

New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

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Act No. 96, 1976.

An Act to amend the Real Property Act, 1900. [Assented to,  
8th December, 1976.]

**B**E 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.

1. This Act may be cited as the "Real Property (Amendment) Act, 1976".

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*Real Property (Amendment).*

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2. (1) This section and sections 1, 3 and 4 commence on the date of assent to this Act. Commence-  
ment.

(2) Sections 5, 6, 7 and 8 shall, in their application to a provision of Schedules 1-15, commence or be deemed to have commenced on the day on which that provision commences or is deemed to have commenced.

(3) Except as provided by subsections (4) and (5) the several provisions of Schedules 1-12 and of Schedules 14 and 15 shall commence on the date of assent to this Act.

(4) Schedule 8 (3), (4), (5), (6) and (7) and Schedule 13 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(5) Schedules 5 (6) and 7 (6) shall be deemed to have commenced on 1st July, 1967.

3. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO PRELIMINARY MATTER IN THE REAL PROPERTY ACT, 1900.

SCHEDULE 2.—AMENDMENT TO PART I OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 3.—AMENDMENTS TO PART II OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 4.—AMENDMENTS TO PARTS III AND IV OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 5.—AMENDMENTS TO PART IVA OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 6.—AMENDMENTS TO PART VA OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 7.—AMENDMENTS TO PART VI OF THE REAL PROPERTY ACT, 1900.

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 8.—AMENDMENTS TO PART VII OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 9.—AMENDMENTS TO PART IX OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 10.—AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 11.—AMENDMENT TO PART XV OF THE REAL PROPERTY ACT, 1900.

SCHEDULE 12.—FURTHER AMENDMENTS TO THE REAL PROPERTY ACT, 1900.

SCHEDULE 13.—AMENDMENT TO THE CONVEYANCING ACT, 1919.

SCHEDULE 14.—AMENDMENT TO THE DISTRICT COURT ACT, 1973.

SCHEDULE 15.—AMENDMENTS TO THE STRATA TITLES ACT, 1973.

Transi-  
tional  
provision.

4. Where, before the date of assent to this Act, a writ authorising the sale of land for the purpose of satisfying a judgment debt had issued out of a court of competent jurisdiction and, before that date—

- (a) had been recorded in the Register kept under the Real Property Act, 1900; and
- (b) had not been executed by sale of the land to which it relates,

sections 105 (1) and (5), and 105A to 105D, both inclusive, of the Real Property Act, 1900, as amended by this Act, apply to and in respect of the writ in the same way as they apply to and in respect of a writ recorded on or after that date under section 105 of that Act, as so amended.

Amendment  
of Act No.  
25, 1900.

5. The Real Property Act, 1900, is amended in the manner set forth in Schedules 1–12.

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*Real Property (Amendment).*

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6. The Conveyancing Act, 1919, is amended in the manner set forth in Schedule 13. Amendment of Act No. 6, 1919.
7. The District Court Act, 1973, is amended in the manner set forth in Schedule 14. Amendment of Act No. 9, 1973.
8. The Strata Titles Act, 1973, is amended in the manner set forth in Schedule 15. Amendment of Act No. 68, 1973.
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SCHEDULE 1.

Sec. 5.

AMENDMENTS TO PRELIMINARY MATTER IN THE REAL PROPERTY ACT, 1900.

- (1) Section 1, matter relating to Division 3 of Part IV—  
Omit "*original*", insert instead "*primary*".
- (2) Section 1, matter relating to Part IVA—  
Omit "28P", insert instead "28R".
- (3) Section 3 (a), definition of "Conveyancer"—  
Omit the definition.
- (4) Section 3 (a), definition of "Writ"—

After the definition of "Transmission", insert :—

"Writ"—A writ that issues out of a court of competent jurisdiction and authorises the sale of land for the purpose of satisfying a judgment debt, including a renewal of a writ and a second or subsequent writ issued on a judgment.

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SCHEDULE

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*Real Property (Amendment).*

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**Sec. 5.**

## SCHEDULE 2.

## AMENDMENT TO PART I OF THE REAL PROPERTY ACT, 1900.

## Section 10—

Omit the section.

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**Sec. 5.**

## SCHEDULE 3.

AMENDMENTS TO PART II OF THE REAL PROPERTY ACT,  
1900.

## (1) Section 12 (1) (h)—

Omit “advertisements in the Government Gazette prescribed by subsection (2) of section 17 or”.

## (2) Section 12 (1A)—

After section 12 (1), insert :—

(1A) Notwithstanding subsection (1) (h), a notice of intention to issue a certificate of title for land the subject of a primary application may be served by post.

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**Sec. 5.**

## SCHEDULE 4.

AMENDMENTS TO PARTS III AND IV OF THE REAL PROPERTY  
ACT, 1900.

## (1) Section 13 (5)—

After “those provisions”, insert “, by recording a caveat pursuant to section 12 (1) (e)”.

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 4—*continued.*

AMENDMENTS TO PARTS III AND IV OF THE REAL PROPERTY  
ACT, 1900—*continued.*

(2) Section 14 (5), (6), (7)—

After section 14 (4), insert :—

(5) Subject to subsection (7), an easement expressly created as appurtenant to land the subject of a primary application or to land under the provisions of this Act may be the subject of, or may be included in, a primary application.

(6) Where an easement is, pursuant to a primary application, brought under the provisions of this Act, the Registrar-General shall make any necessary recordings in the Register and, when it becomes available to the Registrar-General, upon any relevant grant or certificate of title.

(7) A primary application may not be made for the issue of a certificate of title for an easement alone.

(3) Section 14A—

Omit the section.

(4) Section 15—

After “produce”, insert “and leave”.

(5) Section 15—

Omit “there to be left for the perusal of the examiners,”.

SCHEDULE

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*Real Property (Amendment).*


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SCHEDULE 4—*continued.*AMENDMENTS TO PARTS III AND IV OF THE REAL PROPERTY ACT, 1900—*continued.*

## (6) Section 17—

Omit the section, insert instead :—

Issue of  
certificate  
of title for  
land the  
subject of  
a primary  
application.

17. (1) Where the Registrar-General intends to issue a certificate of title for land that is the subject of a primary application and, pursuant to section 12 (1) (h) or 12 (1A), gives notice of that intention he shall, in the notice, specify a period (being not less than one month after the date of the notice) before the expiration of which the certificate of title will not be issued.

(2) Where land is the subject of a primary application, the Registrar-General may, subject to subsection (3), bring the land under the provisions of this Act by issuing a certificate of title to—

- (a) the primary applicant;
- (b) where the primary applicant has directed that the certificate of title be issued to a specified person—that person; or
- (c) where, in the opinion of the Registrar-General, a person not referred to in paragraph (a) or (b) is entitled to the land—that person.

(3) The Registrar-General shall not issue a certificate of title under subsection (2)—

- (a) if a notice referred to in subsection (1) has been given and the period specified therein has not expired; or
- (b) there is in force under section 24 a caveat forbidding the issue of the certificate of title.

SCHEDULE

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*Real Property (Amendment).*

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**SCHEDULE 4—*continued.***

AMENDMENTS TO PARTS III AND IV OF THE REAL PROPERTY  
ACT, 1900—*continued.*

(4) The Registrar-General shall, where he issues a certificate of title under subsection (2) to a mortgagee, record on the certificate of title his caveat forbidding the registration of any dealing except in accordance with the powers of the registered proprietor as mortgagee.

(7) Part IV, Division 3, short heading—

Omit "*original*", insert instead "*primary*".

(8) Section 24 (1)—

Omit the subsection, insert instead :—

(1) A person claiming an interest in land the subject of a primary application may, at any time before a certificate of title for the land is issued under section 17 (2), lodge with the Registrar-General a caveat in the approved form forbidding the issue of the certificate of title.

(9) Section 24 (2)—

Omit the subsection.

(10) Section 24 (3)—

Omit "or (2)".

(11) Section 24 (4)—

After section 24 (3), insert :—

(4) The provisions of section 72 (4) and (6) apply to a caveat lodged under subsection (1).

**SCHEDULE**



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*Real Property (Amendment).*

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SCHEDULE 4—*continued.*

AMENDMENTS TO PARTS III AND IV OF THE REAL PROPERTY  
ACT, 1900—*continued.*

(12) Section 25—

Omit the section.

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**Sec. 5.**

SCHEDULE 5.

AMENDMENTS TO PART IV<sup>A</sup> OF THE REAL PROPERTY ACT,  
1900.

(1) Section 28A, definition of “Qualified certificate of title”—

Omit “entered”, insert instead “recorded”.

(2) Section 28EA—

After section 28E, insert :—

Ordinary  
certificate  
of title  
may be  
issued in  
certain cases.

28EA. (1) The Registrar-General may, instead of issuing a qualified certificate of title for land under section 28C, 28D or 28E, issue an ordinary certificate of title for the land if he is satisfied that, were he to issue a qualified certificate of title for the land, the only subsisting interests affecting the land would be one or more of the following :—

- (a) the interest of a mortgagor under a mortgage in respect of which the Registrar-General would be required by subsection (2) to record his caveat;
- (b) an interest that the Registrar-General would protect by recording his caveat under section 12 (1) (e) or (f);

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 5—*continued.*

AMENDMENTS TO PART IVA OF THE REAL PROPERTY ACT,  
1900—*continued.*

- (c) an interest that the Registrar-General would record on the qualified certificate of title;
- (d) an interest that, without any action by the Registrar-General referred to in paragraph (a), (b) or (c), would be preserved by section 42.

(2) Where a certificate of title issues under subsection (1) to a mortgagee, the Registrar-General shall record thereon his caveat forbidding the registration of any dealing except in accordance with the powers of the registered proprietor as mortgagee.

(3) Section 28H (1)—

After “title” where firstly occurring insert “, or by issuing an ordinary certificate of title under section 28EA”.

(4) Section 28H (1)—

Omit “qualified” where secondly occurring.

(5) Section 28J (1)—

Omit “certificate of title pursuant to this Part”, insert instead “qualified certificate of title”.

(6) Section 28M (3), (3A)—

Omit section 28M (3), insert instead :—

(3) After the expiration of the period of 6 years that next succeeds the date of issue of a qualified certificate of title, the caution recorded on the folio

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*Real Property (Amendment).*

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SCHEDULE 5—*continued.*AMENDMENTS TO PART IV<sub>A</sub> OF THE REAL PROPERTY ACT,  
1900—*continued.*

of the Register relating to the land comprised in the **qualified certificate** of title lapses as regards any estate or interest in that land of which, after the date of issue of that certificate of title, a person became or becomes, or is deemed by section 36 (8) to have become, registered as proprietor—

(a) for valuable consideration given after that date; and

(b) without fraud to which he is a party.

(3A) Subject to subsection (5), where a caution lapses under subsection (3) the lapsing operates to free the land, estate or interest in respect of which the caution lapsed from any interests that affected the land at the date on which it was brought under the provisions of this Act by the issue of a qualified certificate of title.

(7) Section 28M (4)—

Omit “subsection (3)”, insert instead “subsection (3) or (9)”.

(8) Section 28M (5)—

After “subsection (3)”, insert “or (8)”.

(9) Section 28M (6)—

After “subsection (4)”, insert “or (8)”.

SCHEDULE

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*Real Property (Amendment).*

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**SCHEDULE 5—*continued.***

**AMENDMENTS TO PART IVA OF THE REAL PROPERTY ACT,  
1900—*continued.***

(10) Section 28M (7), (8), (9), (10)—

After section 28M (6), insert :—

(7) Where the Registrar-General—

(a) records a resumption pursuant to section 31A (3) (a) or (b); or

(b) registers a transfer pursuant to section 604 (3) of the Local Government Act, 1919,

of land comprised in a qualified certificate of title he—

(c) shall cancel the caution recorded on the relevant folio of the Register; and

(d) when the certificate of title becomes available to him, shall cancel the caution recorded thereon,

in so far as the caution relates to the land so resumed or transferred.

(8) Where land has been brought under the provisions of this Act by the issue of a qualified certificate of title and immediately before the expiration of the period of 12 years that next succeeds the issue of the certificate of title (whether it was issued before, on or after the date of assent to the Real Property (Amendment) Act, 1976) the caution affecting that certificate of title has not lapsed as regards all estates and interests in the land or been cancelled, the caution lapses on the expiration of that period and the Registrar-General may, if he thinks fit, cancel the caution.

**SCHEDULE**

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*Real Property (Amendment).*


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 SCHEDULE 5—*continued.*

 AMENDMENTS TO PART IVA OF THE REAL PROPERTY ACT,  
 1900—*continued.*

(9) Subject to subsection (5), where a caution lapses under subsection (8) the lapsing operates to free the land in respect of which the caution lapsed from any interests that affected the land at the date on which it was brought under the provisions of this Act by the issue of a qualified certificate of title.

(10) Subsections (8) and (9) do not operate to defeat the estate or interest of a mortgagor in land in respect of which a Registrar-General's caveat has been recorded under section 28F (2).

(11) Section 28o—

Omit “summons or other proceeding shall lie”, insert instead “proceedings shall be brought, and no action shall lie”.

(12) Section 28P (2) (e)—

After “interest”, insert “affecting land comprised in a qualified certificate of title”.

(13) Section 28P (2) (g)—

Omit “entered”, insert instead “recorded”.

(14) Section 28P (2) (i)—

Omit “any action”, insert instead “any proceedings or action”.

(15) Section 28P (2) (i)—

Omit “that action”, insert instead “those proceedings are or that action”.

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 5—*continued.*

AMENDMENTS TO PART IV<sub>A</sub> OF THE REAL PROPERTY ACT,  
1900—*continued.*

(16) Section 28Q (2)—

Omit “the Real Property Act, 1900”, insert instead  
“this Act”.

(17) Section 28R—

After section 28Q, insert—

28R. Where a dealing creating or transferring an estate or interest in land comprised in a qualified certificate of title has been registered under this Act, any other instrument not registrable under this Act is, to the extent that it purports to give effect to the transaction creating or transferring that estate or interest, of no force or effect.

Certain  
instruments  
to have no  
effect.

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SCHEDULE 6.

Sec. 5.

AMENDMENTS TO PART V<sub>A</sub> OF THE REAL PROPERTY ACT,  
1900.

(1) Section 31A (1), definition of “resumption application”—

Omit “application to”, insert instead “application in the approved form to”.

(2) Section 31A (2)—

Omit “or is comprised in a qualified certificate of title”.

SCHEDULE

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*Real Property (Amendment).*


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**SCHEDULE 6—*continued.***
**AMENDMENTS TO PART VA OF THE REAL PROPERTY ACT,  
1900—*continued.***
**(3) Section 31A (2) (a)—**

Omit “the Registrar-General” where firstly occurring, insert instead “subject to subsection (2B), the Registrar-General”.

**(4) Section 31A (2A), (2B)—**

After section 31A (2), insert—

(2A) An easement which is created by resumption of land which is not under the provisions of this Act may be the subject of, or may be included in, a resumption application under subsection (2) and, for the purpose of giving effect to such an application, the Registrar-General shall make any necessary recordings in the Register and, when it becomes available to the Registrar-General, upon any relevant grant or certificate of title.

(2B) A resumption application may not be made for the issue of a certificate of title for an easement alone.

**(5) Section 31A (4)—**

Omit the subsection, insert instead :—

(4) An action does not lie against the Registrar-General for the recovery of damages sustained through deprivation of land, or of any estate or interest in land, by reason that—

- (a) the Registrar-General acted under this section in relation to what purported to be, but was not, an effective resumption; or

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 6—*continued.*

AMENDMENTS TO PART VA OF THE REAL PROPERTY ACT,  
1900—*continued.*

- (b) the Registrar-General failed to exercise the power conferred on him by subsection (3) (a).

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SCHEDULE 7.

Sec. 5.

AMENDMENTS TO PART VI OF THE REAL PROPERTY ACT,  
1900.

- (1) Section 32 (4)—

Omit “duly registered when the Register has been altered to give effect thereto”, insert instead “registered when a recording with respect to the dealing has been made in the Register”.

- (2) Section 32 (4A)—

After section 32 (4), insert :—

(4A) Subject to sections 12 (1) (d) and 12 (3), where a recording in the Register (including a recording of particulars under subsection (2) (c)) **with** respect to, or consequential upon, a dealing lodged for registration before, on or after the date of assent to the Real Property (Amendment) Act, 1976, is inconsistent with the dealing, the inconsistency **shall be resolved by disregarding the dealing.**

SCHEDULE



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*Real Property (Amendment).*

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SCHEDULE 7—*continued.*AMENDMENTS TO PART VI OF THE REAL PROPERTY ACT,  
1900—*continued.*

## (3) Section 33 (1)—

Omit “section”, insert instead “subsection”.

## (4) Section 33 (3)—

After section 33 (2), insert :—

(3) Where a person is registered as proprietor of a lease registered under this Act, the Registrar-General may, if he thinks fit so to do, issue a certificate of title, or certificates of title, for the estate or interest of that person in some or all of the land leased and may, for the purposes of this subsection, require the production to him of the duplicate registered lease.

## (5) Section 36 (6) (b) (i)—

Omit “subsection (1) or (2)”, insert instead “subsection (2) or (3)”.

## (6) Section 36 (8)—

After “Part”, insert “IVA or”.

## (7) Section 38 (6)—

After “any dealing”, insert “or he may deliver any such folio or registered dealing to a person who, in his opinion, intends to preserve it for historical purposes”.

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 7—*continued.*

AMENDMENTS TO PART VI OF THE REAL PROPERTY ACT,  
1900—*continued.*

(8) Section 43B—

After section 43A, insert—

43B. (1) In this section—

“land” does not include land in a reserve as defined in section 37M (1) of the Crown Lands Consolidation Act, 1913;

Statutory  
restrictions  
on  
alienation,  
etc.

“prescribed consent” means the consent or approval of—

- (a) the Crown;
- (b) a Minister of the Crown; or
- (c) a public authority constituted by an Act where at least one of the members of the authority is appointed by the Governor or by a Minister of the Crown;

“statutory restriction” means a limitation or restriction upon the disposition or devolution of land imposed by the Crown Lands Consolidation Act, 1913, the Returned Soldiers Settlement Act, 1916, the Western Lands Act, 1901, any Act relating to closer settlement or any other Act relating to the alienation of land of the Crown.

(2) Notwithstanding anything in this or any other Act, a registered proprietor of an estate or interest in land that, but for this subsection, would be subject to a statutory restriction holds that estate or interest free from the statutory restriction if—

- (a) he became so registered in good faith and for valuable consideration; and

SCHEDULE

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*Real Property (Amendment).*


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**SCHEDULE 7—*continued.***
**AMENDMENTS TO PART VI OF THE REAL PROPERTY ACT,  
1900—*continued.***

- (b) at the time when he became so registered, the statutory restriction was not recorded on the folio of the Register comprising the land in which he has the estate or interest,

and upon his so holding that estate or interest the statutory restriction ceases to have any further force or effect in relation to that estate or interest.

(3) For the purposes of subsection (2), a statutory restriction may be recorded—

- (a) by a recording which refers to the provision that imposes the statutory restriction;
- (b) by a recording, pursuant to section 12 (1) (e), of a caveat that refers to the provision that imposes the restriction; or
- (c) by a recording of the restriction in such other manner as the Registrar-General considers appropriate.

(4) Notwithstanding anything in any Act, where by the operation of subsection (2) a statutory restriction ceases to have any force or effect in relation to an estate or interest in land, a disposition or devolution of that estate or interest that, but for this subsection, would be invalidated as being in breach of that statutory restriction is not so invalidated.

(5) Where a certificate of title issues for a lot in a deposited plan registered under section 196 of the Conveyancing Act, 1919, and a prescribed consent required for the subdivision illustrated by that deposited plan has not been given—

- (a) that consent to the subdivision shall be deemed not to have been required; and

**SCHEDULE**

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*Real Property (Amendment).*

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**SCHEDULE 7—*continued.***

**AMENDMENTS TO PART VI OF THE REAL PROPERTY ACT,  
1900—*continued.***

- (b) where, but for this paragraph, section 279 of the Crown Lands Consolidation Act, 1913, would apply to or in respect of a proprietor of land in that subdivision, that section does not so apply.

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**SCHEDULE 8.**

**Sec. 5.**

**AMENDMENTS TO PART VII OF THE REAL PROPERTY ACT,  
1900.**

**(1) Section 47 (6A)—**

After section 47 (6), insert :—

(6A) Where the registered proprietor of an easement applies to the Registrar-General in the approved form for cancellation of a specified recording in the Register relating to the easement and, except in the case of an easement created under section 88A of the Conveyancing Act, 1919, or where the Registrar-General otherwise approves, the application bears, or is accompanied by, the written consent of each person who has a registered interest in the land benefited by the easement, the Registrar-General may, to the extent applied for, cancel any recording relating to the easement on any folio of the Register and, when it becomes available to him, upon any grant or certificate of title.

**SCHEDULE**

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*Real Property (Amendment).*


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SCHEDULE 8—*continued.*
**AMENDMENTS TO PART VII OF THE REAL PROPERTY ACT,  
1900—*continued.***
**(2) Section 53 (3)—**

After “transfer”, insert “of”.

**(3) Section 57—**

Omit the section, insert instead :—

**Procedure  
on default.**

57. (1) A mortgage or encumbrance under this Act has effect as a security but does not operate as a transfer of the land mortgaged or encumbered.

(2) A registered mortgagee or encumbrancee may, subject to this Act, exercise the powers conferred by section 58 if—

(a) default has been made in the observance of any covenant expressed or implied in the mortgage or encumbrance or in the payment on the due date of the principal, interest, annuity, rent-charge or other money the payment of which is secured by the mortgage or encumbrance or of any part of that principal, interest, annuity, rent-charge or other money;

(b) where—

(i) the default relates to that payment;  
or

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 8—*continued.*

AMENDMENTS TO PART VII OF THE REAL PROPERTY ACT,  
1900—*continued.*

- (ii) the default does not relate to that payment and notice or lapse of time has not been dispensed with under section 58A,

the mortgagee or encumbrancee serves on the mortgagor or encumbrancer, in the manner authorised by section 170 of the Conveyancing Act, 1919, a written notice that complies with subsection (3); and

- (c) where such a notice is so served, the requirements of the notice are not complied with within the time notified pursuant to subsection (3) (d).

(3) A notice referred to in subsection (2) complies with this subsection if—

- (a) it specifies that it is a notice pursuant to section 57 (2) (b) of the Real Property Act, 1900;
- (b) it requires the mortgagor or encumbrancer on whom it is served—
  - (i) to observe, except in relation to any time expressed in the covenant for its observance, the covenant in respect of the observance of which he made default; or

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 8—*continued.*AMENDMENTS TO PART VII OF THE REAL PROPERTY ACT,  
1900—*continued.*

- (ii) as the case may be, to pay the principal, interest, annuity, rent-charge or other money in respect of the payment of which he made default;
  - (c) if the costs and expenses of the mortgagee or encumbrancee in preparing and serving the notice are to be demanded, it requires payment of a reasonable amount for those costs and expenses and specifies the amount; and
  - (d) it notifies the mortgagor or encumbrancer that, unless the requirements of the notice are complied with within one month after service of the notice (or, where some other period exceeding one month is limited by the mortgage or encumbrance for remedying the default referred to in the notice, within that other period after service of the notice), the mortgagee or encumbrancee proposes to exercise his power of sale.
- (4) Where a notice is served under subsection (2) (b) and the requirements of the notice are complied with within the time applicable to the notice under subsection (3) (d), the default to which the notice relates shall be deemed not to have occurred.

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 8—*continued.*

AMENDMENTS TO PART VII OF THE REAL PROPERTY ACT,  
1900—*continued.*

(5) Without prejudice to any other manner in which it may be deprived of force or effect, a covenant, agreement or condition whereby upon a default referred to in subsection (2) (a)—

(a) the whole of the principal or other money of which the payment is secured by a mortgage or encumbrance becomes payable;  
or

(b) a part of that principal or other money (not being a part to which that default relates) becomes payable,

has no force or effect until the powers conferred by section 58 become exercisable by reason of that default.

(4) Section 58 (1)—

Omit “After such default in payment or in observance of covenants continuing for the further space of one month from the service of such notice, or for such other period as may in such instrument be for that purpose limited, such mortgagee or encumbrancee is hereby authorised and empowered to sell the land so”, insert instead “Where a mortgagee or encumbrancee is authorised by section 57 (2) to exercise the powers conferred by this section, the mortgagee or encumbrancee may sell the land”.

SCHEDULE



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*Real Property (Amendment).*

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SCHEDULE 8—*continued.*AMENDMENTS TO PART VII OF THE REAL PROPERTY ACT,  
1900—*continued.*

## (5) Section 58A (1)—

Omit “sections 57 or 58”, insert instead “section 57 (not being notice or lapse of time relating to default in the payment on the due date of any principal, interest, annuity, rent-charge or other money)”.

## (6) Section 58A (2)—

Omit “Conveyancing (Amendment) Act, 1930”, insert instead “Real Property (Amendment) Act, 1976, and, to the extent to which an agreement dispensing with notice or lapse of time expressed in such a mortgage or encumbrance is not authorised by subsection (1), the agreement has no force or effect”.

## (7) Section 61 (5)—

Omit “in which the requirement of notice prescribed by section 57 is expressed to be dispensed with”, insert instead “in respect of which the giving of notice is dispensed with under section 58A”.

## (8) Section 72 (4)—

Omit “referred to in subsection (1)”.

## (9) Section 74 (3) (g)—

Omit “of execution”.

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*Real Property (Amendment).*

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SCHEDULE 9.

Sec. 5.

AMENDMENTS TO PART IX OF THE REAL PROPERTY ACT,  
1900.

(1) Section 82 (1)—

Omit “paragraph (f) of section 12”, insert instead  
“section 12 (1) (f)”.

(2) Section 86 (3), (4)—

After section 86 (2), insert :—

(3) Where a direction, judgment or order of a court of competent jurisdiction directs, appoints or empowers a person other than the registered proprietor to dispose of land that is under the provisions of this Act, the Registrar-General may refuse to register a dealing executed pursuant to the direction, judgment or order unless—

(a) the attestation of the dealing indicates that it is executed pursuant to; and

(b) the dealing is accompanied by an office copy of,

the direction, judgment or order.

(4) An action does not lie against the Registrar-General for recovery of damages sustained through deprivation of land, or of any estate or interest in land, by reason of registration of an order referred to in subsection (1) or a dealing referred to in subsection (3).

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SCHEDULE

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*Real Property (Amendment).*


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Sec. 5.

## SCHEDULE 10.

 AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900.

## (1) Section 97 (2)—

Omit the subsection, insert instead :—

(2) A person who claims an estate or interest in land described in a caveat lodged under section 24 or 72 may apply to the Supreme Court for an order that the caveat be withdrawn by the caveator or by some other specified person, being a person authorised by section 72 (6) (b), (c) or (d) to withdraw the caveat.

## (2) Section 97 (3), (4), (5), (6)—

Omit section 97 (3), insert instead :—

(3) Subject to subsection (4), notice of an application under subsection (2)—

- (a) shall be served on the person against whom the order applied for is sought; and
- (b) where that person is the caveator may be served as provided by section 72 (4).

(4) Where the Supreme Court considers that notice of an application under subsection (2) cannot be served as provided by subsection (3), the Court may order—

- (a) that notice be served in such other manner, or on such other person, as the Court may direct; or
- (b) that service of the notice be dispensed with.

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

(5) Where notice of an application under subsection (2) has been served as provided by subsection (3) or (4) or service of the notice has been dispensed with under subsection (4), the Supreme Court may, in the proceedings instituted by the application—

(a) order a specified person, being a person authorised by section 72 (6) to withdraw the caveat to which the proceedings relate, to withdraw that caveat within a specified time; and

(b) make such other or further order as it thinks fit,

or may dismiss the application.

(6) Where an order for the withdrawal of a caveat is made under subsection (5) and a withdrawal of the caveat is not, within the time limited by the order, lodged with the Registrar-General, the caveat lapses when an office copy of the order is lodged with the Registrar-General.

(3) Section 101 (b)—

Omit “a registered”, insert instead “an”.

(4) Section 101 (2)—

At the end of section 101, insert :—

(2) Subsection (1) does not authorise the Registrar-General to bring land under the provisions of this Act.

**SCHEDULE**

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*Real Property (Amendment).*


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 SCHEDULE 10—*continued.*

 AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
 1900—*continued.*

## (5) Section 105—

Omit the section, insert instead :—

 Recording  
 of writ in  
 Register.

105. (1) A writ, whether or not it is recorded in the Register, does not create any interest in land under the provisions of this Act.

(2) Subject to subsections (3), (5) and (6), the Registrar-General may record a writ in the Register pursuant to an application in the approved form which—

- (a) identifies, by reference to a folio of the Register or to a registered dealing, the land in respect of which the recording is sought;
- (b) is accompanied by an office copy of the writ;
- (c) incorporates, or is accompanied by, a statutory declaration that, to the satisfaction of the Registrar-General, identifies the judgment debtor named in the writ with the registered proprietor of the land comprised in that folio or registered dealing; and
- (d) is lodged not later than six months after the date of issue of the writ.

(3) Where application is made under subsection (2) for the recording of a writ and it appears to the Registrar-General that the land to which the application relates is held by the registered proprietor

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

in a fiduciary capacity, the Registrar-General may refuse to record the writ unless it is proved to his satisfaction that the writ was issued pursuant to a judgment against the registered proprietor in that fiduciary capacity.

(4) A writ may be recorded on a registered mortgage, encumbrance or lease and may be executed by the sale and transfer of a mortgage, encumbrance or lease.

(5) Where a writ is recorded in the Register, the Registrar-General shall not, unless he cancels that recording, record upon the folio of the Register, or upon the registered dealing, upon which the writ was recorded a renewal of the writ or a second or subsequent writ that was issued on the same judgment.

(6) Where, at the time of lodgment of an application for the recording of a writ, a dealing for valuable consideration affecting the land identified under subsection (2) (a) in the application is awaiting registration and is in registrable form, the Registrar-General shall not record the writ unless—

- (a) the dealing is withdrawn from registration;  
or
- (b) the dealing does not dispose of the whole estate and interest in the land so identified and the application indicates to the satisfaction of the Registrar-General that, unless the dealing is subsequently withdrawn from registration, its registration is to precede the registration of any transfer giving effect to a sale under the writ.

SCHEDULE

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*Real Property (Amendment).*


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SCHEDULE 10—*continued.*AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

## (6) Sections 105A–105D—

After section 105, insert :—

Effect of  
recording  
of writ.

105A. (1) Subsection (2) does not apply to a dealing affecting land in respect of which a writ is recorded under section 105 where the dealing is—

- (a) a transfer giving effect to a sale under the writ;
- (b) a dealing on which is endorsed a consent under section 112 (3) of the District Court Act, 1973;
- (c) an application under section 28M (4) for cancellation of a caution;
- (d) a transfer referred to in section 53 (3) executed pursuant to a right or covenant stipulated in a lease that was recorded in the Register before the writ was so recorded;
- (e) a dealing which, upon registration, will record the determination of a registered lease;
- (f) a dealing by a mortgagee or encumbrancee in exercise of his powers under a mortgage or encumbrance that was recorded in the Register before the writ was so recorded;
- (g) a postponement of mortgage where each of the relevant mortgages was recorded in the Register before the writ was so recorded;
- (h) an order for foreclosure issued under section 62 (1);

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

- (i) an application for the recording under section 66 (1) of the satisfaction or discharge of an annuity or sum of money secured by a registered encumbrance;
- (j) a dealing referred to in section 74 (3) (a), (b), (c), (d), (e), (f) or (g);
- (k) an order or transfer referred to in section 85 (1);
- (l) an office copy of an order referred to in section 86 (1);
- (m) a dealing referred to in section 86 (3);
- (n) an application under section 90;
- (o) a dealing by The Official Receiver in Bankruptcy constituted under the Bankruptcy Act 1966 of the Commonwealth;
- (p) a dealing the registration or recording of which is ordered or directed under section 121 (7), 123 or 138;
- (q) an application under section 105D for cancellation of the recording of a writ; or
- (r) a notification in the Gazette whereby land becomes Crown land within the meaning of the Crown Lands Acts.

(2) Where a writ is recorded under section 105 and a dealing (other than a dealing to which, by the operation of subsection (1), this subsection does not apply) that affects the land to which the recording relates is lodged for registration within the period of three months that next succeeds the recording of the writ, the Registrar-General shall not,

SCHEDULE



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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

during that period of three months, register the dealing unless the writ is referred to in the dealing as if it were a prior encumbrance.

(3) Notwithstanding anything in subsection (7), where a writ has been recorded under section 105 and a transfer by the judgment debtor is lodged for registration, being a transfer that—

- (a) is in registrable form;
- (b) comprises the whole of the land to which the recording relates; and
- (c) bears an endorsement of a consent given under section 112 (3) of the District Court Act, 1973,

the Registrar-General shall register the transfer and cancel the recording of the writ.

(4) Notwithstanding anything in subsection (7), where a writ has been recorded under section 105 and a transfer or mortgage by the judgment debtor is lodged for registration, being a transfer or mortgage that—

- (a) is in registrable form;
- (b) in the case of a transfer, comprises part of the land to which the recording relates or, in the case of a mortgage, comprises the whole or part of that land; and

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

- (c) bears an endorsement of a consent given under section 112 (3) of the District Court Act, 1973,

the Registrar-General shall register the transfer or mortgage.

(5) Where—

- (a) a writ which has been recorded in the Register is referred to in a dealing as if it were a prior encumbrance; and  
(b) a transfer in registrable form pursuant to a sale under the writ is lodged for registration,

the Registrar-General shall, whether or not—

- (c) the dealing referred to in paragraph (a) has been registered; or  
(d) the judgment debtor named in the writ is registered as proprietor of the land comprised in the transfer referred to in paragraph (b),

make such recordings in the Register as will register the transferee under the transfer referred to in paragraph (b) as proprietor of the land comprised in that transfer, freed from any estate or interest created by the dealing referred to in paragraph (a).

(6) Where a writ recorded under section 105 has not, within the period of three months that next succeeds that recording, been executed by sale of the land to which the recording relates, a dealing with that land lodged for registration before the writ is so executed may be registered notwithstanding the recording of the writ.

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

(7) Where a writ recorded under section 105 is, after the expiration of the period of three months that next succeeds the recording, executed by sale of all or part of the land to which the recording relates and a transfer pursuant to the sale is lodged for registration—

- (a) the Registrar-General shall register the transfer under section 105B (1) if, at the time the transfer is lodged—
- (i) the judgment debtor named in the writ is registered as proprietor of the whole of the land comprised in the transfer;
  - (ii) the transfer is in registrable form; and
  - (iii) no dealing creating or disposing of an estate or interest in the whole or part of the land comprised in the transfer and expressed to be for valuable consideration is awaiting registration,

and shall so register the transfer notwithstanding that, at the time it is lodged, a dealing creating or disposing of an estate or interest in the whole or part of the land comprised in the transfer but not expressed to be for valuable consideration is awaiting registration;

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

(b) the Registrar-General shall refuse to register the transfer if—

(i) the judgment debtor named in the writ is not, at the time the transfer is lodged, registered as proprietor of any of the land comprised in the transfer; and

(ii) the person who is, at that time, registered as proprietor of any of that land became so registered pursuant to a dealing expressed to be for valuable consideration,

unless the writ was referred to in the dealing referred to in subparagraph (ii) as if it were a prior encumbrance;

(c) the Registrar-General shall refuse to register the transfer if, at the time it is lodged—

(i) the judgment debtor named in the writ, or a transferee from that judgment debtor pursuant to a transfer not expressed to be for valuable consideration, is registered as proprietor of part only of the land comprised in the transfer; and

(ii) another person registered as proprietor of some other part of that land became so registered pursuant to a dealing expressed to be for valuable consideration,

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

unless—

(iii) the writ was referred to in the dealing referred to in subparagraph (ii) as if it were a prior encumbrance; or

(iv) all the land referred to in subparagraph (ii) is excluded from the transfer,

and the Registrar-General shall so refuse notwithstanding that the transfer would, but for this paragraph, be in registrable form;

(d) the Registrar-General shall refuse to register the transfer if, at the time it is lodged, the whole of the land comprised therein is the subject of another transfer that—

(i) is awaiting registration;

(ii) is in registrable form;

(iii) is expressed to be for valuable consideration; and

(iv) is not a transfer that, upon registration, would operate only to create or release an easement,

unless that other transfer is withdrawn from registration or the writ is referred to therein as if it were a prior encumbrance;

(e) the Registrar-General shall refuse to register the transfer if, at the time it is lodged, part of the land comprised therein is the subject

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

of another transfer that is awaiting registration, is in registrable form, is expressed to be for valuable consideration and is not a transfer that, upon registration, would operate only to create or release an easement unless—

- (i) that other transfer is withdrawn from registration; or
  - (ii) that part of the land is excluded from the first-mentioned transfer;
- (f) the Registrar-General shall refuse to register the transfer if, before it was lodged, a dealing (not being a transfer or, if it is a transfer, being a transfer that operated only to create or release an easement) by the judgment debtor named in the writ expressed to be for valuable consideration and creating or disposing of an estate or interest in the whole or part of the land comprised in the first-mentioned transfer has been registered unless that estate or interest is referred to in the first-mentioned transfer in the memorandum of prior encumbrances;
- (g) the Registrar-General shall refuse to register the transfer if, before the transfer was lodged, a dealing (not being a transfer or, if it is a transfer, being a transfer that, upon registration, would operate only to create or release an easement) expressed to be for

**SCHEDULE**

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**Real Property (Amendment).**

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**SCHEDULE 10—continued.****AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—continued.**

valuable consideration and creating or disposing of an estate or interest in the whole or part of the land comprised in the transfer is awaiting registration unless—

- (i) that dealing is withdrawn from registration; or
- (ii) that estate or interest is referred to in the first-mentioned transfer in the memorandum of prior encumbrances.

(8) Where—

- (a) a writ recorded under section 105 is, after the expiration of the period of three months that next succeeds the recording, executed by sale of the whole or part of the land to which the recording relates;
- (b) a transfer in registrable form pursuant to the sale is lodged for registration; and
- (c) a dealing (including another transfer but not being a dealing expressed to be for valuable consideration) by the judgment debtor named in the writ was lodged for registration after the recording of the writ, being a dealing that—
  - (i) creates or disposes of an estate or interest in the whole or part of the land comprised in the transfer referred to in paragraph (b); and

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

- (ii) at the time the transfer referred to in paragraph (b) was lodged for registration, had been registered or was awaiting registration,

the Registrar-General shall register the transfer referred to in paragraph (b) and—

- (d) where the dealing referred to in paragraph (c) has been registered—cancel its registration; or

- (e) where the dealing so referred to is awaiting registration—reject it,

unless—

- (f) where that dealing is a transfer that affects part only of the land comprised in the transfer referred to in paragraph (b)—the estate or interest created or disposed of by the dealing is excluded from the transfer so referred to; or

- (g) in any other case—that estate or interest is referred to in the memorandum of prior encumbrances in the transfer so referred to.

105B. (1) A transfer pursuant to a sale under a writ is registered when it is recorded on the relevant folio of the Register or on the relevant registered dealing and, where the Registrar-General has registered such a transfer, he shall, when the relevant grant, certificate of title or duplicate registered dealing becomes available to him, record the transfer thereon. **Registration of transfer pursuant to sale under writ.**

**SCHEDULE**



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*Real Property (Amendment).*


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 SCHEDULE 10—*continued.*


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 AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
 1900—*continued.*

(2) Upon the registration of a transfer referred to in subsection (1), the transferee holds the land transferred free from all encumbrances, liens, estates or interests except such as—

- (a) are recorded on the relevant folio of the Register or on the relevant registered dealing;
- (b) are preserved by section 42; and
- (c) are, in the case of land comprised in a qualified certificate of title, subsisting interests within the meaning of section 28A.

(3) An action for recovery of damages sustained through deprivation of land, or of any estate or interest in land, by reason of the registration of a transfer purporting to give effect to a sale under a writ does not lie against the Registrar-General.

**Lapsing  
of writ.**

105c. (1) Upon the registration of a transfer or other dealing that for valuable consideration disposes of the whole estate or interest in land affected by a recording of a writ (not being a transfer pursuant to a sale under the writ) the writ lapses in relation to that land unless the transfer or other dealing refers to the writ as if it were a prior encumbrance.

(2) Upon the registration of a dealing that for valuable consideration disposes of or creates an estate or interest less than the whole estate or interest in land affected by a recording of a writ, the writ lapses in respect of the estate or interest so disposed of or created unless the dealing refers to the writ as if it were a prior encumbrance.

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*

AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

(3) Upon the expiration of the currency of a writ recorded under section 105, the writ lapses in respect of the land to which the recording relates unless it was, during its currency, executed by sale of that land.

105D. The Registrar-General may cancel a record-  
ing in the Register of a writ if application for the  
cancellation of the recording is made in the approved  
form and— Cancel-  
lation of  
recording  
of writ.

- (a) the application incorporates or is accompanied by—
  - (i) a withdrawal of the writ signed by the judgment creditor; and
  - (ii) a statutory declaration that satisfies the Registrar-General that the writ has not been executed by sale of the land to which the application relates and has been returned to the court out of which it issued;
  
- (b) the application incorporates or is accompanied by—
  - (i) a withdrawal of the writ signed by the purchaser at a sale pursuant to the writ of the land to which the application relates;
  - (ii) evidence that satisfies the Registrar-General of the identity of the purchaser; and

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*Real Property (Amendment).*

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SCHEDULE 10—*continued.*AMENDMENTS TO PART XII OF THE REAL PROPERTY ACT,  
1900—*continued.*

- (iii) a statutory declaration that satisfies the Registrar-General that the writ has been returned to the court out of which it issued;
  - (c) the application incorporates or is accompanied by—
    - (i) evidence that satisfies the Registrar-General that the writ has been satisfied otherwise than by sale of the land to which the application relates; and
    - (ii) a statutory declaration that satisfies the Registrar-General that the writ has been returned to the court out of which it issued; or
  - (d) the writ has lapsed and the application is supported by such evidence as the Registrar-General may require.
- (7) Section 117 (1)—
- Omit “, or by the conveyancer employed by the applicant or party”.

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*Real Property (Amendment).*

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SCHEDULE 11.

Sec. 5.

AMENDMENT TO PART XV OF THE REAL PROPERTY ACT,  
1900.

Section 138 (2)—

At the end of section 138, insert :—

(2) An action does not lie against the Registrar-General for recovery of damages sustained through deprivation of land, or any estate or interest in land, by reason of compliance by the Registrar-General with a direction given under subsection (1).

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SCHEDULE 12.

Sec. 5.

FURTHER AMENDMENTS TO THE REAL PROPERTY ACT,  
1900.

(1) Section 1—

After the matter relating to Part IVA, insert :—

PART IVB.—LIMITED CERTIFICATES OF TITLE—  
ss. 28s–28z.

(2) Section 28D—

Omit the section, insert instead—

28D. Where the title to any land under common law title is evidenced by a registered deed and the land is so described in that deed that, in the opinion of the

Qualified certificate of title may be based on registered deed.

SCHEDULE

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*Real Property (Amendment).*


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**SCHEDULE 12—continued.**
**FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—continued.**

Registrar-General, no further survey definition is necessary adequately to define the boundaries of that land, the Registrar-General may—

- (a) issue, in accordance with the provisions of this Part, a qualified certificate of title for any of that land; and
- (b) for the purposes of so issuing a qualified certificate of title, retain any relevant deed in his custody.

(3) Section 28E (1)—

Omit the subsection, insert instead—

(1) The Registrar-General may cause notice to be given to any person (in this subsection referred to as “the addressee”) requiring him, after making such inquiries as are necessary to enable him to do so, within a time specified in the notice—

- (a) to furnish to the Registrar-General a statement supplying the particulars required by the notice in respect of land under common law title specified in the notice, being land the boundaries of which, in the opinion of the Registrar-General, are adequately defined without further survey definition;
- (b) to indicate in that statement whether the addressee claims a proprietary interest in the land;

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

- (c) where the addressee so claims a proprietary interest by virtue of an assurance or other disposition or by devolution in law—
  - (i) to indicate the nature of that interest; and
  - (ii) where the Registrar-General so requires, to include in the statement a list setting out in chronological order particulars of all instruments that evidence title to the interest claimed and of the existence of which he is aware and to indicate in that list which of those instruments are in his possession or under his control;
- (d) where the addressee so claims a proprietary interest by the operation of any statute of limitations, to furnish to the Registrar-General such evidence in support of that claim as the addressee possesses; and
- (e) to produce to the Registrar-General such instruments, being instruments referred to in paragraph (c) (ii) that are in the possession of the addressee or under his control, as the Registrar-General may require.

SCHEDULE

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*Real Property (Amendment).*


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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

## (4) Section 28E (2)—

Omit the subsection, insert instead—

(2) Where a notice has been given under subsection (1) the Registrar-General may, in accordance with the provisions of this Part, issue for any land specified in the notice a qualified certificate of title.

(5) Part IV<sub>B</sub>—

After Part IV<sub>A</sub>, insert :—

PART IV<sub>B</sub>.

## LIMITED CERTIFICATES OF TITLE.

**Interpre-**  
**tation.**

28s. (1) In this Part and in all instruments purporting to be made under this Act, unless inconsistent with the context or subject-matter—

“delimitation condition” means a condition referred to in section 28T (4) (a);

“exemption certificate” means a certificate issued under section 28W;

“land under common law title” has the same meaning as it has in Part IV<sub>A</sub>;

“limitation caveat” means a caveat recorded under section 28T (4);

## SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

“limited certificate of title” means a certificate of title upon which is recorded a limitation caveat which has not been withdrawn, whether or not that certificate of title is a qualified certificate of title;

“occupational boundary” means a line determined in accordance with the position of a fence, wall or other structure which physically separates a parcel of land from conterminous land, not being a line determined in accordance with the position of a fence erected as to part across a river, stream, creek or other such natural feature and as to part on each side thereof in such manner that, in the opinion of the Registrar-General, the fence is in the nature of a give and take fence;

“ordinary certificate of title” means a certificate of title that is not a qualified certificate of title or a limited certificate of title;

“qualified certificate of title” has the same meaning as it has in Part IVA;

“registered deed” has the same meaning as it has in Part IVA;

“valuable consideration” means monetary consideration that is not nominal consideration.

(2) In this Part, a reference to a transfer for valuable consideration does not include a reference to a transfer the sole purpose of which is to discharge a mortgage or to create or release an easement.

SCHEDULE



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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

Issue of  
limited  
certificate  
of title.

28T. (1) Where the boundaries of land described in a registered deed are not sufficiently defined to enable the Registrar-General to issue a qualified certificate of title under section 28C or 28D, he may, subject to subsection (4)—

- (a) issue a qualified certificate of title for any of that land to the person to whom, if no further survey definition had been necessary adequately to define the boundaries of the land, he could have issued a qualified certificate of title under section 28C or 28D, as the case may be; and
- (b) for the purpose of issuing a certificate of title for that land under paragraph (a), retain any relevant deed in his custody.

(2) Where the boundaries of land are not sufficiently defined to enable the Registrar-General to cause a notice to be given under section 28E (1), he may cause such a notice to be given and, subject to subsection (4), may issue a qualified certificate of title to the person to whom, if no further survey definition had been necessary adequately to define the boundaries of the land, he could have issued a qualified certificate of title under section 28E.

(3) Where the boundaries of land are not sufficiently defined to enable the Registrar-General to issue an ordinary certificate of title under section 28EA, he may, subject to subsection (4), issue a certificate of title to the person to whom, if no further survey definition had been necessary adequately to define the boundaries of the land, he could have issued an ordinary certificate of title under section 28EA.

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY ACT,  
1900—*continued.*

(4) When issuing a certificate of title under subsection (1), (2) or (3) the Registrar-General shall record on the relevant folio of the Register a caveat that—

- (a) specifies the conditions, being conditions relating to definition of boundaries, subject to compliance with which he will withdraw the caveat;
- (b) specifies any occupational boundary of the land that has been adopted under section 28U; and
- (c) forbids the registration of any transfer for valuable consideration of the land comprised in the certificate of title unless—
  - (i) the conditions referred to in paragraph (a) are complied with; or
  - (ii) the transfer is accompanied by an appropriate exemption certificate.

(5) Where a certificate of title issues under subsection (3) to a mortgagee, the Registrar-General shall record thereon his caveat forbidding the registration of any dealing except in accordance with the powers of the registered proprietor as mortgagee.

(6) The provisions of section 28H (1) apply to and in respect of a certificate of title issued under subsection (3) as if the reference in section 28H (1) to an ordinary certificate of title issued under section 28EA were a reference to a certificate of title issued under subsection (3).

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*FURTHER AMENDMENTS TO THE REAL PROPERTY ACT,  
1900—*continued.*

(7) Part IVA (sections 28B, 28C, 28D, 28E and 28EA excepted) applies to and in respect of a qualified certificate of title issued under this Part (whether or not it ceases to be a limited certificate of title) in the same way as it applies to and in respect of a qualified certificate of title issued under Part IVA.

(8) Except as otherwise provided by any other provision of this Part—

- (a) land comprised in a limited certificate of title is subject to the provisions of this Act;
- (b) the provisions of this Act relating to ordinary certificates of title, land comprised in ordinary certificates of title and the registration of dealings affecting land comprised in ordinary certificates of title shall apply to limited certificates of title, land comprised in limited certificates of title and the registration of dealings affecting land comprised in limited certificates of title;
- (c) a reference in this and in any other Act (other than the Strata Titles Act, 1973) to a certificate of title includes a reference to a limited certificate of title; and
- (d) a limited certificate of title shall be evidence as to title in all respects as if it were an ordinary certificate of title, except that—
  - (i) the certification of title is not conclusive as regards the definition of any boundary that is subject to a delimitation condition; and

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

- (ii) where the certificate of title is also a qualified certificate of title, the operation of section 28<sup>P</sup> (1) (d), as applied by subsection (7), is not affected.

- 28U. (1) This section has effect notwithstanding—
- (a) section 9 (2) of the Dividing Fences Act, 1951; or
  - (b) anything in the Local Government Act, 1919, or any other Act, with respect to the subdivision of land.

Adoption  
of  
occupational  
boundary.

(2) Subject to subsections (3), (4) and (5), on and after the second anniversary of the date of assent to the Real Property (Amendment) Act, 1976, the Registrar-General may, for the purpose of issuing a limited certificate of title, adopt an occupational boundary as the boundary between the land comprised in that certificate of title and any conterminous land that is—

- (a) under common law title; or
- (b) comprised in a limited certificate of title in respect of which the limitation caveat specifies that boundary as an occupational boundary.

(3) Where, under subsection (2), the Registrar-General, for the purpose of issuing a limited certificate of title, intends to adopt an occupational boundary as the boundary between the land

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

to be comprised in that certificate of title and conterminous land under common law title, he shall cause notice of that intention to be given—

- (a) to the person to whom he intends to issue the limited certificate of title; and
- (b) to the person to whom, if no further survey definition were necessary adequately to define the boundaries of the conterminous land, he could issue a qualified certificate of title for that land under Part IVA.

(4) A notice referred to in subsection (3) shall—

- (a) specify a period (being not less than one month after the date of the notice) before the expiration of which the limited certificate of title will not be issued; and
- (b) require the person to whom it is given to show cause to the Registrar-General within the period so specified why the certificate of title should not be issued.

(5) Unless within the period specified in a notice given under subsection (3) cause is so shown to his satisfaction, the Registrar-General may proceed with the issue of the limited certificate of title.

(6) Where an occupational boundary of land has been adopted under subsection (2) and that boundary is defined by a fence the position of which has been determined by an order under section 9 (1) of the Dividing Fences Act, 1951, that order ceases,

SCHEDULE

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*Real Property (Amendment).*


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**SCHEDULE 12—*continued.***
**FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.***

upon the recording of the limitation caveat affecting the land, to have any further force or effect in so far as it relates also to the payment of compensation.

(7) Where, under subsection (2), the Registrar-General adopts an occupational boundary of any land and, by reason only of the adoption of that boundary there is included in the limited certificate of title any land that, immediately before the issue of the certificate of title—

- (a) was under common law title and was owned by a person other than the registered proprietor named in the limited certificate of title; and
- (b) would not have been included in the limited certificate of title had that boundary been defined by survey,

the land so included shall be deemed to have been duly and effectually assured to the owner for the time being of the balance of the land comprised in the limited certificate of title.

28v. (1) The Registrar-General may—

- (a) where he is satisfied that a delimitation condition has been complied with—cancel the reference in the limitation caveat to that condition; and
- (b) where he is satisfied that all delimitation conditions in a limitation caveat have been complied with—withdraw the caveat.

Withdrawal  
of limita-  
tion caveat.

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

(2) Where land comprised in a limited certificate of title is conterminous with other land comprised in a limited certificate of title and there is lodged with the Registrar-General a memorandum in the approved form that—

- (a) evidences an agreement, made between the respective registered proprietors of the lands comprised in those certificates of title, to ratify the definition of a common boundary of those lands (being a boundary the subject of a delimitation condition) shown in the relevant folios of the Register;
- (b) incorporates, or is accompanied by, a statutory declaration by each of those registered proprietors with respect to the land comprised in his limited certificate of title that—
  - (i) specifies that there is no person who has an unregistered proprietary interest in that land; or
  - (ii) identifies all persons who have such an interest; and
- (c) incorporates, or is accompanied by, the written consent of—
  - (i) all persons (other than the parties to the agreement and any person whose consent is dispensed with under subsection (3)) who have registered interests in those lands; and

**SCHEDULE**

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

- (ii) the persons identified in accordance with paragraph (b) (ii) (other than the parties to the agreement and any person whose consent is dispensed with under subsection (3)),

the Registrar-General may, in his discretion, cancel a delimitation condition in so far as it relates to that boundary.

(3) Where the Registrar-General is satisfied that, in relation to any land, the exercise by him of his powers under subsection (2) would not prejudicially affect the proprietary interest in that land of a person whose consent would, but for this subsection, be required under subsection (2) (c), he may dispense with that consent.

28w. (1) Upon application being made in the approved form, the Registrar-General may, subject to subsection (2), certify in writing that a transfer for valuable consideration of specified land (being land comprised in a limited certificate of title) that is otherwise in order for registration will be registered notwithstanding the limitation caveat affecting the certificate of title. Exemption certificates.

(2) The Registrar-General shall not issue a certificate under subsection (1) unless he considers that, having regard to—

- (a) the value of the land to which the application relates;

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*Real Property (Amendment).*


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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

- (b) the nature and extent of the evidence necessary to comply with the delimitation conditions affecting that land;
  - (c) the cost of obtaining that evidence; and
  - (d) any other circumstances he considers to be relevant,
- refusal to issue the certificate would inflict unreasonable hardship on the applicant.

(3) A certificate issued under subsection (1) may—

- (a) stipulate that the exemption conferred by the certificate is conditional upon the consideration in respect of any exempted transfer not exceeding a specified sum;
- (b) specify a date before which a transfer should be lodged for registration in order to enjoy the exemption conferred by the certificate; and
- (c) be expressed to be subject to such other conditions or limitations as may be prescribed.

(4) The Registrar-General may register a transfer for valuable consideration of land comprised in a limited certificate of title, notwithstanding the existence of a limitation caveat, if the transfer is accompanied by an appropriate exemption certificate but shall allow the caveat to remain recorded on the relevant folio of the Register until withdrawn in accordance with the provisions of this Part.

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

28x. (1) Except as provided by subsection (2), in any contract for the sale of land comprised in a limited certificate of title there shall be implied a condition that the vendor will, at his own expense, procure the withdrawal of the limitation caveat affecting the land.

Implied  
condition  
in contract  
for sale  
of land in  
limited  
certificate  
of title.

(2) The condition referred to in subsection (1) is not implied in a contract for the sale of land if—

- (a) it is an express term of the contract that the vendor will, at his own expense and on or before completion of the contract, provide the purchaser with an appropriate exemption certificate; and
- (b) the vendor so provides such an exemption certificate.

(3) This section has effect notwithstanding any stipulation to the contrary.

28y. (1) Notwithstanding the provisions of Part XIV, no proceedings shall be brought, and no action shall lie, against the Registrar-General for any refusal—

Certain  
proceedings  
against  
Registrar-  
General  
barred.

- (a) to register a transfer for valuable consideration of land comprised in a limited certificate of title where the transfer is not accompanied by an appropriate exemption certificate;

SCHEDULE

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*Real Property (Amendment).*


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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

- (b) to cancel a delimitation condition; or
- (c) to withdraw a limitation caveat.

(2) The Registrar-General may refuse to register a transfer referred to in section 604 of the Local Government Act, 1919, of land comprised in a limited certificate of title (not being a transfer accompanied by an appropriate exemption certificate) until the relevant limitation caveat has been withdrawn.

Lodgment  
of plan  
may be  
required.

28z. Without limiting the generality of section 114, the Registrar-General may require the deposit of a plan in accordance with the provisions of that section as a condition precedent to—

- (a) the registration of a transfer for valuable consideration of land comprised in a limited certificate of title (not being a transfer accompanied by an appropriate exemption certificate);
- (b) the cancellation of a delimitation condition;  
or
- (c) the withdrawal of a limitation caveat.

(6) Section 100 (2)—

Omit “Part IV or Part IVA”, insert instead “Part IV, Part IVA or Part IVB”.

SCHEDULE

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*Real Property (Amendment).*

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SCHEDULE 12—*continued.*

FURTHER AMENDMENTS TO THE REAL PROPERTY  
ACT, 1900—*continued.*

(7) Section 123—

Omit “Part IV or Part IVA”, insert instead “Part IV,  
Part IVA or Part IVB”.

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SCHEDULE 13.

Sec. 6.

AMENDMENT TO THE CONVEYANCING ACT, 1919.

Section 111 (1)—

Omit “and 58”, insert instead “, 58 and 58A”.

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SCHEDULE 14.

Sec. 7.

AMENDMENT TO THE DISTRICT COURT ACT, 1973.

Section 110 (6)—

Omit the subsection.

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SCHEDULE

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*Real Property (Amendment).*

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Sec. 8.

## SCHEDULE 15.

## AMENDMENTS TO THE STRATA TITLES ACT, 1973.

(1) Section 7 (1), definition of "land"—

After "title", insert "or in a limited certificate of title".

(2) Section 19 (1)—

After "title", insert "or in a limited certificate of title".  
  

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