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Customer Information Bulletin on email

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A Victorian
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Victorian Water Register

Confirmation of Ownership of Water Shares, Transfer of Water Shares and Forms

Unconfirmed water shares

On 1 July 2007, when existing water rights held on land in irrigation districts in northern Victoria were unbundled and separated into a water share, a delivery share, and a water use licence, some of the shares were recorded as 'unconfirmed'.

For example where there were multiple parcels of land listed as a 'holding' in the water authorities' Section 230 Registers as at 1 July 2007, the *Water Act 1989* required the creation of water shares for those holdings as 'unconfirmed' — Clause 17(1)(a) or (b) if the parcels in the holding were:

- owned by different persons, (even if the names were for only one individual person); or
- owned by the same persons but in a different manner, or
- if the parcels in the holding were subject to different mortgages.

There were also unconfirmed 17(1)(c) water shares that resulted from unresolved investigations of the records for the land in the prior service holding. The water authorities and the Department of Sustainability and Environment are progressively resolving these.

In the case of unconfirmed 17(1)(a)(b) shares the *Water Act 1989* required entitled parties to reach agreement as to the ownership structure and if there were mortgages extended to the water shares as to how those mortgages should be ranked [or discharged]. Water share owners are encouraged to submit to Land Victoria a completed Application to Confirm Ownership of a Water Share — see Forms section on page 2.

In relation to such applications the Water Registrar requires all entitled parties be named as applicants and properly execute the application in accordance with the form of application.

If the applicant is a company or other incorporated association, the application is required to be executed in accordance with Section 127 of the *Corporations Act 2001* or other act governing the association's execution. If an application is executed by a party pursuant to a Power of Attorney then the document must contain an appropriate attestation clause and a certified copy of the Power of Attorney must be produced.

The same requirements apply to the execution of any other documents lodged for recording by the Registrar of the Victorian Water Register.

Permitted dealings with an unconfirmed water share

Under Schedule 15 to the *Water Act 1989*, there are three permitted dealings with an unconfirmed 17(1)(a)(b) water share — refer to Clause 32. A transfer of

ownership of a water share, including a limited term transfer, and a discharge of mortgage over a water share may take place. Dealings with unconfirmed 17(1)(c) shares are not permitted until the investigation by the water authority and the Department of Sustainability and Environment is completed.

Transfers must be recorded within the two-month approval validity period

Once an approval is given by a water authority to a transfer of water share the pre-filled Transfer of Water Share that issues from the water authority must be recorded by the Water Registrar within the approval validity period i.e. within the two (2) month approval period — refer to Part 3A *Water Act 1989*. If the transaction is not recorded within the two calendar months, the Water Authority approval lapses and the Water Registrar will not record the transfer. A new application for approval would need to be lodged with the water authority with another application fee. Customers must ensure that they allow sufficient time to lodge a transfer and for completion of the recording of the transfer within that two month period.

Mortgagee's Consent to a Transfer of a water share

If a water share is encumbered by a mortgage, consent from the mortgagee to a transfer of the water share will be required. The consent must be a separate supporting document and must be lodged in conjunction with a Water Share Transfer or Limited Term Transfer form. However, if a Water Share Transfer or Limited Term Transfer is accompanied by a discharge of the mortgage, the mortgagee's consent to the transfer is not required.

Extension of period for waiver of recording fee payable on a Discharge of Mortgage of Water Share

When water rights in northern irrigation districts were unbundled into new water entitlements and recorded in the Water Register, mortgages were extended to water shares created on 1 July 2007 (when the water shares were greater than five megalitres).

Under the Water (Resource Management) Regulations 2007, the Water Registrar waived the fee for recording a discharge of mortgage of water share where the discharge related to a mortgage that was extended to a water share on creation of the share on 1 July 2007. This waiver applied to most discharges for the six-month period from commencement of the Victorian Water Register until 31 December 2007.

The Water Registrar has decided to extend the period for which this fee will be waived, **until 31 December 2008**. This will apply to unbundling in both the northern and southern irrigation districts.

If an extended mortgage is not required to remain on a water share and the lender/bank agrees to discharge that mortgage, or as part of the confirmation of ownership by agreement, a mortgage is to be discharged, then the discharge of mortgage will continue to be recorded free of charge if lodged with the Water Registrar for recording by 31 December 2008 (the normal fee is \$48).

Forms

Approved forms for lodging to record transactions with water shares by the Water Registrar with guides on completion and periodic updates to Water Registrar's requirements are published online at <http://www.dse.vic.gov.au/waterregistrar>

Customers are also reminded that if there is insufficient space in any form, the approved Annexure page may be used and attached to the approved form.

An approved Annexure page can only be used in a prefilled Transfer of Water Share if there is insufficient space on the prefilled form for execution by the parties — no other details in the prefilled transfer can be altered or amended by addition.

Refer to Customer Information Bulletin No 103 — June 2007 for additional information on the operation of the Victorian Water Register.

Land Registration Services

Name used by registered proprietor

From **1 January 2008**, practices have been simplified where the name used by the registered proprietor is different to the name recorded in the Register.

In most instances, where the name used by the registered proprietor is different to the name recorded in the Register and the registered proprietor is staying on the Register, an accompanying Section 103(2) *Transfer of Land Act 1958* application or Section 32 *Transfer of Land Act* application will not be required.

This will represent a cost saving to customers in terms of document preparation and registration fees.

The following three basic rules will apply in all instances where the registered proprietor is dealing:

1. registered proprietor deals as registered; or
2. registered proprietor deals in a new or different name but there is a recital (with some notable exceptions — see Recitals and document preparation below); or
3. a statutory declaration identifying the party dealing with the registered proprietor.

Any dealing not complying with the above points will be refused.

Recitals and document preparation

Where appropriate, recitals should be used, particularly for individuals and companies. The following points regarding recitals should be noted:

- where a recital is, after acceptance of a dealing, found to be inappropriate the Registrar will requisition for evidence that the party dealing is entitled to do so
- if a series of documents vary between them as to the name in which a party deals, they will be refused. An example often seen

is where a Transfer of Land and a mortgage are lodged and there is a variation (no matter how slight) between the transferee(s) name(s) and the mortgagor(s) name(s)

- when recitals are included in a document and/or satisfactory evidence is supplied identifying the party dealing with the registered proprietor, the Register will be updated
- companies may require definitive proof of their entitlement to deal, but generally a recital will be sufficient evidence provided that the Australian Company Number (ACN) of the party dealing is the same as that of the registered proprietor
- statutory and other entities may require different proof of their entitlement to deal, depending on the legislation by which the entity was created.

Abbreviated names of companies/ incorporated associations

The *Corporations Act 2001* permits the abbreviations 'Pty' and 'Ltd' to be used instead of the words 'Proprietary' and 'Limited' respectively in any document. Thus, 'Ltd' and 'Pty Ltd' are legally acceptable abbreviations and their use is an accurate reflection of a corporation's name in any document.

Land Victoria, in processing any dealing in which a company's name is to be recorded, now uses the abbreviations 'Pty' and 'Ltd' whenever it is necessary to capture the words 'Proprietary' and 'Limited' respectively as part of a company name.

In addition, all existing recordings of company names in the Register are being amended to show the abbreviations 'Pty' and 'Ltd' (as appropriate).

Similarly, the *Associations Incorporation Act 1981* permits the abbreviation

'Inc' to be used instead of the word 'Incorporated' in any document.

All existing recordings in the Register are being amended to show the abbreviations 'Inc' and all future recordings will use the abbreviation.