

# 1Part 29 – Profit a prendre

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# **<sup>1</sup>Part 29 – Profit a prendre**

## **General Law**

[29-0000]

A profit a prendre is an interest that arises by agreement between two parties and relates to the right of one party to enter upon the land of the other and to extract or remove part of the land's substance (e.g. sand, gravel, trees, etc).

Profits a prendre were not recorded in the Land Registry until amendments to the *Land Title Act 1994*, that commenced on 13 July 1997 and amendments to the *Land Act 1994*, that commenced on 6 May 2004 made specific provision for their registration. This situation has existed even though relevant Torrens legislation envisaged the registration of profits a prendre and the repealed *Real Property Act 1861* provided for registration of easements and incorporeal rights.

The following types of profit a prendre are recognised:

- appurtenant profits which relate to or fulfil a need of a dominant parcel of freehold land or lease under the Land Act;
- profits in gross that benefit the grantee personally and are not attached to other freehold land or lease under the Land Act;
- profits in common in which the proprietors of both a dominant and a servient parcel share the enjoyment of a right to some substance of the encumbered freehold land or lease under the Land Act, however, these are not common in Australia.

Both an appurtenant profit and profit in gross may be mortgaged. However, only a profit in gross may be sold, the subject of a gift, or pass to a beneficiary by will or intestacy.

Every profit a prendre must be granted for a specific period that can be based on either a date or the occurrence of an event.

## **Legislation**

[29-1000]

The functions of the Chief Executive under the *Land Act 1994* relating to the keeping of registers are carried out by the Registrar of Titles under delegation made under s. 393 of that Act.

## **Practice**

### **Requirements of Profits a prendre**

[29-2000]

For a profit a prendre to be registered in the Land Registry it must be prepared in a Form 29 – Profit a prendre. Full particulars of the lot, or lease under the *Land Act 1994* that is burdened must be shown in Item 2 and if a lot, or lease under the Land Act is benefited, its particulars are to be shown below those of the burdened lot, or lease under the Land Act. Both the purpose and the term or event on which the profit a prendre profit ceases must be stated. The specific rights that relate to the stated purpose(s) may be fully defined either by an attached Form 20 – Schedule, a prior registered standard terms document or a combination of them.

The profit a prendre must be validly executed by both the grantor and grantee and witnessed.

In accordance with s. 373G(1) of the Land Act a lease under the Land Act may be made the subject of a profit a prendre only with the written approval of the chief executive. However, the chief executive's approval is not required if the profit a prendre is a forest consent agreement.

A profit a prendre is registrable even if the lot(s), or lease(s) under the Land Act burdened and the lot(s), or lease(s) under the Land Act benefited have, or will have, the same registered owner or holder or if the registered owner or holder of the benefited lot(s), or lease(s) under the Land Act has an interest in the burdened lot(s), or lease(s) under the Land Act.

Transactions involving registered profits a prendre (e.g. transfers, transmissions, etc) will be recorded on the title(s) for the burdened lot, or lease under the Land Act and the benefited lot, or lease under the Land Act, if applicable.

## Survey requirements of Profit a prendre over part of a lot

[29-2050]

A plan of survey or explanatory format plan is required to precede a profit a prendre if the interest affects part of the lot, or lease under the *Land Act 1994*. If the profit a prendre is for the whole of the lot, or lease under the Land Act, no plan is required.

Plans for profits a prendre purposes must comply with directions 4.8.2 and 19 of the Registrar of Titles Directions for the Preparation of Plans. A plan must not describe a profit a prendre as proposed and there is no requirement for a profit a prendre to be lodged immediately after the plan. See also part 21 – Plans and Associated Documents, esp. [21-2100]).

## Transfer Duty

[29-2100]

A duty notation is required.

## Removing Profits a prendre from Titles

[29-2200]

A profit a prendre may be released or removed from the title.

A profit a prendre is released from a title under the provisions of ss. 97L(1) and (2) of the *Land Title Act 1994* or ss. 373O(1) and (2) of the *Land Act 1994*. The grantee of a profit a prendre may release a profit a prendre from the title by surrendering it to the extent shown in the release (see part 33 – Release of Covenant/Profit a prendre, esp. [33-2200]).

A profit a prendre may be removed from a title under the provision of s. 97L(3) of the Land Title Act or s. 373O(3) of the Land Act. A profit may be removed from the title by any interested party, if the specified period of time has expired or the event upon which it is based has occurred (see part 14 – General Request, esp. [14-2425]).

Profits a prendre are not extinguished merely because the same person becomes the owner or lessee of the benefited and burdened lots, or leases under the Land Act, acquires an interest or a greater interest. Extinguishment can only occur if:

- the owner of the benefited lot, or the lessee of the lease under the Land Act, or grantee of the profit a prendre asks the Registrar to extinguish it; or
- <sup>2</sup>the Registrar creates a single title for the benefited and burdened lots.

## Amending Profits a prendre

[29-2300]

A profit a prendre may be amended by lodgement of a Form 13 – Amendment of Profit a prendre. (See part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement, esp. [13-2130]).

# Forms

## General Guide to Completion of Forms

[29-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number



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<b>1. Grantor</b>	<b>Lodger</b> (Name, address, E-mail & phone number)	<b>Lodger Code</b>
KRISTINA MARIA PARKER	SMYTHE & CO. SOLICITORS 45 ADELAIDE STREET BRISBANE QLD 4000 mail@smytheco.com.au (07) 3227 9850	490

<b>2. Description of Profit A Prendre/Lot on Plan burdened</b>	<b>Title Reference</b>
LOT 33 ON RP587601	11567215
<b>Description of Lot on Plan benefited (if applicable)</b>	
LOT 34 ON RP587601	11567216

<b>3. Grantee</b>	Given names	Surname/Company name and number	(include tenancy if more than one) and interest if not fee simple)
IVAN GEORGE		JOHNSON	

<b>4. Purpose</b>	<b>5. Termination date or Occurrence</b>
TO REMOVE FLOODED GUM AND SPOTTED GUM TREES	30 JUNE 2020

<b>6. Consideration</b>
\$55,000.00

**7. Grant/Execution**  
 The Grantor grants to the Grantee for the above consideration a profit a prendre for the purpose stated in item 4 and the Grantor and Grantee covenant with each other in terms of: - \*the attached schedule; \*~~the attached schedule and document no. \_\_\_\_\_~~; \* document no. \_\_\_\_\_  
 \* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

*J K Reid*  
 .....signature  
 JOHN KEVIN REID  
 .....full name  
 SOLICITOR  
 .....qualification

**Witnessing Officer**  
 (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

21/11/2017  
**Execution Date**

*K M Parker*  
 .....  
**Grantor's Signature**

*P L Fish*  
 .....signature  
 PETA LAUREL FISH  
 .....full name  
 SOLICITOR  
 .....qualification

**Witnessing Officer**  
 (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

22/11/2017  
**Execution Date**

*I G Johnson*  
 .....  
**Grantee's Signature**

**Title Reference [11567215]**

(The terms and conditions of the agreement are to be set out here)

## Guide for Completion of Form 29

### Item 1 [29-4010]

Insert the full name(s) of the registered owner or lessee as grantor.

### Item 2 [29-4020]

Insert the ‘Lot on Plan’ descriptions of all burdened and if applicable benefited lots, or leases under the *Land Act 1994* comprised in the profit a prendre.

### Item 3 [29-4030]

Insert the full name(s) of the grantee(s) and tenancy (if applicable).

### Item 4 [29-4040]

Insert the purpose of the profit a prendre.

### Item 5 [29-4050]

Insert the termination date or a reference to the event that terminates the profit a prendre.

### Item 6 [29-4060]

Insert monetary or other consideration.

### Item 7 [29-4070]

Complete where indicated and execute as required.

[29-6000] deleted

## Case Law [29-7000]

Nil.

## Fees [29-8000]

Fees payable to the Titles Registry are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- <sup>2</sup>Land Title Regulation; and
- <sup>3</sup>Land Regulation.

## Cross References and Further Reading [29-9000]

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 14 – General Request

Part 33 – Release of Covenant/Profit a prendre

Megarry and Wade, *The Law of Real Property*, 5th edn, London, Stevens, 1984

Bradbrook and Neave, *Easements and Restrictive Covenants*, Butterworths, 1986

Bradbrook, MacCallum and Moore, *Australian Real Property Law*, LBC Information Services, 1991

## Notes in text

[29-9050]

Note<sup>1</sup> – This part does not apply to water allocations.

Note<sup>2</sup> – This numbered section, paragraph or statement does not apply to State land.

Note<sup>3</sup> – This numbered section, paragraph or statement does not apply to freehold land.