

**REAL PROPERTY (CROWN LAND TITLES)
AMENDMENT ACT, 1980, No. 193**

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 193, 1980.

An Act to amend the Real Property Act, 1900, to enable the Registrar-General to bring Crown land and alienated Crown land under the provisions of that Act without the issue of a Crown grant; and for certain other purposes. [Assented to, 22nd December, 1980.]

See also Crown Lands (Land Titles) Amendment Act, 1980; Closer Settlement (Land Titles) Amendment Act, 1980; Miscellaneous Acts (Crown Land Titles) Amendment Act, 1980.

Real Property (Crown Land Titles) Amendment.

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 :—

1. This Act may be cited as the "Real Property (Crown Land Titles) Amendment Act, 1980". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commencement.

(2) Except as provided in subsection (1), this Act 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.

3. The Real Property Act, 1900, is referred to in this Act as the Principal Act. Principal Act.

4. The Principal Act is amended in the manner set forth in Schedule 1. Amendment of Act No. 25, 1900.

5. (1) Where, in respect of a lease in perpetuity of land under the Crown Lands Consolidation Act, 1913, the Closer Settlement Acts or the Returned Soldiers Settlement Act, 1916, the Registrar-General has, before the commencement of this section, created a folio of the Register for an estate in fee simple in the land, the Registrar-General may— Perpetual leases expressed to be held in fee simple— amendment.

- (a) amend that folio by omitting any reference which expresses the title to the land to be an estate in fee simple and by inserting instead a reference which expresses the title to the land to be a lease in perpetuity; and
- (b) when it is available to him, make the same amendment to any certificate of title issued in respect of that land.

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(2) No action shall lie against the Registrar-General in respect of anything done under subsection (1).

Replace-
ment of
Crown
grants.

6. Where, in any instrument made before the commencement of this section under an Act referred to in section 13 (2) of the Principal Act, as amended by this Act, it is provided that a Crown grant or grant or deed of grant from the Crown will be prepared, completed or issued in respect of land or an estate in land, or a like intention is expressed, and such a grant has not been prepared, completed or issued as at the commencement of this section, it is sufficient compliance with that provision if—

- (a) where the land or the estate in land has not been brought under the provisions of the Principal Act—a folio of the Register under that Act is, in respect of the land or the estate in land, created by the Registrar-General in the name of the person who, in the opinion of the Registrar-General, would, under the instrument, be entitled to such a grant; or
- (b) where the land or the estate in land has been brought under the provisions of the Principal Act—an instrument of transfer is executed under that Act transferring the land or the estate in land from “The State of New South Wales” to the person who would, under the instrument, be entitled to such a grant.

Tran-
sitional
provisions—
surrenders.

7. (1) Where—

- (a) an application under the provisions of the Crown Lands Consolidation Act, 1913, the Closer Settlement Acts, the Western Lands Act, 1901, or the Returned Soldiers Settlement Act, 1916, has been made but has not been finally dealt with as at the commencement of this section; and
- (b) those provisions, as in force before that commencement, required a surrender of a perpetual lease grant to be made in connection with that application,

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the requirement, if not complied with, or any surrender executed in compliance with the requirement, shall be deemed never to have had any force or effect in relation to the application.

(2) The Minister or a person authorised by him may, by notice in writing given in relation to an application referred to in subsection (1) (a), require a person who is in possession of a perpetual lease grant or certificate of title issued in respect of the holding the subject of the application to deliver up the grant or certificate for cancellation or notation within a period specified in the notice or within such further period as the Minister or the person so authorised may allow.

(3) If, in respect of an application referred to in subsection (1) (a), a grant or certificate is not delivered up in accordance with a requirement made under subsection (2), the application shall be deemed to have lapsed.

8. (1) Where—

- (a) any provision of the law (being a provision enacted before, and in force after, the commencement of this section but not being a provision of an instrument made under an Act referred to in section 13 (2) of the Principal Act, as amended by this Act) authorises the issue of a Crown grant; and
- (b) a Crown grant is, after the commencement of this section, issued in accordance with that provision,

Tran-
sitional
provision—
Crown
grants.

the provisions of the Principal Act, as in force immediately before the commencement of this section, shall be deemed to apply to that Crown grant and the issue thereof.

(2) Where a provision of the law referred to in subsection (1) (a) (being a provision authorising the issue of a Crown grant) depended on a provision of any other Act repealed or amended by the Crown Lands (Land Titles) Amendment Act, 1980, the Closer Settlement (Land Titles) Amendment Act, 1980,

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or the Miscellaneous Acts (Crown Land Titles) Amendment Act, 1980, for its operation, that lastmentioned provision shall, for the purpose of issuing that Crown grant, be deemed not to have been so repealed or amended.

(3) A reference in any provision of the law enacted before, and in force after, the commencement of this section to a grant of land in fee simple by the Crown (not being a provision authorising the issue of a Crown grant) shall be deemed to include a reference to a sale of land by the Crown.

Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 1—

Omit the matter relating to Part III, insert instead :—

PART III.—CROWN LANDS AND LANDS ACQUIRED
FROM THE CROWN TO BE SUBJECT TO THE ACT—
ss. 13–13M.

(2) Section 2 (1)—

Omit “the First Schedule to this Act”, insert instead
“Schedule 1”.

(3) Part III—

Omit the Part, insert instead :—

PART III.

CROWN LANDS AND LANDS ACQUIRED FROM THE CROWN
TO BE SUBJECT TO THE ACT.

Applica-
tion of
this Part.

13. (1) For the purposes only of this Part, “perpetual lease from the Crown” includes a homestead selection under the Crown Lands Consolidation Act, 1913.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (2) This Part applies to land—
- (a) sold, leased, dedicated, reserved or otherwise disposed of or dealt with;
 - (b) in the course of being sold, leased, dedicated, reserved or otherwise disposed of or dealt with;
or
 - (c) capable of being sold, leased, dedicated, reserved or otherwise disposed of or dealt with,

by or on behalf of the Crown under the Crown Lands Acts (as defined in the Crown Lands Consolidation Act, 1913) or under any of the Acts specified in Schedule 2, being land in respect of which a grant has not issued and which, unless the context otherwise indicates or requires, is not under the provisions of this Act.

13A. (1) Where a person has an estate in fee simple in land to which this Part applies (not being a homestead selection under the Crown Lands Consolidation Act, 1913), the Registrar-General may, by creating a folio of the Register in the name of the person who, in the opinion of the Registrar-General, is entitled to be the registered proprietor of the land, bring the land under the provisions of this Act. Bringing of purchases, etc., of Crown land under Act.

(2) The Registrar-General shall, in accordance with subsection (1), bring land referred to in that subsection under the provisions of this Act if he is satisfied that—

- (a) the purchase money (if any) and all other money payable to the Crown in respect of the land have been paid; and

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) where the land was sold or otherwise disposed of subject to conditions, those conditions have been performed or complied with, as the case may be.

(3) For the purposes of subsection (2) (b), the conditions subject to which the land referred to in that paragraph was sold or otherwise disposed of shall be deemed to have been performed or complied with, as the case may be, if—

(a) where the land is not within an irrigation area, the Minister authorised to sell or otherwise dispose of the land on behalf of the Crown (or a person authorised by him for the purposes of this subsection); or

(b) where the land is within an irrigation area, the Water Resources Commission,

has advised the Registrar-General that he or it is satisfied that those conditions have been sufficiently performed or complied with, as the case may be.

Bringing of
perpetual
leases of
Crown land
under Act.

13B. (1) Where land to which this Part applies is held under perpetual lease from the Crown, the Registrar-General may, by creating a folio of the Register in the name of the person who, in the opinion of the Registrar-General, is entitled to be the registered proprietor of the perpetual lease from the Crown, bring the land under the provisions of this Act.

(2) The Registrar-General shall, in accordance with subsection (1), bring under the provisions of this Act land referred to in that subsection which—

(a) is not part of a lease the other part of which is held for a specified term; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) is not the subject of a lease under the Western Lands Act, 1901,

if he is satisfied that—

- (c) all money due to the Crown in respect of the land has been paid; and
- (d) where the land was leased subject to conditions, those conditions have been performed or complied with, as the case may be.

(3) For the purposes of subsection (2) (d), the conditions subject to which the land referred to in that paragraph was leased shall be deemed to have been performed or complied with, as the case may be, if—

- (a) where the land is not within an irrigation area, the Minister authorised to lease the land on behalf of the Crown (or a person authorised by him for the purposes of this subsection); or
- (b) where the land is within an irrigation area, the Water Resources Commission,

has advised the Registrar-General that he or it is satisfied that those conditions have been sufficiently performed or complied with, as the case may be.

13c. Where—

- (a) land to which this Part applies is, after the commencement of Schedule 1 to the Real Property (Crown Land Titles) Amendment Act, 1980, brought, or to be brought, under the provisions of this Act; and
- (b) an instrument of lease has been issued in respect of that land,

Lodgment
of instru-
ments of
lease for
cancellation.

the Registrar-General may require the instrument to be lodged with him for cancellation.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Bringing of
other
Crown
land
under Act.

13D. (1) The Registrar-General may bring under the provisions of this Act any land to which this Part applies (not being land referred to in section 13A (1) or 13B (1)) by creating a folio of the Register recording "The State of New South Wales" as the proprietor of the land.

(2) Where the Registrar-General creates a folio of the Register under subsection (1), he may record in that folio such particulars relating to any dedication, reservation, lease, licence, permit, occupancy or other matter affecting that land from time to time as he considers appropriate.

(3) The Registrar-General may, in respect of a lease the particulars of which are recorded in a folio of the Register pursuant to subsection (2), create a folio of the Register in the name of the person who, in his opinion, is entitled to be the registered proprietor of the lease.

Death of
person
before
creation
of folio.

13E. Where a person is or was, in the opinion of the Registrar-General, entitled to be the registered proprietor of land to which this Part applies and that person dies before a folio of the Register is created in respect of the land—

- (a) a folio of the Register may be created in the name of that person; and
- (b) the land the subject of the folio shall devolve as if the folio had been created immediately before the death of that person.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

13F. In the application of section 39A to land to which this Part applies, that section shall be deemed—

Mortgages—
application
of sec. 39A.

(a) to have been amended by the omission of subsection (1) (b) and by the insertion instead of the following paragraph :—

(b) that—

(i) has been registered in the General Register of Deeds kept pursuant to the Registration of Deeds Act, 1897; and

(ii) is a mortgage or a charge the existence of which is disclosed in the records of land tenures or holdings kept by the Department of Lands, the Western Lands Commissioner or the Water Resources Commission; and

(b) to have been amended by the omission from subsection (2) (a) of the words “unless the mortgagee or chargee otherwise directs;” and

(c) to have commenced on the date of commencement of this section.

13G. (1) Where a folio of the Register has been created, whether before or after the commencement of Schedule 1 to the Real Property (Crown Land Titles) Amendment Act, 1980, in respect of land to which this Part applies, the Registrar-General may record in the folio.

Recordings
in Register.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

and upon any certificate of title issued in respect of the land comprised in the folio, such particulars of, or such references to—

- (a) any covenants, conditions, terms, reservations, exceptions, exemptions, restrictions or provisions (including the provisions of an Act or an instrument made under an Act) attaching or applying to the land;
- (b) the purpose, if any, for which the land was disposed of; and
- (c) any variation, alteration, modification or revocation of, or addition to, a matter recorded pursuant to paragraph (a) or (b),

as he considers appropriate, and may cancel or remove any such recording.

(2) The provisions of subsection (1) apply in addition to and not in derogation of any provisions of this or any other Act.

(3) Notwithstanding that under a provision of this or any other Act any covenant, condition, term, reservation, exception, exemption, restriction or provision (including a provision of an Act or an instrument made under an Act) to which land to which this Part applies is subject is required to be, or may be, set forth in a folio of the Register created, or upon a certificate of title issued, in respect of that land, it shall be sufficient compliance with that provision if—

- (a) the covenant, condition, term, reservation, exception, exemption, restriction or provision is set out in a public document; and

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) the folio of the Register or the certificate of title, as the case may be, specifies that it is subject to the covenants, conditions, terms, reservations, exceptions, exemptions, restrictions or provisions set out in that document.

(4) For the purposes of this or any other Act, where a folio of the Register or a certificate of title specifies that the land to which it relates is subject to covenants, conditions, terms, reservations, exceptions, exemptions, restrictions or provisions set out in a specified public document, those covenants, conditions, terms, reservations, exceptions, exemptions, restrictions or provisions shall be deemed to be set out at length in the folio or certificate.

(5) In subsections (3) and (4), “public document” includes a memorandum which has been distinctively numbered and filed in the office of the Registrar-General.

(6) A memorandum referred to in subsection (5) shall, for the purposes only of section 96B, be deemed to be part of the Register.

13H. (1) Where the Registrar-General becomes aware that land (whether it is land to which this Part applies or not) comprised in a folio of the Register has become Crown land within the meaning of the Crown Lands Consolidation Act, 1913, he shall make such recordings in the Register as he considers appropriate and may cancel, or make such recordings as he considers appropriate upon, any relevant certificate of title or duplicate registered dealing when it becomes available to him.

Land that becomes Crown land.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Without limiting the generality of subsection (1), the Registrar-General may record “The State of New South Wales” as the registered proprietor of land referred to in that subsection if it is not already so recorded.

(3) The Registrar-General may, by notice in writing, require a person who is in possession of a certificate of title or duplicate registered dealing evidencing title to an estate or interest in land referred to in subsection (1) to deliver up the certificate or dealing for cancellation or notation, as the case may require, within a period specified in the notice.

(4) Where a certificate of title or duplicate registered dealing is not delivered up to the Registrar-General for cancellation or notation as required by a notice given under subsection (3)—

- (a) the certificate of title or duplicate registered dealing, as the case may be, shall be deemed to be wrongfully retained within the meaning of section 136; and
- (b) the notice shall be deemed to be a notice referred to in section 136 (1).

Revocation
of
reserves.

131. The revocation of any dedication or reservation of land, or the cancellation or revocation of any Crown grant of land, in respect of which a folio of the Register has been created (whether before or after the commencement of Schedule 1 to the Real Property (Crown Land Titles) Amendment Act, 1980) shall not effect a cancellation of the folio of the Register.

*Real Property (Crown Land Titles) Amendment.*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

13J. Where “The State of New South Wales” is recorded as the registered proprietor of land in accordance with this Part, the estate to which that recording relates is an estate in fee simple.

Estate in land where the State is recorded as proprietor.

13K. (1) Where a holding comprising land to which this Part applies is subject to the provisions of this Act and the following action is taken in regard to the holding :—

Conversions, purchases, extensions of term, subdivisions, etc.

- (a) it is converted in whole or in part into another class of holding;
- (b) being a leasehold tenure, the purchase from the Crown of the whole or a part of it is confirmed, approved or granted;
- (c) being a leasehold tenure, its term is extended as to the whole or a part thereof;
- (d) it is subdivided;
- (e) land is added to, included in or withdrawn from it;
- (f) land comprised in it is exchanged for other land; or
- (g) it is otherwise dealt with (except by way of a dealing registrable under this Act),

the Registrar-General may create such folios of, and make such recordings in, the Register as, in his opinion, are appropriate to give effect to that action.

(2) Any folio of the Register created in respect of land in pursuance of this section shall be in the name of the person who, in the opinion of the Registrar-General, is entitled to be the registered proprietor of the land.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Without limiting the generality of any other provision of this or any other Act, where—

- (a) a folio of the Register has been created in respect of land to which this Part applies;
- (b) an interest affecting the land is recorded in the folio; and
- (c) a new folio of the Register is created as referred to in this section in respect of the land,

the creation of the new folio shall not affect the interest and the interest shall, to the extent that it is applicable to the land—

- (d) continue to exist in relation to the land in respect of which the new folio has been created in the same way as it existed in relation to the land in respect of which the firstmentioned folio was created; and
- (e) be recorded by the Registrar-General in the new folio.

(4) In subsection (3), “interest” includes mortgage, easement, restriction as to user, lease, caveat and writ.

(5) Where it appears to the Registrar-General that the legal estate in land in respect of which a new folio of the Register is to be created as referred to in this section is vested in a mortgagee, he may record as the registered proprietor in the new folio the mortgagee or the mortgagor of the land.

*Real Property (Crown Land Titles) Amendment.*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 39A as deemed to be amended by section 13F shall apply to land in respect of which a new folio of the Register is created pursuant to this section and, for the purpose of that application, section 39A shall be deemed to have been further amended by—

- (a) the omission of subsection (1) (a);
- (b) the omission from subsection (1) (c) of the words “, at the time of its execution, the land it affects had been subject to the provisions of this Act and”;
- (c) the omission from subsection (2) of the words “When land that is affected by a prescribed instrument is brought under the provisions of this Act by the creation of a folio of the Register” and by the insertion instead of the words “When a new folio of the Register is created for land that is affected by a prescribed instrument and the folio is created”; and
- (d) the omission from subsection (8) of the words “, when bringing land under the provisions of this Act,”.

13L. (1) Where—

- (a) land to which this Part applies has been brought under the provisions of this Act;
- (b) “The State of New South Wales” is recorded as the registered proprietor of the land; and
- (c) the land is to be transferred or otherwise dealt with,

Execution
of
instruments
in respect
of land
to which
this Part
applies.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

the required instrument may be executed by—

- (d) the Minister authorised to sell or otherwise deal with the land on behalf of the Crown (or a person authorised by him for the purposes of this section); or
- (e) the Water Resources Commission, where that Commission is authorised to sell or otherwise deal with the land on behalf of the Crown.

(2) Any instrument executed by a Minister or the Water Resources Commission as referred to in subsection (1) may be expressed to be executed on behalf of “The State of New South Wales”, with or without reference to the Crown.

(3) An instrument referred to in subsection (2) which is expressed to be executed on behalf of “The State of New South Wales”, with or without reference to the Crown, shall be deemed to have been executed on behalf of the Crown.

Registration
of
instruments
executed
before
creation
of a folio.

13M. (1) The Registrar-General may record in a folio of the Register created for the purpose of bringing land referred to in section 13A or 13B under the provisions of this Act any transfer (other than a transfer by way of mortgage) or any mortgage or charge that affects the land if the transfer, mortgage or charge—

- (a) was executed, before the creation of the folio, by the registered proprietor for the time being recorded therein;
- (b) is in a form that is, in the opinion of the Registrar-General, an appropriate form for the transfer, mortgage or charging, as the case may be, of the land before its being brought under the provisions of this Act; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) is presented to the Registrar-General within 6 months next after the creation of the folio.

(2) Section 39A as deemed to be amended by section 13F shall apply to a recording of a mortgage or charge made pursuant to subsection (1) notwithstanding that the existence of the mortgage or charge is not disclosed in the records of land tenures or holdings kept by the Department of Lands, the Western Lands Commissioner or the Water Resources Commission.

(4) Section 28EA (1) (a)—

Omit “subsection (2)”, insert instead “section 12B (2)”.

(5) Section 33A (4) (a)—

Omit the paragraph, insert instead :—

(a) a grant or the first certificate of title issued for land brought under the provisions of this Act pursuant to Part III shall be deemed to have been lodged by the grantee or the registered proprietor named therein, as the case may be; and

(6) Section 45D (7)–(9)—

After section 45D (6), insert :—

(7) Where—

(a) land to which Part III applies has been or is being purchased from the Crown; and

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) but for this subsection, a holder of the land at any time after the commencement of the purchase would not, at that time, have had an estate in fee simple in the land,

the holder shall, for the purposes of subsection (1), be deemed to have had such an estate at that time.

(8) Where—

- (a) a limitation period for a cause of action to recover land to which Part III applies has commenced to run; and
- (b) after that commencement a folio of the Register is created in respect of the land pursuant to Part III,

the time which elapsed after the limitation period commenced to run and before the date on which the folio of the Register was created may be counted in the reckoning of the limitation period for the purposes of a possessory application in respect of the land.

(9) Subsection (8) applies to a limitation period for a cause of action to recover land notwithstanding that—

- (a) the limitation period commenced to run; or
- (b) the folio of the Register created in respect of the land pursuant to Part III was created,

before the commencement of that subsection.

(7) Section 49—

Omit the section.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(8) Section 83—

Omit the section, insert instead :—

83. Nothing in this Act shall be deemed to prevent the registration of a transfer of dedicated or reserved land to which Part III applies by reason of the fact that a trust is declared in the transfer. Dedicated
or reserved
lands—
trusts.

(9) Section 112—

Omit the section.

(10) Section 126 (2)—

Omit “section 13 (2A)” wherever occurring, insert instead “Part III”.

(11) (a) Section 144 (1) (a)—

Omit “and” where secondly occurring.

(b) Section 144 (1) (b)—

Omit “refunded.”, insert instead “refunded; and”.

(c) Section 144 (1) (c)—

After section 144 (1) (b), insert :—

(c) the circumstances in which, and the extent to which, fees and charges recoverable under the regulations in respect of the administration of Part III may be waived.

Real Property (Crown Land Titles) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(12) First Schedule—

Omit "FIRST SCHEDULE.", insert instead "SCHEDULE 1."

(13) Schedule 2—

After the First Schedule, insert :—

SCHEDULE 2.

Sec. 13
(2).

Closer Settlement Acts.

Western Lands Act, 1901.

Public Roads Act 1902.

Irrigation Act, 1912.

Returned Soldiers Settlement Act, 1916.

Prickly-pear Act, 1924.

Glen Davis Act, 1939.

Land Acquisition (Charitable Institutions) Act, 1946.

Aborigines Act, 1969.

Zoological Parks Board Act, 1973.

Chipping Norton Lake Authority Act, 1977.
