesses to executions or signatures are required to:

- take reasonable steps to ensure that the individual is the person entitled to sign the instrument or document;
- have the individual execute the instrument or sign the document in their presence; and
- not be a party to the instrument or document.

The persons who can witness the execution of a land registry form are listed in Schedule 1 of the *Land Title Act* 1994 or s 46 of the *Land Regulation* 2009. Definitions in the *Land Title Act* 1994, the *Justices of the Peace and Commissioners for Declarations Act* 1991 and other Acts apply to some of the terms in this list. For example:

- “lawyer” means an Australian lawyer who, under the *Legal Profession Act* 2007, may engage in legal practice in Queensland;
- “Justice of the Peace” or “Commissioner for Declarations” means a person holding the relevant office under the *Justices of the Peace and Commissioners for Declarations Act* 1991.

Where a form is executed outside Australia, in addition to a notary public, a person prescribed by regulation is also authorised to witness an execution, for example:

- Part IV of the *Defence Force Regulation* 1952 (Cth) provides that a *competent officer* (as defined in reg 15 of the Regulation) may attest the execution of a document by a member of the Defence Force (or a person who accompanies a part of the Defence Force) while on service outside Australia; or
- the *Australian Consular Officers’ Notarial Powers and Evidence Act* 1946 (Qld) and *Consular Fees Act* 1955 (Cth) authorises witnessing of an instrument or document by an Australian Consular Officer (which includes an Australian Diplomatic Officer), an authorised employee of the Commonwealth or an employee of the Australian Trade Commission.

The Registrar may also approve another person in a State or Territory of Australia, or in any place outside Australia to witness the execution of an instrument or document. Examples of persons who have been approved to witness executions are:

- a lawyer or legal practitioner entitled to practice in an Australian State or Territory other than Queensland;

- A Justice of the Peace or Commissioner for Declarations under the law of an Australian State or Territory other than Queensland;
- a licensed settlement agent authorised under the *Settlement Agents Act* 1981 (WA);
- a Registrar of the Supreme, District or Magistrates Courts of Western Australia.

Section 161(3) of the *Land Title Act* 1994 or s 310(3) of the *Land Act* 1994 gives the Registrar discretion in exceptional circumstances to register an instrument or document even though the execution is not witnessed or was witnessed by a person other than mentioned in Schedule 1 of the *Land Title Act* 1994 or in s 46 of the *Land Regulation* 2009.

Practice

[60-0390]

Additional Witnessing Requirement for Form 1, Form 2 and Form 3

Form 1 – Transfer, Form 2 – Mortgage and Form 3 – Release of Mortgage require the completion of a separate witnessing provision for each signature which is required to be witnessed, even though signatures were made in front of the same witness.

Witnessing Within Australia

The Registrar requires the full name and qualification of a witness to be shown legibly adjacent to their signature.

²Section 161(3A) of the *Land Title Act* 1994 provides that for an instrument that transfers or creates an interest in a lot, the execution by the solicitor for the transferee or the person in whose favour the interest is created need not be witnessed. Where a solicitor executes an instrument in this capacity, his/her full name and occupation or qualification ‘solicitor’ must be shown. However, the jurisdiction of practice is not required. Executions signed personally or by an attorney for an individual are required to be witnessed.

The requirement that a witness must not be a party to the instrument or document is not infringed by an employee of a bank or other institution, who is a qualified witness by virtue of Schedule 1 of the *Land Title Act* 1994 or s 46 of the *Land Regulation* 2009 witnessing the execution of an instrument or document that their employer is a party to. For example, a bank officer who is a justice of the peace is not a party to a mortgage to the bank.

Notwithstanding a person may be authorised to take a declaration, they are not authorised to witness the signing of an instrument or a document unless included in a category listed in Schedule 1 of the *Land Title Act* 1994 or s 46 of the *Land Regulation* 2009. For example, the following are considered not to be authorised if they do not also hold an office or qualification mentioned in Schedule 1 of the *Land Title Act* 1994, s 46 of the *Land Regulation* 2009 or are not persons approved by the Registrar:

- an *ex officio* commissioner for declarations under the *Oaths Act* 2001 (Tas); or
- a person who is an authorised witness under the *Oaths, Affidavits and Statutory Declarations Act* 2005 (WA); or
- a person authorised under the *Statutory Declarations Act* 1959 (Cth); or
- a legal executive or a paralegal.

Justice of the Peace and Commissioner for Declarations

When witnessing the execution of instruments or documents, justices of the peace must clearly write, type, print or stamp the words 'Justice of the Peace' or the abbreviation 'JP' after or under their signature.

Similarly, commissioners for declarations need only place the words 'Commissioner for Declaration', 'Com Dec' or even 'CDec' adjacent to their signatures. Each commissioner for declarations is allocated a number on registration. It is desirable but not compulsory for that number to be included as part of their witnessing.

A justice of the peace appointed prior to 1 November 1991 who has not applied to be appointed as a commissioner for declarations by 30 June 2000 ceases to hold that office and instead holds the office of a justice of the peace (commissioner for declarations). When witnessing the execution of instruments or documents a justice of the peace (commissioner for declarations) may repeat their full title or use the abbreviation 'JP (C.Dec)'.

Witnessing Outside Australia

The Registrar requires that an instrument executed or a document signed by an individual outside Australia is witnessed by:

- an Australian Consular Officer or an Austrade Officer; or
- a competent officer of the Defence Force; or
- a notary public; or
- an Australian Legal Practitioner; or
- another person approved by the Registrar;

and that other relevant requirements set out below are met.

Australian Consular Officer or Austrade Officer

An Australian Consular officer or an Austrade officer will clearly print their full name and legibly affix the official seal of their mission or post adjacent to their signature.

Honorary consuls are not authorised to undertake notarial functions including witnessing the execution of an instrument or the signing of a document.

Competent Officer of the Defence Force

Where a competent officer has witnessed the signature of an individual the following is required:

- the witnessing officer must print their full name and rank adjacent to their signature; and
- supporting documentation must be deposited to verify the execution was made while the member of the Defence Force was serving overseas, for example a letter from a solicitor. There is no need to state the country in which the member of the Defence Force was serving.

Notary Public

Where an instrument or a document signed outside of Australia, in the presence of a notary public, the following is required:

- (a) the full name, qualification or description of public office or commission, date of expiry of the commission (if applicable) and official stamp/seal (if one is required to be used) of the witness must be shown clearly:
 - on the form; or
 - in the manner required of a notary public when undertaking a witnessing function (note: if the notary public signs a separate document, rather than the face of the form, the details of the form must be clearly referenced on the separate document - for example, type of form, property and party details)
- (b) a translation of any non-English part of the execution or additional statement. Note that an informal translation is acceptable.
- (c) full contact details for the notary public i.e. postal address, email address and telephone number (if not already provided in the execution) and details of the evidence sighted by the notary public to confirm identity - for example, passport.

Note: copies of passports or other identity documentation must not be deposited in the registry when the form is lodged.

- (d) full contact details of the solicitor for the party signing overseas, if one is acting.

Another Person Approved by the Registrar

In special circumstances (for example, due to the remote overseas location of the party signing the form), the solicitor acting for the person signing overseas may seek approval from the Registrar for “another person” (other than an Australian Consular Officer, an Austrade Officer; a competent officer of the Defence Force; a notary public or an Australian Legal Practitioner) to witness the execution of the form (for example, an overseas lawyer) before it is lodged.

When requesting the Registrar’s approval, the solicitor acting for the person signing overseas is required to provide to the Registrar either a statement on their firm’s letterhead, or a statutory declaration, detailing both the circumstances and how he or she knows that they are dealing with the person entitled to execute the form, for example:

- the person is a long standing client;
- the solicitor has prior written instructions from the person in relation to the sale/mortgage etc;
- the solicitor has contacted the person on an email address or telephone number that the person provided prior to leaving the country.

¶[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 1994*.

Pursuant to s 190 of the *Land Title Act 1994*, 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:

- ²register a transmission application
- ^{1, 2}dispense with production of a Certificate of Title or Deed of Grant
- ^{1, 2}register a person as an adverse possessor.

^{1, 3}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 1994* 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 1994* or s 294(3) of the *Land Act 1994*).

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 1994*). A person claiming an interest in a lot may lodge a caveat pursuant to s 122(1)(a) of the *Land Title Act 1994* or s 294(4) of the *Land Act 1994*.

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 1994*).

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 (eg column 2 notice 6) should be included in the e-mail.

¶[60-0840] to ¶[60-0890] deleted

Statutory Exemption from Lodgement Fees

[60-0892]

A dealing 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 merely because a legislative provision for an exemption exists the exemption may not extend to all dealings in a transaction.

For the purpose of this practice, lodgement fees include all fees payable when a form is lodged or deposited. Where a dealing 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 dealings 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 dealings 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 the provisions of s 4(3) of the *Land Title Regulation 2005* or s 62(4) of the *Land Regulation 2009* a fee is not payable for the lodgement and registration of an instrument of transfer of land to, or acquisition or lease of land by, the State; or for a covenant or release of a covenant if the covenantee is the State.

An acquisition by the State mentioned in s 4(3) of the *Land Title Regulation 2005* or s 62(4) of the *Land Regulation 2009* includes:

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

The above provision extends to an entity that has the privileges and immunity of the State and also includes dealings 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 provision does 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 4(3) of the *Land Title Regulation 2005* and s 62(4) of the *Land Regulation 2009* do not apply to similar dealings 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 2 item 3 of the *Land Title Regulation 2005*. 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 dealings 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 dealing/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]

General

Section 11(1) of the *Land Title Act 1994* requires that an instrument to transfer or create an interest in a lot must be executed by:

- the transferor or the person creating the interest; and
- the transferee or the person in whose favour the interest is to be created or a solicitor authorised by the transferee or the person.

Execution Where Different Estates in Same Instrument or Document

A registered proprietor or registered owner of different estates [eg fee simple and as lessee] may deal with those interests in the one instrument or document. One execution in an instrument or

document is acceptable where the same party is dealing with different shares or estates. In both of these scenarios they are dealing with their own asset in their personal capacity.

Execution Where Different Capacities in Same Instrument or Document

Where a party has entered into a transaction in two different capacities, as a trustee and in their own right, and it is acceptable to use one Land Registry form (see further [51-2115]), the form must be executed separately in each capacity. Alternatively, a single execution is acceptable provided a statement appears in the appropriate item of the form that the party was executing in both capacities.

Execution by Corporation

See part 50, esp ¶[50-2000] and ¶[50-2030] to ¶[50-2050]).

Execution with Marksman Clause

A person who is illiterate, blind, infirm or too ill to sign may affix a mark, instead of a signature. The witness to the signature then writes the words '[name in full], his or her mark', around the mark, and places their signature at the witness signature position on the form.

A Form 20 – Declaration is required to include the following statements by the witness:

- (a) that the witness is the attesting witness to the mark of the person executing the instrument or document in respect of the property being transferred (the property must be fully described);
- (b) that the witness certifies that the mark was made in their presence; and
- (c) that prior to the mark being made, the witness read the instrument or document to that person, who appeared to understand the nature and effect of the instrument or document.

Execution by Attorney

The signature of an attorney who signs an instrument or document for an individual must be witnessed. Acceptable witnesses to executions, whether inside or outside Australia, are listed in Schedule 1 to the *Land Title Act 1994* or s 46 of the *Land Regulation 2009*.

The signature of an individual as attorney for a corporation who executes a transfer, mortgage, lease, etc as transferor, mortgagor, lessor etc must be witnessed in the same manner as for individuals above. However, an execution by an attorney for a corporation as transferee, mortgagee, etc in a transfer, mortgage, lease, etc need not be witnessed as no conveyance is involved (s 46 of the *Property Law Act 1974*). The signature of an individual as attorney for a corporation who executes a release of mortgage or a surrender of lease or easement as mortgagee, lessee or grantee must be witnessed.

A conveyance executed by a corporation as an attorney (with or without a common seal) is not required to be witnessed in accordance with Schedule 1 of the *Land Title Act 1994* or s 46 of the *Land Regulation 2009* (see also part 50 – Corporations and Companies, esp ¶[50-2000]).

Where an instrument or document is executed by a person as attorney for another person, or for a corporation, the execution clause must read:

'John Smith [or John Smith & Co Ltd ACN 001 002 003] by his [its] duly constituted attorney William Smith [name in full] under power of attorney No X999999Y'

The Registrar does not require proof that the attorney has not received notice of the death of the principal or revocation of the power of attorney.

Where a lodged dealing is signed under a power of attorney that is restricted to deal with certain property, but the property is identified by other than lot on plan description, a statutory declaration is required to identify the property in the dealing as the property referred to in the power of attorney. Similarly, a declaration is required to be deposited with a dealing signed under a power of attorney limited to property identified by lot on plan description, but the property has been subdivided.

Where two or more persons have jointly appointed a common attorney under a power of attorney or have a common attorney under separate powers of attorney, one execution of the instrument by the attorney suffices. That is, 'A and B by their attorney C'. However, reference to the relevant power(s) of attorney must be shown.

Where there are two or more attorneys for a single principal under a power of attorney, only one witnessing provision need be completed for attorneys signing at the same time before a witness.

Where an attorney is executing on behalf of a custodian, appointed by a responsible entity incorporated under the *Corporations Act 2001* (Cth), a statutory declaration by the attorney is required stating the interest being dealt with is held in the capacity of custodian. The declaration must also identify the trust/scheme referred to in the registered power of attorney. Alternatively, a letter from the solicitor acting on behalf of the custodian may be deposited, stating the interest being dealt with is held in the capacity of custodian and identifying the trust or scheme referred to in the registered power of attorney.

Signing by Lawyer

If a lawyer, where permitted by the land registry form, executes on behalf of a party to an instrument or document, the lawyer's signature need not be witnessed, but his/ her full name must be printed underneath the signature. Only lawyers under the *Legal Profession Act 2007* are authorised to execute on behalf of a party to an instrument or document.

Witness to Execution

Section 162(c) of the *Land Title Act 1994* and s 311(c) of the *Land Act 1994* provide that the person who witnesses execution of an instrument or document must not be a party to the instrument or document. The Registrar is of the view that an employee of a bank or other financial institution, otherwise qualified under Schedule 1 of the *Land Title Act 1994* or s 46 of the *Land Regulation 2009* (eg as a justice of the peace), is qualified to witness an instrument or document to which their employer is a party.

On forms that do not require separate witness provisions and where multiple executions are needed due to signatories signing before different witnesses, separate witnessing provisions must be completed by each witness. In cases where there is insufficient room on the form, a Form 20 – Enlarged Panel is required. It is permissible for the item to appear partially on the form and a Form 20 – Enlarged Panel. However, the full execution for each party (signature, date and completed witnessing provision) must appear on the same form. The item number and heading (ie '**Item 6 Execution**') must be included on the Form 20 – Enlarged Panel and otherwise comply with requirements for completing a Form 20.

For further information, see:

- part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney, esp ¶[16-2170];

- part 50 – Corporations and Companies, esp ¶[50-0110] to ¶[50-0130], ¶[50-2000] and ¶[50-2020] to ¶[50-2050]; and
- part 1 – Transfer, esp ¶[1-2060].

Execution by a Receiver Appointed by a Mortgagee for an Individual

Where an instrument or document is executed by a receiver appointed by a mortgagee of the property of a mortgagor who is an individual, the following applies:

- evidence of the appointment must be deposited with the dealing or a reference to the dealing where the evidence was deposited must be provided;
- the relevant clause(s) in the mortgage (and the deed of appointment if this is where the receiver's power authorising the transaction is stated) must be identified in the form or by letter;
- the name and appointment capacity (e.g. 'Receiver') must be printed adjacent to their signature; and
- a qualified person mentioned in Schedule 1 of the *Land Title Act* 1994 must witness the signature.

Execution for a Minor

See part 1 – Transfer, ¶[1-2060]

Execution by Public Trustee

[60-0910]

The Public Trustee of Queensland is authorised by the *Public Trustee Act* 1978 and various other Acts to execute instruments or documents for individuals in certain circumstances, such as incapacitation or imprisonment.

All instruments or documents must be executed in a way showing the appointment or authority under which the public trustee acts (s 13 of the *Public Trustee Regulation* 2001). For example, where the Public Trustee executes an instrument or document for an incapacitated person, a statement to the following effect should be added:

‘Signed in the name of and on behalf of the said [name] by [name and position], Public Trust Office, the Public Trustee being authorised to manage the estate of the said [name] pursuant to Part 6 of the *Public Trustee Act* 1978’.

Seal of the public trustee

The seal of the Public Trustee may be used in the execution of an instrument or document. However this is not essential and an instrument or document not under seal is still effective at law (s 11C of the *Public Trustee Act* 1978 and s 227 of the *Property Law Act* 1974).

Execution by delegates of the Public Trustee

Where such authorisation exists, the execution may be by a delegate of the Public Trustee. The delegate should add after the delegate's signature a statement to the following effect 'Signed as delegate for the Public Trustee under section 11A of the *Public Trustee Act* 1978'.

Execution for prisoners

The Public Trustee is the manager of estates of prisoners who are undergoing sentences of imprisonment for over three years and is therefore the proper person to execute instruments or documents dealing with the prisoner's property, unless the Public Trustee has discontinued management (s 92 of the *Public Trustee Act 1978*) or has given consent for the prisoner to execute the instrument or document dealing with the property themselves (s 95 of the *Public Trustee Act 1978*).

Witnessing requirements

The usual witnessing requirements apply to the execution.

Execution by Local Government

General Law

[60-0920]

Section 236 of the *Local Government Act 2009* provides that the following persons may sign a document on behalf of a local government:

- (a) the head of the local government (defined in Schedule 4 of the *Local Government Act 2009*);
- (b) a delegate of the local government (powers of delegation are provided by s 257 of the *Local Government Act 2009*);
- (c) a councillor or local government employee who is authorised by the head of the local government, in writing, to sign documents.

Practice

[60-0970]

A document executed by a local government before 1 July 2010 must be signed by either:

- the mayor;
- an authorised councillor;
- the chief executive officer; or
- an authorised employee of the council (i.e. delegate or authorised officer).

A document executed by a local government on or after 1 July 2010 must be signed by either:

- the mayor;
- the chief executive or interim administrator;
- a delegate;
- an authorised councillor; or
- an authorised local government officer.

The name of the local government and designation of the signatory (for example, Mayor, Delegate or Authorised Officer) must be shown adjacent to the signature. The authorising provision of the Act is not required to be stated and the Registrar makes no inquiry as to whether the delegation has been made or a person is so authorised by a local government. There is no requirement for the names of the signatories to be shown.

The execution must be witnessed by a person with a qualification mentioned in Schedule 1 of the *Land Title Act* 1994 or s 46 of the *Land Regulation* 2009 where a Land Registry form has a witnessing provision. The signing of an approval to a plan of subdivision does not require witnessing.

Style of Local Government Name

[60-0980]

Under the provisions of s 5(2) of the *Local Government (Operations) Regulation* 2010 a local government may be called either—

- (a) ‘Council of the... (*insert /City/Town/Shire/Region*) of... (*insert name of local government area*)’; or
- (b) ‘... (*insert name of local government area*)... (*insert /City/Town/Shire/Regional Council*)’.

Also, an Aboriginal Shire Council may be called ‘(*insert name of local government area*) Aboriginal Shire Council’ (s 5(3) of the *Local Government (Operations) Regulation* 2010).

The Registrar is not concerned with which of the style names is used. However the name stated in the relevant item of a document that creates an interest in the local government, will be recorded in the register. Where there is ambiguity in style names when recording a local government in the register, for example where a new lot is being created from two lots in different style name, clarification will be required from the lodger.

¶[60-0990] deleted

Local Government Reform

[60-1000]

The following requirements apply to local governments affected by local government reform in March 2008 brought about by amendments to the *Local Government Act* 1993.

Where an interest is recorded in a previous council's name and it is not being dealt with, the new council does not need to take any action with regard to that interest.

However, action will be required in instances where an interest is being dealt with and the council will subsequently retain the interest. In such cases, the new council must first vest the interest in the new council by registering a Form 14 – General Request. Item 6 of the form must state ‘... the interest in item 4 be vested in [*name of new/adjusted council*] pursuant to the *Local Government Act* 1993’. The form is exempt from lodgement fees. A duty notation is not required under special dispensation by the Office of State Revenue.

Where an interest in land is held in the name of a previous council and the new council is disposing of the interest, the new name does not need to first be recorded in the land registry. However, the instrument or document lodged to record the disposing of the interest must contain in the appropriate item on the prescribed form, a statement showing both the new name and the previous council name; and be executed by the new council.

For example, a lot held in the name of the Caboolture Shire Council that is being transferred to another party, the land registry Form 1 – Transfer must state at item 3 – Transferor –

‘Moreton Bay Regional Council (formerly Caboolture Shire Council) pursuant to the *Local Government Act 1993*’

¶[60-1010] deleted

Translation of Instrument or Document in Foreign Language

[60-1020]

Translations of supporting documentation or parts of Titles Registry forms (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 a dealing. Each dealing 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) 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 lodging a certified copy of a 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 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.

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 dealing(s) (other than a dealing rejected under s 157 of the *Land Title Act* 1994 or s 306 of the *Land Act* 1994 or a dealing withdrawn before registration under s 159(2) of the *Land Title Act* 1994 or s 308(2) of the *Land Act* 1994) 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 (eg deed of trust).
Note: The original evidence deposited **will not be returned**.

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 dealing, 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 dealing(s) (other than a dealing rejected under s 157 of the *Land Title Act* 1994 or a dealing withdrawn before registration under s 159(2) of the *Land Title Act* 1994) 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 46 of the *Land Regulation* 2009, 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 copy made under s 45 of the *Powers of Attorney Act* 1994, of an Enduring Power 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**Before Lodgement**

A party to a dealing or their solicitor may request that the Registrar suppress in the public register, certain sensitive or confidential information. Only information not directly relevant to examination or other processing of the dealing will be approved for suppression. 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 1994* or document under the *Land Act 1994* 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;
- any part of a will or a grant of representation.

A lodger will not be advised to remove information from a document, but must make a request to the Registrar.

A request to suppress sensitive or confidential information must provide substantive reasons for the suppression and be made in writing **before** the dealing is lodged. If supporting documentation is deposited to satisfy a requisition, the request may be made before the 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:

- the original or a copy of the completed registry form;

- the original or 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 information may be suppressed 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 of approval must be deposited with the dealing at time of lodgement. If approved while the dealing is under requisition, the letter of approval must be deposited with the dealing when returned from requisition.

After Lodgement or Registration

A written request may be made to the Registrar in special circumstances to request suppression of information in a lodged or registered dealing where the affected person is not in a position to request suppression prior to lodgement. Two examples include:

- the caveatee in a caveat
- a transferor in a transfer pursuant to an order under the *Family Law Act 1975* (Cth).

Dealing with or Disposing of an Interest Held by the State

[60-1040]

^{1,2}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 [14-2160]).

^{1,2}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 dealing. 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 dealings. (See [14-2160]).

^{1,3}Unallocated State land

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 [14-2160]).

Cross References and Further Reading

[60-9000]

Nil.

Notes in text

[60-9050]

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

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

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