



Australian Capital Territory

Partition Act 1900 (NSW)

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About this republication

The republished law

This is a republication of the *Partition Act 1900* effective 28 June 1985 to 9 November 1999.

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Australian Capital Territory

PARTITION ACT 1900 (NEW SOUTH WALES)

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 August 1992

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Australian Capital Territory

PARTITION ACT 1900 (NEW SOUTH WALES)

An Act to consolidate enactments relating to partition

Short title

1. This Act may be cited as the Partition Act 1900.¹

Court

3. In the interpretation of this Act, the term “Court” means the Supreme Court.

Power of Court to order sale instead of division

4. (1) In a suit for partition, where, but for this Act or the Act hereby repealed, a decree for partition might have been made—

- (a) if it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstances, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, on the request of any of the parties interested, or on their behalf as hereinafter provided, and notwithstanding the dissent or disability of any others of them, order a sale of the property accordingly; and
- (b) if parties interested collectively to the extent of one moiety or upwards, or some persons as hereinafter provided on their behalf, request the Court to direct a sale of the property and a distribution of

the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, order a sale of the property accordingly; and

- (c) if any party interested, or some person on his behalf as hereinafter provided, requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, unless the other parties interested in the property or some of them, or some persons on behalf of such parties respectively as hereinafter provided, undertake to purchase the share of the party requesting a sale, order a sale of the property.

(2) If such undertaking is given, the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit.

(3) The Court when making any order under this Act shall give all necessary consequential directions.

Authority for parties interested to bid

5. On any sale under this Act the Court may allow any of the parties interested in the property to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase money or any part thereof instead of paying the same or as to any other matters as to the Court may seem reasonable.

Court may appoint trustees to receive and apply moneys arising from sales otherwise the moneys to be paid into Court

7. (1) All money to be received on any sale under the authority of this Act may, if the Court thinks fit, be paid to any trustees of whom it approves, or otherwise the same shall be paid into Court.

(2) Such money shall be applied as the Court directs to some one or more of the following purposes, namely:

- (a) the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid or affecting any other hereditaments subject to the same uses and trusts;
- (b) the purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or
- (c) the payment to any person becoming absolutely entitled.

Trustees may apply moneys in certain cases without application to Court

8. The application of the money in manner aforesaid may, if the Court so directs, be made by the trustees (if any) without any application to the Court or otherwise shall be made upon an order to the Court upon the application of the person who would be entitled to the possession or to the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

Until money can be applied to be invested and dividends to be paid to parties entitled

9. (1) Until the money can be applied as aforesaid, the same shall be dealt with as provided for by the rules of Court relating to the deposit and investment of moneys in Court.

(2) The interest and proceeds shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

Parties to partition suits

10. (1) Any person who, but for this Act or the Act hereby repealed, might have maintained a suit for partition, may maintain such suit against any of the parties interested without serving the others (if any) of those parties, and it shall not be competent for any defendant in the suit to object for want of parties.

(2) At the hearing of the suit, the Court may direct such inquiries as to the nature of the property and the persons interested therein and other matters as it thinks necessary or proper with a view to an order for partition or sale being made on further consideration.

(3) All persons who, if this Act or the Act hereby repealed had not been passed, would have been necessary parties to the suit shall be served with notice of the decree or order on the hearing, and, after such notice, shall be bound by the proceedings as if they had been originally parties to the suit and shall be deemed parties to the suit.

(4) All such persons may have liberty to attend the proceedings, and any such person may, within a time limited by rule of Court, apply to the Court to add to the decree or order.

Power to dispense with service of notice of decree or order in special cases

11. (1) Where notice of the decree or order on the hearing of the suit cannot be served on all the persons on whom that notice is hereinbefore required to be served, or cannot be so served without expense disproportionate

to the value of the property to which the suit relates, the Court may, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order, dispense with that service on any person or class of persons specified in the order, and instead thereof may direct advertisements to be published at such times and in such manner as the Court thinks fit calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective claims in respect thereof before the Court, within a time to be thereby limited.

(2) After the expiration of the time so limited, all persons who have not so come in and established such claims, whether they are within or without the jurisdiction of the Court (including persons under any disability), shall be bound by the proceedings in the suit as if, on the day of the date of the order dispensing with service, they had been served with notice of the decree or order service whereof is dispensed with, and thereupon the powers of the Court under the Trustee Act 1925, in its application in the Territory, shall extend to their interest in the property to which the suit relates as if they had been the parties to the suit, and the Court may thereupon, if it thinks fit, direct a sale of the property and give all necessary consequential directions.

Proceedings where service is dispensed

12. Where an order is made under this Act dispensing with service of notice on any person or class of persons, and property is sold by order of the Court, the following provisions shall have effect:

- (a) The proceeds of sale shall be paid into Court to abide the further order of the Court.
- (b) The Court shall, by order, fix a time at the expiration of which the proceeds will be distributed and may from time to time, by further order, extend that time.
- (c) The Court shall direct such notices to be given by advertisement or otherwise as it thinks best adapted for notifying to any person on whom service is dispensed with who may not have previously come in and established their claims, the fact of the sale, the time of the intended distributions, and the time within which a claim to participate in the proceeds must be made.
- (d) If, at the expiration of the time so fixed or extended, the interests of all the persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons.

- (e) If, at the expiration of the time so fixed or extended, the interests of all the persons interested have not been ascertained, and it appears to the Court that they cannot be ascertained or cannot be ascertained without expense disproportionate to the value of the property, or of the unascertained interests, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favour of any other persons (whether ascertained or not) who may appear to have any prima facie right which ought to be so provided for although such right may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Act be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

Provision for case of successive sale in the same suit

13. Where in a suit for partition two or more sales are made, if any person who has, by virtue of this Act, been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

Request by infant, or person under disability

14. (1) In a suit for partition, a request for sale may be made or an undertaking to purchase given on the part of—

- (a) an infant by his next friend or guardian ad litem;
- (d) a person of unsound mind (whether so found by inquisition or not) by his committee, next friend or guardian ad litem, as the case requires; or
- (e) any other person under disability by the person authorized to act on his behalf.

(2) The Court shall not be bound to comply with any such request or undertaking on the part of any such person unless it appears that the sale or purchase will be for his benefit.

Sales, how effected

15. Wherever the Court orders of sale under this Act, it may order such sale to be effected—

- (a) by the Court;
- (b) out of Court, subject to such restriction as the Court thinks fit; or
- (c) altogether out of Court.

Power to Court to direct sale of portion of property and partition of the remainder

16. In any suit for partition, where, by this Act, the Court is empowered to direct a sale of the property to which the suit relates, the Court may, if it thinks fit, direct a sale of a portion of the property, and a partition of the remainder.

Suit for partition to include suit for sale and distribution of the proceeds

17. For the purposes of this Act, a suit for partition shall include a suit for sale and distribution of the proceeds, and, in a suit for partition, it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

Costs in suits for partition

18. In a suit for partition, the Court may make such order as it thinks just respecting costs up to the time of the hearing.

NOTE

1. The Partition Act 1900 of the State of New South Wales (No. 24, 1900) comprises the Partition Act 1900 in its application in the Territory, as repealed in part by the *New South Wales Acts Application Ordinance 1985* and as amended by the *New South Wales Acts Ordinance 1986* on 12 January 1987. The amendments so made have been incorporated in the text of the Partition Act 1900 in Part 1 of Schedule 2 of the *New South Wales Acts Ordinance 1986*. The *New South Wales Acts Application Ordinance 1985* also made amendments to the Partition Act 1900 but these ceased to have effect by reason of its subsequent disallowance.

The amendments as made and listed below were not automatically revived by the disallowance of subsection 12 (6A) of the *Seat of Government (Administration) Act 1910* of the Commonwealth, amended as at 31 December 1985, which dealt only with Ordinances and did not allow for the revival “of any other law”. For the effect of the disallowance on the operation of the *New South Wales Acts Application Ordinance 1985* see the Seventy Sixth Report (December 1985) of the Senate Standing Committee on Regulations and Ordinances.

Sections 2, 6, 19 and 20 were repealed and paragraphs 14 (1) (b) and (c) were omitted by the *New South Wales Acts Application Ordinance 1985*.

The Act repealed by the Partition Act 1900 was Act 41 Vic. No. 17.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.