

Easements & Statutory Authorities

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Nature of Easements

- A right enjoyed by the owner of one piece of land to carry out some limited activity (short of taking possession)
- There must be a dominant and servient tenement.
- The easement must accommodate the dominant tenement.
- There can not be common ownership of the dominant and servient tenement (but Section 23 Subdivision Act 1988 allows).
- The right must be capable of forming the subject matter of a grant.



Types of Easements

- Expressed Easements
- Implied Easements
- Easements in Gross
- Any Easements
- General Law Easements (by Deed)
- Conditions in a Crown Grant in the nature of an Easement



Easements in Gross

- An “easement in gross” can only exist vide a statute
- Certain statutes provide expressly that an authority can acquire an easement notwithstanding that the right in question is not taken for the benefit of land of that authority.
- Prescribed Authorities are entitled to hold an easement in gross.



Current Statutes

Some Common Statutes are :

- Section 146 of the Gas Industry Act 2001
- Section 88 of the Electricity Industry Act 2000
- Section 130(3) of the Water Act 1989
- Section 61 of the Water Industry Act 1994
- Section 187A of the Local Government Act 1989
- Various other statutes



Beneficiaries

- Authorities entitled to acquire rights generally have to be either a:
 - Transmission, Distribution or Generation Company.
 - A water authority or water corporation.
 - A gas company
 - A retail or business which has been issued a licence which allows it to take easements in gross.
- Municipalities
- Government Authorities



Establishing Easements in Gross

- An easement in gross can be:
 - acquired by agreement between the landowner and the Authority or
 - compulsorily acquired by the Authority.
- There is provision within the compulsory acquisition process for easements to be acquired by agreement.



Sec. 45 of the Transfer of Land Act

- Creation of Easement Deed that may or may not:
 - incorporate the terms and conditions of a Memorandum of Common Provisions (See [Example "A"](#))
 - May be lodged pursuant to section 45 of the Transfer of Land Act 1958
 - May be recorded on the Register pursuant to Section 72 of the Transfer of Land Act.
- The majority of Easements are created pursuant to Section 45 of the Transfer of Land Act 1958 or
- Section 23 of the Subdivision Act.
- A bulk of the remainder are recorded under section 88(2) of TLA.



Sec. 45 of the Transfer of Land Act

- Example “B” – Common creation under Section 45
- Example “C” – Common Mistakes



Sec 88(2) of the Transfer of Land Act

- This section concerns “rights in the nature of an easement”.
- Used to show on Folios of the Register easements that have been compulsorily acquired.
- The easement right may be recorded on the affected folio in the form of a
 - Notice of the authority having Acquired an Easement.
- Upon such charge, easement or right being acquired the appropriate authority (or person) may lodge with the Registrar a notification specifying the subject land, and the Registrar may make an appropriate recording on the relevant plan.

Sec 88(2) of the Transfer of Land Act

- Example of Sec 88(2) See [Example “D”](#)
- Recording of a 88(2) example below:

Easement Reference	Purpose	Width	Origin	Land Benefited / In favour of
E-1	Water Supply and Carriageway	See Diag	Section 103 of the Water Act 1989 and Section 6 of the Land Acquisition and Compensation Act 1989 acquired an easement vide AC123456X	Goulburn Valley Region Water Authority



Easements on Plans

- Existing easements to authorities
- New easements to authorities



Existing Easements to Authorities

- Obtain **current** title search (diagram, instrument etc.)
- Check the instrument which created the easement carefully
 - Look for key statements eg “...for purposes of...”
 - Don’t show ancillary rights as purpose
 - Be aware of companies creating easements in favour of dominant tenement eg “SECV (Vol.2345 Fol.123)”
 - Generally origins and beneficiaries do not get updated



Existing Easements to Authorities

- Do not alter Benefiting party (Authority) when carrying forward existing easements.
- Consider the effect of altering easement information after the plan has been certified
 - Registration delays
 - Information differing from contracts
- Contact Land Victoria (LV) if in doubt.

Examples – Existing Easements

Easement Reference	Purpose	Width (m)	Origin	Land Benefited / In favour of
E-1	Water Supply & Drainage	See Diag	C/E C43453	State Rivers & Water Supply Commission
E-2	Sewerage	20.12	C/E 23456	M.M.B.W.
E-3	Powerline	10	PS.323232G - Section 44 Electricity Industry Act 1993	S.E.C.V.



New Easements to Authorities

- Easement in gross created in Plan vide a statute
 - Section 88 Electricity Industry Act 2000
 - (formerly Sec. 44 Electricity Industry Act 1993)
 - Section 146 Gas Industry Act 2001
 - (formerly Sec. 61 of the Gas Industry Act 1994)
 - Section 136 Water Act 1989
 - Rural and regional Water Authorities
 - Section 61 Water Industry Act 1994
 - Melbourne water retailers
 - Section 187A Local Government Act 1989



Acceptable Beneficiaries

- Electricity Authorities/Companies
 - **Distribution, Generation and Transmission** Companies are **able** to create easements in gross
 - **Retail** companies **don't** have the ability to create easements in gross
- Gas Companies
 - Only **Distribution**, companies are able to create easements in gross
 - **Retail** companies **don't** have the ability to create easements in gross
- Water Authorities/companies who act under the Water Act 1989 or Water Industry Act 1994
- Municipalities under the Local Govt Act 1989



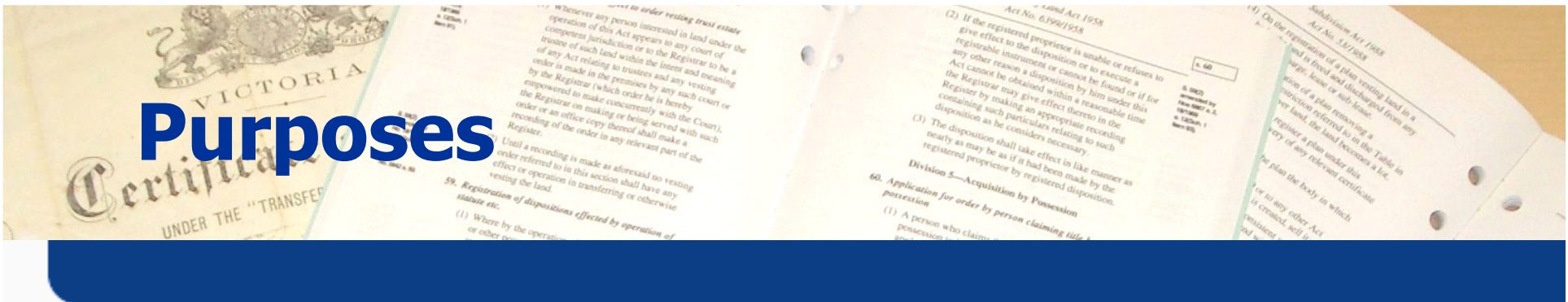
Non-acceptable Beneficiaries

- Some corporations don't have the required powers to acquire easements in gross.
- Known beneficiaries not accepted for easement in gross include (but not limited to):
 - Telstra
 - Optus
 - Country Fire Authority (CFA)
 - Metropolitan Fire and Emergency Services Board (MFB)
- If a company is not known to Land Victoria proof will be required to establish how such easements can exist **OR** the plan amended by the surveyor and re-certified by council



Essential Services Commission

- For Electricity and Gas licences
 - <http://www.esc.vic.gov.au>
 - **Energy Licences Issued** under “Energy – Regulation and Compliance”
- Water authorities at
 - <http://www.esc.vic.gov.au/public/Water/Links/>
- If company is not one of those listed, proof must be supplied stating the said company can create Easements in Gross



- Authorities may take an easement for any purpose
- Specific purposes are set out in the Act
 - **Schedule** of Electricity Industry Act 2000 and Gas Industry Act 2001 define purposes.
 - Section 136 Water Act 1989 & Section 61 Water Industry Act 1994 set out **specific** purposes
- Origin must show the relevant Section and Act if specific purpose used.
- A purpose not defined by the Act may show the origin as “This plan” only



Easement Purposes - notes

- Certain easement Purposes will require qualification
Eg:
 - **Support** - (What is being supported and by what method)
 - **Data Transmission, Telecommunications Etc** - (what sort of data and what method of transmission eg: - overhead/ underground cable etc.)
- Some easement purposes should be fully qualified &/or Legal Branch opinion sought.
- If in doubt check with Land Victoria!

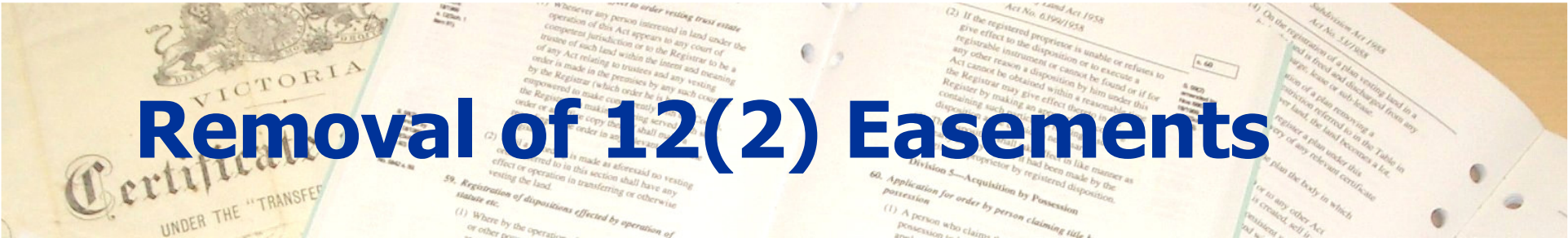


Examples – New Easements

- Section or schedule defines the purpose.
- Land Victoria prefers new easements show both the plan and the relevant Section and Act in the origin.
 - Eg ‘Gas Pipeline’ ‘This Plan - Sec 146 Gas Industry Act 2001’
 - ‘Power line’ ‘This Plan - Sec 88 Electricity Industry Act 2000’
 - ‘Pipelines or ancillary purposes’ ‘This Plan - Section 136 Water Act 1989’

Examples – New Easements

Easement Reference	Purpose	Width (m)	Origin	Land Benefited / In favour of
E-1	Powerline	See Diag	This plan – Section 88 Electricity Industry Act 2000	SPI Electricity Pty Ltd
E-2	Distribution &/or Transmission of Gas	10	This Plan - (Sec.146 - Gas Industry Act 2001)	SPI Networks (Gas) Pty Ltd
E-3	Pipelines or ancillary purposes	See Diag	This Plan - (Section 61 Water Industry Act 1994)	Yarra Valley Water



Removal of 12(2) Easements

- Up to now there has been no legislation allowing **removal** of 12(2) easements apart from Section 32 or 32A Subdivision Act 1988
- **Section 23** Subdivision Act 1988 may now be used to remove with appropriate direction in Planning Permit.
- **NOTE** – may not be used where building boundaries form part of the Lot boundaries.



Transparencies

- Commencing September 2008, transparencies will **not be required** when lodging a Plan of Subdivision/Consolidation at Land Registration Services (Land Victoria).
- The certified plan will replace the plan transparency as the imaging source.
 - Hence, the reproductive **quality** of the Certified Plan becomes **paramount**.
- General rule: If the plan as copied is clear and unblemished it will meet imaging specifications.
 - Note - When preparing a plan bear in mind that registered plans copied as part of a folio search are reduced to A4 size



Please contact Land Victoria if you
have any further queries....

Thank you!



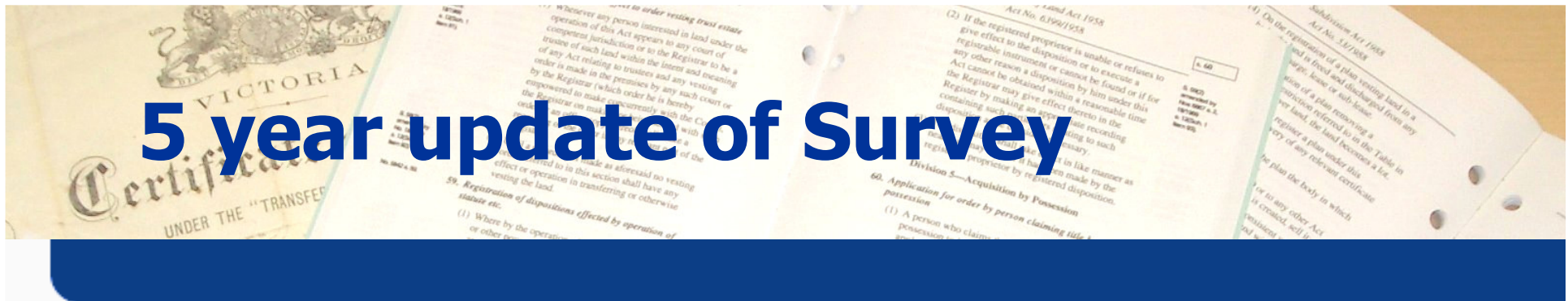
Subdivision Branch – other matters

- 5 year update
- Supplementary field records
- Lot numbering



5 year update of Survey

- A survey for a Plan of Subdivision has a 5 year life span commencing from the original date of survey.
- This survey may be updated by the same Surveyor (or by the same Surveying Company) in a following Plan
 - The survey should be lodged as an abstract of field records, and fully or partially update the previous survey
- The **Surveyor's report should clearly state** that the purpose of the survey is to update a specific survey. Eg **“This is an update of the Survey in BP....”**



- Land Victoria will examine the survey and update records in the following way:
 - A note will be added to the Land Victoria examiner’s report of the *new plan*:
 - Eg; **BP.... updated by this survey**
 - The *survey being updated* will be amended to show where the update can be found.
 - Eg; **For update of this survey see PS.....**
- By updating and cross-referencing surveys in this manner, the searching of current survey information should be simplified and more accurate



Supplementary Field Records

- Only **one** copy of Supplementary Field Records will be filed and imaged in this office.
- Supplementary Field Records will be filed with the survey report for the plan directly affected by the survey.
- Where Supplementary Field Records cover **more than one plan**:
 - the Supplementary Field Records will be filed with only one of the survey reports



Supplementary Field Records

- The following will appear on front page of the survey report when supplementary field records have been supplied and filed in that report:

**SUPPLEMENTARY FIELD
RECORDS FILED HEREIN**

- The following will appear on front page of the survey report when supplementary field records have been supplied and are filed in different report.

**SUPPLEMENTARY FIELD
RECORDS FILED IN PS.....**



Incorrect Lot Numbers

- **Section 8 of the Subdivision (Procedure) Regs 2000** relates to abbreviations on plans:
 - **"A (no.)"** when accompanying a number (letter followed by a number) , means an **appurtenant easement** number
 - **"E (no.)"** when accompanying a number (letter followed by a number), means an encumbering **easement** number
 - **"R (no.)"** when accompanying a number (letter followed by a number), means land not being a lot which is part of a **road**



Incorrect Lot Numbers

- **"S (no.)"** when accompanying a number (letter followed by a number), means **Stage number**
- Plans that show any of the above examples as lot identifiers are not acceptable (apart from Stage lots)
- Further examples of taboo **lot** numbers:
 - A2, E-1, A-14, R3, E234pt. Etc
- Note – acceptable lot identifiers may include:
 - A, E, R, S or
 - AA EE RR SS or
 - AE, RS, EE233 etc
- Any doubts contact the Subdivision Branch.