

## AUSTRALIA

### *Legal System*

The history of British colonisation has produced a legal system rooted in English common law. In theory all the feudal aspects of English property law, the **doctrine of estates** and **doctrine of tenure** and the Crown's ultimate right of ownership, are part of Australian law. However, although the 'doctrines' are part of any property law textbook, much has changed in Australian property law since the establishment of the Commonwealth of Australia and the Constitution Act of 1901 and especially the Australia Acts of 1986. These changes include ending of the ultimate right of appeal to the Privy Council in London; the transfer of **Crown land** to the Federal government, or to the State (except in ACT where Crown land can be sold as freehold, unless so held before 1910); and to court decisions that no longer rigorously follow English precedents. In addition, the States and Territories have their own laws, administered by their own courts. The Federal Constitution is paramount law and this includes the right to the compulsory acquisition of land by the Commonwealth. Equally significant is the recognition of the traditional rights to land of the indigenous people (or **Native Title**).

The States have their own institutions—administrative, legislative, and judicial—and, even before independence, had established their own body of law. Since then this has grown so that there is a separate set of state and federal laws, in the event of conflict or on any matter affected by the constitution federal authority and law prevails.

### *Property Law*

#### *Ownership*

Real property may be held as a **freehold (fee simple or fee tail)** or as a **leasehold** (see "leases" below).

Apart from the Native Title, there are other aspects of Australian law that are virtually unique. The most notable is the **Torrens title system**, which is the forerunner of the formal land recording systems adopted in much of the United States and even been adopted as the starting point for English modern land registration. In addition, there are Fencing Laws applicable to each State, the right to own a unit or **strata title** (basically **condominium** ownership as found in many other countries), Shops Acts in most States, and the Australian mobile home has given a new meaning to term **fixture**.

Foreign individuals or companies are entitled to own property in Australia. However, the purchase of any residential property (whether developed – houses or apartments – or developed or undeveloped land) must be approved by the Foreign Investment Review Board (FIRB) ([www.firb.com.au](http://www.firb.com.au)). This does not apply to Australian citizens, an approved migrant, and in most cases a permanent resident of Australia, a foreign resident holding a permanent visa, and a foreign citizen who is entitled to permanent residency, such as a citizen of New Zealand. The FIRB will not grant permission to purchase a property by an individual or company if it is being acquired only for renting or speculation. The purchase of a second home for short term occupation is not permitted. The purchase of an apartment or townhouse 'off plan' for investment may be permitted if the developer has approval for such sales.

FIRB approval is required prior to the purchase by a foreign individual or company of an existing commercial and non-residential real estate valued at A\$5 million or more. This is normally granted unless it is considered "contrary to the national interest".

#### *Easements/Servitudes*

Terms in **bold** are defined and explained in the Encyclopedia of Real Estate Terms (Third Edition hardcopy and ONLINE)  
<<http://realestatedefined.com>>

This information is intended as an introductory guide and is intended to point out issues that may be of interest to a foreign investor.

It does not constitute legal advice and should not be relied on as such. Professional advice is recommended on any issue referred to herein.

Also, please see [Disclaimer](#).

©2011 Delta Alpha Publishing <[www.deltaalpha.com](http://www.deltaalpha.com)>