



Australian Capital Territory

# Land Titles Act 1925

A1925-1

**Republication No 23**

**Effective: 21 December 2010 – 28 February 2011**

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Last amendment made by A2010-50

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Land Titles Act 1925* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 21 December 2010. It also includes any amendment, repeal or expiry affecting the republished law to 21 December 2010.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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# Land Titles Act 1925

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Australian Capital Territory

# Land Titles Act 1925

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An Act to provide for the registration of title to land, and for related purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Land Titles Act 1925*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*registrable form*, for an instrument—see section 4.' means that the term 'registrable form' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### 4 Meaning of *registrable form*

For this Act, an instrument is in *registrable form* if—

- (a) the instrument does not require a material correction, alteration or addition; and
- (b) the instrument is in the form (if any) approved under section 140 (Approved forms); and

- (c) any certificate of title or other document that is required to be produced under section 14 (1) (a) (Powers of registrar-general) for the instrument is produced when the instrument is lodged; and
- (d) the instrument is otherwise in accordance with this Act or another law in force in the ACT.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

## **5 Application to married women's property**

Nothing in this Act is taken to affect or control any other territory law which deals with married women's property.

## **Part 2 Administration**

### **7 Registrar-general's seal of office etc**

A reference in this Act to the seal of office, or the signature, of the registrar-general, deputy registrar-general or acting registrar-general includes a reference to a production by electronic means of the seal or signature, as the case may be.



## Part 3                      General powers of registrar-general

### 14                      Powers of registrar-general

- (1) The registrar-general may—
- (a) require the proprietor or other person making application to have any land brought under this Act, or the proprietor or mortgagee or other person interested in any land under this Act, in respect of which any transfer, lease, mortgage, encumbrance or other dealing or any release from any mortgage or encumbrance has been presented to the registrar-general for registration under this Act, or in respect of which any transmission is about to be registered or which or any portion of which has been resumed or withdrawn, to produce any grant, certificate of title, conveyance, deed, mortgage, lease, will or other document or instrument in his or her possession or within his or her control affecting the land or the title thereto; and
  - (b) summon any such proprietor, mortgagee or other person mentioned in paragraph (a) to appear and give any explanation respecting the land or the documents or instruments affecting the title thereto; and
  - (c) keep a record of administrative interests on the register;  
*Note      Administrative interest*—see s 69A.
  - (d) administer oaths or may take a statutory declaration in lieu of administering an oath; and
  - (e) correct or alter the register to the extent and in the manner provided by sections 160, 161 and 162A; and

- (f) on the application of a registered proprietor and on production of any evidence that the registrar-general requires—record in the register that an interest in land has been extinguished by merger; and
- (g) enter a caveat on behalf of any person under a legal disability or who is absent from Australia, or on behalf of the Commonwealth, to prohibit the transfer or dealing with any land belonging or supposed to belong to any such person, and also to prohibit the dealing with any land in any case in which it appears to him or her that an error has been made by misdescription of the land or otherwise in any certificate of title or other document or instrument, or for the prevention of any fraud or improper dealing; and
- (h) without erasing or rendering illegible the original measurements, alter—
  - (i) grants, certificates of title, the register and entries made therein; and
  - (ii) any maps, plans, documents and instruments deposited or lodged with him or her, whether under this or any other Act;

so as to express in metric units, to the 3rd decimal place, any measurements contained therein that are expressed in imperial units.

- (2) The registrar-general has, and may exercise, if a notice of a determination made under the *Rates and Land Rent (Relief) Act 1970*, section 3, or a memorandum of discharge under that Act, section 18, is presented to him or her for registration, all or any of the powers conferred by subsection (1) as if the notice were a mortgage, or the memorandum of discharge were a discharge of a mortgage, presented to him or her for registration under this Act.
- (3) If notice in writing is given to the registrar-general that land, or an interest in land, is affected by—

- (a) a Territory or Commonwealth law; or
- (b) anything done under a Territory or Commonwealth law;

the registrar-general must make a record in the register that the land or interest has been so affected.

- (4) For subsection (3), the following provisions apply:
  - (a) subject to any relevant provision of the Territory or Commonwealth law, a record made under that subsection takes effect accordingly;
  - (b) that subsection does not apply to a matter if a provision of a Territory or Commonwealth law makes provision (however expressed) for making a record in the register in respect of the matter.
- (5) If a record—
  - (a) was made in the register before the date of commencement of subsection (3) (the *commencement date*); and
  - (b) was not, when made, authorised or required by a Territory or Commonwealth law to be made in the register; and
  - (c) could, on and after the commencement date, have been made under that subsection;the record takes effect, on and after the commencement date, as a record made under that subsection.
- (6) If—
  - (a) the register contains a record in relation to land or an interest in land; and
  - (b) the lease of the land is surrendered by the lessee; and
  - (c) a new lease of the land comprised in the surrendered lease is granted to the lessee;

the registrar-general must make a corresponding record in the register in relation to the new lease.

- (7) The registrar-general may allow a document that is required or permitted to be presented or lodged with the registrar-general for this or any other Act to be presented by such means, including electronic means, as the registrar-general thinks fit.

## **15 Penalty for obstructing registrar-general**

- (1) If any person upon requisition in writing made by the registrar-general under section 14 (1) (a) or (b)—
- (a) refuses or neglects to produce any document or instrument or to allow it to be inspected; or
  - (b) refuses or neglects to give any explanation;
- he or she commits an offence.

Maximum penalty:

- (a) for paragraph (a)—50 penalty units, imprisonment for 6 months or both; and
  - (b) for paragraph (b)—50 penalty units.
- (2) The registrar-general, if any document or instrument so withheld appears to him or her to be material, shall not be bound to proceed with the bringing of the land under this Act, or with the registration of the transfer or other dealing, as the case may be.

## Part 4                      Future grants of freehold and of    certain Crown leaseholds

### 17                      Crown grants and certain Crown leases under Act

- (1) Each grant of freehold and each grant for a term exceeding 5 years granted by or in the name of the Commonwealth or by the Territory after the commencement of this Act shall be in duplicate, and, in addition to proper words, shall refer to a map of the land.
- (2) Both parts of the grant shall be lodged with the registrar-general, who, after registration under this Act, shall deliver 1 part to the grantee.

*Note*                      A fee may be determined under s 139 (Determination of fees, charges and other amounts) for delivery of 1 part of a grant to the grantee.

- (3) The registration shall be deemed to be an enrolment of record of the grant, and the enrolment shall relate back to the date of the grant, and either part of the grant when registered under this Act shall be sufficient evidence of a duly enrolled grant of the land therein described to the person therein named on the date thereof.

## **Part 5 Applications to bring land under Act and proceedings on applications**

### **Division 5.1 Requirements of applications**

#### **18 Land brought under Act**

- (1) Land not subject to this Act may be brought under its provisions.
- (2) The registrar-general shall receive applications for that purpose if made by—
  - (a) any person in Australia claiming to be the person in whom the fee simple is vested in possession either at law or in equity:

Provided that in any case where trustees, seized in fee simple, have no express power to sell the land which they seek to bring under the operation of this Act, the person claiming to be beneficially entitled for the first life estate, or other greater estate than a life estate in the land, shall join in the application; or

- (b) any person in Australia claiming a life estate in possession, or a leasehold for a life or lives, or having a term of not less than 25 years then current, and any person in Australia claiming a leasehold estate under a Crown lease having a term not less than 5 years then current:

Provided that all persons claiming to be beneficially entitled in reversion or remainder shall join in the application:

Provided further that nothing in the preceding proviso shall be construed as requiring the concurrence of a lessor in an application by a lessee; or

- (c) any person in Australia who has the power of appointing or disposing of the fee simple of any land absolutely; or
- (d) the attorney in the ACT, under a power of attorney, of a corporation having the power to hold or dispose of land in fee simple:

Provided that—

- (i) the power of attorney shall be under the common seal of the corporation, and shall authorise the attorney to apply; and
  - (ii) the application shall be made for and on behalf of the corporation; and
  - (iii) the requisite declaration shall be made by him or her to the best of his or her knowledge, information and belief; and
  - (iv) the application shall be subscribed in his or her own name as such attorney; and
  - (v) the certificate shall be issued in the name of the corporation; or
- (e) the attorney in the ACT of any person absent Australia who would be entitled to apply if resident in Australia, provided that the attorney is constituted such by an instrument under seal authorising him or her, at his or her absolute discretion—
    - (a) to sell and convey land for an absolute estate in fee simple, and to give effectual discharges to purchasers; or
    - (b) as regards applications in respect of a life estate or a leasehold, to deal with life estates and leaseholds respectively;

and the requisite evidence of non-revocation of the power by the grantor's death or otherwise is furnished; or

- (f) a parent or guardian of an infant, in the name of the infant; or
- (g) the manager of a person's property under the *Guardianship and Management of Property Act 1991*.

*Note* If a form is approved under s 140 (Approved forms) for an application to bring land under this Act, the form must be used.

- (3) No such application shall be received—
  - (a) from a person who has contracted to purchase any land unless either the vendor consents to or joins in the application or the whole of the purchase money has been paid to the vendor or his or her authorised attorney or agent; or
  - (b) from a person claiming to be entitled to an undivided share of any land unless the person who appears to be entitled to the other undivided share joins in the application with the view of bringing the entirety under this Act; or
  - (c) from the mortgagor of any land unless the mortgagee joins in the application; or
  - (d) from the mortgagee of any land except in the exercise of a power of sale contained in the mortgage deed; or
  - (e) in respect of any land subject to the lien of any judgment or execution creditor unless the creditor consents to the application.
- (4) The bringing of any leasehold under this Act shall not be held to extinguish the reversion expectant thereon.
- (5) In the event of land being brought under this Act under an application by any person mentioned in subsection (2) (c), the application shall be deemed, both at law and in equity, to be an exercise of the power vested in that person.



**19 Judge may order production of deeds for purpose of application**

- (1) The judge of the 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 deed, document, instrument or evidence of title relating to or affecting the land, to produce, at the office of the registrar-general, on a day to be named in the order, the deed, document, instrument or evidence for the perusal of the registrar-general.
- (2) Any order under subsection (1) shall be upon such terms and subject to such conditions as to costs or otherwise as the judge deems fit.

**20 Applicant to surrender documents of title and to furnish abstract if required**

- (1) Every applicant to bring land under this Act shall, when making his or her application—
  - (a) deposit with the registrar-general all documents in his or her possession or under his or her control constituting or in any way affecting his or her title, and in the case of a leasehold a duplicate or certified copy of the lease, and of any other document under which the applicant claims title, and furnish a schedule of those documents, and also, if required, an abstract of his or her title; and
  - (b) state in his or her application the nature of his or her interest, and of every interest held therein by any other person whether at law or in equity, in possession, or in futurity or expectancy, and whether the land be occupied or unoccupied (and, if occupied, the name and description of the occupant and the nature of his or her occupancy, and whether the occupancy be adverse or otherwise), and the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect to which application is made so far as known to him or her, and that the schedule so furnished includes all documents

of title to the land in his or her possession or under his or her control; and

- (c) make and subscribe a declaration to the truth of the statement.
- (2) The applicant may in his or her application require the registrar-general, at the expense of the applicant, to cause notice of his or her application to be served upon any person whose name and address is for that purpose therein stated.

## **Division 5.2 Procedure on applications**

### **21 Applications to be considered by registrar-general**

- (1) Upon the receipt of an application, the registrar-general shall cause the title of the applicant, for such period as he or she considers sufficient, to be examined, and shall thereafter take the case into his or her consideration.
- (2) If it appears to the registrar-general that the applicant is the original grantee from the Crown of the land in respect of which the application is made, and that no sale, mortgage, or other encumbrance or transaction affecting the title of the land has at any time been registered in New South Wales or in the ACT, and that the applicant has not required notice of his or her application to be served upon any person, the registrar-general may bring the land under this Act forthwith by issuing to the applicant, or to such person as he or she or the person applying in his or her behalf by writing directs a certificate of title for the land as described in this Act.

### **22 When applicant is not original grantee or any transactions registered**

If it appears to the registrar-general that the land in respect of which application has been made is held by the applicant for the interest described in the application free from mortgage, encumbrance or other beneficial interest affecting the title thereto, or, if any such

mortgage, encumbrance or interest remain unsatisfied, that the parties interested therein are also parties to the application, and that the applicant has not required notice of his or her application to be served on any person, the registrar-general shall require notice of the application to be advertised in such newspapers as the registrar-general thinks fit, and shall further limit and appoint a time not less than 1 month nor more than 12 months from the date of notification of the application under the *Legislation Act 2001* (see section 24 (Notice of application to be published)) upon or after the expiration of which the registrar-general may, unless he or she has in the interval received a caveat forbidding him or her so to do, proceed to bring the land under this Act.

### **23 When evidence of title imperfect**

- (1) If it appears to the registrar-general that any parties interested in any unsatisfied mortgage or encumbrance affecting the title to the land or beneficially interested therein are not parties to the application, or that the evidence of title set forth by the applicant is imperfect or that the applicant has required notice of his or her application to be served personally upon any person, the registrar-general may reject the application altogether, or require notice of the application to be served upon all persons who appear to him or her to have any interest in the land the subject of the application, and to be advertised in such newspapers as he or she thinks fit, and to be published in the Commonwealth Gazette and in the London Gazette, and in the official Gazettes of each of the States, or in any 1 or more of those Gazettes, and the registrar-general shall determine the number of times and at what intervals the advertisements shall be published in each or any of the newspapers and Gazettes, and shall also limit and appoint a time, not less than 2 months nor more than 2 years after the date of the earliest of the Gazette advertisements, or notification of the application under the *Legislation Act 2001* (see section 24 (Notice of application to be published)), whichever is earlier, upon or after the expiration of which he or she may bring the

land under this Act, unless he or she has in the interval received a caveat forbidding him or her to do so.

- (2) The registrar-general may, in his or her discretion, notwithstanding that certain persons are not parties to the application, or that the evidence of title set forth by the applicant is imperfect, take the steps provided in section 22, and may bring the land under this Act; but in that case he or she may require payment to him or her of such special fee as he or she considers adequate in addition to that provided under section 139.

## **24 Notice of application to be published**

- (1) The registrar-general shall, of his or her own motion or under any order of the court, require notice to be published, in such manner as he or she determines or as the order prescribes, that application has been made for bringing the land therein referred to under this Act, and shall also cause a copy of the notice to be posted in a conspicuous place in his or her office and in such other places as he or she deems necessary, and shall forward by registered letter through the post office, a copy of the notice addressed to the persons (if any) who he or she thinks ought to be served with the notice, and to the persons (if any) stated in the declaration by the applicant to be in occupation of the land or to be occupiers or proprietors of land contiguous thereto, so far as his or her knowledge of the addresses of those persons may enable him or her, and, if the applicant has required any such notice to be personally served upon any person named in his or her application, the registrar-general shall require a copy of the notice to be so served upon that person.
- (2) The notice of the application is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **25 Registrar-general bringing land under Act**

If, within the time limited by the registrar-general or under any order of the court, any notice forwarded by registered letter in

accordance with section 24 is not returned by the postmaster-general, and if within the time so limited the registrar-general has not received a caveat as described in this Act forbidding him or her so to do, and, in any case in which personal notice has been required as aforesaid, if the registrar-general has received proof to his or her satisfaction that the notice has been served, the registrar-general shall bring the land described in the application under this Act by issuing to the applicant, or to such person as the applicant or the person applying in his or her behalf by any writing directs, a certificate of title for the land as described in this Act.

**26 On a return of notices or failure of personal service, registrar-general may proceed or give further directions**

- (1) Whenever the registrar-general is made aware that any notice required by any applicant to be served personally has failed to be or cannot be so served, he or she shall notify that fact to the applicant, who may, by writing, withdraw the requisition.
- (2) Upon the withdrawal of the requisition, or upon the return to the registrar-general by the postmaster-general of any letter containing any notice, the registrar-general may reject the application altogether, or bring the land therein described under this Act forthwith, or after such further interval, notification or advertisement as he or she deems fit.

**27 Applicant may withdraw application**

Any applicant may withdraw his or her application at any time prior to the issuing of the certificate of title, and the registrar-general shall in that case, upon request in writing signed by the applicant, return to him or her or the person (if any) notified in the application as having a lien upon the documents, the abstract and all documents of title deposited by the applicant for the purpose of supporting his or her application.

**28 Land occupied may be brought under Act by different description from that in title on special application**

On any application to bring land under this Act in which the land actually and bona fide occupied by or under the applicant differs in boundaries, area or position from the land described in his or her documents of title, the applicant may apply to bring under this Act the land so occupied; and in any such case the applicant shall state in his or her application, in addition to the other particulars required by this Act, that the land as so occupied and as to which he or she applies for a certificate of title is not correctly described in the documents of title lodged in support of the application, and shall specify to the best of his or her knowledge and belief the reasons for the discrepancy between the land as so occupied and the land as described in the documents of title.

**29 Applications to bring land under Act or to amend certificate may be granted for land occupied under, but not described in, title deeds or certificate**

On an application to bring land under this Act by a description different from that in the documents of title or for the issue of an amended certificate of title or for the amendment of a grant or certificate of title, the registrar-general may grant the application as to the land occupied by or under the applicant if the discrepancy between the land as so occupied and as described in the documents of title or grant or certificate of title appears to be due to the inaccuracy of any survey or plan or description on the sale of the land by the Crown or on any subsequent dealing therewith or to any discrepancy between the actual measurements or bearings at any time made or marked on the ground and those represented or mentioned in any plan or description.

## **Division 5.3                      Caveats against original applications**

### **30                      Parties interested may enter caveat**

- (1) Any person having or claiming an interest in any land advertised as provided in division 5.2, or the legal practitioner or agent in the ACT of any such person, may within the time limited by the registrar-general for that purpose lodge a caveat with the registrar-general, forbidding the bringing of the land under this Act, and every such caveat shall particularise the interest, lien or charge claimed by the caveator.

*Note*        If a form is approved under s 140 (Approved forms) for a caveat, the form must be used.

- (2) No such caveat shall be received by the registrar-general unless some address within the ACT is appointed therein as the place at which notices and proceedings relating to the caveat may be served.
- (3) Any person lodging any caveat with the registrar-general without reasonable cause shall be liable to make to any person who has sustained damage thereby such compensation as is just, and the compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat.

### **31                      If caveat be received within time limited proceedings stayed**

Upon receipt of any such caveat within the time limited by him or her for the purpose, the registrar-general shall notify the receipt thereof to the applicant, and shall suspend further action in the matter, and the lands in respect of which the caveat is lodged shall not be brought under this Act until the caveat has been withdrawn or has lapsed from any of the causes provided in section 32, or until a decision has been obtained from the court.

**32 Caveats lapse unless proceedings taken within 3 months**

After the expiration of 3 calendar months from the receipt thereof, every such caveat shall be deemed to have lapsed unless the caveator has, within that time—

- (a) taken proceedings in the court to establish his or her title to the interest, lien or charge therein specified, and given written notice thereof to the registrar-general; or
- (b) obtained from the court an order or injunction restraining the registrar-general from bringing the land therein referred to under this Act, either absolutely or until the further order of the court.

**33 Special case**

- (1) Where a caveat against an application to bring land under this Act has been lodged by a caveator claiming the land or a portion thereof or an interest therein adversely to the applicant, the applicant may state a case for the opinion and direction of the court upon the matter, and the caveator may under section 32 apply for an injunction until the further order of the court, and the court may direct the caveator to lodge in the court, on or before a certain day, a case on his or her own behalf, stating whether he or she claims in his or her own right or under another person, together with such other particulars (if any) as the court thinks fit to order.
- (2) The court shall thereupon direct issues to be tried as to any facts, or, should no fact be in contest, may decide the matter upon the case stated, and, for those purposes, may make all such orders as the court thinks fit.
- (3) The decision of the court finally upon the matter shall be conclusive on the parties and on the registrar-general.
- (4) The costs of every proceeding under this section shall be borne by the party finally unsuccessful.



**34        Where caveator fails to prosecute proceedings**

Where a caveator has under section 32 given notice to the registrar-general that he or she has taken proceedings to establish his or her title, but the proceedings have not, within 6 months after the date of writ or commencement of the proceedings, been continued to such a state as to have resulted in a decision, judgment or order by the court in which the proceedings are pending, the registrar-general, on giving 1 month's notice to the caveator or to the legal practitioner whose name appears on the caveat of his or her intention to proceed, or, if neither of such courses be practicable, then on posting or exhibiting the notice on the land for a period of 30 days, may proceed with the application, notwithstanding section 31, and may bring the land, the subject of the application and of the caveat, under this Act, unless in the meantime an order or injunction restraining the registrar-general from further proceeding with the application has been served on him or her.

## **Part 6 Issue of certificates of title and grants**

### **35 Documents of title how to be dealt with**

- (1) Upon issuing a certificate of title bringing land under this Act, the registrar-general shall cancel every document of title deposited by the applicant when making his or her application, and in the case of a leasehold shall endorse upon the lease so deposited a memorandum stating that the lease has been brought under this Act, and shall certify the memorandum by his or her signature and seal, and shall, in the case of a Crown lease, file the lease in his or her office, and, in other cases, return the lease to the applicant annexing thereto the certificate of title, and shall file in his or her office the duplicate or certified copy of such lease directed by section 20 to be furnished by the applicant.
- (2) If any such document relates to or includes any property, whether personal or real, other than the land included in the certificate of title, the registrar-general shall endorse thereon a memorandum cancelling the document in so far only as relates to the land included in the certificate of title, and shall return the document to the applicant.
- (3) The registrar-general shall retain in his or her office all documents so cancelled, except such documents as he or she is by this section directed to return to the applicant, and no person shall be entitled to the production of any such document so cancelled except upon the written order of the applicant or of some person claiming through or under him or her or upon the order of the judge of the court.

**36 How certificate of title to issue in case of previous death of applicant**

Where any applicant or the person to whom an applicant has directed a certificate of title to be issued dies in the interval between the date of his or her application and the date appointed for the certificate of title to issue in accordance with this Act, the certificate of title shall be issued in the name of the applicant or in the name of the person to whom he or she has directed it to be issued, as the case requires, and the land shall devolve in like manner as if the certificate of title had been issued prior to the death of the applicant or person so named by him or her.

**37 Crown grants**

Where any person entitled to a grant dies before the grant has been made, the grant may be made to and issue in the name of that person, and the land, the subject of the grant, shall devolve in like manner as if the grant had been made prior to the death of that person.

## Part 7 Land registered under Real Property Act 1900 (NSW)

### 38 Bringing under this Act of land to which State Act applies

- (1) This section applies to land in the ACT that is under the *Real Property Act 1900* (NSW) (*RPA land*).
- (2) The registrar-general may, in writing, declare that RPA land described in the declaration is, by force of the declaration, brought under this Act.
- (3) For subsection (2), a description of land as the land comprised in a specified Crown grant or in a specified certificate of title under the *Real Property Act 1900* (NSW) is a sufficient description of the land.
- (4) A declaration under subsection (2) is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (5) On notification under the *Legislation Act 2001* of the declaration, the land described in the declaration is under this Act.
- (6) The registrar-general may state in the declaration the folium of the register in which each grant or certificate of title, as the case may be, is to be registered.

### 39 Transfer of records

The Governor-General may arrange with the Governor of New South Wales for the handing over to the Commonwealth of all duplicate grants and certificates of title, and other documents registered or lodged with the registrar-general of that State in respect of land in the ACT, which, at the date of the commencement of this part, is under the *Real Property Act 1900* (NSW), or for the delivery to the Commonwealth of copies of those grants, certificates

of title and documents duly certified by the registrar-general of the State as correct copies.

#### **40 Recognition of transferred records**

The duplicate grants and certificates of title and other documents or the certified copies thereof, as the case may be, handed over or delivered to the Commonwealth under section 39, shall be deemed for all purposes thereafter to be duplicate grants and certificates of title and other documents duly registered and authenticated by the registrar-general or lodged with the registrar-general under this Act.

#### **41 Duplicate grant etc handed over to be deemed original grant**

- (1) The original of any duplicate grant or certificate of title which, or a certified copy of which, is handed over or delivered to the Commonwealth under section 39 shall, as from the date of the handing over or delivery, be deemed to be an original grant or certificate of title delivered under this Act to the proprietor entitled to the land described therein.
- (2) Any instrument or document relating to land included in a grant or certificate of title (the duplicate or a certified copy of the duplicate of which is handed over or delivered to the Commonwealth under section 39) which—
  - (a) was executed prior to the date of the commencement of this part; and
  - (b) would have been entitled to registration under the *Real Property Act 1900* (NSW) if the land were under that Act;may be registered under this Act notwithstanding that the instrument or document is not in the form prescribed by this Act.

**42 Land referred to in pt 7 to be subject to certain reservations etc**

All land referred to in this part which is subject to any reservation, exception, easement, obligation, trust, encumbrance, mortgage or charge at the time when this part commences shall continue subject thereto until it is lawfully removed or discharged.

## Part 8 Register book and registration

### 43 Registrar-general to keep register

- (1) The registrar-general shall keep a register relating to land.
- (2) The registrar-general may—
  - (a) keep the register—
    - (i) in such form or combination of forms; and
    - (ii) on such medium or combination of media; and
    - (iii) in such manner;as the registrar-general thinks fit; and
  - (b) at any time, vary the form or medium in which the register or part of the register is kept.
- (3) A reference to a medium in subsection (2) includes but is not limited to—
  - (a) a computer; or
  - (b) microfilm; or
  - (c) paper.
- (4) The register consists of folios of the register, instruments, plans and registered documents.
- (5) Where the registrar-general is satisfied—
  - (a) that the register contains an entry relating to an instrument or document affecting land; and
  - (b) that the land is no longer affected by the instrument or document;the registrar-general may cancel the entry in the register.

**44 Form of certificate of title**

- (1) Every certificate of title shall set forth the nature of the estate of freehold or leasehold in respect of which it is issued.
- (2) The registrar-general shall note thereon in such manner as to preserve their priority the particulars of all unsatisfied mortgages or other encumbrances, and of any other interests to which the land is subject, and if the certificate of title be issued to an infant or to a person otherwise under disability he or she shall state the age of the infant or the nature of the disability so far as known to him or her, and shall cause a certificate of title to be delivered to the proprietor entitled to the land described therein.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for the issue of a certificate of title.

*Note 2* If a form is approved under s 140 (Approved forms) for a certificate of title, the form must be used.

**45 One certificate may be issued for lands not contiguous**

The registrar-general may issue 1 certificate of title for several parcels of land even if they are not contiguous.

**46 Registration where certificate of leasehold issued**

Before bringing under this Act an estate in fee simple or in fee tail in any land in respect of which a certificate of title has been issued for any leasehold interest, the registrar-general shall close the folium of the register constituted by the certificate of title of the leasehold, and shall carry forward, upon the certificate of title issued in respect of the estate in fee, memorials of the leasehold interest, and of all mortgages or other interests affecting the leasehold then registered and still current, and the memorials of all future dealings with the leasehold interest, directed in this Act to be registered, shall be entered upon the folium of the register constituted by the certificate of title representing the fee.



**47 Grants and certificates when deemed to be registered**

Every grant and every certificate of title shall be deemed to be registered under the provisions and for this Act, so soon as it has been marked by the registrar-general with the folium and volume as embodied in the register, and every memorandum of transfer or other instrument purporting to transfer or in any way to affect land under this Act, shall be deemed to be so registered so soon as a memorial thereof, in accordance with section 49, has been entered in the register upon the folium constituted by the existing grant or certificate of title of the land, and the person named in any grant, certificate of title or instrument so registered as seized of or taking any interest shall be deemed to be the registered proprietor thereof.

**47A Registration of transfers of mortgages, subleases etc**

- (1) Notwithstanding anything contained in section 47 a transfer of a mortgage or encumbrance or a transfer or mortgage of a lease (other than a Crown lease) or sublease, or a sublease granted by a lessee other than a Crown lessee, or by a sublessee or of variation of mortgage, shall be deemed and taken to be duly registered when a memorial thereof has been entered in the register on the folium constituted by the existing grant or certificate of title.
- (2) Every memorial prepared under this section shall state the nature of the instrument to which it relates and such other particulars as the registrar-general directs, and shall be signed by the registrar-general.

**47B Registration of memoranda of provisions**

A memorandum of provisions shall be deemed to be registered when a memorial of registration is endorsed upon it and signed by the registrar-general.

**48 Instruments—registration and priority**

- (1) The registrar-general shall register an instrument lodged in registrable form.
- (2) The registrar-general may require a specified class of instruments to be lodged in duplicate.
- (3) An instrument lodged, other than—
  - (a) an order of the court; or
  - (b) a grant; or
  - (c) a memorandum of provisions; or
  - (d) a notice of determination or memorandum of discharge under the *Rates and Land Rent (Relief) Act 1970*;shall be attested by a witness.
- (4) Subject to subsection (5), instruments lodged for registration shall be registered in the order of time in which they are lodged in registrable form.
- (5) Where a person lodges 2 or more instruments that affect the same land immediately one after the other, the registrar-general may register the instruments in the order that will give effect to the intentions of the parties as expressed in, or apparent from, those instruments.
- (6) Where 2 or more instruments are registered in respect of, or affecting, the same interest in land, the instruments shall, notwithstanding any express, implied or constructive notice, have priority according to the date and time of registration.
- (7) When an instrument is registered, the registrar-general shall enter a record of that instrument in the register.
- (8) On registration, an instrument, other than a memorandum of provisions or a caveat, shall be taken to be part of the register and shall have the effect of a deed duly executed by the parties.

- (9) In this section:

*instrument* includes a caveat.

**48A Refusal to accept instruments for lodgment**

The registrar-general may refuse to accept an instrument for registration if it is not in registrable form.

**48B Refusal of registration**

- (1) The registrar-general shall not register any instrument purporting to transfer or otherwise deal with or affect any interest in land except—
- (a) as required or permitted by a Territory or Commonwealth law; and
  - (b) in the manner provided by this Act.
- (2) Where an instrument is lodged that is not in registrable form, the registrar-general may—
- (a) refuse to register it and require 1 or more of the parties to the instrument to alter or correct the instrument or produce a specified document under section 14 (1) (a); or
  - (b) reject it.

**48C Correction of errors prior to registration**

Where an instrument containing a patent error is lodged, the registrar-general may correct the error by marginal notation on the instrument and the instrument as so corrected shall be as valid and effectual as if the error had not been made.

**49 Form of memorial**

Every memorial entered in the register shall, unless the entry is in a computer folio, state the nature of the instrument to which it relates

and such other particulars as the registrar-general directs, and shall be signed by the registrar-general.

**50 Memorial to be recorded on duplicate grant, certificate or instrument, unless dispensed with**

- (1) Where a memorial of an instrument is entered in the register, the registrar-general shall, unless the entry is in a computer folio, endorse a corresponding memorial on the duplicate grant, certificate of title or instrument evidencing title to the interest intended to be dealt with or in any way affected, unless the registrar-general dispenses with the production of the duplicate grant, certificate of title or instrument under this Act.
- (2) The registrar-general may dispense with the production of any grant, certificate of title or instrument for the purpose of recording the memorial thereon, and shall in that case notify in the memorial in the register that no entry of the memorial has been made on the duplicate grant, certificate of title or instrument.
- (3) Before so dispensing with production, the registrar-general shall require the party intending to register the dealing to make a statutory declaration that the grant, certificate of title or instrument has not been deposited as security for any loan, and may require the party to prepare a notice of intention to register the dealing.
- (4) However, if a memorial is in relation to the surrender of a lease by an owners corporation under the *Unit Titles Act 2001*, section 49A, the registrar-general may dispense with the production of the duplicate certificate of title if the owners corporation makes a statutory declaration that—
  - (a) the certificate of title cannot be produced and why it cannot be produced; and
  - (b) the requirements for the surrender of the lease under the following have been met:
    - (i) the *Unit Titles Act 2001*, section 49A;

(ii) section 86.

- (5) A notice under subsection (3) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (6) The party intending to register the dealing must also publish the notice in a newspaper or newspapers, as required (if at all) by the registrar-general.

## **50A Issue of duplicate when document lost or destroyed**

- (1) When a duplicate memorandum of lease, mortgage or encumbrance or a duplicate notice of determination made under the *Rates and Land Rent (Relief) Act 1970*, section 3 has been lost or destroyed, the registrar-general upon being satisfied as to the loss or destruction may issue a certificate of lease, mortgage, encumbrance or notice of determination, as the case may be, in place thereof.

*Note* If a form is approved under s 140 (Approved forms) for a certificate or notice, the form must be used.

- (2) The issue of the certificate shall be subject to such conditions as to advertisement, notice and indemnity as the registrar-general thinks fit.
- (3) Upon the issue of a certificate under this section, the registrar-general shall enter in the register a memorandum that the certificate has been issued, and thereafter the certificate shall be produced to the registrar-general on every occasion upon which production of the duplicate lease, mortgage encumbrance or notice of determination would be required if the certificate had not been issued.

## **51 Instruments not to be registered**

- (1) The registrar-general shall not register—
- (a) an instrument executed on or after 1 July 1969 and before 1 August 1987, being an instrument included in a class of

instruments specified in the *Australian Capital Territory Stamp Duty Act 1969* (Cwlth), schedule 1, item 4, 5, 6 or 7; or

- (b) an instrument executed on or after 1 January 1986 and before 1 September 1987 being an instrument included in a class of instruments specified in the *Australian Capital Territory Stamp Duty Act 1969* (Cwlth), schedule 1, item 9; or
- (c) an instrument executed on or after 1 January 1987 and before 1 August 1987, being an instrument included in a class of instruments specified in the *Australian Capital Territory Stamp Duty Act 1969* (Cwlth), schedule 1, item 6A;

unless—

- (d) the instrument is duly stamped within the meaning of the *Australian Capital Territory Taxation (Administration) Act 1969* (Cwlth); or
  - (e) the instrument bears a stamp impressed on it under that Act to the effect that no stamp duty is payable; or
  - (f) the instrument, being a counterpart of another instrument that has been so duly stamped, bears a stamp impressed on it under that Act to that effect.
- (2) The registrar-general shall not register an instrument executed on or after 1 August 1987 and before the repeal day, being an instrument of a kind referred to in the *Stamp Duties and Taxes Act 1987*, section 17 (1) (a), (b), (c), (ca) or (d), unless the instrument has been duly stamped within the meaning of that Act.

- (3) In subsection (2):

**repeal day** means the day on which the *Stamp Duties and Taxes Act 1987* is repealed.

**52 Certificate of title as evidence that land duly brought under Act**

- (1) A certificate of title signed and sealed by the registrar-general is conclusive evidence that the property comprised in the certificate of title has been duly brought under this Act.
- (2) No certificate of title 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 this Act, or on account of any error, omission or informality in the application, or in the proceedings pursuant thereto, by the registrar-general.

**53 Evidence as to title**

- (1) The register is conclusive evidence—
  - (a) as to the interests held in land under the Act; and
  - (b) that the registered proprietor of each such interest is entitled to that interest.
- (2) A certified copy of a part of the register, furnished under section 65 and signed and sealed by the registrar-general, is conclusive evidence of the matters stated in the certified copy, as at the date on which the certified copy was furnished.
- (3) A certificate of title signed and sealed by the registrar-general is evidence of the matters stated in the certificate.
- (4) Where any grant or certificate of title contains a statement to the effect that the person named therein is entitled to any easement therein specified, the statement shall be conclusive evidence that he or she is so entitled.
- (5) Where any grant of certificate of title contains the words ‘Together with a right of carriageway over the road delineated and coloured brown on the said map’ or words to the like effect, those words shall have the same effect as if the words contained in schedule 1 had been in their stead.

**54 Joint tenants and tenants in common**

- (1) A transfer to 2 or more persons shall not be registered unless those persons are expressed to be either joint tenants or tenants in common.
- (2) Where 2 or more persons listed in the register as joint proprietors, but not as tenants in common, they shall be taken to be registered as joint tenants.
- (3) Except in the case of a Crown lease, a person registered as a joint tenant is entitled to receive a separate duplicate certificate of title, but is not bound to take such a certificate.
- (4) A person registered as a tenant in common is entitled to receive a separate certificate of title showing the person's interest, but is not bound to take such a certificate.
- (5) A certificate of title relating to the share of a person registered as a tenant in common shall specify the person's share.

**55 Survivor of joint tenants**

In any of the following cases, that is to say:

- (c) upon the death of any person registered together with any other person as joint tenant of the same interest in any land; or
- (d) when the life estate in respect of which any certificate of title has been issued has determined, and the estate next registered in remainder or reversion has become vested in possession or the person to whom the certificate of title has been issued or a purchaser has become entitled to the land for an estate in fee simple in possession;

the registrar-general may, upon the application of the person entitled and proof to his or her satisfaction of any such occurrence as mentioned in this section, register that person as proprietor of the interest in manner prescribed by this Act for the registration of a like interest upon a transfer or transmission.



**56      Remainderperson or reversioner may be registered as such**

Whenever a certificate of title has been issued in respect of a life estate in any land, any person entitled in reversion or remainder to the land may apply to be registered as so entitled, and the registrar-general shall cause the title of the applicant to be investigated, and thereafter, upon consideration of the case, may, unless otherwise directed by the court, either reject the application altogether or direct that the applicant be registered forthwith or be so registered unless a caveat is lodged after the notice or advertisement and within such period as he or she thinks fit.

**57      Instruments not effectual until entry in register**

- (1) Subject to section 60, no instrument entitled by this Act to be registered shall, until registered in manner prescribed in this Act, be effectual to pass any interest in any land under this Act or to render the land liable as security for the payment of money, but upon the registration of any instrument in manner prescribed in this Act, the interest specified in the instrument 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 the instrument, or by this Act declared to be implied in instruments of a like nature.
- (2) Should 2 or more instruments executed by the same proprietor and purporting to transfer or encumber the same interest in any land be at the same time presented to the registrar-general for registration and endorsement, he or she shall register and endorse that instrument under which the person claims property, who shall present to him or her the grant or certificate of title of the land for that purpose.

**58 Estate of registered proprietor paramount**

- (1) Notwithstanding the existence in any other person of any interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, a person becoming registered as proprietor of land or of any interest in land under this Act shall, except in case of fraud, hold the land or interest, subject to such interests as are notified on the folium of the register constituted by the grant or certificate of title of the land, but absolutely free from all other interests whatsoever except as to—
- (a) the interest of a proprietor claiming the same land under a prior certificate of title or under a prior grant registered under this Act; and
  - (b) any right of way or other easement created in or existing upon the same land which is not described, or is misdescribed in the relative certificate of title; and
  - (c) any portion of land that may by wrong description of parcels or of boundaries be included in the grant, certificate of title, lease or other document or instrument evidencing the title of the 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) any prior tenancy for a term not exceeding 3 years; and
  - (e) any leases, licences or other authorities granted by the Territory and in respect of which no provision for registration is made; and
  - (f) any unpaid rates, taxes or other moneys which are expressly declared by any Act or law to be a charge upon land.
- (2) The land which is included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any) contained in the grant thereof.

**59 Purchaser from registered proprietor not to be affected by notice**

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 interest shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which the registered proprietor or any previous registered proprietor of the 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.

**60 Protection as to notice of transferee before registration**

- (1) For the purposes of determining whether a person has notice of a prior interest in land under this Act, the interest taken by the person under a dealing that—
  - (a) is registrable under this Act; or
  - (b) will, when signed by or on behalf of the person, 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 interest in land under 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.

**61 Combining or dividing grants or certificates of title**

- (1) Upon the application of any registered proprietor of land held under separate grants or certificates of title or under 1 grant or certificate,

and the delivering up of the grant or grants, certificate or certificates of title, the registrar-general may issue to the proprietor a single certificate of title for the whole of the land or several certificates, each containing portion of the land in accordance with the application, and as far as that may be done consistently with any regulations at the time in force respecting the parcels of land that is included in 1 certificate of title.

- (2) On issuing a certificate or certificates of title in accordance with subsection (1), the registrar-general shall—
  - (a) cancel the document or documents delivered up; and
  - (b) make such entries in the register as he or she considers necessary to preserve a record of the transaction.

## **62 Lost grant or certificate**

- (1) Where a grant or certificate of title under this Act is lost, mislaid or destroyed, the proprietor of the land to which the grant or certificate relates may apply to the registrar-general for the issue of a new grant or certificate.
- (2) An application under subsection (1) shall be supported by such evidence as the registrar-general requires.
- (3) Subject to subsection (5), if the registrar-general is satisfied that a grant or certificate of title has been lost, mislaid or destroyed, the registrar-general shall issue a new grant or certificate, as the case requires, and shall record in the register that the new grant or certificate has been issued.
- (4) A new grant or certificate issued under subsection (3) shall be valid to the same extent as, and available for all purposes for which, the grant or certificate lost, mislaid or destroyed would have been valid or available.
- (5) The registrar-general may, at least 14 days before issuing a new grant or certificate and at the expense of the applicant, cause notice

of the registrar-general's intention to issue the grant or certificate to be published in a daily newspaper.

## **62A Power of registrar-general to issue new certificate**

- (1) Where—
- (a) a duplicate grant or certificate of title lodged with the registrar-general is in such a condition that, in the opinion of the registrar-general, a new certificate of title should be issued in its place; or
  - (b) it appears to the registrar-general to be desirable that a new certificate of title should be issued in respect of the whole or part of the land in respect of which a person is registered as proprietor;

the registrar-general may issue the new certificate of title and cancel or partly cancel, as the case requires, the existing grant or certificate of title.

*Note* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for the issue of a new certificate of title.

- (2) The registrar-general may, upon the delivery up to him or her of a duplicate grant or certificate of title, issue a new certificate of title in the place of the existing grant or certificate of title which shall thereupon be cancelled.

## **63 Dealings may be registered prior to issue of grant from Crown**

Upon the production of the official receipt in full for the purchase money of any lands alienated in fee from the Crown, together with a memorandum of transfer, mortgage or lease, duly executed by the purchaser from the Crown of the land, the registrar-general shall endorse upon the receipt such memorial as he or she is, in accordance with this Act, required to enter in the register upon the registration of any dealing of a like nature with land in respect of

which a grant or certificate of title has been registered, and shall sign the endorsement and stamp it with his or her seal, and the document shall thereupon be held to be duly registered in accordance with this Act, and the registrar-general shall file the receipt and the documents in his or her office, and upon the registration of the grant of the land the registrar-general shall enter thereon a memorial of the dealing, and shall endorse the document with the certificate of registration as prescribed in this Act for the registration of documents and instruments generally.

**64 Registrar-general may require map to be deposited**

- (1) The registrar-general may require the proprietor applying to have any land brought under this Act, or desiring to transfer or otherwise to deal with the land or any portion thereof, to deposit at the office of the registrar-general a map or plan of the land, certified by a registered surveyor.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for the deposit of a map or plan.

*Note 2* If a form is approved under s 140 (Approved forms) for a map or plan, the form must be used.

- (2) The registrar-general may supply stationery for the purposes of preparing a map or plan for deposit at the office of the registrar-general in accordance with subsection (1).

*Note* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for providing stationery.

- (3) If the land or the portion thereof proposed to be transferred or dealt with is of an area not exceeding 5 000m<sup>2</sup>, the map or plan shall be on a scale of not less than 1 to 2 000.
- (4) If the land or the portion thereof proposed to be transferred or dealt with is of an area exceeding 5 000m<sup>2</sup> but not exceeding 2ha, the map or plan shall be on a scale of not less than 1 to 4 000.

- (5) If the land or the portion thereof proposed to be transferred or dealt with is of an area exceeding 2ha but not exceeding 30ha, the map or plan shall be on a scale of not less than 1 to 8 000.
- (6) If the land or the portion thereof proposed to be transferred or dealt with is of an area exceeding 30ha, the map or plan shall be on a scale of 1 to 20 000.
- (7) If the proprietor neglects or refuses to comply with the requirement as to the deposit of a map or plan or, if the map or plan deposited by the registered proprietor is not approved by the surveyor-general, or an officer appointed by him or her in that behalf, it shall not be incumbent on the registrar-general to proceed with the bringing of the land under this Act or with the registration of the transfer or lease.
- (8) The maps or plans shall, if required by the registrar-general, be in duplicate.

## **65 Certified copies of register**

On application, the registrar-general must give the applicant a certified copy of any part of the register.

*Note* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for a certified copy of a part of the register.

## **66 Searches**

- (1) A person shall have access to the register for the purpose of inspection during office hours, or such other hours as the registrar-general from time to time determines.

*Note* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for inspection of the register.

- (2) The registrar-general may provide access of the kind referred to in subsection (1) by way of certificate, visual display unit, computer print-out, microfiche reader or any other means.
- (3) In subsection (2):

*computer print-out* means a document that—

- (a) is—
  - (i) a record of; or
  - (ii) an extract from; or
  - (iii) derived from;  
information stored in, or processed by, a computer; or
- (b) is produced by a computer, or a series or combination of computers, directly or (with or without human intervention) with the aid of other equipment.

**67 Issue of uncertified copies**

The registrar-general may provide an uncertified copy of any part of the register or of any information contained in the register.

*Note* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for providing an uncertified copy of a part of the register.

**68 Registrar-general may register as proprietor person entitled to land by operation of statute or by defeasance of estate**

- (1) Whenever—
  - (a) by the operation of any law or Act either directly or by reason of anything done under it; or
  - (b) by the defeasance of any estate of any person registered as proprietor under this Act;

any land under this Act has become or becomes vested in some person other than the registered proprietor either alone or jointly or in common with the registered proprietor, or some such person has become or becomes entitled to have any such land so vested, or the site or any part of the site of any closed road whether belonging to



the Commonwealth or to any person has become or becomes vested in the person registered as proprietor under this Act of adjoining land, the registrar-general may, at the written request of a person in whom there has been such a vesting or who has become so entitled, on such evidence as appears to the registrar-general to be sufficient, and after such notice (if any) to such person as the registrar-general deems proper, register the person in whom any such land or site or part thereof is vested or who has become so entitled, as the proprietor of the estate therein as is appropriate, and for that purpose may make every such entry, cancellation and correction in the register and issue every such certificate of title as appears to the registrar-general to be necessary or proper.

*Note* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for a request for registration.

- (2) This section does not apply to a case for which express provision is made by this Act or any other law.

## **69 Statute of limitations not to run against land under Act**

No title to 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.

## Part 8A Record of administrative interests

### 69A Meaning of *administrative interest*—Act

In this Act:

*administrative interest*, in relation to a parcel of land—

- (a) means a decision under a law in force in the Territory by an authorised entity in relation to the use of land that may affect a decision of a person proposing to deal with land, whether or not the land is the parcel affected or another parcel; and
- (b) if an authorised entity may or must give notice to the registrar-general of the happening of a thing that relates to the use of the land and may affect a decision of a person proposing to deal with land, whether or not the land is the parcel affected or another parcel—includes the happening of the thing; but
- (c) does not include an interest in land registrable under another part of this Act.

#### Examples of administrative interests

- 1 a development approval under the *Planning and Development Act 2007* for the use of land
- 2 if notice of a development approval is given to the registrar-general under the *Planning and Development Act 2007*—the ending, by surrender, of the development approval.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**69B Meaning of *authorised entity*—pt 8A**

In this part:

*authorised entity* means any of the following:

- (a) the registrar-general;
- (b) the Territory;
- (c) a territory authority;
- (d) an entity prescribed by regulation;
- (e) an employee of an entity mentioned in paragraph (a), (b), (c) or (d).

**69C Record of administrative interests**

- (1) This section applies if the registrar-general keeps a record of administrative interests on the register.
- (2) The registrar-general may include, in the record, the following information about an administrative interest that is a decision:
  - (a) the date of the decision;
  - (b) the particulars of the decision;
  - (c) the law under which the decision was made.
- (3) The registrar-general may include, in the record, the following information about a parcel of land to which an administrative interest relates:
  - (a) if the parcel is leased—the name of the lessee;
  - (b) the block and section;
  - (c) the address of the parcel;
  - (d) any other information the registrar-general considers necessary in relation to the parcel.

- (4) However, if the registrar-general includes information mentioned in subsection (3) in relation to the parcel of land, the information must not include information other than information already available on the register in relation to the parcel.

**69D Protection from liability—administrative interests**

- (1) This section applies if the registrar-general takes reasonable steps to bring the effect of subsection (2) to the attention of people given access to the record of administrative interests in accordance with section 66 (Searches).
- (2) Neither the registrar-general nor an authorised entity incurs liability for any omission, misstatement or inaccuracy in the information.
- (3) A regulation may prescribe what are reasonable steps for subsection (1).

## Part 9 Crown leases

### 70 Registration of Crown leases

- (1) The registrar-general shall register in the register every Crown lease for a term of not less than 12 months granted by or in the name of the Commonwealth by entering the lease in a folio of the register.
- (2) The registrar-general may register in the register a Crown lease for a term of less than 12 months, being a Crown lease granted by or in the name of the Commonwealth after the date of commencement of the *Real Property (Amendment) Act (No. 3) 1986*, by entering the lease in a folio of the register.

### 71 Dealings with Crown leases

- (1) Every Crown lease, upon registration, shall be subject to this Act, and (subject to the Act under which the Crown lease was granted and to the Crown lease) may be transferred, mortgaged and dealt with for the same purposes, and in like manner, as if it had been granted by a proprietor of land under this Act and registered in the register.
- (2) Any entries which, in the case of a lease granted by a proprietor of land under this Act, would require to be made in the register shall, in the case of a registered Crown lease, be made in the register on the folium constituted by the Crown lease.

### 72A Registration of variations

- (1) If the planning and land authority has executed a variation of a Crown lease under the *Planning and Development Act 2007*, the authority must lodge a copy of the variation with the registrar-general.

- (2) On receipt of a copy of a variation under subsection (1), the registrar-general shall endorse on the folium of the register constituted by the relevant certificate of title a memorial in accordance with this Act.
- (3) The variation takes effect when the registrar-general endorses on the folium of the register constituted by the relevant certificate of title the memorial mentioned in subsection (2).

**72AB Registration etc of orders under Planning and Development Act 2007**

- (1) This section applies if the registrar-general receives a notice under either of the following provisions of the *Planning and Development Act 2007* about an order under that Act that appears to affect a Crown lease:
  - (a) section 359 (Notice of making of controlled activity orders);
  - (b) section 364 (Notice ending controlled activity orders).
- (2) The registrar-general must endorse on the folium of the register constituted by the relevant certificate of title a memorial in accordance with this Act about the making or ending of the order.

**72B Dealing with land before grant or registration of Crown lease**

- (1) An instrument signed by a person to whom a Crown lease of land is or has been granted, or signed by a person claiming through or under such a person, and purporting to pass such an interest in the land as may be registered under this Act shall be deemed to confer on the person intended to take the interest in the land under the instrument, and on any other person claiming through or under the person intended to take that interest, the right, upon the registration of the Crown lease under this Act, to have the instrument registered under this Act.

- (2) The right conferred by subsection (1) to have an instrument registered is conferred notwithstanding that the Crown lease had not been granted or registered when the instrument was signed, but is otherwise conferred subject to this Act.

**72C Memorial of compliance with building and development provision in lease**

- (1) This section applies if—
- (a) a Crown lease is registered under this Act; and
  - (b) a building and development provision of the lease has been fully complied with and the lessee has applied, under the *Planning and Development Act 2007*, section 296 (1) (Certificates of compliance) for a certificate of compliance; and
  - (c) the registrar-general is satisfied that the planning and land authority has issued a certificate of compliance under the *Planning and Development Act 2007*, section 296 in relation to the lease.
- (2) The registrar-general may enter in the register a memorial to the effect that the building was completed in accordance with the building and development provision of the lease.
- (3) A memorial under subsection (2) is, for the *Planning and Development Act 2007*, section 296, conclusive evidence of the matter in relation to which the registrar-general has stated in the memorial that the registrar is satisfied.
- (4) In this section:
- building and development provision*—see the *Planning and Development Act 2007*, section 234.

**72D Memorial of application of Planning and Development Act 2007, s 251 to lease**

If the planning and land authority tells the registrar-general that the *Planning and Development Act 2008*, section 251 (Restrictions on dealings with certain leases) applies to a lease, the registrar-general must enter in the register a memorial to that effect.



## **Part 10 Dealings**

### **Division 10.1 Transfers**

#### **73 Memorandum of transfer**

- (1) An interest in land under this Act may be transferred by registration of a memorandum of transfer.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of transfer.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) The registrar-general shall not register a memorandum of transfer under subsection (1) unless the transfer has been executed by the registered proprietor of the land and accepted by the transferee or the transferee's legal practitioner on his or her behalf.
- (3) An acceptance under subsection (2) shall be evidenced—
- (a) in the case of a natural person—by his or her signature; or
  - (b) in the case of a corporation—in accordance with section 172.

#### **75 Procedure for dealing with certificate of title in case of transfer**

If a memorandum of transfer purports to transfer the whole or part of the land mentioned in any grant or certificate of title, the transferor shall deliver up the grant or certificate of title of the land, and the registrar-general may issue a new certificate of title or certificates of title, as the case requires, instead of entering a memorandum of the transfer on the grant or certificate of title.

**76 Issue of fresh certificate on cancellation of grant or certificate**

- (1) The registrar-general upon cancelling any grant or certificate of title, either wholly or partially, pursuant to any such transfer, shall make out to the transferee a certificate of title to the land mentioned in the memorandum of transfer, and every such certificate of title shall refer to the original grant of the land and to the memorandum or other instrument of transfer.
- (2) The registrar-general shall retain every such memorandum of transfer and cancelled or partially cancelled grant or certificate of title, and whenever required thereto by the proprietor of an unsold portion or balance of land included in any such partially cancelled grant or certificate of title, or by a registered transferee of that portion or of any part thereof, shall make out to the proprietor or transferee a certificate of title for the portion, or for any part thereof, of which he or she is the proprietor or transferee.

**77 Transferee—interests and obligations**

- (1) On the registration of a transfer, the interest in land described in the transfer, shall pass to the transferee.
- (2) In the case of a transfer of a mortgage, encumbrance or lease the transferee shall be subject to and liable for, while he or she remains the registered mortgagee, encumbrancee or lessee, all the obligations that the transferor was subject to, or liable for, before the transfer.
- (3) Where a registered lessee of a Crown lease transfers his or her interest, he or she shall not be liable for any obligation under the lease accruing after the registration of the transfer.

**78 Transfer of mortgage or lease—right to sue**

By virtue of every transfer of a mortgage, encumbrance or lease, the right to sue upon the memorandum of mortgage, encumbrance or

lease, and to recover any debt, sum of money, annuity or damages thereunder (notwithstanding that the right 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 it in the transferee thereof.

**79 Proprietor may vest estate jointly in self and others without limiting any use or without reassignment**

The registered proprietor of any land or of any interest in land, under this Act, whether of the nature of real or personal property, may, by any of the forms of instruments of transfer provided by this Act, modified as is necessary, transfer the land or interest, or any part thereof, to his or her domestic partner, or the registered proprietor may make the transfer to himself or herself jointly with any other person, or create or execute any powers of appointment, or limit any estates whether by remainder or otherwise, without limiting any use or without any reassignment being executed; but upon the registration of the transfer, the land or interest shall vest in the registered proprietor jointly with any other person, or in the person taking under the limitation, or in whose favour any power has been executed, or otherwise according to the intent and meaning appearing in the instrument and thereby expressed.

*Note* For the meaning of *domestic partner*, see Legislation Act, s 169.

**80 Endorsement when land becomes Crown land**

Upon any land under this Act becoming Crown land (whether or not held by the Commonwealth in its capacity as a body corporate conferred by the *Lands Acquisition Act 1955* (Cwlth), section 61), the registrar-general shall cause a notification to the effect that the land has become vested in the Commonwealth as Crown land, to be made in the register.

## 81 Short words for creation of right of way

In any transfer or lease the words—‘Together with a right of carriageway over the road delineated and coloured brown on the said map’, or words to the like effect, shall have the same effect as if the words contained in schedule 1 had been used instead thereof.

## Division 10.2 Leases

### 82 Form of lease

- (1) A lease in registrable form for a life or lives or a term that expires on a date specified in the lease, may be registered under this Act.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a lease.

*Note 2* If a form is approved under s 140 (Approved forms) for a lease, the form must be used.

- (2) Every such lease shall for description of the land to be dealt with refer to the grant or certificate of title of the land, or shall give such other description as is necessary to identify the land.
- (3) A lease may incorporate by reference, with or without amendment, any or all of the provisions contained in a memorandum of provisions.
- (4) Where a lease—
  - (a) incorporates by reference provisions contained in a memorandum of provisions; or
  - (b) incorporates by reference, with amendment, provisions contained in a memorandum of provisions;

those provisions, or those provisions as amended, as the case may be, shall be deemed to be set out at length in the lease.

**83 Right of purchase or covenant to purchase may be inserted**

- (1) In any lease other than a lease from the Commonwealth a right to purchase the fee simple of the land thereby demised may be granted to the lessee, or a covenant to purchase the fee simple of the land may be entered into by the lessee.
- (2) The true amount of the purchase money to be paid, the period within which the right may be exercised or within which the covenant is to be performed, and any other particulars necessary to explain the terms of the right or covenant, shall be stated in the lease.
- (3) If the lessee pays the purchase money stipulated and otherwise observes his or her covenants expressed and implied in a registered lease, the lessor shall execute a transfer to the lessee of the fee simple, and perform all acts required by this Act to be done for the purpose of transferring the fee simple of the land.

**84 Mortgagee etc not bound by lease unless consent given**

No lease of land subject to a mortgage or encumbrance shall be valid or binding against the mortgagee or encumbrancee unless he or she has consented to the lease before it is registered.

**85 Certain unregistered leases valid, but not rights of purchase or renewal under them**

- (1) A registered lease is subject to any prior unregistered lease, or agreement for a lease, for a term not exceeding 3 years.
- (2) No right or covenant to purchase the freehold or to assign the reversionary interest of the lessor contained in any lease or agreement, and no right or covenant to or for the renewal of any lease or agreement, shall be valid as against any subsequent purchaser of the reversion, lessee, mortgagee or encumbrancee unless the lease or agreement is registered.

## 86 Surrender of lease

- (1) Where any registered lease is intended to be surrendered and the surrender is effected otherwise than through the operation of a surrender in law or than under any law for the time being in force relating to insolvent or bankrupt estates, there may be endorsed upon the lease or on the counterpart thereof the word 'Surrendered' with the date of the surrender or a memorandum of surrender may be executed.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of surrender.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) The endorsement or memorandum of surrender shall be signed by the lessee and by the lessor as evidence of the acceptance of the surrender, and shall be attested by a witness.
- (3) Where the Commonwealth is the lessor, the endorsement or memorandum of surrender may be signed—
- (a) in the case of national land—by the Commonwealth Minister for the time being administering the *National Land Ordinance 1989*; and
  - (b) in the case of Territory land—by the Minister for the time being administering the Acts relating to the leasing of Crown land in the ACT;

and that signature shall constitute and be evidence of the acceptance by the Commonwealth of the surrender.

- (4) If an owners corporation surrenders the lease on behalf of a lessee under the *Unit Titles Act 2001*, section 49A, the endorsement or memorandum of surrender must be—
- (a) signed by the owners corporation; and

- (b) accompanied by evidence of the resolution under the *Unit Titles Act 2001*, section 109 authorising the surrender.
- (5) Subject to this section, the registrar-general shall, upon production to him or her of—
- (a) the lease or counterpart endorsed in accordance with this section; or
  - (b) a memorandum of surrender executed in accordance with this section;
- enter in the register a memorial recording the date of the surrender.
- (6) Upon the making of the entry required by subsection (5) the interest of the lessee in the land shall revert in the lessor or in the person in whom, having regard to intervening circumstances (if any), the land would have vested if the lease had not been executed.
- (7) No lease subject to a registered mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.
- (8) Where a lease subject to a registered mortgage is intended to be surrendered with a view to the acceptance of a new lease in its place, the registrar-general shall not enter in the register a memorial of the surrender unless he or she is satisfied, on reasonable grounds—
- (a) that the mortgage has been discharged; or
  - (b) that—
    - (i) the mortgagee consents to the continuation of the mortgage under section 91B; and
    - (ii) the priority of the mortgage relative to each other mortgage (if any) continuing in force under section 91B, can be clearly defined; and
    - (iii) the land comprised in the new lease includes all or part of the land comprised in the lease to be surrendered.

- (9) Where a lease out of which any registered sublease is derived is intended to be surrendered with a view to the acceptance of a new lease in place thereof, the endorsement to be made upon the lease or the counterpart thereof shall be the words ‘Surrendered with a view to the acceptance of a new lease’, with the date of the surrender or, if a memorandum of surrender is executed, the memorandum shall include the words ‘This surrender is with a view to the acceptance of a new lease’.
- (10) Upon production to him or her of the endorsement or memorandum of surrender, the registrar-general shall not make any entry in the register until there is presented for registration a new lease from the same lessor to the same lessee of the whole or part of the land comprised in the surrendered lease which new lease is, subject to registration of the surrender of the surrendered lease, in every respect entitled to registration.
- (11) Immediately after making an entry in the register of the surrender of a lease pursuant to an endorsement or memorandum of surrender made in accordance with subsection (9), the registrar-general shall register the new lease and shall endorse thereon a memorial of every sublease which is continued in force by section 91B, and shall include in the memorial the words ‘Continued in force by the *Land Titles Act 1925*, section 91B’, or words to the like effect.
- (12) For subsection (11), a reference in a memorial to section 90A is taken to be a reference to section 91B.

## **87 Registration of re-entry by lessor**

- (1) The registrar-general, upon proof to his or her satisfaction of re-entry by the lessor under any power in that behalf contained in the lease or declared by this Act to be implied, or of recovery of possession by the lessor by any proceeding in law or of determination, cancellation or forfeiture of a Crown lease, shall note the re-entry, recovery of possession, determination, cancellation or



forfeiture by entry in the register, and the estate of the lessee in the land shall thereupon determine.

- (2) The determination shall not release the lessee from his or her liability in respect of the breach of any covenant expressed or implied in the lease.
- (3) The person having the lease in his or her possession or within his or her control shall, when required by the registrar-general, deliver it up to the registrar-general for cancellation and the registrar-general shall cancel it accordingly.
- (4) Any person who so fails to deliver a lease up to the registrar-general when required commits an offence.

Maximum penalty: 10 penalty units.

#### **87A Entry of expiration of lease in register**

The registrar-general may, upon being satisfied that the term of a lease has expired, note the expiration of the lease by entry in the register.

#### **87B Resumption and withdrawal of land from lease**

- (1) Where, under any power contained in that behalf in any lease or under any law in force in the ACT, any portion of the land comprised in a lease is resumed or withdrawn by the lessor from the lease, the registrar-general, upon proof to his or her satisfaction of the resumption or withdrawal, shall note such resumption or withdrawal by entry in the register and the estate of the lessee in the portion of the land so resumed or withdrawn shall thereupon determine.
- (2) If the resumption or withdrawal is brought about by the Territory on behalf of the Commonwealth, a Minister may prepare a notice of the resumption or withdrawal.

- (3) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **87C Extension or variation of lease**

- (1) The registrar-general may, in respect of a lease, other than a Crown lease, register a memorandum of variation that—

- (a) varies the term of the lease; or
- (b) varies, revokes or supplements a covenant, condition or restriction contained or implied in the lease.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of variation.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) A memorandum of variation shall—

- (a) be signed by the lessor and lessee; and
- (b) be registered in the same manner as the current lease; and
- (c) be registered before the expiry of the term of the current lease.

- (3) On registration, a memorandum of variation shall—

- (a) have the same effect as if it were a registered memorandum of lease—
  - (i) for the varied term; or
  - (ii) containing the covenants, conditions or restrictions as varied; and
- (b) be deemed to be subject to all interests (except interests to have effect as varied by the memorandum of variation) to which the lease was subject at the time of registration of that memorandum.

- (4) For this section, a reference in any Territory law or in any instrument or other document to a lease or to the interest of a lessee includes a reference to the lease or the interest as affected by any memorandum of variation.
- (5) If a person has a registered interest in land, as mortgagee or otherwise, at the time of registration of a memorandum of variation affecting that land, the person is not bound by the memorandum unless the person has consented, in writing, to be so bound.

## **88            Lessee may sublet**

- (1) The proprietor of any registered lease may, subject to any provisions in his or her lease or to any Act affecting his or her right to do so, sublet by signing a sublease for a life or lives or a term that expires on a date specified in the sublease.

*Note 1*    A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a sublease.

*Note 2*    If a form is approved under s 140 (Approved forms) for a sublease, the form must be used.

- (2) A sublease may incorporate by reference any or all of the provisions contained in a memorandum of provisions.
- (3) Where a sublease incorporates by reference provisions contained in a memorandum of provisions, the provisions so incorporated shall be deemed to be set out at length in the sublease.
- (4) No sublease of any land subject to a mortgage or encumbrance shall be valid or binding against the mortgagee or encumbrancee unless he or she has consented to the sublease before it is registered.

## **89            Provisions as to leases to apply to subleases**

The provisions of this Act affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees with such modifications and exceptions as the difference between a lease and a sublease requires.

**90 Determination of lease to determine sublease**

Subject to section 91A, if a registered lease is determined from any cause, the determination shall determine any sublease thereunder.

**91 Covenants to be implied in subleases**

In addition to the covenants declared by this Act to be implied in every registered lease, there shall be implied in every registered sublease the following covenant with the sublessee by the sublessor, that is to say:

That the sublessor will during the term thereby granted pay the rent reserved by, and perform and observe the covenants and agreements contained in, the head lease, and on his or her part to be paid, performed and observed.

**Division 10.2A Surrender of lease**

**91A Surrender of lease not to affect sublease**

- (1) This section applies if—
  - (a) a lease of land under this Act is surrendered by the lessee; and
  - (b) the lessor grants to the lessee a new lease of the land comprised in the surrendered lease; and
  - (c) the lessee has granted, under the surrendered lease, a sublease that is still in force when the lease is surrendered; and
  - (d) the whole of the land comprised in the sublease is within the new lease.
- (2) The sublease continues in force, unless otherwise terminated, as a sublease under the new lease.
- (3) The sublessor has the same rights and remedies against the sublessee, and the sublessee has the same rights and remedies

against the sublessor, under the sublease as if the lease had not been surrendered.

- (4) The lessor has the same rights and remedies against the sublessee, by entry onto the land, as the lessor would have had if the surrendered lease had not been surrendered.
- (5) However, subsection (4) does not confer a right or remedy on the lessor if, or to any extent that, the lessor would not have a similar right or remedy against the sublessee of a sublease of land comprised in the new lease.
- (6) In this section, a reference to a lessor, lessee, sublessor or sublessee includes a reference to a successor in title to the lessor, lessee, sublessor or sublessee.

### **91B Surrender of lease not to affect mortgage**

- (1) This section applies if—
  - (a) a lease of land under this Act is surrendered by the lessee; and
  - (b) the lessor grants to the lessee a new lease of the land comprised in the surrendered lease; and
  - (c) the lessee has given a mortgage of the land comprised in the surrendered lease; and
  - (d) the mortgage is still in force when the lease is surrendered.
- (2) The mortgage continues in force, unless otherwise terminated or discharged, as a mortgage of the land comprised in the new lease.
- (3) The mortgagor has the same rights and remedies against the mortgagee, and the mortgagee has the same rights and remedies against the mortgagor, under the mortgage as if the lease had not been surrendered.
- (4) The mortgage is to be read subject to any changes necessary to give effect to subsections (2) and (3).

- (5) The lessor has the same rights and remedies against the mortgagee, by entry onto the land, as the lessor would have had if the surrendered lease had not been surrendered.
- (6) However, subsection (5) does not confer a right or remedy on the lessor if, or to any extent that, the lessor would not have a similar right or remedy against the mortgagee of a mortgage of the land comprised in the new lease.
- (7) In this section, a reference to a lessor, lessee, mortgagor or mortgagee includes a reference to a successor in title to the lessor, lessee, mortgagor or mortgagee.

**91C New lease—continuation of interests noted on surrendered lease**

If a lease is surrendered by the lessee and a new lease of the land comprised in the surrendered lease is granted to the lessee, the following provisions apply to any interest in the land noted on the surrendered lease at the time of the surrender:

- (a) the interest must be noted on the new lease;
- (b) unless varied, terminated or discharged, the interest applies to the new lease in the same way as it applied to the surrendered lease.

**Division 10.3 Mortgages and encumbrances**

**92 Land—how mortgaged or encumbered**

- (1) Whenever any land or interest in land under this Act is intended to be charged or made security in favour of any mortgagee, the mortgagor may execute a memorandum of mortgage.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of mortgage or encumbrance.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum of mortgage or encumbrance (see s (2)), the form must be used.

- (2) Whenever any such land or interest is intended to be charged with or made security for the payment of an annuity, rent charge or sum of money in favour of any encumbrancee, the encumbrancer may execute a memorandum of encumbrance.
- (3) Every such instrument shall contain an accurate statement of the interest intended to be mortgaged or encumbered, and shall for description of the land intended to be dealt with refer to the grant or certificate of title of the land in which the interest is held, or shall give such other description as is necessary to identify the land together with a statement of all mortgages and other encumbrances (if any) affecting the land.
- (4) A memorandum of mortgage or a memorandum of encumbrance, may incorporate by reference, with or without amendment, any or all of the provisions contained a memorandum of provisions.
- (5) Where a memorandum of mortgage, or a memorandum of encumbrance—
  - (a) incorporates by reference provisions contained in a memorandum of provisions; or
  - (b) incorporates by reference, with amendment, provisions contained in a memorandum of provisions;

those provisions, or those provisions as amended, as the case may be, shall be deemed to be set out at length in the memorandum of mortgage or encumbrance, as the case requires.

## **92A Mortgage or encumbrance—postponement of priority**

- (1) In this section:  

*mortgage* includes an encumbrance, and *mortgagee* and *mortgagor* have corresponding meanings.
- (2) Where—

- (a) 2 or more memoranda of mortgage on land, or on an interest in land, under this Act have been registered under this Act; and
- (b) the land charged by each of those mortgages is the same and no other land is charged by any of those mortgages;

the relative priorities that those 2 or any 2 or more of those memoranda have by reason of section 48 (6) or of this section may, by memorandum of variation, be varied so that those memoranda shall be entitled in priority the one over the other in the order in which, by the memorandum of variation, they are expressed to have priority.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of variation.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (3) A memorandum of variation referred to in subsection (2) shall be signed in the presence of a witness—
  - (a) by the mortgagee under each of the mortgages the priority of the memorandum of which is to be varied; and
  - (b) where the assent of the mortgagor is necessary in order to render the variation effective against him or her, by the mortgagor.
- (4) If—
  - (a) in addition to the memoranda of mortgage the priorities of which are to be varied, there is registered under this Act another memorandum of mortgage charging the whole or any part of the land charged by those memoranda; and
  - (b) that other memorandum of mortgage has priority over 1 or more of those memoranda of mortgage but not over the remaining memorandum or memoranda of mortgage; and



- (c) it is not intended that the priority that that other memorandum of mortgage has by reason of section 48 (3) or of this section be varied by the memorandum of variation;

the memorandum of variation shall also be signed in the presence of a witness by the mortgagee under that other memorandum of mortgage.

- (5) After lodgment of a memorandum of variation, the registrar-general shall—
- (a) register the memorandum of variation; and
  - (b) make such entries in the register as are necessary, in relation to—
    - (i) the memoranda of mortgage the relative priorities of which are to be varied; and
    - (ii) any other memorandum of mortgage of the kind referred to in subsection (4).
- (6) After the registration of a memorandum of variation, the memoranda of mortgage the relative priorities of which are affected by the memorandum shall be entitled in priority the one over the other in the order in which, by the memorandum of variation, they are expressed to have priority.

### **93 Mortgage or encumbrance—effect**

- (1) Any mortgage or encumbrance under this Act shall, have effect as a security but shall not operate as a transfer of the land thereby charged.
- (2) If default is made in the payment of the principal sum, interest, annuity or rent charge, or any part thereof, secured by the mortgage or encumbrance, or in the observance of any covenant expressed in any memorandum of mortgage or of encumbrance registered under this Act, or that is in this Act declared to be implied in the instrument, and the default is continued for the space of 1 month or

for such other period of time as is therein for that purpose expressly limited, the mortgagee or encumbrancee may—

- (a) give to the mortgagor or encumbrancer notice in writing to pay the money then due or owing on the memorandum of mortgage or of encumbrance, or to observe the covenants therein expressed or implied, as the case may be, and that sale will be effected unless the default be remedied; or
- (b) leave the notice on the mortgaged or encumbered land or at the usual or last-known place of abode in the ACT of the mortgagor or encumbrancer or other person claiming to be then entitled to the land or with his or her agent in the ACT.

#### **94 Power to sell**

- (1) If the default in payment or in observance of covenants continues for the further period of 1 month after the service of the notice, or for such other period as is in the instrument for that purpose limited, the mortgagee or encumbrancee may sell all the interest of the mortgagor or encumbrancer in the land so mortgaged or encumbered, or any part thereof, and either altogether or in lots by public auction or by private contract, or both those modes of sale, and subject to such conditions as he or she thinks fit, and may buy in and resell the interest without being liable for any loss occasioned thereby, and may make and execute all such instruments and documents as are necessary for effecting the sale thereof.
- (2) All sales, contracts, matters and things made, done or executed in pursuance of subsection (1) shall be as valid and effectual as if the mortgagor or encumbrancer had made, done or executed them, and the receipt or receipts in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of the land or interest, or of any portion thereof, for so much of his or her purchase money as is thereby expressed to be received.
- (3) 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 paid by him or her, nor shall he or she be concerned to inquire as to the fact of any default or notice having been made or given as provided in section 93.

- (4) The purchase money to arise from any sale under this section shall be applied, first, in payment of the expenses occasioned by the sale; second, in payment of the moneys which are owing to the mortgagee or encumbrancee; third, in payment of subsequent mortgages or encumbrances (if any) in the order of their priority; and the surplus (if any) shall be paid to the mortgagor or encumbrancer, as the case may be.
- (5) Where a transfer is made in professed exercise of the power of sale conferred by this Act, the title of the transferee shall not be impeachable on the ground that no case has arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his or her remedy in damages against the person exercising the power.
- (6) A memorandum of transfer executed by a mortgagee or encumbrancee in exercise of the power of sale conferred by this Act shall be accepted by the registrar-general as sufficient evidence that the power has been duly exercised, and he or she shall not be bound or required to call for proof thereof.
- (7) Where—
  - (a) after the registration under this Act of a mortgage or encumbrance on a parcel of land, there is registered under this Act a notice of a determination made under the *Rates and Land Rent (Relief) Act 1970*, section 3 in which the parcel of land referred to is the parcel of land subject to the mortgage or encumbrance; and

- (b) the mortgagee under the mortgage or the encumbrancee under the encumbrance exercises the rights conferred by this section in relation to the land;

the notice of the determination shall, for this section, be deemed to be a mortgage of the land referred to in the notice to the Territory having priority according to the date of its registration under this Act and securing the payment to the Territory of an amount equal to the amount for the time being secured by section 108B.

## **95 Sale by mortgagee—vesting**

- (1) For the purposes of a sale under section 94, the registrar-general shall register a memorandum of transfer—
  - (a) executed by a mortgagee or encumbrancee; and
  - (b) lodged in registrable form.
- (2) Where a transfer is registered under subsection (1), the interest of the mortgagor or encumbrancer 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—
  - (a) the mortgage or encumbrance; or
  - (b) any other mortgage or encumbrance registered after the registration of the interest of the mortgagor or encumbrancer but before the registration of the transfer; or
  - (c) any other mortgage or encumbrance over which the firstmentioned mortgage or encumbrance has priority under a memorandum of variation registered under section 92A.
- (3) Where—
  - (a) there is a caveat entered in the register in respect of the land comprised in the transfer; and

- (b) the caveat was entered in the register after the registration of the interest of the mortgagee or encumbrancee, as the case may be;

the registrar-general may register the transfer notwithstanding the existence of the caveat and the caveat lapses on registration of the transfer.

- (4) The registrar-general may remove from the register a caveat that has lapsed under subsection (3).

#### **95A Sale by court order—application by mortgagor etc**

- (1) A mortgagor or encumbrancer of land may apply to the Supreme court for an order that the land be sold.
- (2) On an application the court may order a sale of the land on any terms as the court considers just.
- (3) In particular, the court may make the operation of the order subject to payment into court of a specified sum to meet the expenses of the sale and to secure the performance of the terms.
- (4) The court may make an order even if a procedure has been taken, or proceedings have been instituted, by any person to foreclose or realise the mortgage or encumbrance or to sell the land.
- (5) The court may make an order without deciding the priority of mortgages or encumbrances over the land.

#### **96 Default, entry and possession—action for recovery**

The mortgagee or encumbrancee upon default in payment of the principal sum or any part thereof, or of any interest, annuity or rent charge secured by any mortgage or encumbrance may—

- (a) enter into possession of the mortgaged or encumbered land by receiving the rents and profits therefor; or

- (c) bring an action to recover the land, either before or after commencing to take the rents and profits, and either before or after any sale of the land effected under the power of sale given or implied in his or her memorandum of mortgage or of encumbrance;

in the same manner in which he or she might have made the entry or brought the action if the principal sum or annuity were secured to him or her by a conveyance of the legal estate in the land so mortgaged or encumbered.

## **97 Order for foreclosure on default**

- (1) When default has been made in the payment of the interest or principal sum secured by memorandum of mortgage for 6 months, a registered mortgagee or his or her legal practitioner or attorney in the ACT may make application in writing to the registrar-general for an order for foreclosure.
- (2) The application shall state that the default has been so made, and that the land or interest mortgaged has been offered for sale at public auction by a licensed auctioneer, after notice given to the mortgagor, as in this Act provided, and that the amount of the highest bid at the sale was not sufficient to satisfy the money secured by the mortgage, together with the expenses occasioned by the sale, and that notice in writing of the intention of the mortgagee to make the application has been given to the mortgagor by leaving the notice at his or her usual or last-known place of abode, if that place is within 5km of the residence of the mortgagee, or by forwarding the notice by registered letter through the post office, if that place is beyond that distance.
- (3) The application shall be accompanied by a certificate of the auctioneer by whom the land was put up for sale, and such other proof of the matters stated by the applicant, as the registrar-general requires.

- (4) The statements made in the application shall be verified by the oath or statutory declaration of the applicant or other person applying on his or her behalf.

## **98 Application—how made effective**

- (1) The registrar-general may prepare a notice offering the land for sale, and shall limit and appoint a time, not less than 1 month from the date of notification of the offer under the *Legislation Act 2001*, upon or after which the registrar-general may issue to the applicant an order for foreclosure, unless in the interval a sufficient amount has been realised by the sale of the land to satisfy the principal and interest moneys due, and all expenses occasioned by the sale.

- (2) An offer under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) The registrar-general must also publish the offer in a newspaper or newspapers.
- (4) Every such order for foreclosure entered in the register shall have the effect of vesting in the mortgagee all the estate and interest of the mortgagor in the land mentioned in the order free from all right and equity of redemption on the part of the mortgagor or of any person claiming through or under him or her.

## **99 Mortgagee to receive rent**

- (1) Whenever a mortgagee or encumbrancee gives notice of his or her demanding to enter into receipt of the rents and profits of the mortgaged or encumbered 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 or encumbrancer in regard to receipt and recovery of, and giving discharges for, the rents and profits, shall be suspended and transferred to the mortgagee or encumbrancee until the notice is withdrawn, or the mortgagee or encumbrancee is satisfied, and a discharge thereof duly registered.

- (2) In every such case, the receipt in writing of the mortgagee or encumbrancee shall be a sufficient discharge for any rents and profits therein expressed to be received, and no person paying the rents and profits shall be bound to inquire concerning any default or other circumstance affecting the right of the person giving the notice beyond the fact of his or her being duly registered as mortgagee or encumbrancee of the land.
- (3) Nothing herein contained shall interfere with the effect of any rule, order or judgment of the court in regard to the payment of rent under the special circumstances of any case, or prejudice any remedy of the mortgagor or encumbrancer against the mortgagee or encumbrancee for wrongful entry or for an account.

- (4) In this section:

*court* includes the Family Court of Australia and any other court having jurisdiction under the *Family Law Act 1975* (Cwlth).

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

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

## **100A Right of Territory if determination revoked and amount secured not paid**

- (1) Where—



- (a) a determination under the *Rates and Land Rent (Relief) Act 1970*, section 3 has been revoked under that Act, section 9, 12 or 13;
- (b) the amount of the payment of which is secured by section 108B has not been paid in full to the Territory; and
- (c) a memorandum of discharge under the *Rates and Land Rent (Relief) Act 1970* has not been presented to the registrar-general for registration under this Act;

the Territory shall be deemed to have, on and after the date on which default has been made in the payment of the whole or part of the amount referred to in paragraph (b), the rights that it would have had under sections 93 (2), 94, 96, 97, 99 and 100 if—

- (d) the notice of the determination had been a mortgage by the registered proprietor of the land referred to in the notice securing the payment to the Territory of the amount referred to in paragraph (b) and registered on the date of registration of the notice; and
  - (e) the amount were the principal sum secured by the mortgage; and
  - (f) the default in the payment of the whole or part of the amount referred to in paragraph (b) were default in the payment of the principal sum or part of the principal sum secured by the mortgage.
- (2) Sections 93 (2) and 94 to 100 apply to and in relation to the exercise by the Territory of the rights that it is to be deemed to have under subsection (1) to the same extent and in the same manner as if the Territory were the mortgagee under a mortgage referred to in subsection (1) (d).
- (3) For subsection (1), default shall be deemed to have been made in the payment of—

- (a) the whole of the amount referred to in subsection (1) (b) if an amount equal to that amount has not been paid to the Territory within 1 month after the date on which such an amount has become payable under the *Rates and Land Rent (Relief) Act 1970*, section 15 (1); and
- (b) part of the amount referred to in subsection (1) (b) if an amount equal to that part has not been paid to the Territory within 1 month after the date on which such an amount has become payable to the Territory under that Act, section 15 (2) or (3).

## 101 Discharge of mortgages and encumbrances

- (1) The registrar-general may, on lodgment of a discharge of mortgage or encumbrance, register a discharge of the mortgage or encumbrance to the extent specified in the discharge instrument.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a discharge of mortgage or encumbrance.

*Note 2* If a form is approved under s 140 (Approved forms) for a discharge, the form must be used.

- (2) The discharge of mortgage or encumbrance may discharge the debt or annuity secured in relation to—
  - (a) subject to subsection (3), 1 or more parcels of land; or
  - (b) 1 or more of the mortgagors or encumbrancers, as the case requires; or
  - (c) 1 or more of the mortgagees or encumbrancees, as the case requires.
- (3) A discharge of mortgage or encumbrance in relation to a parcel of land does not discharge the debt or annuity in respect of the parcel of land unless there is a separate certificate of title for that parcel.

- (4) On registration of the discharge of mortgage or encumbrance, the mortgage or encumbrance, as the case requires, is discharged to the extent specified in the discharge instrument.

### **101A Variation of mortgages**

- (1) A registered mortgage may be varied by registration of a memorandum of variation of mortgage.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of variation of mortgage.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) The memorandum shall be signed in the presence of a witness by each of the parties to the mortgage.
- (3) Upon production of a memorandum referred to in subsection (2), the registrar-general shall make such entries in the register as are necessary.
- (4) The memorandum shall, when registered under this Act, operate so as to vary the mortgage in the manner specified in the memorandum.
- (5) This section applies to a mortgage made before or after the commencement of this section.

### **102 Entry of satisfaction of annuity**

- (1) Upon proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with any memorandum of encumbrance, the annuity or sum of money thereby secured ceases to be payable, and upon proof that all arrears of the annuity and interest or money have been paid, satisfied or discharged, the registrar-general shall make an entry in the register noting that the annuity or sum of money is satisfied or discharged, and shall cancel the instrument.

- (2) Upon the entry being made, the land or interest shall cease to be subject to, or liable for, the annuity or sum of money.

**103 Facilitation of redemption in case of absent or unknown mortgagees**

- (1) When any person entitled to receive payment of any money secured by memorandum of mortgage is out of the jurisdiction, cannot be found, or is unknown, or it is uncertain who is so entitled, the court, upon the application of the person entitled to redeem the mortgaged premises, may order the amount of the debt to be ascertained in such manner as the court thinks fit, and direct the amount so ascertained to be paid into court.
- (2) The court shall order the amount so paid into court to be paid to the person entitled, upon the application of that person, and on proof that the memorandum of mortgage and all deeds or documents evidencing title which were delivered by the mortgagor to the mortgagee on executing the memorandum of mortgage, or in connection therewith, have been delivered up to the person by whom the amount was so paid into court, or his or her executors, executrices, administrators, administratrices or assigns, or have been otherwise satisfactorily accounted for.
- (3) Upon production to the registrar-general of the certificate of a registrar of the court that the payment was directed as provided in subsection (1) and has been made—
  - (a) he or she shall make such entries in the register as are necessary; and
  - (b) the entry shall be a discharge of the land from the mortgage:

Provided that as between the mortgagor and the person entitled to receive payment, any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due or payable over and above the amount so paid, shall continue to be a speciality debt due under the mortgage.

*Note* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a discharge of mortgage by court order.

## **Division 10.3A Memoranda of provisions**

### **103A Registration of memoranda of provisions**

- (1) A person may present for registration a memorandum containing provisions that are to be incorporated by reference in—
  - (a) leases or subleases that are to be prepared or executed by the person; or
  - (b) memoranda of mortgage that are to be prepared or executed by the person; or
  - (c) memoranda of encumbrance that are to be prepared or executed by the person.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of provisions.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) A memorandum referred to in subsection (1) shall be signed by the person for whom it is lodged or by his or her legal practitioner.
- (3) The registrar-general shall, upon presentation to him or her of a memorandum that is in registrable form, register the memorandum.

## Division 10.3B Easements and other incorporeal rights

### 103B Easements—registration

- (1) Where a memorandum of easement has been lodged in registrable form, the registrar-general shall register the easement and enter in the register—
  - (a) particulars of the land that is benefited by the easement or of the person in whose favour it is registered; and
  - (b) particulars of the land that is burdened by the easement; and
  - (c) such other particulars as the registrar-general considers necessary.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of easement.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) An easement may be limited wholly or partly in height or depth, or both.

### 103C Easements in gross—registration, transfer and extinguishment

- (1) The registrar-general may register an easement in gross, being an easement that does not benefit any land and is registered in favour of 1 of the following:
  - (a) the Territory or a body corporate established by or under a Territory law;
  - (b) the Commonwealth or a body corporate established by or under a Commonwealth law;
  - (c) a State or another Territory or a body corporate established by or under a law of the State or other Territory;

(d) a person who is providing a public utility service in the ACT.

- (2) Where the business of providing a public utility service is transferred, the registrar-general may, on application by the transferee, register the transfer of the benefit of any public utility easement in respect of that business or all such easements, to the transferee.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of an application for transfer.

*Note 2* If a form is approved under s 140 (Approved forms) for an application, the form must be used.

- (3) Where—

- (a) a public utility easement is registered in favour of a person or body; and
- (b) the person or body ceases to provide the public utility service for the purposes of which the easement was registered;

the easement shall—

- (c) on application by the transferee under subsection (2), be registered in the name of the person or body to whom the business of providing that service is transferred; or
- (d) where the transfer of the easement has not been so registered within 30 days of the transfer of the business or where there is no such transferee—shall be extinguished.

- (4) In this section:

*public utility easement*, in relation to a business providing a public utility service, means an easement registered in the name of a person or body for the purposes of that business.

### **103D Easements—same owner of benefited and burdened land**

An easement may be registered even if—

- (a) the land benefited and the land burdened by the easement have the same registered proprietor; or
- (b) the registered proprietor of the land benefited by the easement has a registered interest in the land burdened by the easement.

**103DA Easements—subdivision of dominant tenement**

If an easement subsists under the *Land Titles (Unit Titles) Act 1970*, section 9 for the benefit of units in a units plan, the easement may be registered in relation to the units.

**103E Extinguishment of easement**

- (1) A registered easement shall be extinguished—
  - (a) by the registration of a memorandum of extinguishment of easement; or
  - (b) by the surrender of the lease of the land benefited by the easement.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of extinguishment of easement.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) Despite subsection (1) (b), a registered easement is not extinguished if, after surrender by the lessee of the lease, a new lease of the land comprised in the surrendered lease is granted to the lessee.
- (3) On registration of a memorandum of extinguishment of easement, the registrar-general shall make such entries in the register as are necessary to record the extinguishment.
- (4) A memorandum of extinguishment of easement shall be signed by—
  - (a) the registered proprietor of the land benefited by the easement or the person or body in whose favour the easement is registered; and



- (b) each registered mortgagee and lessee (other than a lessee who does not receive a benefit from the easement) of the land benefited by the easement.
- (5) An easement is not extinguished merely because—
  - (a) the burdened and benefited land in relation to the easement have the same registered proprietor; or
  - (b) the registered proprietor of the land benefited by the easement acquires an interest, or a greater interest, in the land burdened by the easement.

### **103F Easements—variation**

- (1) Subject to subsection (2), a registered easement may be varied by registration of a memorandum of variation of easement.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of variation of easement.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) A registered easement cannot be varied—
  - (a) by changing the location of the easement; or
  - (b) by increasing or decreasing the area of land affected by the easement; or
  - (c) by changing the burdened or benefited land; or
  - (d) if it is an easement registered in accordance with section 103C (1)—by changing the person or body in whose favour the easement is registered.
- (3) A memorandum of variation of easement shall be signed by—
  - (a) the registered proprietor of the land benefited by the easement or the person or body in whose favour the easement is registered; and

- (b) each registered mortgagee and lessee (other than a lessee who does not receive a benefit from the easement) of the land benefited by the easement.

### **103G Incorporeal rights—registration**

- (1) The registrar-general may register a memorandum of incorporeal right that creates an incorporeal right other than an annuity or rent charge.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of incorporeal right.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) Where the registrar-general registers a memorandum under subsection (1), he or she or she shall enter in the register such particulars of the incorporeal right, and of the land burdened or benefited by the right, as he or she considers necessary.

### **103H Incorporeal rights—extinguishment**

- (1) The registrar-general may register a memorandum of extinguishment of incorporeal right.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a memorandum of extinguishment of incorporeal right.

*Note 2* If a form is approved under s 140 (Approved forms) for a memorandum, the form must be used.

- (2) On registration of a memorandum of extinguishment of incorporeal right, the registrar-general shall make such entries in the register as are necessary to record the extinguishment and preserve the record.

## Division 10.4 Caveats against dealings

### 104 Lodging of caveat

- (1) A caveat, in relation to land, shall not be entered in the register unless it is lodged by—
  - (a) if the land is to be held by the transferee as trustee—the transferor of the land; or
  - (b) a person claiming an interest in the land or his or her legal practitioner; or
  - (c) where a person claiming an interest in the land so authorises in writing—the agent of that person.
- (2) Subject to subsections (3) to (5), a caveat may prohibit the registration of any document affecting the land or interest in respect of which it is entered in the register.
- (3) A caveat may be restricted in operation by stating—
  - (a) that specified types of documents are not prohibited from registration by the caveat; or
  - (b) that 1 or more of the types of documents referred to in subsection (5) are prohibited from registration by the caveat.
- (4) A caveat can not prohibit—
  - (a) the registration of a writ or the lapsing, withdrawal, cancellation or removal of a writ; or
  - (b) the registration of a caveat or the lapsing, withdrawal or removal of a caveat; or
  - (c) the registration of an instrument executed by a mortgagee whose interest was registered before lodgment of the caveat; or
  - (d) a correction or alteration of the register by the registrar-general under section 107C (2), 160, 161 or 162A.

- (5) Unless a caveat states that it prohibits 1 or more of the following types of registration, those registrations are not prohibited:
- (a) registration of the survivor of joint proprietors under section 55;
  - (b) registration of the vesting of an interest in land under section 68;
  - (c) registration of the resumption and withdrawal of land under section 87B;
  - (d) registration of the discharge of a mortgage or encumbrance under section 101;
  - (e) registration of an easement under section 103B;
  - (f) registration of the extinguishment of an easement under section 103E;
  - (g) registration of the variation of an easement under section 103F;
  - (h) registration of an incorporeal right under section 103G;
  - (i) registration of the extinguishment of an incorporeal right under section 103H;
  - (j) registration of a transmission by bankruptcy or insolvency under section 132;
  - (k) registration of a transmission by death to an executor, executrix, administrator or administratrix under section 135;
  - (l) registration of new or additional trustees under section 138A;
  - (m) registration of a declaration by an executor or executrix under section 138B;
  - (n) registration of an instrument executed by a lessor whose interest was registered before the caveat if the lessor has power under the lease to execute the instrument.

- (6) Every such caveat shall state the name and address of the caveator, and shall contain a sufficient description to identify the land and the interest therein claimed by the caveator, and, except in case of caveats lodged by order of the court or by the registrar-general, as in this Act provided, shall be signed by the caveator or by his or her legal practitioner or agent in the ACT.
- (7) No such caveat shall be received unless some address or place within the ACT is specified in the caveat as the address for service of notices and proceedings relating to the caveat.
- (8) In this section:  
*court* includes the Family Court of Australia and any other court having jurisdiction under the *Family Law Act 1975* (Cwlth).

#### **104A      Entering caveat in register**

- (1) The registrar-general shall enter in the register a caveat that—
  - (a) does not require a material correction, alteration or addition; and
  - (b) otherwise complies on its face with the requirements of this Act.

*Note 1*    A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a caveat.

*Note 2*    If a form is approved under s 140 (Approved forms) for a caveat, the form must be used.
- (2) Other than for the purpose of determining that a caveat complies with subsection (1), the registrar-general is not required to determine the validity of the caveator's claim.

#### **104B      Withdrawal of caveats**

A caveat may be withdrawn—

- (a) by the caveator or his or her legal practitioner; or

- (b) where the caveator so authorises in writing—by the agent of the caveator; or
- (c) where the interest claimed in the caveat was, in the caveat, claimed to be held by 2 or more caveators as joint tenants and 1 of those caveators is dead—by the surviving caveator or caveators, as the case requires; or
- (d) where the caveator is dead and paragraph (c) does not apply—by the executor or executrix of the will, or the administrator or administratrix of the estate, of the caveator; or
- (e) where the interest claimed in the caveat has vested, pursuant to a law in force in the ACT relating to bankruptcy, in the official trustee in bankruptcy, in a trustee or in any other person—by the official trustee in bankruptcy, that trustee or that other person, as the case requires.

## **105 Notice of caveat**

- (1) Upon the receipt of a caveat, the registrar-general shall notify the receipt to the person against whose application to be registered as proprietor, or, as the case may be, to the registered proprietor against whose title to deal with land under this Act the caveat has been lodged.
- (2) A person who—
  - (a) is an applicant or registered proprietor referred to in subsection (1);
  - (b) has a registered interest in the land; or
  - (c) has an interest in the land under a memorandum of transfer or other instrument registrable under this Act;

may apply to the court, on notice to the caveator, for an order that the caveat be removed.

- (3) The court or judge, upon proof that the caveator has been given notice of the application for the order, may make such order in relation to the land, either *ex parte* or otherwise, as to the court or judge seems fit.
- (4) In this section:  
*court* includes the Family Court of Australia and any other court having jurisdiction under the *Family Law Act 1975* (Cwlth).

**105A Surrender and regrant of lease of land affected by caveat**

- (1) This section applies, subject to any order of the court, if—
- (a) a caveat has been registered in relation to land; and
  - (b) the caveat has not lapsed or been removed; and
  - (c) the lease of the land is surrendered by the lessee and a new lease of the land comprised in the surrendered lease is granted to the lessee.
- (2) The operation or effect of the caveat is not affected by the surrender of the lease and the grant of the new lease.
- (3) If the registrar-general makes a record in the register of the grant of the new lease, the registrar-general must also make a record of the caveat in relation to the new lease.

**106 Caveat lapsing**

- (1) Except in the case of a caveat lodged—
- (a) by a settlor; or
  - (b) by or on behalf of a beneficiary claiming under a will or settlement; or
  - (c) by the registrar-general;
- a caveat lodged against a registered proprietor shall, unless the court otherwise orders, lapse 14 days after the date of a notice to the

caveator that application has been made for the registration of a document in respect of the land or interest to which the caveat relates.

- (2) On the registration of the document, in respect of which the notice referred in subsection (1) has been given, the lapsed caveat shall be deemed to be reinstated.
- (3) Subsection (2) applies even though the lease of land to which the caveat related has been surrendered by the lessee, if a new lease of the land comprised in the surrendered lease is granted to the lessee.
- (4) In this section:

*court* includes the Family Court of Australia and any other court having jurisdiction under the *Family Law Act 1975* (Cwlth).

## 107 Removal of caveat

- (1) A registered proprietor to whose interest in land a caveat relates may apply to the registrar-general to have the caveat removed.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of an application to remove a caveat.

*Note 2* If a form is approved under s 140 (Approved forms) for an application, the form must be used.

- (2) On receipt of an application under subsection (1), the registrar-general shall—
  - (a) give notice of the application to the caveator; and
  - (b) not less than 14 days from the date of service of the notice, remove the caveat from the register, unless the court otherwise orders.
- (3) If the registrar-general believes on reasonable grounds that the caveator's interest has been extinguished by the transfer of the whole of the registered proprietor's interest to another person, the registrar-general may—



- (a) give notice to the caveator that he or she believes that the caveator's interest has been extinguished and that he or she intends to remove the caveat from the register; and
- (b) not less than 14 days from the date of service of the notice, remove the caveat from the register, unless within that time—
  - (i) the caveator shows to the satisfaction of the registrar-general that his or her interest has not been extinguished; or
  - (ii) the court otherwise orders.

**107A      Effect on dealings**

- (1) While a caveat remains in force prohibiting the registration of a document, the registrar-general shall not register the document, unless—
  - (a) the court otherwise orders; or
  - (b) the caveator consents in writing to the registration of that document.
- (2) Subsection (1) does not operate to prohibit the registration of a document lodged in registrable form before the caveat was lodged.

**107B      Removal of caveat by registrar-general**

Where the registrar-general is satisfied that a caveator has acquired, by registration of a memorandum of transfer or other document, the whole of the land or interest in respect of which the caveat is lodged, the registrar-general may remove the caveat from the register, unless the court otherwise orders.

**107C      Successive caveats**

- (1) Where a caveat has been removed by the registrar-general in accordance with section 107 (2), the registrar-general shall not enter on the register any subsequent caveat affecting the same land or

interest by the same person, or for the same purpose, except by order of the court.

- (2) Where a subsequent caveat of the kind referred to in subsection (1) has been entered on the register, other than by order of the court, the registrar-general may—
- (a) give notice to the caveator that the caveat will be removed; and
  - (b) not less than 14 days after the date of service of the notice, remove the caveat from the register, unless the court otherwise orders.

**108 Compensation for lodging caveat without reasonable cause**

Any person lodging any caveat with the registrar-general without reasonable cause shall be liable to make to any person who has sustained damage thereby such compensation as is just, and the compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat.

**Division 10.5 Determinations under Rates and Land Rent (Relief) Act 1970**

**108A Certain documents under Rates and Land Rent (Relief) Act 1970 to be instruments affecting land**

- (1) Subject to subsection (2), a notice of a determination made under the *Rates and Land Rent (Relief) Act 1970*, section 3, and a memorandum of discharge under that Act, section 18, shall, on being presented to the registrar-general for registration under this Act each be deemed to be, for this Act, an instrument affecting the land referred to in the notice.
- (2) Section 67 does not apply to or in relation to a notice or memorandum referred to in subsection (1).

**108B Effect of registration of determination**

A notice of a determination made under the *Rates and Land Rent (Relief) Act 1970*, section 3 shall, when registered under this Act, have effect as a charge securing the payment to the Territory of an amount equal to the amount for which the person to whom the determination relates becomes, whilst the determination remains in force, indebted to the Territory under that Act and the payment to the Territory of interest payable under that Act, section 4 (3) or 16, or both.

**108C Registration of memorandum of discharge**

Upon the production to the registrar-general of a memorandum of discharge under the *Rates and Land Rent (Relief) Act 1970*, the registrar-general shall—

- (a) register the memorandum; and
- (b) make an entry in the register noting that the charge created by the registration of the notice of the determination referred to in the memorandum is discharged.

## **Part 11 Implied covenants and short forms of covenants**

### **109 Effect of covenant**

- (1) A covenant whether expressly contained in any instrument or implied therein under this Act shall be deemed to be made with the covenantee, his or her heirs, executors, executrices, administrators, administratrices and assigns, and shall have effect accordingly.
- (2) A covenant whether express or implied under this Act made with 2 or more jointly to pay money or to do any other act to them or for their benefit shall be deemed to include, and shall by virtue of this Act imply, an obligation to do the act to or for the benefit of the survivor or survivors of them and to or for the benefit of any other person to whom the right to sue on the covenant devolves.
- (3) This section applies only if and as far as a contrary intention is not expressed in the instrument and shall have effect subject to the instrument.

### **110 Covenants by person with self and another or others**

A covenant mentioned in section 109 made by a person with himself or herself and another or others shall be construed and be capable of being enforced in like manner as if the covenant had been made with the other or others.

### **111 Implied covenants to be joint and several**

Where a covenant is implied under this Act and more persons than 1 are covenantors such covenant shall be deemed to bind the covenantors and any 2 or greater number of them jointly and each of them severally.

**112 Implied covenants may be modified or negated**

- (1) Every covenant and power to be implied in any instrument by virtue of this Act may be negated, varied or extended by express declaration in the instrument or endorsed thereon.
- (2) Any such covenant or power so varied or extended shall, so far as may be, operate in the like manner and with all the like incidents, effects and consequences as if the variations or extensions were implied under this Act.
- (3) In any pleading 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 the action is brought did so covenant precisely in the same manner as if the covenant had been expressed in words in the memorandum of transfer or other instrument, any law or practice to the contrary notwithstanding.
- (4) Every such implied covenant or power shall have the same force and effect, and may be enforced in the same manner as if it had been set out at length in the instrument.

**113 Benefit of implied covenants**

The benefit of a covenant implied under this Act shall be annexed and incident to, and shall go with, the interest of the implied covenantee, and shall be capable of being enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

**114 Construction of implied covenants and provisions**

In the construction of a covenant or proviso or other provision implied by virtue of this Act, words importing the singular or plural number or the masculine gender shall be read as also importing the plural or singular number or as extending to females as the case requires.

**115 Implied covenants with mortgagees**

In any memorandum of mortgage and in any memorandum of transfer of mortgage where there are more mortgagees or transferees than 1, any implied covenant with them shall be deemed to be a covenant with them jointly in equity as well as at law, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him or her.

**116 General covenants to be implied in instruments**

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

**117 Transferring of land subject to mortgage, encumbrance or charge to indemnify transferor**

- (1) In every instrument, transferring an interest in land under this Act, subject to mortgage or encumbrance, there shall be implied the following covenant by the transferee:

That the transferee will pay the interest, or annuity, or rent charge secured by the mortgage or encumbrance after the rate and at the time specified in the instrument creating the mortgage or encumbrance, and will indemnify and keep harmless the transferor from and against the principal sum secured by the instrument, and from and against all liability in respect of any of the covenants therein contained, or by this Act implied on the part of the transferor.

- (2) In every instrument transferring an interest in land under this Act subject to a charge securing the payment of an amount to the Territory under section 108B, there shall be implied the following covenant by the transferee:

That the transferee will pay to the Territory the amount secured by the charge on the land and will indemnify and keep harmless the transferor against the amount secured by the charge, and from and against all liability in respect of the failure by the transferor to pay the amount secured by the charge within the period of 1 month after the transfer.

#### **118 Covenant implied in mortgage**

In every memorandum of mortgage there shall be implied against the mortgagor a covenant that he or she will keep all buildings or other improvements erected and made upon the land in as good and substantial repair as they were in at the date of the mortgage, and that the mortgagee may, at all convenient times, until the mortgage is discharged, be at liberty, with or without surveyors or others, to enter into, and upon, the land to view and inspect the state of repair of the buildings and improvements.

#### **119 Covenants of lessees**

In every memorandum of lease there shall be implied the following covenants by the lessee with the lessor:

- (a) that the lessee will pay the rent thereby reserved at the time therein mentioned:

Provided, however, that in case the leased premises or any part thereof are at any time during the continuance of the lease destroyed or damaged by fire, flood, lightning, storm or tempest so as to render the premises unfit for the occupation and use of the lessee, then and so often as the premises or any part thereof are so destroyed or damaged, the rent thereby reserved, or a proportionate part thereof, according to the

nature and extent of the damage sustained shall abate, and all or any remedies for recovery of the rent or such proportionate part thereof shall be suspended until the premises have been rebuilt or made fit for the occupation and use of the lessee, and in case of any dispute arising under this proviso the dispute shall be referred to arbitration under the laws in force in the ACT relating to arbitration; and

- (b) that the lessee will at all times during the continuance of the lease, keep and, at the termination thereof, yield up the premises in good and tenantable repair, having regard to their condition at the commencement of the lease, accidents and damage from fire, flood, lightning, storm and tempest, and reasonable wear and tear excepted.

## **120 Powers in lessor**

- (1) In every memorandum of lease there shall be implied the following powers in the lessor:
  - (a) that the lessor may by himself or herself or his or her agents, twice in every year during the term at a reasonable time of the day upon giving to the lessee 2 days previous notice, enter upon the leased premises and view the state of repair thereof, and may serve upon the lessee or leave at his or her last or usual place of abode in the ACT or upon the premises, a notice in writing of any defect, requiring him or her within a reasonable time, to repair the premises in accordance with any covenant expressed or implied in the lease;
  - (b) that in default of the lessee repairing any defect according to notice the lessor may from time to time enter the premises and execute the required repairs;
  - (c) that the lessor may, by himself or herself or his or her agents, at all reasonable times during the term, with workers and others and all necessary materials and appliances, enter upon the premises or any part thereof, for the purpose of complying



with the terms of any present or future legislation affecting the premises, and of any notices served upon the lessor or lessee by any competent authority involving the destruction of pest plants or pest animals, or the carrying out of any repairs, alterations or works of a structural character, which the lessee is not bound, or, if bound, neglects to do, and also for the purpose of exercising the powers and authorities of the lessor under the lease:

Provided that the destruction, repairs, alterations and works shall be carried out by the lessor without undue interference with the occupation and use of the premises by the lessee;

- (d) that in case the rent or any part thereof is in arrear for the space of 1 month (although no formal demand therefor has been made), or in case default is made in the fulfilment of any covenant, condition or stipulation, whether expressed or implied in the lease, and on the part of the lessee to be performed or observed, and the default is continued for the space of 2 months, or in case the repairs required by a notice served or left in pursuance of paragraph (a), are not completed within the time therein specified, the lessor may re-enter upon the premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee therein, but without releasing the lessee from liability in respect of the breach or nonobservance of any such covenant, condition or stipulation.

- (2) In this section:

*pest animal*—see the *Pest Plants and Animals Act 2005*, dictionary.

*pest plant*—see the *Pest Plants and Animals Act 2005*, dictionary.

## 121 **Abbreviated forms of words for covenants in leases**

Such of the covenants set forth in this section as are expressed in any memorandum of lease as to be implied shall, if expressed in the form of words in this section appointed and prescribed for the case

of each such covenant respectively, be so implied as fully and effectually as if those covenants were set forth fully and in words at length in the instrument:

- (a) the words ‘will insure’ shall imply as follows: will insure, and, so long as the term expressed in the lease has not expired, will keep insured, in the name of the lessor, in some public insurance office, to be approved by the lessor, against loss or damage by fire, to the full amounts specified in the lease, or, if no amount be specified, then to their full value, all buildings, tenements or premises erected on the land which are of a nature or kind capable of being insured against loss or damage by fire, and that the lessee will at the request of the lessor hand over to and deposit with him or her the policy of every such insurance and produce to him or her the receipt and receipts for the annual or other premiums payable on account thereof, and also that all moneys to be received under or by virtue of any such insurance shall in the event of loss or damage by fire be laid out and expended in making good the loss or damage:

Provided that if default is made in the observance or performance of the covenant last abovementioned, the lessor may without prejudice to and concurrently with the powers granted him or her by his or her memorandum of lease or by this Act provided, insure the building; and the costs and charges of the insurance shall, until the lease expires, be a charge upon the land recoverable in like manner as rent in arrear;

- (b) the words ‘will paint outside every alternate year’ shall imply as follows: will in every alternate year during the currency of the lease, paint all the outside woodwork and ironwork belonging to the hereditaments and premises mentioned in the lease with 2 coats of proper oil colours in a workmanlike manner;

- (c) the words ‘will paint and paper inside every third year’ shall imply as follows: will in every third year during the currency of the lease paint the inside, wood, iron and other works, now or usually painted with 2 coats of proper oil colours in a workmanlike manner, and also repaper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten or colour such parts of the premises as are now washed, stopped, whitened or coloured respectively;
- (d) the words ‘will fence’ shall imply as follows: will, during the continuance of the lease, erect and put up on the boundaries of the land therein mentioned, or upon such boundaries upon which no substantial fence now exists, a good and substantial fence;
- (e) the words ‘will cultivate’ shall imply as follows: will, at all times during the lease, cultivate, use and manage all such parts of the land therein mentioned as are or shall be broken up or converted into tillage in a proper and husbandmanlike manner, and will not impoverish or waste the land;
- (f) the words ‘that the lessee will not use the premises as a shop’ shall imply as follows: that the lessee will not convert, use or occupy the hereditaments and premises mentioned in the lease or any part thereof into or as a shop, warehouse or other place for carrying on any trade or business whatsoever, or permit or suffer the hereditaments and premises or any part thereof to be used for any such purpose or otherwise than as a private dwelling house without the consent in writing of the lessor;
- (g) the words ‘that he or she will not carry on offensive trades’ shall imply as follows: that no noxious noisome or offensive art, trade, business, occupation or calling shall, at any time during the term of the lease, be used, exercised, carried on, permitted or suffered in or upon the hereditaments and premises abovementioned, and that no act, matter or thing

whatsoever shall, at any time during the term of the lease, be done in or upon the hereditaments and premises or any part thereof which shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the occupiers or owners of the adjoining lands and hereditaments;

- (h) the words 'will not without leave assign or sublet' shall imply as follows: will not, during the term of the lease, assign, transfer, demise, sublet or set over, or otherwise by any act or deed procure the lands or premises therein mentioned or any of them or any part thereof to be assigned, transferred, demised, sublet or set over unto any person whomsoever without the consent in writing of the lessor first had and obtained;
- (i) the words 'will not cut timber' shall imply as follows: will not cut down, fell, injure or destroy any growing or living timber or timberlike trees standing and being upon the hereditaments and premises abovementioned without the consent in writing of the lessor.

## **122 Abbreviated form in mortgage**

Whenever in any memorandum of mortgage the mortgagor employs the following form of words, namely, 'that the mortgagor will insure' that form of words shall imply the following covenant by the mortgagor:

That the mortgagor will insure, and, so long as the principal money and interest secured by the mortgage or any part thereof remains unpaid or the term expressed in the mortgage has not expired, will keep insured, in the name of the mortgagee, in some public insurance office to be approved by the mortgagee, against loss or damage by fire, to the full amounts specified in the mortgage, or, if no amount be specified, then to their full value, all buildings tenements or premises erected on the land which are of a nature or kind capable of being insured against loss or damage by fire, and that the mortgagor will at the request of the mortgagee hand over

and deposit with the mortgagee the policy of every such insurance, and produce to the mortgagee receipt and receipts for the annual or other premiums payable on account thereof, and also that all moneys to be received under or by virtue of any such insurance, shall, in the event of loss or damage by fire, be laid out and expended in making good such loss or damage:

Provided that if default is made in the observance or performance of the covenants last abovementioned, the mortgagee may, without prejudice to and concurrently with the powers granted him or her by his or her memorandum of mortgage or by this Act provided, insure the building; and the costs and charges of the insurance shall, until the mortgage is discharged, be a charge upon the land recoverable in like manner as interest in arrear.

**123 Pt 11 not to apply to Crown leases**

This part shall not apply to Crown leases but shall apply to mortgages and subleases of Crown leases.

**123A Pt 11 not to apply to residential tenancy agreements**

Notwithstanding section 123, this part does not apply to a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1997* to which that Act applies.

**123B Pt 11 does not apply to leases under Leases (Commercial and Retail) Act**

Despite section 123, this part does not apply to a lease to which the *Leases (Commercial and Retail) Act 2001* applies.

## Part 12 Trusts

### 124 No notice of trusts to be entered in register

- (1) The registrar-general shall not make any entry in the register of any notice of trust, whether express, implied or constructive.
- (2) Trusts may be declared by any document, which document may include both, land under this Act, and land that is not under this Act.
- (3) The description of the several parcels of lands contained in the document shall sufficiently distinguish the land which is under this Act from the land which is not under the provisions thereof, and a duplicate or an attested copy of the document may be deposited with the registrar-general for safe custody and reference, but shall not be registered.
- (4) When any such document or duplicate or attested copy thereof is so lodged, the registrar-general shall forthwith enter in the folium of the register comprising the land referred to in the document 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 the document.
- (5) The caveat may be removed on the application of the same person and in the same manner as is provided in section 105.

### 125 Grants may be registered although trusts declared

Nothing in this Act shall be deemed to prevent the registration of any Crown grant by reason of the fact that a trust is declared in the grant.

**128 Registrar-general to carry out order of court vesting trust estate**

- (1) Whenever any person interested in land under this Act, appears to the court or the judge thereof to be a trustee of the land within the intent and meaning of any law or Act relating to trustees then in force in the ACT, and any order is made in the premises by the court or judge, the registrar-general on being served with an office copy of the order shall enter in the register the date of the order, the date and hour of its service and the name and residence of the person in whom the order purports to vest the land, and that person shall thereupon be deemed to be the registered proprietor of the land.
- (2) Unless and until that entry is made, the order shall have no effect or operation in transferring or otherwise vesting the land.
- (3) In this section:

*court* includes the Family Court of Australia and any other court having jurisdiction under the *Family Law Act 1975* (Cwlth).

## Part 13 Powers of attorney

### 130 Powers of attorney

- (1) The registered proprietor of any land or interest under this Act may, by executing a power of attorney, authorise and appoint a person to act for and on his or her behalf in respect of the transfer or other dealing with the land or interest in accordance with this Act.
- (2) An instrument executed under a power of attorney must not be registered under this Act unless the power of attorney has been registered under the *Registration of Deeds Act 1957*.



## Part 14 Transmissions

### 132 Transmission by bankruptcy or insolvency

- (1) Upon the bankruptcy or insolvency of the registered proprietor of any land or interest under this Act, the assignee or trustee of the bankrupt or insolvent shall be entitled to be registered as proprietor in respect of the land or interest.
- (2) The registrar-general, upon the receipt of an office copy of the appointment of the assignee or trustee, accompanied by an application in writing under his or her hand to be so registered in respect of any land or interest of the bankrupt or insolvent therein specified and described, shall enter in the register, upon the folium constituted by the grant or certificate of title of the land affected, a memorandum notifying the appointment of the assignee or trustee.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of an application for transmission on bankruptcy or insolvency.

*Note 2* If a form is approved under s 140 (Approved forms) for an application, the form must be used.

- (3) Upon the entry being made, the assignee or trustee shall be deemed and taken to be the registered proprietor of the interest of the bankrupt or insolvent in the land, and shall hold the land or interest subject to the equities upon and subject to which the bankrupt or insolvent held the land or interest, but for the purpose of any dealings with the land or interest under this Act the assignee or trustee shall be deemed to be the absolute proprietor thereof.

**133 Mortgagee of leasehold interest of bankrupt may be entered as transferee of lease**

- (1) Upon the bankruptcy or insolvency of the registered proprietor of any lease subject to mortgage under this Act, the registrar-general, upon the application in writing of the mortgagee accompanied by a statement in writing signed by the assignee or trustee of the bankrupt or insolvent certifying his or her refusal to accept the lease, shall enter in the register the particulars of the refusal, and the entry shall operate as a foreclosure, and the interest of the bankrupt or insolvent in the lease shall thereupon vest in the mortgagee.
- (2) If the mortgagee neglects or declines to make the application mentioned in subsection (1), the registrar-general, upon application by the lessor, and proof of the neglect or refusal and of the matters mentioned in subsection (1), shall enter in the register notice of the neglect or refusal of the assignee or trustee to accept the lease, and the entry shall operate as a surrender of the lease.

**135 Transmission on death of proprietor**

- (1) On the death of a registered proprietor, the executor, executrix, administrator, administratrix or other person claiming to be entitled to be registered as proprietor may apply to the registrar-general to be registered as proprietor of all or part of the interest of that deceased proprietor.
- (2) An application shall be supported by—
  - (a) evidence of the grant of administration or such other evidence of the applicant's claim as he or she is able to produce; and

- (b) where the applicant claims otherwise than as executor, executrix, administrator, administratrix or trustee—evidence of the consent of the executor, executrix, administrator, administratrix or trustee of the deceased proprietor, unless the registrar-general dispenses with that consent.

*Note 1* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of an application for transmission on death of proprietor.

*Note 2* If a form is approved under s 140 (Approved forms) for an application, the form must be used.

- (3) Where the registrar-general is not satisfied that the evidence provided with an application is sufficient to support the application he or she may request the applicant to produce further specified evidence.
- (4) Where the registrar-general is satisfied, on the basis of the evidence produced under subsection (2) or (3), that the applicant is entitled to be registered as proprietor, the registrar-general shall register the applicant as proprietor of the relevant interest.
- (5) Where, pursuant to an application, 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 be deemed to have become registered as proprietor, immediately before the registration of the applicant as proprietor, of the land specified in the application and to have transferred that land to the applicant.
- (6) In this section:
- grant of administration*** means—
- (a) a grant of probate, or of letters of administration, under the *Administration and Probate Act 1929*; or
- (b) a grant of an order to collect and administer under section 88 of that Act; or
- (c) an election to administer under section 87C of that Act; or

- (d) a corresponding grant or election under a law in force in a State or another Territory.

**136 Trusts—protection**

- (1) A person registered as proprietor under section 135 (not being a person entitled beneficially to the relevant interest) shall hold that interest in trust for the persons for whom, and purposes for which, that interest is applicable by law.
- (2) For the purposes of executing any instrument affecting land in respect of which a person is registered under section 135, that person shall be deemed to be absolute proprietor.

**138A Appointment of new or additional trustees**

- (1) Where any land or interest under this Act is held by a trustee, either solely or jointly with other trustees, and—
  - (a) the trustee vacates his or her office and a new trustee is appointed in his or her place or the vacancy is not filled; or
  - (b) an additional trustee is appointed to hold the land or interest jointly with the existing trustees;

the registrar-general, upon receipt of the instrument effecting the vacancy or appointing the new or additional trustee, or of an office copy thereof, or of a copy thereof verified by affidavit, or upon production of such other evidence as the registrar-general thinks sufficient, and upon being satisfied that the vacation of office or the new or additional appointment, as the case may be, is in accordance with law, shall, subject to this Act, enter in the folio of the register constituted by the grant or certificate of title effected, a memorandum setting forth the fact of the vacation of the office or of the new or additional appointment, as the case may require.

- (2) Upon the entry being made, the new trustee, the continuing trustees, or the continuing trustees and the new trustee or the additional trustee, as the case may be, shall be deemed to be the registered proprietor or proprietors of the land or interest, and as such to be subject to this Act as if he or she or they were the trustee or trustees originally registered as proprietor or proprietors of the land or interest.
- (3) In this section:
- trustee* includes an assignee or trustee of a bankrupt or insolvent registered proprietor, and an executor or administrator of the estate of a deceased proprietor.

### **138B Registration of declaration by executor**

Any instrument by which an executor declares that he or she holds as trustee or beneficiary, as the case may be, may be registered by the registrar-general and the registrar-general shall, after such evidence is given as he or she requires, and after notice is given to such persons as he or she directs, enter, vary, or withdraw caveats, as the case requires, and make such entry in the register as is necessary.

*Note* A fee may be determined under s 139 (Determination of fees, charges and other amounts) for lodgment of a declaration.

## Part 15 Fees and forms

### 139 Determination of fees, charges and other amounts

- (1) The Minister may, in writing, determine fees, charges or other amounts for this Act, the *Community Title Act 2001*, the *Districts Act 2002* or the *Land Titles (Unit Titles) Act 1970*, or in relation to the exercise of any function of the registrar-general relating to the register that is not expressly provided for in any of those Acts.

#### **Examples—matters for which the Minister may determine fees etc**

- 1 Lodgment of any document affecting land, or any other document, whether or not expressly provided for in any Act.
- 2 Issue or acceptance of any document or form (whether approved or otherwise) by the registrar-general in the exercise of a function of the registrar-general in relation to the register, whether or not the function is expressly provided for in any Act.
- 3 Inspection of the register.
- 4 Inspection of a document held by the registrar-general that affects land.
- 5 Examination by the registrar-general of a document printed without the registrar-general's seal.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees, charges and other amounts (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### 140 Approved forms

- (1) The registrar-general may, in writing, approve forms for this Act, the *Community Title Act 2001* or the *Land Titles (Unit Titles) Act 1970*.

- (2) Without limiting subsection (1), the registrar-general may, in writing, approve forms for any document (including an application and a memorandum) that may be registered or entered on the register, whether or not the registration or entry is expressly provided for in this or any other Act.
- (3) If the registrar-general approves a form for a particular purpose, the approved form must be used for that purpose.
- (4) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## Part 16 Civil rights and remedies

### 143 Damages in certain cases

In any case where a person against whom proceedings have been taken under section 154—

- (a) ceases, under section 154 (5), to be liable for the payment of damages; or
- (b) being liable for damages under that section, is dead, bankrupt or insolvent, or cannot be found within the jurisdiction;

the damages with costs of action may be recovered by action against the Territory.

### 144 Damages and costs to be paid by Territory

If in any action under section 143 or 155 the plaintiff recovers final judgment against the Territory, the court before which the action is tried shall certify the fact of the judgment and the amount of damages and costs recovered, and the amount of the damages and costs shall be paid by the Territory to the person recovering them.

### 145 Moneys paid by Territory may be recovered against estate of deceased or bankrupt person

- (1) Whenever any amount has been paid by the Territory on account of any person who is dead, that amount may be recovered by the Territory from the estate of that person by action against his or her personal representatives.
- (2) Whenever any such amount has been paid on account of a person who is insolvent or bankrupt, the amount so paid shall be considered to be a debt due from the estate of the insolvent or bankrupt and a certificate signed by a person thereto authorised in writing by the Minister certifying the fact of the payment and delivered to the



official assignee or trustee of the insolvent or bankrupt shall be sufficient proof of the debt.

#### **146 Where person liable is out of jurisdiction**

- (1) Whenever any amount has been paid by the Territory, on account of any person who has absconded or who cannot be found within the jurisdiction and has left any real or personal estate within the jurisdiction the court or the judge thereof, upon the application of a person thereto authorised in writing by the Minister and upon the production of a certificate signed by the person so authorised certifying that the amount has been paid in satisfaction of a judgment against the Territory may allow the Territory to sign judgment against that person forthwith for the amount so paid together with the costs of the application.
- (2) The judgment shall be final and signed in like manner as a final judgment by confession or default in an adverse suit, and execution may issue immediately.
- (3) If the person against whom judgment has been signed has not left real or personal estate within the jurisdiction sufficient to satisfy the amount for which execution has been issued under subsection (2), the Territory may recover the amount or the unrecovered balance thereof by action against that person at any time thereafter when he or she is within the jurisdiction.

#### **147 Territory only liable in certain cases**

The Territory shall not, under any circumstances, be liable for compensation for any loss, damage or deprivation occasioned—

- (a) by the breach by a registered proprietor of any trust whether express, implied or constructive; or
- (b) by any land being included in the same certificate of title with other land through misdescription of boundaries or parcels of any land, unless it is proved that the person liable for

compensation and damages is dead or has absconded or is insolvent or bankrupt, or the proper officer of the court certifies that that person is unable to pay the full amount awarded in any action for recovery of the compensation and damages.

**148 Proprietor may summon registrar-general to show cause if dissatisfied**

- (1) If, upon the application of any proprietor to have land brought under this Act, or to have any dealing or transmission registered or recorded, or to have any certificate of title, foreclosure, order, instrument or document issued, or to have any act or duty done or performed which, by this Act or the regulations, is required to be done or performed by the registrar-general, the registrar-general refuses so to do, or if the proprietor is dissatisfied with the direction upon his or her application given by the registrar-general as in the foregoing provisions of this Act provided, the proprietor may require the registrar-general to set forth in writing under his or her hand the grounds of his or her refusal or the grounds upon which the direction was given, and the proprietor may, if he or she think fit, summon the registrar-general to appear before the court to substantiate and uphold the grounds of his or her refusal or of the direction, as the case may be.
- (2) The summons shall be issued under the hand of the judge of the court and served upon the registrar-general 6 clear days at least before the day appointed for hearing the complaint of the proprietor, and upon the hearing the registrar-general or his or her legal practitioner shall have the right of reply.
- (3) The court shall, if any question of fact be involved, direct an issue to be tried to decide the fact, and the court shall thereupon make such order in the premises as in its judgment the circumstances of the case require, and the registrar-general shall obey the order.

**149 Special case when applicant dissatisfied with objection of registrar-general**

- (1) If any objection to the title of land sought to be brought under this Act is made by the registrar-general, which the applicant deems not well founded, he or she may state a case for the decision of the court.
- (2) The decision of the court shall be binding upon the registrar-general, but shall not affect the claim of any person under section 143 or 155, or the right of the applicant to proceed under section 148.
- (3) To every such case there shall be annexed such observations as the registrar-general thinks proper to make.

**150 Registrar-general may state case for court**

The registrar-general, whenever any question arises with regard to the performance of any duties or the exercise of any of the functions by this Act conferred or imposed upon him or her, may state a case for the opinion of the court, and thereupon the court may give its judgment thereon, and that judgment shall be binding upon the registrar-general.

**151 Costs of proceedings**

The court may make such order as it thinks just as to the costs and expenses of and attendant upon any summons or proceeding under section 148, 149 or 150, and all costs and expenses to be paid by the registrar-general under the order shall be paid by the Territory.

**152 Registered proprietor protected against ejectment except in certain cases**

- (1) No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under this Act, except in any of the following cases:
  - (a) the case of a mortgagee as against a mortgagor in default;

- (b) the case of an encumbrancee as against an encumbrancer in default;
  - (c) the case of the Territory as against the person registered as proprietor of the land if the land is subject to a charge by reason of section 108B and the person is in default in payment of the whole or any part of the amount secured by the charge;
  - (d) the case of a lessor as against a lessee in default;
  - (e) the case of a person deprived of any land by fraud as against the person registered as proprietor of the land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;
  - (f) the case of a person deprived of, or claiming, any land included in any grant or certificate of title of other land by misdescription of that other land, or of its boundaries, as against the registered proprietor of that other land not being a transferee thereof bona fide for value;
  - (g) the case of a registered proprietor claiming under a title prior in date of registration under this Act, in any case in which 2 or more grants or 2 or more certificates of a title or a grant and a certificate of title may be registered under this Act in respect of the same land.
- (2) In any case, other than those mentioned in subsection (1), the production of the registered grant, certificate of title or lease, shall be held in every court to be an absolute bar and estoppel to any such action against the person named in the document or instrument as seized of or as registered proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding.

**153 In case of ejectment of defendant who has made improvements their value may be assessed**

- (1) Whenever an action is brought against a registered proprietor or person holding a grant or certificate of title in either of the last 2 cases excepted in section 152, if the defendant or any person through whom he or she claims has made improvements on the land since obtaining a registered title thereto, then, whether he or she admits or denies the plaintiff's title, he or she may plead the fact of the improvements being made, and may set a value thereon, and also on the land as distinct therefrom, and also give evidence thereof at the trial.
- (2) If the court finds for the plaintiff or the plaintiff's title is admitted, the court must assess the value of the claimed improvements, and must also separately assess the value that the land would have had if the improvements had not been made.
- (3) No writ of possession shall issue in any such case unless the plaintiff first pays into court for the use of the defendant the value of the improvements so assessed, deducting only the costs (if any) to which he or she is entitled in the action.
- (4) If the plaintiff fails to make that payment within 3 months after verdict, the judgment to which he or she is entitled shall thereafter be limited to the sum separately assessed, as the value of the land together with costs of suit, and the defendant shall upon satisfaction thereof be entitled to retain the land and improvements.
- (5) In either case the registrar-general shall be entitled, under the power conferred by part 17 of cancelling erroneous certificates, to require to be delivered up any grant or certificate of title which is held by the party whose right to the land has determined.
- (6) In every case in which the defendant is entitled to indemnity from the Territory, the Territory shall be made a codefendant, and may defend the action either severally or jointly, or may leave the defence wholly to the Territory, as he or she thinks fit.

- (7) In no case shall the Territory be liable to the principal defendant for any greater damages than he or she actually sustains as the result of the action, after using all reasonable diligence in the defence thereof.

#### **154 Compensation for party deprived of land**

- (1) Any person deprived of land or of any interest in land—
- (a) in consequence of fraud; or
  - (b) through the bringing of the land under this Act; or
  - (c) by the registration of any other person as proprietor of the land or interest; or
  - (d) in consequence of any error, omission or misdescription in any grant, certificate of title or in any entry or memorial in the register;
- may bring and prosecute an action for the recovery of damages.
- (2) The action shall, in any case in which the land has been included in 2 or more grants, be brought and prosecuted against the Territory.
- (3) The action shall in any other case, but subject to subsections (4) and (5), be brought and prosecuted against the person—
- (a) upon whose application the land was brought under this Act; or
  - (b) upon whose application the erroneous registration was made; or
  - (c) who acquired title to the interest in question through the fraud, error, omission or misdescription.
- (4) In every case in which the fraud, error, omission or misdescription occurs upon a transfer for value, the transferor receiving the value shall be regarded as the person upon whose application the certificate of title was issued to the transferee.

- (5) Except in the case of fraud or of error occasioned by any omission, misrepresentation or misdescription in his or her application, or in any instrument executed by him or her, the person upon whose application the land was brought under this Act, or the erroneous registration was made, shall, upon a transfer of the land bona fide for value, cease to be liable for the payment of any damages which might have been recovered from him or her under this section.

**155      When actions may lie against registrar-general as nominal defendant**

Any person sustaining loss or damages through any omission, mistake or misfeasance of the registrar-general or any of his or her officers or clerks in the execution of their respective duties under this Act, or by the registration of any other person as proprietor of land, or by any error, omission or misdescription in any grant, certificate of title or any entry or memorial in the register, and who by this Act is barred from bringing an action of ejectment or other action for the recovery of the land or interest may, in any case in which the remedy by action for recovery of damages as provided in this part is inapplicable, bring an action against the Territory for recovery of damages.

**156      Notice of action**

- (1) This section applies if—
- (a) there is a proceeding against the Territory to recover damages under section 143 (Damages in certain cases) or section 155 (When actions may lie against registrar-general as nominal defendant); and
  - (b) either—
    - (i) judgment is given for the defendant; or
    - (ii) the plaintiff ends the proceeding.

- (2) The plaintiff is liable to pay the defendant's full costs of defending the proceeding.

**158 Registrar-general not to be liable for acts done bona fide**

The Territory or the registrar-general shall not, nor shall any person acting under its or his or her authority, be liable to any action, suit or proceeding for or in respect of any act or matter bona fide done or omitted to be done under this Act.

**159 Purchasers and mortgagees protected**

Nothing in this Act shall be so interpreted as to leave subject to action for recovery of damages, as provided in this part, or to action of ejectment, or to deprivation of the interest in respect of which he or she is registered proprietor, any purchaser or mortgagee bona fide for valuable consideration of land under this Act on the plea that his or her vendor or mortgagor was registered as proprietor, or procured the registration of the transfer or mortgage to the purchaser or mortgagee, through fraud or error, or has derived from or through a person registered as proprietor through fraud or error, and this whether the fraud or error consists in wrong description of the boundaries or of the parcels of any land or otherwise howsoever.



## Part 17 Corrections and alterations

### 160 Correction of errors

- (1) The registrar-general may—
  - (a) on application by the registered proprietor of an interest in land or the registered proprietor's legal practitioner; and
  - (b) subject to any order of the court;correct an error in the register in accordance with subsection (5).
- (2) Where the register is found to contain an error that is an accidental slip or omission, the registrar-general shall—
  - (a) subject to any order of the court, correct the register in accordance with subsection (5); or
  - (b) where he or she considers it necessary—
    - (i) notify each person who appears from the register to have an interest in the land to which the error relates, that the registrar-general intends to make a specified correction after a specified date, being a date not less than 14 days after the date of the notice; and
    - (ii) request that person's consent or other comment in relation to the making of the correction.
- (3) A person notified under subsection (2) (b) may apply, within 14 days of the date of the notice, to the court for an order directing the registrar-general not to make the correction.
- (4) Where the registrar-general takes action under subsection (2) (b), he or she may, subject to any order of the court, correct the register in accordance with subsection (5) after considering any response provided under subsection (2) (b) (ii).

- (5) A correction shall—
  - (a) be made in such a manner as to preserve the record and show that a correction has been made and the date on which it was made; and
  - (b) be authorised by the registrar-general.
- (6) No correction shall be made under this section that would affect rights acquired by an entry in the register in reliance on the uncorrected register.
- (7) The registrar-general may apply to the court for directions in relation to a possible error in the register.

**161 Power of court**

- (1) In any proceedings in which the correctness or otherwise of the register is in issue, the court may require the registrar-general to correct the register or direct the registrar-general not to do so.
- (2) In any proceedings in the court in relation to—
  - (a) any land; or
  - (b) any transaction, contract or application relating to land; or
  - (c) any instrument, memorial or other entry affecting land;the court may, by order, direct the registrar-general—
  - (d) to correct, record, substitute, issue or cancel any certificate or memorial, or to correct, record, substitute, make or cancel any entry in the register, notwithstanding that the relevant duplicate certificate has not been produced to the registrar-general; or
  - (e) otherwise to do any acts and make any entries that are necessary to give effect to any judgment or order of the court given or made in those proceedings;and the registrar-general shall give effect to such a direction.

- (3) An order made under subsection (2) is not effective to vest a registrable interest in any person before the appropriate entry is made in the register.

**162 Correction of duplicate certificate etc**

Where the register is corrected in accordance with section 160 or 161, the registrar-general may—

- (a) correct a duplicate grant, certificate of title or other instrument; and
- (b) require the production of any such duplicate for that purpose.

**162A Amend or alter name or address entered in register**

The registrar-general shall—

- (a) on receipt of a written request made by a person whose name is entered in the register or his or her legal practitioner; and
- (b) on production of any further evidence required by the registrar-general;

amend or alter the name or address entered in the register in relation to that person.

## Part 19                            Miscellaneous

### 164A            Registrar-general may hold instrument for safekeeping

- (1) On application, by a person entitled to hold a document, including a duplicate of a certificate of title or Crown lease, or by his or her legal practitioner, the registrar-general may accept the document to be held in his or her office for safekeeping.

*Note*            A fee may be determined under s 139 (Determination of fees, charges and other amounts) for an application to hold a document.

- (2) A person who has deposited a document with the registrar-general under subsection (1), or his or her legal practitioner, may, in writing at any time, request the return of the document and the registrar-general shall return that document.

### 165            Offence for certain fraudulent acts

- (1) If any person—
  - (a) fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procuring of any certificate of title or other instrument, or of any entry in the register, or of any erasure or alteration in any entry in the register, or in any certificate of title, instrument or form issued, approved or otherwise sanctioned by the registrar-general; or
  - (b) fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be approved or otherwise sanctioned by the registrar-general; or
  - (c) knowingly misleads or deceives any person authorised by this Act to demand explanation or information in respect of any land or the title to any land which is the subject of any application to bring the land under this Act, or in respect of

which any dealing or transmission is proposed to be registered or recorded; or

- (d) knowingly makes any false statement in any document produced to the registrar-general;

he or she commits an offence.

Maximum penalty:

- (a) for paragraph (a)—100 penalty units, imprisonment for 1 year or both; or
- (b) for paragraph (b), (c) or (d)—50 penalty units, imprisonment for 6 months or both.
- (2) Any certificate of title, entry, erasure or alteration so procured or made by fraud, shall be void as between all parties or privies to the fraud.

**166 Conviction not to affect civil remedy**

No proceeding in respect of or conviction of any offence under this Act shall affect any remedy to which any person aggrieved or injured by the offence may be entitled against the person who has committed the offence, or against his or her estate.

**167 Prosecutions and recovery of penalties**

Except where otherwise expressly provided in this Act, all offences against this Act may be prosecuted, and all penalties or sums of money imposed or declared to be due or owing by or under this Act may be sued for and recovered, in the name of the registrar-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.

**168A Document bearing imprint of seal of registrar-general**

- (1) A person shall not cause to be printed a document bearing a representation of the imprint of the seal of the registrar-general except with the approval of the registrar-general.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An approval referred to in subsection (1) shall be in writing and shall specify the contents of the document to which the approval relates and the number of copies of the document that the person may print.

**170 Sales by order of court etc**

- (1) No writ of fieri facias or other writ of execution shall bind, charge or affect any land or interest under this Act, but whenever any land or any interest in land under this Act is seized or sold under any direction, decree or order of the court the registrar-general, on being served with an office copy of the writ, direction, decree or order, as the case may be, shall enter in the folio of the register relating to that land or interest the date of the writ, direction, decree or order, and the date and hour of the production thereof.
- (2) After the entry the person authorised by the court to seize or sell the land or interest shall do such acts and execute such instruments as under this Act are necessary to transfer or otherwise to deal with the interest.
- (3) Unless and until the entry has been made no such writ shall bind or affect any land under this Act or any interest therein, nor shall any sale or transfer thereunder be valid as against a purchaser or mortgagee notwithstanding the writ was actually in the hands of the proper officer of the court at the time of any purchase or mortgage, or notwithstanding the purchaser or mortgagee had actual or constructive notice of the issue of the writ.

- (4) Subsection (3) applies to and in relation to land subject to a charge securing the payment of an amount to the Territory under section 108B in the same manner and to the same extent as if the notice of the determination made under the *Rates and Land Rent (Relief) Act 1970*, section 3 in respect of the land were a mortgage securing the payment to the Territory of an amount equal to the amount for the time being secured by the charge.
- (5) Upon production to the registrar-general of sufficient evidence of the satisfaction of any writ so entered, he or she shall enter in the register a memorandum to that effect, and the writ shall be deemed to be satisfied accordingly.
- (6) No writ of execution shall bind any land under this Act, nor shall any transfer on a sale of the land under the writ be registered, unless a true copy of the writ is served on the registrar-general within 6 months from the teste date of the writ, or date of any renewal thereof, for the purpose of making the entries described in this section.
- (7) Every such writ shall be deemed to have lapsed unless it is executed and put in force within 3 months from the day on which it was entered in the register.
- (8) In this section:  
*writ of execution* means a writ or warrant of execution after judgment in any court, and includes an enforcement order under the rules under the *Court Procedures Act 2004*.

#### **170A Surrender and regrant of lease of land affected by writ**

- (1) This section applies, subject to any order of the court, if—
  - (a) in relation to a writ of fieri facias or other writ of execution, an entry has been made in the register in relation to land; and

- (b) the lease of the land is surrendered by the lessee and a new lease of the land comprised in the surrendered lease is granted to the lessee.
- (2) The operation or effect of the writ is not affected by surrender of the lease and the grant of the new lease.
- (3) The registrar-general must make an entry in the register, in relation to the writ, in relation to the new lease.
- (4) In this section:  
*writ of execution* means a writ or warrant of execution after judgment in any court, and includes an enforcement order under the rules under the *Court Procedures Act 2004*.

## **171 Conditions of sale of land under Act**

- (1) Under a contract for the purchase of land under this Act the purchaser shall be entitled, at the cost of the vendor—
  - (a) to receive from the vendor sufficient particulars of title to enable him or her to prepare the appropriate instrument to give effect to the contract; and
  - (b) to receive from the vendor an abstract of any document or instrument forming part of the vendor's title in respect of which a caveat is entered upon the register; and
  - (c) to have the relevant certificate of title, or other document of title lodged by the vendor at the office of the registrar-general to enable the instrument to be registered; and



- (d) to have any objection to the registration of the instrument removed by the vendor:

Provided that, as to any such objection which the purchaser ought to have raised on the particulars or abstract, or upon the investigation of the title, or which arises from his or her own act, default or omission, he or she shall not be entitled to have it removed except at his or her own cost.

- (2) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract, and to the provisions therein contained.

### **173 Attesting of instruments**

An instrument executed under this Act shall be attested by 1 witness, being an adult who is not a party to the dealing.

### **177 Signature in ink**

The signature of every person by whom any application instrument or other document is required to be attested, signed or attested shall be in ink.

### **178 Service of notices**

- (1) The registrar-general shall cause a copy of each notice required by this Act to be served on, or given or sent to, a person, to be filed with a memorandum of the notice having been so served, given or sent and the memorandum shall be sufficient proof that the notice was duly served, given or sent.
- (2) When all reasonable efforts have been made to serve, give or send a notice on or to a person in accordance with this Act and the person cannot be located, or the registered letter containing the notice has been returned, the registrar-general may—
- (a) cause a further notice to be served, given or sent; or

- (b) cause substituted service to be effected; or
- (c) proceed without notice.

**179 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Part 20 Transitional

### 180 Savings of titles with words ‘no survivorship’ endorsed

Despite the repeal of sections 126 and 127 of this Act made by the *Land Titles (Amendment) Act 1995*, section 126 (2) (so far as it requires the sanction of the court or the judge for any dealings) and section 127 continue to apply to a registered title that on 19 June 1996 had the words ‘no survivorship’ endorsed on it.

## Schedule 1

(see s 81)

### Creation of right of carriageway in transfer of freehold land

Together with full and free right and liberty to and for the transferee hereunder and to and for the registered proprietor or proprietors for the time being of the land hereby transferred or any part thereof, and his or her tenants, servants, agents, workers and visitors to go, pass and repass at all times hereafter and for all purposes and either with or without horses or other animals, carts or other carriages into and out of and from the said land or any part thereof through, over and along the road or way or several roads or ways delineated and coloured brown on the said map.

### Creation of right of carriageway in lease of land

Together with full and free right and liberty to and for the said lessee and his or her transferees and his or her tenants, servants, agents, workers and visitors to go, pass and repass at all times hereafter during the continuance of this lease and for all purposes and either with or without horses or other animals, carts or other carriages into and out of and from the said land or any part thereof, through, over and along the road or way or several roads or ways delineated and coloured brown on the said map.

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## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- change
- civil partnership
- Commonwealth
- daily newspaper
- estate
- exercise
- fail
- function
- instrument (see s 14)
- interest
- land
- penalty unit (see s 133)
- registrar-general
- territory lease
- under.

*administrative interest*—see section 69A (Meaning of *administrative interest*—Act).

*authorised entity*—see section 69B (Meaning of *authorised entity*—pt 8A).

*caveator* means the person by whom or on whose behalf a caveat has been lodged under this Act.

*computer folio* means a folio of the register that is kept or maintained in or on a computer.

**court** means the Supreme Court or any other court having jurisdiction in relation to the matters mentioned in this Act.

**Crown land** includes all land belonging to the Commonwealth.

**Crown lease** means—

- (a) a territory lease; and
- (b) includes a lease granted by the Commonwealth or the Federal Capital Commission.

**encumbrance** means any charge on land created for the purpose of securing the payment of an annuity or sum of money other than a debt.

**encumbrancee** means the proprietor of an encumbrance.

**encumbrancer** means the proprietor of any land or of any interest in land subject to an encumbrance.

**Federal Capital Commission** means the Federal Capital Commission under the *Seat of Government (Administration) Act 1924* (Cwlth).

**grant** means the grant by the Crown of land for a term of years, and includes—

- (a) a grant by or in the name of the Commonwealth or by the Federal Capital Commission; and
- (b) the grant of a new lease over part of the land in a surrendered lease.

**instrument** includes a transfer, a lease, a sublease, an endorsement on a lease under section 86, a memorandum of surrender of a lease, a memorandum of mortgage, a memorandum of encumbrance, a memorandum of provisions, a memorandum of easement, and any other document that is required or permitted by a Territory or Commonwealth law to be lodged with the registrar-general for registration under this Act, but does not include a caveat, a grant or a Crown lease.

***lodge*** means deposit for registration in the registrar-general's office.

***memorandum of provisions*** means a memorandum registered under section 103A.

***memorial*** means a notation, entered in the register, or endorsed on a document.

***mortgage*** means any charge on land created merely for securing a debt.

***mortgagee*** means the proprietor of a mortgage.

***mortgagor*** means the proprietor of land or of any interest in land pledged as security for a debt.

***proprietor*** means a person seized or possessed of, or entitled to, land, at law or in equity.

***register*** means the register kept under section 43.

***registrable form***, for an instrument—see section 4.

***transfer*** means the passing of any interest in land under this Act whether for valuable consideration or otherwise.

***transmission*** means the acquirement of title to or interest in land consequent on the death, will, intestacy, bankruptcy, insolvency, marriage or civil partnership of a proprietor.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

|  |  |
|--|--|
| A = Act  | NI = Notifiable instrument   |
| AF = Approved form                                     | o = order  |
| am = amended   | om = omitted/repealed  |
| amdt = amendment                                       | ord = ordinance  |
| AR = Assembly resolution                               | orig = original  |
| ch = chapter   | par = paragraph/subparagraph   |
| CN = Commencement notice                               | pres = present   |
| def = definition                                       | prev = previous  |
| DI = Disallowable instrument                           | (prev...) = previously   |
| dict = dictionary                                      | pt = part  |
| disallowed = disallowed by the Legislative<br>Assembly | r = rule/subrule   |
| div = division   | reloc = relocated  |
| exp = expires/expired                                  | renum = renumbered   |
| Gaz = gazette  | R[X] = Republication No  |
| hdg = heading  | RI = reissue   |
| IA = Interpretation Act 1967                           | s = section/subsection   |
| ins = inserted/added                                   | sch = schedule   |
| LA = Legislation Act 2001                              | sdiv = subdivision   |
| LR = legislation register                              | SL = Subordinate law   |
| LRA = Legislation (Republication) Act 1996             | sub = substituted  |
| mod = modified/modification                            | <u>underlining</u> = whole or part not commenced<br>or to be expired |



### 3 **Legislation history**

This Act was originally a Commonwealth ordinance—the *Real Property Ordinance 1925* No 1 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day). It was later renamed the *Land Titles Act 1925* by the *Land Titles (Amendment) Act 1995* (see s 5).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### **Legislation before becoming Territory enactment**

##### **Land Titles Act 1925 No 1**

notified 21 May 1925

pt 7 commenced 1 January 1957

remainder commenced 21 May 1925

as amended by

##### **Real Property Ordinance (No 2) 1925 No 12**

notified 26 November 1925

commenced 26 November 1925

##### **Real Property Ordinance 1926 No 8**

notified 8 July 1926

commenced 8 July 1926

##### **Real Property Ordinance 1927 No 15**

notified 14 July 1927

commenced 14 July 1927

## Endnotes

3 Legislation history

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**Real Property Ordinance (No 2) 1927 No 21**

notified 24 December 1927  
commenced 24 December 1927

**Real Property Ordinance 1930 No 19**

notified 16 October 1930  
commenced 16 October 1930

**Real Property Ordinance 1933 No 26**

notified 16 November 1933  
s 2 commenced 21 May 1925 (s 2 (2))  
remainder commenced 16 November 1933

**Real Property Ordinance (No 2) 1933 No 34**

notified 7 December 1933  
commenced 16 November 1933

**Real Property Ordinance 1934 No 14**

notified 17 May 1934  
commenced 17 May 1934

**Real Property Ordinance 1936 No 15 (as am by 1937 No 27)**

notified 30 April 1936  
commenced 30 April 1936

**Ordinances Revision Ordinance 1937 No 27 sch 2**

notified 23 December 1937  
sch 2 commenced 23 December 1937

**Real Property Ordinance 1938 No 15**

notified 31 March 1938  
commenced 31 March 1938

**Real Property Ordinance 1940 No 16**

notified 8 August 1940  
commenced 8 August 1940

**Real Property Ordinance 1942 No 15**

notified 2 July 1942  
commenced 2 July 1942

**Real Property Ordinance 1951 No 9**

notified 20 September 1951  
commenced 20 September 1951

**Real Property Ordinance 1956 No 16**

notified 24 December 1956  
commenced 24 December 1956

**Real Property Ordinance 1957 No 12**

notified 21 November 1957  
commenced 21 November 1957

**Real Property Ordinance 1961 No 7**

notified 25 May 1961  
commenced 1 June 1961

**Real Property Ordinance 1963 No 6**

notified 4 April 1963  
commenced 4 April 1963

**Real Property Ordinance 1967 No 46**

notified 20 December 1967  
commenced 20 December 1967 (s 2)

**Real Property Ordinance 1969 No 9**

notified 20 June 1969  
commenced 1 July 1969

**Real Property Ordinance 1970 No 6**

notified 26 February 1970  
commenced 26 February 1970

**Real Property Ordinance 1972 No 11**

notified 29 March 1972  
commenced 29 March 1972

**Real Property Ordinance 1975 No 33**

notified 7 October 1975  
commenced 27 January 1976 (Cwlth Gaz 1976 No S13)

## Endnotes

3 Legislation history

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**Ordinances Revision (Administrative Arrangements) Ordinance 1977 No 18**

notified 21 June 1977  
commenced 21 June 1977

**Real Property (Amendment) Ordinance 1977 No 47**

notified 27 September 1977  
commenced 3 October 1977

**Ordinances Revision Ordinance 1977 No 65**

notified 22 December 1977  
commenced 22 December 1977

**Real Property (Amendment) Ordinance 1978 No 24**

notified 5 September 1978  
commenced 3 October 1978

**Real Property (Amendment) Ordinance 1979 No 16**

notified 29 June 1979  
commenced 1 July 1979

**Real Property (Amendment) Ordinance 1980 No 13**

notified 15 May 1980  
commenced 1 July 1980

**Real Property (Amendment) Ordinance 1982 No 78**

notified 1 October 1982  
commenced 1 October 1982

**Real Property (Amendment) Ordinance (No 2) 1982 No 102**

notified 31 December 1982  
commenced 31 December 1982

**Real Property (Amendment) Ordinance 1983 No 39**

notified 29 September 1983  
commenced 1 October 1983

**Real Property (Amendment) Ordinance (No 2) 1983 No 68**

notified 30 December 1983  
commenced 30 December 1983

**Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9 sch 2**

notified 8 March 1985

sch 2 commenced 28 October 1985 (Cwlth Gaz 1985 No G42)

**Limitation Ordinance 1985 No 66**

notified 19 December 1985

commenced 19 December 1985

**Real Property (Amendment) Ordinance 1985 No 71**

notified 19 December 1985

commenced 1 January 1986 (Cwlth Gaz 1985 No S538)

**Real Property (Amendment) Ordinance 1986 No 22**

notified 30 June 1986

commenced 1 July 1986 (Cwlth Gaz 1986 No S315)

**Sex Discrimination (Miscellaneous Amendments) Ordinance 1986 No 31**

notified 31 July 1986

commenced 1 August 1986

**Real Property (Amendment) Ordinance (No 2) 1986 No 44**

notified 20 August 1986

commenced 20 August 1986 (Cwlth Gaz 1986 No S412)

**Real Property (Amendment) Ordinance (No 3) 1986 No 88**

notified 22 December 1986

commenced 1 January 1987 (Cwlth Gaz 1986 No S669)

**Real Property (Amendment) Ordinance 1987 No 66**

notified 25 November 1987

commenced 1 August 1987

**Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 and see Cwlth Gaz 1989 No S164)

**Legislation after becoming Territory enactment**

**Rates and Land Rent (Relief) (Amendment) Act 1991 No 22 s 11**

notified 10 May 1991 (Gaz 1991 No S36)

commenced 10 May 1991

**Self-Government (Consequential Amendments) Act 1991 No 53 pt 2 div 7**

notified 2 October 1991 (Gaz 1991 No S98)

commenced 2 October 1991

**Land (Planning and Environment) (Consequential Provisions) Act 1991 No 118 pt 2 div 6, sch 1 pt 9**

notified 15 January 1992 (Gaz 1992 No S3)

s 1, s 2 commenced 15 January 1992 (s 2 (1))

pt 2 div 6, sch 1 pt 9 commenced 2 April 1992 (s 2 (2) and Gaz 1992 No 13)

**Real Property (Amendment) Act 1992 No 3**

notified 25 May 1992 (Gaz 1992 No S58)

ss 1-3 commenced 25 May 1992 (s 2 (1))

remainder commenced 5 June 1992 (s 2 and see Gaz 1992 No S80)

**Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)

commenced 27 August 1993 (s 2)

**Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1**

notified 6 September 1993 (Gaz 1993 No S172)

s 1, s 2 commenced 6 September 1993 (s 2 (1))

sch 1 commenced 1 October 1993 (s 2 (2) and see Gaz 1993 No S207)

**Real Property (Amendment) 1993 No 89**

notified 17 December 1993 (Gaz 1993 No S258)

ss 1-3 commenced 17 December 1993 (s 2 (1))

remainder commenced 1 January 1994 (s 2 (2) and Gaz 1993 No S270)

**Mental Health (Consequential Provisions) Act 1994 No 45 sch**

notified 7 September 1994 (Gaz 1994 No S177)  
s 1, s 2 commenced 7 September 1994 (s 2 (1))  
sch commenced 6 February 1995 (s 2 (2) and see Gaz 1995 No S33)

**Land Titles (Amendment) Act 1995 No 53**

notified 20 December 1995 (Gaz 1995 No S313)  
ss 1-3 commenced 20 December 1995 (s 2 (1))  
remainder commenced 20 June 1996 (s 2 (3))

**Land (Planning and Environment) (Amendment) Act 1997 No 7 s 13**

notified 22 April 1997 (Gaz 1997 No S92)  
ss 1-3 commenced 22 April 1997 (s 2 (1))  
s 13 commenced 24 June 1997 (s 2 (2))

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Residential Tenancies (Consequential Provisions) Act 1998 No 4 sch**

notified 25 May 1998 (Gaz 1998 No S150)  
sch commenced 25 May 1998 (s 2)

**Statute Law Revision (Penalties) 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Duties (Consequential and Transitional Provisions) Act 1999 No 8 s 32**

notified 1 March 1999 (Gaz 1999 No S8)  
s 32 commenced 1 March 1999 (s 2 (2))

**Rates and Land Rent (Relief) Amendment Act 2000 No 79 sch 1**

notified 21 December 2000 (Gaz 2000 No S69)  
s 4, s 5 commenced 1 July 2000 (s 2 (2))  
remainder commenced 21 December 2000 (s 2 (1))

## Endnotes

3 Legislation history

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**Statute Law Amendment Act 2000 No 80 amdt 3.10**

notified 21 December 2000 (Gaz 2000 No S69)  
amdt 3.10 commenced 21 December 2000 (s 2 (1))

**Land Titles Legislation Amendment Act 2000 No 82 pt 2**

notified 21 December 2000 (Gaz 2000 No S69)  
pt 2 commenced 21 December 2000 (s 2)

**Surveyors (Consequential Amendments) Act 2001 No 3 sch 1**

notified 8 March 2001 (Gaz 2001 No 10)  
s 1, s 2 commenced 8 March 2001 (IA s 10B)  
sch 1 commenced 26 July 2001 (S 2 and Gaz 2001 No 30)

**Leases (Commercial and Retail) Act 2001 No 18 s 173**

notified 19 April 2001 (Gaz 2001 No 16)  
s 1, s 2 commenced 19 April 2001 (IA s 10B)  
s 173 commenced 1 July 2002 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 212**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 212 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Community Title Act 2001 No 58 s 99, s 100**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
s 99, s 100 commenced 10 March 2002 (s 2 and LA s 79)

**Districts Act 2002 No 39 pt 1.5**

notified LR 10 October 2002  
s 1, s 2 commenced 10 October 2002 (LA s 75 (1))  
pt 1.5 commenced 11 October 2002 (s 2)

**Civil Law (Wrongs) Act 2002 No 40 div 3.2.6**

notified LR 10 October 2002  
s 1, s 2 commenced 10 October 2002 (LA s 75 (1))  
div 3.2.6 commenced 1 November 2002 (s 2 (2) and CN2002-13)



**Planning and Land (Consequential Amendments) Act 2002 A2002-56 sch 3 pt 3.11**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
sch 3 pt 3.11 commenced 1 July 2003 (s 2 and see Planning and Land Act 2002 A2002-55, s 2)

**Legislation (Gay, Lesbian and Transgender) Amendment Act 2003 A2003-14 sch 1 pt 1.21**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
sch 1 pt 1.21 commenced 28 March 2003 (s 2)

**Land (Planning and Environment) (Compliance) Amendment Act 2003 A2003-34 sch 1 pt 1.4**

notified LR 7 July 2003  
s 1, s 2 commenced 7 July 2003 (LA s 75 (1))  
sch 1 pt 1.4 commenced 1 September 2003 (s 2 and CN2003-8)

**Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.49**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.49 commenced 9 April 2004 (s 2 (1))

**Pest Plants and Animals Act 2005 A2005-21 sch 1 pt 1.2**

notified LR 12 May 2005  
s 1, s 2 commenced 12 May 2005 (LA s 75 (1))  
sch 1 pt 1.2 commenced 12 November 2005 (s 2 and LA s 79)

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.19**

notified LR 19 May 2006  
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))  
sch 1 pt 1.19 never commenced

*Note* Act repealed by disallowance 14 June 2006 (see Cwlth Gaz 2006 No S93)

## Endnotes

3 Legislation history

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**Justice and Community Safety Legislation Amendment Act 2006  
A2006-40 sch 1 pt 1.8, sch 2 pt 2.20**

notified LR 28 September 2006  
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
sch 1 pt 1.8 commenced 19 October 2006 (s 2 (3))  
sch 2 pt 2.20 commenced 29 September 2006 (s 2 (1))

**Powers of Attorney Act 2006 A2006-50 sch 2 pt 2.2**

notified LR 30 November 2006  
s 1, s 2 commenced 30 November 2006 (LA s 75 (1))  
sch 2 pt 2.2 commenced 30 May 2007 (s 2 and LA s 79)

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.55**

notified LR 22 March 2007  
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
sch 3 pt 3.55 commenced 12 April 2007 (s 2 (1))

**Planning and Development (Consequential Amendments) Act 2007  
A2007-25 sch 1 pt 1.19**

notified LR 13 September 2007  
s 1, s 2 commenced 13 September 2007 (LA s 75 (1))  
sch 1 pt 1.19 commenced 31 March 2008 (s 2 and see Planning and  
Development Act 2007 A2007-24, s 2 and CN2008-1)

**Surveyors Act 2007 A2007-33 sch 1 pt 1.3**

notified LR 25 October 2007  
s 1, s 2 commenced 25 October 2007 (LA s 75 (1))  
sch 1 pt 1.3 commenced 14 November 2007 (s 2 and CN2007-15)

**Planning and Development Legislation Amendment Act 2008 A2008-4  
pt 4**

notified LR 18 March 2008  
s 1, s 2 commenced 18 March 2008 (LA s 75 (1))  
pt 4 commenced 31 March 2008 (s 2 and see Planning and  
Development Act 2007 A2007-24, s 2 and CN2008-1)

**Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.15**

notified LR 15 May 2008  
s 1, s 2 commenced 15 May 2008 (LA s 75 (1))  
sch 1 pt 1.15 commenced 19 May 2008 (s 2 and CN2008-8)

**Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.48**

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.48 commenced 22 September 2009 (s 2)

**Surveyors Amendment Act 2010 A2010-6 sch 1 pt 1.3**

notified LR 2 March 2010

s 1, s 2 commenced 2 March 2010 (LA s 75 (1))

sch 1 pt 1.3 commenced 3 March 2010 (s 2)

**Statute Law Amendment Act 2010 A2010-18 sch 3 pt 3.9**

notified LR 13 May 2010

s 1, s 2 commenced 13 May 2010 (LA s 75 (1))

sch 3 pt 3.9 commenced 3 June 2010 (s 2)

**Justice and Community Safety Legislation Amendment Act 2010  
(No 4) A2010-50 sch 1 pt 1.4**

notified LR 14 December 2010

s 1, s 2 commenced 14 December 2010 (LA s 75 (1))

sch 1 pt 1.4 commenced 21 December 2010 (s 2 (1))

**4 Amendment history****Long title**

long title am 1995 No 53

**Name of Act**s 1 am 1995 No 53  
sub A2007-3 amdt 3.294**Dictionary**s 2 am 1956 No 16; 1995 No 53  
om 2001 No 44 amdt 1.2521  
ins A2007-3 amdt 3.305**Notes**s 3 am 1933 No 26; 1956 No 16; 1996 No 53  
sub 2001 No 44 amdt 1.2522  
om A2007-3 amdt 3.295  
ins A2007-3 amdt 3.305**Provisions affecting certain land to which State Act applies**s 3A ins 1961 No 7  
am 1989 No 38 sch 1; 1993 No 64 sch 1; 1995 No 53  
om A2007-3 amdt 3.295

## Endnotes

### 4 Amendment history

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#### **Meaning of *registrable form***

s 4 sub 1961 No 7  
am 1970 No 6  
om 1977 No 65  
ins A2007-3 amdt 3.305

#### **Application to married women's property**

s 5 om A2007-3 amdt 3.295  
ins A2007-3 amdt 3.305

#### **Interpretation for Act**

s 6 am 1957 No 12; 2000 No 82 s 4; 2001 No 44  
amds 1.2524-1.2526; ss renum R3 LA  
defs reloc to dict A2007-3 amdt 3.304  
om A2007-3 amdt 3.305  
def **approved form** ins 1995 No 53 s 6  
om 2001 No 44 amdt 1.2523  
def **city area** ins 1925 No 12 s 2  
om 1991 No 118 sch 1 pt 9  
def **commission** om A2007-3 amdt 3.296  
def **computer** ins 1993 No 89 sch  
om A2007-3 amdt 3.297  
def **curator** om 1985 No 9 sch 2  
def **determined fee** ins 1983 No 39 s 4  
om 2001 No 44 amdt 1.2523  
def **justice** om 1937 No 27 sch 2  
def **land** am 1995 No 53 s 6; 1991 No 118 sch 1 pt 9  
om A2007-3 amdt 3.302  
def **registrar** om 1993 No 64 sch 1  
def **the court** am 1937 No 27 sch 2; 1982 No 102 s 2  
om A2007-3 amdt 3.303

#### **Registrar-general's seal of office etc**

s 7 am 1927 No 21; 1930 No 19  
sub 1957 No 12  
am 1977 No 18  
om 1993 No 64  
ins 1993 No 89

#### **Registrar's seal of office**

s 8 am 1930 No 19; 1977 No 18  
om 1993 No 64

#### **Functions of acting registrar and deputy registrar**

s 9 om 1993 No 64

#### **Oath of office**

s 10 om 1993 No 64

**Sworn valuers**

s 11 am 1930 No 19  
om 1969 No 9

**Certain information and omissions not to invalidate documents**

s 12 om 1993 No 64 sch 1

**Surveyors to be licensed**

s 13 am 1930 No 19  
om 1967 No 46

**General powers of registrar-general**

pt 3 hdg am 1993 No 64 sch 1

**Powers of registrar-general**

s 14 am 1930 No 19; 1970 No 6; 1975 No 33; 1986 No 31; 1991  
No 22 s 11; 1993 No 89; 1994 No 45 sch; 1995 No 53; 2000  
No 82 s 5; pars and ss renum R3 LA; A2007-25 amdt 1.83;  
pars renum R18 LA

**Penalty for obstructing registrar-general**

s 15 am 1967 No 46; 1995 No 53; 1998 No 54 sch  
am A2004-15 amdts 2.106-2.108

**Registrar may take statutory declaration**

s 16 om 1993 No 64 sch 1

**Crown grants and certain Crown leases under Act**

s 17 am 1927 No 21; 1956 No 16; 1963 No 6; 1989 No 38 sch 1;  
1995 No 53; 2001 No 44 amdt 1.2527, amdt 1.2528

**Requirements of applications**

div 5.1 hdg (prev pt 5 div 1 hdg) renum R3 LA

**Land brought under Act**

s 18 am 1986 No 31; 1993 No 89; 1994 No 45 sch; 1995 No 53;  
2001 No 44 amdt 1.2529; ss renum R3 LA

**Judge may order production of deeds for purpose of application**

s 19 am 1937 No 27 sch 2; 1995 No 53

**Applicant to surrender documents of title and to furnish abstract if required**

s 20 am 1995 No 53

**Procedure on applications**

div 5.2 hdg (prev pt 5 div 2 hdg) renum R3 LA

**Applications to be considered by registrar-general**

s 21 am 1993 No 89; 1995 No 53

**When applicant is not original grantee or any transactions registered**

s 22 am 1995 No 53; 2001 No 44 amdt 1.2530, amdt 1.2531

## Endnotes

4 Amendment history

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### **When evidence of title imperfect**

s 23 am 1956 No 16; 1989 No 38 sch 1; 1993 No 89; 1995 No 53;  
2001 No 44 amdt 1.2532, amdt 1.2533

### **Notice of application to be published**

s 24 am 1995 No 53; 2001 No 44 amdt 1.2534, amdt 1.2535

### **Registrar-general bringing land under Act**

s 25 am 1993 No 89; 1995 No 53

### **On a return of notices or failure of personal service, registrar-general may proceed or give further directions**

s 26 am 1993 No 89; 1995 No 53

### **Applicant may withdraw application**

s 27 hdg am 1995 No 53 notes

s 27 am 1995 No 53

### **Land occupied may be brought under Act by different description from that in title on special application**

s 28 am 1995 No 53

### **Applications to bring land under Act or to amend certificate may be granted for land occupied under, but not described in, title deeds or certificate**

s 29 am 1995 No 53

### **Caveats against original applications**

div 5.3 hdg (prev pt 5 div 3 hdg) renum R3 LA

### **Parties interested may enter caveat**

s 30 am 1993 No 89; 1995 No 53; 1997 No 96 sch 1; 2001 No 44  
amdt 1.2536

### **If caveat be received within time limited proceedings stayed**

s 31 am 1995 No 53

### **Caveats lapse unless proceedings taken within 3 months**

s 32 hdg am 1995 No 53 notes

s 32 am 1995 No 53

### **Special case**

s 33 am 1995 No 53

### **Where caveator fails to prosecute proceedings**

s 34 am 1995 No 53; 1997 No 96 sch 1

### **Documents of title how to be dealt with**

s 35 am 1937 No 27 sch 2; 1993 No 89; 1995 No 53

### **How certificate of title to issue in case of previous death of applicant**

s 36 am 1995 No 53

**Bringing under this Act of land to which State Act applies**

s 38 am 1933 No 26  
sub 1956 No 16  
am 1961 No 7; 1993 No 89; 1995 No 53; 2001 No 44  
amdts 1.2537-1.2539; ss renum R3 LA (see 2001 No 44  
amdt 1.2540)

**Transfer of records**

s 39 am 1930 No 19; 1995 No 53

**Recognition of transferred records**

s 40 am 1930 No 19; 1995 No 53

**Duplicate grant etc handed over to be deemed original grant**

s 41 am 1930 No 19; 1995 No 53

**Land referred to in pt 7 to be subject to certain reservations etc**

s 42 am 1995 No 53

**Registrar-general to keep register**

s 43 am 1957 No 12; 1993 No 89; ss renum R3 LA

**Form of certificate of title**

s 44 am 1993 No 89; 1995 No 53; 2001 No 44 amdt 1.2541,  
amdt 1.2542

**One certificate may be issued for lands not contiguous**

s 45 am 1975 No 33  
sub 1995 No 53

**Registration where certificate of leasehold issued**

s 46 am 1993 No 89; 1995 No 53

**Grants and certificates when deemed to be registered**

s 47 am 1993 No 89; 1995 No 53

**Registration of transfers of mortgages, subleases etc**

s 47A ins 1927 No 15  
am 1940 No 16; 1956 No 16; 1957 No 12; 1993 No 89; 1995  
No 53

**Registration of memoranda of provisions**

s 47B ins 1983 No 68

**Instruments—registration and priority**

s 48 am 1970 No 6; 1979 No 16; 1983 No 68; 1991 No 22; 1993  
No 89  
sub 1995 No 53

**Refusal to accept instruments for lodgment**

s 48A ins 1995 No 53

## Endnotes

4 Amendment history

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### **Refusal of registration**

s 48B ins 1995 No 53

### **Correction of errors prior to registration**

s 48C ins 1995 No 53

### **Form of memorial**

s 49 am 1957 No 12; 1993 No 89

### **Memorial to be recorded on duplicate grant, certificate or instrument, unless dispensed with**

s 50 am 1957 No 12; 1961 No 7; 1993 No 89; 1995 No 53; 2001 No 44 amdts 1.2543-1.2545; A2010-50 amdt 1.10; ss renum R23 LA

### **Issue of duplicate when document lost or destroyed**

s 50A ins 1927 No 21  
am 1970 No 6; 1991 No 22 s 11; 1993 No 89; 1995 No 53;  
2001 No 44 amdt 1.2546; ss renum R3 LA

### **Instruments not to be registered**

s 51 sub 1969 No 9  
am 1985 No 71; 1986 No 88; 1987 No 66; 1989 No 38 sch 1;  
1995 No 53; 1999 No 8 s 32; ss and pars renum R3 LA

### **Certificate of title as evidence that land duly brought under Act**

s 52 am 1993 No 89; 1995 No 53

### **Evidence as to title**

s 53 am 1993 No 89; 1995 No 53; ss renum R3 LA

### **Joint tenants and tenants in common**

s 54 sub 1927 No 15; 1995 No 53

### **Survivor of joint tenants**

s 55 am 1986 No 31; 1995 No 53

### **Remainderperson or reversioner may be registered as such**

s 56 am 1995 No 53

### **Instruments not effectual until entry in register**

s 57 am 1995 No 53

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

s 58 am 1989 No 38 sch 1; 1993 No 89; 1995 No 53

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

s 59 am 1995 No 53

### **Protection as to notice of transferee before registration**

s 60 sub 1995 No 53

### **Combining or dividing grants or certificates of title**

s 61 am 1993 No 89; 1995 No 53



**Lost grant or certificate**

s 62 am 1927 No 21; 1993 No 89  
sub 1995 No 53  
am 2000 No 82 s 6; A2009-20 amdt 3.115

**Power of registrar-general to issue new certificate**

s 62A ins 1927 No 21  
am 1957 No 12; 1983 No 39; 1995 No 53; 2001 No 44  
amdt 1.2547

**Dealings may be registered prior to issue of grant from Crown**

s 63 am 1993 No 89; 1995 No 53

**Registrar-general may require map to be deposited**

s 64 am 1936 No 15 (as am by 1937 No 27); 1967 No 46; 1975  
No 33; 1980 No 13; 1992 No 3; 1995 No 53; 2001 No 3  
sch 1; 2001 No 44 amdt 1.4548, amdt 1.2549; ss renum  
R3 LA; A2007-33 amdt 1.8; A2010-6 amdt 1.9

**Certified copies of register**

s 65 am 1983 No 39; 1983 No 68; 1993 No 89; 1995 No 53  
sub 2001 No 44 amdt 1.2550

**Searches**

s 66 am 1977 No 47  
sub 1993 No 89  
am 2001 No 44 amdt 1.2551, amdt 1.2552

**Issue of uncertified copies**

s 67 am 1967 No 46  
sub 1995 No 53  
am 2001 No 44 amdt 1.2553

**Registrar-general may register as proprietor person entitled to land by operation of statute or by defeasance of estate**

s 68 am 1957 No 12; 1993 No 89; 1995 No 53; 2001 No 44  
amdt 1.2554, amdt 1.2555

**Record of administrative interests**

pt 8A hdg ins A2007-25 amdt 1.84

**Meaning of *administrative interest*—Act**

s 69A ins A2007-25 amdt 1.84

**Meaning of *authorised entity*—pt 8A**

s 69B ins A2007-25 amdt 1.84

**Record of administrative interests**

s 69C ins A2007-25 amdt 1.84

**Protection from liability—administrative interests**

s 69D ins A2007-25 amdt 1.84

## Endnotes

4 Amendment history

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### **Registration of Crown leases**

s 70 am 1927 No 21; 1986 No 88; 1993 No 89

### **Registration of extension of grant of Crown lease**

s 70A ins 1995 No 53  
om 2000 No 82 s 7

### **Dealings with Crown leases**

s 71 am 1993 No 89; 1995 No 53

### **Application of ordinance to registered Crown leases**

s 72 om 1993 No 44 sch 2

### **Registration of variations**

s 72A ins 1940 No 16  
am 1986 No 22; 1989 No 38 sch 1  
sub 1991 No 118  
am 1993 No 89; A2002-56 amdt 3.41; A2006-40 amdt 1.25;  
A2007-25 amdt 1.85

### **Registration etc of orders under Planning and Development Act 2007**

s 72AB hdg sub A2007-25 amdt 1.86

s 72AB ins 1991 No 118  
am 1993 No 89  
sub A2003-34 amdt 1.21  
am A2007-25 amdt 1.87

### **Dealing with land before grant or registration of Crown lease**

s 72B ins 1957 No 12; 1995 No 53

### **Memorial of compliance with building and development provision in lease**

s 72C ins 1961 No 7  
am 1991 No 118; 1993 No 89; 1995 No 53  
sub A2007-25 amdt 1.88

### **Memorial of application of Planning and Development Act 2007, s 251 to lease**

s 72D ins A2008-4 s 78  
am A2010-18 amdt 3.10

### **Transfers**

div 10.1 hdg (prev pt 10 div 1 hdg) renum R3 LA

### **Memorandum of transfer**

s 73 am 1970 No 6; 1993 No 89  
sub 1995 No 53  
am 1997 No 96 sch 1; 2001 No 44 amdt 1.2556

### **Easements and incorporeal rights to be registered**

s 74 am 1993 No 89  
om 1995 No 53

**Procedure for dealing with certificate of title in case of transfer**

s 75 am 1927 No 21  
sub 1993 No 89

**Issue of fresh certificate on cancellation of grant or certificate**

s 76 am 1995 No 53

**Transferee—interests and obligations**

s 77 sub 1995 No 53

**Transfer of mortgage or lease—right to sue**

s 78 am 1995 No 53

**Proprietor may vest estate jointly in self and others without limiting any use or without reassignment**

s 79 hdg am 1995 No 53 notes  
s 79 am 1995 No 53; A2003-14 amdt 1.70, amdt 1.71

**Endorsement when land becomes Crown land**

s 80 am 1961 No 7; 1993 No 89; 1995 No 53

**Short words for creation of right of way**

s 81 am 1993 No 89

**Leases**

div 10.2 hdg (prev pt 10 div 2 hdg) renum R3 LA

**Form of lease**

s 82 am 1983 No 68; 1993 No 89; 1995 No 53; 2001 No 44  
amdt 1.2557

**Right of purchase or covenant to purchase may be inserted**

s 83 am 1995 No 53

**Mortgagee etc not bound by lease unless consent given**

s 84 hdg am 1995 No 53 notes  
s 84 am 1927 No 21; 1995 No 53

**Certain unregistered leases valid, but not rights of purchase or renewal under them**

s 85 am 1995 No 53

**Surrender of lease**

s 86 am 1926 No 8; 1927 No 21; 1930 No 19; 1940 No 16; 1942  
No 15; 1961 No 7; 1989 No 38 sch 1; 1993 No 64 sch 1;  
1993 No 89; 1995 No 53; 2000 No 82 s 8; 2001 No 44  
amdt 1.2558; ss renum R3 LA; A2010-50 amdt 1.11;  
ss renum R23 LA

**Registration of re-entry by lessor**

s 87 am 1930 No 19; 1967 No 46; 1993 No 89; 1995 No 53; 1998  
No 54 sch

## Endnotes

### 4 Amendment history

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#### **Entry of expiration of lease in register**

s 87A ins 1930 No 19  
am 1961 No 7; 1993 No 89

#### **Resumption and withdrawal of land from lease**

s 87B ins 1930 No 19  
am 1989 No 38 sch 1; 1993 No 89; 1995 No 53; 2001 No 44  
amdt 1.2559

#### **Extension or variation of lease**

s 87C ins 1995 No 53  
am 2001 No 44 amdt 1.2560

#### **Lessee may sublet**

s 88 am 1983 No 68; 1993 No 89; 1995 No 53; 2001 No 44  
amdt 1.2561; ss renum R3 LA

#### **Determination of lease to determine sublease**

s 90 am 1942 No 15; 1995 No 53; 2000 No 82 s 9

#### **Surrender of lease without prejudice to subleases with view to grant of new lease**

s 90A ins 1942 No 15  
am 1985 No 71; 1995 No 53  
om 2000 No 82 s 10

#### **Covenants to be implied in subleases**

s 91 am 1995 No 53

#### **Surrender of lease**

div 10.2A hdg ins 2000 No 82 s 11

#### **Surrender of lease not to affect sublease**

s 91A ins 2000 No 82 s 11

#### **Surrender of lease not to affect mortgage**

s 91B ins 2000 No 82 s 11

#### **New lease—continuation of interests noted on surrendered lease**

s 91C ins 2000 No 82 s 11

#### **Mortgages and encumbrances**

div 10.3 hdg (prev pt 10 div 3 hdg) renum R3 LA

#### **Land—how mortgaged or encumbered**

s 92 am 1983 No 68; 1993 No 89; 1995 No 53; 2001 No 44  
amdt 1.2562; ss renum R3 LA

#### **Mortgage or encumbrance—postponement of priority**

s 92A ins 1972 No 11  
am 1993 No 89; 1995 No 53; 2000 No 82 s 12; 2001 No 44  
amdt 1.2563

**Mortgage or encumbrance—effect**

s 93 am 1995 No 53

**Power to sell**

s 94 am 1970 No 6; 1989 No 38 sch 1; 1991 No 22 s 11; 1993 No 89; 1995 No 53

**Sale by mortgagee—vesting**

s 95 sub 1995 No 53

**Sale by court order—application by mortgagor etc**

s 95A ins 2000 No 82 s 13

**Default, entry and possession—action for recovery**

s 96 am 1995 No 53

**Order for foreclosure on default**

s 97 am 1975 No 33; 1995 No 53; 1997 No 96 sch 1

**Application—how made effective**

s 98 am 1993 No 89; 1995 No 53; 2001 No 44 amds 1.2564-1.2566; ss renum R3 LA (see 2001 No 44 amdt 1.2567)

**Mortgagee to receive rent**

s 99 hdg am 1995 No 53 notes

s 99 am 1995 No 53; A2007-3 amdt 3.306

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

s 100 am 1995 No 53

**Right of Territory if determination revoked and amount secured not paid**s 100A ins 1970 No 6  
am 1989 No 38 sch 1; 1991 No 22 s 11; 1993 No 89; 1996 No 53; 2000 No 79 amdt 1.1**Discharge of mortgages and encumbrances**

s 101 am 1951 No 9; 1993 No 89

sub 1995 No 53

am 2001 No 44 amdt 1.2568

**Variation of mortgages**

s 101A ins 1956 No 16

am 1993 No 89; 1995 No 53; 2001 No 44 amdt 1.2569,  
amdt 1.2570**Entry of satisfaction of annuity**

s 102 am 1993 No 89; 1995 No 53

**Facilitation of redemption in case of absent or unknown mortgagees**

s 103 am 1983 No 39 sch 1; 1993 No 64 sch 1; 1993 No 89; 1995 No 53; 2001 No 44 amdt 1.2571, amdt 1.2572

## Endnotes

4 Amendment history

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### **Memoranda of provisions**

div 10.3A hdg (prev pt 10 div 3A hdg) ins 1993 No 68  
renum R3 LA

### **Registration of memoranda of provisions**

s 103A ins 1983 No 68  
am 1993 No 89; 1995 No 53; 1997 No 96 sch 1; 2001 No 44  
amdt 1.2573

### **Easements and other incorporeal rights**

div 10.3B hdg (prev pt 10 div 3B hdg) ins 1995 No 53  
renum R3 LA

### **Easements—registration**

s 103B ins 1995 No 53  
am 2001 No 44 amdt 1.2574

### **Easements in gross—registration, transfer and extinguishment**

s 103C ins 1995 No 53  
am 2001 No 44 amdt 1.2575

### **Easements—same owner of benefited and burdened land**

s 103D ins 1995 No 53

### **Easements—subdivision of dominant tenement**

s 103DA ins 2000 No 82 s 14

### **Extinguishment of easement**

s 103E ins 1995 No 53  
am 2000 No 82 s 15; 2001 No 44 amdt 1.2576; ss renum R3  
LA

### **Easements—variation**

s 103F ins 1995 No 53  
am 2001 No 44 amdt 1.2577

### **Incorporeal rights—registration**

s 103G ins 1995 No 53  
am 2001 No 44 amdt 1.2578

### **Incorporeal rights—extinguishment**

s 103H ins 1995 No 53  
am 2001 No 44 amdt 1.2579

### **Caveat against dealings**

div 10.4 hdg (prev pt 10 div 4 hdg) renum R3 LA

### **Lodging of caveat**

s 104 am 1993 No 89; 1995 No 53; 1997 No 96 sch 1; ss and pars  
renum R3 LA; A2007-3 amdt 3.307

**Entering a caveat in register**

s 104A ins 1995 No 53  
am 2001 No 44 amdt 1.2580, pars renum R3 LA (see 2001  
No 44 amdt 1.2581), amdt 1.2582

**Withdrawal of caveats**

s 104B ins 1995 No 53  
am 1997 No 96 sch 1

**Notice of caveat**

s 105 am 1937 No 27 sch 2; 1995 No 53; A2007-3 amdt 3.308

**Surrender and regrant of lease of land affected by caveat**

s 105A ins 2000 No 82 s 16

**Caveat lapsing**

s 106 am 1937 No 27 sch 2  
sub 1995 No 53  
am 2000 No 82 s 17; A2007-3 amdt 3.309

**Removal of caveat**

s 107 am 1993 No 89  
sub 1995 No 53  
am 2001 No 44 amdt 1.2583, amdt 1.2584

**Effect on dealings**

s 107A ins 1995 No 53

**Removal of caveat by registrar-general**

s 107B ins 1995 No 53

**Successive caveats**

s 107C ins 1995 No 53

**Determinations under Rates and Land Rent (Relief) Act 1970**

div 10.5 hdg (prev pt 10 div 5 hdg) am 1991 No 118  
renum R3 LA

**Certain documents under Rates and Land Rent (Relief) Act 1970 to be instruments affecting land**

s 108A hdg am 1995 No 53 notes  
s 108A ins 1970 No 6  
am 1991 No 22 s 11; 1995 No 53

**Effect of registration of determination**

s 108B ins 1970 No 6  
am 1989 No 38 sch 1; 1991 No 22 s 11; 1995 No 53

**Registration of memorandum of discharge**

s 108C ins 1970 No 6  
am 1991 No 22 s 11; 1993 No 89; 1995 No 53; 2000 No 79  
amdt 1.2

## Endnotes

### 4 Amendment history

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#### **Fees not payable**

s 108D ins 1970 No 6  
am 1991 No 22 s 11; 1995 No 53  
om 2001 No 44 amdt 1.2585

#### **Effect of covenant**

s 109 am 1995 No 53

#### **Covenants by person with self and another or others**

s 110 hdg am 1995 No 53 notes  
s 110 am 1995 No 53

#### **Implied covenants to be joint and several**

s 111 am 1995 No 53

#### **Benefit of implied covenants**

s 113 am 1996 No 53

#### **Implied covenants with mortgagees**

s 115 am 1995 No 53

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

s 116 am 1995 No 53

#### **Transferring of land subject to mortgage, encumbrance or charge to indemnify transferor**

s 117 am 1970 No 6; 1989 No 38 sch 1; 1995 No 53

#### **Covenant implied in mortgage**

s 118 am 1995 No 53

#### **Covenants of lessees**

s 119 am 1995 No 53

#### **Powers in lessor**

s 120 am 1995 No 53; 1997 No 7 s 13; A2005-21 amdt 1.13

#### **Abbreviated forms of words for covenants in leases**

s 121 am 1995 No 53

#### **Abbreviated form in mortgage**

s 122 am 1995 No 53

#### **Pt 11 not to apply to Crown leases**

s 123 am 1995 No 53

#### **Pt 11 not to apply to residential tenancy agreements**

s 123A ins 1998 No 4 sch

#### **Pt 11 does not apply to leases under Leases (Commercial and Retail) Act**

s 123B ins 2001 No 18 s 173

#### **No notice of trusts to be entered in register**

s 124 am 1993 No 89; 1995 No 53; ss renum R3 LA



**How survivorship among trustees may be banned except on order of judge**

s 126 am 1937 No 27 sch 2; 1993 No 89  
om 1995 No 53

**Notice to be published before order**

s 127 am 1937 No 27 sch 2  
om 1995 No 53

**Registrar-general to carry out order of court vesting trust estate**

s 128 am 1933 No 26; 1937 No 27 sch 2; 1993 No 89; 1995 No 53;  
A2007-3 amdt 3.310

**Action may be brought by person claiming beneficial interest in name of trustee**

s 129 om 1995 No 53

**Powers of attorney**

s 130 am 1926 No 8  
sub 1956 No 16  
am 1957 No 12; 1995 No 53; A2006-50 amdt 2.12

**Revocation of power of attorney**

s 131 am 1956 No 16; 1993 No 89; 1995 No 53; 2001 No 44  
amdt 1.2586, amdt 1.2587  
om A2006-50 amdt 2.13

**Transmission by bankruptcy or insolvency**

s 132 am 1993 No 89; 1995 No 53; 2001 No 44 amdt 1.2588

**Mortgagee of leasehold interest of bankrupt may be entered as transferee of lease**

s 133 am 1993 No 89; 1995 No 53

**Marriage of female proprietor to be certified to registrar**

s 134 om 1986 No 31

**Transmission on death of proprietor**

s 135 am 1957 No 12; 1985 No 9; 1993 No 89  
sub 1995 No 53  
am 2001 No 44 amdt 1.2589

**Trusts—protection**

s 136 am 1930 No 19; 1957 No 12; 1969 No 9; 1985 No 9; 1993  
No 89  
sub 1995 No 53

**Powers of registrar in dealing with applications of executors and administrators**

s 137 am 1927 No 21; 1993 No 89  
om 1995 No 53

## Endnotes

4 Amendment history

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### **Trusts protected**

s 138 om 1995 No 53

### **Appointment of new or additional trustees**

s 138A ins 1933 No 26  
am 1933 No 34; 1993 No 89; 1995 No 53

### **Registration of declaration by executor**

s 138B ins 1934 No 14  
am 1967 No 46; 1977 No 47; 1978 No 24; 1982 No 78; 1983  
No 39; 1993 No 64 sch 1; 1993 No 89; 1995 No 53; 2001  
No 44 amdt 1.2590

### **Fees and forms**

pt 15 hdg am 1995 No 53  
sub 2001 No 44 amdt 1.2591

### **Approved forms**

s 138C ins 1995 No 53  
om 2001 No 44 amdt 1.2591

### **Determination of fees, charges and other amounts**

s 139 am 1930 No 19  
sub 1956 No 16  
am 1963 No 6; 1977 No 47; 1979 No 16  
sub 1983 No 39  
am 1983 No 68; 1986 No 22; 1993 No 89; 1995 No 53  
sub 2001 No 44 amdt 1.2591  
am 2001 No 58 s 99; 2002 No 39 amdt 1.5

### **Approved forms**

s 140 am 1925 No 12 s 3; 1937 No 27 sch 2; 1938 No 15; 1951 No 9  
om 1956 No 16  
ins 2001 No 44 amdt 1.2591  
am 2001 No 58 s 100

### **Percentage to be levied for registration of transfer**

s 141 am 1930 No 19; 1933 No 26; 1936 No 15 (as am by 1937  
No 27); 1967 No 46  
om 1969 No 9

### **Payment of certain fees to registrar-general**

s 142 am 1930 No 19; 1986 No 22; 1993 No 89; 1995 No 53  
om 2001 No 44 amdt 1.2591

### **Remission of fees**

s 142A ins 1927 No 21  
am 1930 No 19; 1951 No 9  
om 1969 No 9

**Damages in certain cases**

s 143 am 1930 No 19; 1989 No 38; 1995 No 53

**Damages and costs to be paid by Territory**

s 144 am 1930 No 19; 1937 No 27 sch 2; 1989 No 38 sch 1; 1995 No 53

**Moneys paid by Territory may be recovered against estate of deceased or bankrupt person**

s 145 am 1930 No 19; 1977 No 18; 1989 No 38 sch 1; 1995 No 53

**Where person liable is out of jurisdiction**

s 146 am 1930 No 19; 1937 No 27 sch 2; 1977 No 18; 1989 No 38 sch 1; 1991 No 53; 1995 No 53

**Territory only liable in certain cases**

s 147 am 1930 No 19; 1989 No 38 sch 1

**Proprietor may summon registrar-general to show cause if dissatisfied**

s 148 am 1937 No 27 sch 2; 1995 No 53; 1997 No 96 sch 1

**Special case when applicant dissatisfied with objection of registrar-general**

s 149 am 1995 No 53

**Registrar-general may state case for court**

s 150 am 1995 No 53

**Costs of proceedings**

s 151 hdg am 1995 No 53 notes

s 151 am 1930 No 19; 1989 No 38 sch 1; 1995 No 53

**Registered proprietor protected against ejectment except in certain cases**

s 152 am 1970 No 6; 1989 No 38 sch 1; 1995 No 53; paragraphs renum R3 LA

**In case of ejectment of defendant who has made improvements their value may be assessed**

s 153 am 1930 No 19; 1989 No 38 sch 1; 1995 No 53; 2002 No 40 amdt 3.26

**Compensation for party deprived of land**

s 154 am 1930 No 19; 1989 No 38 sch 1; 1993 No 89; 1995 No 53

**When actions may lie against registrar-general as nominal defendant**

s 155 am 1930 No 19; 1989 No 38 sch 1; 1993 No 89; 1995 No 53

**Notice of action**

s 156 am 1930 No 19; 1985 No 66; 1989 No 38 sch 1; ss renum R3 LA  
sub A2006-40 amdt 2.115

## Endnotes

### 4 Amendment history

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#### **Limitation of actions**

s 157 am 1930 No 19  
om 1985 No 66

#### **Registrar-general not to be liable for acts done bona fide**

s 158 am 1930 No 19; 1989 No 38 sch 1; 1995 No 53

#### **Purchasers and mortgagees protected**

s 159 am 1995 No 53

#### **Corrections and alterations**

pt 17 hdg sub 1995 No 53

#### **Correction of errors**

s 160 am 1937 No 27 sch 2  
sub 1995 No 53  
am 1997 No 96 sch 1

#### **Power of court**

s 161 am 1937 No 27 sch 2; 1993 No 89  
sub 1995 No 53

#### **Correction of duplicate certificate etc**

s 162 am 1937 No 27 sch 2; 1993 No 89  
sub 1995 No 53

#### **Amend or alter name or address entered in register**

s 162A ins 1995 No 53  
am 1997 No 96 sch 1

#### **Practice and procedure**

pt 18 hdg om 2001 No 44 amdt 1.2592

#### **Rule of court to apply and same right of appeal**

s 163 om 2001 No 44 amdt 1.2592

#### **Court may make rules etc**

s 164 am 1937 No 27 sch 2  
om 2001 No 44 amdt 1.2592

#### **Registrar-general may hold instrument for safekeeping**

s 164A ins 1995 No 53  
am 1997 No 96 sch 1; 2001 No 44 amdt 1.2593, amdt 1.2594

#### **Offence for certain fraudulent acts**

s 165 hdg sub A2007-3 amdt 3.311  
s 165 am 1967 No 46; 1993 No 89; 1995 No 53; 1998 No 54 sch;  
2001 No 44 amdt 1.2595, amdt 1.2596

#### **Conviction not to affect civil remedy**

s 166 am 1995 No 53

**Prosecutions and recovery of penalties**

s 167 am 1995 No 53

**Use of prescribed forms**

s 168 sub 1979 No 16  
om 1993 No 89

**Document bearing imprint of seal of registrar-general**

s 168A ins 1979 No 16  
am 1998 No 54

**Alteration of forms**

s 169 am 1925 No 12 s 4; 1930 No 19; 1977 No 18; 1979 No 16  
om 1993 No 89

**General form of application**

s 169A ins 1961 No 7  
om 1993 No 89

**Sales by order of court etc**

s 170 am 1970 No 6; 1989 No 38 sch 1; 1991 No 22 s 11; 1993  
No 89; 1995 No 53; ss renum R3 LA; A2006-40 amdt 2.116

**Surrender and regrant of lease of land affected by writ**

s 170A ins 2000 No 82 s 18  
am A2006-40 amdt 2.117

**Conditions of sale of land under this Act**

s 171 am 1995 No 53

**Seal of corporation substituted for signature**

s 172 am 1995 No 53  
om 2000 No 82 s 19

**Attesting of instruments**

s 173 am 1961 No 7  
sub 1995 No 53

**Mode of proving execution**

s 174 am 1937 No 27 sch 2; 1993 No 89  
om 1995 No 53

**Acknowledgment by married woman not necessary**

s 175 om 1986 No 31

**Place of signing to be stated**

s 176 om 1995 No 53

**Service of notices**

s 178 am 1993 No 89  
sub 1995 No 53

## Endnotes

### 4 Amendment history

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#### **Regulation-making power**

s 179 am 1930 No 19; 1977 No 18; 1983 No 39; 1989 No 38 sch 1  
sub 1995 No 53  
sub 2001 No 44 amdt 1.2597

#### **Transitional**

pt 20 ins 2000 No 80 amdt 3.10

#### **Savings of titles with words 'no survivorship' endorsed**

s 180 ins 2000 No 80 amdt 3.10

#### **The schedules**

schs hdg om 1993 No 89 sch

sch 1 orig 1st sch am 1930 No 19; 1956 No 16; 1967 No 46; 1975  
No 33; 1983 No 39; 1986 No 31; 1993 No 64 sch 1  
om 1993 No 89 sch  
(prev sch 7 (7th sch)) renum by 1993 No 89 s 4  
am 1995 No 53

#### **Documents required to be in approved form**

sch 2 orig sch 2 (2nd sch) am 1930 No 19; 1963 No 6; 1967 No 46;  
1993 No 64  
om 1993 No 89 sch  
(prev sch 18) renum by 1993 No 89 s 4  
sub 1995 No 53  
om 2001 No 44 amdt 1.2598

#### **Matters subject to determination of fees**

sch 3 (prev 3rd sch) am 1930 No 19; 1993 No 64 sch 1  
om 1993 No 89 sch  
ins 1995 No 53  
om 2001 No 44 amdt 1.2598

sch 4 (prev 4th sch) am 1930 No 19; 1967 No 46; 1975 No 33; 1986  
No 31; 1993 No 64 sch 1  
om 1993 No 89 sch

sch 5 (prev 5th sch) am 1930 No 19; 1967 No 46; 1975 No 33; 1986  
No 31; 1993 No 64 sch 1  
om 1993 No 89 sch

sch 6 (prev 6th sch) am 1930 No 19; 1967 No 46; 1975 No 33; 1986  
No 31; 1993 No 64 sch 1  
om 1993 No 89 sch

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|        |   |
|--------|---|
| sch 7  | (prev 7th sch) renum sch 1 1993 No 89 s 4   |
| sch 8  | (prev 8th sch) am 1930 No 19; 1967 No 46; 1975 No 33; 1993 No 64 sch 1<br>om 1993 No 89 sch                 |
| sch 9  | (prev 9th sch) am 1930 No 19; 1967 No 46; 1975 No 33; 1993 No 64 sch 1<br>om 1993 No 89 sch                 |
| sch 10 | (prev 10th sch) am 1930 No 19; 1967 No 46; 1975 No 33;<br>1993 No 64 sch 1<br>om 1993 No 89 sch             |
| sch 11 | (prev 11th sch) am 1930 No 19; 1967 No 46; 1975 No 33;<br>1986 No 31; 1993 No 64 sch 1<br>om 1993 No 89 sch |
| sch 12 | (prev 12th sch) am 1930 No 19<br>om 1956 No 16 s 14   |
| sch 13 | (prev 13th sch) am 1930 No 19<br>om 1956 No 16 s 14   |
| sch 14 | om 1993 No 89 sch   |
| sch 15 | (prev 15th sch) am 1930 No 19; 1937 No 27 sch 2; 1967 No 46; 1993 No 64 sch 1<br>om 1993 No 89 sch          |
| sch 16 | (prev 16th sch) am 1930 No 19; 1967 No 46; 1993 No 64 sch 1<br>om 1993 No 89 sch                            |
| sch 17 | om 1993 No 89 sch   |

## Endnotes

### 4 Amendment history

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- sch 18 (prev 18th sch) am 1925 No 12 s 5; 1930 No 19; 1933 No 26;  
1940 No 16; 1951 No 9  
sub 1956 No 16 s 15  
am 1961 No 7  
sub 1963 No 6  
am 1967 No 46; 1969 No 9; 1975 No 33  
sub 1977 No 47  
am 1978 No 24; 1979 No 16; 1980 No 13; 1982 No 78  
sub 1983 No 39  
am 1983 No 68; 1986 No 44  
renum as sch 2 1993 No 89 s 4
- sch 19 (prev 19th sch) om 1993 No 89 sch
- sch 20 (prev 20th sch) ins 1927 No 21  
am 1930 No 19; 1993 No 64 sch 1  
om 1993 No 89 sch
- sch 21 (prev 21st sch) ins 1940 No 16  
am 1993 No 64 sch 1  
om 1993 No 89 sch
- sch 22 (prev 22nd sch) ins 1956 No 16 s 16  
am 1967 No 46; 1993 No 64 sch 1  
om 1993 No 89 sch
- sch 23 (prev 23rd sch) ins 1961 No 7  
am 1993 No 64 sch 1  
om 1993 No 89 sch
- sch 24 (prev 24th sch) ins 1972 No 11  
am 1993 No 64 sch 1  
om 1993 No 89 sch
- sch 25 (prev 25th sch) ins 1983 No 68  
om 1993 No 89 sch



## Dictionary

dict

ins A2007-3 amdt 3.312  
 am A2007-25 amdt 1.89; A2008-14 amdt 1.40; A2009-20  
 amdt 3.116  
 def **administrative interest** ins A2007-25 amdt 1.90  
 def **authorised entity** ins A2007-25 amdt 1.90  
 def **caveator** am 1995 No 53 s 6  
 reloc from s 6 A2007-3 amdt 3.304  
 def **computer folio** ins 1993 No 89 sch  
 reloc from s 6 A2007-3 amdt 3.304  
 def **court** ins A2007-3 amdt 3.298  
 reloc from s 6 A2007-3 amdt 3.304  
 def **Crown land** reloc from s 6 A2007-3 amdt 3.304  
 def **Crown lease** am 1927 No 21 s 2; A2007-3 amdt 3.299  
 reloc from s 6 A2007-3 amdt 3.304  
 sub A2007-25 amdt 1.91  
 def **encumbrance** reloc from s 6 A2007-3 amdt 3.304  
 def **encumbrancee** reloc from s 6 A2007-3 amdt 3.304  
 def **encumbrancer** am 1995 No 53 sch 2  
 reloc from s 6 A2007-3 amdt 3.304  
 def **Federal Capital Commission** ins A2007-3 amdt 3.300  
 reloc from s 6 A2007-3 amdt 3.304  
 def **grant** am 1927 No 21 s 2  
 sub A2007-3 amdt 3.301  
 reloc from s 6 A2007-3 amdt 3.304  
 def **instrument** am 1961 No 7 s 5; 1995 No 53 s 6  
 sub 1983 No 68 s 3  
 am 1995 No 53 s 6  
 reloc from s 6 A2007-3 amdt 3.304  
 def **Land Act** ins 1991 pt 2 div 6, sch 1 pt 9  
 reloc from s 6 A2007-3 amdt 3.304  
 om A2007-25 amdt 1.92  
 def **lodge** ins 1995 No 53 s 6  
 reloc from s 6 A2007-3 amdt 3.304  
 def **memorandum of provisions** ins 1983 No 68 s 3  
 reloc from s 6 A2007-3 amdt 3.304  
 def **memorial** ins 1995 No 53 s 6  
 reloc from s 6 A2007-3 amdt 3.304  
 def **mortgage** reloc from s 6 A2007-3 amdt 3.304  
 def **mortgagee** reloc from s 6 A2007-3 amdt 3.304  
 def **mortgagor** am 1995 No 53 sch 2  
 reloc from s 6 A2007-3 amdt 3.304  
 def **proprietor** reloc from s 6 A2007-3 amdt 3.304  
 def **register** ins 1995 No 53 s 6  
 reloc from s 6 A2007-3 amdt 3.304  
 def **registrable form** ins A2007-3 amdt 3.312

## Endnotes

### 5 Earlier republications

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def **transfer** am 1995 No 53 sch 2  
reloc from s 6 A2007-3 amdt 3.304  
def **transmission** am A2006-22 amdt 1.70 (A2006-22 rep  
before commenced by disallowance (see Cwltz Gaz 2006  
No S93))  
reloc from s 6 A2007-3 amdt 3.304  
am A2008-14 amdt 1.39

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

| Republication No | Amendments to         | Republication date |
|------------------|-----------------------|--------------------|
| 1                | Act 1995 No 53        | 20 June 1996       |
| 2                | Act 1998 No 4         | 1 July 1998        |
| 3                | <u>Act 2001 No 58</u> | 7 March 2002       |
| 4*               | Act 2002 No 58        | 11 March 2002      |
| 5                | Act 2001 No 58        | 1 July 2002        |
| 6                | Act 2002 No 39        | 11 October 2002    |
| 7                | Act 2002 No 40        | 1 November 2002    |
| 8                | A2003-14              | 28 March 2003      |
| 9                | A2003-14              | 1 July 2003        |
| 10*              | A2003-34              | 1 September 2003   |
| 11               | A2004-15              | 9 April 2004       |
| 12               | A2005-21              | 12 November 2005   |
| 13               | <u>A2006-40</u>       | 29 September 2006  |
| 14               | A2006-40              | 19 October 2006    |
| 15               | A2007-3               | 12 April 2007      |
| 16               | A2007-3               | 30 May 2007        |

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| <b>Republication No</b> | <b>Amendments to</b> | <b>Republication date</b> |
|-------------------------|----------------------|---------------------------|
| 17                      | A2007-33             | 14 November 2007          |
| 18                      | A2008-4              | 31 March 2008             |
| 19                      | A2008-14             | 19 May 2008               |
| 20*                     | A2009-20             | 22 September 2009         |
| 21                      | A2010-6              | 3 March 2010              |
| 22                      | A2010-18             | 3 June 2010               |

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