

REAL PROPERTY (AMENDMENT)
ACT.

Act No. 3, 1921.

An Act to amend the Real Property Act, 1900, the Public Works and Closer Settlement Funds Act, 1906, and other Acts; and for other purposes. [Assented to, 29th October, 1921.]

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BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

1. This Act may be cited as the "Real Property (Amendment) Act, 1921." Short title.

Amendments of Real Property Act.

2. Subsection one of section fourteen of the Real Property Act, 1900, is repealed, and the following subsection substituted therefor:— New subsection (1) of s. 14 of Real Property Act.

(1) Land not subject to the provisions of this Act may be brought under its provisions.

3. Subsection one of section seventeen of the said Act is amended by inserting after the word "applicant" the words "for such period as he considers sufficient." Amendment of s. 17 (1).

4.

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Amendment
of s. 19.

4. Section nineteen of the said Act is amended by adding the following proviso:—“Provided that the Registrar-General may, in his discretion, notwithstanding that certain persons are not parties to the application, or that the evidence of title set forth by the applicant is imperfect, take the steps in the last preceding section provided, and may bring the land under the provisions of this Act; but in such case he may, notwithstanding section one hundred and nineteen, require payment to him of such special fee as he considers adequate in addition to that provided in the Nineteenth Schedule.”

Amendment
of s. 56.

5. Section fifty-six of the said Act is amended by adding at the end thereof the following subsections:—

(4) In a memorandum of mortgage or memorandum of encumbrance there may be expressed to be included as appurtenant to the land mortgaged or encumbered any easement over other land of which the mortgagor or encumbrancer is the registered proprietor and the grant or certificate of title of which is specified in the memorandum of mortgage or memorandum of encumbrance.

(5) When an easement is so expressed to be included the Registrar-General shall on registration of the memorandum of mortgage or memorandum of encumbrance enter a memorial of the instrument in which such easement is expressed to be included upon the folium of the register book constituted by the existing grant or certificate of title of the land over which the easement is expressed to be included.

(6) The easement so expressed to be included shall, when the memorandum of mortgage or memorandum of encumbrance is registered, be deemed to be an easement appurtenant to the land mortgaged or encumbered for the purpose of enjoyment leasing or transfer by the mortgagee or encumbrancee or of foreclosure, and so that upon foreclosure in favour of, or lease or transfer by, the mortgagee or encumbrancee such easement shall, unless expressly excluded, be created by the order or decree for foreclosure or the lease or transfer and entry or registration thereof.

(7)

(7) Subsections four, five, and six of this section shall extend to instruments registered before as well as after the commencement of those subsections. Provided that it shall be optional only for the Registrar-General to comply with subsection five of this section if the instrument was registered before such commencement.

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6. (1) Section eighty-eight of the said Act is amended by omitting all words following the word “heretc” and inserting the following: “Provided that no instrument executed under a power of attorney shall be registered under this Act unless such power of attorney has been registered as provided for by the Conveyancing Act, 1919.”

Amendment
of ss. 88 and
89.

(2) Section eighty-nine of the said Act is amended by omitting all words following the words “the like purpose.”

7. Subsection three of section ninety-four of the said Act is repealed, and the following is substituted therefor:—

New sub-
section (3)
of s. 94.

(3) The Registrar-General may if he thinks fit, upon production of such other evidence of the death as appears to him sufficient, dispense with the said certificate of death.

8. (1) Subsection five of section ninety-four of the said Act is amended by omitting the words “and the examiners,” and by inserting the word “been” after the word “have.”

Amendment
of subsection
(5) of s. 94.

(2) Subsection seven of the same section is amended by omitting the word “general.”

9. (1) Subsection one of section ninety-five of the said Act is repealed, and the following substituted therefor:—

New sub-
section (1)
of s. 95.

(1) The Registrar-General may—

- (a) reject such application altogether; or
- (b) cause notice thereof by advertisement, or the serving or posting of notices, to be given as he thinks fit; or

(c)

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(c) dispense with the giving of any such notice.

Amendment
of subsection
(2).

(2) Subsection two of the same section is amended by omitting the words "not less than one month from the date of the advertisement in the Gazette."

Repeal of
subsection (6).

(3) Subsection six of the same section is repealed.

Provisions as
to costs of
proceedings
under ss. 121,
122, and 123.

10. (1) Section one hundred and twenty-one of the said Act is amended as follows:—

- (a) By omitting from subsection one the words "at his own costs"; and
- (b) by omitting from subsection three the words "and all expenses attendant upon any such proceedings shall be borne and paid by the applicant or other person preferring such complaint, unless the judge or court shall certify that there were no probable grounds for such refusal or direction as aforesaid."

(2) Section one hundred and twenty-two of the said Act is amended as follows:—

- (a) By omitting from subsection one the word "Examiners" and substituting the word "Registrar-General";
- (b) by omitting from subsection two the words "Examiners and";
- (c) by omitting from subsection three the word "Examiners" and substituting the word "Registrar-General"; and
- (d) by omitting subsection four.

New s. 123.

(3) The following new section is inserted next after section one hundred and twenty-three of the said Act:—

123A. Upon any summons or proceeding under the three last preceding sections the court may make such order as to the costs and expenses of and attendant upon such summons or proceeding as it deems just, and all costs and expenses to be paid by the Registrar-General under such order shall be paid out of the closer settlement fund.

11. (1) Where property of the State of New South Wales used exclusively in connection with a department of the Public Service which is transferred to the Commonwealth consists of land registered under the Real Property Act, 1900, and the land has become vested in the Commonwealth under the provisions of the Commonwealth of Australia Constitution Act, upon application in that behalf made to the Registrar-General and the consent thereto of the Attorney-General for New South Wales, the Registrar-General shall register the Commonwealth as the proprietor of the land.

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As to land vested in the Commonwealth under s. 85 of the Commonwealth of Australia Constitution Act.
cf. Act No. 2966 (Vict.).

(2) This section applies notwithstanding that the registered proprietor of the land is the King.

(3) This section applies whether the department is transferred to the Commonwealth before or after the commencement of this Act.

(4) In this section the expressions "property of the State," "used exclusively in connection with," "department of the Public Service," and "transferred to the Commonwealth," have the same meanings respectively as in section eighty-five of the Commonwealth of Australia Constitution Act.

Amendment of Public Works and Closer Settlement Funds Act.

12. Subsection two of section six of the Public Works and Closer Settlement Funds Act, 1906, is amended as follows:—

Amendment of s. 6 (2) of Public Works and Closer Settlement Funds Act, 1906.

- (a) By inserting after "1900" the words "or any Act amending it"; and
- (b) by adding at the end of the subsection the words "and so far as such fund is insufficient to meet any such claim, shall be paid out of the Consolidated Revenue Fund."

Roads included in certificates of title.

13. Where, before the commencement of this Act, a road or part thereof bounding land the subject of a Crown grant, or reserved in a Crown grant, has been included within the boundaries of the land described in any

Where roads are included in certificate of title.

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This section shall bind the Crown.

Registrar-
General may
register as
proprietor
person
entitled to
land by
operation of
statute or by
defeasance of
estate.

14. (1) Whenever—

- (a) by the operation of any statute either directly or by reason of anything done in pursuance thereof; or
- (b) by the defeasance of any estate of any person registered as proprietor under the provisions of the Real Property Act, 1900,

any land under the provisions of the said Act has or shall become vested in some person other than the registered proprietor either alone or jointly or in common with the registered proprietor or some such person has or shall become entitled to have any such land so vested, or the site or any part of the site of any closed road whether belonging to His Majesty the King or to any person has or shall become vested in the person registered as proprietor under the said Act of adjoining land, the Registrar-General may at the written request of a person in whom there has been such a vesting or who has become so entitled on such evidence as shall appear to the Registrar-General to be sufficient, and after such notice (if any) and to such person as the Registrar-General shall deem proper register the person in whom any such land or site or part thereof is vested or who has become so entitled as the proprietor of such estate therein as shall be appropriate, and for that purpose may make every such entry, cancellation, and correction in the register and issue every such certificate of title as shall appear to the Registrar-General to be necessary or proper: Provided, however, that this section shall not apply to any case for which express provision is made in the said Act, or any other Act, and that such stamp duty and fees shall be payable on every request under this section as would have been payable on a transfer, conveyance, or Crown grant as the case may be of the land or site or part thereof so vested.

(2)

(2) Every entry, cancellation, and correction made and every certificate of title issued by the Registrar-General before the passing of this Act which might have been made or issued under the provisions of subsection one of this section if it had been passed before the making of such entry, cancellation, or correction, or the issue of such certificate of title shall be as valid and effectual for all purposes as if this Act had been passed before the making of such entry, cancellation, or correction, or the issue of such certificate of title.

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