

REAL PROPERTY (AMENDMENT) ACT.

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 23, 1970.

An Act to make further provision for the declaration of titles to land and the facilitation of its transfer; for these and other purposes to amend the Real Property Act, 1900, the Conveyancing Act, 1919, and the Real Property (Amendment) Act, 1921; and for purposes connected therewith. [Assented to, 8th April, 1970.]

BE

Real Property (Amendment).

No. 23, 1970 **BE** it enacted by the Queen'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 and commencement. **1.** (1) This Act may be cited as the "Real Property (Amendment) Act, 1970".

(2) The Real Property Act, 1900, is in this Act referred to as the Principal Act.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 25, 1900. **2.** The Principal Act is amended—

Sec. 1.
(Short title.)

- (a) (i) by omitting from the matter relating to Part II in section one the letter and figures "s. 12" and by inserting in lieu thereof the letters and figures "ss. 12, 12A";
- (ii) by omitting from the matter relating to Part VA in the same section the words "ISSUE OF CERTIFICATES OF TITLE FOR" and by inserting in lieu thereof the words "CERTIFICATION OF TITLE TO";
- (iii) by omitting from the matter relating to Part VI in the same section the words "REGISTER BOOK" and by inserting in lieu thereof the words "THE REGISTER";
- (iv) by omitting from the matter relating to Part VII in the same section the matter relating to Division 4;

(v)

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(v) by omitting from the same section the matter No. 23, 1970 relating to Part X;

(vi) by inserting at the end of the same section the following new matter :—

PART XVIII.—REGULATIONS—s. 144.

(b) by omitting subsections five and six of section two; Sec. 2.
(Repeal of
Acts.)

(c) (i) by inserting in paragraph (a) of section three Sec. 3.
(Interpre-
tation.) immediately before the definition of “Caveator” the following new definition :—

“Approved form”—Form approved by the Registrar-General for the purposes of the provision of this Act in relation to which the expression is used.

(ii) by inserting in the same paragraph after the definition of “Conveyancer” the following new definitions :—

“Dealing”—Any instrument other than a grant or certificate of title which is registrable or capable of being made registrable under the provisions of this Act, or in respect of which any recording in the Register is by this or any other Act or any Act of the Parliament of the Commonwealth required or permitted to be made.

“Duplicate registered dealing”—The duplicate of a registered dealing directed to be delivered by subsection ten of section thirty-six of this Act.

“Easement

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“Easement in gross”—An easement without a dominant tenement created pursuant to the provisions of section 88A or 88B of the Conveyancing Act, 1919, or acquired by the Commonwealth in exercise of authority conferred by any Act of the Parliament of the Commonwealth.

(iii) by omitting from the definition of “Instrument” in the same paragraph the words “transfer or other dealing with” and by inserting in lieu thereof the words “disposition, devolution or acquisition of”;

(iv) by inserting in the same paragraph next after the definition of “Mortgagee” the following new definitions :—

“Primary applicant”—Person who makes a primary application.

“Primary application”—Application to bring under the provisions of this Act land that is not subject to those provisions.

(v) by inserting in the same paragraph next after the definition of “Proprietor” the following new definition :—

“The Register”—The record, kept by the Registrar-General, of grants, certificates of title and dealings that have been registered pursuant to section thirty-two of this Act.

(vi) by omitting from the definition of “Transmission” in the same paragraph the words “, bankruptcy, insolvency, or marriage” and by inserting in lieu thereof the words “or bankruptcy”;

(vii)

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- (vii) by omitting from paragraph (b) of the same No. 23, 1970 section the words "or as a trustee,";
- (viii) by omitting from the same paragraph the word "heirs,".

3. The Principal Act is further amended—

Further
amendment
of Act No.
25, 1900.

- (a) (i) by omitting from subsection one of section six the words "Royal Arms of England" and by inserting in lieu thereof the words "Arms of the State of New South Wales"; Sec. 6.
(Registrar's
seal of
office.)
- (ii) by inserting in subsection two of the same section after the word "seal" the words ", or of any seal authorised, before the commencement of the Real Property (Amendment) Act, 1970, for use by the Registrar-General,";
- (b) (i) by omitting from section eight the word "or" where firstly occurring and by inserting in lieu thereof the word "of"; Sec. 8.
(Oaths of
office.)
- (ii) by omitting from the same section the word "Colony" and by inserting in lieu thereof the word "State";
- (c) by omitting section nine; Sec. 9.
(Sworn
valuators.)
- (d) by omitting subsection one of section ten. Sec. 10.
(Convey-
ancers
authorised
to complete
transfers,
etc.)

4.

No. 23, 1970 **4. The Principal Act is further amended—**

Further
amendment
of Act No.
25, 1900.

Sec. 12.
(Powers of
Registrar-
General.)

(a) (i) by omitting paragraphs (a) and (b) of section twelve and by inserting in lieu thereof the following paragraphs :—

(a) He may require any person who may have possession or control of an instrument relating to land the subject of a dealing, or relating to the title to any such land, to produce that instrument, and he may retain any such instrument, whether produced pursuant to this paragraph or otherwise, until it is no longer required for action in connection with a dealing lodged with him.

(b) He may summon any person referred to in paragraph (a) of this section or any person who to the Registrar-General appears to be interested in any land, title to land, or instrument affecting land, the subject of a dealing to appear and give an explanation respecting that land, title, or instrument.

(ii) by omitting paragraph (d) of the same section and by inserting in lieu thereof the following paragraph :—

(d) He may, subject to this section and upon such evidence as appears to him sufficient, correct errors and omissions in the Register.

(iii) by omitting from paragraph (e) of the same section the word “enter” and by inserting in lieu thereof the word “record”;

(iv)

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- (iv) by omitting from the same paragraph the words “the disability of infancy, coverture, lunacy, unsoundness of mind, or absence from the colony,” and by inserting in lieu thereof the words “any legal disability”;
- (v) by omitting paragraph (f) of the same section and by inserting in lieu thereof the following paragraph :—
- (f) For the protection of any person interested in land under the provisions of this Act he may record in the Register a caveat, or may otherwise record the interest of that person in the Register in such manner as appears to the Registrar-General to be appropriate.
- (vi) by omitting from paragraph (g) of the same section the words “enter in the register-book a notification of” and by inserting in lieu thereof the words “record in the Register”;
- (vii) by omitting from paragraph (h) of the same section the words “sections eighteen and nineteen” and by inserting in lieu thereof the words “subsection two of section seventeen”;
- (viii) by inserting in the same paragraph after the word “instrument” the words “, and he may give notice by advertisement or by personal service, whenever and to whomsoever he thinks proper, of the intended exercise or performance of any power, authority, duty or function conferred or imposed by this Act”;
- (ix) by inserting at the end of the same section the following new paragraph and subsections :—
- (i) He may, at the request of a proprietor, accompanied by such evidence as he
- may**

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may require, record in the Register that any estate or interest has been extinguished by merger.

(2) Where a person required to produce an instrument pursuant to paragraph (a) of subsection one of this section fails to produce the instrument or to allow it to be inspected or, being summoned pursuant to paragraph (b) of that subsection, refuses or neglects to give an explanation which he is, pursuant to that paragraph, required to give, or knowingly misleads or deceives any person authorised to demand any such explanation, he shall for each such offence incur a penalty not exceeding two hundred dollars, and the Registrar-General, if the instrument or information withheld appears to him material, may reject the relevant dealing referred to in that subsection.

(3) Where the Registrar-General, in the exercise of the powers conferred upon him by paragraph (d) of subsection one of this section, makes a correction in the Register—

- (a) he shall authenticate the correction and record the date thereof;
- (b) to the extent that, but for this paragraph, the correction would prejudice or affect a right accrued from a recording made in the Register before the correction, the correction shall be deemed to have no force or effect;
- (c) subject to paragraph (b) of this subsection, the Register shall, as so corrected, have the same validity and effect as it would have had if the error or omission had not occurred; and
- (d)

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(d) the Registrar-General shall, while any right preserved by paragraph (b) of this subsection is subsisting, maintain available for search a record of the date, nature and effect of the correction. No. 23, 1970

(4) Where the Registrar-General exercises the powers conferred upon him by paragraph (f) of subsection one of this section otherwise than by entering his caveat, the interest recorded shall be deemed to be an interest within the meaning of section forty-two of this Act but otherwise shall have no greater operation or effect than it would have had if not so recorded.

(5) Upon the recording, pursuant to paragraph (i) of subsection one of this section, of the extinction of an estate or interest by merger, that estate or interest shall be deemed to have been extinguished accordingly.

(b) by inserting next after the same section the following new section :— New sec. 12A.

12A. (1) Where upon lodgment of a dealing for registration, it appears to the Registrar-General that a person who is not a party to the dealing should be notified of the dealing, the Registrar-General may direct that notice of the dealing be given to that person. Power of Registrar-General to serve notice of conflicting dealing.

(2) Where the Registrar-General has given notice pursuant to the powers conferred upon him by subsection one of this section in relation to a dealing, he may refuse to register the dealing until after the expiration of a period specified in the notice and he may proceed to register the dealing

at

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at or after the expiration of the period so specified unless he is first served with, or with written notice of, an order of the Supreme Court restraining him from so doing.

(3) Where a person given notice under subsection one of this section in relation to a dealing does not within the time limited by the notice serve upon the Registrar-General or give him written notice of an order made by the Supreme Court restraining the Registrar-General from registering the dealing, no action by that person or by any person claiming through or under him shall lie against the Registrar-General in respect of the registration of the dealing specified in the notice.

(4) No action shall lie against the Registrar-General for failure to give a notice under subsection one of this section.

Further
amendment
of Act No.
25, 1900.

5. The Principal Act is further amended—

Sec. 13.
(Registration
of Crown
grants.)

- (a) by omitting from subsection one of section thirteen the words “fee, be subject” and by inserting in lieu thereof the words “fee, or leased as a perpetual lease under grant from the Crown be subject, and be deemed, since the first day of January, one thousand eight hundred and sixty-three, to have been subject”;
- (b) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections :—

(2) Each grant of land prepared after the commencement of the Real Property (Amendment) Act, 1970, shall, in addition to containing proper words

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words of description, illustrate in the prescribed manner the land thereby granted and the grant, together with a duplicate thereof if the Registrar-General so requires, shall be delivered to the Registrar-General who shall, subject to this Act, register it. No. 23, 1970

(3) Where a person entitled to a grant referred to in subsection one of this section dies before it has been made, the grant may be made to and issue in the name of that person, and the land the subject of the grant shall devolve in like manner as if the grant had been made prior to the death of that person.

(4) Any land which, having been leased as a perpetual lease under grant from the Crown, is subject to the provisions of this Act shall, for the purpose only of enabling the Registrar-General to exercise and perform in respect thereof the powers, authorities, duties and functions conferred or imposed on him by this Act, be deemed to be land alienated by the Crown in fee.

(5) Where the provisions of the Crown Lands Consolidation Act, 1913, or of any other Act, limit or restrict the disposition or devolution of land leased as a perpetual lease under grant from the Crown the Registrar-General shall record in the Register the limitation or restriction, either by reference to those provisions or in such other manner as he considers appropriate.

6. The Principal Act is further amended—

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

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

Further
amendment
of Act No.
25, 1900.

Sec. 14.
(Application
to bring
land under
the Act.)

(2)

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(2) Subject to this section, a primary application may be made by—

- (a) a person claiming to be the person in whom is vested an estate in fee simple either at law or in equity in the land to which the application relates;
- (b) a person claiming, in the land to which the application relates, an estate in possession, or in reversion, or in remainder, or a leasehold for a life or for lives or a leasehold having a term of not less than twenty-five years current at the time of making the application; or
- (c) a person having the power to appoint an estate or interest referred to in paragraph (a) or (b) of this subsection in the land to which the application relates, if he obtains the consent of any other person whose consent to the exercise of the power is required and directs issue of the certificate of title to the object of the power;

(3) A primary application may not be made—

- (a) by a person who has contracted to purchase the land to which the application relates, unless—
 - (i) the vendor consents in writing to the application; or
 - (ii) the whole of the purchase money has been paid to the vendor or his authorised agent;
- (b) by a person claiming to be entitled to a share of or interest in the land to which the application relates, unless the person
entitled

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entitled to the other share or shares or to any other interest or interests joins in the application for the purpose of bringing the entirety thereof under the provisions of this Act;

- (c) by a mortgagor of the land to which the application relates, unless the mortgagee joins in or consents to the application;
- (d) by a mortgagee of the land to which the application relates, unless—
- (i) the mortgagor joins in or consents to the application; or
 - (ii) the Registrar-General is satisfied that the mortgagor is in default under the terms of the mortgage; or
- (e) by an execution debtor named in a writ that has been registered in the Register of Causes, Writs and Orders affecting land, unless the execution creditor consents to the application.

(4) A primary application shall be in the approved form and shall be accompanied by such evidence and documents of title as the Registrar-General may require.

- (b) (i) by omitting from subsection one of section 14A the words “or section one hundred and two”;
- (ii) by omitting from subsection two of the same section the words “include in or endorse on the certificate of title” and by inserting in lieu thereof the words “record on the folio of the Register”;

Sec. 14A.
(Easements created by unregistered instruments may be brought under Act.)

(iii)

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- (iii) by omitting from the same subsection the words "certificate of title" where secondly occurring and by inserting in lieu thereof the word "folio";
- (iv) by omitting from subsection four of the same section the words "title for the servient tenement, notify the easement on that certificate of title" and by inserting in lieu thereof the words "folio of the Register relating to the servient tenement, notify the easement on that folio";
- (v) by omitting from subsection five of the same section the words "certificate of title" and by inserting in lieu thereof the words "folio of the Register";
- (vi) by omitting subsection seven of the same section;

Sec. 16.

(Applicant to surrender instruments of title and to furnish abstract if required.)

- (c) by omitting section sixteen;

Subst. sec. 17.

- (d) by omitting section seventeen and by inserting in lieu thereof the following section :—

Procedure by Registrar-General to bring land under Act.

17. (1) Upon receipt of a primary application the Registrar-General shall cause the title of the primary applicant, for such period as he considers sufficient, to be examined by an Examiner and shall thereafter himself take the case into his consideration.

(2) The Registrar-General shall cause notice of a primary application to be published in the Gazette and shall therein specify a period, expiring not less than one month after publication

of

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of the notice, on or before which caveats may be lodged against the application, and may also cause such other notice of the application to be given (by advertisement or otherwise) as he thinks fit. No. 23, 1970

(3) Where notice of a primary application has been given under subsection two of this section, the Registrar-General may direct in writing that caveats against the application may, on or before a day specified in the direction (being a day that is later than the expiration of the period specified in the notice published in the Gazette under subsection two of this section), be lodged by a specified person or class of persons.

(4) The Registrar-General—

- (a) may give a direction under subsection three of this section before or after the expiration of the period specified in the notice published in the Gazette under subsection two of this section and may, in respect of the same or a different person or class of persons, give a further direction or further directions under subsection three of this section before or after the day specified in an earlier direction;
- (b) may, if he sees fit, cause a copy of any such direction to be published in the Gazette; and
- (c) shall notify any such direction to the person who made the primary application to which the direction relates or his solicitor, known agent or attorney.

(5) After the expiration of the period specified in a notice published in the Gazette under subsection two of this section or, where the Registrar-General has given a direction under subsection three of this section, after the day specified

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specified in the only or the later or latest such direction, the Registrar-General may bring the land the subject of the primary application to which the notice relates under the provisions of this Act by issuing a certificate of title in accordance with this Act to the primary applicant, or to any person in whose name the primary applicant directed that the certificate of title be issued, or to such other person as the Registrar-General finds entitled to the land, unless the issue of the certificate of title is prohibited by a caveat or by an order or injunction of the Supreme Court.

(6) Where, pursuant to paragraph (d) of subsection three of section fourteen of this Act, a certificate of title issues to a mortgagee the Registrar-General shall record thereon his caveat forbidding the registration of any dealing except in accordance with the powers and duties of the registered proprietor as mortgagee.

Sec. 18.
(When original applicant is not original grantee or any transactions registered.)

(e) by omitting section eighteen;

Sec. 19.
(When evidence of title is imperfect.)

(f) by omitting section nineteen;

Sec. 20.
(Notice of application to be published.)

(g) by omitting section twenty;

Sec. 21.
(Land brought under Act.)

(h) by omitting section twenty-one;

(i)

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(i) by omitting section twenty-two;

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Sec. 22.

(On a return of notices or failure of personal service, Registrar-General may proceed or give further directions.)

(j) by omitting section twenty-three and by inserting in lieu thereof the following section :—

Subst. sec. 23.

23. (1) A primary applicant may, with the consent of any person in whose name he has directed that a certificate of title be issued, withdraw his primary application before issue of the certificate of title in respect thereof and, where such an application is so withdrawn the Registrar-General, when requested in writing, shall return to the primary applicant, or to the person appearing to the Registrar-General entitled, all documents lodged in support of the application.

Withdrawal of primary application.

(2) If it appears to the Registrar-General—

- (a) that a primary applicant has not complied with the requirements of this Act relating to primary applications;
- (b) that the evidence adduced by a primary applicant in support of his primary application is deficient in any material particular;
or
- (c) that a primary applicant has not proceeded with his primary application within a reasonable time, having regard to the circumstances of the case,

he may reject the primary application.

(k)

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Subst. sec.
24.Interested
person may
lodge caveat.

(k) by omitting section twenty-four and by inserting in lieu thereof the following section :—

24. (1) Subject to this section, a person having or claiming an interest in any land in respect of which notice of a primary application has been published in the Gazette pursuant to subsection two of section seventeen of this Act may within the time limited by the notice lodge with the Registrar-General a caveat in the approved form forbidding the bringing of that land under the provisions of this Act.

(2) Notwithstanding subsection one of this section, a person referred to therein may, if he is the person, or one of the class of persons, specified in a direction given under subsection three of section seventeen of this Act in relation to a primary application so referred to, lodge a caveat under subsection one of this section—

- (a) on or before the day specified in the direction; or
- (b) where that person or class is specified in more than one such direction, on or before the day specified in the later or latest of those directions.

(3) A caveat lodged under subsection one or two of this section shall state the name and address of the caveator and shall contain a sufficient description to identify the land and the estate or interest therein claimed by the caveator and shall be signed by the caveator or by his solicitor, known agent or attorney.

Sec. 25.

(If caveat
be received
within time
limited pro-
ceedings
stayed.)

(l) by omitting from section twenty-five the words “applicant proprietor” and by inserting in lieu thereof the words “primary applicant”;

(m)

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- (m) (i) by omitting from paragraph (a) of section twenty-six the words "estate, interest, lien, or charge" and by inserting in lieu thereof the word "interest"; No. 23, 1970
Sec. 26.
(Caveats lapse unless proceedings taken within three months.)
- (ii) by omitting from paragraph (b) of the same section the word "Registrar-General." and by inserting in lieu thereof the following words :—

Registrar-General,

and those proceedings have not been determined (otherwise than in favour of the caveator) or, as the case may be, that order or injunction is still in force.

- (n) by omitting from section twenty-eight the words "within six months after the date of writ or commencement of such proceedings" and by inserting in lieu thereof the words "within such time as to the Registrar-General appears reasonable in the circumstances". Sec. 28.
(Where caveator fails to prosecute proceedings.)

7. The Principal Act is further amended—

Further
amendment
of Act No.
25, 1900.

- (a) by omitting from paragraph (a) of the definition of "Subsisting interest" in section 28A the word "register-book" and by inserting in lieu thereof the word "Register"; Sec. 28A.
(Interpretation.)
- (b) by omitting from subsection two of section 28F the words "enter on" and by inserting in lieu thereof the words "record on the relevant folio of the Register for"; Sec. 28F.
(Mortgagee entitled to qualified certificate of title.)
- (c) by omitting from section 28I the words "notify thereon" wherever occurring and by inserting in lieu thereof the words "record on the relevant folio of the Register"; Sec. 28I.
(Subsisting interests to be entered on qualified certificates of title.)
- (d)

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 Sec. 28J.
 (Cautions.)

- (d) (i) by omitting from subsection one of section 28J the words “enter thereon” and by inserting in lieu thereof the words “record on the relevant folio of the Register”;
- (ii) by omitting from the same subsection the word “notified” and by inserting in lieu thereof the word “recorded”;
- (iii) by omitting from subsection two of the same section the word “entered” and by inserting in lieu thereof the word “recorded”;
- (iv) by omitting from subsection three of the same section the words “notified on the qualified certificate of title” and by inserting in lieu thereof the words “recorded on the relevant folio of the Register”;

Subst.
 sec. 28K.

- (e) by omitting section 28K and by inserting in lieu thereof the following section :—

Additional
 subsisting
 interests
 may be
 notified.

28K. A qualified certificate of title may be lodged with the Registrar-General by the registered proprietor thereof, together with a memorandum in the approved form setting out particulars of any subsisting interest affecting the land comprised in the qualified certificate of title and not already recorded on the relevant folio of the Register, and the Registrar-General shall so record that subsisting interest.

Sec. 28L.
 (Duties of
 registered
 proprietor
 dealing with
 land in
 qualified
 certificate
 of title.)

- (f) by omitting from section 28L the words “notified thereon” and by inserting in lieu thereof the words “recorded on the relevant folio of the Register”;

(g)

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- (g) (i) by omitting from section 28M the words “entered on that qualified certificate of title” wherever occurring and by inserting in lieu thereof the words “recorded on the relevant folio of the Register”; **No. 23, 1970**
Sec. 28M.
 (Dealings with land in qualified certificate of title to be subject to subsisting interests.)
- (ii) by omitting from the same section the words “notified on the qualified certificate of title” wherever occurring and by inserting in lieu thereof the words “recorded on the relevant folio of the Register”;
- (h) (i) by omitting from section 28N the words “entered on a qualified certificate of title” and by inserting in lieu thereof the words “recorded in the Register”; Sec. 28N.
 (Cancellation of instruments.)
- (ii) by omitting from the same section the words “such qualified certificate of title” and by inserting in lieu thereof the words “the qualified certificate of title affected by the caution”;
- (i) (i) by omitting from paragraph (d) of subsection one of section 28P the words “notified thereon” and by inserting in lieu thereof the words “recorded in the Register”; Sec. 28P.
 (Application of provisions of this Act to qualified certificate of title and land therein.)
- (ii) by omitting from paragraph (a) of subsection two of the same section the words “entered on the qualified certificate of title for the land” and by inserting in lieu thereof the words “recorded on the relevant folio of the Register”;
- (iii) by omitting paragraph (b) of the same subsection;
- (iv) by omitting paragraph (c) of the same subsection;

(v)

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(v) by inserting next after the same paragraph the following new paragraph :—

Sec. 32. (c1) by omitting subparagraph
(Grants and (i) of paragraph (a) of
certificates subsection one of section
of title.) thirty-two;

(vi) by omitting paragraph (d) of the same subsection;

New sec.
28Q.

(j) by inserting next after the same section the following new section :—

Application
of Act No.
6, 1919,
Part IV.

28Q. (1) To the extent that, but for this section Part IV of the Conveyancing Act, 1919, would not apply to or in respect of land comprised in a qualified certificate of title, it shall so apply, and shall be deemed always to have so applied after the commencement of the Real Property (Conversion of Title) Amendment Act, 1967, as if the land were not land subject to the provisions of this Act.

(2) Subsection one of this section shall not operate to exclude the application, to and in respect of land comprised in a qualified certificate of title, of such of the provisions of Part IV of the Conveyancing Act, 1919, as apply to and in respect of land under the provisions of the Real Property Act, 1900.

Further
amendment
of Act No.
25, 1900.

8. The Principal Act is further amended—

Subst. sec.
29.

(a) by omitting section twenty-nine and by inserting in lieu thereof the following section :—

Instruments
of title, how
to be dealt
with.

29. (1) For the purposes of this section “instrument” in relation to a primary application or a primary applicant means instrument deposited

with

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with the Registrar-General that relates to land the No. 23, 1970
subject of the primary application, whether so
deposited by the primary applicant or by some
other person and whether so deposited pursuant to
paragraph (e) of subsection two of section fifty-
three, or pursuant to section sixty-four, of the
Conveyancing Act, 1919, or otherwise.

(2) Upon issuing a certificate of title under
Part IV of this Act the Registrar-General shall
endorse on each instrument relating to the primary
application pursuant to which the certificate of title
issued a memorial cancelling it so far as it relates
to land under the provisions of this Act.

(3) Subject to subsection four of this
section, upon issuing a certificate of title under
Part IV of this Act the Registrar-General—

- (a) shall retain in his office every instrument
relating to the primary application pursuant
to which the certificate of title issued until
it is delivered or destroyed pursuant to this
section, and no person shall be entitled to
the production of an instrument so
retained except upon the written order of
the primary applicant, or of some person
claiming through or under him, or upon the
order of a Judge of the Supreme Court;
- (b) shall deliver to the primary applicant or
other person entitled thereto any instrument
that relates to land not under the provisions
of this Act; and
- (c) subject to paragraph (b) of this subsection
may destroy any instrument or may deliver
it to the primary applicant or other person
entitled thereto or to any person who has
satisfied the Registrar-General that he bona
fide intends to preserve the instrument for
historical purposes.

(4)

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(4) The provisions of subsection three of this section—

- (a) shall apply to instruments relating to primary applications pursuant to which certificates of title issued before or after the commencement of the Real Property (Amendment) Act, 1970;
- (b) shall not apply to instruments deposited pursuant to paragraph (e) of subsection two of section fifty-three or pursuant to section sixty-four of the Conveyancing Act, 1919; and
- (c) are subject to the provisions of section fourteen of the Archives Act, 1960.

Sec. 30.
(How certificate of title to issue in case of previous death of applicant.)

(b) by omitting section thirty;

Sec. 31.
(Crown grants.)

(c) by omitting section thirty-one.

Further amendment of Act No. 25, 1900.
Subst. Part VA.

9. The Principal Act is further amended by omitting Part VA and by inserting in lieu thereof the following Part :—

PART VA.

CERTIFICATION OF TITLE TO RESUMED LAND.

Certification of title to resumed land.

31A. (1) In this Part—

“resumption” means appropriation of Crown land, or compulsory acquisition of land that is not Crown land, under the provisions of any Act or Act of

the

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the Parliament of the Commonwealth authorising No. 23, 1970
appropriation or compulsory acquisition of land;
and "resumed" has a corresponding meaning;

"resumption application" means application to the Registrar-General to cause to be registered as proprietor of land the person entitled to the land by virtue of a resumption or by virtue of any further vesting of resumed land by the operation of any Act or Act of the Parliament of the Commonwealth, either directly or by reason of anything done in pursuance thereof.

(2) Where resumed land is not under the provisions of this Act or is comprised in a qualified certificate of title—

- (a) the Registrar-General shall, upon lodgment of a resumption application relating to the land resumed, accompanied by a copy of the instrument by which the resumption was effected, together with any other evidence required by the Registrar-General, issue to the person in whom is vested the land described in that resumption application a certificate of title under this Act without causing any examination or report to be made as to the title to the land and without considering that title except so far as may be necessary to give effect to paragraph (b) of this subsection;
- (b) it shall not be necessary in any resumption application to locate the boundaries of the Crown grant (if any) of the resumed 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 subsection that the land to be comprised in the certificate of title is included in the resumed land; and

(c)

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(c) in any certificate of title issued in pursuance of this subsection the resumed land may be described in the terms of or by reference to the instrument by which the resumption was effected.

(3) Where resumed land is under the provisions of this Act—

(a) the Registrar-General may, where he has notice of the resumption, record the resumption in the Register of his own motion;

(b) subject to paragraph (a) of this subsection, the Registrar-General, upon lodgment of a resumption application relating to the land resumed, accompanied by a copy of the instrument by which the resumption was effected and any other evidence required by the Registrar-General, shall make such recording in the Register as may be necessary to give effect to the resumption application;

(c) where a recording of a resumption application is not also made on the relevant grant, certificate of title or duplicate registered dealing, the Registrar-General shall record that fact in the Register and, in the case of a resumption of an estate in fee simple, shall, at the request of the person entitled, issue a new certificate of title to the person in whom the resumed land is vested; and

(d) where a grant, certificate of title or duplicate registered dealing evidencing title to an estate or interest affected by a registered resumption is in the possession of some person other than the person registered as proprietor under this subsection, and that person in possession fails to deliver it up for cancellation when required in writing by the Registrar-General so to do the

grant,

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grant, certificate of title or duplicate registered dealing, as the case may be, shall be deemed to be wrongfully retained within the meaning of section one hundred and thirty-six of this Act. No. 23, 1970

(4) No action for recovery of damages sustained through deprivation of land or of any estate or interest in land, by reason of the exercise by the Registrar-General of his powers under this section in respect of an invalid resumption, shall lie or be sustained against the Registrar-General.

(5) The Registrar-General may give notice to a person that at the expiration of a period specified in the notice he proposes to register a specified resumption application and, where he directs service of such a notice, he may withhold registration of the resumption application until the expiration of the period so specified.

(6) This section shall apply to and in respect of resumptions before or after the commencement of the Real Property (Amendment) Act, 1970, except to the extent that—

- (a) a certificate of title issued in respect of the resumed land after the resumption and before that commencement; or
- (b) a resumption application in respect of the resumed land was registered before that commencement.

10. The Principal Act is further amended—

Further
amendment
of Act No.
25, 1900.

- (a) by omitting from the heading to Part VI the word "REGISTER-BOOK" and by inserting in lieu thereof the words "THE REGISTER";

(b)

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Subst.
sec. 32.Grants and
certificates
of title.

(b) by omitting section thirty-two and by inserting in lieu thereof the following section :—

32. (1) A certificate of title shall be in the prescribed form and the Registrar-General—

(a) shall record thereon—

(i) particulars of all subsisting encumbrances affecting the land;

(ii) the date of birth of any registered proprietor of the land whom the Registrar-General knows to be an infant; and

(iii) such other matters as the Registrar-General is, by or under this or any other Act, required to record upon certificates of title; and

(b) may record thereon such other matters as he is by or under this or any other Act, or Act of the Parliament of the Commonwealth, authorised to record.

(2) The Registrar-General—

(a) shall allot to each grant or certificate of title a volume number and a folio number, or shall otherwise identify it in such manner as may be prescribed;

(b) when issuing a new certificate of title, shall cancel, wholly or partially as the case may require, any folio of the Register thereby superseded; and

(c) shall record in the Register, in such manner as he shall determine, such particulars of the grant or certificate of title as he thinks fit.

(3)

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(3) Every grant or certificate of title No. 23, 1970 is duly registered when particulars thereof have been recorded in accordance with subsection two of this section, and the recording of the particulars thereof shall constitute a folio of the Register.

(4) Upon lodgment of a dealing, the Registrar-General shall allot thereto a distinctive number and the dealing is duly registered when the Register has been altered to give effect thereto.

(5) The Registrar-General shall have, and shall be deemed always to have had, power to cancel in such manner as he considers proper any recording in the Register which he is satisfied does not affect the land to which the recording purports to relate.

(c) by omitting section thirty-three and by inserting in lieu thereof the following sections :— Subst. sec. 33, and new sec. 33A.

33. (1) The Registrar-General may, if he thinks fit so to do, issue a certificate of title, or certificates of title, for the whole or part of the land comprised in one or more grants or certificates of title registered under this Act and may, for the purposes of this section, require the production to him of any grant, certificate of title or duplicate registered dealing. Issue of new certificates of title.

(2) No person shall be entitled to require delivery to himself of any grant or certificate of title which has been partially cancelled but the Registrar-General may, if he thinks fit so to do, deliver a partially cancelled grant or certificate of title to the registered proprietor thereof or, where some other person is entitled to receive it, to that other person.

33A.

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Delivery,
etc., of
instruments
in the
custody
of the
Registrar-
General.

33A. (1) The Registrar-General—

- (a) where he considers it proper so to do, may deliver an instrument (being a grant, certificate of title or duplicate registered dealing) in his custody to the person by whom it was lodged, or to his solicitor, known agent or attorney, unless the person by whom it was lodged has given written instructions to the Registrar-General for the delivery of the instrument to some other person;
- (b) where written instructions have been given as referred to in paragraph (a) of this subsection, shall not deliver such an instrument otherwise than in accordance with those instructions;
- (c) where he would, but for this paragraph, be unable to determine to whom such an instrument should be delivered, may deliver it to the person he considers best entitled thereto.

(2) An instrument in the custody of the Registrar-General, being a grant, certificate of title or duplicate registered dealing, may be used by the Registrar-General in the course of registering a dealing affecting the land, estate or interest to which the instrument relates—

- (a) if the instrument was lodged by or on behalf of the person who lodged that dealing or was lodged for the purpose of enabling that dealing to be registered; or
- (b) if the Registrar-General gives to the person entitled to the instrument written notice of his intention so to use the instrument and that person does not, within a time specified

in

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in the notice for the purpose, notify the Registrar-General in writing of his refusal to permit the instrument so to be used. No. 23, 1970

(3) Where the Registrar-General, in a notice given pursuant to subsection two of this section, indicates that he proposes to deliver an instrument specified in the notice to a person nominated in the notice he may, unless the person to whom the notice is given notifies the Registrar-General before the expiration of a period specified in the notice for the purposes of this subsection that he objects to that proposal, deliver the instrument in accordance with the proposal.

(4) For the purposes of subsections one, two and three of this section, for the purpose of delivery of a grant upon registration thereof and for the purpose of delivery of a certificate of title, or qualified certificate of title, upon issue thereof—

- (a) a grant shall be deemed to have been lodged by the grantee named therein;
- (b) upon first being issued pursuant to subsection one of section thirty-three of this Act, a certificate of title shall be deemed to have been lodged by the person who would have been entitled to take delivery of the superseded grant or certificate of title had it not been cancelled, wholly or partially, upon the issue of the first-mentioned certificate of title;
- (c) a certificate of title bringing land under the provisions of this Act and issuing in the name of the primary applicant therefor or
of

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of a person claiming under the will or intestacy of the primary applicant therefor shall be deemed to have been lodged by the person who lodged the primary application;

- (d) a certificate of title bringing land under the provisions of this Act and issuing in accordance with a direction or conveyance by a primary applicant shall be deemed to have been lodged by the person who lodged the direction or conveyance;
- (e) a certificate of title issued pursuant to section one hundred and eleven of this Act shall be deemed to have been lodged by the person who lodged the application for issue of the certificate of title; and
- (f) a qualified certificate of title shall, upon its issue, be deemed to have been lodged by the person nominated by the registered proprietor named therein as entitled to take delivery thereof.

(5) The Registrar-General may assume, and shall be deemed always to have been entitled to assume, that a person who lodges with him any dealing or other document has authority from all persons claiming under, or having an interest in, the dealing or other document—

- (a) to lodge it with the Registrar-General;
- (b) to uplift it for amendment or to withdraw it from registration and, in either case, to give a receipt therefor;
- (c) to receive requisitions, communications and notices in respect thereof; and

(d)

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(d) to attend to all other matters which may arise in the course of registration thereof or in the course of any other action within the office of the Registrar-General with respect thereto. No. 23, 1970

(d) by omitting section thirty-five;

Sec. 35.
(Instru-
ments,
when
deemed
to be
registered.)

(e) by omitting section thirty-six and by inserting in lieu thereof the following section :— Subst. sec.
36.

36. (1) Save as may otherwise be prescribed, execution of a dealing lodged for registration shall be attested by a witness who is not a party to the dealing. Registration
of dealings.

(2) A dealing executed under a power of attorney shall not be registered under this Act unless the power of attorney has been registered as provided for by the Conveyancing Act, 1919.

(3) When lodged for registration every mortgage, encumbrance or lease, and such other dealings as may be prescribed for the purposes of this subsection, shall be in duplicate, and any other dealing shall be lodged as required by the Registrar-General.

(4) Where two or more dealings which affect the same land are awaiting registration, the Registrar-General may register those dealings in

the

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the order which will give effect to the intentions of the parties as expressed in, or apparent to him from, the dealings.

(5) Subject to section 12A of this Act, where the intentions of the parties to dealings referred to in subsection four of this section appear to the Registrar-General to conflict, the order of registration shall be the order in which the dealings were lodged in registrable form.

(6) For the purposes of this section—

- (a) a dealing that is lodged in registrable form and is subsequently uplifted shall be deemed not to be in registrable form until re-lodged in registrable form;
- (b) a dealing shall be deemed not to be in registrable form—
 - (i) if, notwithstanding anything done under subsection one or two of section thirty-nine of this Act, the dealing requires a material correction, alteration or addition;
 - (ii) unless the Registrar-General has authority to use, for the purpose of registering the dealing, the relevant grant, certificate of title or duplicate registered dealing; or
 - (iii) unless the dealing is in the approved form; and
- (c) a dealing lodged with the Registrar-General that is not in registrable form shall where it is not uplifted, be deemed not to have been so lodged until it is in registrable form.

(7)

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(7) Where two or more dealings which No. 23, 1970 affect the same land are awaiting registration the Registrar-General may, if he thinks fit, register those dealings by making a single recording in the Register, referring in the recording to the lodgment numbers of those dealings or otherwise identifying them.

(8) Dealings registered under subsection seven of this section shall be deemed to have been duly registered notwithstanding any requirement in this Act that dealings be executed by a registered proprietor and, for the purposes of Part XIV of this Act, upon registration of such a dealing a person expressed therein to take an estate or interest in land under the provisions of this Act shall be deemed to have become registered as proprietor of that estate or interest according to the tenor of the dealing.

(9) Dealings registered with respect to, or affecting, the same estate or interest shall, notwithstanding any notice (whether express, implied or constructive), be entitled in priority the one over the other according to the order of registration thereof and not according to the dates of the dealings.

(10) Upon registration of a dealing the Registrar-General shall deliver any duplicate thereof that bears a certificate of registration under subsection four of section thirty-eight of this Act to the person who, pursuant to section 33A of this Act, appears to him to be entitled thereto.

(11) Upon registration, a dealing shall have the effect of a deed duly executed by the parties who signed it.

(f)

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Sec. 37.
(Form of
memorial.)Subst.
sec. 38.Recording
dealings
on grants,
etc.

(f) by omitting section thirty-seven;

(g) by omitting section thirty-eight and by inserting in lieu thereof the following section :—

38. (1) Subject to this Act, when making a recording in the Register the Registrar-General shall make a like recording upon any grant, certificate of title or duplicate registered dealing evidencing title to the estate or interest affected by the recording unless the Registrar-General, pursuant to this Act, dispenses with production thereof.

(2) A failure by the Registrar-General to comply with the requirements of subsection one of this section shall not invalidate the registration of a dealing.

(3) The Registrar-General may, upon lodgment of an application in the approved form, together with such evidence as he may require, dispense with the production of any grant, certificate of title or duplicate registered dealing for the purpose of recording thereon the effect of a dealing and, where production is so dispensed with, he shall, when registering the dealing, record in the Register that the effect of the dealing has not been recorded on the grant, certificate of title or duplicate registered dealing, as the case may require.

(4) Upon registering a dealing the Registrar-General shall certify thereon the fact and date of its registration and that certificate shall be received in any proceedings before any Court or any person having by law or consent of parties authority to hear, receive and examine evidence as conclusive evidence that the dealing was duly registered on that date.

(5)

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(5) Subject to the Archives Act, 1960, No. 23, 1970 where an instrument that is a grant, certificate of title or duplicate registered dealing is in the custody of the Registrar-General and no person is entitled to require the delivery to himself of the instrument the Registrar-General may, notwithstanding the other provisions of this section—

- (a) dispense with the recording of the effect of any dealing upon that instrument; and
- (b) destroy that instrument without retaining a copy or record thereof.

(6) Subject to the Archives Act, 1960, the Registrar-General may destroy any part of the Register comprising a folio or a registered dealing that does not evidence a subsisting interest and will not, in his opinion, be required for the purpose of recording thereon the effect of any dealing.

- (h) (i) by omitting from section thirty-nine the word “instrument” where firstly, secondly, fourthly, fifthly, sixthly and seventhly occurring and by inserting in lieu thereof the word “dealing”;
- (ii) by omitting from the same section the word “hereof :” and by inserting in lieu thereof the words “hereof, and he may reject any dealing which is not in accordance with the provisions hereof or which the Registrar-General is satisfied should not be registered”;
- (iii) by omitting from the same section the words “an instrument” and by inserting in lieu thereof the words “a dealing”;

Sec. 39.
(Dealings not to be registered unless in accordance with prescribed forms.)

(iv)

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(iv) by omitting from the same section the words "Provided that" and by inserting in lieu thereof the words "(2) Notwithstanding subsection one of this section,";

(v) by omitting from the same section the words "Provided further that" and by inserting in lieu thereof the words "(3) Notwithstanding subsection one of this section,";

Sec. 40.
(Certificate to be conclusive evidence of title, and that the land has been duly brought under the Act.)

(i) (i) by omitting subsection one of section forty and by inserting in lieu thereof the following subsection :—

(1) A folio of the Register shall be received by all Courts or persons having by law or consent of parties authority to hear, receive and examine evidence as evidence of the particulars therein recorded and shall be conclusive evidence that any person therein named as seised of or as taking an estate or interest in the land comprised in that folio is seised or possessed of or entitled to that land for that estate or interest and that the land comprised in that folio has been duly brought under the provisions of this Act.

(ii) by omitting from subsection two of the same section the words "certificate of title" and by inserting in lieu thereof the words "folio of the Register";

(iii) by omitting from subsection three of the same section the words "certificate of title" and by inserting in lieu thereof the words "folio of the Register";

(iv) by omitting from the same subsection the words "noted by memorial" and by inserting in lieu thereof the word "recorded";

(j)

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- (j) (i) by omitting from subsection one of section No. 23, 1970 forty-one the word "instrument" wherever occurring and by inserting in lieu thereof the word "dealing"; Sec. 41.
(Dealings not effectual until recorded in Register.)
- (ii) by omitting subsection two of the same section;
- (k) (i) by omitting from section forty-two the words ", whether derived by grant from the Crown or otherwise,"; Sec. 42.
(Estate of registered proprietor paramount.)
- (ii) by omitting from the same section the words "or of any estate or interest in land";
- (iii) by omitting from the same section the words "notified on the folium of the register-book constituted by the grant or certificate of title of such land" and by inserting in lieu thereof the words "recorded in the Register";
- (iv) by omitting from paragraph (c) of the same section the words "grant, certificate of title, lease, or other instrument" and by inserting in lieu thereof the words "folio of the Register or registered dealing";
- (v) by omitting from paragraph (d) of the same section the following words :—
- ; and
- (iii) the registration of the proprietor is after the commencement of the Conveyancing (Amendment) Act, 1930;
- (l) (i) by omitting from subsection one of section 43A the words "an instrument" and by inserting in lieu thereof the words "a dealing"; Sec. 43A.
(Protection as to notice of person contracting or dealing in respect of land under this Act before registration.)
- (ii) by omitting from the same subsection the words "that instrument" and by inserting in lieu thereof the words "that dealing";
- (m)

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Sec. 44.

(Registered proprietor suing for specific performance.)

(m) by omitting from section forty-four the words "certificate of" and by inserting in lieu thereof the words "folio of the Register certifying the";

Sec. 45A.

(Construction of instruments relating to land abutting on streams or roads.)

(n) (i) by omitting from subsection one of section 45A the word "instruments" wherever occurring and by inserting in lieu thereof the word "dealings";

(ii) by omitting from subsection two of the same section the words "certificate of title issued to such an applicant, or to any subsequent" and by inserting in lieu thereof the words "folio of the Register evidencing issue of a";

(iii) by omitting from subsection three of the same section the words "other instrument" and by inserting in lieu thereof the word "dealing".

Further amendment of Act No. 25, 1900.

11. The Principal Act is further amended—

Subst. sec. 46.

(a) by omitting section forty-six and by inserting in lieu thereof the following section :—

Transfers.

46. Where land under the provisions of this Act is intended to be transferred, or any easement affecting land under the provisions of this Act is intended to be created, the proprietor shall execute a memorandum of transfer in the approved form.

Subst. sec. 46A.

(b) by omitting section 46A and by inserting in lieu thereof the following section :—

Construction of references to this section.

46A. A reference to this section in any other Act, or in any by-law, regulation, ordinance or in

any

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any other instrument or document whatsoever, No. 23, 1970
whether of the same or of a different kind or
nature, shall be read and construed—

- (a) in relation to anything done before the commencement of the Real Property (Amendment) Act, 1970, as a reference to this section as enacted at the time that thing was done; and
- (b) in relation to anything done or to be done after that commencement, as a reference to section 31A of this Act.
- (c) by omitting section forty-seven and by inserting in lieu thereof the following section :—

Subst. sec.
47.

47. (1) Where an easement burdening land under the provisions of this Act is created for the purpose of being annexed to or used and enjoyed together with other land under the provisions of this Act, the Registrar-General shall, in addition to any other recording by this Act required, record particulars of the dealing creating the easement upon the folio of the Register evidencing title to the land to which the easement is annexed or with which it is to be used and enjoyed.

Creation of
easements.

(2) An easement may, by a memorandum of lease, be granted in or over land, other than the demised land, of which the lessor is registered as proprietor under this Act, where it is granted for the purpose of being annexed to or used and enjoyed together with the estate or interest of the lessee under the lease.

(3) An easement may, by a memorandum of lease, be reserved in or over the demised land for the purpose of being annexed to or used and enjoyed together with other land of which the lessor is registered as proprietor under this Act.

(4)

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—

(4) On registration of a memorandum of lease which grants or reserves an easement the Registrar-General shall record particulars of the easement—

- (a) where the easement is granted under subsection two of this section, upon the folio of the Register, or the registered lease, evidencing title to the land burdened by the easement; or
- (b) where the easement is reserved under subsection three of this section, upon the folio of the Register, or the registered lease, evidencing title to the land to which the easement is to be annexed or with which it is to be used and enjoyed.

(5) Particulars of a dealing effecting a disposition of a registered easement in gross may be recorded upon the transfer or other instrument whereby the easement in gross was created or is evidenced and thereupon the dealing shall be deemed to be duly registered.

(6) An easement recorded in the Register may be released wholly or partly by a transfer registered under this Act and altered as the circumstances of the case may require.

(7) An easement recorded in the Register shall not be extinguished solely by reason of the same person becoming proprietor both of the land burdened and of the land benefited by the easement, notwithstanding any rule of law or equity in that behalf.

(8) The provisions of subsection seven of this section shall only apply to easements which,
according

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according to the Register, subsist at the commencement of the Real Property (Amendment) Act, 1970, and to easements recorded in the Register after that commencement. No. 23, 1970

- (d) by omitting section 47A; Sec. 47A.
(Release of easement.)
- (e) by omitting section 48; Sec. 48.
(If estate of freehold be transferred, certificate of title to be delivered up and cancelled unless the whole land in the certificate is transferred.)
- (f) by omitting section forty-nine and by inserting in lieu thereof the following section :— Subst. sec. 49.
49. (1) In this section "Crown land" means land which has ceased to be subject to the provisions of this Act and has become Crown land within the meaning of the Crown Lands Acts. Land that becomes Crown land.
- (2) Where the Registrar-General becomes aware, whether by lodgment of a dealing or otherwise, that land comprised in a folio of the Register has become Crown land, he shall record that fact in the Register and also upon the grant or certificate of title relating to the land when it is available to the Registrar-General.
- (g) by omitting section fifty; Sec. 50.
(Fresh certificate to be issued to purchaser.)
- (h)

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Sec. 53.
(Lands under the provisions of this Act—how leased.)

- (h) (i) by omitting from subsection one of section fifty-three the words “form of the Eighth Schedule hereto” and by inserting in lieu thereof the words “approved form”;
- (ii) by omitting subsection two of the same section;
- (iii) by omitting from subsection three of the same section the words “memorandum of transfer to such lessee of the said land and the fee-simple thereof, and to perform all necessary acts by this Act prescribed for the purpose of transferring to a purchaser the said land and the fee-simple thereof” and by inserting in lieu thereof the words “transfer the said land to such lessee”;

Sec. 54.

(Lease may be surrendered by endorsement by lessee with concurrence of lessor.)

- (i) (i) by omitting from subsection one of section fifty-four the words “there shall be endorsed upon such lease or on the counterpart thereof, the word ‘surrendered’ with the date of such surrender, and such endorsement shall be signed by the lessee and by the lessor as evidence of the acceptance thereof, and shall be attested by a witness” and by inserting in lieu thereof the words “the lessee and lessor shall execute a memorandum of surrender of lease in the approved form”;
- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) The Registrar-General shall record a surrender under subsection one of this section upon the registered lease and also upon the folio of the Register, or the registered lease, evidencing title to the reversion.

(iii)

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- (iii) by omitting from subsection three of the same section the words "such entry having been so made in the register-book" and by inserting in lieu thereof the words "a surrender having been recorded under subsection two of this section";
- (iv) by omitting subsection four of the same section;
- (j) (i) by omitting from section fifty-five the words "In any case under section seventy-nine of this Act the" and by inserting in lieu thereof the word "The";
- (ii) by omitting from the same section the words "note the same by entry in the register-book" and by inserting in lieu thereof the words "record the re-entry and recovery in the Register";
- (k) (i) by omitting from subsection one of section fifty-six the words "in favour of any mortgagee the mortgagor" and by inserting in lieu thereof the words "the proprietor";
- (ii) by omitting from the same subsection the words "form of the Ninth Schedule hereto" and by inserting in lieu thereof the words "approved form";
- (iii) by omitting from subsection two of the same section the words "in favour of any encumbrancee, the encumbrancer" and by inserting in lieu thereof the words "the proprietor";
- (iv) by omitting from the same subsection the words "form of the Tenth Schedule hereto" and by inserting in lieu thereof the words "approved form";

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Sec. 55.
(Registrar-General to note particulars of re-entry in Register.)

Sec. 56.
(Lands under this Act how mortgaged or encumbered.)

(v)

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- (v) by omitting subsection three of the same section;
- (vi) by omitting from subsection four of the same section the words "the grant or certificate of title of";
- (vii) by omitting from subsection five of the same section the words "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" and by inserting in lieu thereof the words "record particulars of the easement upon the folio of the Register or, as the case may be, the registered lease, evidencing title to the land burdened by the easement";
- (viii) by omitting from subsection six of the same section the words "entry or";

Sec. 56A.
(Postpone-
ment of
mortgages.)

- (1) (i) by omitting from subsection one of section 56A the words "or to the effect of a form which may be prescribed under the Conveyancing Act, 1919-1930, and registered under this Act" and by inserting in lieu thereof the words "the approved form";
- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) Registration of a memorandum under this section shall be effected by recording the effect thereof upon the folio of the Register or registered dealing on which the mortgages referred to in the memorandum have been registered and upon those mortgages.

(m)

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- (m) by omitting subsection three of section 56B and by inserting in lieu thereof the following subsection :—

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Sec. 56B.

(3) Upon registration of any such dealing the Registrar-General shall make such recordings in the Register as may be necessary to give effect to the dealing.

(Special provision as to certain postponements.)

- (n) by omitting subsection four of section fifty-eight;
- (o) by omitting section fifty-nine and by inserting in lieu thereof the following section :—

Sec. 58.
(Power to sell.)

Subst. sec. 59.

59. The Registrar-General shall, for the purpose of a sale authorised by section fifty-eight of this Act, register a transfer executed by a mortgagee or encumbrancee in the approved form and, upon that registration, the estate or interest of the mortgagor or encumbrancer in the land comprised in the transfer shall pass to and be vested in the transferee, freed and discharged from all liability on account of the mortgage or encumbrance, or of any mortgage or encumbrance registered subsequent thereto.

Registration of transfer by mortgagee or encumbrancee.

- (p) (i) by omitting paragraph (b) of section sixty;
- (ii) by omitting from paragraph (c) of the same section the words "or making any distress as aforesaid";
- (iii) by omitting from the same section the words "or distress";
- (q) (i) by omitting from subsection two of section sixty-one the words "given to the mortgagor by leaving the same at his usual or last known place of abode, if such place be within three miles of the residence of such mortgagee, or by forwarding the same by registered letter

Sec. 60.
(In case of default, entry and possession, distress ejection,)

Sec. 61.
(or foreclosure.)

through

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through the post office, if such place be beyond that distance” and by inserting in lieu thereof the words “served on the mortgagor in the manner prescribed by section one hundred and seventy of the Conveyancing Act, 1919”;

(ii) by omitting from subsection four of the same section the words “oath or”;

Sec. 62.
(Application
how made
effective.)

(r) by omitting from subsection two of section sixty-two the words “entered in the register-book” and by inserting in lieu thereof the words “recorded in the Register”;

Subst. sec.
65.

(s) by omitting section sixty-five and by inserting in lieu thereof the following section :—

Discharge
of mort-
gages and
encum-
brances.

65. (1) Whenever a mortgage or encumbrance registered under this Act is intended to be discharged wholly or partially the mortgagee or encumbrancee shall execute a discharge in the approved form.

(2) Upon registration of a discharge of mortgage or encumbrance the mortgaged or encumbered estate or interest shall, to the extent specified in the discharge, cease to be charged with any moneys secured by the mortgage or encumbrance.

Sec. 66.
(Recording
satisfaction
of annuity.)

(t) (i) by omitting from subsection one of section sixty-six the words “make an entry in the register-book noting” and by inserting in lieu thereof the words “record in the Register”;

(ii) by omitting from subsection two of the same section the word “entry” and by inserting in lieu thereof the word “recording”;

(iii) by omitting subsection three of the same section;

(u)

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(u) by omitting Division 4 of Part VII;

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Part VII.
Division 4.
(Dealings
outside
New South
Wales.)

(v) by omitting section seventy-two and by inserting in lieu thereof the following section :—

Subst.
sec. 72.

72. (1) Where—

Lodging of
certain
caveats.

(a) a settlor transfers land that is under the provisions of this Act to be held by the transferee as trustee; or

(b) any person claims under an unregistered dealing or by devolution in law or otherwise, an estate or interest in land under the provisions of this Act,

that settlor or person may, by caveat in the approved form, forbid the recording in the Register of any dealing affecting the estate or interest evidenced by the folio of the Register, or by the registered dealing, specified in the caveat until after notice of the intended dealing given to the caveator as may be required in the caveat.

(2) A caveat referred to in subsection one of this section shall state—

(a) the name and address of the caveator and, unless the Registrar-General dispenses therewith, of the registered proprietor;

(b) an address for service of notice on the caveator;

(c) the estate or interest claimed by the caveator;

(d) the folio of the Register, or the registered dealing, affected by the caveat; and

(e)

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- (e) where the caveat relates to part of the land in a folio of the Register or in a registered dealing, such further description as may be necessary to identify the subject land,

and shall be signed by the caveator or by his solicitor, known agent or attorney.

(3) Where a person entitled to withdraw a caveat notifies the Registrar-General, by lodging a notice in the approved form, that the name of the caveator or the address for service of notice on the caveator has been changed from the name or address specified in the caveat the Registrar-General shall record on the caveat the name or address so notified and thereupon the name or address so recorded shall be the name or address for service of notice on the caveator.

(4) A notice relating to a caveat referred to in subsection one of this section, or to any proceedings in respect thereof, if served at the address given in or recorded on the caveat or, where the caveat was signed by a solicitor, at the office of that solicitor, shall be deemed to have been duly served.

(5) Service of a notice in accordance with subsection four of this section may be dispensed with where the Registrar-General is satisfied that the notice cannot be so served and—

- (a) notice is served in such manner (by advertisement or otherwise) and upon such persons (if any) as the Registrar-General directs by writing under his hand; or
- (b) the Registrar-General directs by writing under his hand that service of notice be dispensed with.

(6)

Real Property (Amendment).

(6) A caveat may be withdrawn—

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- (a) by the caveator, his solicitor or his agent authorised in that behalf;
- (b) where the caveator is dead, by the executor or administrator of the caveator or where the estate or interest claimed in the caveat was held, or in the caveat was claimed to be held, by caveators as joint tenants, by the surviving caveator;
- (c) by the trustee, The Official Receiver in Bankruptcy, or other person in whom the estate or interest claimed in the caveat has vested pursuant to any Act or Act of the Parliament of the Commonwealth relating to bankruptcy; or
- (d) by the person to whom is entrusted, pursuant to the Mental Health Act, 1958, the management and care of the estate or interest claimed in the caveat.

(7) On lodgment for registration of a dealing with land affected by a caveat, if the Registrar-General is satisfied that upon registration the dealing will vest in the person named as caveator the estate or interest claimed by him in the caveat, the Registrar-General may register the dealing notwithstanding the caveat and the provisions of sections seventy-three and seventy-four of this Act, and may record in the Register that the caveat has lapsed.

- (w) by omitting section seventy-three and by inserting in lieu thereof the following section :—

Subst. sec.
73.

73. A caveat lodged pursuant to section seventy-two of this Act shall, unless an order to the contrary is made by the Supreme Court and the order is

Lapsing of
caveat.

served

Real Property (Amendment).

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served on, or written notice thereof is given to, the Registrar-General, lapse upon the expiration of fourteen days after—

- (a) notice has been duly served on the caveator, or has been served pursuant to paragraph (a) of subsection five of section seventy-two of this Act, and is to the effect that a dealing prohibited by the caveat has been lodged for registration; or
- (b) the Registrar-General has, pursuant to paragraph (b) of subsection five of section seventy-two of this Act, directed that service on the caveator of notice of a dealing be dispensed with.

Sec. 73A.
(Removal of caveat where caveator's interest has terminated.)

- (x) by omitting from section 73A the words "has ceased to" and by inserting in lieu thereof the words "does not";

Subst.
sec. 74.

- (y) by omitting section seventy-four and by inserting in lieu thereof the following section :—

Recording of dealing while caveat in force.

74. (1) Subject to this section, so long as a caveat remains in force, the Registrar-General shall not, except with the written consent of a person entitled to withdraw the caveat, record in the Register any dealing the recording of which is prohibited by the caveat.

(2) Subsection one of this section shall not operate to prevent the recording of a dealing referred to in that subsection which, when the caveat so referred to was lodged with the Registrar-General, had previously been so lodged in registrable form within the meaning of subsection six of section thirty-six of this Act.

(3)

Real Property (Amendment).

(3) Except to the extent that it otherwise specifies, a caveat shall not prevent the Registrar-General from recording in the Register—

- (a) an application made pursuant to section ninety-three of this Act by an executor, administrator, or trustee in respect of the estate or interest of a deceased registered proprietor;
- (b) an application pursuant to section twelve of the Trustee Act, 1925;
- (c) a transfer which the Registrar-General is satisfied evidences a transition of trusteeship;
- (d) an application pursuant to section one hundred and one of this Act;
- (e) an application pursuant to section 46c of this Act;
- (f) a resumption application within the meaning of Part VA of this Act;
- (g) a writ of execution; or
- (h) any dealing where the dealing is by the registered proprietor of a lease, mortgage, or encumbrance to the registration of which the caveator consented, or in respect of which the caveat lapsed.

12. The Principal Act is further amended—

- (a) (i) by omitting subsection one of section eighty-two and by inserting in lieu thereof the following subsection :—

(1) Except as provided by paragraph (f) of section twelve of this Act the Registrar-General shall not record in the Register any notice

Further amendment of Act No. 25, 1900.

Sec. 82.

(No notice of trusts to be recorded in Register.)

Real Property (Amendment).

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notice of trusts whether express, implied, or constructive.

- (ii) by omitting from subsection three of the same section the word "enter" and by inserting in lieu thereof the words "record in the Register";
- (iii) by omitting from the same subsection the words ", and thereupon the words 'caveat number' (the proper number being filled in) shall be stamped or written upon the folium of the register comprising the land referred to in such instrument";
- (iv) by omitting subsection four of the same section ;

Subst.
sec. 84.

- (b) by omitting section eighty-four and by inserting in lieu thereof the following section :—

Barring of survivorship among trustees in certain cases.

84. Where before the commencement of the Real Property (Amendment) Act, 1970, the words "no survivorship" were recorded in the Register it shall not be lawful for any less number of joint proprietors than the number registered at the time those words were so recorded to deal with the land affected by the recording without obtaining the sanction of the Supreme Court or a Judge thereof.

Sec. 85.
(Notice to be published before order.)

- (c) (i) by omitting from subsection one of section eighty-five the words "or to make" and by inserting in lieu thereof the words "or make";
- (ii) by omitting from subsection two of the same section the word "entries" and by inserting in lieu thereof the words "recordings in the Register";

Subst.
sec. 86.

- (d) by omitting section eighty-six and by inserting in lieu thereof the following section :—

Recording of vesting order.

86. (1) Where an order is made by a court of competent jurisdiction vesting land under the provisions of this Act in any person, the Registrar-General on being served with an office copy of the order

Real Property (Amendment).

order shall make such recording in the Register No. 23, 1970 as in accordance with the provisions of this Act may be necessary to give effect to the order.

(2) Unless and until a recording referred to in subsection one of this section is made, an order so referred to shall have no effect or operation in transferring or otherwise vesting the land the subject of the order, but when the recording is made the person in whom it purports to vest the land shall become the registered proprietor of the land.

13. The Principal Act is further amended by omitting Part X.

Further amendment of Act No. 25, 1900. Part X. (Powers of attorney.)

14. The Principal Act is further amended—

Further amendment of Act No. 25, 1900.

(a) by omitting section ninety and by inserting in lieu thereof the following section :—

Subst. sec. 90.

90. (1) In this Part—

Transmission on bankruptcy.

“the Commonwealth Act” means the Bankruptcy Act 1966 of the Parliament of the Commonwealth and any Act of that Parliament amending or replacing that Act;

“The Official Receiver in Bankruptcy” means the body corporate constituted by section eighteen of the Commonwealth Act.

(2) The Official Receiver in Bankruptcy, a trustee, or any other person claiming to be entitled to land under the provisions of this Act by virtue of the operation of the Commonwealth Act, or of

anything

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anything done thereunder, may apply to the Registrar-General in writing to be registered as proprietor of that land.

(3) On being satisfied that an applicant under subsection two of this section is entitled to be registered as proprietor of the land to which the application relates, the Registrar-General may record in the Register that the applicant is so registered.

(4) Where an official receiver, having claimed to be entitled to land under the provisions of this Act by virtue of the operation of the Acts repealed by the Commonwealth Act is registered as the proprietor of that land, the Registrar-General may register a dealing affecting that land and executed by The Official Receiver in Bankruptcy.

Subst. sec.
91.Disclaimer
of lease
under Com-
monwealth
Act.

(b) by omitting section ninety-one and by inserting in lieu thereof the following section :—

91. (1) This section applies to and in respect of a lease registered under the provisions of this Act where—

- (a) the registered proprietor of the lease is a bankrupt within the meaning of the Commonwealth Act;
- (b) the trustee, as defined by the Commonwealth Act, has disclaimed the lease pursuant to that Act;
- (c) a Court having jurisdiction in bankruptcy under that Act has not made an order pursuant to subsection nine of section one hundred and thirty-three of the Commonwealth Act vesting the lease in some person other than the lessee; and
- (d) no application has been made pursuant to that subsection to such a Court, or any application so made has been dismissed.

(2)

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(2) A lessor under a lease to which this section applies may, by notice in the approved form, served in the prescribed manner, on a person (other than the bankrupt lessee) who is registered as proprietor of an interest in the lease and any person who, by a caveat, claims to be entitled to an interest in the lease, require that person to state within a time specified for the purpose in the notice whether the person on whom the notice is so served claims the interest of the lessee or claims an interest derived therefrom. No. 23, 1970

(3) Subject to this section, the Registrar-General may record in the Register that a lease to which this section applies has been surrendered by operation of law where the lessor applies for such a recording to be made, and—

- (a) there is no person, other than the bankrupt lessee, registered as proprietor of an estate or interest in the lease and the lease is not affected by any caveat; or
- (b) the lessor lodges with his application evidence that notice has been served as provided in subsection two of this section upon every person (other than the bankrupt lessee) who appears from the Register to have or to claim an interest in the lease and that no person on whom notice has so been served has, within the time specified in the notice, claimed the interest of the lessee or (otherwise than as registered proprietor of a sub-lease) an interest derived therefrom,

and any caveat affecting the lease has lapsed or has been withdrawn.

(4) Before recording a surrender of lease under subsection three of this section, the Registrar-General shall record any sub-lease claimed pursuant to

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to that subsection on the folio of the Register or on the registered lease, as the case may be, evidencing the title of the lessor, and that folio or registered lease, as the case may be, shall thereupon evidence the title to the reversion expectant on the sub-lease.

(5) Where a lease to which this section applies is subject to a mortgage registered under the provisions of this Act the mortgagee may, by notice in the approved form, served in the prescribed manner, on any person (other than the bankrupt lessee) who is registered as proprietor of an interest in the lease and any person who, by a caveat, claims to be entitled to an interest in the lease, require that person to state within a time specified for the purpose in the notice whether the person on whom the notice is so served claims the interest of the lessee or claims an interest derived therefrom.

(6) Subject to this section, the Registrar-General may record in the Register that a mortgage of a lease to which this section applies has been foreclosed where the mortgagee applies for such a recording to be made, the application is in respect of the whole of the land subject to the mortgage, and—

- (a) there is no person, other than the mortgagee and the bankrupt lessee, registered as proprietor of an estate or interest in the lease and the lease is not affected by any caveat; or
- (b) the mortgagee lodges with his application evidence that notice has been served as provided in subsection five of this section upon every person (other than himself and the bankrupt lessee) who appears from the Register to have or to claim an interest in the lease and that no person on whom notice

has

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has so been served claims the interest of the No. 23, 1970
 lessee or claims (otherwise than as regis-
 tered proprietor of a sub-lease) an interest
 derived therefrom,

and any caveat affecting the lease has lapsed or
 has been withdrawn.

(7) Before recording a foreclosure of mort-
 gage under subsection six of this section, the
 Registrar-General shall record on the registered
 lease any sub-lease claimed pursuant to that subsec-
 tion that is binding on the mortgagee and that
 registered lease shall thereupon evidence the title
 to the reversion expectant on the sub-lease.

(8) Where a lease to which this section
 applies is affected by a caveat, an application
 pursuant to subsection three or subsection six of
 this section is, for the purposes of sections seventy-
 two and seventy-three of this Act, a dealing the
 recording of which is prohibited by the caveat.

(c) by omitting section ninety-three and by inserting Subst.
sec. 93.
 in lieu thereof the following section :—

93. (1) Upon the death of a registered pro- Transmis-
sion on
death of
proprietor.
 prietor, the executor, administrator or other person
 claiming consequent upon the death, will or
 intestacy of that deceased proprietor, or otherwise,
 to be entitled to be registered as proprietor may
 apply in the approved form to the Registrar-
 General to be registered as proprietor of all or part
 of the estate or interest of that deceased proprietor.

(2) An application under subsection one of
 this section shall be—

(a) supported by such evidence as the
 Registrar-General may require; and

(b)

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(b) accompanied by the consent of the executor or administrator of the deceased proprietor where the applicant claims otherwise than as executor, administrator or trustee unless the Registrar-General thinks fit to dispense with that consent.

(3) The Registrar-General, on being satisfied that an applicant under subsection one of this section is entitled to the estate or interest claimed in the application, shall register him as proprietor of that estate or interest.

(4) Where, pursuant to an application under subsection one of this section, a person is registered as proprietor with the consent of another person given under paragraph (b) of subsection two of this section, the person who has given the consent shall, for the purposes of section one hundred and thirty-three of this Act, be deemed to have become, immediately before registration of the applicant as proprietor, himself registered as proprietor of the land specified in the application and to have transferred that land to the applicant.

Sec. 94.
(Registration of executors, administrators, etc., by transmission.)

(d) by omitting section ninety-four;

Sec. 95.
(Registrar-General may reject application or cause notice by advertisement to be given.)

(e) by omitting section ninety-five;

(f)

Real Property (Amendment).

- (f) by omitting section ninety-six and by inserting in lieu thereof the following section :—

Subst.
sec. 96.

96. A fiduciary registered as proprietor pursuant to section ninety-three of this Act shall hold the estate or interest in respect of which he is so registered in trust for the persons for whom and purposes for which that estate or interest is applicable by law, but for the purposes of any dealing therewith he shall be deemed to be absolute proprietor thereof.

Trusts
protected.

15. The Principal Act is further amended—

Further
amendment
of Act No.
25, 1900.

- (a) (i) by omitting from section ninety-nine the words “forms of instruments of transfer provided by this Act” and by inserting in lieu thereof the words “approved forms of transfer”;
- (ii) by omitting from the same section the word “instrument” and by inserting in lieu thereof the word “transfer”;
- (b) by omitting subsection two of section one hundred and by inserting in lieu thereof the following subsections :—

Sec. 99.
(Proprietor
may vest
estate jointly
in himself
and others
without
limiting
any use
or without
reassign-
ment.)

Sec. 100.
(Registered
co-tenants.)

(2) Subject to subsection three of this section, where persons are entitled to be registered as proprietors of a life estate and an estate in remainder in, or as tenants in common of undivided shares in, land under the provisions of this Act, or are entitled to be so registered in respect of land in the course of being brought under the provisions of this Act pursuant to Part IV or Part IVA of this Act,

Act,

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- No. 23, 1970
—
- Act, the Registrar-General may, in respect of the life estate and estate in remainder or, as the case may be, the undivided shares—
- (a) issue separate certificates of title;
 - (b) issue a certificate or certificates of title in such other manner as he thinks proper; or
 - (c) deliver any existing grant or certificate of title after making thereon such recording as may be required by the provisions of this Act.
- (3) The Registrar-General shall not refuse to act in accordance with paragraph (a) of subsection two of this section if he is requested so to act and his expenses for so acting are paid.
- Subst. sec. 101.
Registration of survivor of joint proprietors.
- (c) by omitting section one hundred and one and by inserting in lieu thereof the following section :—
101. Where a person becomes entitled to an estate or interest in land—
- (a) upon the death of a person registered with him as joint proprietor of that estate or interest; or
 - (b) by the determination or defeasance, by death or the occurrence of some other event, of a registered estate or interest in land,
- the Registrar-General may, upon the application of the person so entitled and proof to his satisfaction of the death or other event, as the case may require, register that person as proprietor of the estate or interest.
- Sec. 102.
(Remainderman or reversioner may be registered as such.)
- (d) by omitting section one hundred and two;

(e)

Real Property (Amendment).

(e) by omitting section one hundred and three; No. 23, 1970

Sec. 103.
(Prescribed
forms to be
used.)

(f) by omitting section one hundred and four and by inserting in lieu thereof the following section :— Subst. sec.
104.

104. (1) The Registrar-General shall cause approved forms sealed with his seal to be supplied free of charge or at such moderate charges as he may fix and he may license a person to print and sell approved forms sealed with his seal. Approved
forms.

(2) The Registrar-General may register a dealing containing departures, not being in matters of substance, from an approved form and the dealing shall be deemed to be in an approved form when it has been sealed with the seal of the Registrar-General.

(g) (i) by omitting from subsection one of section one hundred and five the words "enter particulars thereof in the register-book and also upon the instrument evidencing title to the said estate or interest, if produced for that purpose" and by inserting in lieu thereof the words "record particulars thereof in the Register and also upon the grant, certificate of title or duplicate registered dealing, as the case may be, if produced for that purpose"; Sec. 105.
(Sales by
Sheriff or
under order
of Supreme
Court or
District
Court.)

(ii) by omitting from subsection two of the same section the words "such entry as aforesaid" and by inserting in lieu thereof the words "particulars of the writ have been recorded under subsection one of this section";

(iii) by omitting from subsection three of the same section the words "entry has been made" and by inserting in lieu thereof the words "particulars have been recorded";

(iv)

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- (iv) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection :—

(4) The Registrar-General upon production of such evidence as he considers sufficient may record in the Register the satisfaction of any writ recorded under this section, and thereupon that writ shall be deemed to be satisfied accordingly.

- (v) by omitting from subsection five of the same section the words “, for the purpose of making the entries described in this section”;

- (vi) by omitting from subsection six of the same section the words “it was entered in the register-book as aforesaid” and by inserting in lieu thereof the words “particulars thereof were recorded in the Register under this section”;

Sec. 107.
(Dealings
how attested
and before
whom
proved.)

- (h) (i) by omitting from subsection one of section one hundred and seven the word “Instruments” and by inserting in lieu thereof the words “A dealing”;

- (ii) by omitting from the same section the word “instrument” wherever occurring and by inserting in lieu thereof the word “dealing”;

- (iii) by omitting from paragraph (d) of subsection two of the same section the word “place.” and by inserting in lieu thereof the following word and new paragraph :—

place;

- (e) in such other manner as satisfies the Registrar-General that the dealing was duly executed;

(i)

Real Property (Amendment).

- (i) (i) by omitting from subsection one of section one hundred and eight the word "instrument" wherever occurring and by inserting in lieu thereof the word "dealing"; No. 23, 1970
Sec. 108.
(Mode of proving execution.)
- (ii) by omitting from the same subsection the words "form of the Eighteenth Schedule hereto" and by inserting in lieu thereof the words "approved form";
- (iii) by omitting from subsection two of the same section the word "instrument" and by inserting in lieu thereof the word "dealing";

- (j) by omitting section one hundred and ten; Sec. 110.
(Upon surrender of existing grants or certificates proprietor may obtain a single certificate or vice versa.)
- (k) by omitting section one hundred and eleven and by inserting in lieu thereof the following section :— Subst. sec. 111.

111. (1) Where a grant or certificate of title of land under the provisions of this Act is lost, mislaid or destroyed, the proprietor of the land may apply in the approved form to the Registrar-General for the issue of a new certificate of title. Lost, etc., grant or certificate of title.

(2) An application under subsection one of this section shall be supported by such evidence as the Registrar-General may require.

(3) The Registrar-General, if satisfied that a grant or certificate of title has been lost, mislaid or destroyed, may cancel the relevant folio of the Register, recording in the Register that the folio was cancelled pursuant to this section, and may issue a new certificate or certificates of title for the land.

(1)

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Subst.
sec. 112.Dealings
may be
registered
prior to
issue of
grant from
the Crown.

- (1) by omitting section one hundred and twelve and by inserting in lieu thereof the following section :—

112. (1) In this section “pre-grant certificate” means an acknowledgment by or on behalf of the Crown of payment of all moneys required to be paid to the Crown before issue of a grant of land.

(2) Where a dealing is lodged with the Registrar-General for registration, accompanied by a pre-grant certificate relating to land affected by the dealing, the Registrar-General shall, subject to subsection four of this section, record upon the pre-grant certificate, which he shall retain in his office, particulars of the dealing.

(3) Where particulars of a dealing are recorded on a pre-grant certificate—

- (a) the dealing shall be deemed to have been duly registered under this Act; and
- (b) the person named in the recording shall be deemed to be duly registered as proprietor of the estate or interest specified in the recording.

(4) Where particulars of a dealing affecting part of the land in a pre-grant certificate have been recorded under subsection two of this section, the Registrar-General shall not be bound to record on the pre-grant certificate particulars of any other dealing affecting that part.

(5) A caveat or writ relating to land to which a pre-grant certificate in the custody of the Registrar-General relates shall be dealt with by the Registrar-General in the like manner and shall have the like effect and operation as provided by this Act in respect of a caveat or writ relating to land in a grant registered under this Act.

(6)

Real Property (Amendment).

(6) Upon registering a grant of land in respect of which a pre-grant certificate has been retained in his office under subsection two of this section, the Registrar-General shall record on the grant all registrations recorded on the pre-grant certificate. No. 23, 1970

(7) The Registrar-General shall not deliver a grant, or issue a certificate of title for the whole or part of the land comprised in a grant, until—

- (a) the grant has been registered in accordance with the requirements of section thirty-two of this Act; and
- (b) the requirements of subsection six of this section have been complied with.

(m) by omitting section one hundred and fourteen and by inserting in lieu thereof the following section : — Subst. sec. 114.

114. (1) The Registrar-General may require a person— Registrar-General may require plan to be deposited.

(a) applying to have land brought under the provisions of this Act; or

(b) seeking to procure registration of a dealing, to deposit in his office a plan of the relevant land, together with one or more copies thereof, and he may require that such a plan be a plan of survey within the meaning of the Survey Practice Regulations, 1933.

(2) If a person neglects or refuses to comply with a requirement under subsection one of this section it shall not be incumbent on the Registrar-General to proceed with the bringing of the land under the provisions of this Act, or the registration of the dealing, as the case may be.

(n)

Real Property (Amendment).

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Sec. 115.

(Certified copies to be furnished by Registrar-General and to be evidence.)

- (n) (i) by omitting from subsection one of section one hundred and fifteen the words "fee specified in the Nineteenth Schedule hereto" and by inserting in lieu thereof the words "prescribed fee";
- (ii) by omitting from subsection two of the same section the word "endorsed" and by inserting in lieu thereof the word "recorded";

Subst.
sec. 116.

- (o) by omitting section one hundred and sixteen and by inserting in lieu thereof the following section : —

Searches.

116. (1) The Register shall be a public record and information therein shall be available at the prescribed times, in the prescribed manner, and upon payment of the prescribed fee.

(2) Where the Registrar-General supplies information in response to a written inquiry as to the manner in which a proposed dealing or plan should be drawn, or whether a proposed dealing or plan should be entitled to registration, by or under this or any other Act—

- (a) the Registrar-General may require payment of a prescribed fee, or may supply the information without fee; and
- (b) the fact that any such information has been so supplied shall not, of itself, bind the Registrar-General to register or otherwise give effect to any dealing or plan, or any class of dealing or plan.

(3) A regulation prescribing a fee for the purposes of paragraph (a) of subsection two of this section may—

- (a) prescribe the fee to be paid in the circumstances specified in the regulation;

(b).

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- (b) require, in the circumstances specified in No. 23, 1970 the regulation, the payment of a fee calculated on such basis as may be prescribed by the regulation; or
- (c) authorise the Registrar-General to charge, in circumstances not provided for under paragraph (a) or (b) of this subsection, a reasonable fee.
- (p) (i) by omitting from subsection one of section one hundred and seventeen the words “instrument purporting to deal with or” and by inserting in lieu thereof the words “other dealing purporting to”; Sec. 117. (Authority to register.)
- (ii) by omitting from the same subsection the word “instrument” where secondly occurring and by inserting in lieu thereof the word “dealing”;
- (iii) by omitting from subsection two of the same section the word “instrument” and by inserting in lieu thereof the word “dealing”;
- (iv) by omitting from subsection three of the same section the words “instrument, or any duplicate thereof,” and by inserting in lieu thereof the words “application or other dealing”.

16. The Principal Act is further amended—

- (a) by omitting section one hundred and eighteen; Further amendment of Act No. 25, 1900. Sec. 118. (Fees.)
- (b) (i) by omitting from subsection one of section one hundred and twenty the word “Colonial”; Sec. 120. (Registrar-General to pay moneys into Treasury and to render accounts.)
- (ii) by omitting from the same section the word “said” wherever occurring.

17.

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No. 23, 1970 **17.** The Principal Act is further amended—

Further
amendment
of Act No.
25, 1900.

Sec. 121.
(Proprietor
may
summon
Registrar-
General to
show cause
if dis-
satisfied.)

- (a) (i) by omitting from subsection one of section one hundred and twenty-one the words “or transmission registered or recorded, or to have any certificate of title, registration, abstract, foreclosure, order,” and by inserting in lieu thereof the words “registered or recorded, or to have any certificate of title, order for foreclosure”;
- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsections :—

(3) The proprietor shall serve a summons under this section on such persons in addition to the Registrar-General, and shall give such notice of the summons by advertisement or otherwise, as the Court of Appeal thinks fit.

(4) If, in any proceedings under this section, a person who, but for this subsection, would be required by the Court of Appeal to be served with a summons under this section cannot be found within New South Wales, or if it is uncertain whether he is living or dead, or if the summons cannot be served on him without expense disproportionate to the value of his interest, the Court of Appeal may dispense with notice to him, and he shall thereupon be taken to have submitted to such order as the Court of Appeal may make on the hearing of the summons.

(5) A person served with a summons under this section and, with the leave of the Court of Appeal, any person interested, may appear

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appear and take part in proceedings instituted No. 23, 1970
by the summons generally as if he were a
respondent to the summons.

(6) The Court of Appeal may give such directions as it thinks fit for the settlement and determination of issues of fact and for the reception of evidence (including evidence by affidavit) and otherwise for the disposal of proceedings instituted by a summons under this section.

(7) In proceedings instituted by a summons under subsection one of this section, the Registrar-General may, with the leave of the Court of Appeal, substantiate and uphold his refusal or direction on grounds other than the grounds set forth by him under that subsection.

(8) In proceedings instituted by a summons under subsection one of this section, the Court of Appeal—

(a) shall either—

- (i) uphold the refusal or direction of the Registrar-General; or
- (ii) make an order for action by the Registrar-General to give effect wholly or partly to the application of the proprietor, or an order that such direction as the Court of Appeal thinks fit be substituted for the direction of the Registrar-General; and

(b)

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(b) may make such further or other order in the premises as the Court of Appeal thinks fit.

Sec. 123.
(Registrar-General may state a case for Court of Appeal.)

(b) (i) by inserting in section one hundred and twenty-three after the word "arises" the words "in respect of land under the provisions of this Act or the subject of action under Part IV or Part IVA of this Act";

(ii) by inserting in the same section after the word "this" the words "or any other";

Sec. 123A.
(Order as to costs and expenses.)

(c) by omitting from section 123A the words "the three last preceding sections" and by inserting in lieu thereof the words "sections one hundred and twenty-one, one hundred and twenty-two and one hundred and twenty-three";

Sec. 126.
(Compensation for party deprived of land.)

(d) (i) by omitting from paragraph (d) of subsection one of section one hundred and twenty-six the words "any certificate of title, or in any entry or memorial in the register-book" and by inserting in lieu thereof the words "the Register";

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) An action under subsection one of this section shall, in any case in which the land to which the action relates has been included in two or more grants, or a grant in respect of that land has otherwise incorrectly issued, be brought and prosecuted against the Under Secretary for Lands as nominal defendant and,

in

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in any other case, shall, subject to subsections No. 23, 1970 three, four and five of this section, be brought and prosecuted against the person—

- (a) upon whose application the land was brought under the provisions of this Act;
 - (b) upon whose application the erroneous registration was made; or
 - (c) who acquired title to the land, or the estate or interest therein, through the fraud, error, omission or misdescription.
- (e) by omitting from subsection one of section one hundred and twenty-seven the words “any certificate of title or any entry or memorial in the register-book” and by inserting in lieu thereof the words “the Register”;
- Sec. 127.
(When actions may lie against the Registrar-General as nominal defendant.)
- (f) (i) by omitting from subsection one of section one hundred and thirty the word “instrument” and by inserting in lieu thereof the word “dealing”;
- Sec. 130.
(Limitation of actions.)
- (ii) by omitting from subsection two of the same section the words “the disability of coverture, infancy, unsoundness of mind, or absence from New South Wales,” and by inserting in lieu thereof the words “any legal disability”;
- (iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) No action based on a claim of deprivation of land through the bringing of that land under the provisions of this Act shall be brought against the Registrar-General where

the

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the person alleging the deprivation, or the person through or under whom he claims title, had notice by personal service or otherwise or was aware that application had been made to bring the land under the provisions of this Act, and had wilfully or collusively omitted to lodge a caveat forbidding the bringing of the land under the provisions of this Act or had allowed such a caveat to lapse.

Sec. 131.
(Moneys paid in respect of a claim on assurance fund may be recovered against estate of deceased or bankrupt person.)

- (g) (i) by omitting from subsection two of section one hundred and thirty-one the word "Colonial";
- (ii) by omitting from the same subsection the words "the official assignee" and by inserting in lieu thereof the words "The Official Receiver in Bankruptcy";

Sec. 132.
(Where person liable is out of New South Wales.)

- (h) by omitting from subsection one of section one hundred and thirty-two the word "Colonial";

Sec. 134.
(Registrar-General not to be liable for acts done bona fide.)

- (i) by inserting at the end of section one hundred and thirty-four the following new subsection :—
- (2) A successful claim against the Registrar-General under this Act shall be satisfied in the manner provided by law for the satisfaction of claims against the assurance fund.

Sec. 135.
(Purchasers and mortgagees protected.)

- (j) by inserting in section one hundred and thirty-five after the word "error," where firstly and secondly occurring the words "or under any void or voidable instrument,".

*Real Property (Amendment).***18.** The Principal Act is further amended—

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Further amendment of Act No. 25, 1900.

- (a) (i) by omitting subsection one of section one hundred and thirty-six and by inserting in lieu thereof the following subsection :—
- (1) Where the Registrar-General is satisfied that—
- (a) a certificate of title or grant has been issued in error or contains any misdescription of land or of boundaries ;
- (b) a recording has been made in error in the Register ;
- (c) a grant, certificate of title or recording in the Register has been fraudulently or wrongfully obtained ; or
- (d) a grant, certificate of title or duplicate registered dealing is fraudulently or wrongfully retained,
- he may summon the person to whom the grant, certificate of title or duplicate registered dealing, as the case may be, has been issued, or by whom it has been so obtained or is retained, to deliver it to him for the purpose of being cancelled or corrected, as the case may require.
- (ii) by omitting from subsection two of the same section the words “other instrument” and by inserting in lieu thereof the words “duplicate registered dealing”;
- (b) (i) by omitting from subsection one of section one hundred and thirty-seven the words “such grant, certificate of title, or other instrument as aforesaid” and by inserting in lieu thereof the

Sec. 136. (Holder of certificate or other instrument of title issued in error or wrongfully retained to show cause to Court against cancellation or correction.)

Sec. 137. (Court may order the delivery of the instrument to the Registrar-General.)

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the words "the grant, certificate of title or duplicate registered dealing to which the summons relates";

- (ii) by omitting from subsection three of the same section the words "issue to the proprietor of the said land such certificate of title or other instrument as is herein provided to be issued in the case of any grant or certificate of title being lost, mislaid, or destroyed, and shall enter in the register-book notice of the issuing of the said certificate of title or other instrument and the circumstances under which the same was issued and such other particulars as he may deem necessary" and by inserting in lieu thereof the words "take action under the authority conferred upon him by subsection three of section thirty-eight, or by section one hundred and eleven, of this Act";

Sec. 138.
(Court may direct cancellation of certificate or recording.)

- (c) by omitting from section one hundred and thirty-eight the words "cancel any certificate of title or other instrument, or any entry or memorial in the register-book relating to such land, and to substitute such certificate of title or entry" and by inserting in lieu thereof the words "take such action in respect of the Register, including the cancellation or amendment of any folio thereof or of any recording therein and the issue of such new certificate of title or the substitution of such new recording".

Further amendment of Act No. 25, 1900.

19. The Principal Act is further amended—

Sec. 141.
(Certain fraudulent acts to be deemed misdemeanours.)

- (a) by omitting from paragraph (a) of subsection one of section one hundred and forty-one the words "or other instrument, or of any entry in the register-book, or of any erasure or alteration in any entry

in

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in the register-book” and by inserting in lieu thereof No. 23, 1970 the words “, recording in the Register, or of any alteration in any such recording”;

- (b) by omitting from paragraph (c) of the same subsection the words “or transmission”;
- (c) by omitting from subsection two of the same section the words “entry, erasure,” and by inserting in lieu thereof the word “recording”.

20. The Principal Act is further amended by inserting Further amendment of Act No. 25, 1900. next after section one hundred and forty-three the following New Part. XVIII. new Part :—

PART XVIII.

REGULATIONS.

144. The Governor may make regulations not Regulations. inconsistent with this Act prescribing all such matters as are by this Act required or permitted to be prescribed or as may be necessary or convenient to be prescribed for the administration of this Act and, without prejudice to the generality of the foregoing, may make regulations prescribing—

- (a) the fees, charges and expenses recoverable by the Registrar-General in the administration of this Act; and
- (b) the circumstances in which, and the extent to which, fees and charges recoverable under the regulations may be refunded.

21. The Principal Act is further amended by omitting the Further amendment of Act No. 25, 1900. Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth and Twentieth (Schedules.) Schedules.

22.

Real Property (Amendment).

No. 23, 1970 22. The Principal Act is further amended by inserting next after section 46A the following new sections :—

Further amendment of Act No. 25, 1900.

Where roads are included in certificate of title.

46B. (1) Where, before the commencement of the Real Property (Amendment) Act, 1921, a road or part thereof bounding land the subject of a Crown grant, or reserved in a Crown grant, was included within the boundaries of the land described in a certificate of title without being specifically excepted from the certificate of title by express exception or notification referring to the road, the certificate of title shall, in so far as it includes the road or part thereof, be deemed for all purposes to have been properly issued, and to include the area of the road or part thereof, as the case may be.

(2) This section shall bind the Crown.

Registrar-General may register as proprietor person who is entitled to land by operation of statute.

46C. (1) Where, by the operation of a statute, either directly or by reason of anything done in pursuance thereof—

- (a) land under the provisions of this Act became, before the commencement of the Real Property (Amendment) Act, 1970, or becomes, after that commencement, vested in a person (other than the registered proprietor of the land) either alone or jointly or in common with that registered proprietor; or
- (b) land that is the site of a closed road or part thereof so became, or so becomes, vested in a person registered under this Act as the proprietor of adjoining land,

the Registrar-General may, of his own motion, and shall, 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 appears to the Registrar-General sufficient, and after such notice (if any) to such person as the Registrar-General deems proper, register the person in whom any such land is vested, or who has become so entitled,

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entitled, as the proprietor of such estate therein as the Registrar-General deems to be appropriate, and for that purpose the Registrar-General may make such recordings in the Register, and issue such certificates of title, as appear to the Registrar-General to be necessary or proper. No. 23, 1970

(2) Where a recording pursuant to subsection one of this section is not also made on the relevant grant, certificate of title or duplicate registered dealing, the Registrar-General shall record that fact in the Register and shall, at the request of the person entitled, issue a new certificate of title to the person in whom the land is vested.

(3) If a grant, certificate of title or duplicate registered dealing evidencing title to an estate or interest affected by a vesting registered pursuant to this section is in the possession of some person other than the person registered as proprietor under subsection one of this section and the person so in possession fails to deliver it to the Registrar-General for cancellation when required in writing by the Registrar-General so to do, the grant, certificate of title or duplicate registered dealing shall be deemed to be wrongfully retained within the meaning of section one hundred and thirty-six of this Act.

(4) The Registrar-General shall be deemed always to have been authorised—

- (a) to make a recording before the commencement of the Real Property (Amendment) Act, 1921; and
- (b) to issue a certificate of title before that commencement,

that he could have made or issued had this section and section 46B of this Act been in force at the time the recording was made, or the certificate of title issued, as the case may be.

Real Property (Amendment).

No. 23, 1970 **23.** (1) The Conveyancing Act, 1919, is amended—

Amendment
of Act No.
6, 1919.

Sec. 202.
(General
rules under
this Part
of this
Act as to
registration
and fees.)

- (a) by omitting from paragraph (a) of subsection one of section two hundred and two the words “the Real Property Act, 1900,”;
- (b) by omitting from paragraph (c) of the same subsection the words “the Real Property Act, 1900,”;
- (c) by omitting from paragraph (e) of the same subsection the words “or the Real Property Act, 1900”;
- (d) by inserting in the same subsection after the words “other Act” wherever occurring the words “(except the Real Property Act, 1900)”;
- (e) by omitting from subsection three of the same section the words “the provisions of section one hundred and eighteen of the Real Property Act, 1900, and the nineteenth schedule to such Act, or”;
- (f) by inserting in the same subsection after the word “regulation” the words “(except the Real Property Act, 1900, and the regulations made thereunder)”.

(2) Notwithstanding the amendments made by subsection one of this section, the regulations made under the Conveyancing Act, 1919, that—

- (a) were in force immediately before the commencement of this Act; and
- (b) but for this subsection would be repealed by the operation of subsection one of this section,

shall remain in force until repealed by regulations made under that Act.

24.

Real Property (Amendment).

24. The Real Property (Amendment) Act, 1921, is **No. 23, 1970** amended—

(a) by omitting section eleven;

Amendment
of Act No.
3, 1921.

Sec. 11.
(As to land
vested in
the Com-
monwealth
under
s. 85 of the
Common-
wealth of
Australia
Constitution
Act.)

(b) by omitting section thirteen;

Sec. 13.
(Where
roads are
included in
certificate
of title.)

(c) by omitting section fourteen.

Sec. 14.
(Registrar-
General
may register
as proprietor
person
entitled to
land by
operation of
statute
or by
defeasance
of estate.)

25. A reference in any other Act, or in any by-law, regulation, ordinance or in any other instrument or document whatsoever, whether of the same or of a different kind or nature, to a form in a Schedule to the Principal Act shall be read and construed as a reference to the corresponding form approved by the Registrar-General under the Principal Act, as amended by this Act.

Construction
of certain
Acts.

26. Nothing in this Act shall be construed as affecting the provisions of the Evidence (Reproductions) Act, 1967.

Construction
of Act.

27.

Real Property (Amendment).

No. 23, 1970 **27.** Except to the extent that the Registrar-General otherwise directs, a form that, immediately before the commencement of this Act, was authorised for use for certain purposes under the Principal Act shall be deemed to be a form approved by the Registrar-General for the like purposes under the Principal Act, as amended by this Act.

Transitional provisions.
