SECTION 7

BOUNDARIES

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SECTION 7- BOUNDARIES

7.1 Cadastral Boundaries

7.1.1 Historical Scene

It is important for the cadastral surveyor to be aware of the historical scene, particularly in regard to the accuracies of surveys performed in the early days of settlement.

Surveyors are aware of the problems of obtaining accuracy in measurements and current regulations provide for tolerances which are deemed to be acceptable in the 1990s. The early cadastral surveys made in Victoria contained comparatively large inaccuracies in measurements and, in addition, many also include errors and mistakes. A Royal Commission on Land Titles and Surveys in 1884 and 1885 included lengthy inquiries into early Victorian surveys and procedures - the following short extracts of comments give some indication of the early scene:

"I divided some of Mr. Surveyor Dark's work on the Werribee plains - it would come within 4 or 5 links in a mile" (Robert Hoddle, surveyor).

"In Crown grants issued about 1854 it is common for areas nominally for 300 acres to contain 3 or 4 acres excess". (W.K. Andrews, surveyor).

"A very large number of them (private subdivisions) have not been surveyed at all, having simply been laid out on paper". (W.K. Andrews).

"The chief difficulty in agreement with other surveyors was in obtaining a common starting point......... Chapel Street upon the plans is shown straight, north to south, and the measurements upon that are shown to be as if parallel lines and right angles. The street, as a matter of fact, runs due north and south as far as Commercial Road; there the divergence is 2 degrees and 45 minutes; it comes off on the next one again as a divergence of about one degree off the true meridian". (T.B. Muntz, civil engineer and surveyor).

"In town (Melbourne) a common circumferentor was the instrument used for the angles, and the chain was purposely kept longer than 66 feet - four or five inches longer".

"Mr. Hoddle chained from the corner of Flinders and Spencer Street, along "Flinders Street to Spring Street and then he chained northward three blocks up, something like 30 chains to the north; then he returned again westward to Spencer Street; and then back southward to where he started from. That was the beginning of Melbourne - that was about March 1837. The angles were taken with a circumferentor". (Robert Russell, architect and surveyor).

"The country surveys now made (1885) under contract are to an accuracy of about 4 links to a mile". (T.W. Pininger, District Surveyor).

The standard of Crown surveys and other cadastral surveys improved significantly soon after the Royal Commission. No doubt some of the improvement was due to reaction from the very strong criticisms, but the better training and equipment were also significant factors.

While the accuracies have improved, the marking of boundaries has remained basically the same. Wooden pegs are still placed at corners and at intervals along boundaries - trenches are still dug to assist both the owners and following surveyors. Older surveys are notable for the establishment of reference trees some of which have survived both the natural environment hazards and the onslaught of settlement.
7.1.2 Legislation

The cadastral surveyor is required to know legislation which is relevant to the location of boundaries and to the adjustment or alteration of boundaries. The most significant legislation is:

Sections 267-273 Property Law Act 1958
Section 10 Transfer of Land Act 1958
Section 26C Transfer of Land Act 1958
Section 26D Transfer of Land Act 1958
Section 26E Transfer of Land Act 1958
Section 26M Transfer of Land Act 1958
Section 42(2) Transfer of Land Act 1958
Section 60 Transfer of Land Act 1958
Section 99 Transfer of Land Act 1958
Sections 102,103 Transfer of Land Act 1958
Section 22 Subdivision Act 1988
Section 24 Subdivision Act 1988
Section 24A Subdivision Act 1988
Section 26 Subdivision Act 1988
Section 32 Subdivision Act 1988
Section 32A Subdivision Act 1988
Section 35 Subdivision Act 1988
Section 37 Subdivision Act 1988

Extracts from the Acts are included in Annex A.

7.1.3 Existing Boundaries

Practically all parcels of land in Victoria are ultimately based on survey having derived from a Crown grant the boundaries of which were, with few exceptions, surveyed and marked on the ground. However there are many folios of the Register which are not directly based on survey and many other titles for which the survey records are not available. It is the common occurrence for pegs placed at corners to be removed soon after they are initially placed and the surveyor who is required to define the boundaries of land contained in a title deed normally finds it necessary to rely on other evidence. This can range from co-ordinated permanent survey marks in a recent subdivision to an area where no survey marks exist and the location of occupation is inconsistent with the dimensions of the folio of the Register.

7.1.4 Location of Boundaries

Where survey marks of a recent survey, made in accordance with relevant legislation, are found, there should be little difficulty for a cadastral surveyor to make firm conclusions and to place boundary marks with complete confidence.

It should be remembered that when a surveyor places boundary marks he is giving clear evidence of his opinion of the location of a corner or boundary. The law may, or may not, confirm this opinion. In most cases the surveyor's assessment will be based on logical deductions and experience - in this the surveyor is no more or less favoured than the doctor, dentist or treasurer.

It is a normal function for the surveyor to relate his own "perfect" measurements to quite unreliable data, to consider relevant legislation and to prepare a licensed surveyor's report in which he is required to:

(a) Set out the relevant facts concerning the survey and the boundaries, abuttals and encumbrances; and

(b) State whether the survey is in or contiguous to a proclaimed survey area.
As practically all folios of the Register to land in Victoria abut roads and most are also related to other roads by connection, it follows that alignments of roads is an important part of boundary determination.

7.1.5 Creation of Roads

In Victoria there are three main groups of roads:

(a) "Government" Roads are usually the balance of the Crown land remaining after the sale of Crown allotments, being left to provide access to the allotments or to unalienated Crown land;

(b) Subdivisional Roads are those created by private subdivision of land under the Subdivision Act 1988 or previously the Transfer of Land Act;

(c) General Law Roads are those which were created by private subdivision of land not under the Transfer of Land Act.

7.1.6 Location of Boundaries of Government Roads

Although the nominal width of such strips is usually some exact fraction or multiple of one chain (11/11, 11/2, 2,3 chains), it is not uncommon for the actual width to differ, sometimes considerably from the nominal, because in the early days many "roads" were not directly surveyed and also because there was very little co-ordination of surveys. It is necessary to research original Crown survey information in order to confirm both that it was the intention to set aside one of the nominal widths and also that this was done.

The following points are guidelines for use in the assessment of alignments:

(a) If original Crown survey marks are found, and are considered to be in their original position, they should be adopted;

(b) In the absence of original Crown marks old and well established fences are usually the best guide - it is reasonable to assume that fences are quite likely to have been erected on the original survey marks;

(c) There may be "local" reasons why fencing may not have been erected on original Crown marks e.g. rocky outcrops, swampy ground;

(d) With the exception of more recent Crown surveys, precise agreement with the measurements of the original survey is doubtful - generally the older the original survey the larger are the expected differences. (An inspection of registered survey documents in the vicinity may indicate the magnitude of the differences likely to be encountered - in some parishes the differences are remarkably consistent);

(e) Bearings tend to be relatively more accurate than lengths. If an area was evidently laid out at the one time, datums of bearings can be carried through areas for large distances;

(f) Surveys should be extended across road intersections to locate the occupation and survey marks (if any);

(g) Information on connections across road intersections is often available from old records and should be used;

(h) If bearings between occupation at road bends accord with original information, the occupation is probably reliable - sufficient measurements should be taken to enable such comparisons to be made;

(i) If alignments have been adopted on the other side of roads proper connection should be made;

(j) Steps or numerous bends are undesirable and seldom justified;
(k) In rural areas, bends may occur at the corners of Crown allotments. However in Township areas it is usual practice to adopt straight alignments between intersecting roads.

7.1.7 Location of Boundaries of Subdivisional Roads

Where pegs can be located few difficulties should arise and the determination of alignments should be relatively simple.

If pegs and reference marks cannot be found it is often necessary for the surveyor to determine alignments solely from an assessment of present day occupation. Frequently alignments are adopted on the basis of a "best fit" with occupation and in such cases the following points should be considered:

(a) Inspect the original plan and abstract of field notes closely and, if possible, determine a datum on the basis of any occupation or kerbs which remain;

(b) It is desirable that a first re-survey in a "street section" should extend around the section;

(c) Ideally all occupation should be located by "chainage" and "offset" and traverses extended across streets to locate occupation at opposite corners;

(d) Fences that appear to be roughly contemporary with the original survey are likely to have been erected to the original pegs;

(e) Where occupation is consistent within adjoining sections, it is probably better to depart from nominal widths of streets rather than carry the scheme of subdivision from section to section, particularly where "survey differences" are to be expected. In such cases opposite sides of streets may be adopted not exactly parallel to each other;

(f) It is desirable that the angles between streets be adhered to wherever practical.

7.1.8 Location of Boundaries of General Law Roads

The determination of alignments to general law roads is fundamentally the same as for other roads.

It is of interest to note that until the mid 1930s it was practice to adopt road alignments precisely in accord with occupation in surveys to bring land under the operation of the Transfer of Land Act on the basis of occupation or to obtain a vesting order in respect of land adversely occupied. This practice resulted in "alignments" of some roads, particularly general law roads, being a series of short straights with steps and bends at each title corner.

It is current practice to adopt straightened alignments between road corners if the difference between the straightened lines and occupation is small. However if the difference is significant it must be borne in mind that title may be obtained to small parts of private roads under the provisions of section 73A Transfer of Land Act and also that land may be separated from a road by a strip of land not in the possession of an "owner".

7.1.9 Crown Boundaries

The provisions contained in Part VII - Survey Boundaries of the Property Law Act 1958 were first enacted in Victoria in 1885 in the Survey Boundaries Act 1885 No.855. They followed recommendations of the Royal Commission on Land Titles and Surveys of 1885 which was held because of the errors and inaccuracies in early Crown surveys.

Part VII of the 1958 Act is included in Annex A. The following is a brief summary of the main provisions:

(a) Section 268
The predominance of survey boundaries as marked over the dimensions expressed in the Crown grant is clearly stated.

The boundaries as marked by the Crown surveyor are deemed to be the Crown boundaries.

(b) Section 269

The land conveyed in a Crown grant is deemed to be the land within the survey boundaries.

(c) Section 270

Excess area in a Crown section is to be distributed equally in certain circumstances, namely:

- where a Crown section has been subdivided by the Crown into allotments of equal area, and
- there is excess area, and
- the original subdivisional survey boundaries do not exist (or if not inconsistent with such boundaries where they do exist).

(d) Section 271

Provides for the proof of Crown boundaries where survey marks defining a Crown boundary have been removed or obliterated and buildings, fences, walls or other improvements of a permanent nature exist.

It is clearly necessary to make every effort to locate any Crown marks which were placed in the original survey.

The requirements of proof are set out in paragraphs (b) and (c) of this section.

It is necessary to prove the position of the boundary to the satisfaction of the Registrar of Titles where the land is under or is proposed to be brought under the *Transfer of Land Act*.

Otherwise it must be proved in some court of competent jurisdiction.

(e) Section 272

Includes margins of error allowed in the description of boundaries and limits court actions.

(f) Section 273

The provisions of sections 267-273 apply both to land under the general law and land under the *Transfer of Land Act*.

The provisions of section 271 now have the widest application as probably no survey marks placed in the notoriously inaccurate early surveys remain. Most of the Crown boundary marks that do remain have been placed in surveys that compare favourably with current standards.

Much of a cadastral surveyor's work continues to require the determination of Crown boundaries and a sound working knowledge of the legal provisions is necessary.

7.1.10 Land Titles Office Practice - Crown Boundaries

The Land Titles Office has, for many years, encouraged surveyors to adopt occupation as Crown boundaries provided of course that sufficient information is available to warrant the adoptions and no Crown survey marks are found. The following factors should be considered:

(a) If the location of a fence is

- Compatible with the location of a boundary shown on litho, and
• Obviously quite old on available evidence (e.g. shown on recorded survey documents, described in a licensed surveyor's report, stated by owner, occupier), then it is more likely to be the Crown boundary;

(b) If a Crown boundary is not adopted on the line of old occupation, the location should be justified;

(c) New or recent fences etc. should not be disregarded without investigation - they may have been erected on the line of old occupation;

(d) The adopted position of a Crown boundary should not differ from that which would be adopted if the abutting parcel was being surveyed;

(e) There should not be two locations of a Crown boundary - one which would be adopted on the basis of a complete survey of the parcel and another which would be adopted on the basis of a partial survey;

(f) Regulation 16(3) Surveyors (Cadastral Surveys) Regulations 1985 S.R.No.209 directs surveyors in the location of Crown boundaries;

(g) Generally the surveyor should be able to give satisfactory comments as to the age and reliability of fences. It is expected he should obtain or derive the measurements of adjoining allotments. The licensed surveyor's report should include comments and information on:

• Age of fencing;

• Evidence of fenced locations from older surveys;

• Evidence of older or other occupation;

• Any facts on the ground which would influence the location of fences, e.g. drains, rocky outcrops;

• Details of discussions with owners, occupiers and others with pertinent knowledge;

(h) Wherever practicable, requisition for strict proof under the provisions of section 271 Property Law Act 1958 is not called for - existing survey information and relevant comments in the licensed surveyor's report are used wherever possible. (It is disappointing to find that very few such reports refer to discussion of boundaries between surveyor and client - facts concerning re-fencing on different lines and/or reliability of fences could be disclosed in many cases);

(i) Where a survey shows that no land described in an abutting folio of the Register is affected, the Land Titles Office does not normally require a formal application to amend the dimensions of the land in the folio of the Register to precede a plan of subdivision. An application would be necessary where abutting parcel dimensions are adversely affected to an extent that it is desirable to serve notice on abutting owners etc. and to rectify the description of land in the folio of the Register.

7.1.11 Subdivisional Boundaries

For the purposes of this section, subdivisional boundaries are regarded as being those which have been created subsequent to the Crown survey. They result from subdivision of Crown allotments by formal plan of subdivision, unregistered subdivision, acquisition or transfer.

These boundaries are not subject to the provisions of sections 268 - 271 of the Property Law Act 1958.

With very few exceptions, the boundaries are defined by bearings and lengths, and are connected on folios of the Register to road corners and/or Crown boundaries.

The location of subdivisional boundaries is relatively simple where marks of the original survey are found. However the task becomes increasingly difficult where no survey marks can be found or where the boundaries were created without a registered survey. In such cases the surveyor has to make an assessment of any relevant surveys and the relative positions of existing physical features such as...
fences, buildings, walls or kerbs in order to determine original road boundaries and subdivisional boundaries

### 7.1.12 Boundaries - Natural

Section 7.11 of the *Survey Practice Handbook*, Part 2 - Survey Procedures, deals with the location of boundaries which are not described by bearings and lengths.

### 7.1.13 Statutory Requirements

The other parts of Section 7 of the *Survey Practice Handbook, Part 1* include comments and supplementary information on the statutory requirements contained in the Survey Co-ordination (Surveys) Regulations and the Surveyors (Cadastral Surveys) Regulations.

Particular attention is drawn to the Surveyors (Cadastral Surveys) Regulations 1985:

(a) Regulation 16 requires a surveyor to relate his survey to the boundaries referred to in the documents of title of the subject land and adjoining parcels of land. It is clearly essential to obtain up to date copies of the original documents for not only the subject land but also for adjoining land in many cases.

(b) Regulation 16 also requires a surveyor to endeavour to re-establish Crown boundaries, and to have regard for the provisions of section 271 of the *Property Law Act 1958*.

(c) Regulation 24 requires that an abstract of held notes shall show, where applicable, the status of all abuttals to the subject land and whether there is any encroachment onto the subject land or by the subject land onto an abuttal, in respect of the adopted boundaries of the subject land, the relationships of those boundaries to the boundaries shown on the folio of the Register or on a previous survey of the subject land.

(d) Regulation 28 requires the licensed surveyor's report to include relevant facts concerning the survey and the boundaries, abuttals and encumbrances and state whether the land is in or contiguous to a proclaimed survey area.

(e) Regulation 29 requires a licensed surveyor to give notice to the Surveyor-General of having re-established part or the whole of a parcel.

### 7.1.14 Adjustment of Title Dimensions

There are a number of legislative provisions and other methods by which dimensions of the land described in a folio of the Register can be adjusted to accord with the facts on the ground as determined by modern surveys.

It must be recognised that there are, however, certain restrictions of a legal and practical nature which must be observed to enable the statutory requirements to be met. It is significant that in all cases the registered proprietor and other interested parties are made aware of the proposals.

### 7.1.15 Certificates of Adjustment

These certificates are issued by the Surveyor-General pursuant to the power contained in Regulation 15 of the Regulations dated 26 June 1984 made under the *Land Act 1958*.

The certificates are restricted to whole Crown parcels and the registered proprietor(s) and other interested parties are advised of the issue of the certificate.

On receipt of the certificate in the Land Titles Office the Crown Grant or relevant folio of the Register is amended and the registered proprietor(s) and any other known interested parties are served with
notice under section 104 of the *Transfer of Land Act* to produce the duplicate Crown Grant or Certificate of Title.

If the Crown parcel has been subdivided it may be necessary to amend more than one title.

### 7.1.16 Application by a Proprietor for amendment of the Register (on the basis of a re-survey)

(a) Section 99 of the *Transfer of Land Act* 1958

A proprietor may make an application for amendment of his folio of the Register or the folio of the Register of any other proprietor under this section. In most cases a new surround survey is made of the subject land However, suitable recent survey information already recorded in the Land Titles Office may be utilized in appropriate cases.

Where an application, if granted, will affect any other person, proof of occupation is normally required and notice is given to appropriate registered proprietors, owners, mortgagees etc. who appear to be affected.

The purpose of this notice is to give such parties an opportunity of objecting to the granting of the application.

Notice is not given by the Registrar until he is satisfied that *prima facie* evidence is available to substantiate the application and the proposed amendments.

(b) Section 103 of the *Transfer of Land Act* 1958

Sub-section (1) requires the Registrar to obey a direction of a court and make amendments to the Register. Sub-section (2) of section 103 provides for the correction of errors and sets out the principles to be observed when physically making any amendments for this purpose. These provisions seem to be interrelated with the powers conferred upon the Registrar by section 102 of the Act. Generally this section enables the Registrar, where it is found that errors have occurred, to correct the dimensions in the Register and distribute excesses.

The evidence upon which the Registrar acts under section 103(2) is usually accompanied by a formal application by the proprietor or his agent to amend the dimensions of his own folio of the Register to accord with those on a plan of survey which accompanies the application.

(c) Section 26M of the *Transfer of Land Act* 1958

This section is primarily intended for the deletion of a warning relating to dimensions of a folio of the Register. However it also provides that the Registrar may make any necessary amendment to the Register. Additional land may also be included in an application under this section.

### 7.1.17 Compulsory Acquisition

An application for acquisition of the whole of an existing parcel of land is lodged at the Land Titles Office in accordance with the provisions of section 54 of the *Transfer of Land Act* 1958.

With the introduction of the *Subdivision Act* 1988, State Government (Acquiring) Authorities lost the ability to acquire part of a parcel of land irrespective of the acquisition being by agreement or by compulsory means. Under the *Subdivision Act*, a plan of subdivision pursuant to section 35 must be lodged and registered at the Land Titles Office.

Upon registration of the plan the boundaries of the land to be acquired are those shown on the plan. The status of the land (e.g. as a road or reserve) does not apply however until:

1. In relation to the land to be compulsorily acquired - the Registrar records the vesting date.
(2) In relation to land to be acquired by agreement - the land has vested (i.e. a transfer of the land has been registered).

In both the above circumstances other purposes of the plan such as the specification of new easements are similarly deferred.

7.1.18 Plan of Subdivision

(a) Based on a re-survey of the whole of the land in the relevant folio of the Register (or of a separately disposable portion thereof).

Minor differences are frequently disclosed between survey and dimensions of the land in a folio of the Register. It is normal practice, provided the differences are justified, to accept the plan “as practically agreeing with title” subject to the following criteria being observed:

- No abutting folios of the Register are affected;
- The licensed surveyor’s report draws attention to and provides a satisfactory explanation of the discrepancies.

(b) Based on a re-survey of part of the land in a folio of the Register (or of part of a separately disposable portion thereof).

Generally, any discrepancy between a folio of the Register and survey dimensions in these circumstances is most undesirable as it is usually impossible to be satisfied that the amendment of some dimensions is justified and also that no adverse effect will be caused to the balance of the land in the folio of the Register. The derivation of appropriate dimensions for the balance land is also impractical in most cases.

There are some circumstances where a surround survey is not warranted and where variations from the dimensions of the folio of the Register in a partial survey are unavoidable. Two common examples are:

- Where a partial survey discloses that original Crown survey pegs have been found and survey differences are apparent. (See section 268 of the Property Law Act 1958);
- Where adjoining or adjacent surveys make it impracticable to adopt the dimensions of the folio of the Register.

7.1.19 Plan of Consolidation

In similar circumstances to those outlined in connection with plans of subdivision based on a full survey, dimensions may be adjusted to a minor degree by a plan of consolidation. However it is common practice to lodge an application to amend folios of the Register concurrently with the plan of consolidation.

7.1.20 Vesting Order (Section 60 of the Transfer of Land Act 1958)

Granting of an application under this section which is supported by a plan of survey may have the effect of varying the dimensions of the subject folio of the Register, together with, in some circumstances, any folio of the Register abutting. (The variations referred to are in addition to those caused by the excision of the land claimed adversely which creates a separate folio of the Register).

7.1.21 Bringing Land under the operation of the Transfer of Land Act 1958.

The majority of survey based applications are made pursuant to section 26E of the Act and are based on a re-survey. Often the dimensions of the parcel brought under the Act differ from those shown on
the the general law Crown grant or deed. Since the introduction of section 26E, few applications are made under section 9 of the Act.

Annex A

Extracts from the Property Law Act 1958

Part VII - Survey Boundaries

Definition.

5.267. In this Part "document of title" includes any Crown grant or Crown lease or any folio of the Register deed of conveyance partition release or assurance or other deed will lease written contract or writing.

Crown survey boundaries as marked on the ground to be deemed the true boundaries.

5.268. The survey boundaries of any Crown section portion allotment or other parcel of land marked on the ground at the time of the Crown survey thereof, and shown by survey posts pegs trenches or other survey marks shall, as to any such parcel of land heretofore or hereafter granted or demised by the Crown, be and be deemed to have been the true boundaries of such parcel of land whether such boundaries upon admeasurement are or are not found to be of the same dimensions or to include the same area as the boundaries or description of such parcel given in the Crown grant or Crown lease thereof.

Crown grant or lease to be deemed to convey the land within the survey boundaries.

5.269. Every Crown grant and Crown lease purporting to convey a section allotment or other parcel of land, whether describing it by a distinguishing number or letter or by metes and bounds or otherwise, shall be deemed to convey the land included within the survey boundaries of such parcel of land marked on the ground in the Crown survey thereof, notwithstanding any discrepancy between the dimensions of such survey boundaries or the area they include and the dimensions or area expressed in such grant or lease or shown in any plan used in connexion with the alienation by the Crown of such parcel of land.

As to aliquot parts of Crown sections having excess of area.

5.270. Where a Crown section has been subdivided by the Crown into allotments or portions of equal area, and by reason of excessive measurements in the original Crown survey the area of the section as marked on the ground by the survey boundaries exceeds the sum of the areas of all the allotments or portions as shown by any plan or description used at the Crown sale or as deducible from any Crown grant of any such allotment or portion, the total excess of area of the section shall be deemed originally distributable amongst the allotments or portions equally; and every Crown grant purporting to be a grant of one of such allotments or portions shall where the original subdivisional survey boundaries thereof do not exist, or if not inconsistent with such boundaries where they do exist, be construed to be a grant of such aliquot part of the total area included within the survey boundaries of such section as is obtained by dividing such area by the number of original allotments or portions.

How Crown survey boundaries may be proved in the absence of survey marks.

5.271. When the survey marks of any line constituting one of the original boundary lines of any Crown section allotment or other Crown parcel of land have been removed or obliterated but it is proved in some court of competent jurisdiction or (where the land is under or is proposed to be brought under the Transfer of Land Act 1958) to the satisfaction of the Registrar of Titles that certain buildings fences walls or other improvements of a permanent nature or a succession of such improvements -

(a) have ever since the removal or obliteration of such survey marks agreed in position with such original boundary line or with the particular portion thereof required to be established; or

(b) have for the period of fifteen consecutive years been accepted and regarded by the vendors purchasers owners and occupiers for the time being of such parcel of land as agreeing in position with such original boundary line; or
(c) have for the period of fifteen consecutive years been accepted and regarded by the vendors purchasers owners and occupiers for the time being of any portion of such parcel of land bounded by such Crown boundary line or by a portion thereof as agreeing in position with such original boundary line or such particular portion thereof - such proof as aforesaid shall for all purposes be deemed and received as sufficient prima facie evidence of the true position of such original Crown survey boundary line or of such particular portion thereof as the case may be.

Margin of error allowed in description of boundaries.

5.272. From and after the first day of August One thousand eight hundred and ninety the dimensions of the boundaries of any parcel of land as stated in any document of title now made or hereafter to be made relating to such land, or as represented on any plan drawn on and referred to in any such document of title/ shall unless such construction is expressly negatived or modified by such document of title or contract be construed as though the phrase “a little more or less” immediately followed and referred to the dimensions so stated or represented; and such phrase shall in all cases whether so implied or expressed be deemed to cover any difference between the dimensions so stated or represented as aforesaid and the actual dimensions of such boundaries as found by admeasurement on the ground, when such difference does not exceed the following limits, that is to say, a limit of 50 millimetres for any one boundary line irrespective of its length where the length does not exceed 40.30 metres, but where it exceeds 40.30 metres a limit equivalent to one in five hundred computed upon the total length of such boundary line. No action shall be brought by reason or in respect of such difference whether of excess or deficit) where it does not exceed the aforesaid limits; and in any case where such difference does exceed such limits an action for damages or compensation in respect thereof shall lie in respect of such excess only.


5.273. The provisions of this Part shall apply to land whether under the general law or under the operation of the Transfer of Land Act 1958, and shall where applicable be acted upon by the Registrar of Titles in dealing with any application to bring land under the Transfer of Land Act 1958, or to have any folio of the Register amended as to boundaries, and also in any investigation in the Land Titles Office as to boundaries.

Extracts from the Transfer of Land Act 1958

How application dealt with.

S.10.(1) The Registrar may subject to this Act bring the land under the operation of this Act by creating a folio of the Register for it.

(2) In respect of any application the Registrar may accept inter alia as evidence recitals statements and descriptions of the facts matters and parties in deeds documents Acts of Parliament or statutory declarations not less than twenty years old, office copies of orders of the Court solicitor's certificate and memorials of registration under any Act concerning the registration of instruments relating to or affecting land.

(3) Where application is made to bring land under this Act by a description different from that in the muniments of title the Registrar may grant the application as to the land in the occupation of the applicant if the discrepancy appears to be due to the inaccuracy of any survey or plan or description on the alienation of the land by the Crown or on any subsequent dealing therewith or to any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented or mentioned in any plan or description.

(4) Where any land has been brought under this Act subject to any mortgage and the purchaser at a sale by the mortgagee or any person claiming under the purchaser applies to be registered as proprietor of the land after such sale, the mortgage shall be deemed to have conferred upon the purchaser under the power of sale contained in the mortgage the right to be registered as proprietor of the same estate in the land as that for which the mortgagor was registered, and the only inquiry into title shall be as to the validity of the sale and of any subsequent dealings, and no caveat which might have been lodged against the original application shall be lodged against the application of the purchaser or any person claiming under him.
Deed registration conversion scheme

S.26C.(1) A person who under section 6 of the *Property Law Act* 1958 registers with the Registrar-General a deed, conveyance or instrument affecting land by delivering a memorial of that deed, conveyance or instrument to the Registrar-General may lodge with the Registrar of Titles a solicitor's certificate relating to the title of the land.

(2) A person who lodges a solicitor's certificate with the Registrar must also lodge with it -

(a) the deeds that relate to the title to the land and that are in the person's possession; and

(b) the deeds that relate to the title to the land and that the person may compel another person to produce except deeds that are deposited with the Registrar-General under the *Property Law Act* 1958; and

(c) a search of title.

(3) The procedure in this section cannot be used to bring land under this Act if the title to the land is claimed by possession.

(4) If in respect of land the provisions of sub-sections (1) and (2) are complied with, and the deeds lodged show a good root of title which is at least 30 years old, the Registrar may create -

(a) an ordinary folio; or

(b) a qualified folio of a kind that the Registrar considers appropriate.

(5) A person may withdraw from this conversion scheme at any time before the creation of a folio of the Register whereupon the Registrar must return to that person or the person appearing to be entitled to them the solicitor's certificate and the documents lodged under sub-section (2).

Application (non-survey) conversion scheme

S.26D.(1) A person who can apply under section 9 to have land brought under this Act may apply under this section to the Registrar to have the land brought under this Act.

(2) An application must be in the prescribed form and the applicant must lodge with the application -

(a) the deeds that relate to the title to the land and that are in the applicant's possession; and

(b) the deeds that relate to the title to the land and that the applicant may compel another person to produce except deeds which are deposited with the Registrar-General under the *Property Law Act* 1958; and

(c) a search of title and a solicitor's certificate relating to the title of the land.

(3) The procedure in this section cannot be used to bring land under this Act if the title to the land is claimed by possession.

(4) If in respect of land the provisions of sub-sections (1) and (2) are complied with, and the deeds lodged show a good root of title which is at least 30 years old, the Registrar may create -

(a) an ordinary folio; or

(b) a qualified folio of a kind that the Registrar considers appropriate.

(5) An applicant may withdraw an application at any time before the creation of a folio of the Register whereupon the Registrar must return to the applicant or to the person appearing to be entitled to them the documents lodged in support of the application.
Application (survey) conversion scheme.

S 26E (1) A person who can apply under section 9 to have land brought under this Act may apply under this section to the Registrar to have the land brought under this Act.

(2) An application must be in the prescribed form and the applicant must lodge with the application -

(a) a plan of survey of the land (with an abstract of field notes) certified by a licensed surveyor; and

(b) the deeds that relate to the title to the land and that are in the applicant's possession and the deeds that relate to the title to the land and that the applicant may compel another person to produce except deeds which are deposited with the Registrar-General under the Property Law Act 1955, or

(c) if the applicant's title to the land is claimed by possession, the material on which the solicitor's certificate is based; and

(d) a search of title and a solicitor's certificate relating to the title to the land.

(3) Subject to this Division, the provisions of Division 1 apply to an application under this section and to the proceedings of the Registrar on that application, with such modifications as are necessary, and in particular with the modification that the reference in section 13(1) to muniments of title is to be treated as a reference to the solicitor's certificate and the other documents lodged with the application.

(4) If in respect of land the provisions of sub-section (1) and of sub-section (2)(a), (b) and (d) are complied with and the deeds lodged show a good root of title which is at least 30 years old, the Registrar may create -

(a) an ordinary folio, or

(b) a qualified folio of a kind which the Registrar considers appropriate.

(5) If in respect of a title to land claimed by possession, the provisions of sub-section (1) and sub-section (2)(a), (c), and (d) are complied with and the deeds lodged show a good root of title which is at least 30 years old, the Registrar may create an ordinary folio in which the applicant is recorded as registered proprietor.

Removal of warning relating to title dimensions.

S 26M (1) The registered proprietor of the land in a qualified folio on which there is noted a warning in the form of the Fifth Schedule Part IV may apply to the Registrar in the prescribed form to have the warning deleted from the folio.

(2) An application under sub-section (1) must be lodged with a plan of survey of the land (with an abstract of field notes) certified by a licensed surveyor.

(3) If the Registrar is satisfied that the land in the plan of survey represents the land actually and bona fide occupied by the applicant and purporting to be so occupied under the qualified folio, the Registrar may delete the warning from the folio and make any necessary amendments to the Register.

(4) If this section does not prevent an applicant under sub-section (1) from including in the application by separate definition in the plan of survey lodged with the application such additional land as the applicant claims by possession or otherwise.

(5) If an application includes additional land in accordance with sub-section (4) the requirements of -

(a) sections 11 and 12, and

(b) this Act relating to the granting of vesting orders by the Registrar -

as are appropriate to land which is, and land which is not under the operation of this Act, apply to the land included in the application.
(6) This section does not limit section 106(e).

(7) Section 102 applies to an application under this section as if it referred to an application under this section instead of an application to bring land under this Act.

**Estate of registered proprietor paramount except as to registered and certain other interests etc.**

S.42.(2) Notwithstanding anything in the foregoing the land which is included in any folio of the Register or registered instrument shall be subject to -

(a) the reservations exceptions conditions and powers (if any) contained in the Crown grant of the land;

(b) any rights subsisting under any adverse possession of the land;

(c) any public rights of way;

(d) any easements howsoever acquired subsisting over or upon or affecting the land;

(e) the interest (but excluding any option to purchase) of a tenant in possession of the land;

(f) any unpaid land tax, and also any unpaid rates and other charges which can be discovered from a certificate issued under section three hundred and eighty seven of the *Local Government Act* 1958, section 158 of the *Water Act* 1989 or any other enactment specified for the purposes of this paragraph by proclamation of the Governor in Council published in the *Government Gazette* - notwithstanding the same respectively are not specially recorded as encumbrances on the relevant folio of the Register.

**Application for order by person claiming title by possession.**

S.60.(1) A person who claims that he has acquired a title by possession to land which is under this Act may apply to the Registrar in writing in an appropriate approved form, accompanied by a plan of survey (with an abstract of field notes) of the land certified by a licensed surveyor, for an order vesting the land in him for an estate in fee simple or other the estate claimed.

(2) The Registrar shall cause notice of the application to be advertised once at least in a newspaper circulating in the city of Melbourne or in the neighbourhood of the land and to be given to any person he thinks proper including every person appearing by the Register to have any estate or interest in the land.

(3) The applicant shall cause a copy of the notice to be posted in a conspicuous place on the land or at such place as the Registrar directs and to be kept so posted for not less than twenty-one days prior to the granting of the application.

(4) The Registrar shall appoint a period of not less than twenty-one days from the publication of the advertisement or service of the notice after the expiration of which he may, unless a caveat is lodged as hereinafter provided, grant the application altogether or in part.

**Application by proprietor for amendment of Register to make boundaries coincide with land occupied.**

S.99.(1) A proprietor may make an application in an appropriate approved form for amendment of the folio of the Register -

(a) of his own land, in any case in which the boundaries area or position of the land differ from the boundaries area or position of the land actually and *born fide* occupied by him and purporting to be so occupied under the title in respect of which the folio of the Register was created, or in any case in which the description in a folio of the Register is erroneous or imperfect on the face of it;
(b) of the land of any other proprietor, where by reason of any error in survey or other misdescription part of such land is actually and bona fide occupied by the applicant together with the land described in the applicant’s folio of the Register.

(2) The Registrar shall send by post, to every person who appears from the Register to be affected by the application, notice that application has been made to amend the folio of the Register in the manner specified together with a plan showing the effect of the application and appointing a time after the expiration of which the application may be granted unless a caveat is lodged forbidding the granting thereof.

(3) The Registrar on the request in the approved form of any registered proprietor or his agent and upon payment of the fee (if any) fixed by the Registrar shall inform him as to whether the boundaries area and position of any land the subject-matter of any proposed application under this section are accurately shown on any plan of survey in the Land Titles Office.

Adjustment of discrepancies in boundaries.

S.102.(1) If land included in any application to bring land under this Act or in any folio of the Register or lodged plan of subdivision is found by reason of erroneous measurements in the original survey to exceed or fall short of the dimensions given the Registrar may create a new folio of the Register or amend the recordings in the Register to accord with the dimensions marked on the ground or otherwise to adjust equitably the discrepancy.

(2) The Registrar may -

(a) in appropriate cases, make a distribution among the allotments or lots concerned of any surplus area; or

(b) where the proprietor of an allotment or lot or his predecessor in title has been for over fifteen years in possession of any of such surplus, include in the folio of the Register of such proprietor so much of such surplus so held in possession as does not exceed the area attributable to his allotment or lot; or

(c) in any case, make such adjustments as the Registrar considers equitable and expedient.

General provision as to correction of errors etc.

S.103.(1) In any proceeding in the Court relating to any land or any instrument or dealing in respect thereof if the Court directs the Registrar to make any amendments to the Register or otherwise to do any act or make any recordings necessary to give effect to any judgment decree or order of the Court the Registrar shall obey such direction.

(1A) The Registrar may, if he or she considers it appropriate to do so, correct a patent error in a document lodged for and awaiting registration and, in doing so, the Registrar must not erase or make illegible the original entry in the document and must note on the document the date on which the correction was made.

(2) (a) The Registrar may upon such evidence as appears to him sufficient correct errors in the Register or in any instrument or duplicate or plan of subdivision and supply entries or recordings omitted to be made therein under the provisions of this Act, but in any such case he shall not erase or render illegible the original entry or recording, and shall indicate on that entry or recording the date on which such correction or recording was made.

(b) Every correction recording or entry under sub-section (1A) or (2)(a) shall have the like validity and effect as if the error or omission had not occurred, but without prejudicing any rights accrued from any recording made in the Register prior to the actual time of correcting the error or supplying the omitted entry or recording.

Extracts from the Subdivision Act 1988 When can the Registrar register a plan? S.22(1) The Registrar may register a plan if -
(a) it appears to the Registrar that the plan has been certified by the Council and the certification remains valid; and

(b) the applicant provides a statement of compliance or an acquiring authority. Minister government department/public authority or Council submits a statement that the plan is exempt from Part 3; and

(c) in the case of a master plan, each of the persons listed in sub-section (1A) whose encumbrance mentioned in that sub-section relates to the land in the first stage (but not the residual land) consents in writing to the registration of the plan; and

(d) in the case of a plan for the second or a subsequent stage in a staged subdivision, each of the persons listed in sub-section (1A) whose encumbrance mentioned in that sub-section relates to that stage (but not the residual land) consents in writing to the registration of the plan; and

(da) in the case of a plan that is not a plan for a staged subdivision, each of the persons listed in sub-section (1A) whose encumbrance mentioned in that sub-section relates to the land on the plan consents in writing to the registration of the plan; and

(e) the land is under the *Transfer of Land Act* 1958 and (except for a plan referred to in section 35) is not subject to a mortgage under the general law that is shown on the folio of the Register for the land; and

(f) except for a plan referred to in section 23, 24A, 32, 32A, 35, 36 or 37 or that is in accordance with a court order under this Act, none of the land in the plan is land affected by an existing body corporate.

(1A) For the purposes of sub-section (1)(c), (d) and (da) the following are listed persons –

(a) a registered mortgagee, registered lessee or registered sub-lessee;

(b) the registered annuitant;

(c) a caveator whose caveat is recorded in the Register;

(d) an annuitant whose charge, or a person whose mortgage, caveat, lease or sub-lease was lodged before the lodging of the plan.

(1AA) If a plan provides that land becomes common property, then for the purposes of sub-section (1)(c), (d) and (da) consent to the registration of the plan is not required from any person with an interest in the common property but not in the land.

(1AB) If a person's consent to the registration of a plan is required and the person requests the Registrar to register the plan, the request must be taken to be consent to the registration of the plan.

(1AC) The Registrar may treat as consent from a person whose consent to the registration of a plan is required–

(a) in the case of a natural person, a consent or request to register the plan apparently made on behalf of that person; or

(b) in the case of a corporation or a statutory corporation, a consent or request to register the plan –

(i) apparently made on behalf of the corporation; or

(ii) apparently signed by a director or other person concerned in the management of the corporation; or

(iii) apparently signed by a person who manages the corporation's transactions or securities affecting land.
(1AD) The Registrar need not -

(a) inquire as to the existence or scope of the authority to sign of a person who signs a consent or a request to which sub-section (1AB) or (1AC) applies; or

(b) call for or examine any documents relating to any of the matters referred to in paragraph (a).

(1B) Where a person whose consent to the registration of a plan is required has not consented, the applicant may apply to the Registrar for service on that person of a notice under sub-section (1C).

(1C) The notice must -

(a) state that the applicant has applied for registration of the plan; and

(b) specify a day, not less than 30 days from the service of the notice, before which notice of refusal to consent may be given; and

(c) state that the person served with the notice is to be taken to have consented to the registration of the plan unless before the day specified in the notice the person gives to the Registrar written notice of refusal to consent.

(ID) A person served with a notice under sub-section 1(B) must be taken to have consented to the registration of the plan if before the day specified in the notice the person has not given to the Registrar written notice of refusal to consent.

(IE) Where a person whose consent to the registration of a plan is required refuses to consent, the applicant for its registration may apply to the Supreme Court for an Order consenting to the registration of the plan on behalf of the person whose consent was required.

(IF) On the application, the Court, if satisfied that the refusal of consent was unreasonable, may make the order sought.

(2) If the Registrar is satisfied that a certified plan requires corrections before it can be registered, the Registrar may -

(a) if satisfied that the corrections are minor in nature, make them, or require the applicant to make them on the certified plan, without returning the plan to the applicant to be amended under section 11; or

(c) in any other case, return the plan to the applicant to be amended under section 11.

What is the effect of Registration?

S.24(1) The registration of a plan takes effect from the time that the Registrar records that the plan has been registered.

(2) Upon registration -

(a) land set aside as a reserve vests in the body named in the plan freed and discharged from any mortgage, charge, notice or memorandum of charge, restriction, lease or sub-lease; and

(b) land set aside as a road vests in the Council or any other person or body identified for that purpose in the plan freed and discharged from any mortgage, charge, notice or memorandum of charge, restriction, lease or sub-lease; and

(c) any road vested in the Council becomes a public highway; and

(d) any easement, restriction or other right is created, varied or removed as specified in the plan; and

(da) any right to take water conferred by section 8 of the Water Act 1989 is allocated as specified in the plan; and
(e) any easements or rights implied by section 12 (2) are created; and

(f) the registered plan replaces or modifies any previous registered plan; and

(g) if it is a plan referred to in section 23, 24A, 32, 32B, 35 or 37, the registered plan amends any previous registered plan in the ways indicated in that later registered plan.

(2A) When the land set aside as a road vests in a Council, person or body -

(a) the land continues under the operation of the Transfer of Land Act 1958 and the Council, person or body is deemed to be its registered proprietor; and

(b) the Registrar need not create a folio of the Register or create a Certificate of Title for the land; and

(c) the Registrar may delete any folio of the Register so far as it relates to that land.

(3) The Registrar must create a folio of the Register under the Transfer of Land Act 1958 for -

(a) each lot; and

(b) each reserve.

(4) Despite anything in sub-section (3) of this section or in section 28(e), the Registrar may decide not to create a folio of the Register under the Transfer of Land Act 1958 if -

(a) a document required by the Registrar has not been submitted or lodged; or

(b) there is an order of a court or the Administrative Appeals Tribunal prohibiting the creation of the folio of the Register; or

(c) the creation of a folio of the Register is not required by the owner and its creation would not be desirable; or

(d) in the opinion of the Registrar, other special circumstances make the creation of the folio of the Register undesirable or unnecessary.

(5) The Registrar must make any amendments to any registered plan or to the Register under the Transfer of Land Act 1958 that are necessary because of the operation of this Act.

(6) Where a plan amending a previous registered plan is lodged for registration, it must be accompanied by substitute sheets for the sheets of the registered plan that require amendment, and the Registrar may substitute those sheets for the appropriate sheets of the registered plan and, on the making of the substitution, those substituted sheets form part of the registered plan.

Reserves and other similar land

S.24A(1) If required or authorized to do so by the planning scheme or a permit, a person or body listed in column 1 of the Table may lodge at the Land Titles Office for registration a certified plan to do any of the things listed in relation to that person or body in column 2 of the Table in relation to the whole or any part of land referred to in that part of the column.
TABLE

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person or body</td>
<td>Action</td>
</tr>
<tr>
<td>A Council</td>
<td>Vest in itself land shown or set aside or set aside as a reserve on a registered but not certified plan</td>
</tr>
<tr>
<td>A Council</td>
<td>Vest in itself land on a registered but not certified plan that is not shown as a lot, common property, road or reserve</td>
</tr>
<tr>
<td>The person or body in whom or in which the land is vested</td>
<td>Remove a reservation from land shown or set aside as a reserve on a registered but not certified plan or shown on a plan prepared under this section</td>
</tr>
<tr>
<td>The person or body in whom or in which the land is vested</td>
<td>Remove a reservation from land set aside as a reserve on a certified and registered plan</td>
</tr>
<tr>
<td>The person or body in whom or in which the land is vested</td>
<td>Remove any restriction on the use of land vested under section 18 of the Cluster Titles Act 1974</td>
</tr>
</tbody>
</table>

(1A) A plan referred to in sub-section (1) may do anything else that can be done by a plan under this Act.

(2) In addition to the requirements of this Act about the certification of plans, the Council may certify a plan removing a reservation or restriction prepared under sub-section (1) if the applicant satisfies it that the land in the plan need no longer be used for the purpose for which it is currently reserved or used.

(3) In addition to section 24, on the registration of a plan prepared under this section -

- (a) the land in the plan vests, or
- (b) any reservation or restriction referred to in the Table in sub-section (1) is removed from the land in the plan -

as is specified in the plan.

(4) On the registration of a plan vesting land in a body, the land is freed and discharged from any mortgage, charge, lease or sub-lease.

(5) On the registration of a plan removing a reservation or restriction referred to in the Table in sub-section (1) over land, the land becomes a lot.

(6) The Registrar may register a plan under this section without delivery of any relevant Certificate of Title.

(7) On the registration of the plan the body in which the land is vested may -

- (a) subject to section 20 or to any other Act under which the body is created, sell it, or
- (b) use it for any purpose consistent with any Act under which it operates and with the planning scheme.

(8) If a body sells land under this section that was public open space, it must apply the proceeds -

- (a) first, m paying the expenses of or incidental to the sale,
- (b) secondly, for any recreational or cultural purpose referred to in item 5 of Schedule 1 of the Local Government Act 1989.
Boundary plans

5.26(1) A person intending to subdivide land or an acquiring authority may apply at any time to the Registrar for approval of a boundary plan showing -

(a) the outer boundaries of the land; and

(b) abuttals; and

(c) any other matter required by the Registrar.

(2) The Registrar must –

(a) approve the plan; or

(b) reject the plan giving reasons in writing - within the prescribed time.

How can a subdivision containing a body corporate be altered?

5.32(1) If there is a unanimous resolution of the members, a body corporate may proceed under this section to do one or more of the following -

(a) dispose of the fee simple in-

(i) all or part of any common property; or

(ii) any other land purchased or obtained by it;

(b) purchase or otherwise obtain land -

(i) for inclusion in or to become common property; or

(ii) which is or is to become a lot;

(c) alter the boundaries of any land affected by the body corporate;

(d) increase or reduce the number of lots affected by the body corporate;

(e) create new lots or common property;

(f) create and name a body corporate and specify the land to be affected by that new body corporate and specify lot entitlement and lot liability in relation to that new body corporate;

(g) dissolve itself if -

(i) it is a body corporate without common property and it owns no land; or

(ii) it disposes under this sub-section of all its common property and all the land that it owns;

(h) merge with another body corporate (created on the same or another plan) if -

(i) none of the land affected by the first body corporate is land affected by the other body corporate and the merger would not result in the same land being affected by two or more unlimited bodies corporate; or

(ii) one of the merging bodies corporate is an unlimited body corporate and the land affected by that body corporate includes all the land affected by all c^ other merging limited bodies corporate;

(i) create, vary or remove any easement or restriction (including an implied easement);
(l) consolidate into a single lot all the land affected by the body corporate if -
   (i) it is an unlimited body corporate and, if any land affected by it is also affected by a limited
       body corporate, the members of that limited body corporate by unanimous resolution consent
       to the consolidation, or
   (ii) none of the land affected by the body corporate is land affected by another body corporate,

(k) create, alter or extinguish lot entitlement or lot liability in any way necessary because of the exercise of
    its other powers under this sub-section,

(1) amend or cancel a scheme of development under the Cluster Titles Act 1974 in any way necessary
    because of the exercise of its other powers under this sub-section,

(m) create roads or reserves

(1A) Sub-section (1) does not apply to a change in the ownership of the common property that occurs because
     of a change in the ownership of a lot

(1B) The body corporate cannot under sub-section (1)(b) acquire land by compulsory process

(1C) The body corporate may exercise its powers over land under sub-section (1)(m) even though the land is
     not, and will not after the exercise of the power become, land affected by the body corporate

(ID) The body corporate cannot exercise its powers over land under sub-section (1)(m) so that the land vests in
     itself

(IE) Section 22 applies to a plan resulting from the exercise by the body corporate of its powers over land
     under sub-section (1) as if it included a requirement that the registered proprietor of land in the plan that is not
     land affected by the body corporate must consent to the registration of the plan

(2) If it proceeds under sub-section (1), a body corporate must submit for certification and lodge for
    registration a plan showing the changes to be made to any registered plan

(2A) In exercising its powers under sub-section (1) to create, alter or extinguish lot entitlement or lot liability,
    a body corporate must comply with section 33 (2) and (3)

(2B) A body corporate may only exercise its powers under sub-section (1) in relation to -

   (a) land affected by it, or

   (b) land (whether on the same or another plan) which, when the power is exercised, will become land
       affected by it

(2C) If the exercise by a body corporate of its powers under sub-section (1) involves land affected by another
    body corporate (whether on the same or another plan) and the other body corporate is not a limited body
    corporate all of whose members are members of the first body corporate, the first body corporate must first get
    from the members of the other body corporate their consent by unanimous resolution

(2D) If a body corporate exercises its powers under sub-section (1)(g) to dissolve itself -

   (a) the Registrar must not amend or cancel the plan to give effect to the exercise of that power unless
       satisfied that the body corporate has no accrued or accruing debts, and

   (b) the body corporate is dissolved when the Registrar amends or cancels the plan

(2E) If a body corporate merges with another body corporate -

   (a) the plan giving effect to the merger must specify the name (by reference to a relevant plan number) of
       the new body corporate, the land affected by it, and all relevant lot entitlements and liabilities, and
       whether it is a limited or unlimited body corporate, and
(b) on the registration of that plan -

(i) the merging bodies corporate are dissolved; and

(ii) land affected by those bodies corporate ceases to be so affected; and

(iii) the new body corporate is the successor in law of the merging bodies corporate; and

(iv) if a new limited body corporate succeeds an unlimited body corporate, the new body corporate has, in respect of the assets, rights, liabilities and obligations which have passed to it from the unlimited body corporate, all the functions, powers and duties of an unlimited body corporate.

(2F) To the extent that a plan referred to in sub-section (2) affects common property, consent to the plan is not required by any person in respect of any lot if the common property is not vested in the owners of that lot.

(3) The owner or owners of a lot affected by a body corporate on a registered plan may, without obtaining a resolution of the body corporate, proceed under this sub-section to consolidate, subdivide or alter the lot or lots owned, if the consolidation, subdivision or alteration does not alter the boundaries of common property and does not alter the boundaries or lot entitlement or liability of lots not being consolidated, subdivided or altered.

(4) If an owner proceeds under sub-section (3), the owner must submit for certification and lodge for registration a plan showing the changes to be made to the registered plan.

(5) Repealed

(5A) In relation to -

(a) a plan referred to in sub-section (2) that relates to some but not all of the land in a registered plan and does not relate to common property; or

(b) a plan referred to in sub-section (4) -

consent to the registration of the plan is not required by any person in respect of land that is not the subject of the plan.

(5B) If a body corporate is created on a registered plan, the body corporate or the owner of a lot on that plan must not submit for certification or lodge for registration a plan consolidating, subdividing, or altering the boundaries of any land affected by the body corporate except -

(a) under this section or section 23, 32A, 36 or 37; or

(b) in accordance with a court order under this Act.

(5C) The Registrar must not register a plan referred to in sub-section (7) unless satisfied that the body corporate on the registered plan has no accrued or accruing debts.

(6) Unless this section otherwise provides, the alteration of a registered plan under this section does not affect the legal identity or continuity of operation of the body corporate.

(7) On the registration of a plan of consolidation of all the land affected by a body corporate into a single lot -

(a) that body corporate is dissolved; and

(b) if the land is also land affected by another body corporate, that other body corporate is dissolved; and

(c) the land vests in the former lot owners who are members of the body corporate exercising the power, as tenants in common in proportion to their lot entitlements in that body corporate,
freed from any caveat, mortgage, charge, lease, sub-lease and from any easement under section 12, and

(d) the Registrar must create a folio of the Register accordingly

(8) Despite section 24, on the registration of a plan under sub-section (2) or (4) of this section, the Registrar may if appropriate -

(a) create a folio of the Register for the existing common property and a folio of the Register for newly created common property in the name of a relevant body corporate, or

(b) create in the name of the relevant body corporate a single folio of the Register for existing and newly created common property

**Total consolidation or re-subdivision**

S 32A (1) The owners of all the land in a plan that includes land affected by one or more bodies corporate may submit for certification and lodge for registration a plan consolidating or re-subdividing all that land

(2) The Registrar must not register the plan unless satisfied that each body corporate on the existing plan has no accrued or accruing debts

(3) On the registration of the plan -

(a) each body corporate on the previous registered plan is dissolved, and

(b) the land affected by each body corporate on the previous registered plan vests in the former lot owners who were members of that body corporate as tenants in common in proportion to their lot entitlements in that body corporate, freed from any caveat, mortgage, charge, lease, sub-lease and from any easement under section 12

**Acquisition of land by acquiring authority**

S 35(1) If an acquiring authority is to acquire or acquires land that cannot be disposed of without being subdivided, the authority must, in accordance with section 5 (2), submit a plan to the Council for certification and lodge it for registration as if the authority were the owner of all the land to be subdivided by the acquisition

(2) If a plan submitted by the authority for certification relates to part of the land affected by the body corporate, the Council may require the acquiring authority to submit for certification a new plan of the land affected by the body corporate or to amend the plan so that it includes all that land

(3) A plan submitted by an acquiring authority -

(a) may do anything which can be done by a plan including, but not limited to, one or more of the following

(i) maintain without alteration of boundaries except for the purposes of acquisition or to correct any minor defect in boundaries found on survey the number of separately disposable parcels of land in the area covered by the plan, excluding the land to be acquired,

(ii) reduce the number of separately disposable parcels of land covered by the plan, excluding the land to be acquired,

(iia) alter any separately disposable parcels of land, excluding the land to be acquired,

(iib) subject to section 33 (2) and (3), create new lot entitlements or lot liabilities,

(iii) create additional lots,
(iv) include land that the authority does not intend to acquire any part of which abuts other land in the plan;

(v) include land any part of which abuts land in the plan that is vested in or registered in the name of the authority;

(vi) alter the lot entitlement or liability of land on the plan;

(via) consolidate into a single lot all or any of the land on the plan to be acquired by the authority;

(vii) amend a registered plan in any way necessary because of the things done by the plan;

and

(b) must state which land is to be acquired by the authority and whether it is to be acquired free from or subject to encumbrances; and

(c) having regard to sub-section (6), must, for each thing done by the plan, state whether it is to happen -

(i) on the registration of the plan; or

(ii) to the extent that it relates to land acquired by compulsory process, when the Registrar records the vesting date; or

(iii) to the extent that it relates to land acquired by agreement, on the vesting date; and

(d) if the plan consolidates land acquired or to be acquired by the authority, must (despite paragraph (c)) state that the consolidation is to happen -

(i) on the registration of the plan, if all the land to be consolidated has been acquired by the authority before that registration; or

(ii) if any of the land is acquired after the registration of the plan, on the last of the vesting dates of, or recorded for, that land.

(4) Consent to the registration of the plan is not required by any person to the extent that the plan -

(a) maintains without alteration of boundaries, except for the purposes of acquisition or to correct any minor defect in boundaries found on survey, the number of separately disposable parcels of land in the area covered by the plan, excluding the land to be acquired; or

(b) creates new lot entitlements or lot liability as a result of the acquisition; or

(c) relates to land vested in or registered in the name of the authority.

(d) relates to land acquired or to be acquired by the authority.

(5) Sections 5 (3)(b) and 6 (1)(b) do not apply to land in a plan submitted or lodged under this section.

(6) If a plan lodged by an acquiring authority is registered -

(a) the authority must advise the Registrar of the vesting date of each piece of land in the plan acquired or to be acquired by compulsory process as soon as possible after that vesting date; and

(b) the Registrar must record the vesting dates advised by the authority; and

(c) any thing done by the plan (except consolidation) in relation to land to be acquired by compulsory process has effect when the Registrar records the vesting date of that land, and this Act applies to those things as if the plan were registered on that date; and
(d) any thing done by the plan (except consolidation) in relation to land to be acquired by agreement has effect on the vesting date of that land, and this Act applies to those things as if the plan were registered on that date; and

(e) any thing else done by the plan (except consolidation) has effect when the plan is registered; and

(ea) this Act applies to land on the plan that the authority acquires by agreement as if section 24 (2)(c) referred to "registered in the name of" instead of "vested" and section 24 (2A) referred to "is registered in the name of instead of "vests"; and

(eb) despite paragraphs (c) and (d), the boundaries of the land to be acquired are those shown on the plan but the status of the land does not change unless in accordance with paragraph (c) or (d); and

(f) the holder of any relevant Certificate of Title for land in the plan must, if requested, deliver it to the Registrar; and

(g) if any land in the plan is not under the operation of the Transfer of Land Act 1958 or steps have not been taken to bring it under that Act, the Registrar, before registering the plan, must bring the land under the operation of that Act by direction in accordance with Part II of that Act; and

(h) unless the plan states that land is to remain land affected by a body corporate and its existing lot entitlement and liability is to continue, the land acquired ceases to be land affected by a body corporate and to have any lot entitlement or liability -

(i) if it is acquired by compulsory process, when the Registrar records the vesting date of the land; or

(ii) if it is acquired by agreement, on the vesting date; and

(i) to the extent indicated by the plan, land is consolidated into a single lot on the date indicated in the plan; and

(j) if on the registration of the plan there is still land to be acquired by the authority, then despite anything to the contrary in section 24 the Registrar need not create folios of the Register for that land until the last of the vesting dates for or recorded for that land; and

(k) if the plan consolidates land into a single lot, then despite anything to the contrary in section 24 or paragraph (j) the Registrar need not create a folio of the Register for the land until the consolidation occurs and then may create a single folio of the Register for the land in the name of the authority; and

(l) the Registrar may create any folio of the Register in the name of the authority, for land on the plan that is vested in or acquired by the authority.

(7) This Act does not limit or affect the operation of the Land Acquisition and Compensation Act 1986.

(8) An acquiring authority may under this section submit for certification and lodge for registration a plan subdividing or consolidating any land vested in it or registered in its name.

(9) Sub-sections (2) to (6) apply to a plan referred to in sub-section (8) as if -

(a) the land in the plan were land acquired by the authority;

(b) sub-section (3) (a)(i) provided -

(i) maintain the number of separately disposable parcels of land in the area covered by the plan;

(c) in sub-section (3) (a)(ii) the reference to "excluding the land to be acquired" were deleted;
(d) sub-section (3) (b)(c) and sub-section (6) (a) to (d) and (ea) were deleted.

(10) Without limiting sub-section (9), a plan referred to in sub-section (8) may do anything that can be done by a plan referred to in section 24A.

### Staged subdivision

S.37 (1) A staged subdivision is a scheme for the subdivision of land in stages.

(2) Repealed

(3) If a planning scheme or permit authorizes a staged subdivision -

(a) a master plan must be submitted for certification and lodged for registration and must specify the lots in the first stage and contain the prescribed information; and

(b) a plan for the second or a subsequent stage must contain the prescribed information; and

(c) a plan for the second or a subsequent stage may do any one or more of the following:

(i) Create additional lots on, or alter the lots on, the land in that stage;

(ii) In relation to the land in that stage, create a body corporate, common property, lot entitlement or lot liability;

(iii) Create, vary or remove an easement or restriction over land in that stage;

(iiiia) Set aside additional roads or reserves on the land in that stage;

(iv) Amend the master plan or a plan for an earlier stage by -

(a) adding to the membership of an existing body corporate; or

(b) adding to existing common property; or

(c) subject to sections 33 (2) and (3), changing lot entitlement or liability of existing lots; or

(d) showing land on that plan as land benefited by an easement or restriction created over the land in the plan for the second or subsequent stage;

(v) Amend the master plan or a plan for an earlier stage in any way not provided for in sub-paragraph (iv) if -

(a) the amendment does not affect common property; and

(b) section 22 is complied with, but as if it required consent to the amendment in respect of any lot on the master plan or a plan for an earlier stage shown on the plan sought to be registered as being affected by it and as if the persons listed in section 22 (1A) included each person who, before the lodging of the plan, is an owner or transferee under an instrument lodged for registration.

(4) The amendment of a registered plan under this section does not affect the legal identity or continuity of operation of a body corporate created on the plan.

(5) A plan for a second or a subsequent stage may be submitted for certification and lodged for registration by the owner of all the land in that stage or the applicant for the certification and registration of the master plan, and, if a body corporate is created on the master plan or a plan for an earlier stage, the unanimous resolution of the body corporate is not required for any change to that plan by a plan for a subsequent stage.

(6) When registering a master plan, the Registrar must record the prescribed information.

(7) When registering a plan for the second or a subsequent stage, the Registrar must -
(a) record the prescribed information; and

(b) make any necessary amendments to the information recorded for any earlier stage that are necessary because of the registration of the subsequent plan.

(8) A plan for the second or a subsequent stage may take the land in that stage or in that or any future stages out of the staged subdivision and, if it does this -

(a) must amend the master plan so as to show the land as a lot on the plan; and

(b) subject to section 33 (2) and (3), must make any necessary amendments to lot entitlement and liability; and

(c) may provide that the land in the plan becomes a lot affected by any relevant body corporate.

(9) On the registration of a plan referred to in sub-section (8) -

(a) this section ceases to apply to the land in the plan; and

(b) repealed

(c) any requirement made in the statement of compliance for the master plan ceases to apply to the land in the newly registered plan.

(10) A plan referred to in sub-section (8) may amend the master plan or a plan for an earlier stage in any way necessary because the land in the plan is taken out of the staged subdivision.
7.2 Railway Boundaries

7.2.1 History

To gain a full understanding of railway boundaries it is worthwhile to firstly look at the introduction of railways into Victoria and the sequence of events that lead to the authority that controls the rail network - the Public Transport Corporation.

The first railway established in Victoria was the Flinders Street to Port Melbourne railway which opened for traffic on 12 September 1854. This was constructed by the Melbourne and Hobson's Bay Railway Company, one of several private bodies entrusted to construct the early railways in Victoria.

Other companies such as the Geelong and Melbourne Railway Company, the Melbourne and Suburban Railway Company and the Melbourne, Mount Alexander and Murray River Railway Company constructed early railways, and the different nature of these companies contributed to the varying standards of recording of the land taken for railway purposes. Consequently some railway boundaries can be re-established taking into account the original specified railway reserve widths, whereas others are more dependent on past or present railway fencing or other methods.

The first step in the direction of Government controlled railways was taken in 1856, when legislation authorised the acquisition of the Melbourne, Mount Alexander and Murray River Railway Company and provided for the vesting of the same in the Commissioner of Public Works and the Surveyor-General for Victoria as joint trustees.

In 1857 authorization to construct the Melbourne and Murray River railway between Melbourne - Castlemaine - Bendigo - Echuca, and the Geelong & Ballarat railway providing a direct link between Geelong and Ballarat was given. These were the first two lines to be built at public expense.

The Board of Land and Works was established on 1 January 1858, and all powers formerly vested in the Commissioner of Public Works and the Surveyor-General were vested in the Board. The Board's purpose was to construct and administer the government owned railways, and inspect and supervise other railways.

Between 1864 and 1872 little new construction was undertaken, but thereafter the railway system grew steadily until 7670 route kilometres were established.

The Victorian Railway Commissioners took over the responsibility for the construction, operation, maintenance and inspection of railways in 1884, but in 1892 the responsibility for the construction of new lines reverted to the Board of Land and Works Railway Construction Branch.

In 1964, the Board of Land and Works was dissolved and the Railway Construction Branch of the Board was re-constituted as the Railway Construction Board, which subsequently became the Railway Construction and Property Board.

The Victorian Railways Commissioners were replaced by the Victorian Railways Board in 1972, which became the State Transport Authority in 1983, and in 1984 the railway responsibilities were split between the State Transport Authority (STA or V/Line) and the Metropolitan Transit Authority (MTA or The Met). Finally, the Transport (Amendment) Act 1989 re-amalgamated these bodies on 1 July 1989 to form the Public Transport Corporation (PTC).

7.2.2 Land Ownership

The Public Transport Corporation's Property Department holds Land Record Plans and survey information associated with the Corporation's land holdings.

PTC land ownership in Victoria and southern New South Wales is a combination of land under the operation of the Transfer of Land Act, general law parcels. Crown land vested in the Corporation and freehold land to which the Corporation has statutory ownership (e.g. Government Gazette vesting).
7.2.2.1 Wing Fencing

Wing fences are the short fences found at road/rail crossings that often enclose level crossing furniture.

Various *Railway Construction Acts* and the *Transport Act 1983*, have authorized the taking and using of roads or parts thereof for the purpose of constructing, using and maintaining the railway concerned.

It has been the practice to fence in as much of the road reserve as was necessary without taking any action to obtain a readily transferable title to the land (because of time and manpower constraints), and to regard such land as vested in the PTC as fully as if compensation had been paid and a readily transferable title obtained. Any subsequent removal of fencing would not alter the status of the subject land.

When land, including Crown land and roads, becomes vested in the PTC whether by purchase or by legally enclosing it within railway fences pursuant to the provisions of a *Railway Construction Act* or the *Transport Act* 1983, it can only be divested by an appropriate formality, such as an Act, a transfer or a conveyance or, if the land is vested Crown land, by the use of section 22A of the *Land Act* 1958.

On occasions, with areas of road reserve enclosed by railway wing fences, complications may arise in that cadastral surveys were not undertaken for the land so enclosed, and also the wing fences may have been moved several times since construction of the line. For example, when many gates on country lines were abolished during the early 1900s; when boom barriers or other warning devices have been installed; or in consequence of road works being carried out by a council or by the Roads Corporation.

In such cases, a practical approach has been adopted similar in some respects to the principles of creek and river boundaries. Where small adjustments have been made to the wing fences, the current occupation can usually be regarded as defining the railway boundary. However, where large changes have been made or the wing fencing or other occupation defining railway ownership has been removed altogether, the original occupation as defined by scaling from original railway construction or other plans or field notes, may be adopted as the boundary.

Where a railway line crosses that portion of a road which has never been enclosed by occupation, maintenance rights only are reserved for a distance of 2.2 metres outside each running edge of the railway track. A running edge is defined as the inside edge of a railway track i.e:

![Cross-sectional view of a running edge](image)

7.2.2.2 Rail Bridge over River Reserve

The relevant former Railway Construction Acts authorize the PTC to construct and maintain the bridges and support structures for the railway. These also include access rights necessary to maintain the bridges.
7.2.2.3 Easements, Licences and Occupation Crossings

Generally, easements are not permitted over railway land as it cannot be conceded that the PTC’s rights on their land are subsidiary to those of other Government departments, authorities or individuals which have been permitted to lay their works on that land. Licences are usually executed for services passing through railway land or leases granted for access or roadway, and as there is a payment for use over a specified time, rights of user do not accrue. Occasionally easements are granted, but only over land that is not part of an operating area of the railway ownership.

Some authorities such as Melbourne Water and Telecom Australia are not required to execute a licence because of their statutory rights; instead, general agreements have been established.

Where the construction of a line of railway has severed a parcel of land, occupation crossings were often introduced to allow access to the adjoining owner from one part of his land to his severed part on the other side of the line, and to reduce compensation. Provided the two parts of the land remain in common ownership, the PTC does have an obligation, pursuant to section 43 of the \textit{Lands Acquisition and Compensation Act} 1986, (formerly section 36 of the \textit{Lands Compensation Act} 1958) to make and at all times thereafter maintain the occupation crossing for the owners and occupiers of the affected land.

7.2.2.4 Road Diversions

Upon construction of railway lines, various government and other roads were cut, and to maintain access, railway road diversions were provided by the railway authorities. The land acquired for this purpose may be deemed part of the road system and the Land Titles Office will show these roads as road abutlabs provided the consent of the PTC is given.

7.2.3 Re-establishment of Railway Boundaries

While accepted re-establishment principles should be respected when attempting to relocate railway boundaries, additional aspects should also be taken into consideration.

Some of the significant features of railway boundaries which should be considered are:

(a) Most railway land was fenced very closely to the nominal reserve widths as stated on railway land record plans or descriptive surveys (original field notes);

(b) Where no reserve widths are stated on railway records, then the land was often fenced at an exact fraction or a multiple of one chain (e.g. \(\frac{3}{4}\),1,2,3 chains) from the original centreline of the railway;

(c) Some boundaries are irregular, particularly where whole titles were acquired rather than leaving small land locked portions;

(d) Sometimes the only record of the original railway boundary as "fenced in", is a scaled plot from the PTC’s Land Record Plans. Close examination of these records might suggest that an even chain from an abutting road alignment or the production of some other prominent boundary may have been the intention for the railway boundary;

(e) At the time of construction of a railway, no cadastral surveys were made of the areas enclosed by wing fences and the extent of these areas can only be determined and then only approximately by scaling from plans that still exist, and by any current occupation;

(f) Land taken for railway road diversions was usually taken at an exact width of one chain;

(g) Generally minimal excesses or shortages are found with railway reserve widths;

(h) There is a relationship between railway boundaries and railway track geometry. Boundaries are usually parallel or concentric and at constant side widths to the original design centreline.
In some instances, the original design centreline and the existing centreline may vary due to causes such as trackwork maintenance or re-design of curves. On straight sections of track these variations are generally found to be within 150 mm.

A good guide to the reliability of trackwork is to observe the intersection angle between two straights. If the straights are in good alignment, the variation between the observed and design angles can be less than 1 minute of arc.

Provided due regard is given to these potential differences, track geometry can be at least an assistance when re-establishing railway boundaries;

(i) In some locations (particularly along the Gippsland line) the land was vested and the railway constructed before other land in the vicinity was alienated from the Crown. These locations can usually be identified by the symmetrical layout of parish and township plans with respect to the railway.

Being aware of such a situation can assist the surveyor not only for re-establishing railway boundaries but for other boundaries adjoining the railway. As the railway centreline, fenceline and reserve widths were in place prior to the alienation of adjoining land, use of these features can provide a basis for re-establishment.

Rather than give a long detailed account of the railway construction and maintenance methods over the past 130 years, it is sufficient to say that careful control was exercised over any fence and track construction or maintenance.

In summary, maintaining the original reserve width of the railway land, whether or not it is evidenced by fencing is of the highest priority when re-establishing railway boundaries.

Present railway track geometry can be a good guide particularly where there is no fencing or little other evidence.

Therefore, any survey that is submitted to the PTC for its consent to the common boundary should show the reserve width, the relationship between boundary and occupation, and a distance to the railway centreline or centrelines if more than one track exists.

7.2.4 Other Relevant Information

7.2.4.1 Fences

Original fences erected by the railways were usually sleeper post and wire except for some concrete post and wire fences that were erected between 1928 and 1936. From 1890 onwards, the railway authorities were not obliged to, but often did, erect and maintain fences.

Most fencing was erected so that the fence wires define the boundary, but, for a few lines of railway, e.g. parts of the North Eastern line, the fencing was erected entirely on railway land so that the outside face of the posts defined the railway boundary. This happened in the period between the World War 1 and World War 2.

Railway sleeper fence posts have an approximate life of 60 years.

7.2.4.2 Gauge

Most of the railway tracks throughout Victoria have a broad gauge of 1.60 m between running edges. Some standard gauge lines of 1.44 m exist, for example on the North Eastern line and part of the Albion to Broadmeadows line.

7.2.4.3 Bridge Abutments and Level Crossings

Some bridge abutments and level crossings have a mileage (from Melbourne) plaque displayed which can assist in initial location of railway parcels of land, as these parcels are often tied in to mileages on railway records.
These plaques are usually attached:

(a) on one of the bridge abutments; or

(b) on a post near the level crossing with the mileage signifying the centre of the crossing.

7.2.4.4 Special Railway Conditions

With the rapid expansion of the rail network during the last century, it was often difficult to know exactly where future routes would be required. Vast areas were earmarked for possible rail routes and to enable greater control over any compensation to be paid, "Special Railway Conditions" were placed on Crown grants in these areas.

In 1973 Special Railway Conditions on Crown grants issued prior to the commencement of the Lands Compensation Act 1869 were removed by the Crown Grants (Removal of Conditions) Act 1972.

7.2.5 Railways of Australia Code

Victoria, as a member of the Australian and New Zealand Railways Conference has agreed to the adoption of this Code (ROA Code). The purpose of the code is to provide uniformity in the conditions governing the installation, use and maintenance of other parties' services and pipelines laid under railway tracks or elsewhere below ground within and across railway boundaries. The guidelines for installations included in the Code are designed to cause the least interference to both the installed services and railway operations. See ROA Code, 1977.

7.3 State Boundaries

7.3.1 Chronology

The boundaries of the Colony of New South Wales were declared in the Commission to Governor Phillip dated 2 April 1787, as:

"extending from the northern cape or extremity of the coast, called Cape York, in the latitude of 10 degrees 37 min. south, to the southern extremity of the said Territory of New South Wales, or South Cape, in the latitude of 43 degrees 39 min. south, and of all the country inland westward as far as the one hundred and thirty-fifth degree of longitude, reckoning from the meridian of Greenwich, including all the islands adjacent in the Pacific Ocean, within the latitude aforesaid of 10 degrees 37 min. south, and 43 degrees 39 min. south...".

By the Act 4 Geo iv., c96. Van Diemen's Land was separated from New South Wales and erected into a separate Colony by order of His Majesty, dated 14 June 1825.

The Proclamation issued by Colonel George Arthur, Lieutenant Governor of Van Diemen's Land dated 12 December 1825, describes the boundaries as:

"the said Island and all Islands and Territories lying to the Southward of Wilsons Promontory, in Thirty-nine Degrees and Twelve minutes of South Latitude, and to the Northward of the Forty-fifth Degree of South Latitude, and between the One-hundred-and-fortieth and One-hundred-and-fiftieth Degree of Longitude, East from Greenwich...".

On 15 August 1834 the Act 4 & 5 Will. iv., c95 was proclaimed - this was:

"An Act to empower His Majesty to erect South Australia into a British Province or Provinces, and to provide for the Colonization and Government thereof.

This Act was amended by the Act 1 & 2 Vie., c60 dated 31 July 1838. The boundaries of South Australia were defined as:
"on the North the Twenty-sixth Degree of South Latitude, on the South the Southern Ocean, on the West the One-hundred-and-thirty-second Degree of East Longitude, and on the East the One-Hundred-and-forty-first Degree of East Longitude...".

The Letters Patent of the King dated 19 February 1836 defined the boundaries in the following terms:

"On the North the twenty-sixth degree of South Latitude, on the South the Southern Ocean, on the West the one hundred and thirty-second degree of East Longitude, on the East the one hundred and forty-first degree of East Longitude...".

On 21 May 1839 the Colony of New South Wales was divided into nine districts for the collection of assessments upon stock; the ninth district, Port Phillip was described as lying to the south of the main range between the Rivers Ovens and Goulburn and adjacent to Port Phillip.

A Proclamation issued on 10 September 1839 defined the Port Phillip District as being:

"that portion of the Territory of New South Wales lying to the south of 35°S latitude and between 141° and 146°E longitude".

In 1840, Lord John Russell of the Colonial Office decided for the purpose of land management that the Colony (of New South Wales) should be divided into three districts, the southern of which was to be the district of Port Phillip.

The district was described as bounded to the north and west by the southern boundary of the county of St. Vincent and the south western boundary of the county of Murray "as far as the River Murrumbidgee" and from thence by the said River Murrumbidgee, the River Murray until the same reaches the South Australian Border; what this meant was that the District of Port Phillip now included not only the Riverina but also the east coast and its hinter land as far north as Batemans Bay.

The boundaries of the Port Phillip District of New South Wales were defined in the Imperial Act 5 & 6 Vie., c76 of 30 July 1842 ("An Act for the Government of New South Wales and Van Diemen's Land") as follows:

"... the Boundary of the District of Port Phillip on the North and North-east shall be a straight Line drawn from Cape Howe to the nearest Source of the River Murray, and thence the Course of that River to the Eastern Boundary of the Province of South Australia."

By the Act 13 & 14 Vie., c59 dated 5 August 1850 the Colony of Victoria was separated from New South Wales. The boundaries of the new Colony were described as:

"on the North and Northeast by a straight Line drawn from Cape Howe to the nearest Source of the River Murray, and thence by the Course of that River to the Eastern Boundary of the Colony of South Australia"

There were disputes as to the location of the River Murray boundary and the Act 18 & 19 Vie., c54 dated 16 July 1855 stated:

"It is hereby declared and enacted. That the whole Watercourse of the said River Murray, from its Source therein described to the Eastern Boundary of the Colony of South Australia, is and shall be within the Territory of New South Wales"

On 2 May 1851 the Victorian Electoral Act of 1851 was passed (New South Wales Act 14 Vie., No. 47).

This divided the Colony of Victoria into electoral districts - a schedule describing the boundaries of the electoral districts which formed the boundaries of Victoria included, "the South Australian frontier" and "the 141st meridian being the line dividing the Colony of New South Wales from South Australia" - see later section on South Australian border for explanation of this differentiation.

7.3.2 North East Boundary

"A straight line drawn from Cape Howe to the nearest Source of the River Murray...".
In August 1858 Robert L. J. Ellery (aged 31), Superintendent of the Williamstown Observatory (established in 1853), was transferred together with the instruments under his charge from the Electric Telegraph Department to the Surveyor-General’s Department to begin preliminary work for the proposed Geodetic Survey of Victoria. He still maintained his position as Government Astronomer.

Following a joint inspection in 1866 of the area adjacent to the boundary by Alfred William Howitt who was the Bairnsdale Police Magistrate and Goldfields Warden, and John C. Wilmot who was the Bairnsdale District Surveyor, a request to define the "straight line" boundary was made.

Sometime before 1869 Ellery and P. F. Adams, the Surveyor-General for New South Wales, met at Cape Howe and marked a point named Conference Point. They agreed that any termination of the border survey within 5 chains (100.6 m) of Conference Point would be acceptable to both New South Wales and Victoria.

By the end of 1869 Alexander Black determined the position of a spring 22.5 chains (450 m) north-west of Forest Hill which he decided was the source of the Murray River closest to Cape Howe.

Triangulation work was then commenced in December 1869 at Forest Hill with the object being to compute the bearing of a line from the "spring" to Conference Point.

Alexander Black spent eleven months in 1870 traversing the boundary from the spring to what is known as "Allans Peg" which was on the Western side of the Delegate River - a distance of some 61.5 km. Alexander C. Allan spent long periods between August 1869 and August 1871 traversing the boundary from the peg west of the Delegate River to Conference Point - a distance of some 115 km. The surveyed boundary line passed some 18.4 feet (5.6 m) south of the Conference Point mark placed by Ellery and Adams.

Along the surveyed boundary Black and Allan constructed 18 major and numerous minor rock cairns. Many of the major cairns still exist. The major cairns consisted of three types: the first being a pyramidal pile of rocks some 9 feet (2.7 m) high with a central wooden pole some 12 feet (3.7 m) high braced with four wooden poles located along the edges of the pyramid; the second type consisted of a round pile of rocks some 8 feet (2.4 m) high with a central wooden pole some 10 feet (3.1 m) high; the third type was a simple pyramidal pile of logs infilled with earth.

In between the major cairns they built minor cairns of rock some 4 feet (1.2 m) to 6 feet (1.8 m) in diameter. In all cases the cairns were constructed above a ground mark which consisted of either a marked stone or else a hole drilled in the solid rock.

For many years no interest was shown in this surveyed boundary; however, during the 1980s surveyors from the then Division of Survey and Mapping, Department of Property and Services and also from the Department of Land Information at the Royal Melbourne Institute of Technology (RMIT) independently visited most of the border cairns and reported that the majority were in good repair, some have been rebuilt and a few have been replaced by modern observing pillars, e.g. Carlyle trigonometric station.

In 1984 staff and students from the Department of Land Information at the RMIT performed sufficient survey work to re-establish the border survey in the vicinity of the present Princes Highway (east of Genoa). As a result of this Work a monument to surveyors Black and Allan was located on the boundary adjacent to the highway; this monument was unveiled by the Victorian Minister for Property and Services and the New South Wales Minister for Natural Resources in September 1985.

During March 1993, the Surveyors-General of New South Wales and Victoria visited sections of the border to assess the condition of the old monuments, and the need for repairs and/or further survey work needed to preserve the boundary. As a result, planning has commenced for a joint campaign to stabilize the pillar at Conference Point which has been affected by the shifting sand dunes, to fix the location of the major cairns using satellite technology, and to assist the establishment of visitor facilities such as walking tracks or lockouts at appropriate locations.

7.3.3 North Boundary

The Acts of 1842, 1850 and 1851 already mentioned defined the northern boundary as being "... the course of the River ..." - this was confusing as to which Colony had jurisdiction over the waters of the River Murray.
Most probably the territory of each Colony could have been said to extend *ad medium filum aquae* (the centre thread of the stream).

The New South Wales *Constitution Statute (Imperial Act 18 & 19 Vie., c54 of 16 July 1855)* clarified the situation by decreeing "...That the whole watercourse of the said River Murray from its Source therein described to the Eastern Boundary of the Colony of South Australia, is and shall be within the Territory of New South Wales..." - this Act actually altered the boundary between the two Colonies.

Over the years there have been legal battles as to which State (or Colony) owned particular pieces of land. In 1859 the New South Wales Government claimed an area known as Pental Island, near Swan Hill, as being within New South Wales and hence revenue from the pastoral leases on the island should be paid to it rather than to Victoria as was happening, on the grounds that the island lay to the north of the Watercourse of the River Murray.

In law it is assumed that the boundary will follow the main channel of the river, and any island or area of land to one side of the main channel would be regarded as an appendage to the bank on that side. Victoria claimed that the main course of the River Murray was to the north of the island. The case eventually went to the Privy Council in 1872 and was decided in favour of Victoria.

Under common law, distinction is made between slow changes and sudden changes in the course of a river or other natural feature.

Where a natural feature changes its position or course by gradual or imperceptible steps ("that if one had fixed his eye a whole day thereon together it could not be perceived") then the boundary shifts with the gradual change of the feature - this is the doctrine of *ALLUVION*. But if the change is sudden and well marked, then the boundary is unchanged - this is the doctrine of *AVULSION*.

As a result of these doctrines, there are parts of New South Wales in Victoria (south of the river), and parts of Victoria in New South Wales (north of the river) - fortunately the New South Wales Harbours and Rivers Department undertook a survey of the River Murray from Albury to Wentworth (West of Mildura) from 1869 to 1875.

The 1855 legislation refers only to the main channel and not anabranches, so this survey is vital in determining the location of the main course not too long after the Act. The main channel is generally considered to be the one that carries the greatest discharge.

On 1 May 1980, the High Court of Australia made a decision that fixed the northern boundary of Victoria. The High Court ruled unanimously that the northern boundary of Victoria is the top of the southern bank of the River Murray.

This ruling emanated from the case of "*The Queen vs E. D. Ward*" which was originally heard in the Victorian Supreme Court. In this case Ward was accused of shooting A. J. Reed near Barmah on the River Murray - the deceased was found "his body lying face downwards, the whole of his left foot and the toe of his right foot being in the water, the rest of his body being on land" so the question arose as to whether he was in Victoria or New South Wales. (The solution to this question was important because of different penalties in the two States.)

The Supreme Court Judge directed that:

"at least so much of the southern bank of the Murray as was not covered by water was within Victoria",

and so the jury brought in a verdict of guilty of murder.

An appeal to the Court of Criminal Appeal was dismissed so Ward appealed to the High Court of Australia on the sole ground of misdirection as to the location of the boundary between Victoria and New South Wales. The State of New South Wales successfully advocated a line along the top of the southern bank, whereas Victoria advocated the actual water line from time to time (a vibrating boundary).

One of the problems with Victoria's solution was, that if for some reason the river should dry up the boundary would disappear, and similarly when the river floods does the boundary move miles from
the normal course? (Victoria qualified its proposal by suggesting that in flood time the boundary would remain at the submerged top of the southern bank).

On 23 May 1881 the Victorian Governor in Council reserved from sale, for public purposes permanently, all that land which was the property of the State, within a distance of three chains (60.35 m) from the ordinary water level of the River Murray as confined by the left bank. This did not attempt to fix the State boundary but merely created the datum from which the permanent reservation was measured.

This reservation may shrink if the position of the river moves gradually towards Victoria and if the reverse occurs - if the river moves gradually away from Victoria it is possible that a new strip of unreserved Crown land may appear between the position of the river side of the permanent reserve (1881 position of ordinary winter level) and the present position of the top of the southern bank of the Murray River.

One possible ramification of the 1980 High Court decision is that in almost all cases the width of the permanent reserve will be less than the 300 links (3 chains) gazetted in 1881 - it is possible that in some cases no reserve will exist (if top of bank is 300 links from ordinary winter level).

The solution proposed by New South Wales also has problems - at times apart from high water there would be an isolated strip of New South Wales along the Victorian shore of the river, and also what is the situation where there is no clearly defined "top of the bank?"

The High Court was quite explicit in that the doctrines of accretion and erosion are vital to the River Murray boundary, so the final result of the 1980 High Court decision could be expressed as:

"the top of the southern bank as it was in 1855 taking into account the doctrines of accretion and erosion",

that is, the present position on the top of the bank was the top of the bank in 1855 and so should be adopted as the boundary unless there is evidence of sudden changes.

Professor Sandford dark in his paper "The River Murray Boundary: Muddying the Waters?" raises some interesting questions regarding the High Court decision: If the "top of the bank" test does apply there must be a strip of land between the ordinary high water mark and the top of the southern bank and this strip is a part of New South Wales, hence the Victorian-New South Wales boundary is a land/land boundary and the question arises as to how the doctrine of accretion can be applied to a land/land boundary.

Secondly, the doctrine of accretion must be double sided - a riparian landowner must be capable of winning as well as losing from gradual changes in the water boundary - if the River Murray slowly moves southward Victoria loses, but in the case of a northward movement of the river the northern bank will recede but the southern boundary will remain - Victoria cannot gain by accretion.

One further interesting point would be that Crown grants issued prior to 1881 (date of permanent reservation) presumably would have had riparian rights, but it would now appear that they would be limited to the top of the Victorian bank.

Where weirs have been constructed on the river the State boundary would be a line on the surface of the water vertically above the line which would have been adopted as the left bank of the river had the weir not been built and the land submerged.

On 22 October 1982 the High Court of Australia dismissed an appeal by a William Arthur Hazlett relating to the ownership of Beveridge Island which is approximately 20 km downstream from Swan Hill. Hazlett claimed that Beveridge Island was part of New South Wales and hence he was not liable to pay the (Victorian) State Rivers and Water Supply Commission for the use of the waters of the River Murray.

The claim by Hazlett was based on the fact that in 1875 a survey around Beveridge Island by Alien and Betts showed that the northern channel was the main stream being deeper, broader and carrying the larger flow; however, in 1980 a survey showed that the southern channel was now the main stream and so the island should be considered to be wholly north of the main watercourse and hence in New South Wales.

The Victorian case was based on the fact that the southern channel was an anabranch in 1875 and was still an anabranch and so Beveridge Island was still a part of Victoria.
The dismissal of the appeal was based on the fact that between 1876 and 1901 there had been no dispute between Victoria and New South Wales that Beveridge Island formed part of Victoria and that since Federation nothing has happened to alter that position - this is based on the "doctrine of prescription and acquiescence".

The doctrine of prescription and acquiescence could possibly be extended to cover the strip of land between ordinary winter level and the top of the southern bank to annul any claim by New South Wales to sovereignty.

Another interesting item revealed by dark is that the New South Wales Limitation Act of 1969 could mean that the Crown in the form of the New South Wales Government, has had its title to the 'strip' extinguished.

For some time the position of the border in the vicinity of the wharf area at Echuca had been in dispute at local government level. To resolve this issue/ Government surveyors from both adjoining States undertook a joint survey in 1991 to mark this section of the border on the ground.

This survey highlighted the need for practical guidelines for surveyors on determining the border along the River Murray, and in November 1991 the Surveyors-General of New South Wales and Victoria jointly published *Guidelines for the Determination of the State Border between New South Wales and Victoria Along the River Murray*. The aim of this publication is ".....to bring some consistency into determinations made in individual surveys, by providing past legislation and legal precedents which have been used in previous determinations.....".

These Guidelines were reprinted as Edition 2 in 1993, and are available in Victoria at no charge from the head office and regional offices of Survey and Mapping Victoria.

It is interesting to note that Professor J. R. V. Prescott, Department of Geography at the University of Melbourne, at a meeting concerning the Victoria-New South Wales border issues held in the Premier's Department on 8 January 1981, commented on the fact that he knew of only nine cases in the world where international boundaries were located on the banks of rivers; three in Liberia, between Costa Rica and Nicaragua, between Angola and Zambia, between Indonesia and Malaysia, between Iran and Iraq, between Namibia and South Africa, and between Malawi and Tanzania.

The total length of the New South Wales-Victoria Border is about 2050 km.

### 7.3.4 Western Boundary

"the one hundred and forty-first Degree of East Longitude" (the old eastern boundary of South Australia).

In 1839 Sir George Gipps, Governor of the Colony of New South Wales, arranged for the transfer of Charles James Tyers from the Royal Navy to the Colonial Service and appointed him Surveyor.

Tyers was to determine the longitude of the Gleneig River so as to be able to establish the position of the 141st meridian. He adopted 3 methods of determining this longitude; chronometric measurements from Sydney, triangulation from Melbourne and lunar observations at Portland Bay.

The results of his observations for the "Sandhill" to the east of the Gleneig River were:

- **Chronometric**: 141° 01' 43"E.
- **Lunar Observations**: 141° 01' 58.8"E.
- **Triangulation**: 141° 00' 28"E.

Returning from the Gleneig River, Tyers made further trigonometric observations which caused him to thoroughly revise his previous computations. The longitude of the broad arrow on the sandhill according to the revised calculations was 141° 02' 54"E.

After submitting his computations to a further check by Captain Owen-Stanley, master of the survey ship HMS Britomarte, who by different methods obtained values of 141° 02' 21"E and 141° 02' 50"E,
Tyers settled for a value of 141° 02’ 35.5”E, the mean of the two results, as the longitude of the broad arrow he had marked on the sandhill.

In November 1846 the Office of the Colonial Secretary requested the Deputy Surveyor-General (of New South Wales) to direct Surveyor Henry Wade to define the eastern boundary of the South Australian Colony. By the end of March 1847 Wade and his party were at the mouth of the Gleneig River where he was joined by Assistant Surveyor, Edward Riggs White, who was appointed by the South Australian Government as its observer.

Wade, adopting the mean of Owen-Stanley's values for Tyers' revised computations (141° 02’ 35.5”E), measured 188 chains westwards from the broad arrow and began his survey northwards.

Wade marked the boundary for 123 miles from the coast but had to abandon the project due to lack of supplies and finance to continue. White remained with the cattle and equipment to await instructions from the South Australian Government and Wade struggled back to Portland.

In 1849 the Secretary of State for the Colonies gave formal approval to proclamations declaring that the boundary as laid down by Wade should be deemed and construed to be the eastern boundary of the Province of South Australia.

The two Colonial governments (S.A. and N.S.W.) agreed that Assistant Surveyor E. R. White should continue the survey to the River Murray.

White left Portland in late autumn of 1849 and after many trials and tribulations managed to extend Wade's survey by 97 miles before having to abandon the project due to lack of water for his bullocks - he lost 4 bullocks on the trip back to Lockhart and another went for 11 days without water; eventually he took 2 horses to ride to the river; one horse died after being without water for 4 days and the other collapsed and White had to drink its blood to sustain himself.

Eventually he, plus the saddle and bridle from the dead horse, reached a pastoral station on the other side of the river and rode to Adelaide.

White completed the survey in 1850, suffering hardships equal to or greater than those experienced previously. In all, he defined 157 miles of the boundary, erecting mounds at half mile intervals.

During 1866 official doubts arose as to Wade and White's line being on the 141st. meridian thus prompting the New South Wales government to suggest to their South Australia counterparts that prior to the border being produced north of the River Murray a new fixing be made of the meridian. By December 1868 George Smalley, Government Astronomer of New South Wales, and Charles Todd, Superintendent of Telegraphs in South Australia, had completed a comprehensive programme of astronomical observations on the north bank of the River Murray which showed Wade and White's line, where it struck the river, to be 2 miles 19 chains west of the 141st. meridian.

Exhortations and pleadings by the South Australia government over the next 40 years to have the border shifted eastwards fell on deaf ears east of the border. They culminated in a High Court action in 1911 and a Privy Council appearance in 1913 both of which South Australia lost. The border stayed where it was.

It is interesting to note that expert witnesses in the case before the Privy Council estimated the probable error of the astronomical determination of longitude made in 1847 at amounts varying from one mile to three miles. Also, that the Privy Council accepted that the determination made north of the River Murray with the aid of telegraphic signals is probably 100 yards to the east of the meridian which it purports to mark out. In terms of the Australian Map Grid related to the Australian Geodetic Datum established in 1966, the obelisk erected by Smalley and Todd is about 144 metres to the east of the 141st. meridian.

One result which arises from this Privy Council decision is that Victoria has a common boundary with South Australia for some 2.25 miles (3.6 km) along the River Murray - this is a distance of some 10 km along the actual river. For this section of the river, the Solicitor-General in 1974 commented that common law would probably apply and on this basis the State boundary would be the centre thread of the River Murray as at 1842 and would not follow the southern bank.
In spite of the Privy Council judgement favouring the 1847-50 line no attempt was made to preserve surviving original monumentation such as blazed trees. Passing, as it does, through sandy and clayey country, devoid of rocks, the only original monumentation to be found these days are the few rock cairns at either end of the line. The earthen mounds so often spoken of have long since gone.

Early cadastral survey evidence of boundaries adjoining the border suggest the line suffers considerable deviations in azimuth, as much as a degree in some cases, as it progresses northwards; all the more reason for disappointment that the original documentation of the border survey is lost.

Since 1984 a programme to "re-establish" the boundary has been jointly undertaken by the Surveyors-General of Victoria and South Australia. The survey is being undertaken on a part-time basis with field work scheduled for completion in 1993.

The object of this recent survey is not to relocate the boundary to the 141st meridian or to re-mark the 1847-1850 survey but rather to re-establish the 1847-1850 survey and place sufficient substantial monuments adjacent to it so that any surveyor will be able to re-establish the boundary at any location at any time with ease.

An indication of the lifespan of the early monuments is provided in portion of a report from John J. Kean, a surveyor of the Department of Lands, South Australia, who is involved with re-establishing the border.
"As there are in this sector no original marks of the border survey extant, I am left with having to fix the border position by first re-establishing the eastern boundaries of the South Australian rural sections adjacent to this particular sector of the border. The field notes of these surveys, done during the period 1870 to 1910, indicate that at the time there was sufficient evidence of the border survey on the ground for the surveyors to establish their rural boundaries relative to it. In a number of cases they mention finding the odd survey mound, but for the most part it would be evidence of the cut line that enabled them to fix the border line. The mounds, surrounding the survey posts almost to their tops, probably to protect them from bush fires or from being pushed over by cattle rubbing against them, made it very easy for the white ants to destroy them. In a few short years all that was left was the mound and what with the wind and rain these last vestiges of the original survey marks were well on the way to vanishing by the 1870s”.

7.3.5 Southern Boundary

Van Diemen's Land (name changed to Tasmania by proclamation of 1 January 1856) was separated from the Colony of New South Wales and erected into a separate Colony on 14 June 1825 (Act 4 Geo. IV c96) - this proclamation was issued by the Lieutenant Governor of Van Diemen's Land, Colonel George Arthur.

The proclamation dated 12 December 1825 described the boundaries as including:

"...islands and territories lying to the southward of Wilsons Promontory in 39° and 12' of south latitude...". (Note: The tip of Wilsons Promontory is 39° 08' 19" south latitude).

This proclamation denned the southern boundary of the Colony of New South Wales which was accepted as being the southern boundary of the Colony of Victoria after separation.

The Victorian Electoral Act of 1851 (New South Wales Act 14 Vie., No.47 mentioned previously) was passed on 2 May 1851. A schedule to this Act, describing the boundaries of the electoral districts which formed the boundaries of Victoria, included:

"the sea": "the sea shore", "including the Lawrence and Lady Julia Percy's Islands", "including all the Islands at Port Fairy", "Port Phillip Bay", "the shores of Port Phillip Bay", "the water of Port Phillip Bay", "including the small Islands near the channels at the mouth of Port Phillip and those of Geelong Bay", "including French and Phillip Islands and the small Islands in Western Port Bay."

There is no mention of the islands to the east of Western Port Bay so the Act could be read to imply that these islands may not be part of Victoria but possibly could still be part of New South Wales.

7.3.6 Offshore Boundary

As a result of a High Court of Australia decision on 17 December 1975 the sovereignty of the Crown in right of the State extends only to the low water mark.

7.3.7 Depth

It is commonly accepted that the Crown has sovereignty to the centre of the earth. The Land Act of 1891 imposed a depth limit in new Crown grants. Since 8 August 1891, 99% of Crown grants issued have been limited to 50 feet (15.24 m) below the surface, and since 3 July 1973 this has been metricated to 15 m.

There are exceptions to this rule, for example some land at Morwell and Churchill extends down to 305 metres.

7.3.8 Height

It is commonly accepted that the Crown has complete and exclusive sovereignty over the air space above its territories.
The Victorian Parliament has the power to make laws relating to the control and use of the air space above its territory which are not inconsistent with Commonwealth Laws.

7.3.9 General

It is of interest to note that as the "straight line boundary" in the north-east of the State, the southern boundary and the River Murray boundary with South Australia have not been subjected to the Judicial process, it is assumed that these boundaries are acceptable but are subject to confirmation (or alteration) by the courts of the land.

7.3.10 Bibliography


7.4 Maritime Boundaries

7.4.1 Introduction

Australia's maritime zones are claimed by the Federal Government. Since 1901 Australia has claimed three main zones which still exist.

Australia's territorial sea is 3 nautical miles (n mile) wide, a distance which was also claimed by Britain on behalf of the Australian Colonies before federation. Maritime claims are generally measured in nautical miles each of which is equal in length to 1 minute of latitude which measures 1852 metres.

Although claims to territorial seas 3 n mile wide were general until the 1950s there are now only about fifteen countries which still make this claim.

In contrast eighty-seven countries claim territorial seas 12 n mile wide. It is likely that Australia's claim will be increased to 12 n mile before 2000.

On 1 November 1979 the Australian Fishing Zone came into existence. This is a claim to exclusive fishing rights in waters within 200 n mile of the Australian coast. Where this claim overlaps similar claims from neighbouring States boundaries have been agreed to divide the overlapping area.

Australia now has boundaries which separate fishing zones with France in New Caledonia, the Solomon Islands, Papua New Guinea and Indonesia. This means that this continuous line extends from north of Norfolk Island in the east to west of Ashmore Reef in the west.

Australia is one of eighty-eight countries which claim fishing zones 200 n mile wide. Some of these countries claim exclusive economic zones rather than fishing zones which means they also claim the seabed out to 200 n mile. Australia makes a separate claim to the seabed.

Australia's first claim to the continental margin in September 1953 did not specify the extent claimed. On 22 November 1967 Australia reiterated its claim in the terms of the 1958 Convention on the Continental Shelf. Article 1 of that Convention allows claims to the seabed and subsoil of submarine areas adjacent to the coast to a water depth of 200 metres or beyond that limit where the depth of water allows the exploitation of natural resources. During the negotiation of the 1982 Convention on the Law of the Sea this definition was abandoned in favour of two formulae related to the foot of the continental slope. This new definition gives a finite limit to seabed claims whereas the 1958 definition, which Australia still uses, permits the claim to be advanced seawards as submarine mining and drilling techniques are improved.

7.4.2 The Definition of Maritime Claims

In defining its maritime claims it is necessary for Australian authorities to fix three types of boundaries. First it is necessary to define the baseline from which zonal claims to territorial waters
and fishing zones are claimed. Second, common limits must be agreed with near neighbours when claims to maritime zones overlap. Third, there is a need to know where the outer limit of claims to the seabed is located. Only the first and third types of limits are considered here because there are no overlapping limits with other countries in the vicinity of Victoria.

The baseline is the datum from which zonal claims to the territorial waters and fishing zone are measured. Once the baseline is defined the outer limits of these zones can be found by measuring 3 n mile or 200 n mile seawards. In each case the boundary of the territorial sea or fishing zone would be fixed by the outer edge of the overlapping arcs drawn from every point on the baseline (Figure 1).

Figure 1. Outer limit of territorial sea formed from overlapping arcs

Australia's baseline was proclaimed on 9 February 1983 in a special Commonwealth Gazette. A copy of the relevant portions of that Proclamation is provided in the appendix to this Section.

The Australian baseline can be divided into three parts.

First there is the low-water line. Because there are a number of low-water lines it is necessary to specify which one will be used. Australia has selected the Lowest Astronomic Tide and is the only country into the world to have done so to this date. The Lowest Astronomic Tide is the lowest level.
which can be predicted to occur under average meteorological conditions and under any combination of
astronomic conditions.

It cannot be found by mathematical rules linking the various tidal constituents. It can only be properly
obtained by observing tidal levels for the full tidal cycle of 18.6 years. Because most Australian charts do not
use Lowest Astronomic Tide as the datum a series of maps at a scale of 1:100 000 is being prepared to show
Australia's baseline.

The variation between the location of different tidal levels will be greatest on those coasts which have gentle
offshore gradients and large tidal ranges. These coasts are found off northwest Australia and Arnhem Land.

The second part of Australia's baseline consists of closing lines across the mouths of some bays and all rivers.
Articles 7 and 13 of the 1958 Convention permit straight lines to be drawn across the mouths of bays and
rivers respectively. In such cases the straight line becomes the baseline instead of the low-water line which
lies landwards of that line. The waters which lie landwards of these closing lines have the status of internal
waters of Australia.

Bays can be closed by straight lines if they satisfy the following criteria. They must be well marked
indentations whose penetration is such as to create landlocked waters and constitute more than a mere
curvature of the coast. Plainly this requirement alone would not enable a decision to be made in respect of
those bays which were marginal.

Along the Australian coast it would be possible to find a spectrum of features which ranged from a mere
curvature of the coast to a well-marked indentation. But when lawyers, surveyors or geographers are asked to
mark on the spectrum the point which separated bays according to Article 7 from all other bays there would
be a number of different answers.

To help solve this problem a mathematical test was added. The indentation will only be regarded as a bay if
its area is larger than or as large as the area of a semi-circle whose diameter is equal to the line drawn across
the mouth of the bay. The operation of this rule is shown in Figure 2.
Fig. 2 The rules for identifying legal bays.

Since the area of the bay is less than the area of the semi-circle, the bay cannot be closed.

Since the area of the bay is larger than the area of the semi-circle, the bay can be closed.

The diameter of the semi-circle equals the total width of mouths X, Y and Z. Islands in the bay count as part of the area of the bay.

If the mouth of the bay is wider than 24 nautical miles, a line can be drawn where the bay narrows to 24 nautical miles, providing the semi-circle test is satisfied.
Article 7 sets out some interpretations of this rule which are also shown in Figure 2. They are as follows:

If there are islands in the mouth of the bay the length of the closing line is the sum of lines drawn across the channels between the islands and between the islands and the coast.

If there is an island in the bay its area is counted as part of the area of the bay. If a bay has a mouth wider than 24 n mile but satisfies the semi-circle test it is permissible to draw a closing line within the bay where it narrows to 24 n mile.

Article 7 specifies that these rules do not apply to historic bays. These bays are usually considered to be bays which have been claimed and exclusively used by the State for a long time without those claims being challenged by other countries. For example Hudson Bay has been claimed by Canada as an historic bay since 1906.

On 31 March 1987 Australia claimed Anxious, Encounter, Lacepede and Rivoli Bays as historic bays. They are all on the coast of South Australia. It is believed that this claim relates to the Letters Patent of South Australia dated 19 February 1836. This document noted that the territory of South Australia included “...... all and every the Bays and Gulfs thereof ......”. No historic bays have been proclaimed along the Victorian coast.

Article 13 of the 1958 Convention permits closing lines to be drawn across the mouths of rivers which flow directly into the sea. There are no limits on the length of that line and in 1961 Argentina and Paraguay drew a line across the mouth of the Rio de la Plata which measures 120 n mile.

The reference to a river flowing directly into the sea does not seem to be important. The French version of this article indicated that it referred to rivers which did not form an estuary. But in this period of rising sea levels there would be very few rivers which did not form estuaries and this aspect of the definition appears to have been ignored by all countries.

The third part of the Australian baseline consists of straight lines drawn along coasts which are deeply indented or possess a fringe of islands in their immediate vicinity. This substitution of regional straight lines for the low-water line entered into international law through a case before the International Court of Justice in 1951. The case involved Britain and Norway and centred on Britain's objection to Norway claiming territorial seas from a series of straight lines drawn along its northern fjord coast.

The Court decided in Norway's favour and this concept of regional straight baselines was written into the 1958 Convention and has been retained in the 1982 Convention which has not yet entered into force. The intention of the rule is simple. It allows straight lines to be used instead of low-water lines which might produce very complicated patterns of territorial seas which would create the possibility of friction between foreign navigators trying to stay outside territorial seas and surveillance authorities trying to detect infringements by aliens.

The straight lines are designed to eliminate the culs-de-sac and the enclaves of non-territorial waters within the zone of territorial seas. In fact the spirit and letter of this rule have been breached in a most flagrant manner by a number of countries including Bangladesh, Ecuador, Iceland and Vietnam.

Australian authorities have stuck fairly closely to the letter and spirit of Article 4 of the 1958 Convention. Indeed in the vicinity of the Great Barrier Reef Australia's straight baselines have been extremely modest.

Article 4 provides some guidelines about the construction of straight baselines. It requires that they should not depart to any appreciable extent from the general direction of the coast; that they should not connect with low-tide elevations unless they are surmounted by a lighthouse or similar installation and that they should enclose waters which are sufficiently closely linked with the land to be internal waters.

Compared with the precision of Australia's baseline the outer limit of the claim to the seabed can only be described as general. There does not appear to have been any attempt to produce a limit which is related to the structure or morphology of the seabed.

As Figure 3 shows, the limits in southern Australia consist mainly of long straight lines related to parallels and meridians. The diagram included in the Commonwealth Petroleum (Submerged Lands) Act 1967, as amended, shows the Adjacent Areas into which the Australian claim to the seabed has been declared.
been divided. These areas have been defined for the co-operative administration of offshore mining activities by the Commonwealth and State and Territory administrations.

7.43 Limits of Marine Claims in the Vicinity of Victoria

Australia's baseline along the Victorian coast consists mainly of the Lowest Astronomic Tide. That line has now been marked on official baseline maps which have not yet been made available to the public. If a question arose about whether a particular action was conducted from a vessel within Australia's territorial waters or fishing zone it would be necessary to identify the location of Australia's baseline so that the outer limit of the zone can be established and related to the position of the vessel.

Graham H. McIntosh, a registered surveyor, and formerly of the Hydrographic Office in Sydney, has written an unpublished paper dealing with the precise location of the low-water line. His clear message is that it is not sufficient in such cases to rely only on published charts or maps. The position of any low-water mark will change as the topography of the seabed in the vicinity of the shore changes. He advises that when the baseline must be determined very accurately it is necessary to visit the site to make measurements.

He outlines four stages in the performance of this task.

First a preliminary reconnaissance should identify the site and decide whether it needs to be extended to cope with unexpected problems which might arise. At the same time information should be collected about monuments from which the proposed survey can be connected to
horizontal and vertical datums, about tidal records in the area, and about any land or hydrographic surveys made in the area which might yield useful information.

The second stage involves analysing available tidal information to determine the elevation of the Lowest Astronomic Tide referred to Australian Height Datum. If it is decided that additional tidal observations are necessary, this should be done.

The third stage requires a field survey of the topography of the land and the adjacent seabed related to the Australian Height and Geodetic Datums. This survey should enable the low-water line to be determined along the coast, around any harbour works and around any low-tide elevations.

These last two reminders are timely. The baseline from which the territorial sea is measured includes the outermost permanent harbour works which form an integral part of the harbour system and in certain circumstances low-tide elevations.

A low-tide elevation is a naturally formed area of land which is above and surrounded by water at low-tide and is submerged at high tide. These inter-tidal features can be used as part of the baseline providing they lie wholly or partly at a distance not exceeding the breadth of the territorial sea from land. The operation of this rule is shown in Figure 4. The low-tide elevations B and C can be used to extend the territorial seas because they lie less than 3 n mile from the land. A and D cannot be used because they lie more than 3 n mile from land. The fact that A lies less than 3 n mile from a closing line across a bay does not count.

Mclntosh's fourth stage involves the preparation of the final report and the comparison of the outer edge of the maritime zone from the surveyed site with the location of the offending vessel. All bays which satisfy Article 7 of the Convention and all river mouths along Victoria's coast have been closed. The exact location of these closing lines has not yet been provided to the public, (1989).

Figure 4

Article 7 provides that the closing line will be drawn between the low-water marks at the natural entrance points of the bay. While a feature such as Port Phillip Bay has well marked entrance points some bays have rounded or indistinct entrance points.

While precise rules have been developed in the United States to deal with the problem of locating closing lines in entrance points which are not well defined and while some of them have been favourably received in cases before the Supreme Court in that country, there is no evidence that the methods have gained wider acceptance.
In the case of river mouths Article 13 simply states that the straight line should be drawn across the mouth of the river between points on the low-tide line of its banks. There are some configurations of river mouths which could create some debate about the location of the correct closing line.

Only one section of Victoria's coast has been enclosed by straight baselines in accordance with Article 4 of the 1958 Convention. The segments are numbered 21-28 in Table 1 in the appendix to this Section. These eight straight lines join the southern tip of Wilsons Promontory to Tongue Point via Wattle, Kanowna, Cleft/Citadel, Great Glennie and Norman Islands. Clearly this straight baseline is justified by the fact that these islands fringe the coast in its immediate vicinity.

It should be noted that the co-ordinates given in Table 1, part of which is shown in the appendix, do not define the termini of the various straight lines. The actual terminus is the point on the low-water line which is closest to that position.

Furthermore if any straight line intersects the low-water line then the baseline follows the seaward section of the low-water line as shown in Figure 5.

Points X and Y are shown as points defined in Table 1 of the Proclamations dealing with Australia's baselines. It is then necessary to locate the nearest point on the low-water line. When these points on the low-water line are linked it is seen that they intersect the low-water lines of three islands. On the island marked A the baseline would follow the low-water line from a to b. On the island marked B the baseline would follow the low-water line between c-d and e-f and a bay closing line between d-e. On the island marked C the baseline would follow the low-water line g-h, i-j and k-l and the straight baseline between h-i and j-k.

When the Australian Fishing Zone came into effect on 1 November 1979 a map was issued to show its outer limits and the co-ordinates of points on that line were printed on the reverse of the map.

This map was produced by the Division of National Mapping and given the number NMP 79/128. An extract for the vicinity of the Victorian coast is shown in Figure 6 together with the relevant co-ordinates.
Figure 5. The specific location of segments of Australia's straight baselines
Figure 6. Australia's Fishing Zone in the vicinity of Victoria and Tasmania

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Although these limits were defined before the baselines were proclaimed the Victorian baselines will not have influenced the outer limit of this zone because the baseline continues to be the low-water mark in the relevant sections of coast east and west of Bass Strait. Victoria's Adjacent Area shown in Figure 3 has a curious attenuated appearance and only reaches the outer limit of Australia's claim to the continental margin at two short sections east and west of Tasmania. This shape was imposed by agreed boundaries with South Australia, Tasmania and New South Wales.

It is understood that South Australia wanted the boundary between Adjacent Areas to be a prolongation of the land boundary. Victoria wanted the line to be drawn a right angles to the general direction of the coast. The agreed boundary lay close to the bisector of the angle formed by those rival claims.

When Tasmania was created, as Van Diemen's Land in 1825, it was defined by a rectangle of parallels and meridians. In Bass Strait the northern parallel was 39 degrees 12 minutes south and this boundary had to be respected when the Adjacent Areas were defined. The lines which trend to the southwest and southeast from this parallel appear to be equidistant lines between the nearest points on the Victorian and Tasmanian coasts.

New South Wales and Victoria agreed to extend their final section of land boundary seawards. That final section joins the nearest tributary of the Murray to Cape Howe. That boundary also serves as a division between the fishing areas of Victoria and New South Wales and two pillars were erected on the line at the coast so skippers would know when the line was crossed.

### 7.4.4 Other Maritime Limits

Both the State and Commonwealth governments have also drawn other boundaries in the offshore zone to identify areas set aside for particular purposes.

For example a traffic separation scheme has been created off the tip of Wilsons Promontory to reduce the risk of collision, and a safety zone has been created around the production platforms of the Bass Strait oil field. Vessels of more than 200 gross tonnage may not enter that safety zone (Fig.7).

![Figure 7](image-url)

The Victorian government has created marine parks in and outside Port Phillip Bay and has prohibited diving in areas where there are historic wrecks. There are also spoil grounds where dredged material can be dumped and submarine exercise grounds.
There are too many such areas to be described here and surveyors interested in particular areas of offshore waters should enquire of the appropriate government departments to discover whether any specific zones have been declared.

7.4.5 Conclusion

As you fly over Australia's coastal waters the overwhelming impression is of uniformity. A uniform colour, a uniform surface and usually a uniform lack of activity. In fact there are variations in the productivity of the sea and seabed, in the dangers to navigation, and in the uses which can be made of particular areas.

Governments have to regulate activities by their citizens and foreigners in the surrounding seas and they do this by rules which apply to distinct regions. These regions have to be delimited by boundaries and any chart of Bass Strait which showed all the official boundaries which existed in it would appear as a confusion of lines.

If surveyors have any professional concern with maritime boundaries it is likely that it will be with the baseline from which the territorial seas are measured. It is a matter for satisfaction that Australian authorities have taken their duty to the international community so seriously that strenuous efforts have been made to define an unambiguous baseline which conforms to present international rules.

7.4.6 Bibliography


McIntosh G.H., *The Precise Location of the Low-water line from which to locate Baselines of the Territorial Sea*. Unpublished paper presented to the IGU Conference in Sydney, August 1988.


PROCLAMATION

Commonwealth of Australia

By His Excellency

N. M. STEPHEN

Governor-General of the Commonwealth of Australia

WHEREAS it is provided by sub-section 7(1) of the Seas and Submerged Lands Act 1973 that the Governor-General may, from time to time, by Proclamation, declare, not inconsistently with Section II of Part I of the Convention on the Territorial Sea and the Contiguous Zone, the limits of the whole or any part of the territorial sea:

AND WHEREAS it is provided by sub-section 7(2) of that Act that, for the purposes of such a Proclamation, the Governor-General may, in particular, determine either or both of the following:

(a) the breadth of the territorial sea;
(b) the baseline from which the breadth of the territorial sea, or any part of the territorial sea, is to be measured;

NOW THEREFORE I, Sir Ninian Martin Stephen, the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council in pursuance of section 7 of the Seas and Submerged Lands Act 1973—

(c) hereby revoke, with effect on and from 14 February 1983, the Proclamation under section 7 of that Act made on 24 October 1974 and published in the Gazette on 31 October 1974, and

(d) hereby declare that, on and from 14 February 1983, the inner limit of a part of the territorial sea of Australia referred to in the Schedule is the baseline determined in accordance with that Schedule.

SCHEDULE 1. (1) In this Schedule—

"low-tide elevation" has the same meaning as in the Convention;
"low-water" means Lowest Astronomical Tide, and "low-tide" has a corresponding meaning;
"mile" means an international nautical mile, being a distance of 1,852 metres;
"straight line" means geodesic;
"the territorial sea" means the territorial sea of Australia. (2) For the purposes of this Schedule—

(a) subject to paragraphs (b) and (c), an indentation is a bay if the distance between the low-water marks of the natural entrance points of the indentation does not exceed 24 miles;
(b) an indentation having one mouth is not a bay if the area of the indentation is less than that of the semi-circle whose diameter is a line drawn across the mouth of the indentation;
(c) an indentation which, because of the presence of islands, has more than one mouth is not a bay if the area of the indentation is less than that of the semi-circle drawn on a line as long as the sum total of the lengths of the lines across the different mouths;

(d) the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points, islands within the indentation being included as if they were part of the water areas of the indentation.

(3) For the purposes of this Schedule, the outermost permanent harbour works forming integral parts of a harbour system shall be regarded as forming part of the coast.

(4) For the purposes of paragraphs 2 (d), 3 (d) and 4 (2) (d), the low-water line of a low-tide elevation shall not be taken into account unless a lighthouse or similar installation that is permanently above sea level has been built on the low-tide elevation.

(5) Where for the purposes of this Schedule it is necessary to determine the position on the surface of the Earth of a point, line or area by reference to the Australian Geodetic Datum—

(a) that position shall be determined by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of 100/29825 and by reference to the position of the Johnston Geodetic Station in the Northern Territory and

(b) the Johnston Geodetic Station shall be taken to be situated at Latitude 25° 56'54.5515" South and at Longitude 133° 12'30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to in paragraph (a).

2. Subject to clauses 5, 6 and 7, the baseline from which the breadth of that part of the territorial sea adjacent to the mainland of Australia is to be measured is the line constituted by the following lines:

(a) the low-water line along the coast, except where that low-water line is landward of a line referred to in paragraph (b), (c) or (d);

(b) in the case of each river that flows directly into the sea on that coast, a straight line drawn across the mouth of the river between points on the respective low-tide lines of its banks, except where the line is landward of a line referred to in paragraph (c) or (d);

(c) in the case of each bay on that coast, a straight line drawn between the respective low-water marks of the natural entrance points of the bay, except where the line is landward of, or identical with, a line referred to in paragraph (d);

Proclamation

(d) the straight lines joining each of the points on the low-water line of the coast that are on or closest to the points of latitude and longitude specified in Column 2 of an item in Table 1 (being points of latitude and longitude determined by reference to the Australian Geodetic Datum).

3. Subject to clauses 5, 6 and 7, the baseline from which the breadth of that part of the territorial sea adjacent to the mainland of the State of Tasmania is to be measured is the line constituted by the following lines:

(a) the low-water line along the coast, except where that low-water line is landward of a line referred to in paragraph (b), (c) or (d);
(b) in the case of each river that flows directly into the sea on that coast, a straight line drawn across the mouth of the river between points on the respective low-tide lines of its banks, except where the line is landward of a line referred to in paragraph (c) or (d);
(c) in the case of each bay on that coast, a straight line drawn between the respective low-water marks of the natural entrance points of the bay, except where the line is landward of, or identical with, a line referred to in paragraph (d); and
(d) the straight lines joining each of the points on the low-water line of the coast that are on or closest to the points of latitude and longitude specified in Column 2 of an item in Table 2 (being points of latitude and longitude determined by reference to the Australian Geodetic Datum).

4. (1) In this clause—
(a) a reference to the baseline on the mainland of a State or Territory is a reference—
(i) in the case of a State (other than Tasmania) or the Northern Territory—to the line determined in accordance with clauses 2, 5, 6 and 7; and
(ii) in the case of Tasmania—to the line determined in accordance with clauses 3, 5, 6 and 7;
(b) a reference to an island does not include a reference to—
(i) an island declared by sub-clause (3) to be an excluded island for the purpose of sub-clause (2); or
(ii) an island included in a group of islands declared by sub-clause (4) to be an excluded group of islands for the purpose of sub-clause (2);
(c) a reference to a group of islands does not include a reference to a group of islands declared by sub-clause (4) to be an excluded group of islands for the purpose of sub-clause (2).

(2) Subject to clauses 5, 6 and 7, the baseline from which the breadth of that part of the territorial sea adjacent to each island or group of islands comprised within a State or the Northern Territory and seaward of the baseline of the mainland of that State or Territory, as the case may be, is to be measured is the line constituted by the following lines:

(a) the low-water line along the coast of the island, or, in the case of a group of islands, along the coast of each island included in the group, except where that low-water line is landward of a line referred to in paragraph (b), (c) or (d).
(b) in the case of each river that flows directly into the sea on the coast of the island, or on the coast of an island included in the group of islands, as the case may be, a straight line drawn across the mouth of the river between points on the respective low-tide lines of its banks, except where the line is landward of a line referred to in paragraph (c) or (d);
(c) in the case of each bay on the coast of the island, or on the coast of an island included in the group of islands, as the case may be, a straight line drawn between the respective low-water marks of the natural entrance points of the bay, except where the line is landward of, or identical with, a line referred to in paragraph (d); and
(d) the straight lines joining each of the points on the low-water line of the coast of the island, or on the low-water lines of the coasts of islands, included in the group, as the case may be, that are on or closest to the points of latitude and longitude specified in Column 2 of an item in Table 3 (being points of latitude and longitude determined by reference to the Australian Geodetic Datum).

(3) Each of the following islands comprised within the State of Queensland, namely, Turnagain Island, Turu Cay and Pearce Cay, is an excluded island for the purpose of sub-clause (2).

(4) Each of the following groups of islands comprised within the State of Queensland is an excluded group of islands for the purpose of sub-clause (2):

(a) the islands known as Aubusi, Boigu and Moimi;
(b) the islands known as Dauan, Kaumag and Saibai;
(c) the islands known as Anchor Cay and East Cay;
(d) the islands known as Black Rocks and Bramble Cay;
(e) the islands known as Deliverance Island and Kerr Islet.

5. The baseline from which that part of the territorial sea adjacent to a low-tide elevation situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island is to be measured is the low-water line on that low-tide elevation.

6. (1) If the low-water line of a naturally-formed area of land which is above water at high-tide would intersect a straight baseline drawn in accordance with a provision of this Schedule, there shall be substituted for the part of that baseline that would be between the points of intersection of that low-water line and that baseline the line that would be the baseline between those points if the seaward part of the area of land were part of the coast of the mainland of Australia. (2) In sub-clause (1)—

(a) a reference to the points of intersection of the low-water line of an area of land and a straight baseline is, where that low-water line and baseline intersect at more than two points, a reference to the two outermost points of intersection; and
(b) a reference to the seaward part of the area of land is a reference to the part or parts of the area of land on the seaward side of that straight baseline.
7. (1) Where straight lines referred to in any of paragraphs 2 (d), 3 (d) or 4 (2) (d) of this Schedule join different points on the low-water line of the same island, the baseline from which the part of the territorial sea adjacent to that island or a group of islands in which that island is included, as the case may be, between those points is to be measured is the line that would be the baseline if the seaward part of the coast of the island between those points were part of the mainland of Australia.

(2) In sub-clause (1), a reference to the seaward part of the coast of an island between two points is a reference to that part of the coast of the island between those points that includes the most seaward point of the island.

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**Commonwealth of Australia**

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