Introduction
In this newsletter we provide a brief overview of the relevant legislation and policies that apply when government agencies deal with land.

Categories of land
Land in Victoria can be divided into two categories: Crown land and alienated land. Land can be alienated from the Crown by a grant of freehold or by a lease.

Crown land is land that is held by the Crown in right of the State of Victoria. It constitutes about 30% of the State by area. Nearly half of that Crown land is national, state or other park governed mainly by the National Parks Act 1975, and nearly the other half is forest governed mainly by the Forests Act 1958. The balance is generally comprised of land that has been set aside for public purposes, including cemeteries, camping grounds, parks, public halls, railways, show grounds, schools, hospitals, prisons, ports, aerodromes, racecourses and sporting amenities. Importantly most waterway banks, beds and coastal foreshore remain Crown land. This balance of land is predominantly governed by the Crown Land (Reserves) Act 1978 and the Land Act 1958.

Native title may exist over Crown land and any dealings with Crown land must follow government policies in respect of native title and the provisions of the Native Title Act 1993 (Cth) and any agreements or court orders made under that Act.

Freehold land comprises two sub-categories of land: general law land and Torrens system land.

General law land is land that was granted by the Crown between 1838 and 1862. Dealing with general law land requires the production of the chain of deeds showing ownership and is not guaranteed by the State Government.
Torrens title land

Torrens title land is land that has been registered with the Registrar of Titles under the *Transfer of Land Act 1958*. The Torrens title system was introduced in Victoria in 1862 as a reform to proof of ownership by deed. The Torrens system of land registration was developed by Robert Richard Torrens in South Australia. Under the Torrens system, the owner of land, once registered, obtains a superior interest to the land in all circumstances except those specified by the *Transfer of Land Act 1958*. A considerable amount of general law land has already been converted to Torrens System land, and from 1 January 1999 all general law land is to be brought under the operation of the *Transfer of Land Act 1958* prior to any dealings being registered.

Crown land can become freehold land if a Crown grant is issued. All Crown grants are generally subject to reservations to the Crown of the minerals in the land and the grant is usually limited in depth.

Dealing with Crown land

Crown land is dealt with differently depending on whether it is reserved Crown land or unreserved Crown land.

*Reserved Crown land* is land which has been reserved for any of the variety of public purposes under the *Crown Land (Reserves) Act 1978*. That Act allows for reserved Crown land to be managed on behalf of the Department of Sustainability & Environment (DSE) by a committee of management appointed by the Minister. The Committee has the power to:

- manage and develop the reserve
- undertake financial transactions, including borrowing money (with the Victorian Treasurer’s consent) and entering contracts
- enter tenure arrangements, such as leasing and licensing, for part or all of the reserve, subject to the Minister’s approval
- employ people
- enforce regulations

There are a number of other Ministers who also have responsibilities under the *Crown Land (Reserves) Act 1978*. The Premier’s General Order for the Administration of Acts provides that the Minister for Finance, WorkCover and the Transport Accident Commission is responsible for the *Crown Land (Reserves) Act 1978* in so far as it relates to the land known as the Old Treasury Building Reserve, and the Minister for Major Projects also has responsibilities to administer discrete areas of the Act.

Temporary and permanent reserves may be established by Order of the Governor in Council. Temporary reserves may be revoked by Order of the Governor in Council whereas permanent reserves can only be revoked by a specific Act of Parliament.

DSE has developed guidelines to assist committees of management in managing crown land responsibilities: *Committee of Management Responsibilities and Good Practice Guidelines*

Other legislation relevant to reserved Crown land includes the:

- *Conservation Forests and Lands Act 1987*
- *Heritage Rivers Act 1992*
- *Alpine Resorts (Management) Act 1997*
- *Coastal Management Act 1995*

*Unreserved Crown land* is all other Crown land that is not reserved. This land is subject to the *Land Act 1958* and may be sold, leased or licensed under the Act subject to the approval of the Minister.

Unreserved Crown land is generally managed by Public Land Division, DSE, for the Minister for Environment and Climate Change. A number of other Ministers also have responsibilities under the *Land Act 1958*.

The Premier’s General Order for the Administration of Acts provides that the:

- Minister for Finance, WorkCover and the Transport Accident Commission has responsibility to administer the sale and
alienation of crown land (including grants and reservations, administration, perpetual leases, sales to public authorities, reclaimed lands, agricultural leases and permits, non-agricultural licences and permits, plantation areas, residential areas, commons, development leases, unclaimed lands, and watercourses).

- Attorney General has responsibility in the administration of the surrender of lands under ss 22C-22E of the Act.
- Minister for Health and the Minister for Corrections have other responsibilities under the Act as set out in the General Order.

### Dealing with freehold land

The *Transfer of Land Act 1958* deals with registration of estates and interests in freehold (or Torrens system) land. The Act is administered by the Minister for Environment and Climate Change insofar as it relates to the management and administration of the Office of the Registrar-General and the Office of Titles. The Act is otherwise administered by the Attorney-General.

The *Sale of Land Act 1962* is the primary Act governing sales of land within Victoria. The Act governs much of the conveyancing process and requires vendors to provide certain statements to prospective purchasers and is administered by the Minister for Consumer Affairs.

### Government powers to purchase, hold and sell land

Ministers who are responsible for administering land are often empowered to purchase land for and on behalf of the State of Victoria. For example, s 4A of the *Land Act 1958* provides the Minister for Environment and Climate Change with power to purchase land for and on behalf of the Crown, and the Premier’s General Order of 8 August 2007 for the Administration of Acts empowers both the Minister for Education and the Minister for Skills and Workforce Participation to purchase and hold land pursuant to s 5.2.3 of the *Education and Training Reform Act 2006*.

The Land and Property Group, Commercial Division at the Department of Treasury and Finance develops and implements strategies and policies for property, including sales and acquisitions and manages the:

- sale of surplus Crown land to meet government revenue targets including overseeing delegated sale by other departments, transferring (or other disposal arrangements) of Crown land and property to meet whole of Government service needs
- purchase of land or property to meet government service needs

### Government sale and purchase of land

#### Victorian Government Purchasing Board (VGPB)

The VGPB was established in 1995 under the *Financial Management Act 1994* to develop, implement and review policies and practices and provide advice, staff training and consultancy services in relation to the supply of goods and services to departments and the management and disposal of goods by departments and to:

- monitor departmental compliance with supply policies and Ministerial directions and to report irregularities to the relevant minister, and the Minister for Finance
- establish and maintain a comprehensive database of purchasing data of departments and supply markets for access by departments

#### Contracts Publishing System (CPS)

One of the VGPB’s regulatory responsibilities is for the management of the CPS. In ensuring openness and probity in Victorian Government Contracts, departments are required to disclose summary information about contracts >$100,000. Departments and agencies are required to disclose the text of contracts >$10 million. Agencies can use the CPS or publish contracts on their own websites. Departments are not required to disclose information that would be
exempted from disclosure under the criteria in the Freedom of Information Act 1982. The CPS website is at: http://www.vgpb.vic.gov.au

**Government Land Monitor (GLM)**

The GLM provides government with an assurance of accountability and integrity in land transactions. It ensures that all property transactions are:

- legal
- in the public interest
- provide best results for government

All government agencies must receive GLM approval to undertake property transactions. The GLM operates within the Department of Planning and Community Development.

It is important for all government agencies to note that unless special arrangements have been made with the GLM, there must be no unconditional commitment or agreement, including ‘without prejudice’ offers, before approval for a transaction is obtained from the GLM.

For further information on GLM Policy refer to the publication: Government Land Monitor Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land

**Compulsory acquisition**

Where an interest in land is to be compulsorily acquired by a government agency the agency may only do so in accordance with the principles and procedures contained in the *Land Acquisition and Compensation Act 1986*. The GLM’s approval must be obtained if land is being compulsorily acquired and the compensation is $250,000 or more. Compulsory acquisition is a process essential for efficient operation of government and in the Act a procedure is provided for all compulsory acquisitions regardless of the statute that the action is derived from. The Act contains significant procedural requirements and, where the State needs possession urgently, steps are available to partially bypass the procedural requirements. Under the Premier’s General Order for the Administration of Acts the Attorney-General is responsible for the administration of this Act.

**Useful links**

The Premier’s General Order for the Administration of Acts

Consumer Affairs Victoria
http://www.consumer.vic.gov.au

Department of Sustainability and Environment
http://www.dse.vic.gov.au

Department of Treasury and Finance
http://www.dtf.vic.gov.au

**For further information**

For further information or legal advice on any issues raised in this newsletter contact:

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The VGSO is the primary source of legal services to the Victorian State Government and its statutory authorities, providing strategic advice and practical legal solutions.