

# Real Property Act 1900 No 25

[1900-25]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Real Property and Conveyancing Legislation Amendment Act 2009 No 17*, Sch 1 [4] [6] and [7] (not commenced — to commence on 1.11.2011)

### Authorisation

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# Real Property Act 1900 No 25



New South Wales

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# Real Property Act 1900 No 25



New South Wales

An Act to consolidate the Acts relating to the declaration of titles to land and the facilitation of its transfer.

## Part 1A Preliminary

### 1 Name of Act

This Act may be cited as the *Real Property Act 1900*.

### 2 Repeal of Acts

- (1) The Acts mentioned in Schedule 1, to the extent therein expressed, are hereby repealed, and all lands, estates, and interests which at the commencement of this Act are subject to the provisions of the Acts so repealed shall be subject to the provisions of this Act.
- (2) All rules, forms, and orders made under the provisions of any Act hereby repealed and in force at the commencement of this Act shall be deemed to have been made under the corresponding provisions of this Act.
- (3) All applications duly made, registrations duly effected, proceedings duly commenced or had, and acts or things duly done under the Acts hereby repealed shall be deemed to have been duly made, effected, commenced, had, or done respectively under the corresponding provisions of this Act, but at the date on which the same were in fact made, effected, commenced, had, or done.
- (4) All laws, statutes, Acts, ordinances, rules, regulations, and practice whatsoever relating to freehold and other interests in land operative on the first day of January one thousand eight hundred and sixty-three are, so far as inconsistent with the provisions of this Act, hereby repealed so far as regards their application to land under the provisions of this Act, or the bringing of land under the operation of this Act.
- (5), (6) (Repealed)

### 3 Definitions

- (1) In the construction and for the purposes of this Act, and in all instruments purporting

to be made or executed thereunder (if not inconsistent with the context and subject matter):

(a) the following terms shall bear the respective meanings set against them:

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

**Caveator**—The person by whom or on whose behalf a caveat has been lodged under the provisions of this Act, or any enactment hereby repealed.

**Charge**—Any charge on land created for the purpose of securing the payment of an annuity, rent-charge or sum of money other than a debt.

**Chargee**—The proprietor of a charge.

**Charger**—The proprietor of land or of an estate or interest in land that is subject to a charge.

**Computer folio**—A folio of the Register that is not a manual folio.

**Computer folio certificate**—A certificate issued under section 96D.

**Consular officer**—Consul-general, consul, and vice-consul, and any person for the time being discharging the duties of consul-general, consul, or vice-consul.

**Covenant charge**—Any charge on land created under section 88F of the [Conveyancing Act 1919](#) for securing the payment of money.

**Covenant chargee**—The proprietor of a covenant charge.

**Covenant charger**—The proprietor of land or of any estate or interest in land subject to a covenant charge.

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

**Department**—The Land and Property Management Authority.

**Duplicate registered dealing**—The duplicate of a registered dealing directed to be delivered by section 36 (10) and any instrument recorded under section 39A (2) (a).

**Easement in gross**—An easement without a dominant tenement created pursuant to the provisions of section 88A or 88B of the [Conveyancing Act 1919](#) or acquired by the Commonwealth in exercise of authority conferred by any Act of the Parliament of the Commonwealth.



**Fraud**—Fraud includes fraud involving a fictitious person.

**Grant**—Any Crown grant of land.

**Instrument**—Any grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate, or exemplification of will, or any other document in writing relating to the disposition, devolution or acquisition of land or evidencing title thereto.

**Land**—Land, messuages, tenements, and hereditaments corporeal and incorporeal of every kind and description or any estate or interest therein, together with all paths, passages, ways, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals, quarries, and all trees and timber thereon or thereunder lying or being unless any such are specially excepted.

**Licensed conveyancer** means the holder of a licence in force under the [Conveyancers Licensing Act 2003](#).

**Limited folio**—A folio of the Register that includes a recording under section 28T (4) that has not been cancelled.

**Manual folio**—A folio of the Register maintained by the Registrar-General wholly in the form of a document in writing.

**Mortgage**—Any charge on land (other than a covenant charge) created merely for securing the payment of a debt.

**Mortgagor**—The proprietor of land or of any estate or interest in land pledged as security for the payment of a debt.

**Mortgagee**—The proprietor of a mortgage.

**Ordinary folio**—A folio of the Register that is neither a limited folio nor a qualified folio.

**Plan of survey**—A formal land survey plan within the meaning of the [Surveying and Spatial Information Act 2002](#).

**Possessory applicant**—Person who makes a possessory application.

**Possessory application**—Application under section 45D.

**Primary applicant**—Person who makes a primary application.

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

**Proprietor**—Any person seised or possessed of any freehold or other estate or

interest in land at law or in equity in possession in futurity or expectancy.

**Qualified folio**—A folio of the Register in which is recorded a caution under section 28J that has not been cancelled.

**Regulations**—The regulations made under this Act.

**The Register**—The Register required to be maintained by section 31B (1).

**Torrens Assurance Fund**—The Torrens Assurance Fund established under section 134.

**Transfer**—The passing of any estate or interest in land under this Act whether for valuable consideration or otherwise.

**Transmission**—The acquirement of title to or interest in land consequent on the death, will, intestacy or bankruptcy of a proprietor.

**Writ**—A writ for the levy of property within the meaning of Part 8 of the *Civil Procedure Act 2005*, including any such writ issued pursuant to an Act of the Commonwealth.

**Note—**

See, for example, section 77M of the *Judiciary Act 1903* of the Commonwealth and other similar provisions of Commonwealth legislation.

- (b) The describing any person as a proprietor, transferor, transferee, mortgagor, mortgagee, charger, chargee, lessor, or lessee, or as seised of having or taking any estate or interest in any land shall be deemed to include the executors, administrators, and assigns of such person.
- (c) A reference:
  - (i) to a certificate of title includes a reference to a grant, and
  - (ii) to the issue of a certificate of title includes a reference to the issue of a grant after it has been registered under this Act.
- (d) A reference to recording includes a reference to amending, cancelling or deleting.
- (e) A reference to a caveator includes a reference to any person who claims through or under the caveator and also includes a reference to any person other than the caveator who, by virtue of section 74M (1), is authorised to withdraw the caveat which was lodged by the caveator.
- (f) A reference to an office copy of an order, judgment or injunction made, given or granted by a court is a reference to a copy of that order, judgment or injunction certified as such an office copy by the proper officer of the court.

(2) A reference in this or any other Act to a recording in a folio of the Register includes a reference to a recording in the Register with respect to that folio.

(3) Notes in the text of this Act do not form part of this Act.

### **3A Application of Act to electronic form plans and other documents**

(1) This section applies to:

(a) plans lodged for the purposes of this Act, and

(b) other documents, except certificates of title and office copies of court order, that:

(i) are required by or under this or any other Act to be lodged with those plans, or

(ii) are of a class prescribed by the regulations made under this Act as documents that may be lodged in electronic form.

(2) A reference in this Act:

(a) to a plan or another document includes a reference to an electronic data file containing a plan or another document in an electronic form, and

(b) to the lodging of a plan or another document includes a reference to the electronic lodging of a plan or another document in an electronic form approved by the Registrar-General, and

(c) to a sheet of a plan or another document that is in electronic form, is a reference to a sheet on which the whole or part of the plan or other document would be reproduced if the plan or other document were converted to hard copy form without re-pagination.

(3) If a plan is lodged electronically, all other documents that are required to be lodged with the plan must also be lodged electronically in an electronic form approved by the Registrar-General, except:

(a) certificates of title and office copies of court orders, and

(b) any other documents excepted from this requirement by regulations under this or any other Act or by the Registrar-General.

(4) Any signature, seal, certificate, consent or other approval required to authenticate, or to authorise the registration or recording of, a plan proposed to be lodged in electronic form is to be endorsed on an approved form for signatures. When the plan is lodged, that form must also be lodged electronically in an electronic form approved by the Registrar-General.

(5) This Act applies to and in respect of plans and other documents lodged in electronic form in the same way as it applies to other plans and documents, subject to any

modifications prescribed by this Act or the *Conveyancing Act 1919* or the regulations under either of those Acts.

### **3B Arrangements for payment of fees**

Except as provided by section 96J, a provision of this Act to the effect that something may or must be done on or after payment of a fee prescribed by the regulations enables or requires (as appropriate) the thing to be done if arrangements have been made in accordance with the regulations for the future payment of the fee.

## **Part 1 Administration**

### **4 Administration of this Act**

The office of the Registrar-General shall be the office authorised to carry into execution the provisions of this Act.

#### **4A Registrar-General—delegation and seal of office**

- (1) The Registrar-General may delegate any of the powers and functions of the Registrar-General under this or any other Act, other than this power of delegation, to a member of staff of the Department.
- (2) The Registrar-General is to have a seal of office that bears an impression of the Arms of the State of New South Wales and has inscribed in the margin the words “Registrar-General, New South Wales”.
- (3) An instrument or document issued by the Registrar-General or a Deputy Registrar-General, acting or purporting to act under the authority of any Act, is not invalid only because of:
  - (a) any irregularity in the manner or time of affixing, impressing or printing the seal of the Registrar-General to or on the instrument or document, or
  - (b) a failure to affix, impress or print the seal of the Registrar-General to or on the instrument or document.
- (4) All courts and persons acting judicially:
  - (a) are required to take judicial notice of the seal of the Registrar-General, and
  - (b) must, until the contrary is proved, presume that the seal was properly affixed.

### **5 Appointment of examiners of titles, officers and clerks**

- (1) The Governor may appoint to the office referred to in section 4 such officers and clerks as may be necessary for carrying out the provisions of this Act, and may likewise appoint two or more persons being barristers or solicitors to be “Examiners of Titles,” hereinafter styled “Examiners,” to advise and assist in carrying out the said

provisions.

- (2) No examiner shall engage in private practice as a barrister or solicitor, or be in partnership with or employed by any solicitor.

### **6-11 (Repealed)**

## **Part 2 General powers of Registrar-General**

### **12 Powers of Registrar-General**

- (1) The Registrar-General may exercise the following powers, that is to say:
- (a) The Registrar-General may require any person who may have possession or control of an instrument relating to land the subject of a dealing, or relating to the title to any such land, to produce that instrument, and the Registrar-General may retain any such instrument, whether produced pursuant to this paragraph or otherwise, until it is no longer required for action in connection with a dealing lodged with the Registrar-General.
  - (b) The Registrar-General may summon any person referred to in paragraph (a) or any person who to the Registrar-General appears to be interested in any land, title to land, or instrument affecting land, the subject of a dealing to appear and give an explanation respecting that land, title, or instrument.
  - (c) The Registrar-General may administer oaths or may take a statutory declaration in lieu of administering an oath.
  - (d) The Registrar-General may, subject to this section and upon such evidence as appears to the Registrar-General sufficient, correct errors and omissions in the Register.
  - (d1) The Registrar-General may, subject to subsection (3A), on such evidence and after such notices (if any) as appear to the Registrar-General to be sufficient, and with the consent of the proprietors and any mortgagees of the land, correct the Register by correcting a reference to one or more lot numbers in a plan. The Registrar-General may make the correction on the application of a proprietor or mortgagee or on the Registrar-General's own initiative.
  - (e) The Registrar-General may record in the Register a caveat on behalf of any person under any legal disability or on behalf of Her Majesty to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person as hereinbefore mentioned, and also to prohibit the dealing with any land in any case in which it appears to the Registrar-General that an error has been made by misdescription of such land or otherwise in any folio of the Register or instrument, or for the prevention of any fraud or improper dealing.

**Editorial note—**

See *Trustee Act 1925*, sec 11.

- (f) For the protection of any person interested in land under the provisions of this Act the Registrar-General may record in the Register a caveat, or may otherwise record the interest of that person in the Register in such manner as appears to the Registrar-General to be appropriate.
  - (g) The Registrar-General may, on such evidence as appears to the Registrar-General sufficient, record in the Register any change in the name of a registered proprietor, whether the change is consequent upon the marriage of the proprietor or otherwise.
  - (h) The Registrar-General may at the Registrar-General's discretion, and notwithstanding anything in this Act, dispense with any advertisement or the supply to the Registrar-General of any information or the production to the Registrar-General of any instrument.
  - (h1) The Registrar-General may give notice by advertisement or by personal service, whenever and to whomever the Registrar-General thinks appropriate, of the intended exercise or performance of any power, authority, duty or function conferred or imposed by this Act. The Registrar-General may instead, if the Registrar-General considers it to be appropriate, direct another person to give notice in a manner and form approved by the Registrar-General.
  - (i) The Registrar-General may, where the Registrar-General is satisfied that an estate or interest has been extinguished by merger, make such recording in the Register as the Registrar-General considers appropriate.
- (1A) Notwithstanding subsection (1) (h1), a notice of intention to bring land under the provisions of this Act or to grant a possessory application or to register a plan of survey lodged for the purposes of section 28V may be served by post.
- (2) Where a person required to produce an instrument pursuant to paragraph (a) of subsection (1) fails to produce the instrument or to allow it to be inspected or, being summoned pursuant to paragraph (b) of that subsection, refuses or neglects to give an explanation which the person is, pursuant to that paragraph, required to give, or knowingly misleads or deceives any person authorised to demand any such explanation, the person shall for each such offence incur a penalty not exceeding 2 penalty units, and the Registrar-General, if the instrument or information withheld appears to the Registrar-General material, may reject the relevant dealing referred to in that subsection.
- (3) Where the Registrar-General, in the exercise of the powers conferred upon the Registrar-General by subsection (1) (d), makes a correction in the Register:
- (a) the Registrar-General shall, by an appropriate recording in the Register, authenticate the correction and record the date thereof,

- (b) to the extent that, but for this paragraph, the correction would prejudice or affect a right accrued from a recording made in the Register before the correction, the correction shall be deemed to have no force or effect,
- (c) subject to paragraph (b), the Register shall, as so corrected, have the same validity and effect as it would have had if the error or omission had not occurred, and
- (d) the Registrar-General shall, while any right preserved by paragraph (b) is subsisting, maintain available for search a record of the date, nature and effect of the correction.

(3A) If the Registrar-General makes a correction referred to in subsection (1) (d1):

- (a) the correction:
    - (i) must not make original words or symbols illegible, and
    - (ii) must be dated, and
    - (iii) must be initialled by the Registrar-General, and
  - (b) the correction takes effect as if the error corrected had not occurred, and
  - (c) the correction does not affect the construction of any instrument made or entered into before the correction so as to prejudice any person claiming under that instrument.
- (4) Where the Registrar-General exercises the powers conferred upon the Registrar-General by subsection (1) (f) otherwise than by entering the Registrar-General's caveat, the interest recorded shall be deemed to be an interest within the meaning of section 42 but otherwise shall have no greater operation or effect than it would have had if not so recorded.
- (5) Upon the recording, pursuant to subsection (1) (i), of the extinction of an estate or interest by merger, that estate or interest shall be deemed to have been extinguished accordingly.

#### **12A Power of Registrar-General to serve notice of proposed action**

- (1) The Registrar-General may, before taking any action that alters the Register, give notice of the proposed action to any person that the Registrar-General considers should be notified of it.
- (2) Where the Registrar-General has given notice pursuant to the powers conferred upon the Registrar-General by subsection (1), the Registrar-General may refuse to take the action until after the expiration of a period specified in the notice and the Registrar-General may proceed to take the action at or after the expiration of the period so

specified unless the Registrar-General is first served with, or with written notice of, an order of the Supreme Court restraining the Registrar-General from so doing.

- (3) Where a person given notice under subsection (1) does not within the time limited by the notice serve upon the Registrar-General or give the Registrar-General written notice of an order made by the Supreme Court restraining the Registrar-General from taking the action, no action by that person or by any person claiming through or under that person shall lie against the Registrar-General in respect of the taking of the action specified in the notice.
- (4) No action shall lie against the Registrar-General for failure to give a notice under subsection (1).

#### **12AA Notice to produce electronic form plans and other documents**

- (1) As soon as is practicable after a written demand of the Registrar-General requiring its production is served on a person who has lodged a plan or other document in electronic form for the purposes of this Act, the person is required to produce to the Registrar-General:
  - (a) an electronically formatted version or a hard copy version of the plan, as directed by the Registrar-General, or the original hard copy version of the other document, in each case as it was when the plan or other document was lodged electronically, and
  - (b) in the case of a plan, the approved form for signatures on which the signatures, seals, certificates, consents or other approvals required to authenticate, or to authorise the registration or recording of, the plan were endorsed.
- (2) This section applies only to a written demand served:
  - (a) in the case of a plan or other document lodged for the purpose of its being registered or recorded, while the plan or other document is so lodged, or
  - (b) in the case of a plan or other document that has been lodged otherwise than for the purpose of its being registered or recorded, before the period prescribed by the regulations (or any shorter period agreed to by the Registrar-General) has expired after the plan or other document was lodged, or
  - (c) in the case of a plan or other document that has been registered or recorded, before the period prescribed by the regulations (or any shorter period agreed to by the Registrar-General) has expired after the plan or other document has been registered or recorded.

#### **12B Mortgagee or mortgagor may be recorded as registered proprietor**

- (1) Where it appears to the Registrar-General that the legal estate in land is vested in a mortgagee and the Registrar-General creates under any provision of this Act, other



than section 17 (2), a folio of the Register for the land, the Registrar-General may record the mortgagee or the mortgagor in the folio as registered proprietor of the land.

- (2) Where, pursuant to subsection (1) or section 17 (2), the Registrar-General records a mortgagee as registered proprietor in a folio of the Register for any land, the Registrar-General shall record in the folio the Registrar-General's caveat forbidding the recording in the Register of any dealing relating to that land by the mortgagee other than a dealing giving effect to an exercise of the mortgagee's powers as mortgagee.

### **12C Recording of native title in Register**

- (1) The Registrar-General may, on evidence that appears to the Registrar-General sufficient, record in the Register approved determinations of native title made under the law of this State or of the Commonwealth and any other matters relating to native title rights and interests that the Registrar-General considers appropriate.
- (2) The information referred to in subsection (1) may be recorded in a manner and form that the Registrar-General considers appropriate.
- (3) In this section, **approved determination of native title**, **native title** and **native title rights and interests** have the same meanings as they have in the [Native Title Act 1993](#) of the Commonwealth.

### **12D Registrar-General's Directions**

- (1) For the purposes of this Act, the Registrar-General may provide information and guidance with respect to the following (to be known as the Registrar-General's Directions):
  - (a) the completion of approved forms,
  - (b) the preparation and lodgment of documents and plans for registration or recording,
  - (c) any other matters that the Registrar-General considers appropriate.
- (2) The Registrar-General's Directions are to be published on the internet or made available through any other means determined by the Registrar-General.

## **Part 3 Crown lands and lands acquired from the Crown to be subject to the Act**

### **13 Application of this Part**

- (1) For the purposes only of this Part, **perpetual lease from the Crown** includes a homestead selection under the Crown Lands Acts.

(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 Act 1989](#)) 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 Bringing of purchases etc of Crown land under Act**

- (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 Acts), 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.
- (2) The Registrar-General shall, in accordance with subsection (1), bring land referred to in that subsection under the provisions of this Act if the Registrar-General 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
  - (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 the Minister for the purposes of this subsection), or
  - (b) where the land is within an irrigation area, the Water Administration Ministerial Corporation,has advised the Registrar-General that the Minister (or the person authorised by the Minister) or the Corporation is satisfied that those conditions have been sufficiently performed or complied with, as the case may be.

### **13B Bringing of perpetual leases of Crown land under Act**

- (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
  - (b) is not the subject of a lease under the *Western Lands Act 1901*,  
if the Registrar-General 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 the Minister for the purposes of this subsection), or
  - (b) where the land is within an irrigation area, the Water Administration Ministerial Corporation,  
  
has advised the Registrar-General that the Minister (or the person authorised by the Minister) or the Corporation is satisfied that those conditions have been sufficiently performed or complied with, as the case may be.

### **13C Lodgment of instruments of lease for cancellation**

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,

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

### **13D Bringing of other Crown land under Act**

- (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 in respect of land to which subsection (1) applies, the Registrar-General 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 the Registrar-General 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 the Registrar-General's opinion, is entitled to be the registered proprietor of the lease.

### **13E Death of person before creation of folio**

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.

### **13F Treatment of instruments not in approved form**

- (1) In this section, **prescribed instrument** means a mortgage, charge or covenant charge:
  - (a) that affects land not subject to the provisions of this Act, and
  - (b) that has been registered in the General Register of Deeds kept pursuant to Division 1 of Part 23 of the [Conveyancing Act 1919](#) or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act, and
  - (c) the existence of which is disclosed in the records of land tenures or holdings kept by the Department, the Western Lands Commissioner, the Department of Industry and Investment or the Water Administration Ministerial Corporation, and
  - (d) that, in the opinion of the Registrar-General, could have been registered under the provisions of this Act as a mortgage, charge or covenant charge if, at the time of its execution, the land it affects had been subject to the provisions of this Act and the instrument had been drawn in a form approved by the Registrar-General.

- (2) When land to which this Part applies and which is affected by a prescribed instrument is brought under the provisions of this Act by the creation of a folio of the Register for the estate or interest of a person other than the mortgagee, chargee or covenant chargee entitled under the instrument:
  - (a) the Registrar-General may record the instrument in the Register in such manner as the Registrar-General considers appropriate, and
  - (b) the mortgagee, chargee or covenant chargee, as the case may be, named in the recording is to be taken to be registered under the provisions of this Act as proprietor of a mortgage, charge or covenant charge registered under this Act in respect of the land, and
  - (c) a person who, by the operation of paragraph (b), is to be taken to be a registered proprietor of a mortgage, charge or covenant charge is entitled to exercise the same rights, powers and remedies as if the mortgage, charge or covenant charge had been drawn in the approved form and registered in the manner provided by this Act.
- (3) Nothing in this section requires the Registrar-General, when bringing land under the provisions of this Act, to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.

### **13G Recordings in Register**

- (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, 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 the Registrar-General 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
  - (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 Land that becomes Crown land**

- (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 Act 1989](#), the Registrar-General shall make such recordings in the Register as the Registrar-General considers appropriate and may cancel, or make such recordings as the Registrar-General considers appropriate upon, any relevant certificate of title or duplicate registered dealing when it becomes available to the Registrar-General.
- (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).

### **13I Revocation of reserves**

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.

### **13J Estate in land where the State is recorded as proprietor**

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

### **13K Conversions, purchases, extensions of term, subdivisions etc**

- (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:
  - (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,
  - (g) (Repealed)
  - (h) 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 the Registrar-General’s 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.

- (2A) If, in connection with the sale of Crown land under Part 4 of the *Crown Lands Act 1989* or the grant of an application to purchase land that is the subject of a holding within the meaning of the *Crown Lands (Continued Tenures) Act 1989*, the Minister administering the *Crown Lands Act 1989* imposes a restriction on use or public positive covenant under Part 4A of that Act, the Registrar-General is to record the restriction on use or covenant in the relevant folio of the Register.
- (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, profit à prendre, 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, the Registrar-General may record as the registered proprietor in the new folio the mortgagee or the mortgagor of the land.
- (6) (Repealed)

### **13KA Treatment of instruments affecting land dealt with under section 13K**

- (1) In this section, **prescribed instrument** means a mortgage, charge or covenant charge:
- (a) that affects land in respect of which a new folio of the Register is created pursuant to section 13K, and
  - (b) that has been registered in the General Register of Deeds kept pursuant to Division 1 of Part 23 of the *Conveyancing Act 1919* or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act, and
  - (c) the existence of which is disclosed in the records of land tenures or holdings kept



by the Department, the Western Lands Commissioner, the Department of Industry and Investment or the Water Administration Ministerial Corporation, and

- (d) that, in the opinion of the Registrar-General, could have been registered under the provisions of this Act as a mortgage, charge or covenant charge if the instrument had been drawn in a form approved by the Registrar-General.
- (2) When a new folio of the Register is created pursuant to section 13K for land that is affected by a prescribed instrument and the folio is created for the estate or interest of a person other than the mortgagee, chargee or covenant chargee entitled under the instrument:
- (a) the Registrar-General may record the instrument in the Register in such manner as the Registrar-General considers appropriate, and
- (b) the mortgagee, chargee or covenant chargee, as the case may be, named in the recording is to be taken to be registered under the provisions of this Act as proprietor of a mortgage, charge or covenant charge registered under this Act in respect of the land, and
- (c) a person who, by the operation of paragraph (b), is to be taken to be a registered proprietor of a mortgage, charge or covenant charge is entitled to exercise the same rights, powers and remedies as if the mortgage, charge or covenant charge had been drawn in the approved form and registered in the manner provided by this Act.
- (3) Nothing in this section requires the Registrar-General to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.

### **13L Execution of instruments in respect of land to which this Part applies**

- (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,
- any instrument required to effect the transfer or dealing or required in connection with the administration of any resulting interest may be executed by:
- (d) the Minister or Ministerial Corporation authorised to sell or otherwise deal with the land on behalf of the Crown (or a person authorised by the Minister or Corporation for the purposes of this section).
- (e) (Repealed)

- (2) Any instrument executed by a Minister or the Ministerial Corporation 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.

### **13M Registration of instruments executed before creation of folio**

- (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, charge or covenant charge that affects the land if the transfer, mortgage, charge or covenant 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
  - (c) is presented to the Registrar-General within 5 years next after the creation of the folio.
- (2) Section 13F applies to a recording of a mortgage, charge or covenant charge made pursuant to subsection (1) notwithstanding that the existence of the mortgage, charge or covenant charge is not disclosed in the records of land tenures or holdings kept by the Department, the Western Lands Commissioner or the Water Administration Ministerial Corporation.

### **13N Restriction on creation of folios**

The Registrar-General shall not create a folio of the Register under this Part if, in the opinion of the Registrar-General, further survey definition is necessary adequately to define the boundaries of the land.

## **Part 4 Applications to bring land under the Act and proceedings thereon**

### **Division 1 Applications**

#### **14 Application to bring land under the Act**

##### **Editorial note—**

See [Conveyancing Act 1919](#), sec 136 (3).

- (1) Land not subject to the provisions of this Act may be brought under its provisions.
- (2) Subject to this section, a primary application may be made by:
  - (a) a person claiming to be the person in whom is vested an estate in fee simple either at law or in equity in the land to which the application relates,
  - (b) a person claiming, in the land to which the application relates, an estate in possession, or in reversion, or in remainder, or a leasehold for a life or for lives or a leasehold having a term of not less than twenty-five years current at the time of making the application, or
  - (c) a person having the power to appoint an estate or interest referred to in paragraph (a) or (b) in the land to which the application relates, if the person obtains the consent of any other person whose consent to the exercise of the power is required and directs that the object of the power be named as proprietor in the folio of the Register to be created for that land.
- (3) A primary application may not be made:
  - (a) by a person who has contracted to purchase the land to which the application relates, unless:
    - (i) the vendor consents in writing to the application, or
    - (ii) the whole of the purchase money has been paid to the vendor or the vendor's authorised agent,
  - (b) by a person claiming to be entitled to a share of or interest in the land to which the application relates, unless the person entitled to the other share or shares or to any other interest or interests joins in the application for the purpose of bringing the entirety thereof under the provisions of this Act,
  - (c) by a mortgagor of the land to which the application relates, unless the mortgagee joins in or consents to the application,
  - (d) by a mortgagee of the land to which the application relates, unless:
    - (i) the mortgagor joins in or consents to the application, or
    - (ii) the Registrar-General is satisfied that the mortgagor is in default under the terms of the mortgage,
  - (d1) where the land to which the application relates is subject to a covenant charge, unless the covenant chargee consents to the application, or
  - (e) by an execution debtor named in a writ that has been registered in the Register of Causes, Writs and Orders affecting land, unless the execution creditor consents to the application.

- (4) A primary application shall be in the approved form and shall be accompanied by such evidence and documents of title as the Registrar-General may require.
- (5) Subject to subsection (7), an easement or profit à prendre 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 or profit à prendre 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 may make any such recordings upon any relevant certificate of title when it becomes available to the Registrar-General.
- (7) No folio of the Register shall be created for an easement or profit à prendre alone.
- (8) In this section, **land not subject to the provisions of this Act** shall be deemed to include land comprised in a qualified folio of the Register, and an application for the creation of an ordinary folio of the Register in respect of any such land may be made:
  - (a) by the registered proprietor of the land,
  - (b) by any other person referred to in subsection (2), or
  - (c) where a mortgage or charge is recorded in the qualified folio of the Register, by the mortgagee or chargee thereunder.
- (9) An application under subsection (8) may be made and dealt with in accordance with the provisions of this Part subject to such modifications as to the Registrar-General may seem appropriate.
- (10) Without prejudice to the operation of subsection (9), an application made under subsection (8) in respect of land comprised in a qualified folio of the Register shall, where that folio is a limited folio, be accompanied by:
  - (a) a plan of survey complying with the regulations and adequately defining the boundaries of the land, and
  - (b) such evidence as the Registrar-General may require relating to any adverse possession of the whole or any part of the land.
- (11) The Registrar-General may, pursuant to an application under subsection (8):
  - (a) cancel the qualified folio of the Register for the land and create an ordinary folio of the Register for the land, or
  - (b) cancel the caution recorded under section 28J (1) in the qualified folio and any recording made therein under section 28T (4).

#### **14A Consolidation with adjoining land in certain cases**

- (1) Where application is made under section 14 by the registered proprietor of an estate in fee simple in any land claiming, by reason of possession and by virtue of any statute of limitations, title to the like estate in the whole or part of any adjoining land comprised in a limited folio of the Register adverse to or in derogation of the title of the registered proprietor thereof, the Registrar-General may require the application to be accompanied by a plan of survey comprising the land the subject of the claim and the applicant's adjoining land.
- (2) Such an application may be granted by recording the applicant in the Register as the proprietor in fee simple of the whole of the land comprised in the plan of survey.
- (3) Upon the granting of the application, the land to which title was therein claimed shall cease to be subject to any registered encumbrances, liens, interests and burdens previously affecting it and shall cease to have the benefit of any rights, privileges, benefits, easements or profits à prendre previously attached thereto, but shall become subject to the same encumbrances, liens, interests and burdens and shall have attached thereto the same rights, privileges, benefits, easements and profits à prendre as the applicant's adjoining land.
- (4) Section 114 (2) applies to and in respect of a requirement made by the Registrar-General under subsection (1) in the same way as it applies to and in respect of a requirement under section 114 (1).

#### **15 Supreme Court may order production of deeds for purposes of application**

The Supreme Court may, on the application of any person seeking to bring land under this Act, order any specified person who has in his or her possession or under his or her control any deeds, instruments, or evidences of title relating to or affecting the land, to produce and leave the same at the office of the Registrar-General, on a day to be named in such order, upon such terms and subject to such conditions as to costs or otherwise as to the Court may seem fit.

#### **16 (Repealed)**

### **Division 2 Applications how dealt with**

#### **17 Creation of folio for land that is the subject of a primary application**

- (1) Where the Registrar-General intends to create a folio of the Register for land that is the subject of a primary application and, pursuant to section 12 (1) (h1) or 12 (1A), notice is given of that intention, that notice must specify a period (being not less than one month after the date of the notice) before the expiration of which that folio will not be created.
- (2) Subject to subsection (3), the Registrar-General may bring land, the subject of a

primary application, under the provisions of this Act by creating for the land a folio of the Register in which:

- (a) the primary applicant,
- (b) where the primary applicant has directed that a person other than the primary applicant be recorded as the registered proprietor of the land—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,

is recorded as the registered proprietor of the land.

(3) The Registrar-General shall not create a folio of the Register under subsection (2) for land if:

- (a) the Registrar-General has given notice of intention to create the folio and the period specified in the notice pursuant to subsection (1) has not expired, or
- (b) there is in force under section 74B a caveat prohibiting the bringing of the land, or any part of the land, under the provisions of this Act.

(4) (Repealed)

#### **18-22 (Repealed)**

#### **23 Withdrawal of primary application**

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

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

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

the Registrar-General may reject the primary application.

### **Division 2A Disposal of certain instruments**

### **23A Instruments of title, how to be dealt with**

- (1) For the purposes of this section, ***instrument***, in relation to a primary application or a primary applicant, means an instrument deposited with the Registrar-General that relates to land the subject of the primary application, whether so deposited by the primary applicant or by some other person and whether so deposited pursuant to section 64 of the [Conveyancing Act 1919](#) or otherwise.
- (2) Upon creating a folio of the Register under this Part, the Registrar-General shall endorse on each instrument relating to the primary application pursuant to which the Registrar-General created the folio a memorial cancelling it in so far as it relates to land under the provisions of this Act.
- (3) Subject to subsection (4), upon creating a folio of the Register under this Part, the Registrar-General:
  - (a) shall retain in the Registrar-General's office every instrument relating to the primary application pursuant to which the folio was created until it is delivered or destroyed pursuant to this section, and no person shall be entitled to the production of an instrument so retained except upon the written order of the primary applicant, or of some person claiming through or under the primary applicant, or upon the order of the Supreme Court,
  - (b) shall deliver to the primary applicant or other person entitled thereto any instrument that relates to land not under the provisions of this Act, and
  - (c) subject to paragraph (b), may destroy any instrument or may deliver it to the primary applicant or other person entitled thereto or to any person who has satisfied the Registrar-General that he or she bona fide intends to preserve the instrument for historical purposes.
- (4) The provisions of subsection (3):
  - (a) apply to instruments relating to primary applications pursuant to which folios of the Register were created before or after the commencement of the [Real Property \(Amendment\) Act 1970](#),
  - (b) do not apply to instruments deposited pursuant to section 64 of the [Conveyancing Act 1919](#), and
  - (c) are subject to the provisions of section 21 of the [State Records Act 1998](#).

## **Division 3**

### **24-28 (Repealed)**

## **Part 4A Qualified folios of the Register**

## 28A Definitions

In this Part and in all instruments purporting to be made or executed under this Act, unless inconsistent with the context or subject matter:

**Caution** means a caution referred to in section 28J.

**Land under common law title** means land alienated from the Crown in fee and not subject to the provisions of this Act and any estate or interest therein.

**Registered deed** means a conveyance, mortgage or charge registered under the provisions of Division 1 of Part 23 of the [Conveyancing Act 1919](#).

**Subsisting interest**, in relation to land for which a qualified folio of the Register has been created, means:

- (a) any contingent or vested estate or interest in that land that was in existence at the date on which the qualified folio of the Register was created and would have been enforceable against the person for the time being registered in that qualified folio as the proprietor had that qualified folio not been created and had any dealing registered therein been effected by a corresponding instrument duly registered under Division 1 of Part 23 of the [Conveyancing Act 1919](#) at the same time as the dealing became registered in the Register, and
- (b) any estate or interest in that land, arising by prescription or under any statute of limitations, that was in existence or in the course of being acquired at the date on which the qualified folio of the Register was created.

## 28B Qualified folio may be created on primary application

The Registrar-General may, upon a request made by the persons who have applied under Part 4 to bring any land under the provisions of this Act, and, where any mortgagee of the land has joined in the application, with the consent of that mortgagee, and upon withdrawal of the application, create, in accordance with the provisions of this Part, a qualified folio of the Register for any land the subject of the application.

## 28C Qualified folio may be created on subdivision

- (1) The Registrar-General may refuse to register, pursuant to Division 3 of Part 23 of the [Conveyancing Act 1919](#), a plan of subdivision that includes land under common law title unless there is lodged with the Registrar-General:
  - (a) any registered deed whereby the land was, or purported to be, conveyed to the subdivider, or
  - (b) where the subdivider acquired title to any such land by devolution in law, any registered deed whereby the land was, or purported to be, conveyed to the person from whom the land so devolved, and such other evidence of the devolution as the



Registrar-General may require,

together with any registered deed whereby a legal estate in the land is, or purports to be, vested in a mortgagee.

- (2) Upon registration of a plan referred to in subsection (1) and lodgment of the appropriate documents referred to in that subsection, the Registrar-General may create, in accordance with the provisions of this Part, a qualified folio of the Register for any land under common law title included in the plan.

#### **28D Qualified folio may be based on registered deed**

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

- (a) create, in accordance with the provisions of this Part, a qualified folio of the Register for any of that land, and
- (b) for the purposes of so creating a qualified folio of the Register, retain any relevant deed in the Registrar-General's custody.

#### **28E Qualified folio may be created upon investigation by Registrar-General**

- (1) The Registrar-General may cause notice to be given to any person (in this subsection referred to as **the addressee**) requiring the addressee, after making such inquiries as are necessary to enable the addressee 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,
  - (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 the addressee is aware and to indicate in that list which of those instruments are in the addressee's possession or under the addressee's 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 the addressee's control, as the Registrar-General may require.
- (2) Where a notice has been given under subsection (1) the Registrar-General may, in accordance with the provisions of this Part, create a qualified folio of the Register for any land specified in the notice.
- (3) Any person who wilfully refuses or neglects to comply with any requirement of a notice given to the person under subsection (1) or who makes any statement pursuant to such a notice that, to the person's knowledge, is false or misleading in a material particular shall be guilty of an indictable offence and shall be liable therefor to the penalty or punishment provided by section 141 (1).

**28EA Ordinary folio may be created in certain cases**

- (1) The Registrar-General may, instead of creating a qualified folio of the Register for land under section 28C, 28D or 28E, create an ordinary folio of the Register for the land if the Registrar-General is satisfied that, were the Registrar-General to create a qualified folio of the Register 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 section 12B (2) to record the Registrar-General's caveat,
  - (b) an interest that the Registrar-General would protect by recording the Registrar-General's caveat under section 12 (1) (e) or (f),
  - (c) an interest that the Registrar-General would record in the qualified folio of the Register,
  - (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) The Registrar-General may create an ordinary folio of the Register under this section only for land the boundaries of which, in the opinion of the Registrar-General, are adequately defined without further survey definition.

**28F Qualified title for holders of aquaculture leases**

A folio created, pursuant to section 13D (3), in the name of a lessee of land under Part 6 of the *Fisheries Management Act 1994* may, if the Registrar-General considers it appropriate, be created as a qualified folio.

### **28G Restriction on creation of qualified folio**

- (1) Where the Registrar-General intends to bring land under the provisions of this Act by creating a qualified folio of the Register for that land and, pursuant to section 12 (1) (h) or 12 (1A), gives notice of that intention the Registrar-General shall, in the notice, specify a period (expiring not earlier than one month after the date of the notice) before the expiration of which that folio will not be created.
- (2) The Registrar-General shall not create a qualified folio of the Register if notice of intention to create the folio has been given and the period specified in the notice pursuant to subsection (1) has not expired.

### **28GA Creation of qualified or ordinary folio to be indexed**

- (1) Immediately after bringing land under the provisions of this Act by creating a qualified folio of the Register or by creating an ordinary folio of the Register under section 28EA, the Registrar-General shall cause a notification of the creation of the qualified folio or ordinary folio, as the case may be, to be entered, in such manner as appears to the Registrar-General to be appropriate, in the index to the General Register of Deeds kept pursuant to Division 1 of Part 23 of the *Conveyancing Act 1919*.
- (2) Immediately after bringing land under the provisions of this Act by creating a qualified folio of the Register for that land, the Registrar-General shall chart on any appropriate map or plan or otherwise record the creation of the folio.

### **28H Recording on qualified folio of registered deeds executed before creation**

- (1) (Repealed)
- (2) The Registrar-General may record in a qualified folio of the Register any registered deed that affects the land for which the qualified folio was created if the deed:
  - (a) was executed, before the qualified folio was created, by the registered proprietor for the time being recorded therein,
  - (b) is presented to the Registrar-General, together with an application in the approved form, in the same manner as that in which a similar dealing would be required to be presented to the Registrar-General for lodgment if the dealing related to land for which an ordinary folio of the Register had been created, and
  - (c) is so presented before the caution recorded under section 28J in the folio has lapsed or been cancelled.

### **28I Subsisting interests to be entered on qualified folio**

- (1) When creating a qualified folio of the Register for any land, the Registrar-General shall record in that folio any subsisting interest then apparent to the Registrar-General, but shall not be concerned to make searches or inquiries as to the existence of any such

interest.

- (2) The Registrar-General may, at any time after the creation of a qualified folio of the Register, record in that folio any additional subsisting interest in the land comprised therein.

## **28J Cautions**

- (1) When creating a qualified folio of the Register for any land, the Registrar-General shall record in that folio a caution warning persons dealing with the registered proprietor that the land comprised therein is held subject to any subsisting interest, whether recorded therein or not.
- (1A) Where, in the opinion of the Registrar-General, any of the documents which evidenced the title to land comprised in a qualified folio of the Register conveyed or purported to convey the land otherwise than for valuable consideration, the Registrar-General may, when creating the folio, include in the caution recorded therein a notation to that effect.
- (1B) Where, in the opinion of the Registrar-General, the title of the registered proprietor to land comprised in a qualified folio of the Register depends on the operation of any statute of limitations, the Registrar-General may, when creating the folio, include in the caution recorded therein a notation to that effect.
- (2) In any caution recorded under subsection (1) in a qualified folio of the Register, the Registrar-General may indicate that, for the purpose of creating an ordinary folio of the Register for other land, a chain of title evidencing the title to land for which the qualified folio was created has been accepted by the Registrar-General up to a specified deed registered under Division 1 of Part 23 of the [Conveyancing Act 1919](#).
- (3) Where a caution contains any such indication, the qualified folio of the Register shall, notwithstanding any other provision of this Part, not be subject to any interest arising under an instrument registered under Division 1 of Part 23 of the [Conveyancing Act 1919](#) before the registration of the specified deed referred to in subsection (2), other than such subsisting interests as are recorded in that folio or are preserved by section 42.

## **28K Additional subsisting interests may be notified**

The registered proprietor of land for which a qualified folio of the Register has been created may lodge with the Registrar-General a memorandum in the approved form setting out particulars of any subsisting interest affecting that land and not already recorded in that folio, and the Registrar-General shall thereupon make such recording in that folio in respect of that subsisting interest as the Registrar-General considers appropriate.

**28L Duties of registered proprietor dealing with land in qualified folio**

A registered proprietor of land comprised in a qualified folio of the Register who has knowledge of a subsisting interest that affects that land and is not recorded in that folio and who, without having lodged a memorandum as provided in section 28K, creates or disposes of or otherwise deals with any estate or interest in land so affected or applies for the cancellation of a caution shall be guilty of an indictable offence and shall be liable therefor to the penalty or punishment provided by section 141 (1).

**28M Lapsing of caution on qualified folio created after registered deed for value (section 28J (1))**

- (1) This section sets out the 2 ways in which a caution recorded on a qualified folio of the Register under section 28J (1) that does not include a notation under section 28J (1A) or (1B) may lapse.
- (2) Firstly, if after the creation of the qualified folio, a person for valuable consideration and without fraud to which the person is a party becomes registered or, pursuant to section 36 (8), is deemed to have become registered, as proprietor of an estate or interest in the land comprised in the folio, the caution recorded on the folio lapses as regards the estate or interest:
  - (a) on the expiration of 6 years after the creation of the folio, or
  - (b) when the person becomes, or is deemed to have become, registered,whichever is the later.
- (3) Secondly, if immediately before the expiration of 12 years after the creation of the qualified folio, the caution affecting the folio has not lapsed as regards all estates and interests in the land comprised in the folio or been cancelled, the caution lapses on the expiration of that period.

**28MA Lapsing of caution on qualified folio created after registered deed other than for value (section 28J (1A))**

- (1) This section sets out the 2 ways in which a caution recorded on a qualified folio of the Register under section 28J (1) that includes a notation under section 28J (1A) but does not include a notation under section 28J (1B) may lapse.
- (2) Firstly, if after the creation of the qualified folio, a person for valuable consideration and without fraud to which the person is a party becomes registered or, pursuant to section 36 (8), is taken to have become registered, as proprietor of an estate or interest in the land comprised in the folio, and another person subsequently for valuable consideration and without fraud to which that other person is a party becomes, or is taken to have become, registered as proprietor of that estate or interest, the caution recorded on the folio lapses as regards the estate or interest:

- (a) on the expiration of 6 years after the time when the firstmentioned person becomes, or is taken to have become, registered, or
- (b) at the time the other person becomes, or is taken to have become, registered, whichever is the later.

(3) Secondly, if:

- (a) after the creation of the qualified folio, a person for valuable consideration and without fraud to which the person is a party becomes registered or, pursuant to section 36 (8), is deemed to have become registered, as proprietor of an estate or interest in the land comprised in the folio, and
- (b) immediately before the expiration of 12 years after the person becomes, or is deemed to have become, so registered, the caution has not lapsed as regards the estate or interest or been cancelled,

the caution lapses as regards the estate or interest on the expiration of that period.

**28MB Effect of lapsing of caution under section 28M or 28MA**

- (1) If a caution lapses under section 28M or 28MA then, subject to subsection (2), the lapsing operates to free the land or the estate or interest in respect of which the caution lapses from any interests that affected the land at the date on which it was brought under this Act by the creation of a qualified folio of the Register.
- (2) However, the lapsing of a caution under section 28M or 28MA does not operate to defeat a subsisting interest that:
  - (a) was, immediately before the lapsing:
    - (i) recorded in the qualified folio, or
    - (ii) the subject of a caveat affecting land comprised in the qualified folio, or
  - (b) is preserved by section 42.
- (3) The provisions of this section and sections 28M (3) and 28MA (3) 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 12B (2).

**28MC Application for cancellation of caution accompanied by search**

- (1) This section applies in respect of a caution recorded on a qualified folio of the Register under section 28J (1) including a caution with a notation under section 28J (1A) but excluding a caution with a notation under section 28J (1B).
- (2) The registered proprietor of land comprised in a qualified folio on which a caution in

respect of which this section applies is noted may, at any time, apply to the Registrar-General in the approved form for cancellation of the caution recorded in the folio.

- (3) The Registrar-General may cancel the caution if:
  - (a) the application is accompanied by an office copy of a certificate of the result of a search relating to the land under section 197 of the *Conveyancing Act 1919* and any other evidence that the Registrar-General may request, and
    - (a1) the Registrar-General has had regard to a survey report and an identification survey relating to the land that have been prepared by a registered surveyor, and
  - (b) the Registrar-General is satisfied that all estates and interests in the land are held free from any subsisting interests, other than those referred to in section 28MG, and
  - (c) the boundaries of the land, in the opinion of the Registrar-General, are adequately defined without further survey definition.
- (4) For the purposes only of enabling a search to be carried out under section 197 of the *Conveyancing Act 1919* in relation to an application under this section, land comprised in a qualified folio is taken not to be land subject to the provisions of this Act.

**28MD Application for cancellation of lapsed caution**

- (1) The registered proprietor of land comprised in a qualified folio:
  - (a) that is not affected by a notation under section 28J (1B), and
  - (b) in respect of which a caution has lapsed by the operation of section 28M or 28MA, may apply to the Registrar-General in the approved form for cancellation of the caution recorded in the folio.
- (2) The Registrar-General may cancel the caution if the Registrar-General is satisfied that, by virtue of section 28MB, all estates and interests in the land are held free from any subsisting interests, other than those referred to in section 28MG.

**28ME Application for cancellation of caution on qualified folio created on possessory title (section 28J (1B))**

- (1) This section sets out the way in which an application for cancellation of a caution recorded on a qualified folio of the Register under section 28J (1) that does not include a notation under section 28J (1A) but does include a notation under section 28J (1B) may be made.
- (2) The registered proprietor of land on which a caution in respect of which this section applies is recorded may apply to the Registrar-General in the approved form for cancellation of the caution if 12 years, running from the date on which a cause of

action to recover the land comprised in the qualified title first accrued to a person, has expired.

- (3) The Registrar-General may cancel the caution to which the application relates to the extent that it affects the land if:
- (a) before the expiration of the period of 12 years referred to in subsection (2), no person has served notice of the commencement of an action to recover the land on the Registrar-General or given the Registrar-General written notice of an order made by the Supreme Court restraining the Registrar-General from cancelling the caution, and
  - (b) the Registrar-General is satisfied that, by virtue of any statute of limitations, the land is held free from any subsisting interests, other than those referred to in section 28MG.

**28MF Registrar-General may cancel lapsed caution**

- (1) The Registrar-General may, if the Registrar-General thinks fit, cancel a caution that lapses by the operation of this Part.
- (2) In particular, the Registrar-General may, if the Registrar-General thinks fit, cancel a caution that lapses in accordance with section 28M (3).

**28MG Cancellation of caution in certain cases does not defeat certain subsisting interests**

The cancellation of a caution under section 28MC, 28MD, 28ME or 28MF does not operate to defeat a subsisting interest that:

- (a) was recorded in the qualified folio of the Register immediately before the cancellation, or
- (b) is preserved by section 42.

**28MH Cancellation of caution on resumption or sale under [Local Government Act 1993](#)**

- (1) This section applies when the Registrar-General:
  - (a) records a resumption pursuant to section 31A (3) (a) or (b), or
  - (b) records a transfer pursuant to section 726 of the [Local Government Act 1993](#), of land comprised in a qualified folio of the Register.
- (2) On making a recording to which this section applies, the Registrar-General:
  - (a) must cancel the caution recorded in the qualified folio, and
  - (b) when the certificate of title becomes available to the Registrar-General, must cancel the caution recorded on it,



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

### **28N Cancellation of instruments**

Before cancelling any caution recorded in a qualified folio of the Register, the Registrar-General may, in the Registrar-General's discretion, call in and cancel, wholly or partially as the case may require, any instruments of title executed before the creation of the folio and affecting the land for which the folio was created.

### **28O Certain proceedings against Registrar-General barred**

Notwithstanding the provisions of Parts 13 and 14, no proceedings shall be brought, and no action shall lie, against the Registrar-General for any refusal to create a qualified folio of the Register or to cancel a caution.

### **28P Application of provisions of this Act to qualified folio and land therein**

(1) Except as otherwise provided by this Act:

- (a) land comprised in a qualified folio of the Register is subject to the provisions of this Act,
- (b) the provisions of this Act relating to ordinary folios of the Register, land comprised in ordinary folios of the Register and to the registration of dealings affecting land comprised in ordinary folios of the Register shall apply to qualified folios of the Register, land comprised in qualified folios of the Register and the registration of dealings affecting land comprised in qualified folios of the Register,
- (c) a reference in this and in any other Act (other than the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*) to a folio of the Register includes a reference to a qualified folio of the Register, and
- (d) a qualified folio of the Register shall be evidence as to title in all respects as if it were an ordinary folio of the Register, except that it shall be subject to every subsisting interest in the land comprised therein, whether recorded in the Register or not.

(2), (3) (Repealed)

### **28Q Application of Act No 6, 1919, Part 4**

- (1) To the extent that, but for this section, Part 4 of the *Conveyancing Act 1919* would not apply to or in respect of land comprised in a qualified folio of the Register, it shall so apply, and shall be deemed always to have so applied after the commencement of the *Real Property (Conversion of Title) Amendment Act 1967* as if the land were not land subject to the provisions of this Act.

- (2) Subsection (1) shall not operate to exclude the application, to and in respect of land comprised in a qualified folio of the Register, of such of the provisions of Part 4 of the *Conveyancing Act 1919* as apply to and in respect of land under the provisions of this Act.

#### **28QA Information and production of documents**

- (1) The Registrar-General, for the purpose of bringing land under the provisions of this Act in accordance with this Part, may:
- (a) retain any deed lodged in the office of the Registrar-General which purports to convey or vest any estate or interest in the land,
  - (b) require persons lodging any such deed to furnish a statement in the approved form supplying the particulars therein requested in relation to any such estate or interest, and
  - (c) by notice in writing served on any person, require the person to produce within a period specified in the notice, being a period expiring not earlier than one month after the date of the notice, any deed or other document or certificate which the person is able to produce and particulars whereof are specified in the notice, being a deed, document or certificate relating to any estate or interest in the land.
- (2) Any person who wilfully refuses or neglects to comply with any requirement under subsection (1) or who makes any statement pursuant to such a requirement that, to the person's knowledge, is false or misleading in a material particular shall be guilty of an indictable offence and shall be liable therefor to the penalty or punishment provided by section 141 (1).

#### **28R Certain instruments to have no effect**

Where a dealing creating or transferring an estate or interest in land comprised in a qualified folio of the Register 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.

### **Part 4B Limited folios of the Register**

#### **Division 1 Creation of limited folios**

##### **28S Definitions**

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

***delimitation plan*** means a plan of survey lodged for the purposes of section 28V.

***land under common law title*** has the same meaning as it has in Part 4A.

**limitation** means a recording referred to in section 28T (4).

**registered deed** has the same meaning as it has in Part 4A.

(2) (Repealed)

### **28T Creation of limited folio**

(1A) Where the boundaries of land to which Part 3 applies are not sufficiently defined to enable the Registrar-General to create an ordinary folio of the Register under that Part, the Registrar-General may, subject to subsection (4), create a folio of the Register:

- (a) in the case of land to which section 13A or 13B applies, being a folio for the estate or interest in any of that land of the person for whose estate or interest the Registrar-General could otherwise have created an ordinary folio of the Register under that section,
- (b) in the case of land to which section 13D (1) applies, being a folio in which “The State of New South Wales” is recorded as the proprietor of that land, or
- (c) in the case of a lease described in section 13D (3) of land to which section 13D (1) applies, being a folio in the name of the person who, in the Registrar-General’s opinion, is entitled to be registered proprietor of the lease.

(1) Where the boundaries of land described in a registered deed are not sufficiently defined to enable the Registrar-General to create a qualified folio of the Register under section 28C or 28D, the Registrar-General may, subject to subsection (4):

- (a) create a qualified folio of the Register for the estate or interest in any of that land of the person for whose estate or interest in the land the Registrar-General could have created a qualified folio of the Register under section 28C or 28D, as the case may be, if no further survey definition had been necessary adequately to define the boundaries of the land, and
- (b) for the purpose of creating a folio of the Register for that land under paragraph (a), retain any relevant deed in the Registrar-General’s 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), the Registrar-General may cause such a notice to be given and, subject to subsection (4), may create a qualified folio of the Register for the estate or interest in any of that land of the person for whose estate or interest in the land the Registrar-General could have created a qualified folio of the Register under section 28E, if no further survey definition had been necessary adequately to define the boundaries of the land.

(3) Where the boundaries of land are not sufficiently defined to enable the Registrar-General to create an ordinary folio of the Register under section 28EA, the Registrar-General may, subject to subsection (4), create a folio of the Register for the estate or

interest in any of that land of the person for whose estate or interest in the land the Registrar-General could have created an ordinary folio of the Register under section 28EA, if no further survey definition had been necessary adequately to define the boundaries of the land.

- (4) When creating a folio of the Register under subsection (1A), (1), (2) or (3), the Registrar-General shall make in that folio a recording to the effect that the description of the land comprised therein has not been investigated by the Registrar-General and may therein or in any plan deposited in the Registrar-General's office illustrating the land so comprised record such other particulars as the Registrar-General considers appropriate.
- (5) Part 3 (sections 13A, 13B, 13D (1) and (3) and 13N excepted) applies to and in respect of a folio of the Register created under subsection (1A) (whether or not it ceases to be a limited folio of the Register) in the same way as it applies to and in respect of a folio of the Register created under Part 3.
- (6) The provisions of section 28GA apply to and in respect of a folio of the Register created under subsection (3) as if the reference in section 28GA to an ordinary folio of the Register created under section 28EA were a reference to a folio of the Register created under subsection (3).
- (7) Part 4A (sections 28B, 28C, 28D, 28E, 28EA and 28QA excepted) applies to and in respect of a qualified folio of the Register created under subsection (1) or (2) (whether or not it ceases to be a limited folio of the Register) in the same way as it applies to and in respect of a qualified folio of the Register created under Part 4A.
- (8) Except as otherwise provided by any other provision of this Part:
  - (a) land comprised in a limited folio of the Register is subject to the provisions of this Act,
  - (b) the provisions of this Act relating to ordinary folios of the Register, land comprised in ordinary folios of the Register and the registration of dealings affecting land comprised in ordinary folios of the Register shall apply to limited folios of the Register, land comprised in limited folios of the Register and the registration of dealings affecting land comprised in limited folios of the Register,
  - (c) a reference in this and in any other Act (other than the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*) to a folio of the Register includes a reference to a limited folio of the Register, and
  - (d) a limited folio of the Register shall be evidence as to title in all respects as if it were an ordinary folio of the Register, except that:
    - (i) the certification of title is not conclusive as regards the definition of the

boundaries of the land comprised therein, and

- (ii) where the folio of the Register is also a qualified folio of the Register, the operation of section 28P (1) (d), as applied by subsection (7), is not affected.

### **28U Defeasibility of limited title**

- (1) Section 12 (3) (b) does not apply to or in respect of a correction made by the Registrar-General of any wrong description of parcels or of boundaries in relation to land included in a limited folio of the Register.
- (2) Where by any wrong description of parcels or of boundaries any land is incorrectly included in a limited folio of the Register, section 42 (1) does not operate to defeat any estate or interest in that land adverse to or in derogation of the title of the registered proprietor and not recorded in the folio, whether or not the registered proprietor is a purchaser or mortgagee of that land for value or derives title from such a purchaser or mortgagee.

## **Division 2 Delimitation plans**

### **28V Removal of limitation**

- (1) Upon the lodgment in the office of the Registrar-General of:
  - (a) a plan of survey complying with the regulations and adequately defining the boundaries of the land comprised in a limited folio of the Register,
  - (b) such evidence as the Registrar-General may require relating to any adverse possession of the whole or any part of the land comprised in the folio, and
  - (c) such other evidence as the Registrar-General may in any case require,the Registrar-General may, subject to this Act, register the plan of survey and cancel the limitation recorded in the folio.
- (2) Where the Registrar-General intends to register a plan lodged for the purposes of this section and, pursuant to section 12 (1) (h) or 12 (1A), gives notice of that intention the Registrar-General shall, in the notice, specify a period (expiring not earlier than one month after the date of the notice) before the expiration of which the plan will not be registered.

### **28W Restrictions on registration of delimitation plan**

Without prejudice to section 74H in so far as it relates to a delimitation plan, the Registrar-General shall not register a delimitation plan if a notice referred to in section 28V (2) has been given and the period specified in that notice has not expired.

### **28X Withdrawal of delimitation plan**

- (1) A person who lodges a delimitation plan may withdraw the plan before it is registered by making a request in the approved form.
- (1A) If a plan lodged electronically is withdrawn before registration, the Registrar-General is to return any documents lodged manually with it to the person appearing to the Registrar-General to be entitled to them.
- (1B) If a plan lodged manually is withdrawn before registration, the Registrar-General is to return the plan and any other documents lodged with it to the person appearing to the Registrar-General to be entitled to them.
- (2) If it appears to the Registrar-General:
  - (a) that a person who has lodged a delimitation plan has not complied, or has unreasonably delayed in complying, with the requirements of the Registrar-General relating to the registration of the plan, or
  - (b) that the evidence adduced by any such person in compliance with any such requirement is deficient in any material particular,the Registrar-General may refuse to register the plan.

## **Division 3**

### **28Y-28ZB (Repealed)**

## **Division 4 Other provisions relating to limited folios**

### **28ZC Certain proceedings against Registrar-General barred**

Notwithstanding the provisions of Parts 13 and 14, no proceedings shall be brought, and no action shall lie, against the Registrar-General for any refusal to create a limited folio of the Register or to cancel a limitation.

### **28ZD Information and production of documents**

- (1) The Registrar-General, for the purpose of bringing land under the provisions of this Act in accordance with this Part, may:
  - (a) retain any deed lodged in the office of the Registrar-General which purports to convey or vest any estate or interest in the land,
  - (b) require persons lodging any such deed to furnish a statement in the approved form supplying the particulars therein requested in relation to any such estate or interest, and
  - (c) by notice in writing served on any person, require the person to produce within a

period specified in the notice, being a period expiring not earlier than one month after the date of the notice, any deed or other document or the certificate which the person is able to produce and particulars whereof are specified in the notice, being a deed, document or certificate relating to any estate or interest in the land.

- (2) Any person who wilfully refuses or neglects to comply with any requirement under subsection (1) or who makes any statement pursuant to such a requirement that, to the person's knowledge, is false or misleading in a material particular shall be guilty of an indictable offence and shall be liable therefor to the penalty or punishment provided by section 141 (1).

## Part 5

### 29-31 (Repealed)

## Part 5A Certification of title to resumed land

### 31A Creation of folio for resumed land

- (1) In this Part:

**resumption** means compulsory acquisition of land (including compulsory acquisition or appropriation of Crown land) under the provisions of any Act or Act of the Commonwealth authorising compulsory acquisition or appropriation of land, and **resumed** has a corresponding meaning.

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

- (2) Where resumed land is not under the provisions of this Act:

- (a) subject to subsection (2B), the Registrar-General shall, upon lodgment of a resumption application relating to the land resumed, accompanied by a copy of the instrument by which the resumption was effected, together with any other evidence required by the Registrar-General, create a folio of the Register for the estate or interest of the person in whom is vested the land described in that resumption application without causing any examination or report to be made as to the title to the land and without considering that title otherwise than to satisfy himself or herself that the land described in the resumption application is included in the resumed land, and
- (b) (Repealed)
- (c) in any folio of the Register created in pursuance of this subsection the resumed

land may be described in the terms of or by reference to the instrument by which the resumption was effected.

- (2A) An easement or profit à prendre 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 may make like recordings upon the relevant certificate of title when it becomes available to the Registrar-General.
- (2B) A resumption application may not be made for the creation of a folio of the Register for an easement or profit à prendre alone.
- (3) Where resumed land is under the provisions of this Act:
- (a) the Registrar-General may, where the Registrar-General has notice of the resumption, record the resumption in the Register of the Registrar-General's own motion,
  - (b) subject to paragraph (a), the Registrar-General, upon lodgment of a resumption application relating to the land resumed, accompanied by a copy of the instrument by which the resumption was effected and any other evidence required by the Registrar-General, shall make such recording in the Register as may be necessary to give effect to the resumption application, and
  - (c) (Repealed)
  - (d) where a grant, certificate of title or duplicate registered dealing evidencing title to an estate or interest affected by a registered resumption is in the possession of some person other than the person registered as proprietor under this subsection, and that person in possession fails to deliver it up for cancellation when required in writing by the Registrar-General so to do the grant, 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.
- (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
  - (b) the Registrar-General failed to exercise the power conferred on the Registrar-General by subsection (3) (a).
- (5) The Registrar-General may give notice to a person that at the expiration of a period specified in the notice the Registrar-General proposes to give effect, under this



section, to a specified resumption application and, where the Registrar-General gives such a notice, the Registrar-General may delay giving effect, under this section, to the resumption application until the expiration of the period so specified.

- (6) This section shall apply to and in respect of resumptions before or after the commencement of the *Real Property (Amendment) Act 1970*, except to the extent that:
- (a) a certificate of title issued in respect of the resumed land after the resumption and before that commencement, or
  - (b) a resumption application in respect of the resumed land was registered before that commencement.

## **Part 6 The Register and registration**

### **31B The Register**

- (1) The Registrar-General shall cause a Register to be maintained for the purposes of this Act.
- (2) The Register shall be comprised of:
  - (a) folios,
  - (b) dealings registered therein under this or any other Act,
  - (c) the record required to be kept pursuant to section 32 (7),
  - (d) instruments of a prescribed class, and
  - (e) records required by the regulations to be kept as part of the Register.
- (3) The Register may be maintained in or upon any medium or combination of mediums capable of having information recorded in or upon it or them.
- (4) The Registrar-General may, from time to time, vary the manner or form in which the whole or any part of the Register is maintained.

### **32 Folios of the Register**

- (1) The Registrar-General creates a folio of the Register for land by making a record of:
  - (a) a description of the land and of the estate or interest therein for which it is created,
  - (b) a description of the proprietor for the time being of the estate or interest and the fact that any such proprietor is a minor if the Registrar-General knows that to be the case, and

(c) such particulars, as the Registrar-General thinks fit, of:

- (i) other estates or interests, if any, affecting the land, and
- (ii) other information, if any, that relates to the land or any estate or interest therein and is included in that record pursuant to this or any other Act (including an Act of the Parliament of the Commonwealth) or an instrument made under any such Act,

and by allocating a distinctive reference to the record so made.

- (2) Subsection (1) does not apply in respect of a folio of the Register constituted under section 22 or 23 of the *Strata Schemes (Freehold Development) Act 1973* or section 25 or 27 of the *Strata Schemes (Leasehold Development) Act 1986*.
- (2A) Subsection (1) (c) applies, in the case of a qualified folio of the Register, subject to the provisions of section 28I.
- (3) Where a person is registered as proprietor of a lease registered under this Act, the Registrar-General may:
  - (a) if the Registrar-General thinks fit so to do, create a folio or folios of the Register for the estate or interest of that person in some or all of the land leased, and
  - (b) for that purpose, require the deposit in the office of the Registrar-General of a plan of the land (together with copies) which shall, if the Registrar-General so requires, be a plan of survey.
- (4) The Registrar-General may, if the Registrar-General thinks fit so to do, create a new folio or new folios of the Register for the whole or any part of the land comprised in one or more of the folios of the Register.
- (5) Where, under this Act, the Registrar-General creates a new folio of the Register for land contained in a previously created folio of the Register, the Registrar-General shall appropriately cancel the previously created folio and may, for the purposes of this subsection, require the production to the Registrar-General of any certificate of title.
- (6) The Registrar-General shall have, and shall be deemed always to have had, power to cancel in such manner as the Registrar-General considers proper any recording in the Register that the Registrar-General is satisfied does not affect the land to which the recording purports to relate.
- (7) The Registrar-General shall maintain a record of all dealings recorded in, or action taken in respect of, a computer folio and such other information, if any, relating to the folio as the Registrar-General thinks fit.

### **33 Issue of certificates of title**

- (1) The Registrar-General may, if the Registrar-General thinks fit so to do, from time to time issue a certificate of title for the land comprised in any folio of the Register and may, for the purposes of subsection (4), require the production to the Registrar-General of any certificate of title.
- (2) A certificate of title shall be in an approved form.
- (3) The Registrar-General shall not issue a certificate of title unless there is endorsed on the certificate of title the distinctive reference allocated to the folio of the Register to which it relates.
- (4) When the Registrar-General issues a certificate of title, the Registrar-General shall cancel, wholly or partially as the case may require, any certificate of title thereby superseded and that has been produced, or is otherwise available, to the Registrar-General.
- (5) Notwithstanding subsection (1) but subject to subsection (6), the Registrar-General shall issue a certificate of title for the land comprised in a folio of the Register upon the written request of:
  - (a) the registered proprietor of that land, or
  - (b) any registered mortgagee, registered chargee or covenant chargee of that land.
- (6) A request made under subsection (5) does not require the Registrar-General to issue a certificate of title for the land comprised in a folio of the Register if a certificate of title for that land has been issued but has not been lodged with the Registrar-General.

### **33A Delivery etc of instruments in the custody of the Registrar-General**

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

- (2) An instrument in the custody of the Registrar-General, being a grant, certificate of title or duplicate registered dealing, may be used by the Registrar-General in the course of registering a dealing affecting the land, estate or interest to which the instrument relates:
- (a) if the instrument was lodged by or on behalf of the person who lodged that dealing or was lodged for the purpose of enabling that dealing to be registered, or
  - (b) if the Registrar-General gives to the person entitled to the instrument written notice of the Registrar-General's intention so to use the instrument and that person does not within a time specified in the notice for the purpose, notify the Registrar-General in writing of the person's refusal to permit the instrument so to be used.
- (3) Where the Registrar-General, in a notice given pursuant to subsection (2), indicates that the Registrar-General proposes to deliver an instrument specified in the notice to a person nominated in the notice the Registrar-General may, unless the person to whom the notice is given notifies the Registrar-General before the expiration of a period specified in the notice for the purposes of this subsection that the person objects to that proposal, deliver the instrument in accordance with the proposal.
- (4) Subject to subsections (4A) and (4B), for the purposes of subsections (1) (a) and (2) (a):
- (a) a grant or the first certificate of title issued for land brought under the provisions of this Act pursuant to Part 3 shall be deemed to have been lodged by the grantee or the registered proprietor named therein, as the case may be, and
  - (b) a certificate of title shall:
    - (i) where it is the first certificate of title issued in respect of land for which a folio of the Register has been created under section 17 (2)—be deemed to have been lodged by the person who lodged the primary application pursuant to which the folio was created or, where the folio was created in accordance with a direction or conveyance by the primary applicant, by the person who lodged the direction or conveyance,
    - (ii) where it is the first certificate of title issued in respect of land for which a folio of the Register has been created under section 28B, 28C (2), 28D, 28E (2), 28EA (1) or 28T (1), (2) or (3)—be deemed to have been lodged by the person nominated by the registered proprietor named therein as entitled to take delivery thereof,
    - (iii) where it is the first certificate of title issued after the total or partial cancellation of a superseded certificate of title under section 33 (4)—be deemed to have been lodged by the person who, in the opinion of the Registrar-General, would have been entitled to take delivery of the superseded

certificate of title had it not been cancelled wholly or partially, as the case may be,

- (iv) where it is the first certificate of title issued pursuant to the grant of a possessory application—be deemed to have been lodged by the person who lodged the possessory application, and
- (v) where it is issued pursuant to section 111—be deemed to have been lodged by the person who lodged the application for issue of the certificate of title.

(4A) Subject to subsection (4B), for the purposes of subsections (1) (a) and (2) (a), a grant or certificate of title referred to in subsection (4) issued in respect of land that is subject to a mortgage, charge or covenant charge shall be deemed to have been lodged by the registered proprietor of the mortgage, charge or covenant charge affecting the land over which no other mortgage, charge or covenant charge has priority.

(4B) Subsections (4) and (4A) do not apply in respect of a grant or certificate of title that has in fact been lodged with the Registrar-General.

(4C) No person shall be entitled to require delivery to himself or herself of any certificate of title that has been partially cancelled but the Registrar-General may, if the Registrar-General thinks fit so to do, deliver a partially cancelled certificate of title under subsection (1).

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

- (a) to lodge it with the Registrar-General,
- (b) to uplift it for amendment or to withdraw it from registration and, in either case, to give a receipt therefor,
- (c) to receive requisitions, communications and notices in respect thereof, and
- (d) to attend to all other matters which may arise in the course of registration thereof or in the course of any other action within the office of the Registrar-General with respect thereto.

### **34, 35 (Repealed)**

### **36 Lodgment and registration of documents**

(1) In this section:

**caveat** means a caveat referred to in section 74F.

**memorandum** has the same meaning as it has in section 80A (1).

- (1A) When the Registrar-General accepts a dealing, memorandum or caveat presented for lodgment, the Registrar-General shall allot thereto a distinctive reference.
- (1B) A dealing, memorandum or caveat is lodged, within the meaning of this Act, only when the Registrar-General has, under subsection (1A), allotted thereto a distinctive reference.
- (1C) The Registrar-General may refuse to accept a dealing, memorandum or caveat presented for lodgment if it does not comply with any requirement made, with respect to the dealing, memorandum or caveat, by or under this or any other Act.
- (1D) Without affecting the generality of subsection (1C), the Registrar-General may refuse to accept a dealing or caveat presented for lodgment:
- (a) that does not recite the distinctive reference allotted under this Act to the folio of the Register or to the registered dealing intended to be affected by the dealing or caveat,
  - (b) unless the regulations otherwise provide, that is not attested by a witness who is not a party to the dealing or caveat, or
  - (c) that is not lodged in a manner approved for the time being by the Registrar-General.
- (1E) If the Registrar-General has grounds for believing that a dealing or caveat has not been duly executed or attested, the Registrar-General may require the execution or attestation to be proved in such manner as the Registrar-General thinks fit.
- (2) Where a plan referred to in subsection (3), or a dealing or caveat, presented for lodgment purports to have been executed under a power of attorney, the Registrar-General may refuse:
- (a) to accept it for lodgment, or
  - (b) to make any recording or entry in the Register or take any other action in respect of it,
- unless the power of attorney has been registered as provided for by the [Powers of Attorney Act 2003](#).
- (3) Where a plan intended to be registered pursuant to the provisions of the [Strata Schemes \(Freehold Development\) Act 1973](#) or the [Strata Schemes \(Leasehold Development\) Act 1986](#) or a dealing, caveat or other document purports to have been signed or otherwise executed under a power of attorney or under any other power or authority, whether statutory or not, the Registrar-General may assume that the plan, dealing, caveat or other document was so signed or otherwise executed and that

there was sufficient power or authority for its being signed or otherwise executed.

- (4) Where two or more dealings which affect the same land have been lodged and are awaiting registration, the Registrar-General may register those dealings in the order which will give effect to the intentions of the parties as expressed in, or apparent to the Registrar-General from, the dealings.
- (5) Subject to section 12A, where the intentions of the parties to dealings referred to in subsection (4) appear to the Registrar-General to conflict, the order of registration shall be the order in which the dealings were lodged in registrable form.
- (6) For the purposes of this section:
  - (a) a dealing that is lodged in registrable form and is subsequently uplifted shall be deemed not to be in registrable form until relodged in a manner approved for the time being by the Registrar-General and in registrable form,
  - (b) a dealing shall be deemed not to be in registrable form:
    - (i) if, notwithstanding anything done under section 39 (3), the dealing requires a material correction, alteration or addition,
    - (ii) unless the Registrar-General has authority to use, for the purpose of registering the dealing, the relevant certificate of title, or
    - (iii) unless the dealing is in the approved form, and
  - (c) notwithstanding that it may have been accepted for lodgment by the Registrar-General, a dealing that is not in registrable form shall, where it is not uplifted, be deemed not to have been lodged with the Registrar-General until it is in registrable form.
- (6AA) A caveat that is lodged with the Registrar-General and is subsequently uplifted is ineffective to prohibit the recording or registration of any dealing or delimitation plan, or the granting of any application, the recording, registration or granting of which is prohibited by the caveat, until the caveat is relodged with the Registrar-General.
- (6A) A dealing is registered when the Registrar-General has made such recording in the Register with respect to the dealing as the Registrar-General thinks fit.
- (7) Where two or more dealings that affect the same land have been lodged and are awaiting registration the Registrar-General may, if the Registrar-General thinks fit, register those dealings by making one or more recordings in such part or parts of the Register as the Registrar-General considers appropriate.
- (8) Dealings registered under subsection (7) shall be deemed to have been duly registered notwithstanding any requirement in this Act that dealings be executed by a registered proprietor and, for the purposes of Part 4A or 14, upon registration of such

a dealing a person expressed therein to take an estate or interest in land under the provisions of this Act shall be deemed to have become registered as proprietor of that estate or interest according to the tenor of the dealing.

- (9) Dealings registered with respect to, or affecting the same estate or interest shall, notwithstanding any notice (whether express, implied or constructive), be entitled in priority the one over the other according to the order of registration thereof and not according to the dates of the dealings.
- (10) Upon registration of a dealing the Registrar-General shall deliver any duplicate thereof to the person who, pursuant to section 33A, appears to the Registrar-General to be entitled thereto.
- (11) Upon registration, a dealing shall have the effect of a deed duly executed by the parties who signed it.

### **36A Notification of permits, licences and permissive occupancies affecting Crown land**

- (1) In this section:

**enclosure permit** means a permit granted under the [Crown Lands Act 1989](#) to enclose a road or watercourse or part of a road or watercourse.

**licence** means a licence granted under the [Crown Lands Act 1989](#) authorising the use or occupation of Crown land.

**permissive occupancy** has the same meaning as in the [Crown Lands \(Continued Tenures\) Act 1989](#).

- (2) The Registrar-General may record a note in a folio of the Register to indicate that land has the benefit of an enclosure permit, licence or permissive occupancy and may alter or remove any such note.
- (3) The Registrar-General is not liable if such a recording:
  - (a) could be made, but is not made, or
  - (b) is made or retained, but should not have been made or retained, or is incomplete or inaccurate.

### **37 Transactions effecting the subdivision of land**

- (1) The Registrar-General:
  - (a) may refuse to accept a dealing or instrument for registration in the Register, or
  - (b) may refuse to register a dealing or instrument in the Register, or
  - (c) may reject a dealing or instrument lodged for registration in the Register,



if the dealing or instrument purports to give effect to a transaction that contravenes section 23F of the *Conveyancing Act 1919*.

- (2) The Registrar-General may refuse to create a folio of the Register for any land, and may refuse to issue a certificate of title for any land, if the land does not comprise one or more existing lots in a current plan within the meaning of the *Conveyancing Act 1919*.

### **38 Recording dealings on certificate of title etc**

- (1) If the Registrar-General, having delivered a certificate of title for land:
  - (a) requests its production for the purpose of registration of a dealing that relates to the land, and
  - (b) the request or a requirement under subsection (2) is not complied with,the Registrar-General may refuse to register the dealing or to accept it for registration.
- (2) Where a certificate of title is not produced in response to a request made by the Registrar-General under subsection (1), the Registrar-General may require that the dealing in respect of which the request was made be accompanied by an application in the approved form to dispense with the production of the certificate of title together with such evidence as the Registrar-General requires.
- (3) Where the Registrar-General makes a recording in the Register in respect of a dealing, the Registrar-General may also make a like recording upon any certificate of title produced to the Registrar-General for the purpose of registration of the dealing or that otherwise becomes available to the Registrar-General.
- (4) (Repealed)
- (5) Where an instrument that is a certificate of title or duplicate registered dealing is in the custody of the Registrar-General and no person is entitled to require the delivery to himself or herself of the instrument the Registrar-General may:
  - (a) dispense with the recording of the effect of any dealing upon that instrument, and
  - (b) subject to the *State Records Act 1998*, destroy that instrument without retaining a copy or record thereof.
- (6) Subject to the *State Records Act 1998*, the Registrar-General may:
  - (a) destroy any document that the Registrar-General is not under a duty to deliver or issue to any person, whether or not it is part of the Register, or
  - (b) deliver to a person who, in the Registrar-General's opinion, intends to preserve it for historical purposes any document that, by paragraph (a), the Registrar-General is empowered to destroy.

- (7) The Registrar-General shall, before destroying a document under subsection (6) (a), make a reproducible copy of that document if:
- (a) where the document is part of the Register, it evidences a subsisting interest, or
  - (b) where the document is not part of the Register, the Registrar-General would, but for subsection (6) (a), have a duty to preserve it.
- (8) The Registrar-General shall preserve a reproducible copy of any document referred to in subsection (7) (a) or (b) for as long as the interest evidenced by the document subsists or for as long as the Registrar-General would, but for subsection (6) (a), have had a duty to preserve the document, as the case may be.
- (9) Where a reproducible copy of a document is preserved under subsection (8) and that document would, if it had not been destroyed under subsection (6) (a), be part of the Register, whether for all purposes or for the purpose only of section 96B, the reproducible copy shall be part of the Register for all purposes or for that purpose, as the case may be.
- (10) In this section:
- reproducible copy*** means a copy of a document that is captured and retained in a manner that enables the document to be reproduced.

### **39 Treatment of dealings that do not comply with requirements**

- (1) The Registrar-General shall not register any dealing purporting to transfer or otherwise to deal with or affect any estate or interest in land under the provisions of this Act, except in the manner herein provided, and the Registrar-General may reject any dealing which the Registrar-General is satisfied should not be registered.
- (1A) The Registrar-General:
- (a) may refuse to register, or may reject, any dealing lodged for registration, and
  - (b) may reject any memorandum or caveat lodged with the Registrar-General,
- that does not comply with any requirement made, with respect to the dealing, memorandum or caveat, as the case may be, by or under this or any other Act.
- (1B) The Registrar-General may:
- (a) refuse to accept for registration:
    - (i) a dealing purporting to transfer or otherwise to deal with or affect any estate or interest in land under the provisions of this Act, or
    - (ii) an application to effect a change in the name of a registered proprietor, or
  - (b) refuse to register such a dealing or application, or

(c) reject such a dealing or application,

if it is not accompanied by a fully completed notice in the approved form.

- (1C) For the purposes of subsection (1B), a dealing or application is taken to be accompanied by a notice in the approved form if, before the presentation of the dealing or application, a notice relating to the dealing or application is lodged electronically in a form and in the manner approved by the Registrar-General.
- (2) The Registrar-General may, at the Registrar-General's discretion, register a dealing notwithstanding any error therein or omission therefrom and, in such case, the error or omission shall not invalidate the registration of the dealing.
- (3) Instead of rejecting any dealing containing a patent error, the Registrar-General may of the Registrar-General's own motion correct the error by marginal notation on the dealing, and the dealing so corrected shall have the like validity and effect as if the error had not been made.

### **39A Treatment of certain instruments when land brought under Act**

- (1) In this section, ***prescribed instrument*** means an instrument:
- (a) that affects land not subject to the provisions of this Act,
  - (b) that has been registered in the General Register of Deeds kept pursuant to Division 1 of Part 23 of the [Conveyancing Act 1919](#) or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act, and
  - (c) that, in the opinion of the Registrar-General, could have been registered under the provisions of this Act as a mortgage, charge or covenant charge if, at the time of its execution, the land it affects had been subject to the provisions of this Act and the instrument had been drawn in a form approved by the Registrar-General.
- (2) 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 for the estate or interest of a person other than the mortgagee, chargee or covenant chargee entitled under the instrument:
- (a) unless the mortgagee, chargee or covenant chargee otherwise directs, the Registrar-General shall record the instrument in the Register in such manner as the Registrar-General considers appropriate,
  - (b) the mortgagee, chargee or covenant chargee, as the case may be, named in a recording made under paragraph (a) shall be deemed to be registered under the provisions of this Act as proprietor of a mortgage, charge or covenant charge registered under this Act in respect of the land, and
  - (c) a person deemed by paragraph (b) to be a registered proprietor of a mortgage,

charge or covenant charge shall be entitled to exercise the same rights, powers and remedies as if the mortgage, charge or covenant charge had been drawn in the approved form and registered in the manner provided by this Act in respect of mortgages, charges or covenant charges, as the case may be.

- (3) This section does not apply to an instrument to which section 13F, 13KA or 13M applies.
- (4) Nothing in this section requires the Registrar-General, when bringing land under the provisions of this Act, to create a folio of the Register for the estate or interest of a mortgagor, charger or covenant charger.
- (5)-(8) (Repealed)

### **39B Registration of mortgagor or charger as proprietor**

- (1) Where land affected by a prescribed instrument (within the meaning of section 13F, 13KA or 39A), or by an instrument to which section 13M applies has been brought under the provisions of this Act by the creation of a folio of the Register for the estate or interest of the mortgagee or chargee entitled under the instrument, the Registrar-General may, on application, amend the Register by registering the applicant as the proprietor of that estate or interest, if:
  - (a) the applicant is the mortgagor or charger under the instrument or another person claiming title under the mortgagor or charger, and
  - (b) the mortgagee or chargee consents to the amendment.
- (2) An application under this section must be made in the approved form.

### **39C Dealings etc to be in approved form**

- (1) This section applies to an instrument:
  - (a) which has been registered:
    - (i) before the commencement of this section, pursuant to section 39A (2) (or section 13F, 13K or 13M), or
    - (ii) after the commencement of this section, pursuant to section 13F, 13KA, 13M or 39A, or
  - (b) where a person other than the mortgagee or chargee under the instrument becomes registered as the proprietor of an estate or interest in land affected by the instrument by virtue of an amendment of the Register:
    - (i) before the commencement of this section, pursuant to section 39A (6A) (or section 13F, 13K or 13M), or

(ii) after the commencement of this section, pursuant to section 39B.

- (2) All dealings, whether by way of transfer, discharge or otherwise, with the mortgage, charge or covenant charge created by an instrument to which this section applies must be in accordance with the forms approved for corresponding dealings with land under the provisions of this Act and must be recorded in accordance with this Act. The Registrar-General may dispense with the requirements of this subsection in a particular case or class of cases.
- (3) When a power of sale becomes exercisable in respect of the instrument, the power may be exercised, and the estate or interest sold may be transferred, only in accordance with this Act.
- (4) If the instrument is one that creates a mortgage or covenant charge, anything done with respect to foreclosure because of a default in payment of an amount secured by the mortgage or charge, in so far as the thing done relates to land under the provisions of this Act, must be done in accordance with those provisions and not otherwise. This subsection has effect subject to section 101 of the [Conveyancing Act 1919](#).

#### **39D Register of Deeds to be noted**

- (1) When the Registrar-General makes a recording under section 13F, 13KA, 13M or 39A in respect of an instrument, the Registrar-General must cause a notation to be entered in the index to the General Register of Deeds kept pursuant to Division 1 of Part 23 of the [Conveyancing Act 1919](#) or, where the interest concerned is a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to that Act.
- (2) The appropriate form of notation, and the manner of making it, are to be determined by the Registrar-General.

#### **40 Manual folio to be considered evidence of title, and that the land has been duly brought under the Act**

- (1) A manual folio shall be received by all Courts or persons having by law or consent of parties authority to hear, receive and examine evidence as evidence of the particulars therein recorded and shall be conclusive evidence that any person recorded in the folio as the registered proprietor of an estate or interest in the land comprised in the folio is the registered proprietor of that estate or interest and that the land comprised in that folio has been duly brought under the provisions of this Act.
- (1A) Where a computer folio certificate is issued in respect of a folio of the Register:
  - (a) the certificate is evidence of the particulars recorded in that folio, and
  - (b) it shall be conclusively presumed that:
    - (i) the certificate contains all the information that was recorded in that folio at the

time specified in the certificate,

- (ii) the land to which the certificate relates was, at that time, under the provisions of this Act, and
- (iii) a person recorded in the certificate as the registered proprietor of an estate or interest in the land to which the certificate relates was, at that time, the registered proprietor of that estate or interest.

(1B) Where, in a manual folio or computer folio certificate, the estate or interest of a registered proprietor is expressed to be subject to:

- (a) an estate or interest evidenced by an instrument,
- (b) a provision of an instrument, or
- (c) an enumerated provision of an Act or of an Act of the Parliament of the Commonwealth,

the whole of the contents of the instrument, provision or enumerated provision, as the case may be, shall be deemed to be set forth at length in the folio or certificate.

- (2) No folio of the Register shall be impeached or defeasible on the ground of want of notice or of insufficient notice of the application to bring the land therein described under the provisions of this Act, or on account of any error, omission, or informality in such application, or in the proceedings pursuant thereto, by the Registrar-General.
- (2A) No folio of the Register shall be impeached or defeasible on the ground of want of notice or of insufficient notice of a possessory application relating to the land therein described, or on account of any error, omission or informality in the application, or in the proceedings pursuant thereto, by the Registrar-General.
- (3) The person recorded in any folio of the Register as entitled to the land therein described shall be held in every Court to be seised of the reversion expectant upon any lease that may be recorded thereon, and to have all powers, rights, and remedies to which a reversioner is by law entitled, and shall be subject to all covenants and conditions therein expressed to be performed on the part of the lessor.

#### **40A Production of computer folio to courts etc**

Where the Registrar-General is required by law to produce at any place or to any person a computer folio, the Registrar-General shall comply with that requirement by issuing a computer folio certificate in respect of the folio and by causing the certificate to be produced at that place or to that person.

#### **41 Dealings not effectual until recorded in Register**

- (1) No dealing, until registered in the manner provided by this Act, shall be effectual to

pass any estate or interest in any land under the provisions of this Act, or to render such land liable as security for the payment of money, but upon the registration of any dealing in the manner provided by this Act, the estate or interest specified in such dealing shall pass, or as the case may be the land shall become liable as security in manner and subject to the covenants, conditions, and contingencies set forth and specified in such dealing, or by this Act declared to be implied in instruments of a like nature.

(2) (Repealed)

#### **42 Estate of registered proprietor paramount**

- (1) Notwithstanding the existence in any other person of any estate or interest which but for this Act might be held to be paramount or to have priority, the registered proprietor for the time being of any estate or interest in land recorded in a folio of the Register shall, except in case of fraud, hold the same, subject to such other estates and interests and such entries, if any, as are recorded in that folio, but absolutely free from all other estates and interests that are not so recorded except:
- (a) the estate or interest recorded in a prior folio of the Register by reason of which another proprietor claims the same land,
    - (a1) in the case of the omission or misdescription of an easement subsisting immediately before the land was brought under the provisions of this Act or validly created at or after that time under this or any other Act or a Commonwealth Act,
    - (b) in the case of the omission or misdescription of any profit à prendre created in or existing upon any land,
    - (c) as to any portion of land that may by wrong description of parcels or of boundaries be included in the folio of the Register or registered dealing evidencing the title of such registered proprietor, not being a purchaser or mortgagee thereof for value, or deriving from or through a purchaser or mortgagee thereof for value, and
    - (d) a tenancy whereunder the tenant is in possession or entitled to immediate possession, and an agreement or option for the acquisition by such a tenant of a further term to commence at the expiration of such a tenancy, of which in either case the registered proprietor before he or she became registered as proprietor had notice against which he or she was not protected:

Provided that:

- (i) The term for which the tenancy was created does not exceed three years, and
- (ii) in the case of such an agreement or option, the additional term for which it provides would not, when added to the original term, exceed three years.
- (iii) (Repealed)

- (2) In subsection (1), a reference to an estate or interest in land recorded in a folio of the Register includes a reference to an estate or interest recorded in a registered mortgage, charge or lease that may be directly or indirectly identified from a distinctive reference in that folio.
- (3) This section prevails over any inconsistent provision of any other Act or law unless the inconsistent provision expressly provides that it is to have effect despite anything contained in this section.

#### **43 Purchaser from registered proprietor not to be affected by notice**

- (1) Except in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such registered owner or any previous registered owner of the estate or interest in question is or was registered, or to see to the application of the purchase money or any part thereof, or shall be affected by notice direct or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.
- (2) Subsection (1) does not operate to defeat any claim based on a subsisting interest, within the meaning of Part 4A, affecting land comprised in a qualified folio of the Register.

#### **43A Protection as to notice of person contracting or dealing in respect of land under this Act before registration**

- (1) For the purpose only of protection against notice, the estate or interest in land under the provisions of this Act, taken by a person under a dealing registrable, or which when appropriately signed by or on behalf of that person would be registrable under this Act shall, before registration of that dealing, be deemed to be a legal estate.
- (2) No person contracting or dealing in respect of an estate or interest in land under the provisions of this Act shall be affected by notice of any instrument, fact, or thing merely by omission to search in a register not kept under this Act.
- (3) Registration under Division 1 of Part 23 of the [Conveyancing Act 1919](#) shall not of itself affect the rights of any person contracting or dealing in respect of estates or interests in land under the provisions of this Act.
- (4) Nothing in subsection (2) or (3) operates to defeat any claim based on a subsisting interest, within the meaning of Part 4A, affecting land comprised in a qualified folio of the Register.



### 43B Statutory restrictions on alienation etc

(1) In this section:

**land** does not include land in a reserve as defined in Part 5 of the *Crown Lands Act 1989*.

**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 or under the Crown Lands Acts (as defined in the *Crown Lands Act 1989*), the *Western Lands Act 1901* 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) the registered proprietor became so registered in good faith and for valuable consideration, and
- (b) at the time when the registered proprietor became so registered, the statutory restriction was not recorded in the folio of the Register for the land in which the registered proprietor has the estate or interest,

and upon the registered proprietor 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 folio of the Register is created for a lot in a deposited plan registered under Division 3 of Part 23 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
  - (b) (Repealed)

#### **44 Registered proprietor suing for specific performance**

- (1) In any proceedings for specific performance brought by a registered proprietor of any land under the provisions of this Act, against a person who may have contracted to purchase such land not having notice of any fraud or other circumstances which according to the provisions of this Act would affect the right of the vendor, the folio of the Register or a computer folio certificate evidencing the title of such registered proprietor shall be held in every Court to be conclusive evidence that such registered proprietor has a good and valid title to the land and for the estate or interest therein mentioned or described, and production to the Court of any such folio or certificate, as the case may be, shall entitle such registered proprietor to judgment for the specific performance of such contract.
- (2) Subsection (1) does not operate to defeat any claim based on a subsisting interest, within the meaning of Part 4A, affecting land comprised in a qualified folio of the Register.

#### **45 Bona fide purchasers and mortgagees protected in relation to fraudulent and other transactions**

- (1) Except to the extent to which this Act otherwise expressly provides, nothing in this Act is to be construed so as to deprive any purchaser or mortgagee bona fide for valuable consideration of any estate or interest in land under the provisions of this Act in respect of which the person is the registered proprietor.
- (2) Despite any other provision of this Act, proceedings for the recovery of damages, or for the possession or recovery of land, do not lie against a purchaser or mortgagee bona fide for valuable consideration of land under the provisions of this Act merely because the vendor or mortgagor of the land:
  - (a) may have been registered as proprietor through fraud or error, or by means of a void or voidable instrument, or
  - (b) may have procured the registration of the relevant transfer or mortgage to the purchaser or mortgagee through fraud or error, or by means of a void or voidable instrument, or

(c) may have derived his or her right to registration as proprietor from or through a person who has been registered as proprietor through fraud or error, or by means of a void or voidable instrument.

(3) Subsection (2) applies whether the fraud or error consists of a misdescription of the land or its boundaries or otherwise.

#### **45A Construction of dealings relating to land abutting on streams or roads**

(1) Except as in this section mentioned, the rebuttable rule of construction applicable to a conveyance of land therein indicated as abutting on a non-tidal stream or a road, that the land extends to the middle line of the stream or road, shall apply, and be deemed always to have applied to dealings registered under the provisions of this Act relating to land indicated in the dealings as so abutting.

(2) The fact that an applicant to bring land abutting on a non-tidal stream or a road under the provisions of this Act has not expressly declared that the applicant was entitled to the bed or part of the bed of the stream or to the road or part thereof shall not, but the fact that the applicant had not a title to any part of the bed of the stream or to any part of the road shall prevent the application of the rule mentioned in subsection (1) to a folio of the Register evidencing title to the land or part of the land which was the subject of the application.

(3) (Repealed)

### **Part 6A Possessory titles to land under the Act**

#### **Division 1 Possessory applications**

##### **45B Definitions**

(1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires:

**current plan** has the same meaning as it has in the [Conveyancing Act 1919](#).

**whole parcel of land** means:

(a) the whole of the land comprised in a folio of the Register,

(b) the whole of the residue of land comprised in a folio of the Register that remains after part of the land has been:

(i) resumed, appropriated or purchased by a body authorised by any Act to resume or appropriate land,

(ii) opened as a public road, or

(iii) shown in a current plan,

- (c) the whole of a lot or portion in a current plan, or
- (d) the whole of the residue of a lot or portion in a current plan that remains after part of the lot or portion has been:
  - (i) resumed, appropriated or purchased by a body authorised by any Act to resume or appropriate land, or
  - (ii) opened as a public road.

(2) Nothing in this Part affects the operation of section 170 of the *Crown Lands Act 1989* in respect of land to which that section relates that has been brought under the provisions of this Act.

#### **45C Acquisition of possessory title to land under the Act**

- (1) Except to the extent that statutes of limitation are taken into consideration for the purposes of this Part, no title to any estate or interest in land adverse to or in derogation of the title of the registered proprietor shall be acquired by any length of possession by virtue of any statute of limitations relating to real estate, nor shall the title of any such registered proprietor be extinguished by the operation of any such statute.
- (2) Subsection (1) does not prevent the acquisition of a title, adverse to or in derogation of the title of the registered proprietor thereof, to an estate or interest in land brought under the provisions of this Act by the creation of a qualified or limited folio of the Register by reason of possession of the land for any length of time commencing before the creation of the folio.

#### **45D Application for title by possession**

- (1) Where, at any time after the commencement of this Part, a person is in possession of land under the provisions of this Act and:
  - (a) the land is a whole parcel of land,
  - (b) the title of the registered proprietor of an estate or interest in the land would, at or before that time, have been extinguished as against the person so in possession had the statutes of limitation in force at that time and any earlier time applied, while in force, in respect of that land, and
  - (c) the land is comprised in an ordinary folio of the Register or is comprised in a qualified or limited folio of the Register and the possession by virtue of which the title to that estate or interest would have been extinguished as provided in paragraph (b) commenced after the land was brought under the provisions of this Act by the creation of the qualified or limited folio of the Register,

that person in possession may, subject to this section, apply to the Registrar-General

to be recorded in the Register as the proprietor of that estate or interest in the land.

(2) Where, at any time after the commencement of this Part:

- (a) a person is in possession of part only of a whole parcel of land, and
- (b) any boundary that limits or defines the land in the person's possession is, to the extent that it is not a boundary of the whole parcel of land, an occupational boundary that represents or replaces a boundary of the whole parcel,

the person may, unless the part of the whole parcel of which the person is in possession lies between such an occupational boundary and the boundary of the whole parcel that it represents or replaces, apply to the Registrar-General to be recorded in the Register as the proprietor of the same estate or interest in that whole parcel of land as could have been the subject of an application by the person under subsection (1) if the land in the person's possession had been that whole parcel of land and subsection (1) (b) and (c) had been complied with in relation thereto.

(2A) A person who:

- (a) is in possession of part of a residue lot that could, if it had been a whole parcel of land, have been the subject of an application by the person under subsection (1), and
- (b) is (or is entitled to be) the registered proprietor of an estate in fee simple in land that adjoins that lot,

may apply to the Registrar-General to be recorded in the Register as the proprietor of an estate in fee simple in land consisting of a consolidated lot comprising the part of the residue lot in the person's possession and the adjoining land.

(2B) In subsection (2A), **residue lot** means an allotment consisting of a strip of land that the Registrar-General is satisfied:

- (a) was intended for use as a service lane, or
- (b) was created to prevent access to a road, or
- (c) was created in a manner, or for a purpose, prescribed by the regulations.

(3) A possessory application may not be made in respect of an estate or interest in any land, or in any part of any land, of which:

- (a) Her Majesty or a Minister of the Crown,
- (b) a statutory body representing the Crown,
- (c) a corporation which is constituted by an Act and of which, in the case of a corporation aggregate, at least one of the members is appointed by the Governor

or a Minister of the Crown, or

(d) a council or county council within the meaning of the *Local Government Act 1993*, is the registered proprietor.

- (4) A possessory application may not be made in respect of an estate or interest in land if:
- (a) the registered proprietor of that or any other estate or interest in the land became so registered without fraud and for valuable consideration, and
  - (b) the whole of the period of adverse possession that would be claimed in the application if it were lodged would not have occurred after that proprietor became so registered,

unless the application is made on the basis that the estate or interest applied for will be subject to the estate or interest of that registered proprietor if the application is granted.

- (5) A possessory application shall be in the approved form and shall be accompanied by such evidence and documents of title, and (in the case of an application under subsection (2A)) such evidence of concurrence on the part of the local council, as the Registrar-General may require.

**Note—**

With an application made under subsection (2A), it is not necessary to include a consolidated plan at first instance.

- (6) For the purposes of subsection (2), a reference to an occupational boundary that represents or replaces a boundary of a whole parcel of land is a reference to:
- (a) a fence, wall or other structure intended to coincide with or represent that boundary of the whole parcel,
  - (b) a channel, ditch, creek, river or other natural or artificial feature that is itself land and is in close proximity to that boundary of the whole parcel, or
  - (c) a give and take fence with respect to that boundary of the whole parcel.
- (7) Where:
- (a) land to which Part 3 applies has been or is being purchased from the Crown, and
  - (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 3 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 3,

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 3 was created,

before the commencement of that subsection.

#### **45E Grant of possessory application**

(1) Subject to section 45F, the Registrar-General may grant a possessory application if the Registrar-General is satisfied that the application:

- (a) was authorised by section 45D (1), (2) or (2A),
- (b) was not made in breach of section 45D (3) or (4), and
- (c) complies with section 45D (5).

(2) Where the Registrar-General intends to grant a possessory application and, pursuant to section 12 (1) (h) or 12 (1A), gives notice of that intention the Registrar-General shall, in the notice, specify a period (being not less than 1 month after the date of the notice) before the expiration of which the application will not be granted.

(3) A possessory application shall be granted by recording the applicant in the Register as the proprietor of an estate or interest in the whole parcel of land the subject of the application, being the estate or interest applied for or such lesser estate or interest as the Registrar-General considers appropriate, free from all estates and interests recorded in the Register that would have been extinguished as referred to in section 45D (1) (b) other than:

- (a) interests referred to in subsection (4), and

(b) interests to which the application has been made subject pursuant to section 45D (4).

(4) Where, immediately before the grant of a possessory application:

(a) any easement or profit à prendre was appurtenant to, or covenant benefited, the land the subject of the application or any part thereof or the land the subject of the application was burdened by an easement, profit à prendre or covenant, or

(b) the land the subject of the application or any part thereof, or the registered proprietor of that land, was subject to any condition or other provision (not being an easement or covenant),

the easement, profit à prendre, covenant, condition or other provision continues to have the same force and effect in relation to the estate or interest acquired by the possessory applicant as it would have had if the possessory applicant had acquired that estate or interest by a transfer.

(5) Without affecting the generality of subsection (4), the grant of a possessory application has, for the purposes of sections 51 and 52, the same effect as the registration of a transfer to the applicant.

(6) The Registrar-General may make such recordings in the Register, and take such other action, as the Registrar-General considers necessary or proper as a consequence of the grant of a possessory application.

(7) In this section **covenant** means a restriction, arising under covenant or otherwise, as to the user of land.

#### **45F Restrictions on grant of possessory applications**

Without prejudice to section 74H in so far as it relates to a possessory application, the Registrar-General shall not grant a possessory application if a notice referred to in section 45E (2) has been given and the period specified in that notice has not expired.

#### **45G Withdrawal of possessory application**

(1) A possessory applicant may withdraw his or her possessory application before it is granted and, where the application is so withdrawn, the Registrar-General, when requested in writing so to do, shall return to the possessory applicant, or to the person appearing to the Registrar-General to be entitled, all documents lodged in support of the application.

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

(a) that a possessory applicant has not complied with the requirements of this Act relating to possessory applications,



- (b) that the evidence adduced by a possessory applicant in support of the application is deficient in any material particular, or
  - (c) that a possessory applicant has not proceeded with the application within a reasonable time, having regard to the circumstances of the case,
- the Registrar-General may reject the application.

(3) (Repealed)

## **Division 2**

**45H-45K (Repealed)**

## **Part 7 Dealings**

### **Division 1 Transfers**

#### **46 Transfers**

- (1) Where land under the provisions of this Act is intended to be transferred, or any easement or profit à prendre affecting land under the provisions of this Act is intended to be created, the proprietor shall execute a transfer in the approved form.
- (2) This section does not apply to the creation of an easement or profit à prendre that burdens and benefits separate parcels of land if the same person is the proprietor of the separate parcels of land.

#### **46A Creation of easements etc over own land by a dealing**

- (1) An easement, profit à prendre or restriction on the use of land that burdens and benefits separate parcels of land all under the provisions of this Act may be created even though the same person is the proprietor of those separate parcels of land, notwithstanding any rule of law or equity in that behalf.
- (2) Any such easement, profit à prendre or restriction on the use of land may be created under this section only by registration in the Register of an instrument that is in the form approved for the purpose by the Registrar-General.
- (3) The Registrar-General may refuse to register such an instrument if the Registrar-General is not satisfied that the boundaries of the land concerned, or the site of the easement or the land to which the profit à prendre or restriction applies, are adequately defined.
- (4) The Registrar-General may make such recordings in the Register as are necessary to give effect to the easement, profit à prendre or restriction on the use of land.
- (5) The instrument creating the easement, profit à prendre or restriction on the use of

land must be executed:

- (a) by the registered proprietor of the land burdened and the land benefited by the easement, profit à prendre or restriction, and
  - (b) by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in the folio of the Register relating to that land.
- (6) The Registrar-General may refuse to register any such instrument unless consents in writing to the registration of the instrument signed by (or by an agent authorised by) such of the following persons as the Registrar-General may determine:
- (a) the lessee under any lease, or the judgment creditor under any writ, recorded in the folio of the Register relating to the land to be burdened or benefited by the easement, profit à prendre or restriction,
  - (b) the caveator under a caveat relating to any estate or interest in that land,
- are lodged in the office of the Registrar-General.

**Note—**

This section allows an easement, profit à prendre or restriction on the use of land to be created by registration of a dealing under this Act as an alternative to registration of a plan to which section 88B of the [Conveyancing Act 1919](#) applies, if all the land concerned is held under the provisions of this Act by the same person.

**46B Roads included in certain certificates of title**

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

**46C Registrar-General may register as proprietor person who is entitled to land by operation of statute**

- (1) Where, by the operation of a statute, either directly or by reason of anything done in pursuance thereof:
- (a) land under the provisions of this Act became, before the commencement of the [Real Property \(Amendment\) Act 1970](#), or becomes, after that commencement, vested in a person (other than the registered proprietor of the land) either alone or jointly or in common with that registered proprietor, or
  - (b) land that is the site of a closed road or part thereof so became, or so becomes,

vested in a person registered under this Act as the proprietor of adjoining land, the Registrar-General may, of the Registrar-General's own motion, and shall, at the written request (made in the approved form) of a person in whom there has been such a vesting on such evidence as appears to the Registrar-General sufficient, and after such notice (if any) to such person as the Registrar-General deems proper, register the person in whom any such land is vested as the proprietor of such estate therein as the Registrar-General deems to be appropriate, and for that purpose the Registrar-General may make such recordings in the Register and create such folios of the Register, as appears to the Registrar-General to be necessary or proper.

(2) (Repealed)

(3) If a certificate of title or duplicate registered dealing evidencing title to an estate or interest affected by a vesting registered pursuant to this section is in the possession of some person other than the person registered as proprietor under subsection (1) and the person so in possession fails to deliver it to the Registrar-General for cancellation when required in writing by the Registrar-General so to do, the certificate of title or duplicate registered dealing shall be deemed to be wrongfully retained within the meaning of section 136.

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

(a) to make a recording before the commencement of the *Real Property (Amendment) Act 1921*, and

(b) to issue a certificate of title before that commencement,

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

#### **47 Recording, variation and release of easements etc**

(1A) In this section, ***affecting interest*** means an easement, profit à prendre or restriction on the use of land.

(1) When an affecting interest that burdens land under the provisions of this Act is created, the Registrar-General is to record particulars of the dealing creating the affecting interest:

(a) in the folio of the Register for the land burdened, and

(b) if the affecting interest is an easement or profit à prendre that benefits land under the provisions of this Act—in the folio of the Register for the land benefited.

(2) An affecting interest may, by a lease, be granted in or over land, other than the demised land, of which the lessor is registered as proprietor under this Act, where it is

granted for the purpose of being annexed to or used and enjoyed together with the estate or interest of the lessee under the lease.

- (3) An affecting interest may, by a lease, be reserved in or over the demised land for the purpose of being annexed to or used and enjoyed together with other land of which the lessor is registered as proprietor under this Act.
- (4) On registration of a lease that grants or reserves an affecting interest, the Registrar-General shall make such recordings in the Register in respect of the affecting interest, as the Registrar-General considers appropriate.
- (5) The Registrar-General may record a dealing effecting a disposition of a registered affecting interest in gross by making such recordings in the Register as the Registrar-General considers appropriate.
- (5A) The terms or site of a registered affecting interest may be varied by a registered dealing in the approved form, or by such a dealing and a plan illustrating the varied site registered or recorded under Division 3 of Part 23 of the [Conveyancing Act 1919](#).
- (5B) The dealing effecting the variation and the plan (if any) must be executed:
  - (a) by the registered proprietors of the land burdened, and of any land benefited, by the affecting interest, and
  - (b) by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in the folio of the Register relating to that land.
- (5C) The Registrar-General may refuse to register any such dealing or plan unless consents in writing to the registration of the dealing or plan signed by (or by an agent authorised by) such of the following persons as the Registrar-General may determine:
  - (a) the lessee under any lease, or the judgment creditor under any writ, recorded in the folio of the Register relating to that land,
  - (b) the caveator under a caveat relating to any estate or interest in that land,are lodged in the office of the Registrar-General.
- (6) An affecting interest recorded in the Register may be released wholly or partly by a registered dealing in the approved form.
- (6A) Where the registered proprietor of an affecting interest applies to the Registrar-General in the approved form for cancellation of a specified recording in the Register relating to the affecting interest 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 affecting interest, the Registrar-General may, to the extent applied for, cancel any recording relating to

the affecting interest in any folio of the Register, and, when it becomes available to the Registrar-General, upon any certificate of title.

- (7) An affecting interest (being an affecting interest that benefits land) recorded in the Register shall not be extinguished solely by reason of the same person becoming proprietor of separate parcels of land respectively burdened and benefited by the affecting interest, notwithstanding any rule of law or equity in that behalf.
- (8) The provisions of subsection (7) shall only apply to easements and profits à prendre which, according to the Register, subsist at the commencement of the *Real Property (Amendment) Act 1970* and to easements and profits à prendre recorded in the Register after that commencement.
- (9) Subsection (7) applies only to a restriction on the use of land recorded under this section after the commencement of Schedule 1 [10] to the *Property Legislation Amendment Act 2005*.

**47A (Repealed)**

**48 Creation of cross-easements for party walls by plans on application**

- (1) A plan registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919* before the commencement of this section creates cross-easements if:
  - (a) a boundary of a lot is, in a manner satisfactory to the Registrar-General, shown in the plan as passing longitudinally through the whole or any part of a wall, and
  - (b) the wall is described in the plan as a “party wall”, and
  - (c) the Registrar-General has recorded in the Register an application to create cross-easements for support of the wall made in the approved form by each person having a registered estate or interest in land that will be benefited or burdened by the cross-easements.
- (1A) A plan registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919* on or after 1 August 1996 creates cross-easements if:
  - (a) a boundary of a lot is shown in the plan as passing longitudinally through the whole or any part of a wall, and
  - (b) the wall is described in the plan as a “proposed party wall”, and
  - (c) the Registrar-General has recorded in the Register an application to create cross-easements for support of the wall made in the approved form by each person having a registered estate or interest in the land that will be benefited or burdened by the cross-easements.
- (2) The benefit of an easement referred to in subsection (1) or (1A) is appurtenant to

each lot shown in the plan as consisting of or including a portion of the wall.

- (3) Each lot shown in the plan as consisting of or including another portion of the wall is subject to the burden of the easement.
- (4) The easement entitles each person for the time being having the benefit of the easement to the continued existence of each portion of the wall:
  - (a) that is necessary for the support of so much of the building as is contained within the lot to which the easement is appurtenant, and
  - (b) that consists of or is included within another lot which is subject to the burden of the easement.

#### **49 Cancellation of recordings of easements after abandonment, consolidation of tenements or release**

- (1) The Registrar-General may cancel a recording relating to an easement in the Register if the easement has been abandoned.
- (1A) The Registrar-General may, under this section, cancel a recording relating to an easement in relation to:
  - (a) all of the land benefited or burdened by the easement, or
  - (b) any one or more of the lots, or part of a lot, burdened by the easement, or
  - (c) any one or one or more of the lots benefited by the easement.
- (2) An easement may be treated as abandoned if the Registrar-General is satisfied it has not been used for at least 20 years before the application for the cancellation of the recording is made to the Registrar-General, whether that period commenced before, on or after, the date of assent to the [Property Legislation Amendment \(Easements\) Act 1995](#).
- (3) However, an easement is not capable of being abandoned:
  - (a) if the easement does not benefit land, or
  - (b) to the extent (if any) that the easement benefits land owned by the Crown, or by a public or local authority constituted by an Act, or
  - (c) if the easement is of a class of easements prescribed by the regulations as being incapable of being abandoned.
- (4) Before cancelling any such recording, the Registrar-General must:
  - (a) serve a notice of intention to cancel the recording, personally or by post, on:
    - (i) where the instrument creating the easement does not allow the identification

of the land benefited by the easement—any person that the Registrar-General considers should receive such a notice taking into consideration the nature and location of the easement, the circumstances surrounding the creation of the easement and the physical characteristics of any relevant land, or

(ii) in any other case—all persons having a registered estate or interest in land benefited by the easement, and

(b) consider any submission made by those persons (but only if the submission is made by the date specified in the notice, being a date later than one month from the date on which the notice is served).

(4A) However, the Registrar-General may give notice of the intention to cancel a recording to some or all of the persons referred to in subsection (4) (a) by advertisement in a newspaper rather than by personal or postal service if the Registrar-General is of the opinion that:

(a) it is appropriate in the circumstances to give notice by advertisement in a newspaper, and

(b) the relevant easement is unlikely to be of real benefit to the land benefited by the easement because the land benefited is no longer connected to the land burdened by the easement in a way that allows access to the site of the easement.

(5) The Registrar-General may cancel a recording in the Register relating to an easement:

(a) if satisfied that the recording relates to land for which the easement has no practical application because separate parcels of land that were respectively burdened and benefited by the easement have been consolidated into a single parcel, or

(b) if the easement has been released under section 88B of the [Conveyancing Act 1919](#).

(6) An application for cancellation of any such recording must be made in the approved form or in a form prescribed by regulations made under the [Conveyancing Act 1919](#).

## **50 (Repealed)**

## **51 Interest and rights of transferor pass to transferee**

Upon the registration of any transfer, the estate or interest of the transferor as set forth in such instrument, with all rights, powers and privileges thereto belonging or appertaining, shall pass to the transferee, and such transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which the transferee would have been subject and liable if named in such instrument originally as mortgagee, chargee or lessee of such land, estate, or interest.

## **52 Transfer of mortgage or lease transferee's right to sue**

- (1) By virtue of every such transfer, the right to sue upon any mortgage or other instrument and to recover any debt, sum of money, annuity, or damages thereunder (notwithstanding the same may be deemed or held to constitute a chose in action), and all interest in any such debt, sum of money, annuity, or damages shall be transferred so as to vest the same at law as well as in equity in the transferee thereof.
- (2) Nothing herein contained shall prevent a Court from giving effect to any trusts affecting the said debt, sum of money, annuity, or damages, in case the transferee shall hold the same as a trustee for any other person.

## **52A Mortgage of a mortgage or charge**

- (1) All acts, powers, and rights which may be done or exercised by the mortgagee or chargee of an estate in land in relation to the estate or the mortgagor or charger of the estate may, when the mortgage of, or charge on, the estate is subject to a mortgage, be done or exercised by the mortgagee of the mortgage or charge, and shall not be done or exercised by the mortgagee or chargee of the estate.
- (2) Nothing in this section shall affect the rights of a mortgagor or charger who has not received notice of a mortgage of the mortgage or charge.
- (3) This section applies only to mortgages executed after the commencement of the [Conveyancing \(Amendment\) Act 1930](#) of mortgages or charges created before or after such commencement.
- (4) In case of default within the meaning of section 57, notice authorised by that section shall not be given by leaving the notice on the mortgaged or charged land.
- (5) The provisions of section 60 shall not apply in case of default by the mortgagor of a mortgage or charge.

## **Division 2 Leases**

### **53 Land under the provisions of this Act—how leased**

- (1) When any land under the provisions of this Act is intended to be leased or demised for a life or lives or for any term of years exceeding three years, the proprietor shall execute a lease in the approved form.
- (2) (Repealed)
- (3) A right for or covenant by the lessee to purchase the land therein described may be stipulated in such instrument, and in case the lessee shall pay the purchase money stipulated and otherwise observe the lessee's covenants expressed and implied in such instrument, the lessor shall be bound to execute a transfer of the said land to such lessee.



- (4) A lease of land which is subject to a mortgage, charge or covenant charge is not valid or binding on the mortgagee, chargee or covenant chargee unless the mortgagee, chargee or covenant chargee has consented to the lease before it is registered.
- (5) Subsection (1) does not apply in relation to land the subject of a social housing tenancy agreement within the meaning of the *Residential Tenancies Act 2010*.

**54 Lease may be surrendered by execution of surrender in approved form**

- (1) Whenever any lease which is required to be registered by the provisions of this Act is intended to be surrendered, and the surrender thereof is effected otherwise than through the operation of a surrender in law or than under the provisions of any law at the time being in force relating to bankrupt estates, the lessee and lessor shall execute a surrender of the lease in the approved form.
- (2) (Repealed)
- (3) Upon registration of any such surrender, the estate or interest of the lessee in such land shall revert in the lessor, or in the person in whom having regard to intervening circumstances (if any) the said land would have vested if no such lease had ever been executed.
- (4) (Repealed)
- (5) A lease subject to a mortgage, charge or covenant charge shall not be so surrendered without the consent of the mortgagee, chargee or covenant chargee.

**55 Registrar-General to note particulars of re-entry in Register**

The Registrar-General upon proof to the Registrar-General's satisfaction of lawful re-entry and recovery of possession by a lessor shall make such recording in the Register with respect to the re-entry and recovery as the Registrar-General thinks fit, and the estate of the lessee in such land shall thereupon determine but without releasing the lessee from the lessee's liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar-General shall cancel such lease if delivered up to the Registrar-General for that purpose.

**55A Registration of variation of lease**

- (1) A lease that is registered under this Act may, by a variation of lease in the approved form, be varied so as:
  - (a) to increase or reduce the rent payable under the lease, or
  - (b) to increase or reduce the period for which the lease is to have effect, or
  - (c) to otherwise vary, omit or add to the provisions of the lease.
- (2) The Registrar-General may make such recordings in the Register as are necessary to

give effect to a variation of lease.

- (3) A variation of lease is not valid or binding against the registered proprietor of any prior estate or interest recorded in a folio of the Register in respect of the land to which the lease relates unless that proprietor has consented in writing to the variation before it is registered.
- (4) A variation of lease may not be registered if it operates to vary the land to which the lease relates.
- (5) The Registrar-General may decline to register a variation of lease if:
  - (a) the application for registration of the variation is lodged after the termination date of the lease, and
  - (b) the proposed variation does not provide for extension of the term of the lease.
- (6) The Registrar-General may decline to register a variation of lease that purports to extend the term of the lease if the application for registration of the variation is lodged later than 12 months after the termination date of the lease.
- (7) In this section, **termination date**, in relation to a lease, means the date of expiry of the term of the lease, as evidenced:
  - (a) by the lease, if no other date has for that purpose been fixed by a registered variation of lease, or
  - (b) by a registered variation of lease (and if more than one, the last to be registered) that fixes such a date.

#### **55B Dealings affecting common law leases**

- (1) Provisions of this Act that apply to and in respect of dealings affecting registered leases apply to and in respect of any dealings affecting a lease that is recorded as an encumbrance in a folio of the Register (a **common law lease**).
- (2) However, registration of a dealing affecting a common law lease does not:
  - (a) imply that the lease is registered, or
  - (b) otherwise alter the effect that lease would have had in the absence of this section.
- (3) The Registrar-General may reject or refuse to register a dealing lodged for registration that purports to affect a common law lease:
  - (a) if not satisfied as to the devolution of the lease, or
  - (b) if, for any other reason, of the opinion that the dealing would not have been registered if it had been a dealing lodged for registration that purported to affect a

registered lease.

### **Division 3 Mortgages, charges and covenant charges**

#### **56 Lands under this Act: how mortgaged or encumbered**

- (1) Whenever any land or estate or interest in land under the provisions of this Act is intended to be charged with, or made security for, the payment of a debt, the proprietor shall execute a mortgage in the approved form.
- (2) Whenever any such land, estate, or interest is intended to be charged with or made security for the payment of an annuity, rent-charge, or sum of money other than a debt, the proprietor shall execute a charge in the approved form.
- (3) (Repealed)
- (4) In a mortgage or charge there may be expressed to be included as appurtenant to the land mortgaged or charged any easement or profit à prendre over other land of which the mortgagor or charger is the registered proprietor and which is specified in the mortgage or charge.
- (5) When an easement or profit à prendre is so expressed to be included the Registrar-General shall on registration of the mortgage or charge make such recording in the Register with respect to the easement or profit à prendre as the Registrar-General thinks fit.
- (6) The easement or profit à prendre so expressed to be included shall, when the mortgage or charge is registered, be deemed to be an easement or profit à prendre appurtenant to the land mortgaged or charged for the purpose of enjoyment leasing or transfer by the mortgagee or chargee, or of foreclosure, and so that upon foreclosure by the mortgagee or lease or transfer by the mortgagee or chargee such easement or profit à prendre shall, unless expressly excluded, be created by the order for foreclosure or the lease or transfer and registration thereof.
- (7) Subsections (4), (5), and (6) shall extend to instruments registered before as well as after the commencement of those subsections: Provided that it shall be optional only for the Registrar-General to comply with subsection (5) if the instrument was registered before such commencement.
- (8) This section does not apply to or in respect of a covenant charge.

#### **56A Postponement of mortgages**

- (1) If two or more mortgages registered under this Act affect the same land, the mortgage which for the time being has priority over the other or others may, by a memorandum in the approved form registered under this Act, be postponed to the other or others in so far as the whole or a disposable part of that same land is

concerned.

- (1A) The reference in subsection (1) to a disposable part of land is a reference to a lot or portion that may be disposed of without contravening section 23F of the [Conveyancing Act 1919](#).
- (1B) Subsection (1) applies whether or not any one or more of the mortgages which affect the same land affects or affect other land.
- (2) A memorandum under this section shall not be registered when any registered mortgage intervenes between the mortgage to be postponed and the mortgage intended to have benefit of the postponement, unless the proprietor of the intervening mortgage joins in the memorandum.
- (3) The Registrar-General shall register a memorandum under this section by making such recording in the Register with respect to the memorandum as the Registrar-General thinks fit.
- (4) After registration of a memorandum under this section, the mortgages affected by the postponement shall be entitled in priority the one over the other as if they had been registered in the order in which by the memorandum they are expressed to have priority.

#### **56B Special provision as to certain postponements**

- (1) Where by an instrument executed prior to the first day of January, one thousand nine hundred and thirty-one, the proprietor of a registered mortgage (in this section referred to as the **prior mortgage**) has agreed to postpone such mortgage in its entirety to a mortgage (in this section referred to as the **subsequent mortgage**) affecting the whole of the same land, and no other land which was registered or to be registered after the prior mortgage, the Registrar-General may register any dealing by the proprietor of the subsequent mortgage as if the subsequent mortgage had been registered immediately before the prior mortgage.
- (2) The power conferred by subsection (1) shall not be exercised where a registered mortgage intervenes between the prior mortgage and the subsequent mortgage unless the proprietor of the intervening mortgage was joined as a party to the instrument postponing the prior mortgage, or by instrument in the prescribed form, consents to the exercise of such power.
- (3) Upon registration of any such dealing the Registrar-General shall make such recordings in the Register as may be necessary to give effect to the dealing.

#### **57 Procedure on default**

- (1) A mortgage, charge or covenant charge under this Act has effect as a security but does not operate as a transfer of the land mortgaged or charged.

- (2) A registered mortgagee, chargee or covenant chargee may, subject to this Act, exercise the powers conferred by section 58 if:
- (a) in the case of a mortgage or charge, default has been made in the observance of any covenant, agreement or condition expressed or implied in the mortgage or charge or in the payment, in accordance with the terms of the mortgage or charge, of the principal, interest, annuity, rent-charge or other money the payment of which is secured by the mortgage or charge or of any part of that principal, interest, annuity, rent-charge or other money,
    - (a1) in the case of a covenant charge, default has been made in:
      - (i) the payment, in accordance with the terms of the judgment to which the covenant charge relates, of the principal, interest or other money the payment of which is secured by the covenant charge, or
      - (ii) the payment, in accordance with the terms of that judgment, of any part of that principal, interest or other money,
    - (b) where:
      - (i) the default relates to that payment, or
      - (ii) in the case of a mortgage, the default does not relate to that payment and notice or lapse of time has not been dispensed with under section 58A,  
a written notice that complies with subsection (3) has been served on the mortgagor, charger or covenant charger in the manner authorised by section 170 of the *Conveyancing Act 1919*,
    - (b1) where a notice is required to be served under paragraph (b), a copy of that notice has been served (in the manner authorised by section 170 of the *Conveyancing Act 1919*) on:
      - (i) each mortgagee, chargee or covenant chargee (if any) of the land mortgaged or charged under a registered mortgage, charge or covenant charge which has less priority than that of the person intending to exercise the power of sale, and
      - (ii) each caveator (if any) who claims as an unregistered mortgagee or chargee to be entitled to an estate or interest in the land mortgaged or charged, 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, charger or covenant charger on whom it is served:
    - (i) to observe, except in relation to any time expressed in the covenant, agreement or condition for its observance, the covenant, agreement or condition in respect of the observance of which the mortgagor, charger or covenant charger made default, or
    - (ii) as the case may be, to pay the principal, interest, annuity, rent-charge or other money in respect of the payment of which the mortgagor, charger or covenant charger made default,
  - (c) if the costs and expenses of 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, charger or covenant charger 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, charge or judgment for remedying the default referred to in the notice, within that other period after service of the notice), it is proposed to exercise a power of sale in respect of the land mortgaged or charged.
- (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.
- (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 charge 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.

## **58 Power to sell**

- (1) Where a mortgagee, chargee or covenant chargee is authorised by section 57 (2) to exercise the powers conferred by this section, the mortgagee, chargee or covenant chargee may sell the land mortgaged or charged, or any part thereof, and all the estate and interest therein of the mortgagor, charger or covenant charger, and either altogether or in lots by public auction or by private contract, or both such modes of sale, and subject to such conditions as the mortgagee, chargee or covenant chargee

may think fit, and to buy in and resell the same without being liable for any loss occasioned thereby, and to make and execute all such instruments as shall be necessary for effecting the sale thereof, all which sales, contracts, matters, and things hereby authorised shall be as valid and effectual as if the mortgagor, charger or covenant charger had made, done, or executed the same, and the receipt or receipts in writing of the mortgagee, chargee or covenant chargee shall be a sufficient discharge to the purchaser of such land, estate, or interest, or of any portion thereof, for so much of the purchaser's purchase money as may be thereby expressed to be received.

- (2) No such purchaser shall be answerable for the loss, misapplication, or non-application, or be obliged to see to the application of the purchase money by the purchaser paid, nor shall the purchaser be concerned to inquire as to the fact of any default or notice having been made or served as referred to in section 57 (2).
- (3) The purchase money to arise from the sale of any such land, estate, or interest, shall be applied, first, in payment of the expenses occasioned by such sale; secondly, in payment of the moneys which may then be due or owing to the mortgagee, chargee or covenant chargee; thirdly, in payment of subsequent mortgages, charges or covenant charges (if any) in the order of their priority; and the surplus (if any) shall be paid to the mortgagor, charger or covenant charger, as the case may be.
- (4) (Repealed)

#### **58A Dispensing with notice or lapse of time**

- (1) Any notice or lapse of time prescribed by section 57 (not being notice or lapse of time relating to default in the payment, in accordance with the terms of the mortgage or charge, of any principal, interest, annuity, rent-charge or other money) may, by agreement expressed in the mortgage or charge, be dispensed with, and in such case section 58 shall operate as if no notice or lapse of time were thereby required.
- (2) This section does not apply to covenant charges but applies to mortgages and charges made before or after the commencement of the [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 charge is not authorised by subsection (1), the agreement has no force or effect.

#### **59 Registration of transfer by mortgagee, chargee or covenant chargee**

The Registrar-General shall, for the purpose of a sale authorised by section 58, register a transfer executed by a mortgagee, chargee or covenant chargee in the approved form and, upon that registration, the estate or interest of the mortgagor, charger or covenant charger in the land comprised in the transfer shall pass to and be vested in the transferee, freed and discharged from all liability on account of the mortgage, charge or covenant charge, or of any mortgage, charge or covenant charge registered subsequent thereto.

## **60 In case of default, entry and possession, ejectment**

The mortgagee, chargee or covenant chargee upon default in payment of the principal sum or any part thereof, or of any interest, annuity, or rent-charge secured by any mortgage, charge or covenant charge may:

- (a) enter into possession of the mortgaged or charged land by receiving the rents and profits therefor, or
- (b) (Repealed)
- (c) bring proceedings in the Supreme Court or the District Court for possession of the said land, either before or after entering into the receipt of the rents and profits thereof, and either before or after any sale of such land effected under the power of sale given or implied in the mortgage, charge or covenant charge,

in the same manner in which the mortgagee, chargee or covenant chargee might have made such entry or brought such proceedings if the principal sum, interest, annuity, or rent-charge were secured to the mortgagee, chargee or covenant chargee by a conveyance of the legal estate in the land so mortgaged or charged.

## **61 Application for foreclosure order**

- (1) When default has been made in the payment of the interest or principal sum secured by a mortgage or covenant charge for six months, a registered mortgagee or covenant chargee, as the case may be, or his or her solicitor, attorney, or agent may make application in the approved form to the Registrar-General for an order for foreclosure.
- (2) An application under this section shall state:
  - (a) that default has been made for 6 months in the payment of the principal sum or interest secured by the mortgage or covenant charge,
  - (b) that the land, estate or interest mortgaged or charged has been offered for sale at a public auction by a licensed auctioneer, after notice was given in accordance with section 57 to the mortgagor or covenant charger and all other persons (if any) required to be given notice under that section,
  - (c) that the amount of the highest bid at the sale was not sufficient to satisfy the money secured by the mortgage or covenant charge, together with expenses occasioned by the sale, and
  - (d) that notice in writing of the intention of the mortgagee or covenant chargee to make the application has been served on:
    - (i) the mortgagor or covenant charger,



- (ii) all registered mortgagees, chargees or covenant chargees under registered mortgages, charges or covenant charges which have less priority than that of the applicant, and
- (iii) each caveator (if any) who claims as an unregistered mortgagee or chargee to be entitled to an estate or interest in the land mortgaged or charged.

(2A)

- (a) The notice of intention to make the application may be given personally or by post to the NSW Trustee and Guardian where, at the time such notice is so given:
  - (i) the mortgagee or covenant chargee has knowledge of the fact that the mortgagor or covenant charger is dead, and
  - (ii) there is no personal representative of the mortgagor or covenant charger in New South Wales.

Every notice given to the NSW Trustee and Guardian under this subsection shall be accompanied by a statement containing such particulars as may be prescribed.

- (b) Any notice given in accordance with the provisions of paragraph (a) shall be as valid and effectual as if given to the personal representative of the mortgagor or covenant charger unless probate of the will or letters of administration of the estate of the mortgagor or covenant charger is granted to some person other than the NSW Trustee and Guardian within one month after such notice has been so given.
- (c) The provision made by this subsection for the giving of notice of intention to make application for an order for foreclosure shall be in addition to and not in derogation from the provision made by section 46B of the *Moratorium Act 1932* for the giving of notices.

- (3) Such application shall be accompanied by a certificate of the auctioneer by whom such land was put up for sale, and such other proof of the matters stated by the applicant as the Registrar-General may require.
- (4) The statements made in such application shall be verified by the statutory declaration of the applicant or other person applying on the applicant's behalf.
- (5) In the case of any mortgage in respect of which the giving of notice is dispensed with under section 58A, subsection (2) shall operate as if the words "after notice given to the mortgagor as in this Act provided" were omitted from that subsection.

## **62 Order for, and effect of, foreclosure**

- (1) Where an application is made in accordance with section 61 for an order for foreclosure, the Registrar-General may:

- (a) issue the order to the applicant, or
  - (b) require the applicant to offer the land mortgaged or charged for sale and to do so in accordance with the directions of the Registrar-General.
- (2) If the applicant is required to offer the land for sale and it is not sold or an insufficient amount is realised by the sale to satisfy the principal sum and interest due, and all expenses occasioned by the sale, the Registrar-General may issue to the applicant an order for foreclosure.
- (3) Every order for foreclosure issued by the Registrar-General and recorded in the Register has the effect of vesting in the mortgagee or covenant chargee who applied for it all the estate and interest of the mortgagor or covenant charger in the land mentioned in the order:
- (a) in every case, free from any right of a mortgagee, chargee or covenant chargee under a registered mortgage, charge or covenant charge which has less priority than that of the applicant, and
  - (b) in the case of mortgaged land, free from any right and equity of redemption of the mortgagor or any person claiming through or under the mortgagor.

### **63 Suspension of mortgagor's rights as landlord**

- (1) Whenever a mortgagee, chargee or covenant chargee gives notice of demanding to enter into receipt of the rents and profits of the mortgaged or charged land to the tenant or occupier or other person liable to pay or account for the rents and profits thereof, all the powers and remedies of the mortgagor, charger or covenant charger in regard to receipt and recovery of, and giving discharges for, such rents and profits, shall be suspended and transferred to the said mortgagee, chargee or covenant chargee until such notice is withdrawn, or the mortgage, charge or covenant charge is satisfied, and a discharge thereof duly registered.
- (2) In every such case, the receipt in writing of the mortgagee, chargee or covenant chargee shall be a sufficient discharge for any rents and profits therein expressed to be received, and no person paying the same shall be bound to inquire concerning any default or other circumstance affecting the right of the person giving such notice beyond the fact of the person's being duly registered as mortgagee, chargee or covenant chargee of the land.
- (3) Nothing herein contained shall interfere with the effect of any judgment or order of the Supreme Court in regard to the payment of rent under the special circumstances of any case, nor shall prejudice any remedy of the mortgagor, charger or covenant charger against the mortgagee, chargee or covenant chargee for wrongful entry or for an account.

#### **64 Mortgagee of leasehold entering into possession liable to lessor**

Any mortgagee or chargee of leasehold land under the provisions of this Act, or any person claiming the said land as a purchaser or otherwise from or under such mortgagee or chargee after entering into possession of the said land or the receipt of the rents and profits thereof shall, during such possession or receipt but only to the extent of any benefit rents and profits which may be received by him or her, become and be subject and liable to the lessor of the said land or the person for the time being entitled to the said lessor's estate or interest in the said land to the same extent as the lessee or tenant was subject to and liable for prior to such mortgagee, chargee, or other person entering into possession of the said land or the receipt of the rents and profits thereof.

#### **65 Discharge of mortgages, charges and covenant charges**

- (1) Whenever a mortgage, charge or covenant charge registered under this Act is intended to be discharged wholly or partially the mortgagee, chargee or covenant chargee shall execute a discharge in the approved form.
- (2) Upon registration of a discharge of mortgage, charge or covenant charge the mortgaged or charged estate or interest shall, to the extent specified in the discharge, cease to be charged with any moneys secured by the mortgage, charge or covenant charge.

#### **66 Recording of satisfaction of annuity etc**

- (1) Upon proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any charge, the annuity, rent-charge or sum of money thereby secured ceases to be payable, and upon proof that all arrears of the said annuity, rent-charge or sum of money (together with interest, if any) have been paid, satisfied, or discharged, the Registrar-General shall make in the Register such recording with respect to the payment, satisfaction or discharge as the Registrar-General thinks fit.
- (2) Upon such recording being made, the land, estate, or interest shall cease to be subject to, or liable for, such annuity, rent-charge or sum of money.
- (3) (Repealed)

#### **67 (Repealed)**

### **Divisions 4, 5**

#### **68-74 (Repealed)**

### **Part 7A Caveats**

## Division 1 Interpretation

### 74A Definitions

- (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires:

**dealing** includes a plan (other than a delimitation plan).

**delimitation plan** has the meaning ascribed to that expression by section 28S (1).

**registrable form:**

- (a) in relation to a dealing other than a plan, means that the dealing is in registrable form for the purposes of section 36, and
- (b) in relation to a plan, means that the plan is in a form in which it is immediately capable of being registered or recorded under the enactment providing for its registration or recording.
- (2) In this Part:
- (a) a reference to a legal or equitable estate in land includes a reference to a subsisting interest in land within the meaning of section 28A, and
- (b) a reference to recording a dealing in the Register shall, where the dealing is a plan, be construed as a reference to registering or recording the plan under the enactment providing for its registration or recording.
- (3) In this Part, a reference to a caveat lodged under section 74F includes a reference to a caveat which was lodged under section 28Y, 45H or 72 before the commencement of this Part but which has not ceased to be in force before that commencement.

## Division 2 Caveats against primary applications

### 74B Lodgment of caveats against primary applications

- (1) A person who claims a legal or equitable estate or interest in land that is the subject of a primary application, or in any part of any such land, may, at any time before a folio of the Register is created for that land or part under section 17 (2), lodge with the Registrar-General a caveat prohibiting the bringing of that land or part under the provisions of this Act.
- (2) A caveat lodged under subsection (1) must:
- (a) be in the approved form,
- (b) specify:
- (i) the name of the caveator,

- (ii) where the caveator is not a body corporate—the residential address of the caveator,
  - (iii) where the caveator is a body corporate—the address of the registered office of the body corporate,
  - (iv) the prescribed particulars of the estate or interest to which the caveator claims to be entitled,
  - (v) where the caveat relates only to part of the land that is the subject of the primary application—such description of that part as will enable it to be identified, and
  - (vi) an address in New South Wales at which notices may be served on the caveator,
- (c) be verified by statutory declaration, and
- (d) be signed by the caveator or by a solicitor or other agent of the caveator.
- (3) On the lodgment of a caveat under subsection (1), the Registrar-General shall give notice in writing of the lodgment of the caveat to the primary applicant in relation to whose application the caveat has been lodged.

**74C Caveats lodged under section 74B to lapse under certain circumstances**

- (1) A caveat lodged under section 74B which has not ceased to have effect lapses on the expiry of 3 months after the date on which it was so lodged, unless, before the end of that period, the caveator:
- (a) has:
    - (i) obtained from the Supreme Court an order extending the operation of the caveat for such further period as may be specified in the order or until the further order of that Court, and
    - (ii) lodged with the Registrar-General the order or an office copy of the order, or
  - (b) has taken proceedings in a court of competent jurisdiction to establish title to the estate or interest specified in the caveat and has:
    - (i) where those proceedings have been determined in favour of the caveator—lodged with the Registrar-General the order or judgment setting out the determination of the court or an office copy of that order or judgment, or
    - (ii) where those proceedings have not yet been determined—lodged with the Registrar-General a notice verified by statutory declaration, to that effect.
- (2) Where a notice referred to in subsection (1) (b) (ii) has been lodged with the Registrar-

General and the proceedings to which the notice relates are finally determined otherwise than in favour of the caveator, the caveat to which the notice relates lapses when the order or judgment setting out the determination of the court, or an office copy of that order or judgment, is lodged with the Registrar-General.

- (3) Where a caveat lodged under section 74B remains in force, the primary applicant concerned may make an application in writing to the Registrar-General calling on the Registrar-General to prepare for service on the caveator a notice to the effect that, unless, within the period of 21 days after service of the notice, the caveator takes the action referred to in subsection (1) (a) or (b), the caveat will lapse.
- (4) On receipt of an application made under subsection (3), the Registrar-General shall, if satisfied that the caveat would not otherwise cease to have effect before it would lapse under subsection (5) if a notice were to be served as referred to in that subsection, prepare for service on the caveator a notice in the form sought by the primary applicant.
- (5) Where a notice prepared under subsection (4) has been served on the caveator, the caveat lapses on the expiry of 21 days after the date on which the notice was so served unless, before the end of that period of 21 days, the caveator has taken the action specified in subsection (1) (a) or (b) with respect to the land or, as the case may be, the estate or interest to which the caveat relates.

#### **74D Caveator to have right to apply for an order extending the operation of the caveat**

- (1) Where a caveat lodged under section 74B remains in force, the caveator may, whether or not a notice has been served on the caveator as referred to in section 74C (5), make, in the manner prescribed by rules of Court, an application to the Supreme Court for an order extending the operation of the caveat.
- (2) Subject to subsection (3), on the hearing of an application made under subsection (1), the Supreme Court may, if satisfied that the caveator's claim has or may have substance, make an order extending the operation of the caveat concerned for such period as is specified in the order or until the further order of that Court, but if that Court is not so satisfied, it shall dismiss the application.
- (3) Unless the Supreme Court has made an order dispensing with service, it may not hear an application made under subsection (1) unless it is satisfied that the primary applicant concerned has been served with a copy of the application before the hearing.
- (4) An order under subsection (2) may be made ex parte or otherwise.
- (5) When making an order under subsection (2), the Supreme Court may make such ancillary orders as it thinks fit.

#### **74E Powers of Registrar-General where caveator fails to prosecute proceedings to**

**establish title to estate or interest claimed in caveat**

(1) Where a caveator has lodged with the Registrar-General a notice in accordance with section 74C (1) (b) (ii) to the effect that the caveator has taken proceedings as referred to in section 74C (1) (b), but those proceedings have not, within such period as appears to the Registrar-General to be reasonable in the circumstances, been continued to a stage that has resulted in a judgment or an order by the court in which the proceedings are pending, the Registrar-General may:

(a) serve on the caveator, or

(b) if service is for any reason not practicable—cause to be exhibited on the land affected by the caveat,

a notice to the effect that, after the expiry of 1 month after the day on which the notice was so served or first exhibited, the caveat will lapse unless, before the end of that period:

(c) an order of the Supreme Court extending the operation of the caveat,

(d) an injunction granted by that Court restraining the Registrar-General from proceeding to bring under the provisions of this Act the land to which the caveat relates, or

(e) an office copy of such an order or injunction,

is lodged with the Registrar-General.

(2) Where:

(a) the Registrar-General has served or caused to be exhibited a notice under subsection (1), and

(b) no order or injunction as referred to in that subsection, or office copy of such an order or injunction, is lodged with the Registrar-General before the expiry of 1 month after the day on which the notice was served or first exhibited,

the caveat lapses at the end of that period.

**Division 3 Caveats against dealings, possessory applications, plans and applications for cancellation of easements or extinguishment of restrictive covenants**

**74F Lodgment of caveats against dealings, possessory applications, plans and applications for cancellation of easements or extinguishment of restrictive covenants**

(1) Any person who, by virtue of any unregistered dealing or by devolution of law or otherwise, claims to be entitled to a legal or equitable estate or interest in land under

the provisions of this Act may lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the estate or interest to which the person claims to be entitled.

- (2) Any registered proprietor of an estate or interest who, because of the loss of a relevant certificate of title or some other instrument relating to the estate or interest or for some other reason, fears an improper dealing with the estate or interest by another person may lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the estate or interest.
- (3) Any person who claims to be entitled to a legal or equitable estate or interest in land that is or may become the subject of a possessory application may, at any time before such an application is granted, lodge with the Registrar-General a caveat prohibiting the Registrar-General from granting such an application.
- (4) Any person who claims to be entitled to a legal or equitable estate or interest in land that is the subject of a delimitation plan lodged in the office of the Registrar-General may, at any time before the plan is registered, lodge with the Registrar-General a caveat prohibiting the registration of the delimitation plan.
- (4A) Any person who claims to be entitled to any legal or equitable interest in an easement the recording of which is the subject of an application for cancellation under section 49 may, at any time before the application is granted, lodge with the Registrar-General a caveat prohibiting the Registrar-General from granting the application.
- (4B) Any of the following persons may lodge with the Registrar-General a caveat prohibiting the Registrar-General from granting an application to extinguish a restrictive covenant:
  - (a) a person who has a registered interest in the land to which the benefit of the restrictive covenant is appurtenant,
  - (b) a person who claims to be entitled to an equitable estate or interest in that land,
  - (c) a person who is recorded in the Register as having the right to release, vary or modify the restrictive covenant,
  - (d) a person who is recorded in the Register as a person whose consent is required to a release, variation or modification of the restrictive covenant.
- (4C) A caveat may be lodged under subsection (4B) whether or not the restrictive covenant is already the subject of an application for extinguishment under Part 8A. However, if such an application has been made and a notice in relation to the application has been given under section 81D then, to be effective, the caveat may only be lodged before the end of the period specified in the notice.



- (5) A caveat lodged under this section must:
- (a) be in the approved form,
  - (b) specify:
    - (i) the name of the caveator,
    - (ii) where the caveator is not a body corporate—the residential address of the caveator,
    - (iii) where the caveator is a body corporate—the address of the registered office of the body corporate,
    - (iv) unless the Registrar-General dispenses with those particulars—the name and address of the registered proprietor concerned,
    - (v) the prescribed particulars of the legal or equitable estate or interest, or the right arising out of a restrictive covenant, to which the caveator claims to be entitled,
    - (vi) the current reference allocated by the Registrar-General to the folio of the Register, or, as the case may be, the lease, mortgage or charge, to which the caveat relates,
    - (vii) where the caveat relates only to part of the land described in a folio of the Register or a current lease—a description of that part in the form or manner prescribed, and
    - (viii) an address in New South Wales at which notices may be served on the caveator (and, if that address is a box at a document exchange, an alternative address in New South Wales that is not such a box),
  - (c) be verified by statutory declaration, and
  - (d) be signed by the caveator or by a solicitor or other agent of the caveator.
- (6) On the lodgment of a caveat under subsection (1), the Registrar-General must give notice in writing of the lodgment of the caveat to the registered proprietor of the estate or interest affected by the caveat by:
- (a) sending the notice by post to the address of the registered proprietor specified in the caveat, or
  - (b) giving the notice in such other manner, whether by advertisement or otherwise, as the Registrar-General considers appropriate,
- unless the consent of the registered proprietor is endorsed on the caveat.

- (7) In subsection (6), a reference to the registered proprietor in relation to an estate or interest referred to in that subsection includes a reference to a person who claims to be entitled to such an estate or interest under a dealing lodged in the office of the Registrar-General for recording in the Register.
- (8) On the lodgment of a caveat under subsection (3), the Registrar-General shall, if a possessory application referred to in that subsection has been lodged in the office of the Registrar-General, give notice in writing of the lodgment of the caveat to the possessory applicant concerned.
- (9) On the lodgment of a caveat under subsection (4), the Registrar-General shall give notice in writing of the lodgment of the caveat to the registered proprietor of the estate or interest affected by the caveat.
- (10) On the lodgment of a caveat under subsection (4A) in relation to an easement, the Registrar-General must, if an application for cancellation of the recording of the easement has been lodged in the office of the Registrar-General, give notice in writing of the lodgment of the caveat to the applicant concerned.
- (11) On the lodgment of a caveat under subsection (4B) in relation to a restrictive covenant, the Registrar-General must, if an application for extinguishment of the restrictive covenant has been lodged in the office of the Registrar-General, or is later lodged, give notice in writing of the lodgment of the caveat to the applicant concerned.

**74G Registrar-General to enter particulars of caveat lodged under section 74F in Register**

For the purpose only of acknowledging the receipt of a caveat lodged under section 74F, the Registrar-General shall, if satisfied that the caveat complies with the requirements made in respect of it by and under this Act, record in the Register such particulars of the caveat as the Registrar-General considers appropriate.

**74H Effect of caveat lodged under section 74F**

- (1) Subject to this section, while a caveat lodged under section 74F remains in force:
  - (a) the Registrar-General must not, except with the written consent of the caveator:
    - (i) record in the Register any dealing, or
    - (ii) grant any possessory application, or
    - (iii) register any delimitation plan, or
    - (iv) cancel the recording of any easement, or
    - (v) extinguish any restrictive covenant,if it appears to the Registrar-General that the recording of the dealing, the

granting of the possessory application, the registration of the delimitation plan, the cancellation of the recording of the easement or the extinguishment of the restrictive covenant is prohibited by the caveat, and

(b) the caveat does not have the effect of prohibiting:

- (i) the recording in the Register of a dealing, or
- (ii) the granting of a possessory application, or
- (iii) the registration of a delimitation plan, or
- (iv) the cancellation of the recording of an easement, or
- (v) the extinguishment of a restrictive covenant,

except to the extent that the recording of such a dealing, the granting of such an application, the registration of such a plan, the cancellation of the recording of such an easement or the extinguishment of such a restrictive covenant would affect the estate, interest or right claimed in the caveat.

- (2) Where a caveat lodged under section 74F purports to protect a subsisting interest within the meaning of section 28A in land described in a qualified folio of the Register, the Registrar-General shall not cancel the caution recorded in that folio.
- (3) While a caveat lodged under section 74F prohibits the recording in the Register of a dealing relating to land described in a limited folio of the Register, the Registrar-General shall not register a delimitation plan which relates to that land.
- (4) Where, at the time when a caveat is lodged under section 74F to protect a particular legal or equitable estate or interest in land, a dealing which relates to the same land has been lodged for recording in the Register and is in registrable form, the caveat does not prohibit the recording in the Register of that dealing.
- (5) Except in so far as it otherwise specifies, a caveat lodged under section 74F to protect a particular legal or equitable estate or interest in land, or a particular right arising out of a restrictive covenant, does not prohibit the Registrar-General from recording in the Register with respect to the same land:
  - (a) an application made under section 93 by an executor, administrator or trustee in respect of the estate or interest of a deceased registered proprietor,
  - (b) an application under section 12 of the [Trustee Act 1925](#) or an order of a court or dealing which, in the opinion of the Registrar-General, effects or evidences a replacement of existing trustees or the appointment of new or additional trustees,
  - (c) an application under section 101,

- (d) a recording under section 46C,
- (e) a resumption application within the meaning of Part 5A,
- (f) a writ or the cancellation of the recording of a writ in accordance with section 105D,
- (g) in relation to a mortgage, charge or covenant charge recorded or lodged in registrable form before the lodgment of the caveat—a dealing effected by the mortgagee, chargee or covenant chargee in the exercise of a power of sale or other power or a right conferred by the mortgage, charge or covenant charge or by or under law,
- (h) in relation to a lease recorded or lodged in registrable form before the lodgment of the caveat—a dealing effected by the lessee pursuant to a right conferred by the lease or by or under law,
- (i) in relation to a mortgage, charge, covenant charge or lease to the recording of which the caveator has consented or in respect of the recording of which the caveat has lapsed—a dealing effected by the mortgagee, chargee, covenant chargee or lessee, including a dealing effected in the exercise of a power of sale or other power or right conferred by the mortgage, charge, covenant charge or lease or by or under law,
- (j) a vesting or dealing effected in accordance with:
  - (i) an order of a court, or
  - (ii) a provision of an enactment of this State or the Commonwealth,  
  
being an order or enactment which, expressly or by implication, requires or permits a recording to be made in the Register, notwithstanding that the caveat has not ceased to have effect,
- (k) except where the caveator claims to be entitled to a subsisting interest within the meaning of section 28A—the cancellation of a caution,
- (l) a change in, or a correction to, the name of a proprietor,
- (m) easements, profits à prendre, restrictions on the use of land or positive covenants created by section 88B (3) of the *Conveyancing Act 1919*,
- (m1) an easement created by a dealing if the caveat is noted on the folio for the land benefited by the easement,
- (m2) a positive covenant created pursuant to section 88BA of the *Conveyancing Act 1919* for maintenance or repair, or maintenance and repair, of land that is the site of an easement or other land that is subject to the burden of the easement (or

- both),
- (n) an order, memorandum or other instrument pursuant to section 88D, 88E, 89 or 98 of the *Conveyancing Act 1919*,
  - (o) a dealing varying, releasing or cancelling an easement, the abandonment of an easement or the effect of an instrument under section 88B of the *Conveyancing Act 1919* releasing an easement, if the caveat is noted on the folio for the land burdened by the easement,
  - (p) a dealing releasing or varying a covenant referred to in paragraph (m2),
  - (q) a notation or an application for notation of the existence of a cross-easement for party walls created by the operation of section 88BB or 181B of the *Conveyancing Act 1919*,
  - (r) a dealing releasing, extinguishing or varying a restriction on the use of land,
  - (s) a change in the address of a body corporate,
  - (t) an application under section 74I (1) or (2), 74J (1) or 74JA (2) for the preparation of a lapsing notice,
  - (u) an application for the issue of:
    - (i) a consolidated certificate of title, or
    - (ii) separate certificates of title where there is more than one registered proprietor for land or for an estate or interest in land,
  - (v) an application under section 12 or 136 for the exercise of the Registrar-General's power to compel the production of a certificate of title or other instrument,
  - (w) an application under section 135B for the determination of a boundary by the Registrar-General,
  - (x) a dealing by one or more joint tenants the sole purpose of which is to effect a severance of a joint tenancy,
  - (y) a dealing by a lessor or sub-lessor recording the determination of a lease or sublease if the caveat is not recorded against the lease or sublease that is the subject of the determination, or
  - (z) a dealing recording the bankruptcy of a registered proprietor.
- (6) Where particular land is affected by a caveat lodged under section 74F and a dealing relating to that land is subsequently lodged for recording in the Register, the Registrar-General may record the dealing notwithstanding the existence of the caveat if satisfied that the estate or interest to which the caveator claims to be entitled would,

on the dealing being recorded, vest in the caveator.

- (7) Whenever a dealing is recorded pursuant to subsection (6), the Registrar-General must record in the Register that the caveat concerned has lapsed.

**74I Lapse of caveat where dealing etc subsequently lodged for recording**

- (1) Whenever:

- (a) a dealing or delimitation plan is lodged with the Registrar-General for recording or registration, and
- (b) the recording of the dealing or, as the case may be, the registration of the plan is prohibited by a caveat that has been lodged under section 74F,

the Registrar-General shall, on an application being made in the approved form by the registered proprietor or by any person who is or claims to be entitled to an estate or interest in the land to which the dealing or plan relates, prepare for service on the caveator a notice to the effect that the dealing or plan has been lodged for recording or registration and that, unless, before the expiry of 21 days after the date of service of the notice, the caveator has:

- (c) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court, and
- (d) lodged with the Registrar-General the order or an office copy of the order,

the caveat will (subject to evidence of due service of the notice on the caveator) lapse in accordance with subsection (5) and the dealing or plan will be recorded or registered.

- (2) Whenever a possessory application has been made to the Registrar-General and a caveat prohibiting the granting of such an application has, either before or after the making of the possessory application, been lodged under section 74F, the Registrar-General shall, on an application being made in the approved form by the possessory applicant, prepare for service on the caveator a notice to the effect that the possessory application has been made and that, unless, before the expiry of 21 days after the date on which the notice is served, the caveator has:

- (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court, and
- (b) lodged with the Registrar-General the order or an office copy of the order,

the caveat will (subject to evidence of due service of the notice on the caveator) lapse in accordance with subsection (5) and the possessory application may be granted.

- (3) The applicant must, within 4 weeks after the issue of the notice, lodge with the Registrar-General, in the form of a statutory declaration or such other form as the Registrar-General may accept, evidence of the due service of the notice on the caveator.
- (4) If the applicant does not comply with subsection (3), the Registrar-General:
  - (a) may refuse to take any further action in connection with the notice prepared under subsection (1) or (2) (as relevant), or
  - (b) may serve on the applicant a notice allowing a further 4 weeks from the date of issue of that notice for lodgment of the evidence and, if the evidence is not lodged within the further period, may refuse to take any further action in connection with the notice prepared under subsection (1) or (2) (as relevant).
- (5) If:
  - (a) the evidence required by subsection (3) is lodged within the time permitted by this section, and
  - (b) the caveator has not lodged with the Registrar-General the order or office copy of the order referred to in subsection (1) or (2) (as the case may require) in accordance with the relevant subsection,

the Registrar-General is to make a recording in the Register to the effect that the caveat has, to the extent that it would prohibit the recording of the dealing or the registration of the delimitation plan, or the granting of the possessory application, lapsed, and the caveat so lapses on the making of that recording.

#### **74J Lapse of caveat on application of proprietor of estate or interest**

- (1) Where a caveat lodged under section 74F remains in force, the Registrar-General shall, on an application being made in the approved form by the registered proprietor of an estate or interest in the land described in the caveat, prepare for service on the caveator a notice to the effect that, unless the caveator has, before the expiry of 21 days after the date of service of the notice:
  - (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court, and
  - (b) lodged with the Registrar-General the order or an office copy of the order,the caveat will (subject to evidence of due service of the notice on the caveator) lapse in accordance with subsection (4).
- (2) The applicant must, within 4 weeks after the issue of the notice, lodge with the Registrar-General, in the form of a statutory declaration or such other form as the

Registrar-General may accept, evidence of the due service of the notice on the caveator.

- (3) If the applicant does not comply with subsection (2), the Registrar-General:
- (a) may refuse to take any further action in connection with the notice prepared under subsection (1), or
  - (b) may serve on the applicant a notice allowing a further 4 weeks from the date of issue of that notice for lodgment of the evidence and, if the evidence is not lodged within the further period, may refuse to take any further action in connection with the notice prepared under subsection (1).
- (4) If:
- (a) the evidence required by subsection (2) is lodged within the time permitted by this section, and
  - (b) the caveator has not lodged with the Registrar-General the order or office copy of the order referred to in subsection (1) in accordance with that subsection,
- the Registrar-General is to make a recording in the Register to the effect that the caveat has lapsed, and the caveat so lapses on the making of that recording.

#### **74JA Lapse of caveat regarding extinguishment of restrictive covenant**

- (1) This section applies if:
- (a) an application has been made to the Registrar-General under Part 8A to extinguish a restrictive covenant, and
  - (b) a caveat prohibiting the granting of such an application has been lodged under section 74F (4B) within the time required by section 74F (4C).
- (2) The person who made the application for extinguishment may apply to the Registrar-General, in the approved form, for the Registrar-General to prepare for service a notice under this section.
- (3) If the person makes an application under this section for preparation of a notice, the Registrar-General must prepare for service on the caveator a notice to the effect that the application for lapsing has been made and that unless, before the expiry of 21 days after the date on which the notice is served, the caveator has:
- (a) obtained from the Supreme Court an order extending the operation of the caveat for such further period as is specified in the order or until the further order of that Court, and
  - (b) lodged with the Registrar-General the order or an office copy of the order,



the caveat will (subject to evidence of due service of the notice on the caveator) lapse in accordance with subsection (6) and the restrictive covenant will be extinguished.

- (4) The applicant must, within 4 weeks after the issue of the notice, lodge with the Registrar-General, in the form of a statutory declaration or such other form as the Registrar-General may accept, evidence of the due service of the notice on the caveator.
- (5) If the applicant does not comply with subsection (4), the Registrar-General:
  - (a) may refuse to take any further action in connection with the notice prepared under subsection (3), or
  - (b) may serve on the applicant a notice allowing a further 4 weeks from the date of issue of that notice for lodgment of the evidence and, if the evidence is not lodged within the further period, may refuse to take any further action in connection with the notice prepared under subsection (3).
- (6) If:
  - (a) the evidence required by subsection (4) is lodged within the time permitted by this section, and
  - (b) the caveator has not lodged with the Registrar-General the order or office copy of the order referred to in subsection (3) in accordance with that subsection,

the Registrar-General is to make a recording in the Register to the effect that the caveat has, to the extent that it would prohibit the extinguishment of the restrictive covenant concerned, lapsed, and the caveat so lapses on the making of that recording.

#### **74K Power of Supreme Court to extend operation of a caveat lodged under section 74F**

- (1) Where a caveator is served with a notice prepared under section 74I (1) or (2), 74J (1) or 74JA (3), the caveator may prepare, in the manner prescribed by rules of Court, an application to the Supreme Court for an order extending the operation of the caveat.
- (2) Subject to subsection (3), on the hearing of an application made under subsection (1), the Supreme Court may, if satisfied that the caveator's claim has or may have substance, make an order extending the operation of the caveat concerned for such period as is specified in the order or until the further order of that Court, or may make such other orders as it thinks fit, but, if that Court is not so satisfied, it shall dismiss the application.
- (3) Unless the Supreme Court has made an order dispensing with service, it may not hear an application made under subsection (1) unless it is satisfied that all interested parties disclosed by the notice which gave rise to the application have been served with copies of the application before the hearing.

- (4) An order under subsection (2) may be made ex parte or otherwise.
- (5) When making an order under subsection (2), the Supreme Court may make such ancillary orders as it thinks fit.
- (6) For the purposes of this section, a caveator served with a notice under section 74JA (3) (in relation to a restrictive covenant) is taken to have a claim that has substance if the caveator:
  - (a) has a registered interest, or has or may have an equitable estate or interest, in land to which the benefit of the restrictive covenant is appurtenant, or
  - (b) is recorded in the Register as having the right to release, vary or modify the restrictive covenant, or as being a person whose consent is required to a release, variation or modification of the restrictive covenant, and should have been so recorded.

## **Division 4 Caveats generally**

### **Note—**

Section 36 (6AA) provides that a caveat that is uplifted after it is lodged with the Registrar-General is ineffective until it is relodged with the Registrar-General.

### **74L Strict compliance with formalities with respect to caveats not necessary**

If in any legal proceedings a question arises as to the validity of a caveat lodged under a provision of this Part, the court shall disregard any failure of the caveator to comply strictly with the requirements of this Part, and of any regulations made for the purposes of this Part, with respect to the form of the caveat.

### **74LA Caveat lapses when order ceases to have effect**

- (1) If the operation of a caveat is extended for a specified period by an order of the Supreme Court under this Part and no further order is made by the Court extending the operation of the caveat before the expiration of the period specified in the order, the caveat lapses on the expiration of that period.
- (2) If the operation of a caveat is extended until the further order of the Court by an order of the Supreme Court under this Part, the caveat lapses if the Registrar-General, on being satisfied that the proceedings in which the order was obtained have been finalised and that no further order is likely to be sought, makes a recording in the Register to the effect that the caveat has lapsed.

### **74M Withdrawal of caveats**

- (1) A caveat lodged under a provision of this Part may be withdrawn:
  - (a) by the caveator,

- (b) by the authorised agent of the caveator,
  - (c) where the caveator is a natural person who has died—by the legal personal representative or trustee of the caveator’s estate,
  - (d) where 2 or more caveators claim to be entitled as joint tenants to the estate or interest protected by the caveat and one or more (but not all) of them has died—by the surviving caveator or caveators,
  - (e) where, after a company has been dissolved or deregistered, the estate or interest claimed by the caveator has become vested in the Australian Securities and Investments Commission by force of section 588 or 601AD of the *Corporations Act 2001* of the Commonwealth—by the Australian Securities and Investments Commission,
  - (f) where the estate or interest claimed by the caveator has become vested in a trustee, The Official Receiver in Bankruptcy or any other person under or by virtue of a provision of any Act or any Act of the Commonwealth relating to bankruptcy—by the trustee, The Official Receiver in Bankruptcy or that other person, as the case may be,
  - (g) where the caveator is a protected person or a managed missing person within the meaning of the *NSW Trustee and Guardian Act 2009*—by the person appointed as manager of the person’s estate or the NSW Trustee and Guardian, as the case requires, or
  - (h) in any other prescribed case—by the person, or a person belonging to the class of persons, prescribed in relation to that case.
- (2) If:
- (a) a caveat lodged under section 74F prohibits the granting of a possessory application, the registration of a delimitation plan or the grant of an application to extinguish a restrictive covenant, and
  - (b) the caveator has consented to the granting of the possessory application, the registration of the delimitation plan or the extinguishment of the restrictive covenant,
- the caveat is taken to have been withdrawn.

**74MA Application to Court for withdrawal of caveat**

- (1) Any person who is or claims to be entitled to an estate or interest in the land described in a caveat lodged under section 74B or 74F may apply to the Supreme Court for an order that the caveat be withdrawn by the caveator or another person who by virtue of section 74M is authorised to withdraw the caveat.

- (2) After being satisfied that a copy of the application has been served on the person who would be required to withdraw the caveat if the order sought were made or after having made an order dispensing with service, the Supreme Court may:
  - (a) order the caveator or another person, who by virtue of section 74M is authorised to withdraw the caveat to which the proceedings relate, to withdraw the caveat within a specified time, and
  - (b) make such other or further orders as it thinks fit.
- (3) If an order for the withdrawal of a caveat is made under subsection (2) 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 after that time expires.

**74N Service of notices on caveators for purposes of Part**

- (1) Where under this Part provision is made for the service on the caveator of a notice relating to a caveat lodged under a provision of this Part, or to any proceedings in respect of such a caveat, the notice is duly served if it is served in one of the following ways:
  - (a) the notice is served on the caveator personally,
  - (b) the notice is left at or sent by registered post to:
    - (i) the address specified in the caveat under section 74B (2) (b) or 74F (5) (b), or
    - (ii) where an address has been notified to the Registrar-General in respect of the caveat under subsection (3)—that address or, if more than one address has been notified in respect of the caveat under that subsection, the last of the addresses so notified,
  - (c) if the caveat was signed on behalf of the caveator by an agent other than a solicitor or licensed conveyancer—the notice is left at or sent by registered post to the business or residential address of that agent,
  - (d) if the caveat was signed on behalf of the caveator by a solicitor or licensed conveyancer—the notice is left at or sent by registered post to the office of the solicitor or licensed conveyancer or, if the solicitor or licensed conveyancer maintains a box at a document exchange established in New South Wales by a prescribed person, deposited in that box or left at another such exchange for transmission to the first-mentioned exchange for depositing in that box,
  - (e) the notice is served in such other manner, whether by advertisement or otherwise, as the Registrar-General directs in writing,
  - (f) the notice is served in such other manner as the Supreme Court, on application

being made to it, directs.

- (2) Where a notice is deposited in a box referred to in subsection (1) (d), or left at a document exchange so referred to for transmission to another such exchange for depositing in such a box, service of the notice shall be deemed to be effected 2 days after the day on which the notice is so deposited or left.
- (3) Where a person entitled to withdraw a caveat lodged under a provision of this Part notifies the Registrar-General, by lodging a notice in the approved form, that the name of the caveator or the address for service of notice on the caveator has been changed from the name or address specified in the caveat, the Registrar-General shall record in the Register the name or address so notified and thereupon the name or address so recorded shall be the name or address for the service of notices on the caveator.
- (4) To avoid doubt, section 77 of the *Interpretation Act 1987* does not apply to this section.

#### **74O Restrictions on lodgment of further caveats if earlier caveat lapses or is withdrawn**

- (1) This section applies if a caveat lodged under a provision of this Part in respect of any particular estate or interest in land or any particular right arising out of a restrictive covenant:
  - (a) subsequently lapses, or
  - (b) is, after an application is lodged with the Registrar-General for the preparation of a notice under section 74C (3), 74I (1) or (2), 74J (1) or 74JA (3), withdrawn under another provision of this Part, or
  - (c) is withdrawn or lapses under section 74MA,and the same caveator lodges a further caveat with the Registrar-General in respect of the same estate, interest or right and purporting to be based on the same facts as the first caveat.
- (2) A further caveat to which this section refers has no effect unless:
  - (a) the Supreme Court has made an order giving leave for the lodgment of the further caveat and the order or an office copy of the order accompanies the further caveat when it is lodged with the Registrar-General, or
  - (b) the further caveat is endorsed with the consent of the primary applicant or possessory applicant for, or the registered proprietor of, the estate or interest affected by the further caveat.

#### **74P Compensation payable in certain cases**

- (1) Any person who, without reasonable cause:

- (a) lodges a caveat with the Registrar-General under a provision of this Part,
- (b) procures the lapsing of such a caveat, or
- (c) being the caveator, refuses or fails to withdraw such a caveat after being requested to do so,

is liable to pay to any person who sustains pecuniary loss that is attributable to an act, refusal or failure referred to in paragraph (a), (b) or (c) compensation with respect to that loss.

- (2) Compensation referred to in subsection (1) is recoverable in proceedings taken in a court of competent jurisdiction by the person who claims to have sustained the pecuniary loss.
- (3) A person who is a caveator is not entitled to bring proceedings under subsection (1) (b) if that person, having had an opportunity to do so, has failed to take all reasonable steps to prevent the caveat from lapsing.

**74Q Registrar-General not obliged to ensure that caveator is entitled to the subsisting estate or interest claimed in a caveat**

Except to the extent of ensuring that a caveat lodged under a provision of this Part apparently complies on its face with the requirements of this Part and with the requirements of any regulations made for the purposes of this Part, the Registrar-General is not required to be satisfied that the caveator is in fact entitled to the estate or interest claimed in the caveat or otherwise as to the validity of the caveat.

**74R Right to obtain injunction not affected**

In relation to a caveat lodged under a provision of this Part, nothing in this Part shall be construed as preventing or restricting the caveator from applying for and obtaining from the Supreme Court an injunction for the purpose of:

- (a) where the caveat relates to land that is the subject of a primary application—restraining the Registrar-General from bringing the land under the provisions of this Act,
- (b) where the caveat relates to the recording of dealings—restraining the Registrar-General from recording a dealing the recording of which is prohibited by the caveat,
- (c) where the caveat relates to a possessory application—restraining the granting of the possessory application,
- (d) where the caveat relates to a delimitation plan—restraining the Registrar-General from registering the delimitation plan, or
- (e) where the caveat relates to an application for the cancellation of the recording of an

easement—restraining the cancellation of the recording of the easement, or

- (f) where the caveat relates to an application for the extinguishment of a restrictive covenant—restraining the extinguishment of the restrictive covenant.

## **Part 8 Implied covenants and incorporated covenants**

### **75 General covenants to be implied in instruments**

In every instrument creating or transferring any estate or interest in land under the provisions of this Act, there shall be implied a covenant by the party creating or transferring such estate or interest that the party will do such acts and execute such instruments as in accordance with the provisions of this Act may be necessary to give effect to all covenants, conditions, and purposes expressly set forth in such instrument, or by this Act declared to be implied against such party in instruments of a like nature.

### **76 Transferee of land subject to mortgage etc to indemnify transferor**

In every instrument, transferring an estate or interest in land under the provisions of this Act, subject to mortgage, charge or covenant charge, there shall be implied the following covenant by the transferee, that is to say, that such transferee will pay the interest, or annuity, or rent-charge secured by such mortgage, charge or covenant charge after the rate and at the times specified in the instrument creating the same (or, in the case of a covenant charge, any interest payable in accordance with the terms of the judgment to which the covenant charge relates), and will indemnify and keep harmless the transferor from and against the principal sum secured by the mortgage, charge or covenant charge, and from and against all liability in respect of any of the covenants contained in the mortgage or charge, or by this Act implied on the part of the transferor.

### **76A Additional implied covenants in respect of land in a qualified folio**

In every instrument registered under this Act creating or transferring any estate or interest in land comprised in a qualified folio of the Register, there shall be implied, in addition to the covenants implied by this Part, such covenants as are set forth by section 78 of the [Conveyancing Act 1919](#) and as would have been implied in respect of any subsisting interest, within the meaning of Part 4A, in that land if the instrument has been an instrument evidencing an equivalent transaction referred to in that section and invoking such of those covenants as are appropriate to the nature of the transaction.

### **77-79 (Repealed)**

### **80 Implied covenants may be modified or negatived**

- (1) Every covenant and power to be implied in any instrument by virtue of this Act may be negatived or modified by express declaration in the instrument or indorsed thereon.

- (2) In any declaration in an action for a supposed breach of any such covenant, the covenant alleged to be broken may be set forth, and it shall be lawful to allege that the party against whom such action is brought did so covenant precisely in the same manner as if such covenant had been expressed in words in such transfer or other instrument, any law or practice to the contrary notwithstanding.
- (3) Every such implied covenant shall have the same force and effect, and be enforced in the same manner as if it had been set out at length in such instrument.
- (4) (Repealed)

#### **80A Incorporation of provisions contained in memorandum or covenants in lease**

- (1) In this section, **memorandum** means a memorandum in the approved form setting forth provisions which are capable of being covenants in a dealing of a class which is specified in the memorandum.
- (2) The Registrar-General:
  - (a) shall file any memorandum which has been lodged with the Registrar-General and which the Registrar-General has not rejected under section 39 (1A), and
  - (b) may distinctively number and file a memorandum on the Registrar-General's own behalf.
- (3) A memorandum filed under subsection (2) shall be retained by the Registrar-General and shall, for the purposes only of section 96B, be deemed to be part of the Register.
- (4) Where a dealing relating to land under the provisions of this Act is of a class specified in a memorandum filed in the office of the Registrar-General and contains a provision which incorporates in the dealing (with or without amendment) any or all of the provisions set out in that memorandum, those provisions or, as the case may be, those provisions as amended shall be deemed to be set out at length in the dealing.
- (5) Where a lease of land under the provisions of this Act contains a provision which incorporates in the lease (with or without amendment) covenants set out in a specified lease of the same land, being a lease registered under this Act, those covenants or, as the case may be, those covenants as amended shall be deemed to be set out at length in the firstmentioned lease.
- (6) Nothing in subsections (4) and (5) shall be construed as limiting the effect, if any, of a provision in a dealing which incorporates in the dealing covenants or other provisions otherwise than as referred to in those subsections.

### **Part 8A Extinguishment of restrictive covenants**

#### **Division 1 Preliminary**



## 81 Definitions

In this Part:

**building materials covenant** means a restrictive covenant that restricts the type, style or proportion of building materials that may be used in the construction or repair of buildings or other structures.

**fencing covenant** means a restrictive covenant:

- (a) that relates to liability for the erection, replacement or maintenance of fences by imposing a condition that contributions to the cost of erecting, replacing or maintaining the fence be made, or
- (b) that imposes any condition that either restricts permissible building materials for fencing or restricts the style, height or other dimension of fencing that may be constructed.

**restrictive covenant** means an express or implied obligation, originating in an instrument, to refrain from using land in a particular way or from doing a particular thing in relation to land.

**value of structures covenant** means a restrictive covenant that restricts the construction or repair of any building or other structure by a condition that the building or structure must have a value of, or above, a specific amount.

## Division 2 Applications to have restrictive covenants extinguished

### 81A Registered proprietor of land may apply to have a restrictive covenant extinguished

- (1) A person who is the registered proprietor of land that is subject to the burden of a building materials covenant, fencing covenant or value of structures covenant that has been in effect for at least 12 years may make a written application in the approved form to the Registrar-General to have the restrictive covenant extinguished.
- (2) If more than one person is the registered proprietor of the relevant burdened land, all of the registered proprietors must join in the application or consent to the application.
- (3) An application may relate to more than one restrictive covenant.
- (4) The Registrar-General may require an application to be accompanied by either or both of the following:
  - (a) a list of the names and addresses of all persons who are required to be notified of the application under section 81D of which the applicant is aware or, if the addresses of those persons are unknown, with evidence of the efforts made by the applicant to ascertain the addresses of those persons,
  - (b) any other evidence.

**81B Registrar-General may ask the registered proprietor for further information**

- (1) The Registrar-General may ask any person who has applied for a restrictive covenant to be extinguished to provide further information to support the application.
- (2) Such a request must be made in writing and must specify a date by which the person is required to provide the information.
- (3) If the person does not respond to the request of the Registrar-General to the Registrar-General's satisfaction by the date specified, the Registrar-General may give the person a further written notice requiring the person to provide the information within 28 days after the date of service of the second notice and warning the person that failure to respond to the notice may result in the rejection of the application.
- (4) If the person who applied does not respond to the request of the Registrar-General within that 28-day period, the Registrar-General may reject the application.

**81C Registrar-General must reject invalid application without further consideration**

- (1) The Registrar-General must reject an application to extinguish a restrictive covenant if, in the opinion of the Registrar-General, the restrictive covenant to which the application relates:
  - (a) is not a building materials covenant, fencing covenant or value of structures covenant, or
  - (b) took effect less than 12 years before the date on which the application was made.
- (2) The Registrar-General must reject the application if, for any other reason, the Registrar-General is satisfied that the application should not be accepted.

**Division 3 Right to be notified of application for extinguishment of restrictive covenant**

**81D Registrar-General must notify certain persons of application for extinguishment of restrictive covenant**

The Registrar-General must give written notice of any application to extinguish a restrictive covenant accepted under this Part to each of the following:

- (a) every person with a registered interest in the land to which the benefit of the restrictive covenant is appurtenant,
- (b) every person of whom the Registrar-General has notice who, in the opinion of the Registrar-General, has an equitable estate or interest in that land,
- (c) every person who is recorded in the Register as having the right to release, vary or modify the restrictive covenant,

- (d) every person who is recorded in the Register as a person whose consent is required to a release, variation or modification of the restrictive covenant.

**81E Form of notice**

A notice under section 81D:

- (a) must specify the restrictive covenant to which the application relates, and
- (b) must specify the land to which the restrictive covenant relates (the land benefited and the land burdened by the restrictive covenant concerned), and
- (c) must set out the procedure for extinguishment of the restrictive covenant, and
- (d) must specify that the person to whom the notice is addressed has the right to object to the extinguishment by lodging a caveat under section 74F (4B), and
- (e) must state that the application will not be granted before the end of such period as is specified in the notice.

**81F Period of notice**

- (1) The period specified in a notice under section 81D must be:
  - (a) for a notice given during the first 2 years after the date of commencement of this section—at least 3 months, or
  - (b) for any other notice—at least 1 month.
- (2) The Registrar-General may specify a longer period of notice or may give a second or subsequent notice in accordance with section 12 (1) or 12A. Where a second, or subsequent, notice is given, a reference in this Act to the period specified in a notice under section 81D is a reference to the period specified in the last such notice given.

**81G Service of notice**

- (1) A notice given under section 81D must be served personally or by registered post at the last address of the recipient known to the Registrar-General.
- (2) However, the Registrar-General may, if he or she considers it appropriate, give notice to some or all of the persons referred to in section 81D by advertisement rather than by personal or postal service. Notice may be given to a person by advertisement only if the Registrar-General considers that the relevant restrictive covenant is unlikely to be of real benefit to the person:
  - (a) because of the distance of the land in relation to which the person has an estate or interest from the land burdened by the restrictive covenant the subject of the application, or
  - (b) because of any other factor causing a lack of connection between the two relevant

parcels of land, or

(c) by otherwise having regard to the benefit conferred by the covenant.

- (3) If the Registrar-General gives notice by advertisement, that notice must comply with section 81E and must be published in a newspaper circulating generally throughout the State.
- (4) To avoid doubt, section 77 of the *Interpretation Act 1987* does not apply to subsection (1).

#### **81H Service of notice by person other than Registrar-General**

- (1) The Registrar-General may, instead of complying with the service obligations created under this Division, if he or she thinks it appropriate, direct the person who made the application to meet those obligations by serving notice on specified persons in a manner and form approved by the Registrar-General.
- (2) The Registrar-General may require that the service of any person, and the particulars of the address of any postal service, be verified by statutory declaration of the person who served them or of some other person specified by the Registrar-General.
- (3) The Registrar-General may reject an application to extinguish a restrictive covenant if not satisfied that a person directed to meet the service obligations under this Division has met those obligations in the manner and form approved by the Registrar-General.
- (4) If the person directed under this section proves to the satisfaction of the Registrar-General that the person has tried to serve all relevant persons personally or by registered post, the Registrar-General may, if he or she considers it appropriate in accordance with section 81G (2), decide that the persons who have not been given such notice may be given notice by advertisement under that subsection. The Registrar-General may further direct the person to give that notice and to verify by statutory declaration that he or she did so.
- (5) If the Registrar-General has given written notice to a person that he or she is satisfied that the person has met the service obligations under this Division, the relevant persons referred to in section 81D are taken to have been properly served with notice for the purposes of this Part.

### **Division 4 Extinguishment of restrictive covenants**

#### **81I Registrar-General may extinguish a restrictive covenant after application made**

- (1) This section applies if:
  - (a) an application has been made to extinguish a restrictive covenant, and
  - (b) notice of that application has been given in accordance with Division 3, and

- (c) the time period specified in that notice has ended, and
  - (d) there is no caveat (lodged before or within the relevant time period) still in force prohibiting the granting of an application to extinguish the restrictive covenant.
- (2) The Registrar-General may grant the application if the Registrar-General is satisfied that the application was properly made, and that the restrictive covenant to which the application relates:
- (a) is a building materials covenant, a fencing covenant or a value of structures covenant, and
  - (b) is of a type likely to lose any practical value after 12 years of operation, and
  - (c) took effect at least 12 years before the date on which the application was made.

**81J Registrar-General may extinguish a restrictive covenant without receiving an application**

- (1) The Registrar-General may extinguish a restrictive covenant without receiving an application if the Registrar-General is satisfied that:
- (a) the restrictive covenant is expressed to be limited in operation, and the time of its operation has expired, or
  - (b) the separate parcels of land that were respectively burdened and benefited by the restrictive covenant have been consolidated into a single parcel, or
  - (c) the restrictive covenant is personal to the covenantee or that the covenantee owned no neighbouring land in connection with which the benefits of the covenant can be enjoyed, or
  - (d) there is no express annexation of the benefit of the covenant to ascertainable land and the relevant covenant was created before 1 July 1920, or
  - (e) the restrictive covenant has no practical value or no practical application.
- (2) This section does not apply if the Registrar-General has received an application under this Part to extinguish the relevant restrictive covenant and has not rejected the application under Division 2 or 3.

**81K Cancellation of recording of restrictive covenant**

- (1) If the Registrar-General decides to grant an application to extinguish a restrictive covenant, or otherwise decides to extinguish a restrictive covenant, the Registrar-General must cancel the recording of the restrictive covenant in the Register.
- (2) A restrictive covenant is extinguished when the recording of the restrictive covenant in the Register is cancelled.

### **81L Effect of extinguishment**

- (1) If a restrictive covenant is extinguished under this Part, the restrictive covenant is not enforceable and is of no effect.
- (2) The extinguishment of a restrictive covenant under this Part is binding on all persons, whether of full age or capacity or not, interested in enforcing the restrictive covenant whether or not they have had notice of its proposed extinguishment.

## **Part 9 Trusts**

### **82 No notice of trusts to be recorded in Register**

- (1) Except as provided by section 12 (1) (f) the Registrar-General shall not record in the Register any notice of trusts whether express, implied, or constructive.
- (2) Trusts may be declared by any instrument, which instrument may include as well lands under the provisions of this Act as land which is not under the provisions thereof: Provided that the description of the several parcels of lands contained in such instrument shall sufficiently distinguish the land which is under the provisions of this Act from the land which is not under the provisions thereof, and a duplicate or an attested copy of such instrument may be deposited with the Registrar-General for safe custody and reference but shall not be registered.
- (3) When any such instrument or duplicate or attested copy thereof is so lodged, the Registrar-General shall forthwith record in the Register a caveat forbidding the registration of any instrument not in accordance with the trusts and provisions therein declared and contained so far as concerns the land affected by such instrument.
- (4) (Repealed)

### **83 Dedicated or reserved lands—trusts**

Nothing in this Act shall be deemed to prevent the registration of a transfer of dedicated or reserved land to which Part 3 applies by reason of the fact that a trust is declared in the transfer.

### **84 Barring of survivorship among trustees in certain cases**

Where before the commencement of the *Real Property (Amendment) Act 1970* the words “no survivorship” were recorded in the Register it shall not be lawful for any less number of joint proprietors than the number registered at the time those words were so recorded to deal with the land affected by the recording without obtaining an order of the Supreme Court sanctioning that action.

### **85 Notice to be published before order**

- (1) Before making any such order as aforesaid the Court shall, if it seem requisite, cause

notice of intention so to do to be advertised once in the Gazette, and three times in at least one newspaper published in Sydney, and shall appoint a period of time within which any person interested may show cause why such order should not be issued, and thereupon the said Court in such order may give directions for the transfer of such land, estate, or interest to any new proprietor or proprietors, solely or jointly with or in the place of any existing proprietor, or make such order in the premises as the Court thinks just for the protection of the persons beneficially interested in such land, estate, or interest, or in the proceeds thereof.

- (2) Upon such order being deposited with the Registrar-General the Registrar-General shall make such recordings in the Register and perform such acts as in accordance with the provisions of this Act may be necessary for the purpose of giving effect to such order.

### **86 Recording of vesting order**

- (1) Where an order is made by a court of competent jurisdiction vesting land under the provisions of this Act in any person, the Registrar-General on being served with an office copy of the order shall make such recording in the Register as in accordance with the provisions of this Act may be necessary to give effect to the order.
- (2) Unless and until a recording referred to in subsection (1) is made, an order so referred to shall have no effect or operation in transferring or otherwise vesting the land the subject of the order, but when the recording is made the person in whom the order purports to vest the land shall become the registered proprietor of the land.
- (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).

### **87 Proceedings may be brought by person claiming beneficial interest in name of trustee**

- (1) Whenever a person entitled to or interested in land as a trustee would be entitled to bring or defend in the person's own name proceedings in the Supreme Court or the District Court for possession of land under the provisions of this Act, such person shall

be bound to allow the person's name to be used as a plaintiff or defendant in such proceedings by any beneficiary or person claiming an estate or interest in the said land.

- (2) The person entitled or interested as such trustee shall in every such case be entitled to be indemnified in like manner as a trustee would before the passing of the Act twenty-sixth Victoria number nine have been entitled to be indemnified in a similar case of the person's name being used in any such proceedings by the person's cestui que trust.

## **Part 10**

### **88, 89 (Repealed)**

## **Part 11 Transmissions**

### **90 Transmission on bankruptcy**

- (1) In this Part:

**the Commonwealth Act** means the [Bankruptcy Act 1966](#) of the Parliament of the Commonwealth and any Act of that Parliament amending or replacing that Act.

**The Official Receiver in Bankruptcy** means the body corporate constituted by section 18 of the Commonwealth Act.

- (2) The Official Receiver in Bankruptcy, a trustee, or any other person claiming to be entitled to land under the provisions of this Act by virtue of the operation of the Commonwealth Act, or of anything done thereunder, may apply in the approved form to the Registrar-General to be registered as proprietor of that land.
- (3) On being satisfied that an applicant under subsection (2) is entitled to be registered as proprietor of the land to which the application relates, the Registrar-General may record the applicant in the Register as proprietor.
- (4) Where an official receiver, having claimed to be entitled to land under the provisions of this Act by virtue of the operation of the Acts repealed by the Commonwealth Act is registered as the proprietor of that land, the Registrar-General may register a dealing affecting that land and executed by The Official Receiver in Bankruptcy.

### **91 Disclaimer of lease under Commonwealth Act**

- (1) This section applies to and in respect of a lease registered under the provisions of this Act where:
  - (a) the registered proprietor of the lease is a bankrupt within the meaning of the Commonwealth Act,
  - (b) the trustee, as defined by the Commonwealth Act, has disclaimed the lease



pursuant to that Act,

(c) a Court having jurisdiction in bankruptcy under that Act has not made an order pursuant to section 133 (9) of the Commonwealth Act vesting the lease in some person other than the lessee, and

(d) no application has been made pursuant to that subsection to such a Court, or any application so made has been dismissed.

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

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

(a) there is no person, other than the bankrupt lessee, registered as proprietor of an estate or interest in the lease and the lease is not affected by any caveat, or

(b) the lessor lodges with the application evidence that notice has been served as provided in subsection (2) upon every person (other than the bankrupt lessee) who appears from the Register to have or to claim an interest in the lease and that no person on whom notice has so been served has, within the time specified in the notice, claimed the interest of the lessee or (otherwise than as registered proprietor of a sub-lease) an interest derived therefrom,

and any caveat which would have the effect of prohibiting the recording of the surrender of the lease has lapsed or has been withdrawn.

(4) Before recording a surrender of lease under subsection (3), the Registrar-General shall record any sub-lease claimed pursuant to that subsection in the folio of the Register or on the registered lease that evidences the title of the lessor, and that folio or registered lease, as the case may be, shall thereupon evidence the title to the reversion expectant on the sub-lease.

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

so served claims the interest of the lessee or claims an interest derived therefrom.

- (6) Subject to this section, the Registrar-General may record in the Register that a mortgage of a lease to which this section applies has been foreclosed where the mortgagee applies in the approved form for such a recording to be made, the application is in respect of the whole of the land subject to the mortgage, and:
- (a) there is no person, other than the mortgagee and the bankrupt lessee, registered as proprietor of an estate or interest in the lease and the lease is not affected by any caveat, or
  - (b) the mortgagee lodges with the application evidence that notice has been served as provided in subsection (5) upon every person (other than the mortgagee and the bankrupt lessee) who appears from the Register to have or to claim an interest in the lease and that no person on whom notice has so been served claims the interest of the lessees or claims (otherwise than as registered proprietor of a sub-lease) an interest derived therefrom,

and any caveat which would have the effect of prohibiting the recording of the foreclosure of the mortgage has lapsed or has been withdrawn.

- (7) Before recording a foreclosure of mortgage under subsection (6), the Registrar-General shall record, in the folio of the Register or on the registered lease that evidences the title of the lessee, any sub-lease claimed pursuant to that subsection that is binding on the mortgagee and that folio or registered lease shall thereupon evidence the title to the reversion expectant on the sub-lease.

- (8) (Repealed)

## **92 (Repealed)**

## **93 Transmission on death of proprietor**

- (1) Upon the death of a registered proprietor, the executor, administrator or other person claiming consequent upon the death, will or intestacy of that deceased proprietor, or otherwise, to be entitled to be registered as proprietor may apply in the approved form to the Registrar-General to be registered as proprietor of all or part of the estate or interest of that deceased proprietor.
- (2) An application under subsection (1) shall be:
- (a) supported by such evidence as the Registrar-General may require, and
  - (b) accompanied by the consent of the executor or administrator of the deceased proprietor where the applicant claims otherwise than as executor, administrator or trustee unless the Registrar-General thinks fit to dispense with that consent.
- (3) The Registrar-General, on being satisfied that an applicant under subsection (1) is

entitled to the estate or interest claimed in the application, shall record the applicant in the Register as proprietor of that estate or interest.

- (4) Where, pursuant to an application under subsection (1), a person is registered as proprietor with the consent of another person given under subsection (2) (b), the person who has given the consent shall, for the purposes of section 129 (2) (f), be deemed to have become, immediately before registration of the applicant as proprietor, registered as proprietor of the land specified in the application and to have transferred that land to the applicant.

#### **94, 95 (Repealed)**

#### **96 Trusts protected**

A fiduciary registered as proprietor pursuant to section 93 shall hold the estate or interest in respect of which the fiduciary is so registered in trust for the persons for whom and purposes for which that estate or interest is applicable by law, but for the purposes of any dealing therewith the fiduciary shall be deemed to be absolute proprietor thereof.

### **Part 11A Searches**

#### **96A Definition**

In this Part, **official search** means:

- (a) a certificate issued under section 96C (e) or 96G, or
- (b) a computer folio certificate.

#### **96B Access to the Register**

- (1) The Register shall be a public record and information therein shall be made available at the prescribed times, in the prescribed manner and upon payment of the prescribed fee, if any.
- (2) Without affecting any duty imposed by or under this Act, information in the Register may also be made available in accordance with such conditions as the Registrar-General, with the approval of the Minister, determines.
- (3) The conditions may:
  - (a) require the payment, whether on a periodic or any other basis, of fees and other charges, and
  - (b) restrict access to information in the Register or any part of the Register.

#### **96C Official search of manual folio**

Where:

- (a) a requisition is lodged for a search to be made by the Registrar-General in respect of the title to the whole or any part of the land comprised in a manual folio specified in the requisition, and
- (b) the requisition complies with the regulations,
- (c) (Repealed)

the Registrar-General shall, if the records kept by the Registrar-General enable the Registrar-General to comply with the requisition, cause:

- (d) the required search to be made, and
- (e) a certificate of the result of the search to be issued to the person who lodged the requisition.

#### **96D Official search of computer folio**

(1) Where:

- (a) a requisition is lodged for a search to be made by the Registrar-General in respect of the title to the whole or any part of land comprised in a computer folio specified in the requisition, and
- (b) the requisition complies with the regulations,
- (c) (Repealed)

the Registrar-General shall issue to the person who lodged the requisition a computer folio certificate setting forth the information recorded in the folio, pursuant to or under this or any other Act, at the time specified in the certificate, together with the particulars required by subsection (2).

- (2) The certificate must also provide particulars of such of the following as are held by the Registrar-General at the time specified in the certificate:
- (a) any plan or dealing, whether registered or awaiting registration, the registration of which requires or will require a change to be made in the information recorded in the folio concerned,
  - (b) any caveat that purports to affect land comprised in the folio concerned if information about the caveat is not recorded in that folio.

#### **96E Searches to disclose recordings on mortgages etc**

In any:

- (a) certificate issued under section 96C (e), or
- (b) computer folio certificate,

the Registrar-General shall cause to be disclosed particulars of any recording:

- (c) evidencing a subsisting estate or interest and made by the Registrar-General upon any registered mortgage, charge or lease, or
  - (d) made by the Registrar-General upon any caveat,
- being a registered mortgage, charge or lease, or a caveat, that affects the folio of the Register in respect of which the certificate was issued.

**96F (Repealed)**

**96G Search of historical record**

Where:

- (a) a requisition is lodged with the Registrar-General for the issue, under this section, of a certificate in respect of any part of the record required, by section 32 (7), to be maintained by the Registrar-General, and
- (b) the requisition complies with the regulations,
- (c) (Repealed)

the Registrar-General shall issue to the person who lodged the requisition a certificate setting forth particulars of that part of that record.

**96H Authentication of official searches**

An official search shall be authenticated in such manner as the Registrar-General considers appropriate.

**96I Matters arising from official searches**

- (1) (Repealed)
- (2) Where a solicitor or licensed conveyancer acts for a person in connection with the purchase, disposal or other dealing with land and in so acting relies on the correctness of an official search, that person has no cause of action against the solicitor or licensed conveyancer for any loss or damage suffered as a result of an error in, or omission from, that official search.
- (3) A person employed in the office of the Registrar-General shall not:
  - (a) commit, or be party or privy to, any fraudulent act in relation to an official search, or
  - (b) be wilfully negligent in the making of, or otherwise in relation to, an official search.

Maximum penalty (subsection (3)): 10 penalty units.

## **96J Search fees**

The Registrar-General is not required to issue a certificate under this Part, or to have any search carried out for the purpose of issuing any such certificate, unless:

- (a) the fee prescribed in respect of the requisition for the certificate or search has been paid, or
- (b) the Registrar-General is satisfied that the fee will be paid in accordance with arrangements approved by the Registrar-General.

## **Part 12 General provisions**

### **97 Severance of joint tenancy by unilateral action**

- (1) Registration of a transfer by a joint tenant of the joint tenant's interest in the land that is the subject of a joint tenancy to himself or herself severs the joint tenancy.
- (2) If a joint tenancy is proposed to be severed by unilateral action by one joint tenant, the Registrar-General may require the person who proposes to sever the joint tenancy to provide the Registrar-General, before recording the instrument that severs the joint tenancy, with:
  - (a) the names and addresses of the joint tenants or, if the addresses are unknown, evidence of the efforts made by the person to locate the addresses of the joint tenants, and
  - (b) a statement that the person is not aware of any limitation or restriction on his or her capacity or entitlement to sever the joint tenancy (arising, for example, from the capacity in which the person holds an estate or interest in the land concerned or from a private agreement).
- (3) The Registrar-General may require the person who proposes to sever a joint tenancy to provide additional information concerning:
  - (a) other persons who may be affected by the severance of the joint tenancy, and
  - (b) any limitation or restriction on the capacity or entitlement of the person to sever the joint tenancy, and
  - (c) any other matter that the Registrar-General considers appropriate.
- (4) The Registrar-General may require any information provided for the purposes of this section to be provided by statutory declaration.
- (5) The Registrar-General must give notice of the lodgment of a dealing for registration or recording that may sever a joint tenancy to all joint tenants in the joint tenancy (other than any joint tenant who executed the dealing, or on whose behalf the dealing was executed). Section 12A (2) and (3) applies to and with respect to a notice given under

this section.

- (6) Despite subsection (5), the Registrar-General is not required to give notice of the lodgment of a dealing for registration or recording that may sever a joint tenancy to a joint tenant in any of the following circumstances:
- (a) if the proposed severance is to arise from the recording of a court order made in proceedings to which the joint tenant is a party,
  - (b) if the proposed severance is to arise from the registration of a transfer pursuant to a writ in respect of an interest of any of the joint tenants,
  - (c) if the dealing concerned is witnessed by the joint tenant and the dealing indicates that the joint tenancy is to be severed,
  - (d) if the dealing is accompanied by a written acknowledgment by the joint tenant that he or she has received legal advice as to the effects of the severance of the joint tenancy,
  - (e) if the proposed severance is to arise out of registration following an application under section 90.

**98, 99 (Repealed)**

**100 Registered co-tenants**

- (1) Two or more persons who may be registered as joint proprietors of an estate or interest in land under the provisions of this Act, shall be deemed to be entitled to the same as joint tenants.
- (2) Subject to subsection (3), where persons are entitled to be registered as proprietors of a life estate and an estate in remainder in, or as tenants in common of shares in, land under the provisions of this Act (other than land comprised in a folio of the Register created pursuant to section 32 (3)), or are entitled to be so registered in respect of land in the course of being brought under the provisions of this Act pursuant to Part 4, Part 4A or Part 4B, the Registrar-General may, in respect of the life estate and estate in remainder or, as the case may be, the shares:
  - (a) create separate folios of the Register and issue separate certificates of title,
  - (b) create a folio or folios of the Register and issue such certificate or certificates of title as the Registrar-General thinks proper, or
  - (c) deliver any existing certificate of title after making thereon and in the Register such recording as may be required by this Act.
- (3) The Registrar-General shall not refuse to act in accordance with subsection (2) (a) if the Registrar-General is requested so to act and the Registrar-General's expenses for

so acting are paid.

### **101 Registration of survivor of joint proprietors**

- (1) Where a person becomes entitled to an estate or interest in land:
  - (a) upon the death of a person registered with the person as joint proprietor of that estate or interest, or
  - (b) by the determination or defeasance, by death or the occurrence of some other event, of an estate or interest in land,

the Registrar-General may, upon application in the approved form by the person so entitled and proof to the Registrar-General's satisfaction of the death or other event, as the case may require, register that person as proprietor of the estate or interest.

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

### **102, 103 (Repealed)**

### **104 Approved forms**

- (1) The Registrar-General shall cause approved forms to be supplied free of charge or at such moderate charges as the Registrar-General may fix and the Registrar-General may license a person to print and sell approved forms.
- (2) The Registrar-General may register a dealing containing departures, not being in matters of substance, from an approved form and the dealing shall be deemed to be in an approved form when it has been authenticated in accordance with subsection (3).
- (3) Approved forms must be sealed with the seal of the Registrar-General or authenticated in such other manner as the Registrar-General approves.

### **105 Recording of writ in Register**

- (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.
- (1A) An estate or interest in land under the provisions of this Act, being an estate or interest arising under a contract of sale under a writ, is not extinguished or otherwise affected merely because the writ subsequently expires.

#### **Note—**

Completion of the sale, including execution of the transfer, is authorised by section 116 of the [Civil Procedure Act 2005](#).

- (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:
    - (i) a sealed copy of the writ, or
    - (ii) a copy of a sealed copy of the writ certified by the Sheriff to be a true copy,
  - (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 before the date shown on the writ as the date on which the writ expires.
- (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 in a fiduciary capacity the Registrar-General may refuse to record the writ unless it is proved to the Registrar-General's satisfaction that the writ was issued pursuant to a judgment against the registered proprietor in that fiduciary capacity.
- (4) A writ recorded in the Register with respect to a registered mortgage, charge or lease may be executed by the sale and transfer, in the approved form, of the mortgage, charge or lease.
- (5) Where a writ is recorded in the Register, the Registrar-General shall not, unless the Registrar-General cancels that recording, record in 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.

### **105A Effect of recording writ**

- (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 113 (6) (b) of the *Civil Procedure Act 2005*,
- (c) an application under Part 4A 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 chargee in exercise of the mortgagee's or chargee's powers under a mortgage or charge 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),
- (i) an application for the recording under section 66 (1) of the satisfaction or discharge of an annuity, rent-charge or sum of money secured by a registered charge,
- (j) a dealing referred to in a provision of section 74H (5),
- (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 122 (4), 124 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 protected period, the Registrar-General shall not, during the protected period, 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) is accompanied by an associated agreement for sale endorsed with the relevant consent under section 113 (6) (b) of the *Civil Procedure Act 2005*,
- 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,
  - (c) in the case of a transfer, is accompanied by an associated agreement for sale endorsed with the relevant consent under section 113 (6) (b) of the *Civil Procedure Act 2005*, and
  - (d) in the case of a mortgage, is endorsed with the relevant consent under section 113 (6) (b) of the *Civil Procedure Act 2005*,
- 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 protected period, 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.
- (7) Where a writ recorded under section 105 is, after the expiration of the protected period, 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,
- (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,

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 or profit à prendre,

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 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 or profit à prendre 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 or profit à prendre) 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 a 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 or profit à prendre) 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 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 a memorandum of prior encumbrances.

(8) Where:

- (a) a writ recorded under section 105 is, after the expiration of the protected period, 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
  - (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 a memorandum of prior encumbrances in the transfer so referred to.

- (9) In this section, ***protected period***, in relation to a writ, means the period:
- (a) that begins when the writ is recorded in the Register, and
  - (b) that ends at the expiration of 6 months after the writ is recorded in the Register, or on the expiration of the writ, whichever first occurs.

**105B Registration of transfer pursuant to sale under writ**

- (1) A transfer pursuant to a sale under a writ is registered when it is recorded in the Register and the Registrar-General may make a like recording on the relevant certificate of title or duplicate registered dealing when it becomes available to the Registrar-General.
- (2) Upon the registration of a transfer referred to in subsection (1), the transferee holds the land transferred free from all estates and interests except such as:
  - (a) are recorded in 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 folio of the Register, 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.
- (4) In this section, ***transfer*** means a transfer in the approved form.

**105C Lapsing of writ in relation to land**

- (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.
- (3) (Repealed)

**105D Cancellation of recording of writ**

- (1) The Registrar-General may cancel a recording in the Register of a writ if application for

the cancellation of the recording is made in the approved form and:

- (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,
  - (b) (Repealed)
  - (c) the application incorporates or is accompanied by evidence that satisfies the Registrar-General that the writ has been satisfied otherwise than by sale of the land to which the application relates, or
  - (d) the writ has lapsed and the application is supported by such evidence as the Registrar-General may require.
- (2) The Registrar-General, on his or her own motion or on an application made in the approved form, may cancel a recording in the Register of a writ in relation to any land, or any estate or interest in land, if:
- (a) the Registrar-General registers a transfer of the land, estate or interest pursuant to a sale under the writ, as referred to in section 105B (1), or
  - (b) the writ lapses in respect of that land, estate or interest, as referred to in section 105C, or
  - (c) the writ expires.

### **106 Execution of instruments by corporations**

For the purposes of this Act, the provisions of sections 127-129 of the *Corporations Act 2001* of the Commonwealth are taken to apply to the execution of instruments as if:

- (a) those provisions formed part of this Act, and
- (b) any reference in those provisions to a company were a reference to a corporation that is not a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

#### **Note—**

Sections 127-129 of the *Corporations Act 2001* of the Commonwealth apply to companies under that Act as a matter of federal law.

### **107-110 (Repealed)**

### **111 Lost etc certificate of title**

- (1) Where a certificate of title of land under the provisions of this Act is lost, mislaid or



destroyed, the proprietor of the land may apply in the approved form to the Registrar-General for the issue of a new certificate of title.

- (2) An application under subsection (1) shall be supported by such evidence as the Registrar-General may require.
- (3) The Registrar-General, if satisfied that a certificate of title has been lost, mislaid or destroyed, may issue a new certificate of title or new certificates of title for the land comprised in the firstmentioned certificate of title and may record in the Register that the new certificate of title or new certificates of title has or have been issued pursuant to this section.

**112, 113 (Repealed)**

**114 Registrar-General may require plan to be lodged**

The Registrar-General may:

- (a) where a person is applying to have land brought under the provisions of this Act, refuse to accept lodgment of or reject the application,
- (b) where a person is seeking to obtain registration of a dealing or to lodge a caveat, refuse to register the dealing or to accept lodgment of the caveat or reject the dealing or caveat, and
- (c) where a person is seeking to obtain the creation of a folio of the Register or the issue of a certificate of title for the land comprised in a folio of the Register, refuse to create the folio or issue the certificate of title,

if the person has refused or neglected to comply with a requirement of the Registrar-General:

- (d) to lodge in the office of the Registrar-General a plan (being, where the Registrar-General so specifies, a plan of survey) of the relevant land, together with such number of copies of the plan, if any, as the Registrar-General may specify, or
- (e) to obtain registration or recording, under Division 3 of Part 23 of the [Conveyancing Act 1919](#), of such a plan.

**115 Certified copies to be furnished by Registrar-General and to be evidence**

- (1) The Registrar-General, upon payment of the prescribed fee, shall furnish to any person applying for the same a certified copy of any registered instrument affecting land under the provisions of this Act.
- (2) Every such certified copy signed by the Registrar-General and sealed with the Registrar-General's seal shall be received in evidence in any Court or before any person having, by law or by consent of parties, authority to receive evidence as prima

facie proof of all the matters contained or recited in or recorded on the original instrument.

### **116 Searches**

- (1) (Repealed)
- (2) Where the Registrar-General supplies information in response to a written inquiry as to the manner in which a proposed dealing or plan should be drawn, or whether a proposed dealing or plan should be entitled to registration, by or under this or any other Act:
  - (a) the Registrar-General may require payment of a prescribed fee, or may supply the information without fee, and
  - (b) the fact that any such information has been so supplied shall not, of itself, bind the Registrar-General to register or otherwise give effect to any dealing or plan, or any class of dealing or plan.
- (3) A regulation prescribing a fee for the purposes of paragraph (a) of subsection (2) may:
  - (a) prescribe the fee to be paid in the circumstances specified in the regulation,
  - (b) require, in the circumstances specified in the regulation, the payment of a fee calculated on such basis as may be prescribed by the regulation, or
  - (c) authorise the Registrar-General to charge, in circumstances not provided for under paragraph (a) or (b), a reasonable fee.

### **117 Certificate of correctness**

- (1) The Registrar-General may reject, or may refuse to accept or to take any action in relation to, any primary application, dealing or caveat unless it bears the following certificates:
  - (a) a certificate (signed by or on behalf of each person by whom the application, dealing or caveat has been executed) to the effect that the application, dealing or caveat is correct for the purposes of this Act, and
  - (b) a certificate (signed by each witness to the execution of the application, dealing or caveat) to the effect that:
    - (i) the witness is personally acquainted with, or is otherwise satisfied as to the identity of, the person to whose execution of the application, dealing or caveat the witness is attesting, and
    - (ii) the execution by that person of the application, dealing or caveat took place in the presence of the witness.

- (1A) The Registrar-General may reject, or may refuse to accept or to take any action in relation to, any dealing accompanied by a notice (in accordance with section 39 (1B)) unless:
- (a) in the case of a notice lodged electronically—the dealing is accompanied by a certificate to the effect that the notice has been lodged electronically in a form and in the manner approved by the Registrar-General and that the notice is correct for the purposes of this Act, and
  - (b) in any other case—the notice bears a certificate to the effect that the notice is correct for the purposes of this Act.
- (1B) A certificate referred to in subsection (1A) must be signed by:
- (a) the person lodging the dealing, or
  - (b) a party to the dealing, or
  - (c) a solicitor or agent acting for the person lodging, or a party to, the dealing.
- (2) Any person who falsely or negligently certifies to the correctness of any application, dealing, caveat or notice referred to in this section shall incur therefor a penalty not exceeding 10 penalty units.
- (3) Such penalty shall not prevent the person who may have sustained any damage or loss in consequence of error or mistake in any such certified application, dealing or caveat from recovering damages against the person who has certified the same.

## **Part 13 Civil rights and remedies**

### **Division 1 Proceedings for the possession or recovery of land**

#### **118 Registered proprietor protected except in certain cases**

- (1) Proceedings for the possession or recovery of land do not lie against the registered proprietor of the land, except as follows:
- (a) proceedings brought by a mortgagee against a mortgagor in default,
  - (b) proceedings brought by a chargee or covenant chargee against a charger or covenant charger in default,
  - (c) proceedings brought by a lessor against a lessee in default,
  - (d) proceedings brought by a person deprived of land by fraud against:
    - (i) a person who has been registered as proprietor of the land through fraud, or
    - (ii) a person deriving (otherwise than as a transferee bona fide for valuable

consideration) from or through a person registered as proprietor of the land through fraud,

- (e) proceedings brought by a person deprived of, or claiming, land that (by reason of the misdescription of other land or its boundaries) has been included in a folio of the Register for the other land against a person who has been registered as proprietor of the other land (otherwise than as a transferee bona fide for valuable consideration),
- (f) proceedings brought by a registered proprietor under an earlier folio of the Register against a registered proprietor under a later folio of the Register where the two folios have been created for the same land.

(2) Despite any rule of law or equity to the contrary:

- (a) the production of a manual folio is an absolute bar and estoppel to any such proceedings commenced before the production of the folio against the person named in the folio as a registered proprietor or lessee of the land, and
- (b) the production of a computer folio certificate for a computer folio is an absolute bar and estoppel to any such proceedings commenced before the time specified in the certificate against the person named in the certificate as a registered proprietor or lessee of the land.

(3) Subsection (2) does not apply to proceedings of the kind referred to in subsection (1) (a)–(f).

(4) This section does not affect:

- (a) any proceedings in relation to land for which a qualified folio of the Register has been created, being proceedings based on a subsisting interest within the meaning of Part 4A, or
- (b) any proceedings brought by a person deprived of, or claiming, land that (by reason of the misdescription of other land or its boundaries) has been included in a limited folio of the Register for the other land, whether or not the registered proprietor of the other land is a transferee of the land bona fide for valuable consideration.

### **119 Defendant's entitlements where improvements have been made**

- (1) This section applies to proceedings for the possession or recovery of land in the circumstances referred to in section 118 (1) (e) or (f).
- (2) If the defendant or any person through whom the defendant claims has made improvements to the land before the proceedings are commenced:
  - (a) the fact that the improvements have been made may be pleaded by the

defendant, and

(b) if the plaintiff's title to the land is established:

(i) the value of the improvements, and

(ii) the value of the land without the improvements,

are to be separately assessed.

(3) An order for the possession or recovery of the land is not to be made until an amount equivalent to the value of the improvements, less the plaintiff's costs in the proceedings, is paid into court for payment to the defendant.

(4) If that amount is not paid within 3 months after the assessment is made:

(a) the plaintiff ceases to be entitled to possession of the land and becomes entitled only to an amount equivalent to the sum of:

(i) the value of the land without the improvements, and

(ii) the plaintiff's costs in the proceedings, and

(b) on paying that amount to the plaintiff, the defendant becomes entitled to retain possession of the land.

## **Division 2 Proceedings for compensation**

### **120 Proceedings for compensation**

(1) Any person who suffers loss or damage as a result of the operation of this Act in respect of any land, where the loss or damage arises from:

(a) fraud, or

(b) any error, misdescription or omission in the Register, or

(c) the land being brought under the provisions of this Act, or

(d) the registration (otherwise than under section 45E) of some other person as proprietor of the land, estate or interest,

may commence proceedings in the Supreme Court for the recovery of damages.

(2) Such proceedings may be taken only:

(a) against the person whose acts or omissions have given rise to the loss or damage referred to in subsection (1), or

(b) against the Registrar-General.

- (3) Proceedings against the Registrar-General are to be taken in accordance with Part 14.

### **Division 3 Review of Registrar-General's actions**

#### **121 Registrar-General to supply reasons for certain decisions**

- (1) A person who is dissatisfied with the Registrar-General's decision:
- (a) to have land brought under the provisions of this Act, or to have any dealing registered or recorded, or
  - (b) to have any certificate of title, order for foreclosure or other instrument issued in relation to land, or
  - (c) to have exercised or performed in relation to land any function or duty which, by this Act, is required to be exercised or performed by the Registrar-General,
- may apply to the Registrar-General for a copy of the Registrar-General's reasons for the decision.
- (2) It is the Registrar-General's duty to provide the person with those reasons.

#### **122 Review of decisions by Supreme Court**

- (1) A person who is dissatisfied with a decision referred to in section 121 (1) may apply to the Supreme Court for a review of the decision.
- (2) For the purpose of conducting such a review, the Supreme Court may reconsider and determine any question of fact involved in the decision.
- (3) If the Registrar-General has provided reasons for the decision, the Registrar-General may not rely on any grounds that are not set out in those reasons except by leave of the Supreme Court.
- (4) After reviewing the Registrar-General's decision on an application under this section, the Supreme Court:
- (a) may uphold the decision, or
  - (b) may order that the Registrar-General take such action in relation to the matters raised by the application as the Supreme Court considers appropriate, being action that the Registrar-General could, but for the order, have taken,
- and may make such further or other orders as the Supreme Court considers appropriate.
- (5) This section does not apply to the determination of the position of a boundary under Part 14A.

### **123 Applicant may state case for Supreme Court**

- (1) If the Registrar-General makes any objection to the title of land the subject of:
  - (a) an application to bring the land under the provisions of this Act, or
  - (b) a possessory application,being an objection that the applicant considers not well founded, the applicant may state a case for the opinion of the Supreme Court.
- (2) The Registrar-General is entitled to appear and be heard, either personally or by a legal practitioner, at the hearing of the matter.
- (3) The Supreme Court's opinion on the stated case binds the Registrar-General in relation to the application, but does not affect:
  - (a) the right conferred on any person by Part 14 to make a claim against the Torrens Assurance Fund, or
  - (b) the right conferred on the applicant by section 122 to apply for a review of the Registrar-General's decision on the application.

### **124 Registrar-General may state case for Supreme Court**

- (1) If any question arises in respect of:
  - (a) land under the provisions of this Act, or
  - (b) land the subject of action under Part 4, 4A, 4B or 6A with regard to the performance or exercise of any duties or functions conferred or imposed on the Registrar-General by or under this or any other Act,the Registrar-General may state a case for the opinion of the Supreme Court.
- (2) If the question arises in connection with:
  - (a) an application to bring the land under the provisions of this Act, or
  - (b) a possessory application,the applicant is entitled to appear and be heard, either personally or by a legal practitioner, at the hearing of the matter.
- (3) The Supreme Court's opinion on the stated case binds the Registrar-General in relation to the question.

### **125 Orders as to costs**

- (1) In any proceedings under this Division, the Supreme Court may make such orders as to costs as it considers just.

- (2) An order requiring the Registrar-General to pay costs in any proceedings relating to an application to bring land under the provisions of this Act is not to be made unless the Supreme Court is of the opinion that the Registrar-General has acted unreasonably.
- (3) All costs to be paid by the Registrar-General under such an order are to be paid out of the Torrens Assurance Fund.

## **Division 4 General**

### **126 Registrar-General may intervene in certain proceedings**

- (1) The Registrar-General may intervene in any proceedings before any court (other than criminal proceedings) if of the opinion that the court's decision in the proceedings could result in compensation becoming payable from the Torrens Assurance Fund.
- (2) The Registrar-General has a right to appear and be heard, either personally or by a legal practitioner, when intervening in any such proceedings.
- (3) On intervening in any such proceedings, the Registrar-General becomes a party to the proceedings and has all the rights of such a party.

### **127 Barring of actions where claimant on notice**

- (1) Proceedings based on a claim of deprivation of land through the bringing of that land under the provisions of this Act do not lie against the Registrar-General where the person alleging the deprivation, or the person through whom he or she claims title:
  - (a) had notice (by personal service or otherwise) or was otherwise aware that application had been made to bring the land under the provisions of this Act, and
  - (b) had omitted to lodge a caveat forbidding the bringing of the land under the provisions of this Act or had allowed such a caveat to lapse.
- (2) Proceedings based on a claim of deprivation of land through the grant of a possessory application do not lie against the Registrar-General where the person alleging the deprivation, or the person through whom he or she claims title:
  - (a) had notice (by personal service or otherwise) or was otherwise aware that the application had been made, and
  - (b) had omitted to lodge a caveat forbidding the grant of the application or had allowed such a caveat to lapse.
- (3) Proceedings based on the extinguishment of a restrictive covenant do not lie against the Registrar-General where the person alleging loss from that extinguishment:
  - (a) had notice (by personal service or otherwise) or was otherwise aware that an application for extinguishment of the restrictive covenant had been made, and



- (b) had omitted to lodge a caveat forbidding the grant of the application or had allowed such a caveat to lapse.
- (4) Proceedings based on the abandonment of an easement do not lie against the Registrar-General where the person alleging loss from that abandonment, or any previous registered proprietor of the land benefited by that easement:
  - (a) had notice (by personal service or otherwise) or was otherwise aware that the Registrar-General intended to cancel a recording relating to the easement in the Register, and
  - (b) had omitted to lodge a caveat forbidding the grant of the application or had allowed such a caveat to lapse.
- (5) Proceedings based on the correction of the Register in accordance with this Act by the Registrar-General do not lie against the Registrar-General where the person alleging loss from that correction:
  - (a) had notice (by personal service or otherwise) or was otherwise aware that the Registrar-General intended to correct the Register, and
  - (b) had failed to serve on the Registrar-General or give the Registrar-General written notice of an order made by the Supreme Court restraining the action.

## Part 14 The Torrens Assurance Fund

### Division 1 Preliminary

#### 128 Definitions

- (1) In this Part:

**administrative proceedings** means proceedings on a claim referred to in section 131.

**compensable loss** means loss or damage of the kind referred to in section 129 (1), other than loss or damage of the kind referred to in section 129 (2).

**compensation** means compensation from the Torrens Assurance Fund to which a person is entitled under section 129.

**court proceedings** means proceedings referred to in section 132.

**insurer** means a professional indemnity insurer and any other person who carries on an insurance business within the meaning of the [Insurance Act 1973](#) of the Commonwealth.

**official search** has the same meaning as it has in Part 11A.

**professional indemnity insurer** means an insurer, scheme or fund (whether or not established by or under any Act or law) by or from which claims are payable, being claims made by persons sustaining loss or damage owing to any fraudulent, wilful or negligent act or omission by a person carrying on business in a particular profession, trade or calling.

- (2) In this Part, **approved determination of native title**, **native title** and **native title rights and interests** have the same meanings as they have in the [Native Title Act 1993](#) of the Commonwealth.

## Division 2 Compensation generally

### 129 Circumstances in which compensation payable

- (1) Any person who suffers loss or damage as a result of the operation of this Act in respect of any land, where the loss or damage arises from:
- (a) any act or omission of the Registrar-General in the execution or performance of his or her functions or duties under this Act in relation to the land, or
  - (b) the registration (otherwise than under section 45E) of some other person as proprietor of the land, or of any estate or interest in the land, or
  - (c) any error, misdescription or omission in the Register in relation to the land, or
  - (d) the land having been brought under the provisions of this Act, or
  - (e) the person having been deprived of the land, or of any estate or interest in the land, as a consequence of fraud, or
  - (f) an error or omission in an official search in relation to the land, or
  - (g) any error of the Registrar-General in recording details supplied in the notice referred to in section 39 (1B),

is entitled to payment of compensation from the Torrens Assurance Fund.

- (2) Compensation is not payable in relation to any loss or damage suffered by any person:
- (a) to the extent to which the loss or damage is a consequence of any act or omission by that person, or
  - (b) to the extent to which the loss or damage:
    - (i) is a consequence of any fraudulent, wilful or negligent act or omission by any solicitor, licensed conveyancer, real estate agent or information broker, and
    - (ii) is compensable under an indemnity given by a professional indemnity insurer,

or

- (c) to the extent to which that person has failed to mitigate the loss or damage, or
- (d) to the extent to which the loss or damage has been offset by some other benefit to that person that has arisen from substantially the same circumstances as those from which the loss or damage has arisen, or
- (e) where the loss or damage arises because of an error or miscalculation in the measurement of land, or
- (f) where the loss or damage arises from:
  - (i) the breach by a registered proprietor of any trust (whether express, implied or constructive), or
  - (ii) the inclusion of the same land in two or more grants, or
- (g) where the loss or damage arises from the recording, or the omitting to record, in the Register of an approved determination of native title or other matter relating to native title rights and interests, or
- (h) where the loss or damage arises from circumstances in respect of which this Act provides that proceedings against the Registrar-General do not lie, or
- (i) where the loss or damage arises from an error contained in a plan lodged in accordance with Division 3C of Part 2 of the *Conveyancing Act 1919*, or
- (j) where the loss or damage arises from the person's failure, as mortgagee or transferee of a mortgage, to comply with section 56C or from the cancellation of a recording with respect to a mortgage in accordance with section 56C (6), or
- (k) where the loss or damage arises from the recording of a Registrar-General's caveat in the Register under section 12 (1) (e) or (f) or the removal of such a caveat by the Registrar-General, or
- (l) where the loss or damage arises from the execution of an instrument by an attorney (under a power of attorney) acting contrary to, or outside of, the authority conferred on him or her by the power of attorney, or
- (m) where the loss or damage is the result of an easement not being recorded in the Register (except where the easement is not recorded in the Register due to an error of the Registrar-General), or
- (n) where the loss or damage arises from the improper exercise of a power of sale, or
- (o) where the loss or damage arises from the operation of section 129 of the *Corporations Act 2001* of the Commonwealth, or

- (p) where the loss or damage arises from the provision by the Registrar-General of information supplied in the notice referred to in section 39 (1B) (subject to subsection (1) (g)).
- (3) Subsection (2) (g) applies whether the loss or damage is alleged to have been suffered:
  - (a) by a holder of native title or a claimant for native title, or
  - (b) by a person deprived of land or an estate or interest in land as a result of the making of an approved determination of native title, or
  - (c) by any other person,but does not apply to an error made by the Registrar-General in the recording of matter in the Register.
- (4) For the purposes of subsection (2) (m), an error of the Registrar-General does not extend to the Registrar-General's failure, in relation to the creation of a qualified folio of the Register under Part 4A, to make searches or inquiries as to the existence of any easement.
- (5) The entitlement to compensation under subsection (1) does not confer any entitlement to compensation for personal injury.
- (6) In this section, **information broker** means a person who has entered into an agreement with the Registrar-General to make information in the Register available in accordance with the conditions determined by the Registrar-General under section 96B (2).

#### **129A Limits on amount recoverable generally**

The total compensation that is payable under this Part, in relation to loss or damage suffered by a person as a result of the person being deprived of land or any estate or interest in land, is limited to the market value of the land at the date on which compensation is awarded to that person plus any legal, valuation or other professional costs reasonably incurred by the person in making the claim.

#### **129B Limits on amount recoverable in respect of mortgage obtained by fraud**

- (1) This section applies only in circumstances where:
  - (a) a claim for compensation is made as a result of the registration of a mortgage and the execution of the mortgage involved, in the opinion of the Registrar-General, fraud against a registered proprietor of the mortgaged land, and
  - (b) a person would be entitled to compensation under this Part for deprivation of the mortgaged land as a consequence of fraud if the position of that person is not

otherwise rectified, and

- (c) as a result of the registration of the mortgage, the mortgagee is entitled to exercise a power of sale in respect of the land mortgaged.
- (2) Section 129A does not apply in the circumstances in which this section applies.
- (3) The total compensation that is payable to a mortgagee is limited to the market value of the land at the date on which compensation is awarded to the mortgagee less the amount secured by any other mortgage affecting the same land (including a mortgage that is registered as a result of fraud) that has, or would have had, more priority.
- (4) Subsections (5) and (6):
  - (a) apply to limit the interest and costs components of a claim, and
  - (b) apply despite anything to the contrary in the mortgage (including any associated document).
- (5) The rate of interest to be applied in calculating the interest component of a claim on any particular day must not exceed:
  - (a) if the interest rate specified in the mortgage is no greater than the official cash rate applicable on that day plus 2%—the interest rate specified in the mortgage, or
  - (b) if the interest rate specified in the mortgage is greater than the official cash rate applicable on that day plus 2%—the official cash rate plus 2%.
- (6) The costs component (being the costs incurred by the mortgagee in relation to the mortgage) of a claim is limited to the reasonable costs incurred by the mortgagee in directly protecting the mortgagee's interest in respect of the land mortgaged.
- (7) In this section, **official cash rate** means the official cash rate specified by the Reserve Bank of Australia.

### **130 Minister may direct ex gratia payments from Torrens Assurance Fund**

- (1) Despite section 129 (2), the Minister may, on the recommendation of the Registrar-General, direct that compensation is payable in any of the circumstances referred to in that subsection if, in all of the circumstances of the case, the Minister is satisfied that it would be just to do so.
- (2) A decision as to whether or not to give a direction under this section is in the absolute discretion of the Minister.
- (3) Without limiting subsection (2), nothing in any recommendation of the Registrar-General requires the Minister to give a direction under this section.

- (4) A decision by the Minister under this section may not be called into question in any legal proceedings.

### **Division 3 Administrative proceedings**

#### **131 Administrative proceedings for recovery of compensation**

- (1) A person who has suffered compensable loss may lodge a claim for compensation, in the approved form, with the Registrar-General.
- (2) Such a claim may not be made more than 6 years after:
- (a) the date on which the act or omission giving rise to the compensable loss occurred, or
  - (b) if the compensable loss arose after the date on which that act or omission occurred, the date on which the compensable loss arose.
- (3) The regulations may make provision for or with respect to the manner in which a claim is to be made and dealt with.
- (4) The Registrar-General may determine a claim by making an offer of settlement or by refusing the claim.
- (5) Section 135 applies to the settlement, and any offer of settlement, of a claim.
- (6) A claimant must co-operate fully with the Registrar-General for the purpose of ensuring that the Registrar-General has sufficient information to be able:
- (a) to assess the validity of the claim, and
  - (b) to assess the claimant's compensable loss, and
  - (c) to make an informed offer of compensation.
- (7) In particular, a claimant must comply with any reasonable request by the Registrar-General:
- (a) to furnish specified information (including information verified by statutory declaration) or to produce specified documents, or
  - (b) to take specified action to further the claim.
- (7A) Without limiting subsection (6), the following information is information that is required to enable the Registrar-General to assess the validity of a claim, assess compensable loss and make an informed offer of compensation:
- (a) details of any potential claims that the claimant may have against other parties to which the Registrar-General may be subrogated,

- (b) details of any proceedings relating to the circumstances which gave rise to the claim (including the outcome of any such proceedings and whether any party to the proceedings has subrogated another person).
- (8) In assessing the reasonableness of a request by the Registrar-General, regard is to be had to the following criteria:
- (a) the amount of time the claimant needs to comply with the request,
  - (b) the degree to which the information, document or action requested is relevant to the determination of the claim,
  - (c) the degree to which the information already available to the Registrar-General should suffice to enable the claim to be properly determined,
  - (d) the degree to which compliance with the request would impose undue hardship on the claimant,
  - (e) the degree to which any information sought by the request is the subject of legal professional privilege,
  - (f) whether any information, document or action the subject of the request is sufficiently specified,
  - (g) the timing of the request, having regard to its effect on the claimant's ability to commence court proceedings,
  - (h) such other criteria as are relevant to the question of whether the request is reasonable.
- (8A) Without limiting the power of the Registrar-General to refuse a claim in accordance with subsection (4), the Registrar-General may refuse a claim on the ground that a claimant has failed to comply with a request made under subsection (7) if:
- (a) the request was made by notice in writing, and
  - (b) at least 2 months have elapsed since the notice was given to the claimant.
- (9) For the purposes of section 132, a claim is taken to have been refused if it is not determined within 12 months after the claim was made. However, if at the end of that period the claimant has failed to provide information in fulfilment of the duty imposed by subsection (6), the claim is only taken to have been refused if it is not determined within 2 months after that information is provided.
- (10) Subsection (9) does not prevent a claim from being determined under this section in favour of the claimant after the expiry of the relevant period limited by that subsection, if the claimant has not commenced proceedings under section 132.

- (11) Interest at the rate payable on an unpaid judgment of the Supreme Court under the [Supreme Court Act 1970](#) is payable on an offer of compensation that has been accepted by the claimant in administrative proceedings to the extent to which the amount accepted remains unpaid at the end of 28 days after the date on which it was accepted.

## **Division 4 Court proceedings**

### **132 Court proceedings for the recovery of compensation**

- (1) Proceedings before a court for the payment of compensation are to be taken against the Registrar-General as nominal defendant.
- (2) Any such court proceedings may only be commenced:
- (a) if administrative proceedings have been commenced and determined in relation to the compensable loss, or
  - (b) by leave of the court or with the consent of the Registrar-General.
- (2A) Court proceedings commenced in accordance with subsection (2) (a) must be commenced within 3 months of the date on which the administrative proceedings have been determined in relation to the compensable loss.
- (3) Court proceedings may be commenced at any time during the period of 3 months referred to in subsection (2A) despite any provision of the [Limitation Act 1969](#) to the contrary.
- (4) In any court proceedings, the Registrar-General is not bound by any prejudicial act or omission by any party to the proceedings, such as:
- (a) entering into, or offering to enter into, a compromise, or
  - (b) granting, or offering to grant, a release or waiver.
- (5) If court proceedings are commenced following administrative proceedings that have been determined by the offer of compensation and the compensation awarded by the court (less any interest awarded in relation to the period after the date of the offer) is less than the compensation offered by the determination:
- (a) the claimant's costs in the court proceedings are not payable by the Registrar-General, and
  - (b) the Registrar-General's costs are payable by the claimant,
- unless the court orders otherwise.
- (6) If court proceedings are commenced following the refusal of a claim in accordance with section 131 (8A):



- (a) the claimant's costs in the court proceedings are not payable by the Registrar-General, and
  - (b) the Registrar-General's costs are payable by the claimant, and
  - (c) the claimant is not entitled to any interest in respect of the amount of compensation claimed from the date of the notice referred to in section 131 (8A), unless the court orders otherwise.
- (7) If court proceedings are commenced with the leave of the court or the consent of the Registrar-General under subsection (2), the claimant must co-operate fully with the Registrar-General for the purpose of ensuring that the Registrar-General has sufficient information to be able:
- (a) to assess the validity of the claim, and
  - (b) to assess the claimant's compensable loss, and
  - (c) to make an informed offer of compensation.
- (8) If a claimant fails to comply with subsection (7):
- (a) the claimant's costs in the court proceedings are not payable by the Registrar-General, and
  - (b) the Registrar-General's costs are payable by the claimant, and
  - (c) where the Registrar-General has requested information in accordance with subsection (7) in writing—the claimant is not entitled to any interest on the claim from the date of that notice, unless the court orders otherwise.

## **Division 5 Miscellaneous**

### **133 Subrogation of rights to claim compensation**

- (1) An insurer cannot be subrogated to any other person in respect of that other person's right to claim compensation from the Torrens Assurance Fund in relation to compensable loss.
- (2) If administrative proceedings or court proceedings are commenced in relation to a claimant's compensable loss, the Registrar-General is subrogated to the claimant in respect of the claimant's rights and remedies against any person in relation to that loss.
- (3) In the case of a deceased person, the compensation may be recovered from the deceased person's estate by proceedings taken against the deceased person's

personal representative.

- (4) The Registrar-General may join any person in any court proceedings if of the opinion that the claimant has a cause of action against that person in respect of the compensable loss to which the proceedings relate.
- (5) This section has effect despite any provision of the *Legal Profession Act 2004* or any other Act, law or agreement.

### **133A Repayment of certain amounts**

- (1) If a claimant:
  - (a) receives a payment from the Torrens Assurance Fund in respect of the claim, and
  - (b) receives or recovers from another source or sources a payment on account of the compensable loss, and
  - (c) there is a surplus after deducting the amount of the compensable loss from the total amount received or recovered by the claimant from both or all sources,the amount of the surplus is a debt payable by the claimant to the Torrens Assurance Fund.
- (2) However, the amount payable by the claimant cannot exceed the amount the claimant received from the Torrens Assurance Fund in respect of the claim.

### **134 Torrens Assurance Fund**

- (1) There is established in the Special Deposits Account an account called the Torrens Assurance Fund.
- (2) The following amounts are to be paid into the Torrens Assurance Fund:
  - (a) any amounts that the Minister directs to be paid from fees paid to the Registrar-General for lodgment of any dealing, caveat or withdrawal of caveat,
  - (b) any amounts recovered by the Registrar-General under or in connection with this Part,
  - (c) any amounts advanced by the Treasurer for payment into the Fund,
  - (d) any amounts appropriated by Parliament for payment into the Fund,
  - (e) any amounts required by or under this or any other Act or law to be paid into the Fund.
- (2A) (Repealed)
- (3) The following amounts are payable out of the Torrens Assurance Fund:

- (a) any compensation payable under or in connection with this Part,
  - (b) any amounts required to repay any advance made by the Treasurer for payment into the Fund,
  - (c) any costs and expenses incurred by the Registrar-General in connection with any claim for compensation from the Fund, including the payment of compensation in settlement of any such claim,
  - (d) any costs and expenses incurred by the Registrar-General in, or as incidental to, the administration of the Fund,
  - (e) any other amounts required by or under this or any other Act or law to be paid out of the Fund.
- (4) The fee payable to the Registrar-General for lodgment of any dealing, caveat or withdrawal of caveat may be prescribed so as to include the amount to be paid into the Torrens Assurance Fund.
- (5) Any shortfall in the Torrens Assurance Fund is to be met from the Consolidated Fund, which is appropriated accordingly.
- (6) The Torrens Assurance Fund is to repay the Consolidated Fund.

**134A (Repealed)**

**135 Registrar-General may settle claims**

- (1) The Registrar-General may settle any claim for payment of compensation from the Torrens Assurance Fund, whether in the course of litigation to enforce the claim or otherwise.
- (2) For the purpose of settling such a claim, the Registrar-General may participate in proceedings in the nature of mediation or neutral evaluation.
- (3) The power of the Registrar-General to settle such a claim is subject to the following restrictions:
  - (a) the claim must not be settled unless the Registrar-General is satisfied:
    - (i) that the claimant would or will be successful in proceedings to enforce the claim, or
    - (ii) that it is otherwise reasonable in all the circumstances of the case to settle the claim,
  - (b) any amount to be paid in settlement of the claim must not exceed \$100,000 (or such other amount as may be prescribed by the regulations) unless the Minister has approved of the settlement.

- (4) In settling such a claim, the Registrar-General:
  - (a) may pay such amount (which may include amounts by way of costs and interest) as the Registrar-General thinks reasonable, and
  - (b) may, instead of or in addition to payment of a settlement amount, take other action.
- (5) A settlement amount may include any costs incurred by the claimant before the settlement.
- (6) The Registrar-General may delegate to a member of staff of the Department the power of the Registrar-General to settle claims under this section.

## **Part 14A Boundary determinations**

### **135A Definition of “owner”**

In this Part:

**owner**, in relation to land, means any person entitled to an estate of freehold in possession in the land:

- (a) whether in fee simple or for life or otherwise, and
- (b) whether at law or in equity, and
- (c) whether absolutely or by way of mortgage.

### **135B Application may be made for boundary determination**

- (1) Application may be made to the Registrar-General for the determination under this Part of the position of the common boundary of adjoining lands.
- (2) Such an application can be made only by or on behalf of:
  - (a) an owner of land on either side of the boundary, or
  - (b) the purchaser under a contract for sale of land on one side of the boundary but only if the owner of the land consents to the application or the whole of the purchase price has been paid to the owner or the owner’s agent, or
  - (c) a public or local authority or the Head of a Government Department.

### **135C Boundaries to which Part applies**

This Part authorises the determination of the position of a boundary between adjoining parcels of land, whether or not each parcel is under the provisions of this Act.

**135D Requirements for application**

- (1) An application for a boundary determination under this Part:
  - (a) is to be made in a form approved by the Registrar-General, and
  - (b) is to be accompanied by such information and documents in support of the application as the Registrar-General may require (either generally or in the particular case), and
  - (c) is to be accompanied by the prescribed application fee.
- (2) The Registrar-General must refuse to make the determination unless satisfied, on investigation, that there is doubt as to the position of the boundary concerned.
- (3) The Registrar-General is to give notice to an applicant if the Registrar-General refuses to make the determination and is to give reasons for that refusal.

**135E Notice of application to be given to certain persons**

- (1) Before determining the position of a boundary pursuant to an application, the Registrar-General is to give notice of the application:
  - (a) to the owner of each parcel of land adjoining the boundary concerned (other than land owned by the applicant), and
  - (b) to such other persons as the Registrar-General considers appropriate.
- (2) The notice is to contain such details of the application as the Registrar-General considers appropriate and is to invite the person to make a written submission concerning the application within a specified period (not less than 21 days).
- (3) In determining the position of the boundary, the Registrar-General is to take into consideration any submissions made in accordance with the requirements of such a notice.

**135F Procedure in determining boundaries**

- (1) In determining the position of a boundary under this Part, the Registrar-General must consult with a registered land surveyor within the meaning of the [Surveying and Spatial Information Act 2002](#).
- (2) If the Registrar-General decides that a survey or other investigation should be carried out to assist the Registrar-General in determining the position of the boundary, the Registrar-General:
  - (a) may require any applicant for the determination to pay the reasonable costs of any such survey or investigation (and for that purpose may require payment in advance), and

(b) may refuse to proceed with the determination until the required payment is made.

### **135G Determination of other boundaries**

- (1) If as a result of considering an application under this Part in respect of a boundary of land, the Registrar-General becomes aware that there is doubt as to the position of another boundary of that or other land, the Registrar-General may determine the position of that other boundary.
- (2) Before making a determination under this section, the Registrar-General:
  - (a) is to give notice of the proposed determination to the owner of each parcel of land adjoining that other boundary inviting the person to make a written submission on the matter within a specified period (not less than 21 days), and
  - (b) is to take into consideration any submissions made in accordance with the requirements of such a notice.
- (3) The Registrar-General must not make a determination under this section without prior consultation with the Surveyor-General.

### **135H Basis of determination**

The Registrar-General is to determine the position of a boundary on the basis of all the evidence available to the Registrar-General but, if that evidence is inconclusive, may determine it on the basis of what appears to the Registrar-General to be just and reasonable in the circumstances.

### **135I Notice of determination of boundary**

The Registrar-General is to give notice of a determination of the position of a boundary under this Part:

- (a) to any applicant for the determination, and
- (b) to the owner of each parcel of land adjoining the boundary, and
- (c) to the Surveyor-General, and
- (d) to such other persons as the Registrar-General considers appropriate.

### **135J Appeals to Land and Environment Court**

- (1) A person who is dissatisfied with a determination under this Part may appeal to the Land and Environment Court for determination by the Court of the position of the boundary.
- (2) Only the following persons can appeal:
  - (a) an owner of land adjoining the boundary,

- (b) a person who applied for the determination as purchaser under a contract for the sale of land adjoining the boundary,
  - (c) a public or local authority or the Head of a Government Department.
- (3) An appeal must be made not later than 28 days after notice of the Registrar-General's determination is given to the person concerned.
- (3A) The appellant must join each owner of land adjoining the boundary (except, in each case, an appellant owner) as a party to the following proceedings:
- (a) proceedings on an appeal under this section,
  - (b) proceedings on any appeal under the *Land and Environment Court Act 1979* in respect of the appeal.
- (4) The Registrar-General is not to take action under section 135K (Noting of boundary on plans etc):
- (a) until the expiration of the period during which an appeal can be made against the determination concerned to the Land and Environment Court, and
  - (b) (if an appeal is made during that period) until the matter has been determined by the Land and Environment Court.
- (5) The Registrar-General is entitled to be joined as a party, and to appear and be heard either personally or by his or her duly appointed agent, at the hearing of an appeal under this section and at the hearing of any appeal under the *Land and Environment Court Act 1979* in respect of any such appeal.

**135K Noting of boundary on plans etc**

- (1) When the position of a boundary is determined under this Part, the Registrar-General:
- (a) is to make such notations and entries on any plan or other document registered or recorded in the office of the Registrar-General as may be necessary to show the position of the boundary determined, and
  - (b) may cause to be registered in the office of the Registrar-General a plan showing the position of the boundary determined.
- (2) The Registrar-General may also amend any plan or other document to correct any error in it or supply any omission from it in respect of the position of the boundary.
- (3) The Registrar-General may also take action under this section in respect of the determination by a competent court of the position of a boundary as if it were a determination under this Part.
- (4) The Registrar-General may, if the position of a boundary is determined under this Part,

request the applicant for the boundary determination to lodge in the office of the Registrar-General a plan (being, if the Registrar-General so specifies, a plan of survey) showing details of the boundary as so determined, together with such number of copies of the plan, if any, as the Registrar-General may specify.

- (5) The Registrar-General may refuse to take action under this section if an applicant fails to comply with a request under subsection (4).

**135L Effect of boundary determination**

- (1) A determination of the position of a boundary under this Part takes effect when the position of the boundary is shown as referred to in section 135K (1).
- (2) Once the determination takes effect, the boundary is for all purposes to be taken to be in the position so shown despite any discrepancy with any plan of survey or other plan or any other record.

**135M Delegation**

- (1) The Registrar-General may delegate to any officer or other person employed in the office of the Registrar-General any of the Registrar-General's powers, authorities, duties or functions under this Part.
- (2) A delegate may sub-delegate to any such officer or person any power, authority, duty or function delegated by the Registrar-General if the delegate is authorised in writing to do so by the Registrar-General.

**135N Application of provisions where land has more than one owner**

If land has more than one owner, a notice given to or by one or more of those owners for the purposes of this Part is to be taken to have been given to or by all the owners of the land.

**135O Owners may agree to dispense with certain requirements**

If the owners of all parcels of land adjoining a boundary that is the subject of an application under this Part consent in writing to this section applying, the Registrar-General:

- (a) need not comply with the requirements of section 135E (Notice of application to be given to certain persons) in respect of the application, and
- (b) may take action under section 135K (Noting of boundary on plans etc) in respect of a determination of the boundary concerned without having regard to section 135J (4) (action delayed to allow appeal to Court).

**135P Failure to notify does not affect validity of determination**

A failure by the Registrar-General to give notice to a person as required by this Part does



not affect the validity of any boundary determination with which the requirement to give notice is concerned.

### **135Q Service of notices**

- (1) A notice required or permitted by this Part to be given to a person may be given:
  - (a) to the Registrar-General—by leaving it at, or by sending it by pre-paid post to, any office of the Registrar-General, or
  - (b) to any other natural person—by delivering it to the person personally or by leaving it at, or by sending it by pre-paid post to, the address of the place of residence or business of the person last known to the Registrar-General, or
  - (c) to a body corporate—by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate, or
  - (d) to any person (including the Registrar-General)—by delivering it to the facilities of a document exchange of which the person is a member.
- (2) In the case of service by delivery to the facilities of a document exchange, the notice is, unless the contrary is proved, to be taken to have been given on the second business day following the day of delivery of the notice to those facilities.
- (3) Nothing in this section:
  - (a) affects the operation of any other law of the State that authorises the service of a document in any other way, and
  - (b) affects the power of a court to authorise service of a document in any other way.
- (4) In this section, **business day** means any day except Saturday or Sunday or a day that is a public or bank holiday throughout the State.

## **Part 15 Cancellation and correction of instruments**

### **136 Wrongful retention of certain instruments**

- (1) Where the Registrar-General is satisfied that:
  - (a) a certificate of title has been issued in error or contains any misdescription of land or of boundaries,
  - (b) a recording has been made in error in the Register,
  - (c) a certificate of title or recording in the Register has been fraudulently or wrongfully obtained, or
  - (d) a certificate of title or duplicate registered dealing is fraudulently or wrongfully retained:

or where the possessory applicant has pursuant to a possessory application made by the possessory applicant become registered as the proprietor of an estate or interest in land comprised in a folio of the Register for which a certificate of title has been issued, the Registrar-General may by notice in writing to the person to whom the certificate of title or duplicate registered dealing, as the case may be, has been issued, or by whom it has been so obtained or is retained, or by whom any certificate of title or duplicate registered dealing showing any such recording is held, require such person to deliver up the certificate of title or duplicate registered dealing, as the case may be, for the purpose of it being cancelled or corrected, as the case may require.

(2) If such person:

(a) cannot be found for the giving of such notice of requirement, or

(b) having been given such notice does not comply with the requirement:

the Registrar-General may, if the Registrar-General thinks fit, commence proceedings against such person in the Supreme Court for an order that such person deliver up the certificate of title or duplicate registered dealing, as the case may be, for the purpose of it being cancelled or corrected, as the case may require.

(3) The Court may order that service upon the defendant of the originating process and of all other documents in the proceedings be dispensed with.

(4) Subject to the *Supreme Court Act 1970*, the Court shall not order that service upon the defendant be dispensed with unless the Court is satisfied that:

(a) the defendant cannot be found in New South Wales, or

(b) it is uncertain whether the defendant is living.

(5) The Court may order the personal attendance before it of the defendant.

(6) Upon the personal appearance before the Court of the defendant the Court may examine the defendant upon oath.

(7) The Court may order the defendant to deliver up to the Registrar-General, within such time as the Court may fix, the certificate of title or duplicate registered dealing, as the case may be.

### **137 Failure to comply with order to deliver up certain instruments**

Where the Supreme Court has ordered, under section 136, a person to deliver up to the Registrar-General, a certificate of title or duplicate registered dealing and the certificate of title or duplicate registered dealing, as the case may be, is not delivered up to the Registrar-General within the time fixed by the order, the Registrar-General shall, if the circumstances of the case require it, dispense with its production or take action under the

authority conferred upon the Registrar-General by section 111 (3).

**138 Court may direct cancellation of folios and other actions related to folios**

- (1) A court may, in proceedings for the recovery of any land, estate or interest from the person registered as proprietor of the land, make ancillary orders of the kind set out in subsection (3), if the court is of the opinion that the circumstances of the case require any such order to be made.
- (2) A court may, in proceedings for the possession or production of a certificate of title or in proceedings in which the court makes a determination as to an estate or interest in land, make ancillary orders of the kind set out in subsection (3), if the court is of the opinion that the certificate of title has not been, or is not likely to be, produced by a person for the purposes of the registration of a dealing affecting the land concerned.
- (3) A court may order the Registrar-General to do one or more of the following:
  - (a) cancel or amend a folio of the Register,
  - (b) cancel, amend or make a recording in a folio of the Register,
  - (c) create a new folio of the Register,
  - (c1) create a new edition of a computer folio,
  - (d) issue a new certificate of title.
- (3A) If a court makes an order under subsection (3) (c), the Registrar-General may require a person to lodge with the Registrar-General a plan (being, where the Registrar-General so specifies, a plan of survey) of the relevant land, together with such number of copies of the plan, if any, as the Registrar-General may specify.
- (4) The Registrar-General must give effect to any such order.
- (5) A court that makes an order under this section may order that a person deliver a certificate of title or other instrument to the Registrar-General for the purpose of giving effect to any such order.
- (6) 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, because of compliance by the Registrar-General with an order under this section.
- (7) In this section:

***court*** does not include the Local Court or a tribunal.

**138A Registrar-General may take steps to rectify Register in case of fraud**

- (1) The Registrar-General may, in relation to the settlement of a claim in accordance with

section 135, take any of the steps set out in subsection (2) that are required to rectify the Register (including by registering a person as proprietor of land) if the Registrar-General is satisfied that:

- (a) the person has been deprived of land, or an estate or interest in land, as a result of fraud, and
  - (b) the current registered proprietor acquired the estate or interest in land through fraud.
- (2) The Registrar-General may do one or more of the following:
- (a) cancel or amend a folio of the Register,
  - (b) cancel, amend or make a recording in a folio of the Register,
  - (c) create a new folio of the Register,
  - (d) create a new edition of a computer folio,
  - (e) issue a new certificate of title.
- (3) The Registrar-General may, if he or she considers it appropriate to do so, require the current registered proprietor to deliver up the certificate of title for the purpose of it being cancelled, by notice in writing to the current registered proprietor.
- (4) If the current registered proprietor fails to respond to such a notice within a reasonable time or cannot be found for the giving of such a notice, the Registrar-General may, if the Registrar-General considers it appropriate, dispense with the production of the certificate of title or take action under the authority conferred upon the Registrar-General by section 111 (3).

## **Part 16 Practice and procedure**

### **139 Rules of court and rights of appeal applicable to proceedings under Act**

In the conduct of proceedings under this Act in the Supreme Court or the Land and Environment Court, the same rules of procedure and practice are to apply, and there are to be the same rights of appeal as are in force or exist for the time being in respect of ordinary proceedings in the court in which the proceedings are instituted.

### **140 (Repealed)**

## **Part 17 Criminal provisions**

### **141 Certain fraudulent acts to be deemed indictable offences**

- (1) If any person:
- (a) fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent

procuring of:

- (i) the creation of a folio of the Register,
  - (ii) the issue or delivery of a certificate of title,
  - (iii) a recording in the Register, or
  - (iv) any alteration in any instrument or form issued by the Registrar-General,
- (b) fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar-General, or
- (c) knowingly misleads or deceives any person hereinbefore authorised to demand explanation or information in respect to any land or the title to any land which is the subject of any application to bring the same under the provisions of this Act, or in respect to which any dealing is proposed to be registered or recorded,

he or she shall be guilty of an indictable offence, and shall incur a penalty not exceeding 10 penalty units, or may, at the discretion of the Court before whom the case may be tried, be imprisoned for any period not exceeding three years.

- (2) Any folio of the Register, certificate of title, recording or alteration the creation of which, issue or delivery of which or the making of which, as the case may be, has been procured by fraud shall be void as between all parties or privies to the fraud.

#### **142 Conviction not to affect civil remedy**

No proceeding or conviction of an indictable offence against this Act shall affect any remedy which any person aggrieved or injured by the offence may be entitled to at law or in equity against the person who has committed the offence or against the estate of the person who has committed the offence.

#### **143 Prosecutions and recovery of penalties**

Except in any case herein otherwise expressly provided, all offences against the provisions of this Act may be prosecuted, and all penalties or sums of money imposed or declared to be due or owing by or under the provisions of the same may be sued for and recovered in the name of the Attorney or Solicitor General before any Court having jurisdiction for punishment of offences of the like nature or for the recovery of penalties or sums of money of the like amount.

### **Part 18 Regulations**

#### **144 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all such matters as are by this Act required or permitted to be prescribed or as may be

necessary or convenient to be prescribed for the administration of this Act and, without prejudice to the generality of the foregoing, may make regulations for or with respect to:

(a) the fees, charges and expenses recoverable by the Registrar-General in the administration of this Act, and

(b) (Repealed)

(c) the refund or waiver of any such fees, charges or expenses, and

(d) the circumstances in which a plan lodged for registration shall be, or may be required by the Registrar-General to be, a plan of survey.

(2) In subsection (1), a reference to “the administration of this Act” includes a reference to the administration of any other Act in so far as that other Act affects the functions of the Registrar-General with respect to land under the provisions of this Act, whether or not that other Act makes provision for matters to be prescribed thereunder with respect to that land.

(3) (Repealed)

#### **144A (Repealed)**

### **Part 19 Miscellaneous**

#### **145 Savings and transitional provisions**

Schedule 3 has effect.

#### **146 Exclusion of personal liability**

An act or omission by the Registrar-General, or by any person acting under the direction, or with the authority, of the Registrar-General, does not subject the Registrar-General or any person so acting personally to any action, liability, claim or demand if the act or omission was done or omitted to be done in good faith in the administration or execution of this Act.

### **Schedule 1**

(Section 2 (1))

<b>Reference to Act</b>	<b>Title or short title</b>	<b>Extent of repeal</b>
26 Vic No 9	Real Property Act.	The whole.
36 Vic No 7	<i>Real Property Act Amendment Act of 1873.</i>	The whole.
41 Vic No 18	<i>Real Property Act Further Amendment Act of 1877.</i>	The whole.

56 Vic No 16	<i>Conveyancer's Enabling Act of 1893.</i>	The whole.
57 Vic No 7	<i>Real Property Act Further Amendment Act of 1893.</i>	The whole.
No 47, 1897	<i>Real Property (Crown Lands) Act 1897.</i>	Sections 2 and 3.

## Schedule 2

(Section 13 (2))

### Closer Settlement Acts

*Western Lands Act 1901*

*Irrigation Act 1912*

*Returned Soldiers Settlement Act 1916*

*Prickly-pear Act 1924*

*Fisheries Management Act 1994*

*Glen Davis Act 1939*

*Land Acquisition (Charitable Institutions) Act 1946*

*Aboriginal Land Rights Act 1983*

*Zoological Parks Board Act 1973*

*Chipping Norton Lake Authority Act 1977*

*Coal Ownership (Restitution) Act 1990*

*Roads Act 1993*

## Schedule 3 Savings and transitional provisions

(Section 145)

### Part 1 General

#### 1 Regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Real Property (Torrens Assurance Fund) Amendment Act 1992*

*Real Property Amendment Act 1996*

*Real Property Amendment Act 1998*

*Real Property and Conveyancing Legislation Amendment Act 1999*

*Real Property Amendment (Compensation) Act 2000*

*Real Property and Conveyancing Legislation Amendment Act 2009*

*Real Property Amendment (Land Transactions) Act 2009*

*State Revenue Legislation Amendment Act 2010*, to the extent that it amends this

Act and the regulation under this Act

*Real Property Amendment (Torrens Assurance Levy Repeal) Act 2011*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 1A Real Property (Amendment) Act 1970**

### **1A Construction of references to former section 46A**

A reference to section 46A in any other Act or in any instrument, whether or not made under an Act, is taken to be:

- (a) in relation to anything done before the commencement of the *Real Property (Amendment) Act 1970*, a reference to section 46A as in force when the thing was done, or
- (b) in relation to anything done after that commencement but before the commencement of Schedule 1 [6] to the *Property Legislation Amendment Act 2005*, a reference to section 31A (Creation of folio for resumed land).

## **Part 2 Real Property (Torrens Assurance Fund) Amendment Act 1992**

### **2 Payment of existing claims**

On the commencement of the *Real Property (Torrens Assurance Fund) Amendment Act 1992*, any liability of the Consolidated Fund under Part 14 becomes a liability of the Torrens Assurance Fund established under section 133A.

### **3 Settlement of existing claims**

Section 129, as substituted by the *Real Property (Torrens Assurance Fund) Amendment Act 1992*, extends to a claim that arose before the commencement of that Act.



## Part 3 Real Property Amendment Act 1996

### 4 Cancellation of caution on qualified folio created on possessory title

Section 28ME, as inserted by the *Real Property Amendment Act 1996*, applies in respect of the cancellation of a caution to which that section applies whether the qualified folio on which the caution is recorded was created before or after the commencement of that section.

### 5 Compensation payable in respect of certain caveats

Section 74P, as amended by the *Real Property Amendment Act 1996*, does not apply in respect of a caveat lodged before the commencement of that amendment.

## Part 4 Real Property and Conveyancing Legislation Amendment Act 1999

### 6 Definition

In this Part:

**amending Act** means the *Real Property and Conveyancing Legislation Amendment Act 1999*.

### 7 Lapsing of existing caveats

Section 74LA, as inserted by the amending Act, applies to orders made by the Supreme Court before the commencement of that section and in force immediately before that commencement in the same way as it applies to orders made after that commencement.

### 8 Severance of joint tenancies

Section 97, as amended by the amending Act, does not apply to or in respect of a dealing lodged, but not registered or recorded, immediately before the commencement of this clause.

### 9 Objections to boundary determinations

- (1) Section 135J, as in force immediately before the commencement of this clause, continues to apply in respect of a request made under that section before that commencement.
- (2) The Land and Environment Court has jurisdiction to deal with a referral arising out of a request referred to in subclause (1) as if the *Land and Environment Court Act 1979* was not amended by the amending Act.

## **Part 5 Real Property Amendment (Compensation) Act 2000**

### **10 Definitions**

In this Part, **amending Act** means the *Real Property Amendment (Compensation) Act 2000*.

### **11 Current proceedings**

Part 14 of this Act, as in force immediately before the commencement of Schedule 1 [12] to the amending Act, continues to apply to and in respect of proceedings commenced before that commencement as if the amending Act had not been enacted.

### **12 Current administrative claims**

Section 129 of this Act, as in force immediately before the commencement of Schedule 1 [12] to the amending Act, continues to apply to and in respect of a claim referred to in subsection (1) of that section, being a claim made before that commencement, as if the amending Act had not been enacted.

### **13 Future proceedings commenced in relation to existing matters**

Parts 13 and 14 of this Act, as substituted by Schedule 1 [12] to the amending Act, apply to and in respect of any matter in respect of which proceedings are commenced on or after the commencement of those Parts, including any matter that occurred before that commencement.

### **14 Torrens Assurance Fund**

The Torrens Assurance Fund referred to in section 134 of this Act (as inserted by Schedule 1 [12] to the amending Act) is a continuation of the Torrens Assurance Fund referred to in section 133A of this Act (as in force immediately before the repeal of that section by Schedule 1 [12] to the amending Act).

### **15 Exclusion of personal liability**

Section 146 (as inserted by Schedule 1 [13] to the amending Act) extends to acts and omissions that occurred before the commencement of that section.

## **Part 6 Land Titles Legislation Amendment Act 2001**

### **16 Definition**

In this Part, **amending Act** means the *Land Titles Legislation Amendment Act 2001*.

### **17 Possessory title to part of residue lot**

The provisions of Part 6A, as amended by the amending Act, apply in respect of possession of land before, as well as after, the date on which the amendments took effect.

## **18 Variation of leases**

The amendments made by the amending Act to section 55A apply only in respect of applications for registration of a variation that are made under that section after the date on which the amendments took effect.

## **Part 7 Statute Law (Miscellaneous Provisions) Act (No 2) 2002**

### **19 Lapsing of caveats**

Sections 74I, 74J and 74JA, as in force immediately before the commencement of Schedule 1.25 to the *Statute Law (Miscellaneous Provisions) Act (No 2) 2002*, continue to apply to and in respect of applications made under those sections before that commencement as if that Act had not been enacted.

## **Part 8 Real Property and Conveyancing Legislation Amendment Act 2009**

### **20 Definition**

In this Part, **amending Act** means the *Real Property and Conveyancing Legislation Amendment Act 2009*.

### **21 Confirmation of identity of mortgagor**

Section 56C, as inserted by the amending Act, does not apply in respect of any mortgages accepted for lodgment before the insertion of that section.

### **22 Limits on compensation payable from Torrens Assurance Fund**

Sections 129A and 129B, as inserted by the amending Act, do not apply in respect of claims lodged before the insertion of those sections but extend to claims lodged after such insertion regardless of whether the loss or damage occurred before or after such insertion.

### **23 Time limits for commencement of proceedings for the recovery of compensation**

Section 132 (2), (2A) and (3), as substituted, inserted and amended, respectively, by the amending Act, do not apply in relation to a matter if administrative proceedings were determined in that matter before the substitution, insertion or amendment.

## **Part 9 Real Property Amendment (Land Transactions) Act 2009**

### **24 Application of amendments**

(1) Sections 39 (1C) and 117 (1A) or (1B), as inserted by the *Real Property Amendment (Land Transactions) Act 2009*, apply in respect of a dealing only if the relevant date for that dealing occurs after the commencement of the relevant subsection.

(2) In this clause, **relevant date** means:

- (a) if a contract has resulted in the execution of the dealing—the date of the contract, or
- (b) in any other case—the date of the acquisition of the land or other event that gave rise to the dealing concerned.

## **Part 10 Real Property Amendment (Torrens Assurance Levy Repeal) Act 2011**

### **25 Definitions**

In this Part:

**amending Act** means the *Real Property Amendment (Torrens Assurance Levy Repeal) Act 2011*.

**Torrens assurance levy** means a levy paid under:

- (a) section 134A of this Act (as in force before its repeal by the amending Act), or
- (b) clause 26 of this Schedule.

### **26 Torrens assurance levy**

Despite the repeal of clauses 12A and 18A and Part 2 of Schedule 1 to the *Real Property Regulation 2008* by Schedule 2 to the amending Act, a levy is payable as if those provisions had not been repealed in respect of any dealing that is:

- (a) a transfer executed to give effect to a contract for the sale of land entered into on or after 1 July 2010 but before 1 July 2011, and
- (b) lodged with the Registrar-General on or after 1 July 2011.

### **27 Torrens Assurance Fund**

- (1) The Minister (after consultation with the Treasurer) may direct that all or a proportion of amounts that have been paid to the Registrar-General as Torrens assurance levies are to be paid into the Torrens Assurance Fund.
- (2) The Minister may make such a direction at any time after the levies are paid into the Consolidated Fund, in which case the amounts are to be paid into the Torrens Assurance Fund without further appropriation.

## **Second-Twentieth Schedules (Repealed)**