

CONVEYANCING (AMENDMENT) ACT.

Act No. 65, 1932.

George V.
No. 65, 1932.

An Act to apply certain provisions of the Conveyancing Act, 1919-1930, to lands under the Real Property Act, 1900; to make provision for the issue of certificates of title upon a resumption; and for these and other purposes to amend the Conveyancing Act, 1919-1930, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 30th December, 1932.]

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:—

Short title.

1. (1) This Act may be cited as the "Conveyancing (Amendment) Act, 1932."

(2)

Conveyancing (Amendment) Act.

657

(2) The Conveyancing Act, 1919-1930, as amended by this Act, may be cited as the Conveyancing Act, 1919-1932.

No. 65, 1932.

2. The Conveyancing Act, 1919-1930, is amended—

Amendment of Part IV of Conveyancing Act, 1919-1930.

(a) by omitting section fifty-two and by inserting in lieu thereof the following new section :—

Substituted s. 52.

52. Divisions 1, 2, 3, and 4 of this Part shall not apply, but Divisions 5 and 6 shall apply and shall be deemed to have applied from the commencement of the Conveyancing (Amendment) Act, 1930, to land under the provisions of the Real Property Act, 1900, except where otherwise provided.

Application of Part IV to land under Real Property Act, 1900.

(b) by inserting at the end of section 54A the following new subsection :—

Sec. 54A.

(Contracts for sale, &c., of land to be in writing.)

(3) This section applies and shall be deemed to have applied from the commencement of the Conveyancing (Amendment) Act, 1930, to land under the provisions of the Real Property Act, 1900.

(c) by inserting at the end of section sixty-one the following new subsection :—

Sec. 61.

(Conditions of sale and agreements as to stamp duty void.)

(2) This section applies to conditions of sale contracts, arrangements or undertakings relating to land under the provisions of the Real Property Act, 1900.

(d) by omitting from paragraph (b) of subsection three of section 66G the words "section nine" and by inserting in lieu thereof the words "section seventy-eight."

Sec. 66G, subsec. (3) (b).

(Statutory trusts for sale or partition of property held in co-ownership.)

3. (1) The Conveyancing Act, 1919-1930, is further amended—

Further amendment of the Conveyancing Act, 1919-1930.

(a) by omitting from section sixty-nine the word and figure "Division 1." and by inserting in lieu thereof the words and figures "Divisions 1 and 4";

Sec. 69.

(Application of Part VI.)

(b)

Conveyancing (Amendment) Act.

No. 65, 1932.

Sec. 88A.
(Easements in gross and easements and restrictions appurtenant to easements.)

- (b) by inserting at the end of section 88A the following new subsection :—

(2) This section applies and shall be deemed to have applied from the commencement of the Conveyancing (Amendment) Act, 1930, to land under the provisions of the Real Property Act, 1900.

Sec. 96A.
(Notice of trusts affecting mortgage debts.)

- (c) by inserting at the end of section 96A the following new subsection :—

(4) This section applies and shall be deemed to have applied from the commencement of the Conveyancing (Amendment) Act, 1930, to mortgages under the Real Property Act, 1900.

Sec. 106.
(Leasing power of mortgagor and of mortgagee in possession.)
cf. Act No. 15, Geo. V, c. 20, s. 99 (19).

- (d) by adding at the end of subsection sixteen of section one hundred and six the words “and the mortgagee may, by deed, delegate such power to the receiver”;

Sec. 107.
(Powers with a view to the grant of an authorised lease) for mortgagor and mortgagee in possession to accept surrenders of lease.)
cf. *Ibid.* s. 100 (13).

- (e) by adding at the end of subsection eleven of section one hundred and seven the words “and the mortgagee may, by deed, delegate such power to the receiver”;

Sec. 115, subsec. (3).
(Powers of receiver.)
cf. *Ibid.* s. 109 (3).

- (f) by inserting at the end of subsection three of section one hundred and fifteen the words “and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Act”;

- (g) by inserting after subsection six of section one hundred and fifteen the following new subsection :—

(6A) Where a trust corporation being a mortgagee is entitled to appoint a receiver under the power in that behalf conferred by this Act or by the mortgage deed, or is in possession of the mortgaged property, such trust corporation may appoint itself receiver, and in that event shall be entitled to retain out of any money received by it as such receiver for its remuneration, and in satisfaction

satisfaction of all costs, charges and expenses incurred by it as such receiver, such commission as would under the provisions of this Act or of the mortgage deed, as the case may be, be retainable by another person if appointed receiver:

No. 65, 1932.

Provided that when a trust corporation so appoints itself receiver it shall not be deemed to be the agent of the mortgagor.

- (h) by omitting from subsection eight of section one hundred and twenty-nine the words "save as otherwise mentioned"; Sec. 129. (Restrictions on and relief against forfeiture of lease.)
- (i) by omitting from paragraph (a) of subsection four of section one hundred and sixty the words "the last preceding subsection" and by inserting in lieu thereof the words "subsection three"; Sec. 160. subsec. (4)(a). (Statement as to non-revocation of power of attorney.)
- (j) by omitting from subsection two of section 181A the word "subsection" and by inserting in lieu thereof the word "section"; Sec. 181A, subsection (2). (Construction of expressions "right of carriage way" and "right of footway.")
- (k) by inserting next after subsection one of section two hundred and two the following new subsection:— Sec. 202. (General rules under this Part of this Act as to registration and fees.)
- (1A) In this section the expression "the office of the Registrar-General" shall include and shall be deemed always to have included the office of the Registrar of Joint Stock Companies.
- (l) by omitting from Schedule VI the note at the end thereof and by inserting in lieu thereof the following new note:— Sch. VI note.

NOTE.—The lessor will be entitled to re-enter or forfeit the lease in the event of the lessee failing to comply with this notice within a reasonable time—see section one hundred and twenty-nine of the Conveyancing Act, 1919-1932.

(2) The Conveyancing (Amendment) Act, 1930, is amended by omitting subparagraph (iii) of paragraph (b) of section twenty-two. Amendment of Act No. 44, 1930, s. 22. (Revision.)

No. 65, 1932.

Amendment of
Real Property
Act, 1900.
New Part VA.

4. (1) The Real Property Act, 1900, is amended—

- (a) by inserting next after section thirty-one the following new Part :—

PART VA.

ISSUE OF CERTIFICATES OF TITLE FOR
RESUMED LAND.Registrar-
General to
issue certi-
ficates of
title in
respect of
resumed
land.cf. Act No.
39, 1905,
s. 20A.

31A. (1) In this section “resumption” means the compulsory acquisition of land for an estate in fee simple under the provisions of the Public Works Act, 1912, or any other Act authorising the compulsory acquisition of land, and “resumed” has a meaning corresponding with that of “resumption.”

(2) Where any land described in a Gazette notification declaring such land to be so resumed is not under the provisions of this Act the Registrar-General shall, upon the application of the person, body, or corporation in whom the land so described is by virtue of such notification vested, and upon payment of the fees prescribed, issue to such person, body, or corporation a certificate of title under this Act in respect of such land without causing any examination or report to be made as to the title to the land and without considering such title except so far as may be necessary to give effect to the provisions of subsection three of this section.

(3) In dealing with the application it shall not be necessary to locate the boundaries of the Crown grant (if any) of the land, but it shall be sufficient if the Registrar-General is satisfied with respect to any certificate of title proposed to be issued by him in pursuance of this section that the land to be comprised in the certificate is included in the resumed land.

(4) In any certificate of title issued in pursuance of this section the land may be described in the terms of or by reference to the notification of resumption.

(5) No contribution to the assurance fund shall be payable upon the issue of any such certificate of title. No. 65, 1932.

(6) This section shall apply to land resumed before or after the commencement of the Conveyancing (Amendment) Act, 1932.

(b) by inserting next after section forty-six the following new section :— New s. 46A.

46A. Where a notice of resumption of land subject to the provisions of this Act, is sent to the Registrar-General in pursuance of section 196A of the Conveyancing Act, 1919-1932, or a copy of a notification of acquisition under the Lands Acquisition Act, 1906-1916, of land subject to the provisions of this Act, is lodged with him, the following provisions shall have effect :— Notices of resumption.

(a) The Registrar-General shall, notwithstanding anything in this Act contained, make such entries, notifications, and cancellations in the register book as may be necessary to give effect to the resumption or acquisition.

(b) Where the duplicate Crown grant or certificate of title is presented with the notice of resumption or the copy of the notification of acquisition, the provisions of this Act relating to the registration of transfer and action consequent thereon shall, mutatis mutandis, apply to and in respect of such notice or copy of notification.

(c) Where the duplicate Crown grant or certificate of title is not presented with the notice of resumption or the copy of the notification of acquisition the Registrar-General shall at the request of the person lodging such notice or copy of notification, where the land has been resumed or acquired for an estate in

in fee-simple, cancel wholly or in part as the case may require the folium of the register book constituted by the Crown grant or certificate of title, and shall make out to the constructing authority or the Commonwealth of Australia, or the person in whom by the notification in the Gazette or in the Government Gazette of the Commonwealth of Australia as the case may be, the land is vested, a certificate of title for the land resumed or acquired.

(d) If the grant or certificate of title is in the possession of some person other than the person, body, or corporation in whom the land is vested by virtue of the resumption or acquisition, and such first-named person declines to deliver it up for cancellation when required in writing by the Registrar-General so to do, the grant or certificate of title shall be deemed to be wrongfully retained within the meaning of section one hundred and thirty-six of this Act.

(c) by inserting next after section 56A the following new section :—

56B. (1) Where by an instrument executed prior to the first day of January, one thousand nine hundred and thirty-one, the proprietor of a registered mortgage (in this section referred to as the "prior mortgage") has agreed to postpone such mortgage in its entirety to a mortgage (in this section referred to as the "subsequent mortgage") affecting the whole of the same land, and no other land which was registered or to be registered after the prior mortgage, the Registrar-General may register any dealing by the proprietor of the subsequent mortgage as if the subsequent mortgage had been registered immediately before the prior mortgage.

(2)

Special provision as to certain postponements.

No. 65, 1932.

(2) The power conferred by subsection one of this section shall not be exercised where a registered mortgage intervenes between the prior mortgage and the subsequent mortgage unless the proprietor of the intervening mortgage was joined as a party to the instrument postponing the prior mortgage, or by instrument in the prescribed form, consents to the exercise of such power.

(3) Upon registration of any such dealing the Registrar-General shall make all such entries, notifications, and cancellations in the register-book and upon the duplicate Crown grant, certificate of title, or other instrument evidencing title to the estate or interest affected as may be necessary to give effect to such dealing.

- (d) by inserting at the end of subsection one of section one hundred and seven the words “not being a party to the instrument.” Sec. 107. (Instruments how attested.)
- (e) by inserting in section one next after the matter relating to Part V the following:— Sec. 1. (Division into Parts.)

PART VA.—ISSUES OF CERTIFICATES OF TITLE FOR RESUMED LAND—s. 31A.

(2) The Conveyancing Act, 1919–1930, is further amended by omitting from subsection four of section 196A the words “as if the same were a memorandum of transfer duly executed under that Act” and by inserting in lieu thereof the words “in the manner provided in that Act.” Further amendment of Act No. 6, 1919, s. 196A. (Register of resumptions.)

(3) The following Acts are to the extent in this subsection mentioned hereby repealed:— Repeals.

- (a) Darling Harbour Land Titles Act, 1907, the whole. Act No. 10, 1907.
- (b) Sydney Harbour Trust Land Titles Act, 1909, section three, subsection two. Act No. 7, 1909, s. 3 (2).
- (c) Sydney Corporation Act, 1932, section two hundred and fifty-one. Sydney Corporation Act, 1932, s. 251.

Conveyancing (Amendment) Act.**No. 65, 1932.**Amendment
of Act No. 13,
1898.

Sec. 46D.

(Application
of income of
settled, resi-
duary, real or
personal
estate.)**5.** The Wills, Probate and Administration Act, 1898,
is amended :—

- (a) (i) by inserting at the end of subsection one of section 46D the words “or of any legacies bequeathed by such will”;
- (ii) by omitting from subsection two of the same section the words “and liabilities” and by inserting in lieu thereof the words “liabilities and legacies”;
- (iii) by omitting from subsection three of the same section the words “and liabilities” and by inserting in lieu thereof the words “liabilities and legacies”;

Third
Schedule.

- (b) by inserting at the end of paragraph two of Part I of the Third Schedule the words :—

In the application of such rules the date of the death of the deceased person shall be substituted for the date of the sequestration order.

Saving.

6. (1) Any alteration of the law by this Act shall not affect any action, suit or proceeding commenced on or after the first day of January, one thousand nine hundred and thirty-one, and concluded before or pending at the commencement of this Act.

(2) Any action, suit or proceeding so pending may be carried on and completed as if this Act had not been enacted.