



Annexures



Glossary of Terms

Alienate: 1. To dispose of, often used in relation to an interest in land. Alienation may be formal (such as by grant or conveyance), informal and involuntary (such as compulsory acquisition by the state). 2. To sell, lease or otherwise dispose of under the Crown lands Acts or any other Act relating to alienation of Crown land: (NSW) *Crown Lands Act 199* s.172(1). See also Acquisition; Conveyance; Crown land; Grant.

Acquisition: 1. Obtaining ownership or possession of a thing. 2. The thing acquired. 3. Territory acquired through cession, conquest, or settlement. See also Cession. 4. Transferral of land or of any interest in land to the government. Acquisition generally must be on *just terms* or compensable: for example Commonwealth Constitution s.51(xxxi).

Collateral: 1. A subsidiary, concurrent, subordinate or additional security as opposed to primary security deposited by the borrower. 2 An item of value offered as security or pledged to secure a note or bond payable, to which the lender is entitled if the borrower does not repay the debt as agreed. The collateral agreement is not subordinate to the original debt but rather, are additional or parallel to the original obligation: *David Securities Pty Ltd v Commonwealth Bank of Australia* (1992) 175 CLR 353 at 364.

Crown Grant: Grant of land title by the Crown; a deed of grant issued in the name of the then current monarch conveying to the grantee some portion of land in fee simple. A Crown grant is the first alienation of crown land and often excludes or reserves from the grant some part of the land such as minerals or roads, so that those parts remain vested in the Crown.

Crown land: 1. Broadly, land that is the property of the Commonwealth, a State or Territory 2. Any land the property of a State, a Territory or the Commonwealth, whether reserved or dedicated for any public use or not. It does not include any estate or interest granted by the government to any person.

Dealing: An act of buying or selling property, goods or commodities, or the registrable instrument that evidences such an act.

Devise: A gift or disposition of an interest in land made by a will. Real property is devised, personal property is bequeathed.



Dispose of: In general terms, to pass into the control of another person, to alienate, relinquish, part with, or get rid of. In respect of real estate, to get rid of, sell, or leave by will.

Estate: Any interest, charge, right, title, claim, demand, lien or encumbrance at law or in equity.

Fiduciary: A person who is under an obligation to act in another's interest to the exclusion of the fiduciary's own interest. A fiduciary cannot use his or her position, knowledge or opportunity to the fiduciary's own advantage, or have a personal interest in, or inconsistent engagement with a third party, unless fully informed and free consent is given.

Fee simple: The estate in land which is 'the most extensive in quantum, the most absolute in respect to the rights it confers of all estates known to law...and for all practical purposes of ownership, it differs from the absolute dominion of a chattel in nothing except the physical indestructibility of its subject': *Commonwealth v New South Wales* (1923) 33 CLR 1. Originated in feudal times as an estate capable of inheritances (a 'fee') which could descend to any heirs whatsoever of the original grantee.

Foreclosure: A mortgagee's right to take absolute title and possession of mortgaged land in full satisfaction of the mortgage debt, extinguishing the mortgagor's equity of redemption. A right to foreclose only arises after the due date for repayment of the principal has passed (unless the terms of the mortgage permit the remedy to be exercised on interest becoming overdue). In relation to Torres title, by state a mortgagee may apply for a foreclosure order to the Registrar-General if certain conditions are met.

Freehold: A type of land-holding originating in feudal times, being land held by a freeman and subject to services and incidents thought to be appropriate to the status of a freeman. At common law, there are three types of freehold estate: fee simple, fee tail and the life estate. Freeholds are of uncertain duration, unlike leasehold.

Fungible: New Latin *fungibilis*, from Latin *fungi* to perform: being something (as money or a commodity) one part or quantity of which can be substituted for another of equal value in paying a debt or settling an account. Example: oil, wheat, and lumber are **fungible** commodities.¹

Gearing: In respect of investment, the ratio of borrowed capital to equity. Investors may borrow to augment the financing of an investment such as residential property. When the interest on such a loan is greater than the income produced by the investment, the gearing is described as negative. Negative gearing presently attracts special tax concessions.

Headlease: A lease between an owner of a freehold estate in land and a tenant, where the tenant has granted a sublease to a third party.

1 Taken from legal dictionary at Find Law <<http://dictionary.lp.findlaw.com/>>.



Inalienability: Characteristic of a right of benefit that the courts will not allow the holder to transfer to another. Native title rights are inalienable except to the Crown or members of the Indigenous people to whom property may be alienated under traditional law and customs, where those people continue to observe and acknowledge such laws and customs: *Mabo v Queensland (No.2)* (1992) 175 CLR 1; 107 ALR 1.

Just terms: A qualification on the power of the Commonwealth Government to acquire land or property from private companies or individuals for purposes for which the government has the power to make laws: Constitution 1901 s.51(xxxi). In exercising this power, the government must do so on just terms. The general requirement of acquisition of property on just terms requires the terms to be actually just and not merely to be those terms which the parliament considers to be just: *P J Magennis Mtd v Commonwealth* (1949) 80 CLR 382 at 397. Just terms should provide fair, timely compensation approximating the market value of the property acquired as far as is possible, and reflecting a general notion of fairness in all the circumstances: *Pevevill v Health Insurance Commission* (1991) 32 FCR 133; 104 ALR 449. The general requirement of just terms is the provision of a price which a reasonably willing vendor and purchaser would have negotiated at the date of the acquisition: *Nelungaloo Pty Ltd v Commonwealth* (1948) 75 CLR 495.

Landlord: In general, an owner of land or an estate in land (including a leasehold estate) who lets premises to another person under a tenancy arrangement.

Lease: An interest in land given by a landowner (landlord or lessor) to another person (lessee or tenant) for a fixed duration such that the lessee has the right to exclusive possession of the premises.

Leasehold: A holding of land for a term of years or for a periodic term, including under grants from the Crown.

Leverage: 1. The extent of the use by an investor of borrowed funds for investment. The greater the proportion of borrowed funds to the value of the investment, the greater the leverage. 2. The ratio of loan capital to share capital in a company.

Mortgage: A lender's interest in land, secured over the land of the borrower, including a charge on property for the purpose of securing money or money's worth: (NSW) Conveyancing Act 1919 s.7. A personal contract for a debt secured by an estate: given over personal property.

Mortgagee: A person who lends money to another where the loan is secured by taking a mortgage over the borrower's property.

Mortgagor: A borrower of money who gives a mortgage over his/her property to secure a mortgage debt in favour of the mortgagee.

Property: A word which can be used to describe every type of right (that is, a claim recognised by law), interest, or thing which is legally capable of ownership, and which has a value. Property is either real (that is, an interest or estate in land) or personal (that is, interests in things other than land including chattels and choses in action).



Real estate: Commonly used to mean land and whatever is attached to land (such as houses, trees, fences and the like).

Real property: Land and interests in land.

Sublease: A lease of a leasehold interest (known as the headlease). A sublease may be in respect of the whole or part only of the premises, and must terminate before the termination date of the headlease. The sublease must not conflict with the terms of the headlease.

Tenant: In modern times, the term is used almost exclusively to refer to a person who holds land under a tenancy from a landlord, whether for a term of years, or under a periodical tenancy, or at will, or at sufferance. During the currency of the tenancy, a tenant is entitled to exclusive possession of the premises the subject of the tenancy against all the world, including the landlord.

Tenure: To hold, possess, or occupy. The mode of holding land...All land in Australia and the United Kingdom that has been granted by the Crown, even that in fee simple, is held by tenure rather than by absolute ownership, as the Crown alone is the source of all tenure. Land held under native title is an exception, since native title rights do not derive from any Crown grant: *Mabo v Queensland (No.2)* (1992) 175 CLR 1; 107 ALR 1.

(Note: Terms provided have been sourced from Butterworths Australian Legal Dictionary 1997 and is in no way intended to be considered as legal advice).