

REAL PROPERTY.

No. 7 of 1961.

An Ordinance to amend the *Real Property Ordinance* 1925-1957.

Short title
and
citation.

1.—(1.) This Ordinance may be cited as the *Real Property Ordinance* 1961.*

(2.) The *Real Property Ordinance* 1925-1957† is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Real Property Ordinance* 1925-1961.

Commence-
ment.

2. This Ordinance shall come into operation on the first day of June, One thousand nine hundred and sixty-one.

3. After section three of the Principal Ordinance the following section is inserted:—

Provisions
affecting
certain land
to which
State Act
applies.

“ 3A. Where, immediately before the commencement of this section, land was deemed to be under the provisions of the Real Property Act, 1900, of the State of New South Wales in its application to the Territory by virtue of the second proviso to sub-section (2.) of section six of the *Seat of Government Acceptance Act* 1909-1955 or section four of the *Seat of Government (Administration) Act* 1933—

(a) that land shall, subject to the next succeeding paragraph, be deemed, by force of this section, to be under the provisions of that Act in that application from the commencement of this section until the land is under the provisions of this Ordinance; or

(b) if the Registrar has, by notice published in the *Gazette* before the commencement of this section, purported to declare that that land is, by force of the notice, brought under the provisions

* Made on 18th May, 1961; notified in the *Commonwealth Gazette* on 25th May, 1961, and commenced on 1st June, 1961.

† Ordinance No. 1, 1925, as amended by Ordinance No. 12, 1925; No. 8, 1926; Nos. 15 and 21, 1927; No. 19, 1930; Nos. 26 and 34, 1933; No. 14, 1934; No. 15, 1936; No. 27, 1937; Nos. 15, 25 and 35, 1938; No. 16, 1940; No. 15, 1942; No. 9, 1951; No. 16, 1956; and No. 12, 1957.

of the *Real Property Ordinance 1925-1956* or that Ordinance as amended by the *Real Property Ordinance 1957*, that land shall, by force of this section, be under the provisions of this Ordinance after the commencement of this section.”

4. Section four of the Principal Ordinance is repealed and the following section inserted in its stead:—

“ 4. This Ordinance is divided into Parts, as follows:—

Parts.

- Part I.—Preliminary (Sections 1-6).
- Part II.—Administration (Sections 7-13).
- Part III.—General Powers of Registrar (Sections 14-16).
- Part IV.—Future Grants of Freehold and of Certain Crown Leaseholds (Section 17).
- Part V.—Applications to bring Land under the Ordinance and Proceedings Thereon.
 - Division 1.—Requirements of Applications (Sections 18-20).
 - Division 2.—Procedure on Applications (Sections 21-29).
 - Division 3.—Caveats against Original Applications (Sections 30-34).
- Part VI.—Issue of Certificates of Title and Grants (Sections 35-37).
- Part VII.—Land Registered under the Real Property Act 1900 of the State of New South Wales (Sections 38-42).
- Part VIII.—Register Book and Registration (Sections 43-69).
- Part IX.—Crown Leases (Sections 70-72c).
- Part X.—Dealings.
 - Division 1.—Transfers (Sections 73-81).
 - Division 2.—Leases (Sections 82-91).
 - Division 3.—Mortgages and Encumbrances (Sections 92-103).
 - Division 4.—Caveats Against Dealings (Sections 104-108).
- Part XI.—Implied Covenants and Short Forms of Covenants (Sections 109-123).

- Part XII.—Trusts (Sections 124-129).
- Part XIII.—Powers of Attorney (Sections 130-131).
- Part XIV.—Transmissions (Sections 132-138B).
- Part XV.—Fees (Sections 139-142A).
- Part XVI.—Civil Rights and Remedies (Sections 143-159).
- Part XVII.—Cancellation and Correction of Instruments (Sections 160-162).
- Part XVIII.—Practice and Procedure (Sections 163-164).
- Part XIX.—Miscellaneous (Sections 165-179).”.

Interpretation.

5. Section six of the Principal Ordinance is amended by inserting in the definition of “instrument” in sub-section (1.), after the word “sub-lease”, the words “, endorsement on a lease under section eighty-six of this Ordinance, memorandum of surrender of a lease”.

Bringing under this Ordinance of land to which the State Act applies.

6. Section thirty-eight of the Principal Ordinance is amended by omitting from sub-section (1.) the words “at the date of commencement of this Part” and inserting in their stead the words “immediately before the date of publication of the notice”.

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

7. Section fifty of the Principal Ordinance is amended by omitting from sub-section (3.) the word “shall” (second occurring) and inserting in its stead the word “may”.

8. After section 72B of the Principal Ordinance the following section is inserted in Part IX.:—

Memorial of completion of building on land included in lease.

“72c.—(1.) Where the Registrar is satisfied, with respect to a Crown lease that is registered under this Ordinance and to which section twenty-eight of the *City Area Leases Ordinance* 1936-1959 applies, that, on or before a particular date, a building was completed on the land included in the lease in accordance with a building plan or design, being a plan or design prepared or approved by the proper authority for the purposes of that section for the building that the lessee is required by the lease to erect on that land, the Registrar may enter in the Register Book, on the folium constituted by a copy of the lease, a memorial to that effect.

“(2.) A memorial made under the last preceding sub-section shall, for the purposes of section twenty-eight of the *City Area Leases Ordinance 1936-1959*, be conclusive evidence of the matter as to which the Registrar has stated in the memorial that he is satisfied.”.

9. Section eighty of the Principal Ordinance is amended by inserting after the words “Crown land” the words “(whether or not held by the Commonwealth in its capacity as a body corporate conferred by section sixty-one of the *Lands Acquisition Act 1955-1957*)”.

Endorsement
when land
becomes Crown
land.

10. Section eighty-six of the Principal Ordinance is amended—

Surrender of
lease by
endorsement,
&c.

- (a) by adding at the end of sub-section (1.) the words “or a memorandum of surrender may be executed in accordance with the form in the Twenty-third Schedule to this Ordinance”;
- (b) by inserting in sub-section (2.), after the word “endorsement” (wherever appearing), the words “or memorandum of surrender”;
- (c) by omitting sub-section (3.) and inserting in its stead the following sub-section:—
 - “(3.) The Registrar shall, upon production to him 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 Book a memorial recording the date of the surrender.”;
- (d) by omitting sub-section (5.);
- (e) by adding at the end of sub-section (7.) the words “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.’”;
- (f) by inserting in sub-section (8.), after the words “the endorsement”, the words “or memorandum of surrender”; and
- (g) by inserting in sub-section (9.), after the word “endorsement”, the words “or memorandum of surrender”.

Entry of
expiration of
case in
Register
Book.

11. Section eighty-seven A of the Principal Ordinance is amended by omitting the words “ upon application in that behalf made by the lessor and ”.

12. After section one hundred and sixty-nine of the Principal Ordinance the following section is inserted:—

General form of
application.

“ 169A. An application to the Registrar under this Ordinance for which a form is not, apart from this section, specified by this Ordinance shall be made in accordance with a form approved by the Registrar.”.

Attesting and
proving of
instruments.

13. Section one hundred and seventy-three of the Principal Ordinance is amended—

(a) by omitting paragraph (a) of sub-section (2.) and inserting in its stead the following paragraph:—

“ (a) if the party executing the instrument is resident within the Commonwealth or a Territory of the Commonwealth—
before—

(i) the Registrar;

(ii) a person before whom a statutory declaration under the *Statutory Declarations Act 1959* may be made; or

(iii) a barrister or solicitor of the High Court or of a Supreme Court of a State or a Territory of the Commonwealth;” and

(b) by adding at the end thereof the following sub-section:—

“ (3.) Notwithstanding the last preceding sub-section, the execution of an instrument by a person resident outside the Commonwealth and the Territories of the Commonwealth may be proved before a person who is an Australian Diplomatic Officer or an Australian Consular Officer for the purposes of the *Consular Fees Act 1955*.”.

Eighteenth
Schedule.

14. The Eighteenth Schedule to the Principal Ordinance is amended by inserting in item 5 of the table, after the word “ copy ” (first occurring), the words “ furnished under section 65 of this Ordinance ”.

15. The Principal Ordinance is amended by adding at the end thereof the following Schedule:—

Twenty-third Schedule.

" THE TWENTY-THIRD SCHEDULE.

Section 86.

AUSTRALIAN CAPITAL TERRITORY.

Real Property Ordinance 1925-1961.

MEMORANDUM OF SURRENDER OF LEASE.

I, ^(a) _____ , being registered as the proprietor of a lease of the land mentioned in the Schedule to this memorandum, do hereby, in consideration of _____ , surrender all my estate or interest as lessee in the land.

(a) Insert name and address of lessee.

THE SCHEDULE.

District or Division.	Block No.	Section No.	Whole or Part.	Vol.	Folio.	Description of Land (if part only).

Dated this _____ day of _____, 19 ____ .

Lessee.

Signed at _____ by the said _____, who is personally known to me, in my presence.

Witness.

Accepted.
Lessor.".