

# Land and Property Information NSW (Authorised Transaction) Act 2016 No 46

[2016-46]



New South Wales

## Status Information

### Currency of version

Current version for 1 July 2021 to date (accessed 15 May 2024 at 7:30)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes (em-dashes). Text of the legislation is not affected.

This version has been updated.

### Responsible Minister

- Treasurer

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

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# Land and Property Information NSW (Authorised Transaction) Act 2016 No 46



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# Land and Property Information NSW (Authorised Transaction) Act 2016 No 46



New South Wales

An Act to provide for the transfer of the assets and staff of the Titling and Registry Services Division of Land and Property Information NSW and to provide for a concession for the operation of titling and registry services by the private sector; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Land and Property Information NSW (Authorised Transaction) Act 2016*.

### 2 Commencement

- (1) This Act commences on the date of assent to this Act except as provided by this section.
- (2) Schedule 4 (Amendment of Acts) commences on a day or days to be appointed by proclamation.

### 3 Interpretation—key definitions

#### Note—

Schedule 1 contains other interpretative provisions. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

In this Act—

**authorised concession**—see section 4.

**authorised operator** means a private sector entity appointed as the authorised operator by the authorised concession arrangements.

**authorised transaction**—see section 4.

**titling and registry assets** means assets, rights and liabilities used, accrued or incurred in the course of or otherwise in connection with the exercise of titling and registry functions.

**titling and registry functions** means functions of the Registrar-General that are exercised in the course of or in connection with the administration or execution of the [Real Property Act 1900](#), the [Conveyancing Act 1919](#) or any other Act.

**titling and registry services** means services provided in the exercise of titling and registry functions.

## Part 2 The authorised transaction

### 4 Authorisation for asset transfer, concession and re-vesting

- (1) This Act authorises the following (collectively referred to in this Act as the **authorised transaction**)—
- (a) the transfer, by the Treasurer, of titling and registry assets of a public sector agency to the private sector or any public sector agency (referred to in this Act as an **authorised asset transfer**),
  - (b) arrangements, established by the portfolio Minister with the approval of the Treasurer, to authorise and otherwise facilitate the provision of titling and registry services by a private sector entity (or a related entity of a private sector entity) to which titling and registry assets are transferred under this Act (referred to in this Act as the **authorised concession**),
  - (c) the transfer, by the portfolio Minister, of titling and registry assets of the authorised operator to a private sector entity or public sector agency on termination of the authorised concession and as provided by the authorised concession arrangements (referred to in this Act as **re-vesting on termination**).
- (2) The authorised concession is limited to a term of 35 years and cannot be renewed or extended beyond that term.

**Note—**

Section 18 (Further authorised concession on termination of authorised concession) provides for the establishment of a new authorised concession with a term of up to 35 years if the original authorised concession is terminated before its term expires.

- (3) Re-vesting on termination comprising the transfer of titling and registry assets of the authorised operator to a private sector entity (but not to a public sector agency) requires the approval of the Treasurer.

### 5 Payment and application of proceeds of transaction

- (1) The proceeds of the authorised transaction that are payable to the State (**the transaction proceeds**) are to be paid into the Restart NSW Fund (**the Restart Fund**) established under the [Restart NSW Fund Act 2011](#).
- (2) The following deductions are authorised to be made from the transaction proceeds—

- (a) deduction of such amounts as the Treasurer approves to repay debt and satisfy other liabilities of a public sector agency in respect of titling and registry assets transferred for the purposes of the authorised transaction,
  - (b) deduction of such amounts as the Treasurer approves to reimburse public sector agencies for payments made by them in respect of any tax, duty, fee or charge imposed by any Act or law of the State or any other jurisdiction in connection with a transaction arrangement,
  - (c) deduction of such amounts as the Treasurer approves to satisfy any liability of a public sector agency arising under or in connection with a transaction arrangement,
  - (d) deduction of such amounts as the Treasurer approves to meet expenses reasonably incurred by public sector agencies for the purposes of the authorised transaction.
- (3) The transaction proceeds do not include any amount certified by the Treasurer as paid or payable to a public sector agency as a tax, duty, fee or charge imposed by any Act or law of the State in connection with a transaction arrangement.
- (4) The deductions authorised to be made from the transaction proceeds may be made before payment of the transaction proceeds into the Restart Fund, or may be made by payment from the Restart Fund.
- (5) The requirements of this section do not affect the validity of a transaction arrangement.

## **Part 3 General functions for the purposes of the authorised transaction**

### **6 Manner of effecting authorised transaction**

- (1) The authorised transaction is to be effected as directed by the Treasurer and can be effected in any manner considered appropriate by the Treasurer.
- (2) There are no limitations as to the nature of the transactions or arrangements that can be entered into or used for the purposes of the authorised transaction.
- (3) The provisions of this Act for the establishment of various kinds of transaction company do not limit the nature of the entities or arrangements that can be used for the purposes of the authorised transaction.

### **7 Functions of Treasurer and portfolio Minister**

- (1) The Treasurer has overall responsibility for the authorised transaction and has and may exercise all such functions as are necessary or convenient for the purposes of the

authorised transaction. The Treasurer's functions do not limit the functions of the portfolio Minister under this Act.

- (2) The portfolio Minister has and may exercise all such functions as are necessary or convenient for the purposes of aspects of the authorised transaction comprising the authorised concession and re-vesting on termination.
- (3) The functions of the portfolio Minister under this Act are subject to any requirement of this Act for the approval of the Treasurer.
- (4) The functions conferred on the Treasurer or portfolio Minister by or under any other provision of this Act do not limit their functions under this section.

## **8 Functions of Registrar-General**

- (1) The Registrar-General has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction.
- (2) The functions conferred by this section are in addition to any other functions that the Registrar-General has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Treasurer or the portfolio Minister may give directions to the Registrar-General for the purposes of the authorised transaction (including directions as to the exercise of functions of the Registrar-General under this Act) and any such directions must be complied with by the Registrar-General.
- (4) The Treasurer or the portfolio Minister may act for or on behalf of the Registrar-General in the exercise of any of the Registrar-General's functions for the purposes of the authorised transaction (including functions conferred by this Act).
- (5) Anything done or omitted to be done by the Registrar-General in compliance or purported compliance with a direction given under this Act does not subject the Registrar-General personally to any action, liability, claim or demand.

## **9 Establishment of transaction companies**

- (1) The Treasurer may for the purposes of the authorised transaction establish, or direct the establishment of, companies as transaction companies in any of the following ways—
  - (a) the formation or acquisition by or on behalf of the State of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State,
  - (b) the formation or acquisition of a company as a wholly owned subsidiary company of a transaction company.



- (2) A transaction company that is a public sector agency may be converted from one kind of company to any other kind of company.
- (3) Except by express agreement with the Treasurer—
  - (a) a transaction company is not and does not represent the State, and
  - (b) the debts, liabilities and obligations of a transaction company are not guaranteed by the State.
- (4) The Treasurer may act for or on behalf of the State or a transaction company that is a public sector agency in connection with the rights, privileges and benefits, and the duties, liabilities and obligations, of the State or a transaction company as the holder of shares or other securities in or issued by a transaction company.
- (5) Shares and other securities in or issued by a transaction company that is a public sector agency may be issued or transferred in accordance with the directions of the Treasurer. The Treasurer may, on behalf of the State or a transaction company that is a public sector agency, enter into and carry out transaction arrangements for the issue or transfer of shares and other securities in or issued by a transaction company.

#### **10 Functions of transaction companies**

- (1) A transaction company has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction.
- (2) The functions conferred by this section are in addition to any other functions that a transaction company has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Treasurer may act for or on behalf of a transaction company in the exercise of any of its functions for the purposes of the authorised transaction but only while the transaction company is a public sector agency.

#### **11 Direction and control of transaction companies**

- (1) A transaction company is subject to the direction and control of the Treasurer in the exercise of any of its functions for the purposes of the authorised transaction but only while the transaction company is a public sector agency.
- (2) The Treasurer may give directions for the purposes of the authorised transaction to a transaction company, and to the directors and other officers of a transaction company. Any such directions must be complied with by the transaction company or the directors or other officers concerned.
- (3) Directions to a transaction company (or its directors and other officers) under this section can only be given and are only required to be complied with while the

transaction company is a public sector agency.

- (4) The power to give directions under this section extends to directions with respect to the way in which a transaction company is to conduct its business and other affairs.
- (5) Anything done or omitted to be done by a director or other officer of a transaction company in compliance or purported compliance with a direction given by the Treasurer under this Act does not subject the director or officer personally to any action, liability, claim or demand.

## **Part 4 Arrangements for transfer of assets and the authorised concession**

### **12 Vesting orders**

- (1) Assets, rights and liabilities comprising titling and registry assets may be vested in a specified person by order in writing (a **vesting order**) made—
  - (a) by the Treasurer for the purposes of an authorised asset transfer, or
  - (b) by the portfolio Minister for the purposes of re-vesting on termination.

#### **Note—**

Schedule 2 provides for vesting orders.

- (2) A vesting order made by the portfolio Minister for the purposes of re-vesting on termination to transfer titling and registry assets to a private sector entity (but not to a public sector agency) requires the approval of the Treasurer.
- (3) A vesting order may vary the terms and conditions of any instrument or contract that relates to assets, rights or liabilities to the extent that is necessary or convenient for the purposes of the authorised transaction.

### **13 Authorised concession arrangements**

- (1) The authorised concession arrangements are to include provision for the following (without limiting the matters for which the authorised concession arrangements can make provision)—
  - (a) the appointment of a private sector entity as **authorised operator**,
  - (b) the grant to the authorised operator of a concession that authorises the authorised operator to maintain the Register and provide specified titling and registry services on the terms and conditions specified in the authorised concession arrangements,
  - (c) the competition and data protection measures required by this section,

- (d) the standards in accordance with which the authorised operator is required to provide titling and registry services,
  - (e) the delegation to the authorised operator of such titling and registry functions as may be necessary or convenient for the purposes of the authorised concession,
  - (f) the functions of the portfolio Minister and the Registrar-General for the purposes of the authorised concession.
- (2) The competition and data protection measures required by this section are measures that the portfolio Minister is satisfied will—
- (a) ensure that electronic forms of the Register are stored on dedicated physical infrastructure located within Australia, and
  - (b) require the implementation and maintenance by the authorised operator of appropriate data security and fraud detection practices, and
  - (c) protect current competition and opportunities for future competition in the supply of services downstream from titling and registry services by ensuring fair, transparent and predictable dealing by the authorised operator with customers and service providers, and
  - (d) ensure that any right, title or interest of the State in information comprised in the Register continues to be held by the State and is not acquired by the authorised operator (without preventing arrangements for the use of information by the authorised operator for the purposes of the authorised concession).
- (3) The authorised concession arrangements can include transaction arrangements entered into by the Registrar-General at the direction of the portfolio Minister.
- (4) The authorised concession arrangements require the approval of the Treasurer before the authorised concession is established but any variation to those arrangements (including additional arrangements) after commencement of the authorised concession does not require the approval of the Treasurer.

#### **14 Delegation of titling and registry functions**

- (1) Titling and registry functions of the Registrar-General can be delegated to the authorised operator by the portfolio Minister for the purposes of the authorised concession.
- (2) Section 49 (Delegation of functions) of the [Interpretation Act 1987](#) applies to a delegation under this section subject to the following—
  - (a) the delegation can provide that it cannot be wholly or partly revoked either generally or except in specified circumstances,

- (b) the delegation can provide that a delegated function can be exercised only by the delegate and not by the Registrar-General, either generally or in specified circumstances.
- (3) Without limiting the conditions to which a delegation may be subject, a delegation under this section may be subject to a condition that requires a delegated function to be exercised in accordance with directions given by the Registrar-General from time to time.
- (4) A delegation under this section has effect as a delegation by the Registrar-General.
- (5) The authorised operator may exercise a delegated function in the name of the Registrar-General or in its own name.
- (6) This section is not limited by section 4A (Registrar-General—delegation and seal of office) of the [Real Property Act 1900](#).

## **15 Liability of authorised operator for compensation**

- (1) The authorised operator has no liability for loss or damage referred to in section 120 (Proceedings for compensation) of the [Real Property Act 1900](#) that arises from any act or omission of the authorised operator (or any person acting under the direction or control of the authorised operator) in the course of the exercise or purported exercise of titling and registry functions.
- (2) A liability referred to in subsection (1) that the authorised operator would have were it not for the operation of that subsection attaches instead to the Registrar-General.
- (3) This section does not apply to a liability to the State that arises under the authorised concession arrangements.

## **16 Penalty provision in authorised concession arrangements**

- (1) The authorised concession arrangements may include provision (a **penalty provision**) that requires the authorised operator to pay a penalty for a failure by the authorised operator to comply with an obligation under the authorised concession arrangements.
- (2) A penalty for which a penalty provision provides may be a specified amount, an amount calculated or determined in a specified manner, or an amount determined by the Registrar-General and not exceeding a specified maximum amount or a maximum amount calculated or determined in a specified manner.
- (3) A penalty provision is lawful and enforceable despite imposing a penalty.
- (4) A penalty that the authorised operator is liable to pay under a penalty provision is recoverable as a debt due to the State and is to be paid into a fund called the Rectification Retention Account that is to be established in the Special Deposits

Account and administered by the portfolio Minister.

- (5) There is payable from the Rectification Retention Account—
- (a) such amounts as the portfolio Minister may direct for the purpose of rectifying any operational, systems or process issues that arise in connection with the provision of titling and registry services, and
  - (b) such amounts as the portfolio Minister may direct for any purpose in connection with the provision of titling and registry services that is prescribed by the regulations, and
  - (c) such amounts as the Treasurer may direct for payment into the Consolidated Fund.
- (6) The portfolio Minister may invest money in the Rectification Retention Account—
- (a) if the portfolio Minister is a GSF agency for the purposes of Part 6 of the [Government Sector Finance Act 2018](#)—in any way that the portfolio Minister is permitted to invest money under that Part, or
  - (b) if the portfolio Minister is not a GSF agency for the purposes of Part 6 of the [Government Sector Finance Act 2018](#)—in any way approved by the Treasurer.

## 17 Grant of relevant authorisations

- (1) The portfolio Minister may by order in writing given to the relevant administering agency direct the grant of a specified relevant authorisation to a person who becomes or who it is proposed will become the authorised operator.
- (2) Such a direction (a **grant direction**) operates to grant the specified relevant authorisation on such terms and conditions and subject to such endorsements as may be specified in the direction, and so operates—
- (a) without the need for any action by the relevant administering agency, and
  - (b) without the need for the making or determination of any application for the relevant authorisation, and
  - (c) despite any requirement of or restriction imposed by a relevant law in relation to the grant of a relevant authorisation.
- (3) A grant direction may only direct the grant of a relevant authorisation that—
- (a) operates to transfer or replace a relevant authorisation that is currently in force, and
  - (b) is subject to terms, conditions or endorsements that are the same (or to substantially the same effect) as those to which that relevant authorisation is subject.

- (4) A grant direction may direct the grant of more than one relevant authorisation to transfer or replace an existing relevant authorisation.
- (5) The portfolio Minister is to consult with the relevant administering agency before giving a grant direction for a relevant authorisation.
- (6) The portfolio Minister may direct the relevant administering agency to give effect to a grant direction by formally granting, and issuing the appropriate documentation for, the relevant authorisation concerned. The relevant administering agency must comply with the portfolio Minister's direction within the period specified in the direction.
- (7) Anything done by a public sector agency in compliance with a condition or endorsement of a relevant authorisation in relation to titling and registry assets is taken to have been done by the authorised operator for the purposes of any corresponding condition or endorsement of a relevant authorisation granted to the authorised operator pursuant to this section.

- (8) In this section—

**grant** includes issue and transfer.

**relevant administering agency**, in relation to a relevant authorisation, means the public sector agency or public official having the function of granting the relevant authorisation.

**relevant authorisation** means a licence, permit, consent, entitlement, accreditation, exemption or other authorisation held by a public sector agency.

## **18 Further authorised concession on termination of authorised concession**

- (1) If the original authorised concession established under this Act is terminated before its term expires, this Act authorises the establishment of another authorised concession (a **re-tender concession**) and for that purpose this Act applies as if the re-tender concession were the original authorised concession.
- (2) Because this Act applies as if the re-tender concession were the original authorised concession, an authorised asset transfer and re-vesting on termination can occur in connection with the re-tender concession and not just the original authorised concession.
- (3) A re-tender concession cannot be granted so as to result in the authorised operator under the re-tender concession (or any related entity) being the same entity as the authorised operator under the original authorised concession.
- (4) As with the original authorised concession, a re-tender concession can be for a term of up to 35 years and is not limited to the remaining term of the original authorised concession.

- (5) If a re-tender concession is established, this section then applies to the re-tender concession as if it were the original authorised concession established under this Act (so as to authorise a further re-tender concession if the re-tender concession that is now treated as the original authorised concession is itself terminated). Accordingly, a re-tender concession with a term of up to 35 years can be established whenever the current authorised concession is terminated.
- (6) This Act does not authorise more than one authorised concession except as provided by this section.

## **Part 5 Arrangements for transfer of staff**

### **19 Relevant employees**

In this Act, **relevant employee** means a person employed in a public sector agency and engaged in the exercise of titling and registry functions, and includes a person who was so employed and engaged immediately before the person's employment was transferred under this Part to the employment of another public sector agency.

### **20 Transfers of staff within public sector**

- (1) The Treasurer may, for the purposes of the authorised transaction, by order in writing transfer the employment of a relevant employee to the employment of another public sector agency.
- (2) A transfer of employment under this section does not require the consent of the person transferred.
- (3) An employee whose employment is transferred under this section is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the employee had the employee remained a relevant employee.
- (4) The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of a public sector agency in connection with the operation of this section.

### **21 Transfers of staff to private sector employment**

- (1) The Treasurer may, for the purposes of the authorised transaction, by order in writing transfer the employment of a relevant employee (a **transferred employee**) to the employment of a private sector entity (the **new employer**).
- (2) A transfer of employment under this section does not require the consent of the relevant employee transferred.
- (3) The terms and conditions of employment of a transferred employee with the new employer are—

- (a) except in the case of a contract employee—the terms and conditions that applied to the employee under a State industrial instrument as a relevant employee immediately before the transfer of employment, or
  - (b) in the case of a contract employee—the terms and conditions determined by the Treasurer and specified in the order that transfers the employee’s employment.
- (4) Those terms and conditions cannot be varied during any employment guarantee period for the transferred employee except by agreement entered into by or on behalf of the transferred employee or in accordance with the [Fair Work Act 2009](#) of the Commonwealth.
- (5) The employment of a transferred employee with the new employer cannot be terminated by the new employer during any employment guarantee period for the transferred employee, except—
  - (a) for serious misconduct, or
  - (b) pursuant to the proper application of reasonable disciplinary procedures, or
  - (c) by agreement with the employee.
- (6) There is an **employment guarantee period** for transferred employees who are permanent or temporary employees, as follows—
  - (a) for permanent employees the employment guarantee period is 4 years after the transfer date,
  - (b) for temporary employees the employment guarantee period is the remainder of the employee’s current term of employment (as specified in the arrangements under which the employee was engaged as a temporary employee) immediately before the transfer date or the period of 4 years after the transfer date, whichever period ends first.

**Note—**

There is no employment guarantee period for contract employees or casual employees. The employment of a transferred employee who is a contract employee remains governed by the contract of employment.

- (7) In this section—

**casual employee** means an employee whose employment is in a category of employment that is described in or classified under a State industrial instrument as casual employment or who is otherwise engaged as a casual employee.

**contract employee** means an employee whose terms and conditions of employment are provided by an individual contract and not by a State industrial instrument.

**permanent employee** means an employee whose employment is of indefinite



duration and who is not a casual employee, temporary employee or contract employee.

**temporary employee** means an employee (other than a casual employee or contract employee) whose employment is in a category of employment that is described in or classified under a State industrial instrument as temporary employment or whose employment is, under the terms of his or her employment, for a limited period.

**transfer date** means the date on which the employment of a transferred employee is transferred under this section to the new employer.

## 22 Continuity of entitlements of transferred employees

- (1) On the transfer of an employee's employment from one employer (the **current employer**) to another employer (the **new employer**) by order under this Part or by a subsequent intra-business transfer, the following provisions have effect—
  - (a) the employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee of the current employer) immediately before the transfer of employment and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law,
  - (b) the new employer is taken to be an employer for the purposes of any superannuation scheme in respect of which the employee continues as a contributor, member or employee pursuant to an entitlement under this section,
  - (c) the continuity of the employee's employment is taken not to have been broken by the transfer of employment, and service of the employee with the current employer (including service deemed to be service with the current employer) that is continuous service up to the time of transfer is deemed for all purposes to be service with the new employer,
  - (d) the employee retains any rights to sick leave, annual leave or extended or long service leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee).
- (2) A **subsequent intra-business transfer** is a transfer of employment of a former relevant employee from one employer to another that results in the transferred employee remaining employed in or in connection with the business of providing titling and registry services. A **former relevant employee** is an employee who was a relevant employee before the employee's initial transfer by order under this Part to

employment by a private sector entity.

- (3) The Treasurer may in connection with the operation of this Part give a certificate in writing as to the extent of the accrued rights to annual leave, extended or long service leave or sick leave that are retained by the employee under this Part, and such a certificate is evidence of the matters certified.
- (4) Nothing in the [Long Service Leave Act 1955](#) prevents payment in connection with the transfer under this Act of the employment of an employee to the employment of a private sector entity of the monetary value of long service leave in lieu of an entitlement to that leave accrued as a relevant employee before the transfer of the employee's employment.
- (5) An employee is not entitled in respect of the same period of service to claim a benefit under this Act and another law or instrument.

## **23 Operation of other laws and entitlements**

The following provisions apply in relation to the transfer of a person's employment under this Part—

- (a) the transfer has effect despite any other law, contract or instrument under a law,
- (b) the transfer does not constitute a retrenchment, redundancy or termination of employment at the initiative of the Crown or any other public sector agency,
- (c) the person transferred is not entitled to any payment or other benefit by reason only of having ceased to be an employee of a public sector agency as a result of the transfer,
- (d) a public sector agency is not required to make any payment to the transferred person in relation to the transferred person's accrued rights in respect of annual leave, sick leave or extended or long service leave.

## **24 Operation of Commonwealth law**

A provision of this Act (including a provision to the extent that it imposes or continues a term or condition of employment) has no effect to the extent of any inconsistency with any provision of the [Fair Work Act 2009](#) of the Commonwealth or of any instrument under that Act.

# **Part 6 Emergency step-in powers**

## **25 Definitions**

In this Part—

**Administration Order** means an Administration Order under this Part.

**Administrator** means the Administrator appointed under this Part for the purposes of an Administration Order.

**land titles business** of the authorised operator means the business of the authorised operator that provides titling and registry services.

**land titles operations** means any activity carried on in connection with the operation, or control of the operation, of the land titles business of the authorised operator.

## **26 Power to issue Administration Order**

The portfolio Minister may issue an Administration Order for the land titles business of the authorised operator if the portfolio Minister thinks it is reasonably necessary to do so to avert a threat or likely threat to the integrity of the Register.

## **27 What Administration Order authorises**

- (1) An Administration Order authorises the portfolio Minister to take control, in accordance with the terms of the Order, of the operation of the land titles business of the authorised operator for the purpose of ensuring the integrity of the Register.
- (2) The portfolio Minister is to appoint an Administrator on terms and conditions determined by the portfolio Minister to operate the land titles business of the authorised operator in accordance with the terms and conditions of the Administrator's appointment and the directions of the portfolio Minister.
- (3) The portfolio Minister may revoke the appointment of the Administrator at any time.

## **28 Powers of Administrator**

- (1) The Administrator has power to do all things that are necessary or convenient for the exercise of the Administrator's functions under this Part.
- (2) Without limitation, the Administrator may enter and remain on any land or premises where land titles operations are carried on.
- (3) A relevant person must provide all reasonable assistance to the Administrator for the purpose of facilitating the exercise of the functions of the Administrator.

Maximum penalty—7,500 penalty units (in the case of a corporation) and 500 penalty units (in any other case).

- (4) A person must not hinder or obstruct the Administrator in the exercise of the Administrator's functions under this Part.

Maximum penalty—10,000 penalty units (in the case of a corporation) and 500 penalty units (in any other case).

- (5) In this section—

**relevant person** means a person who is an occupier of land or premises where land titles operations are carried on or who in their capacity as an officer or employee of the authorised operator has functions in connection with land titles operations.

## **29 Obligations of authorised operator**

- (1) While an Administration Order is in force, the authorised operator must co-operate with the portfolio Minister and the Administrator to facilitate the exercise of functions under the Order.
- (2) In particular, the authorised operator must—
  - (a) provide all reasonable assistance to the portfolio Minister and Administrator to facilitate the carrying on of land titles operations under the Order, and
  - (b) comply with all reasonable directions of the portfolio Minister or Administrator to facilitate the carrying on of land titles operations under the Order, and
  - (c) facilitate access by the portfolio Minister and Administrator to any land or premises where land titles operations are carried on, and
  - (d) provide any information requested by the portfolio Minister or Administrator and that is reasonably required to facilitate the carrying on of land titles operations under the Order.

Maximum penalty—5,000 penalty units.

## **30 Costs of administration**

- (1) Costs reasonably incurred by or on behalf of the portfolio Minister or the Administrator in the exercise of functions under an Administration Order are payable by the authorised operator unless the threat or likely threat in connection with which the Order was made is not the result of any failure by the authorised operator to comply with the obligations of the authorised operator under the authorised concession arrangements.
- (2) Costs payable by the authorised operator are recoverable by the portfolio Minister as a debt due to the Crown and may also be recovered by being deducted by the Administrator from revenues from land titles operations.
- (3) Revenues from land titles operations conducted by the Administrator are (after deduction of any amount authorised by this section) payable to the person who would be entitled to the revenues arising from operation by the authorised operator.
- (4) A certificate of the portfolio Minister as to the amount of the costs recoverable from the authorised operator under this section is evidence of the matters certified.

### 31 Liability of Administrator and others

A matter or thing done or omitted to be done by the Administrator or a person acting under the direction of the Administrator does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Part, subject the Administrator or a person so acting personally to any action, liability, claim or demand.

### 32 Procedure for Administration Order

- (1) An Administration Order is to be issued in writing and the portfolio Minister is to notify the authorised operator of the issuing of the Order.
- (2) An Administration Order remains in force until it is revoked.
- (3) The portfolio Minister may revoke an Administration Order at any time by notice in writing to the authorised operator.
- (4) This Part can apply to part of the land titles business of the authorised operator and for that purpose an Administration Order can be issued for part of that business.

## Part 7 Operation of other laws

### 33 State taxes

- (1) In this section—

**relevant matter** means any of the following—

- (a) any transaction arrangement,
- (b) a vesting of assets, rights or liabilities by vesting order and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),
- (c) the issue, disposal or purchase of shares or other securities or interest in or issued by an entity for the purposes of the authorised transaction,
- (d) such other matters for the purposes of the authorised transaction as may be prescribed by the regulations.

**State tax** means application, transfer or registration fees, duty under the [Duties Act 1997](#) or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable by a public sector agency in relation to a relevant matter.
- (3) The Treasurer may by order in writing direct that subsection (2) does not apply to a public sector agency either generally or in respect of a particular relevant matter or class of relevant matters.
- (4) State tax is not payable by a person or body (other than a public sector agency) in

relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.

- (5) An order may be made by the Treasurer under this section before or after the liability to pay the State tax concerned accrues.
- (6) The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.

### **34 General relationship of Act with other State legislation**

- (1) None of the provisions of the *Real Property Act 1900* operate to prevent, restrict or otherwise limit the entering into or carrying out of a transaction arrangement or the exercise of a function for the purposes of the authorised transaction.
- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.
- (3) The requirements of any other Act (whether enacted before or after this Act) for the approval by resolution of either or both Houses of Parliament (or by Act) of any act that constitutes any aspect of the authorised transaction is satisfied by the enactment of this Act.

### **35 Displacement of Corporations legislation**

The following provisions of this Act are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally—

- (a) section 4 (Authorisation for asset transfer, concession and re-vesting),
- (b) section 9 (Establishment of transaction companies),
- (c) section 11 (Direction and control of transaction companies),
- (d) Part 6 (Emergency step-in powers).

### **36 Competition authorisation for electronic conveyancing**

- (1) Giving effect to a requirement of the Conveyancing Rules that a conveyancing transaction must be lodged using an Electronic Lodgment Network is conduct that is specifically authorised by this Act for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*.
- (2) Conduct authorised by this section is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*.

(3) In this section—

**giving effect to** a requirement includes—

- (a) complying with any obligation arising in connection with the requirement, and
- (b) exercising or enforcing any right or power arising in connection with the requirement.

**Note—**

Section 51 of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales* provide that anything that is authorised by an Act is to be disregarded in deciding whether a person has contravened Part IV of the *Competition and Consumer Act 2010* and the Competition Code (which relates to restrictive trade practices).

### **37 Government Sector Finance Act 2018**

Part 6 of the *Government Sector Finance Act 2018* does not apply to any transaction arrangement.

### **38 State Records Act**

- (1) The *State Records Act 1998* applies to and in respect of the authorised operator as if the authorised operator were a public office under that Act, but only for the purposes of and in connection with the exercise by the authorised operator of titling and registry functions.
- (2) For the purposes of the application of the *State Records Act 1998* to and in respect of the authorised operator, the exercise by the authorised operator of titling and registry functions is considered to be the exercise of official functions in a public office.
- (3) Any approval or permission in force under the *State Records Act 1998* in connection with the exercise by the Registrar-General of a titling and registry function extends to the exercise of the function by the authorised operator.

### **39 Privacy**

- (1) The authorised operator is deemed to be a public sector agency for the purposes of the *Privacy and Personal Information Protection Act 1998* in relation to the exercise of titling and registry functions.
- (2) The Registrar-General and the authorised operator are each authorised to disclose information to the other for the purposes of the authorised transaction and for the purpose of facilitating the exercise of titling and registry functions by the authorised operator.

### **40 Release of information by Auditor-General**

Section 38 (Secrecy) of the *Government Sector Audit Act 1983* does not apply to or in

respect of a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of the authorised transaction or for the purposes of the audit (before or after the completion of the authorised asset transfer) of records relating to titling and registry assets transferred pursuant to the authorised transaction.

#### **41 Contracts for sale of land**

Section 52A of the [Conveyancing Act 1919](#) does not apply to a contract entered into for the purposes of the authorised transaction.

#### **42 Revenues of authorised operator**

- (1) Money collected, received or held by or on behalf of the authorised operator in connection with the exercise of any titling and registry functions is collected, received or held by the authorised operator on its own account and for its own use and benefit and not for or on behalf of the State.

**Note—**

Accordingly any such money is not required to be paid into the Consolidated Fund under section 39 of the [Constitution Act 1902](#).

- (2) This section does not affect the requirement under section 134 of the [Real Property Act 1900](#) for payment of an amount into the Torrens Assurance Fund from fees paid to the Registrar-General, and fees paid to the authorised operator as delegate of the Registrar-General are subject to that requirement.

#### **43 Protection against breach of contractual and other obligations**

- (1) The following matters and things are protected by this section—
  - (a) the operation of this Act (including any regulation or order under this Act),
  - (b) the transfer of titling and registry assets for the purposes of the authorised transaction,
  - (c) the entering into or performance of obligations under a transaction, agreement or other arrangement for the purposes of the authorised transaction,
  - (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of the authorised transaction,
  - (e) anything else done or omitted to be done under or for the purposes of this Act or the authorised transaction.
- (2) None of the matters or things protected by this section are to be regarded as—
  - (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or



liabilities) or as requiring any act to be done under an instrument, or

(c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or

(d) an event of default under any contract or other instrument, or

(e) giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or

(f) releasing a surety or other obligee wholly or in part from an obligation.

(3) This section does not affect rights and obligations that arise under a transaction, agreement or other arrangement entered into for the purposes of the authorised transaction.

(4) In this section, **instrument** means an instrument (other than an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

#### 44 Compensation not payable

(1) Compensation is not payable by or on behalf of the State—

(a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or

(b) because of any statement or conduct relating to the enactment of this Act.

(2) This section does not extend to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under the transaction arrangement.

(3) In this section—

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**operation of this Act** includes the operation of any notice or order under this Act and any agreement entered into under or for the purposes of this Act.

**statement** includes a representation of any kind—

(a) whether made verbally or in writing, and

(b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes a public sector agency and an officer, employee or agent of the Crown or a public sector agency.

## Part 8 Miscellaneous

### 45 Delegation

- (1) The Treasurer may delegate any function of the Treasurer under this Act except this power of delegation to any of the following—
  - (a) the portfolio Minister or any other Minister,
  - (b) the Secretary of the Treasury,
  - (c) any Public Service employee prescribed by the regulations.
- (2) The portfolio Minister may with the approval of the Treasurer delegate any function of the portfolio Minister under this Act except this power of delegation to the Registrar-General or any other member of staff of the Department of Finance, Services and Innovation.

### 46 Act to bind State and other jurisdictions

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.
- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

### 47 Extraterritorial operation of Act

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following—
  - (a) things situated in or outside the territorial limits of the State,
  - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
  - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by

the law of another State, a Territory, the Commonwealth or a foreign country.

- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

#### **48 Construction of Act and instruments so as not to exceed legislative power**

- (1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act—

- (a) would, apart from this section, have an invalid application, but
- (b) also has at least one valid application,

it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.

- (2) Despite subsection (1), the provision is not to have a particular valid application if—

- (a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or
- (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application, or a particular invalid application, of the provision had been within the legislative power of the Parliament of New South Wales.

- (3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).

- (4) This section is in addition to, and not in derogation of, section 31 of the [Interpretation Act 1987](#).

- (5) In this section—

**application** means an application in relation to—

- (a) one or more particular persons, things, matters, places, circumstances or cases, or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

**invalid application**, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

**valid application**, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

## **49 Orders**

- (1) An order made under a provision of this Act takes effect at the beginning of the day on which it is made, unless the order otherwise provides.
- (2) An order cannot provide for the order to take effect earlier than the beginning of the day on which it is made (but can provide for the order to take effect at a time on the day on which it is made that is earlier than the time at which it is made).
- (3) A document purporting to be an order made under a provision of this Act is, unless the contrary is established, taken to be such an order and to have been properly made.
- (4) A certificate purporting to be signed by the Treasurer or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.
- (5) A provision of another Act that results from an amendment made by this Act and that provides for the making of an order is deemed for the purposes of this section to be a provision of this Act (and the order is deemed to be an order made under a provision of this Act).

## **50 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods—
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,

- (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, **serve** includes give or send.

## 51 Proceedings for offences

- (1) Proceedings for an offence against this Act are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence against this Act may instead be dealt with summarily before the Supreme Court in its summary jurisdiction.
- (3) Proceedings for an offence against this Act may be instituted at any time within 2 years after the commission of the offence.
- (4) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act is 100 penalty units (in the case of a corporation) and 50 penalty units (in any other case).
- (5) The maximum penalty that may be imposed by the Supreme Court in proceedings for an offence against this Act is the maximum penalty specified by the relevant section of this Act in respect of the offence.

## 52 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Schedule 1 Interpretative provisions

### 1 Definitions

In this Act—

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**authorised asset transfer**—see section 4.

**authorised concession**—see section 4.

**authorised concession arrangements** means transaction arrangements that are for the purposes of the authorised concession.

**authorised operator**—see section 3.

**authorised transaction**—see section 4.

**completion** of the authorised asset transfer occurs on the date designated by the Treasurer by order in writing as the date of completion of the authorised asset transfer.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

**Corporations legislation** means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

**entity** means a body corporate, a partnership, an unincorporated body, an individual or a trust (including the trustee of a trust).

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**general law** means the common law and equity (as modified from time to time by legislation).

**legislation** includes—

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**person** includes a public sector agency.

**portfolio Minister** means the Minister administering section 11 (Minister's directions) of the [Real Property Act 1900](#).

**private sector** means any person other than a public sector agency and includes a private sector entity.

**Note—**

A person who is a public sector agency of another jurisdiction is a private sector person for the purposes of this Act.

**private sector entity** means an entity in which the private sector has an interest.

**public sector agency** means any of the following—

- (a) the State (including the Crown in right of the State),
- (b) a Minister,
- (c) the Registrar-General,
- (d) a government sector agency (within the meaning of the [Government Sector Employment Act 2013](#)),
- (e) a public authority of the State (including a council under the [Local Government Act 1993](#)),
- (f) any other person acting on behalf of the State (or the Crown in right of the State),
- (g) a transaction company, but only while all the shares in the transaction company are held by or on behalf of the State or the transaction company is the subsidiary of another transaction company all the shares in which are held by or on behalf of the State,
- (h) a wholly-owned subsidiary of a public sector agency.

**relevant employee**—see section 19.

**re-vesting on termination**—see section 4.

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

**State legislation** means any legislation of the State.

**the Register** means the Register kept under the [Real Property Act 1900](#) and any register kept or maintained under the [Conveyancing Act 1919](#).

**the State** means the State of New South Wales.

**titling and registry assets**—see section 3.

**titling and registry functions**—see section 3.

**titling and registry services**—see section 3.

**transaction arrangement** means a transaction, agreement or other arrangement entered into by or on behalf of a public sector agency for the purposes of the authorised transaction.

**transaction company** means a company established as a transaction company pursuant to this Act.

**transfer**, in relation to assets, rights and liabilities, includes any action that results in the vesting of assets, rights and liabilities in another person or the creation or transfer of any interest in or right in respect of assets.

**vesting order** means a vesting order made by the Treasurer under this Act.

## **2 Interpretation—[Real Property Act 1900](#)**

Words and expressions used in this Act that are defined in the [Real Property Act 1900](#) have the same meanings as in that Act, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

## **3 Words and expressions defined in Corporations Act**

In this Act, the following expressions have the meaning that they have in the Corporations Act (except where a definition of the expression in this Act otherwise requires)—

***company***

***company limited by shares***

***corporation***

***related entity***

***subsidiary***

***wholly-owned subsidiary***

## **4 References to titling and registry functions**

A reference in this Act to titling and registry functions includes a reference to those functions when being exercised by the authorised operator under delegation from the Registrar-General.

## **5 References to authorised operator**

A reference in this Act to the authorised operator includes a reference to any related entity of the authorised operator in which titling and registry assets are vested.

## **6 Titling and registry assets**

An interest in or right in respect of titling and registry assets that is created for the purposes of the authorised transaction is itself a titling and registry asset.

## **7 Functions for the purposes of authorised transaction**

(1) For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of the authorised transaction if—

(a) it is done or has effect for the purpose of effecting or facilitating the authorised



transaction, or

- (b) it is done or has effect for any purpose connected with, ancillary or incidental to or consequential on the authorised transaction, or
- (c) it is done or has effect for any purpose connected with the vesting of titling and registry assets in, or the transfer of a relevant employee under Part 5 to, a public sector agency at any time after completion of the authorised asset transfer, or
- (d) it is done or has effect after the completion of the authorised asset transfer for any purpose that is necessary or convenient in connection with the ongoing operation of or the winding up of the affairs of any transaction company.

- (2) A reference in this clause to the authorised transaction includes a reference to any part or aspect of the authorised transaction.

## **8 Staff transfers to private sector**

The transfer to the private sector for the purposes of the authorised transaction of a public sector agency that employs a relevant employee constitutes the transfer of the employment of the relevant employee to the employment of a private sector entity and requires an order of the Treasurer under Part 5.

## **9 Transfer and acquisition of assets, rights and liabilities**

- (1) The assets, rights and liabilities of a body corporate include the assets, rights and liabilities of a wholly-owned subsidiary of the body corporate.
- (2) Without limiting the ways in which assets, rights and liabilities can be transferred for the purposes of the authorised transaction (and without preventing the direct transfer of assets, rights and liabilities to a transferee)—
  - (a) assets, rights and liabilities of a body corporate can be transferred to another person (the **transferee**) by a transfer of shares or any other transaction that results in the body corporate becoming a wholly-owned subsidiary of the transferee, and
  - (b) assets, rights and liabilities of a body corporate are acquired by (and become assets, rights and liabilities of) a transferee when the body corporate becomes a wholly-owned subsidiary of the transferee.

## **10 Transfers to public sector agencies**

No compensation is payable in connection with the transfer for the purposes of the authorised transaction of assets, rights or liabilities to a public sector agency (but this does not prevent such a transfer being for consideration).

## 11 When events occur

If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.

## 12 Notes

Notes included in this Act do not form part of this Act.

# Schedule 2 Vesting of assets, rights and liabilities

(Section 12)

## 1 Definitions

In this Schedule—

**transferee** means the person or body in whom any assets, rights or liabilities are vested by a vesting order.

**transferor** means the person or body from whom any assets, rights or liabilities are divested by a vesting order.

## 2 Effect of vesting order

- (1) When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect except as otherwise provided by the vesting order—
- (a) the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,
  - (d) the transferee has all the entitlements and obligations of the transferor in relation to the assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
  - (e) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or liabilities and except as otherwise provided by the

regulations) to be read as, or as including, a reference to the transferee.

- (2) A vesting order that varies the terms and conditions of any instrument or contract has effect according to its tenor.
- (3) No attornment to the transferee by a lessee from the transferor is required.

### **3 Terms and conditions of vesting**

A vesting order may be made on such terms and conditions as are specified in the order.

### **4 Consideration for vesting**

A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

### **5 Vesting of interests in land**

- (1) A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (2) If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as may be specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

### **6 Confirmation of vesting**

- (1) A vesting of assets, rights or liabilities, or a variation of the terms and conditions of an instrument, by operation of a vesting order may be confirmed by order in writing of the Treasurer or the portfolio Minister (whichever of them made the vesting order concerned).
- (2) Such an order is evidence of that vesting or variation.

### **7 Determinations for purposes of vesting order**

For the purposes of the making of a vesting order, the Treasurer or the portfolio Minister (whichever of them is to make the order) may determine whether or not particular assets, rights or liabilities comprise titling and registry assets, and such a determination is conclusive as to the matters determined.

### **8 Certification to registration authorities**

- (1) A party to a vesting order may lodge with a registration authority a certificate certifying as to such information as the party considers the registration authority reasonably requires to enable the registration authority to exercise any function of the registration authority arising in connection with the vesting of any asset, right or liability, or the variation of any terms and conditions of an instrument or contract, by

operation of this Act.

- (2) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.
- (3) A certificate under this clause is a dealing for the purposes of the [Real Property Act 1900](#) to the extent that any recording in the Register under that Act is permitted to be made on the basis of the certificate because of the operation of this clause.
- (4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability, or the variation of any terms and conditions of an instrument or contract, by operation of this Act.
- (5) A document purporting to be a certificate given under this clause is, unless the contrary is established, taken to be such a certificate and to have been properly given.
- (6) Each of the Treasurer or the portfolio Minister (whichever of them made the vesting order concerned) and a public sector agency that is the transferee or transferor under a vesting order is a party to the vesting order for the purposes of this clause.
- (7) In this clause—

**registration authority** means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities or transactions affecting assets, rights or liabilities.

## **9 Public sector accounting policies**

The Treasurer may give directions to public sector agencies for or with respect to accounting policies to be applied by public sector agencies in connection with the transfer between public sector agencies of assets, rights and liabilities comprising titling and registry assets for the purposes of the authorised transaction (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).

## **Schedule 3 Savings, transitional and other provisions**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) Any such provision may, if the regulations so provide, have effect notwithstanding any

other provision of this Schedule.

- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than a public sector agency), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than a public sector agency) in respect of anything done or omitted to be done before the date of its publication.

#### **Schedule 4 (Repealed)**