

## Registration of Leases

It was noted that some jurisdictions prefer there not to be any registration. While that has been kept in mind, the following table has been drafted to provide recommendations for registration practices.

Issue	Preferred	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Definition of registration under the Act	A lease is registered when the Registrar-General records it in the Register in a manner of his choosing.	N/A – Leases are not required to be registered in the ACT.	Sec 36(6A) A dealing is registered when the Registrar-General has made such recording in the Register with respect to the dealing as the Registrar-General thinks fit.	Section 4 <i>Land Title Act</i> (NT), "Register" in relation to a lot, interest, instrument or thing, means record the particulars of the thing in the land register."	"Registered" "means the making or recording by proper authority in the appropriate register (if any) or other book, instrument or document of such entries, endorsements, particulars or other information as may be requisite for recording a dealing or other transaction with respect to land" – as defined in the <i>Property Law Act</i> 1974.	'Registration' not defined in the <i>Real Property Act 1886</i> , but 'registered proprietor' means any person appearing by the Registrar Book, or by any registered instrument of title to be the proprietor of land.	Registered under the <i>Land Titles Act 1980 (LTA)</i> or prior repealed legislation.	Registered under the <i>Transfer of Land Act 1958 (TLA)</i> or prior repealed legislation.	Section 7 <i>Property Law Act</i> , "Registered or duly registered means registered in the manner provided by the <i>Transfer of Lands Act 1893</i> where the land affected is under that Act, and otherwise means registered in the manner provided by the <i>Registration of Deeds Act 1856</i> .
Is the lease required to be registered under the Act (Yes/No)	All leases except short-term leases. Short term leases (of 12 months or less) should be exempted from registration.	s.82 of the <i>Land Titles Act 1925</i> 'enables' registration only. Registration is not required by law, however is a standard Westfield requirement.	Leases are required to be registered unless:  (i) the term for which the tenancy was created does not exceed three years, and	Similar to the QLD position.  Section 65 of the <i>Land Title Act</i> provides that a lot or part of a lot may be leased by registering an	Section 71 <i>Land Title Act</i> 1994 states "An unregistered lease for a lot or part of a lot is not invalid merely because it is unregistered." However, see ss 184 and 185 of	Section 116 of the <i>Real Property Act 1886</i> exempts short term leases from the requirement for registration. A short term lease is a lease for a term of 12 months or	No. Note: leases not exceeding 3 years cannot be registered: section 63 of the LTA.	No. Note: leases not exceeding 3 years cannot be registered: section 66 of the TLA. In any case, practice is not to register leases in Victoria but to rely upon the indefeasibility	The commentary suggests that a lease for less than 3 years cannot be registered, and its validity depends on the provisions of the Torrens statute protecting unregistered short

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	<p>Short term leases of between 12 months and three years may be registered at the request of either the lessor or lessee.</p> <p>Any lease with a term in excess of three years must be registered.</p>		<p>(ii) in the case of such an agreement or option, the additional term for which it provides would not, when added to the original term, exceed three years." [Section 42 of the <i>Real Property Act</i>]</p> <p>Old system leases are in a different category.</p>	<p>instrument of lease for the lot or part of the lot.</p> <p>However, s 73 headed 'Validity of an Unregistered Lease' states that despite s 184, but subject to ss 188 &amp; 189, an unregistered lease of a lot operates as a lease at law between the parties.</p> <p>Section 184 states that an instrument does not transfer or create an interest in a lot at law until it is registered.</p> <p>Basically, the effect of s 73 when read together with ss 184 and 188 and section 189 is that a short lease, which is defined as a lease under 3 years is not required to be registered, but if a lease exceeds 3 years it must be registered to achieve</p>	<p>the same Act. A lease under 3 years cannot be registered. If the term of the lease exceeds 3 years, registration will achieve indefeasibility</p>	<p>less. A lease for a term exceeding 12 months must be registered to achieve indefeasibility - see section 69(h).</p>		<p>provisions of the TLA: section 42(2)(e).</p>	<p>term leases.</p> <p>The commentary also seems to suggest that in WA, a lease between 3 and 5 years <b>may</b> be registered.</p>

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				<p>indefeasibility</p> <p>Registration means that a registered proprietor holds the interest subject to registered interests affecting the lot but free from all other interests, and in particular, the registered proprietor is not affected by actual or constructive notice of an unregistered interest affecting the lot: s 188.</p>					
What is the prescribed form of the document?	There should be a standardised form for the front page only.		LPI front page required. Apart from that there are no formalities other than keeping prescribed margins. This is a very minor matter	<p>Section 7 headed 'Form of Instrument' states that an instrument lodged by a person or issued by the Registrar-General must be in the appropriate form.</p> <p>Under s 4, 'Appropriate form' means the form that is the approved form for the instrument; or if a form is</p>	<p>Queensland Land Registry front page required. Need to insert following details:</p> <p>- Lessor, Lot no. county, parish, title and reference; lessee; interest being leased; description of premises being leased; term of lease; rental and/or consideration.</p>	<p>Under seal or in accordance with section 127 of the <i>Corporations Act 2001</i> for companies. The execution by individuals or attorneys must be in accordance with the Lands Titles Office requirements.</p> <p>Section 267 <i>Real Property Act</i> - witness to execution by</p>	Approved form of cover sheet and annexure pages.	Approved form of cover sheet and annexure pages.	<p>Regulation 3 of the <i>Transfer of Land Regulation 1997</i>:</p> <p>(1) Each document presented for registration:</p> <p>(a) is to be prepared on paper of a type and quality approved by the Registrar;</p> <p>(b) is to be clearly</p>

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				<p>approved or prescribed for the instrument under another Act - that form.</p> <p>The Registrar-General prescribes the appropriate forms pursuant to a Direction under the <i>Land Title Act</i> - The prescribed form for a lease is a Form 31 (Lease) and a Form 32 (Sub-lease).</p>	Requirements under <i>Land Title Regulation 2005</i> s 3(2).	individuals or attorneys must complete their full name, address and telephone no.			<p>and legibly handwritten;</p> <p>(c) is to have the signature of any party to the document &amp; that of any witness to such signature written in ink;</p> <p>(d) consisting of more than 1 page is to be bound in a manner approved by the Registrar;</p> <p>(e) on an approved form is to show the Registrars approval no. for the form at the top of the first page.</p>
What other administrative requirements are there (eg paper weight/page numbering)	<p>Administrative requirements should be minimised and be consistent across all jurisdictions, possibly limited just to:</p> <ul style="list-style-type: none"> <li>• page numbering; and</li> <li>• a requirement</li> </ul>			<p>Form 31 (Lease) and Form 32 (Sublease). Forms 31 &amp; 32 are a 2 page panel form which must be placed at the front to the provisions of the lease. There are also stringent execution requirements for all Land Titles forms (eg appropriately</p>			Each annexure page must show first title reference, page number and total number of pages. Each annexure page must be signed by parties to dealings and witnesses.	Each annexure page must show the date of the document, the page number and total number of pages. Each annexure page must be signed by parties to dealings and witnesses. All pages must be stapled in the top left corner.	See above.

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	for the parties to initial the first and last pages and complete the execution clause.			qualified witnessing requirements) and where the leased premises forms part of land only, the lease must include a plan depicting the leased area. The plan must clearly indicate the bearings and distances for each boundary of the leased area and connection details to the title boundary.					
Is there a timetable for registration under legislation?	There should be no timetable for registration.		None	If the lease is a "retail shop lease" as defined by the <i>Business Tenancies (Fair Dealings) Act</i> , there is a timeframe in which a landlord must attend to registration. However, this is a statutory imposed contractual obligation on the landlord only for the purposes of expediency.  There is otherwise no prescribed timeframe in	No	No time limit for registering lease, but an extension of lease must be lodged for registration within 2 months of the expiry of the lease – <i>Real Property Act</i> , section 153(2).	No.	No.	None, but note the effect of s 149 of the <i>Transfer of Land Act 1893</i> which states that if within 48 hours a properly perfected instrument (which is defined to include a Lease) is duly lodged for registration, it will have priority over any other instrument lodged after this time.

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				which a lease must be registered (except that a lease cannot be registered if it has already expired).					
What is the consequence of non-registration?	<p>A lease of under 12 months can claim indefeasibility of title.</p> <p>A lease for a term in excess of 12 months that is not registered does not achieve indefeasibility, as the interest could be defeated by a subsequent registered interest.</p>		Operates as an Agreement for Lease. Lessee's rights can be defeated by a sale of the freehold.	<p>Lease still operates as a lease at law, but if it is not registered, it does not achieve indefeasibility</p> <p>See sections 73, 184, 187 and 189 of the Land Title Act.</p>	<p>Section 181 <i>Land Title Act 1994</i> - An instrument does not transfer or create an interest in a lot at law until it is registered.</p> <p>See section 184 - Lease does not achieve indefeasibility and can be defeated by subsequent registered interests.</p> <p>However, note s 185(1)(b) - provides an exception to indefeasibility in that the interest of the holder of a registered interest is not paramount over a 'short lease' - an unregistered lease for a term of 3 years.</p>	<p>Note s 69 <i>Real Property Act</i> - A lease for a term exceeding 12 months must be registered to gain the benefit of protection against subsequent registered dealings and all unregistered dealings.</p> <p>Lessee does not achieve indefeasibility as interest can be defeated by subsequent registered interests. See <i>Real Property Act</i> s 70, which provides that "title of the registered proprietor of land shall prevail" regardless of the existence in any person of "any estate or interest whatever..."</p>	Lease for a term exceeding 3 years takes effect as an equitable lease only.	A tenant in possession has statutory protection under the TLA.	<p>Section 58 of the <i>Transfer of Land Act</i> states that an instrument is not effectual to pass any interest in land until registered.</p> <p>Still operates as a lease at law, but the lessee does not achieve indefeasibility as interest can be defeated by subsequent registered interests.</p>

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Is the consent of mortgagees required? In what form?	<p>The consent of the mortgagee to a lease must be confirmed by signing on the front page of the lease.</p> <p>Alternatively production of a certificate of title by the mortgagee to enable registration of the lease is deemed mortgagee consent.</p>		<p>No form required. From a practical point of view consent is necessary as you need the mortgagee to lodge the title at LPI.</p>	<p>Yes.</p> <p>Pursuant to s 67, a lease or amendment of a lease executed after registration of a mortgage of a lot is valid against the mortgagee only if the mortgagee consents to the lease or amendment before its registration.</p> <p>This implies that the mortgagee's consent is required if a lease is to be valid against the mortgagee. It suggests that the lease can still be registered if mortgagee consent is not obtained, only that it cannot be enforced by the lessee.</p> <p>As for the form, consent of the mortgagee is to be endorsed on the second page of the panel forms in</p>		Yes.	Yes. Usually endorsed on the lease.	Yes. Usually endorsed on the lease.	

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				<p>the space provided under the heading "Consent of Interest Holders". The interest holders are subject to the same execution requirements.</p>					