

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Civil Law (Property) Bill 2005

Contents

	Page
Chapter 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 3
5	Application of Act 3
Chapter 2	Conveyancing
Part 2.1	Conveyancing—preliminary
200	What is a <i>settlement</i> ? 4

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Part 2.2	General rules about property	
Division 2.2.1	Rules of law on certain points	
201	Instruments required to be in writing	5
202	Creation of interests in land by word of mouth	6
203	Exceptions to s 201 and s 202	6
204	Proceedings do not lie on certain unwritten agreements	7
205	Assignment of debts and things in action	8
206	Merger	8
207	Equitable waste	9
Division 2.2.2	Property generally	
208	Person may assure property to self or to self and others	9
209	Power for corporations to hold property as joint tenants	9
210	Interpretation of conveyance etc of property to 2 or more people together	10
211	Tenants in common of equitable estate acquiring legal estate	10
212	People taking who are not parties	11
213	Presumption of survivorship	11
214	Provisions about supplemental instruments	11
Division 2.2.3	Ending life interests	
215	Meaning of <i>life interest</i> for div 2.2.3	12
216	Wrongful holding over of life interest etc	12
217	Vesting of interests on end of life interest—evidence of death	12
218	Vesting orders made in error	14
Part 2.3	General rules about deeds and documents of corporations	
Division 2.3.1	Deeds and their effect	
219	Signature and attestation of deeds	15
220	Receipt in deed sufficient	15
221	Receipt in deed or endorsed evidence for subsequent purchaser	16
222	How powers of appointment are to be exercised	16

	Page
Division 2.3.2 Operation of deeds	
223 Limitations may be made by direct conveyance without uses	16
224 In conveyance use of word grant unnecessary	16
225 Rights of entry etc	17
226 Certain conveyance etc void	17
Division 2.3.3 Documents of corporations	
227 Execution of documents by or on behalf of corporations	17
Division 2.3.4 Powers of appointment	
228 Application—div 2.3.4	19
229 Appointments to be valid despite exclusion of object	19
Part 2.4 Sales and other transactions	
Division 2.4.1 Dispositions on trust for sale or with power of sale	
230 Meaning of <i>purchaser</i> for div 2.4.1	20
231 Consents to execution of trust for sale etc	20
232 Purchaser not to be concerned with trusts of proceeds of sale	21
233 Settlements of personal property invested in land	21
234 Powers given to trustees for sale	22
235 Application of income of land under trust for sale	22
236 Partition of land under trust for sale	22
237 Powers of Supreme Court if trustees for sale decline to exercise powers	24
Division 2.4.2 Voidable dispositions	
238 Meaning of <i>purchaser</i> for div 2.4.2	24
239 Voluntary dispositions to defraud creditors voidable	24
240 Voluntary dispositions of land—how far voidable against purchasers	25
241 Acquisitions of reversions at under value	25
Part 2.5 Partition	
242 Definitions—pt 2.5	26
243 Court may order partition of land held in co-ownership	26
244 Power of Supreme Court to order sale instead of partition	26
245 Authority for interested person to bid	28

	Page	
246	Parties to partition proceedings	28
247	Several sales in same partition proceeding	28
Part 2.6	Apportionment	
248	Definitions—pt 2.6	30
249	Application of pt 2.6 to dividends of companies	30
250	Income apportionable in relation to time	30
251	Time when apportioned part is payable	31
252	Recovery of apportioned parts	31
253	Exceptions and application	32
Part 2.7	Children and children’s property	
254	Receipts by certain children	33
255	Management of land during childhood	33
256	Power to appoint trustees of child’s property	34
257	Powers and duties of guardian	36
Part 2.8	Rights-of-way	
258	No right-of-way by user against Territory etc	37
Chapter 3	Mortgages	
Part 3.1	Powers in relation to mortgages	
300	Application—pt 3.1	38
301	Powers incidental to mortgages	38
302	Receipt for purchase money sufficient discharge	39
303	Notice of sale	39
304	Purported exercise of power of sale	40
305	Application of purchase money by mortgagee	40
306	Property that may be transferred to purchaser	40
307	Mortgagee may call for documents relating to property	41
308	Appointment of receiver	41
309	Receiver taken to be agent of mortgagor	42

	Page
310 Powers of receiver	42
311 Ending appointment of receiver etc	42
312 Commission to receiver	42
313 Receiver to insure if required	43
314 Application of amounts received by receiver	43
Part 3.2 Mortgages—other provisions	
315 Effect of repayment on ejection by mortgagee	44
316 Section 315 not to apply in certain cases	45
317 Redemption if mortgagee absent or unknown	45
Chapter 4 Leases	
Part 4.1 Leases—general provisions	
Division 4.1.1 Lessee’s and lessor’s obligations	
400 Lessee’s obligations attach to reversion	47
401 Lessor’s obligations to run with reversion	48
402 Lessee to give notice of ejection to lessor	49
Division 4.1.2 Renewal of headlease without surrender of sublease	
403 Renewal of headlease	49
404 Rights on renewal	50
Part 4.2 Leases to and for children and for absent lessors	
405 Leases for children	51
406 Costs of lease authorisation application for child	51
407 Renewal of leases by children	52
408 Renewal of leases for people not amenable to process	52
409 Preconditions for grant or renewal of lease to be satisfied	53
410 Application of amounts paid for lease renewal under pt 4.2	53
411 Validity of surrenders and leases under pt 4.2	53
412 Costs of applications under pt 4.2	54

	Page	
Part 4.3	Breach of insurance provisions	
413	Application—pt 4.3	55
414	Relief against forfeiture for failure to insure	55
415	Record of relief granted	55
416	Limit on relief	56
417	Noncomplying insurance	56
418	Protection of purchaser of leasehold against forfeiture	57
Part 4.4	Restriction of effect of licence or waiver by lessor	
419	Application—pt 4.4	58
420	Effect of licence given to lessee	58
421	Operation of partial licences	59
422	Apportionment of conditions of entry on severance	60
423	Waiver of benefit of lease provision	60
Part 4.5	Forfeiture of leases	
424	Definitions—pt 4.5	61
425	Application—pt 4.5	61
426	Restrictions on re-entry or forfeiture	61
427	Notices under s 426 (1)	63
428	Protection of sublessees	63
Part 4.6	Leases invalidly granted under powers	
429	Pt 4.6 does not bind the Territory	64
430	Leases taken to be granted in intended exercise of power	64
431	Certain invalid leases taken to be agreements to lease	64
432	Certain leases validated	65
433	Acceptance of rent taken to be confirmation of lease	66
434	Lessee bound to accept confirmation	66
435	Pt 4.6 does not affect certain other rights	67
Part 4.7	Recovery of leased premises	
436	Application—pt 4.7	68

	Page	
437	Who is an <i>agent</i> for pt 4.7?	68
438	Recovery of possession	69
Chapter 5	Miscellaneous	
Part 5.1	Debts charged on property of deceased person	
500	Charges on property of deceased person to be paid primarily out of property charged	70
Part 5.2	Stipulations in contracts	
501	Stipulations not of the essence of contracts	72
Part 5.3	Miscellaneous—other provisions	
502	Approved forms	73
503	Regulation-making power	73
Part 5.4	Transitional	
504	References to repealed Act	74
505	Transitional regulations	74
506	Expiry of pt 5.4	75
Part 5.5	Repeals and consequential amendments	
507	Legislation repealed	76
508	Legislation amended—sch 1	76
Schedule 1	Consequential amendments	77
Part 1.1	Administration and Probate Act 1929	77
Part 1.2	Civil Law (Wrongs) Act 2002	78
Part 1.3	Confiscation of Criminal Assets Act 2003	78
Part 1.4	Court Procedures Act 2004	78
Part 1.5	Law Reform (Miscellaneous Provisions) Act 1955	79

Contents

	Page
Part 1.6 Legislation Act 2001	79
Part 1.7 Trustee Act 1925	80
 Dictionary	 82

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Civil Law (Property) Bill 2005

A Bill for

An Act to amend, simplify and consolidate provisions about the law of property, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Chapter 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Civil Law (Property) Act 2005*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Dictionary**

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

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

20 For example, the signpost definition ‘*trustee company*—see the *Trustee*
21 *Companies Act 1947*, dictionary.’ means that the term ‘trustee
22 company’ is defined in that dictionary and the definition applies to this
23 Act.

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

1 **4 Notes**

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

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

5 **5 Application of Act**

6 (1) This Act does not apply in relation to leasehold land (including
7 leases of leasehold land) under the *Land Titles Act 1925* so far as
8 there is an inconsistency with that Act.

9 (2) If a provision of this Act is stated to apply to land under the *Land*
10 *Titles Act 1925*, the provision is not taken (unless the contrary
11 intention appears) to apply exclusively to land of that kind.

12 (3) This Act is subject to the following legislation:

13 (a) the *Consumer Credit Act 1995*;

14 (b) the *Consumer Credit (Australian Capital Territory) Code*;

15 (c) the *Consumer Credit (Australian Capital Territory)*
16 *Regulations*;

17 (d) a law prescribed by regulation.

1 **Chapter 2 Conveyancing**

2 **Part 2.1 Conveyancing—preliminary**

3 **200 What is a *settlement*?**

- 4 (1) A *settlement* is an instrument, or a number of instruments, under
5 which land is—
- 6 (a) held by people in limited ownership by succession; or
- 7 (b) held in trust for people as limited owners by succession; or
- 8 (c) held in trust for a child in possession; or
- 9 (d) held in limited ownership by a trust for a child in possession.

10 **Example of settlement**

11 will

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

- 15 (2) If a child is beneficially entitled to land, and because of an intestacy
16 or otherwise there is no instrument under which the interest of the
17 child arises or is acquired, a *settlement* is taken to have been made
18 by the intestate or the person whose interest the child has acquired.
- 19 (3) An interest not disposed of by a settlement, and remaining in or
20 reverting to the settlor (or someone deriving title through the
21 settlor), is an interest included in the settlement and coming to the
22 settlor (or other person) under the settlement.

1 **Part 2.2** **General rules about property**

2 **Division 2.2.1** **Rules of law on certain points**

3 **201** **Instruments required to be in writing**

4 (1) An interest in land cannot be created or disposed of by a person
5 except—

6 (a) by writing signed by the person or by the person's agent
7 properly authorised in writing; or

8 (b) by the person's will; or

9 (c) by operation of law.

10 *Note 1* The Legislation Act, dict, pt 1 defines *interest*, in relation to land and
11 other property, and *land*.

12 *Note 2* See also the Legislation Act, s 168 (References to person with interest
13 in land include personal representative etc).

14 (2) A declaration of trust by a person in relation to an interest in land
15 must be—

16 (a) in writing signed by the person; or

17 (b) made by the person's will.

18 (3) A disposition by a person of an equitable interest or trust existing at
19 the time of the disposition must be—

20 (a) in writing signed by the person or by the person's agent
21 properly authorised in writing; or

22 (b) made by the person's will.

- 1 (4) This section—
2 (a) does not affect the creation or operation of a resulting, implied
3 or constructive trust; and
4 (b) is subject to section 202 (Creation of interests in land by word
5 of mouth).

6 **202 Creation of interests in land by word of mouth**

- 7 (1) This section applies to an interest in land if the interest is—
8 (a) created by word of mouth; and
9 (b) not put into writing signed by the person creating it or by the
10 person's agent properly authorised in writing.
11 (2) The interest is an interest at will only, whether or not consideration
12 is given for it.

13 **203 Exceptions to s 201 and s 202**

- 14 (1) Section 201 (Instruments required to be in writing) and section 202
15 (Creation of interests in land by word of mouth) do not—
16 (a) affect the creation by word of mouth of a lease that is at the
17 highest rent reasonably obtainable without taking a fine and
18 that takes effect in possession—
19 (i) for a term not longer than 3 years without a right for the
20 lessee to extend the term; or
21 (ii) for a term not longer than 3 years with a right for the
22 lessee to extend the term, at the best rent reasonably
23 obtainable without taking a fine, for a further period, but
24 so that the period of the lease and the period of the
25 extension do not total longer than 3 years; or

- 1 (b) invalidate a disposition by will; or
2 (c) affect an interest validly created before 26 June 1986; or
3 (d) affect the law about part performance.

4 *Note* A ‘fine’ is an amount paid by a tenant to a landlord for the grant,
5 transfer or renewal of a lease. It is not an amount reasonably demanded
6 to cover the landlord’s expenses, rather an extortionate amount
7 demanded by a landlord without reasonable cause (see Butterworths,
8 Australian Legal Dictionary, p 477).

9 (2) In this section:

10 *possession*—to remove any doubt, *possession* of land does not
11 include receipt of income from the land.

12 **204 Proceedings do not lie on certain unwritten agreements**

13 (1) A proceeding does not lie against a person on a contract for the sale
14 or other disposition of land unless the agreement on which the
15 proceeding is brought, or a memorandum or note of the agreement,
16 is in writing signed by the person or by the person’s agent properly
17 authorised in writing.

18 (2) This section—

19 (a) applies to contracts whenever they were made; and

20 (b) applies to land under the *Land Titles Act 1925*; and

21 (c) does not affect the law about part performance or sales by a
22 court.

1 **205 Assignment of debts and things in action**

2 (1) An absolute assignment, in writing signed by the assignor, of a debt
3 or thing in action (other than an assignment expressed to be by
4 charge only) is effective at law to transfer the right to the debt or
5 thing in action if written notice of the assignment is given to the
6 debtor, trustee, or other person, (the *liable person*) from whom the
7 assignor would have been entitled to receive or claim the debt or
8 thing in action.

9 *Note* A *thing in action* (also called a *chose in action*) is an intangible
10 personal property right recognised and protected by the law. Examples
11 include debts, money held at a bank, shares, rights under a trust,
12 copyright, and the right to sue for breach of contract.

13 (2) The transfer takes effect on the day the notice is given.

14 (3) Without limiting subsection (1), the assignee may recover or
15 otherwise enforce the debt or thing in action without involving the
16 assignor.

17 (4) However, the transfer is subject to all equities that would have been
18 entitled to priority over the right of the assignee apart from this
19 section.

20 (5) If the liable person has notice that the assignment is disputed, or of
21 any conflicting claims to the debt or thing in action, the liable
22 person may—

23 (a) call on anyone claiming the debt or thing in action to
24 interplead; or

25 (b) pay any amount in dispute into court.

26 **206 Merger**

27 An estate in land is merged in another estate by operation of law
28 only if the beneficial interest in the estate is merged or extinguished
29 in equity.

1 **207 Equitable waste**

2 An estate for life without impeachment of waste does not give the
3 tenant for life a legal right to commit equitable waste, unless an
4 intention to give the tenant for life that right expressly appears in the
5 instrument creating the estate.

6 **Division 2.2.2 Property generally**

7 **208 Person may assure property to self or to self and others**

8 A person may assure property to—

- 9 (a) himself or herself; or
10 (b) himself or herself and anyone else.

11 **209 Power for corporations to hold property as joint tenants**

- 12 (1) A corporation may acquire and hold property in joint tenancy in the
13 same way as if it were an individual.
- 14 (2) Without limiting subsection (1), if a corporation and an individual
15 become entitled to property under circumstances or an instrument
16 that would have created a joint tenancy if the corporation were an
17 individual, the corporation and individual are entitled to the property
18 as joint tenants.
- 19 (3) However, the acquisition and holding of property by a corporation
20 in joint tenancy is subject to the conditions and restrictions that
21 apply to the acquisition and holding of property by a corporation in
22 severalty.
- 23 (4) If a corporation that is a joint tenant of property is dissolved, the
24 property devolves on the other joint tenant.

- 1 **210 Interpretation of conveyance etc of property to 2 or more**
2 **people together**
- 3 (1) A disposition of the beneficial interest in property (whether or not
4 with the legal estate) to or for 2 or more people together beneficially
5 is taken to be made to or for them as tenants in common, and not as
6 joint tenants.
- 7 (2) However, this section does not apply—
- 8 (a) to people who, under the instrument, are executors,
9 administrators, trustees or mortgagees; or
- 10 (b) if the instrument expressly provides that they are to take as
11 joint tenants.
- 12 (3) This section applies to the interpretation of an instrument
13 commencing after 8 May 1958.
- 14 **211 Tenants in common of equitable estate acquiring legal**
15 **estate**
- 16 (1) This section applies if—
- 17 (a) 2 or more people are beneficially entitled as tenants in common
18 to an equitable estate in property; and
- 19 (b) they are or become entitled in their own right (whether as joint
20 tenants or tenants in common) to the legal estate in the
21 property; and
- 22 (c) their legal estate in the property is equal to, and coextensive
23 with, their equitable estate in the property.
- 24 (2) The legal and equitable estates in the property are both to be held by
25 them as tenants in common unless they otherwise agree.

1 **212 People taking who are not parties**

- 2 (1) A person may take an immediate or other interest in land or other
3 property, or the benefit of a condition, right of entry, covenant or
4 agreement over or in relation to land or other property, even though
5 the person is not a party to the assurance or other instrument.
- 6 (2) The person may sue, and is entitled to all rights and remedies, in
7 relation to the land or other property as if the person had been a
8 party to the assurance or other instrument.

9 **213 Presumption of survivorship**

- 10 (1) If 2 people die at the same time or in an order that is uncertain, the
11 deaths are, for purposes affecting title to land, taken to have
12 happened in order of seniority, and the younger is taken to have
13 survived the elder.
- 14 (2) If more than 2 people die at the same time or in an order that is
15 uncertain, the deaths are, for purposes affecting title to land, taken to
16 have happened in order of seniority, and the youngest is taken to
17 have survived the eldest.
- 18 (3) This section is subject to the *Administration and Probate Act 1929*,
19 part 3B (Simultaneous deaths).

20 **214 Provisions about supplemental instruments**

- 21 (1) An instrument (the *supplemental instrument*) expressed to be
22 supplemental to a previous instrument is, as far as practicable, to be
23 read, and has effect, as if the supplemental instrument contained a
24 full recital of the previous instrument.
- 25 (2) This section does not operate to give a right to production of the
26 previous instrument.

- 1 (3) A purchaser may accept the same evidence that the previous
2 instrument does not affect the title as the purchaser could have
3 accepted if it had only been mentioned in the supplemental
4 instrument.

5 **Division 2.2.3 Ending life interests**

6 **215 Meaning of *life interest* for div 2.2.3**

7 In this division:

8 *life interest* means an interest in property ending on the death of 1 or
9 more people.

10 **216 Wrongful holding over of life interest etc**

11 (1) This section applies if a person entitled to a life interest in property
12 holds over or continues in possession of the property, the interest in
13 the property, or the rents, profits or income of the property, after the
14 end of the life interest without the express consent of the person
15 next entitled to the property, or to the rents, profits or income of the
16 property, on the ending of the life interest.

17 (2) The holder of the life interest is liable in damages, to account for the
18 rents, profits or income of the property, or both, to the person
19 entitled to the property, or to the rents, profits or income, after the
20 end of the life interest.

21 **217 Vesting of interests on end of life interest—evidence of
22 death**

23 (1) If a reversion, remainder or other interest in property is to vest in
24 possession on the death of 1 or more people and the person entitled
25 to the interest believes that the interest has become vested in
26 possession because of the death of the relevant person, the person
27 entitled to the interest (the *applicant*) may—

- 1 (a) apply to a court for appropriate orders in relation to the
2 property; and
- 3 (b) give the court evidence of the death of the relevant person.
- 4 (2) If the court is satisfied that the relevant person has died, the court
5 may make appropriate orders in relation to the property in which the
6 interest is held.
- 7 (3) Without limiting subsection (2), if evidence is given to the court that
8 the relevant person has remained outside Australia, or has been
9 absent from the place in Australia where the person might have been
10 expected to be found, for 7 years or longer, then, unless it is proved
11 to the satisfaction of the court that the relevant person is still alive,
12 the court may order that the person is, for the proceeding, taken to
13 have died and make appropriate orders on that basis.
- 14 (4) If judgment is given against the applicant and the applicant later
15 begins another proceeding in a court in which the applicant claims
16 that the relevant person has died, the court in which the other
17 proceeding is begun may order that the proceeding be stayed—
- 18 (a) for a stated time; or
- 19 (b) until a further order of the court; or
- 20 (c) permanently.
- 21 (5) In this section:
- 22 *relevant person*, in relation to the vesting in possession of a
23 reversion, remainder or other interest in property, means the person
24 on whose death the interest vests in possession or, if the vesting of
25 the interest in possession happens on the deaths of 2 or more people,
26 the last of them to die.

- 1 **218 Vesting orders made in error**
- 2 (1) This section applies if—
- 3 (a) a person with a life interest in property (the *interest-holder*)
- 4 has been evicted from the property or deprived of the interest
- 5 because of an order made by a court on the basis that the life
- 6 interest has ended; and
- 7 (b) in a later court proceeding the court is satisfied that the life
- 8 interest has not ended, or had not ended when the order was
- 9 made.
- 10 (2) The court hearing the later proceeding may give the interest-holder
- 11 appropriate relief.

1 **Part 2.3** **General rules about deeds and**
2 **documents of corporations**

3 **Division 2.3.1** **Deeds and their effect**

4 **219** **Signature and attestation of deeds**

- 5 (1) A deed (whether or not it affects property) must be—
6 (a) signed and sealed; and
7 (b) attested by at least 1 witness who is not a party to the deed,
8 using any form of words.
9 (2) Indenting is not necessary.
10 (3) An instrument executed after 1 July 1920 that is signed and attested
11 in accordance with this section is taken to be sealed if the instrument
12 is expressed to be an indenture or deed or to be sealed.
13 (4) A deed executed and attested in accordance with this section may be
14 proved in the same way that a deed not required by law to be
15 attested may be proved.
16 (5) This section does not affect—
17 (a) the execution of a deed by a corporation; or
18 (b) a deed executed before 1 November 1951.

19 **220** **Receipt in deed sufficient**

20 A receipt for consideration in the body of a deed is a discharge for
21 the consideration to the person giving it, even though a receipt is not
22 endorsed on the deed.

1 **221** **Receipt in deed or endorsed evidence for subsequent**
2 **purchaser**

3 A receipt for consideration in the body of a deed (or endorsed on it)
4 is, for a subsequent purchaser without notice that all or part of the
5 consideration has not been given, evidence of the giving of all the
6 consideration.

7 **222** **How powers of appointment are to be exercised**

8 (1) This section applies if a power of appointment by an instrument
9 other than a will is exercised by—

10 (a) a deed executed and attested in accordance with this Act or the
11 Corporations Act; or

12 (b) an instrument under the *Land Titles Act 1925* executed and
13 attested in accordance with that Act.

14 (2) The deed or instrument is, in relation to the execution and
15 attestation, a valid exercise of the power, even though the
16 instrument that creates the power requires an additional or another
17 form of execution or attestation.

18 **Division 2.3.2** **Operation of deeds**

19 **223** **Limitations may be made by direct conveyance without**
20 **uses**

21 A limitation that may be made by use operating under this Act may
22 be made by direct conveyance without the intervention of uses.

23 **224** **In conveyance use of word grant unnecessary**

24 (1) In a conveyance it is not necessary to use the word ‘grant’ to convey
25 land.

26 (2) Any words that indicate an intention to convey the land are
27 sufficient.

1 **225** **Rights of entry etc**

2 The following interests in property may be conveyed by deed:

- 3 (a) a right of entry;
- 4 (b) a contingent remainder;
- 5 (c) a contingent, executory, or future estate, right or interest;
- 6 (d) a possibility coupled with an interest.

7 **226** **Certain conveyance etc void**

- 8 (1) This section applies to a conveyance of, or an agreement to convey,
9 a present right of entry to land, other than a conveyance or
10 agreement to convey to the person in possession of the land (**A**).
- 11 (2) The conveyance or agreement to convey is void as against A or
12 anyone claiming through A unless the person conveying or agreeing
13 to convey (**B**), or the person through whom B claims, has been in
14 possession of the land within 1 year from the date of the conveyance
15 or agreement.

16 **Division 2.3.3** **Documents of corporations**

17 **227** **Execution of documents by or on behalf of corporations**

- 18 (1) For an honest purchaser, a document is taken to have been properly
19 executed by a corporation aggregate if the seal of the corporation is
20 fixed to the document and the fixing of the seal is attested by—
- 21 (a) the secretary or another officer of the corporation or a deputy
22 of the secretary or other officer; and
- 23 (b) a member of the board of directors, council or other governing
24 body of the corporation.

- 1 (2) If a document has attached to it a seal purporting to be the seal of a
2 corporation aggregate and the fixing of the seal has been attested by
3 people purporting to hold the positions mentioned in subsection (1),
4 an honest purchaser may assume the document has been executed in
5 accordance with subsection (1).
- 6 (3) The board of directors, council or other governing body of a
7 corporation aggregate may, by resolution or other means, appoint an
8 agent to execute documents for the corporation, including
9 registration copies of documents to which the corporation is a party.
- 10 (4) If a person is authorised under a power of attorney or a statutory or
11 other power to assure property for a corporation, the person may
12 make the assurance by—
- 13 (a) signing it in his or her name in the presence of at least
14 1 attesting witness and stating in the assurance the power the
15 person has to sign it for the corporation; and
- 16 (b) if the assurance is a deed—further executing the assurance in
17 accordance with section 219 (Signature and attestation of
18 deeds).
- 19 (5) If a corporation aggregate is authorised under a power of attorney or
20 a statutory or other power to assure property for someone else, an
21 officer or employee of the corporation appointed for the purpose by
22 the board of directors, council or other governing body of the
23 corporation may assure the property for the other person.
- 24 (6) If an assurance is made by an officer or employee who purports to
25 be appointed under subsection (5), the assurance is taken, in relation
26 to an honest purchaser, to have been made by a properly appointed
27 officer or employee.
- 28 (7) This section applies to deeds and other documents executed after
29 8 May 1958.

1 (8) This section does not limit the ways in which a company may
2 execute a document (including a deed), and any method of
3 execution authorised by law or by practice, or by the law, charter,
4 constitution or other instrument establishing the corporation or
5 regulating the affairs of the corporation, is (in addition to the
6 methods authorised by this section) as effective as if this section had
7 not been enacted.

8 *Note* The Corporations Act, s 127 provides how a company may execute
9 documents (including deeds), and s 128 provides that a person is
10 entitled to make certain assumptions in s 129 in relation to dealings with
11 a company.

12 **Division 2.3.4 Powers of appointment**

13 **228 Application—div 2.3.4**

14 This division applies to appointments made after 26 June 1986
15 under powers created before, on or after that day.

16 **229 Appointments to be valid despite exclusion of object**

- 17 (1) An appointment made under a power to appoint property among
18 2 or more objects is not invalid only because 1 or more objects of
19 the power is not to take a share in the property.
- 20 (2) This section does not affect a provision of the instrument creating
21 the power that declares a share in the property from which an object
22 of the power is not to be excluded.

1 **Part 2.4 Sales and other transactions**

2 **Division 2.4.1 Dispositions on trust for sale or with**
3 **power of sale**

4 **230 Meaning of *purchaser* for div 2.4.1**

5 In this division:

6 *purchaser* means a person who acquires an interest in or charge on
7 property for money or money's worth.

8 **231 Consents to execution of trust for sale etc**

9 (1) If the consent of 3 or more people is required by a disposition for
10 the execution of a trust for sale of property, or the exercise of a
11 power of sale of property under a trust, then, for a purchaser, the
12 consent of any 2 of those people to the execution of the trust or the
13 exercise of the power or to the exercise of any statutory or other
14 powers vested in the trustees is enough.

15 (2) If a person whose consent is required by a disposition for the
16 execution of a trust for sale of property, or the exercise of a power
17 of sale of property under a trust, is a person with a legal disability,
18 the person's consent is, for a purchaser, taken not to be required.

19 (3) However, for the disposition mentioned in subsection (2), the
20 trustees must get the consent of—

21 (a) if the person is a child—the parent or testamentary or other
22 guardian of the child; or

23 (b) if the person is a person with a mental disability—the manager
24 of the person's property under the *Guardianship and*
25 *Management of Property Act 1991*; or

26 (c) if there is no parent, guardian or manager—the Supreme Court.

-
- 1 **232** **Purchaser not to be concerned with trusts of proceeds of**
2 **sale**
- 3 (1) A purchaser of property from trustees for sale, or from trustees
4 having a power of sale, need not be concerned with the trusts
5 affecting the proceeds of sale or the income of the property until
6 sale, whether or not the trusts are declared by the same instrument
7 that created the trust for sale or the power of sale.
- 8 (2) Despite anything to the contrary in the instrument (if any) creating a
9 trust for sale of property, or a power of sale of property, or in the
10 settlement of the proceeds of sale of property, proceeds of sale or
11 other capital money may only be paid or applied by the direction of
12 at least 2 trustees, unless the trust has only 1 trustee and—
- 13 (a) the trustee is a trust corporation; or
14 (b) the trustee was appointed as the sole trustee by the instrument
15 creating the trust.
- 16 (3) However, subsection (2) does not affect the right of a sole personal
17 representative to give valid receipts for, or direct the application of,
18 proceeds of sale or other capital money.
- 19 (4) Also, subsection (2) does not make it necessary to have more than
20 1 trustee unless capital money arises on a transaction.
- 21 **233** **Settlements of personal property invested in land**
- 22 (1) If a settlement contains a power to invest money in the purchase of
23 land and land is purchased in the exercise of that power—
- 24 (a) the land is held by the trustees on trust for sale; and
25 (b) the net rents and profits from the land must, after paying the
26 costs of repairs properly payable out of income, insurance and
27 other outgoings, be paid or applied in the same way as the
28 income of investments made from the sale price of the land
29 would have been payable or applicable if the land had been

1 sold and the proceeds invested other than in the purchase of
2 land.

3 (2) This section applies unless the settlement provides to the contrary.

4 (3) This section applies only to settlements commencing after
5 1 December 1957.

6 **234 Powers given to trustees for sale**

7 (1) If property under a disposition on trust for sale includes land, the
8 trustees may take possession of, hold and manage the land until it is
9 sold.

10 (2) This section applies unless the disposition provides to the contrary.

11 **235 Application of income of land under trust for sale**

12 (1) The net rents and profits of land under a disposition on trust for sale
13 must, after paying the costs of repairs properly payable out of
14 income, insurance, and other outgoings, be paid or applied in the
15 same way as the income of investments made from the sale price of
16 the land would have been payable or applicable if the land had been
17 sold and the proceeds invested other than in the purchase of land.

18 (2) This section applies subject to any contrary intention in the
19 disposition or in a settlement of proceeds of sale under the
20 disposition.

21 **236 Partition of land under trust for sale**

22 (1) If the net proceeds of sale of land under a disposition on trust for
23 sale have, under the trusts affecting the sale, become absolutely
24 vested in possession in 2 or more people as joint tenants or tenants
25 in common, the trustees for sale may, with the agreement of the
26 people (if any) who are adults and not annuitants and who have
27 interests in possession in the net rents and profits of the land until it
28 is sold—

- 1 (a) partition the land remaining unsold or any part of it; and
2 (b) provide (by mortgage or otherwise) for the payment of equality
3 money.
- 4 (2) On a partition being arranged under subsection (1), the trustees for
5 sale must give effect to the partition by conveying the land
6 partitioned in severalty (subject or not to any mortgage created to
7 raise equality money) to the people entitled to it under the partition.
- 8 (3) A purchaser of land partitioned under subsection (1) need not be
9 concerned to inquire whether any agreement to the partition required
10 by the subsection had been given.
- 11 (4) If a share in the net proceeds belongs to a person who has a
12 physical, mental, psychological or intellectual condition relevant to
13 the *Guardianship and Management of Property Act 1991*, section 8,
14 the trustees for sale are protected if they obtain the agreement of—
- 15 (a) the manager of the person's property under that Act; or
16 (b) if there is no manager—the Supreme Court.
- 17 (5) If a share in the net proceeds is affected by an encumbrance, the
18 trustees for sale may either—
- 19 (a) give effect to the encumbrance; or
20 (b) provide for the discharge of the encumbrance out of the
21 property allotted in relation to the share.
- 22 (6) If a share in the net proceeds is vested absolutely in a child, or in a
23 person who cannot be found or identified, or about whom it is
24 uncertain whether the person is living or dead, the trustees for sale
25 may act for the child or person and keep land or other property that
26 is the person's share.

- 1 **237 Powers of Supreme Court if trustees for sale decline to**
2 **exercise powers**
- 3 (1) If trustees for sale decline to sell or exercise any of the powers given
4 by section 234 (Powers given to trustees for sale) or section 236
5 (Partition of land under trust for sale), or any agreement cannot be
6 obtained, an interested person may apply to the Supreme Court
7 for—
- 8 (a) a vesting or other order to give effect to the proposed
9 transaction; or
- 10 (b) an order directing the trustees for sale to exercise any of their
11 powers.
- 12 (2) The court may make any order it considers appropriate.

13 **Division 2.4.2 Voidable dispositions**

14 **238 Meaning of *purchaser* for div 2.4.2**

15 In this division:

16 *purchaser* means a purchaser for valuable consideration, and
17 includes a lessee, mortgagee or other person who, for valuable
18 consideration, acquires an interest in property.

19 **239 Voluntary dispositions to defraud creditors voidable**

- 20 (1) A disposition of property made with intent to defraud creditors is
21 voidable by a person prejudiced by the disposition.
- 22 (2) However, this section does not apply to an interest in property
23 disposed of to an honest purchaser who did not have, at the time of
24 the disposition, notice of the intent to defraud creditors.
- 25 (3) This section applies to a disposition of property made before or after
26 the commencement of this section.

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- 1 **240** **Voluntary dispositions of land—how far voidable against**
2 **purchasers**
- 3 (1) A voluntary disposition of land made with intent to defraud a
4 subsequent purchaser is voidable by that purchaser.
- 5 (2) For this section, if the document by which a voluntary disposition of
6 land is made is registered before a subsequent purchase of the land,
7 the voluntary disposition is not taken to have been made with intent
8 to defraud a subsequent purchaser—
- 9 (a) only because the disposition was not made for valuable
10 consideration; or
- 11 (b) only because of the subsequent purchase.
- 12 (3) This section applies to a disposition of land made before or after the
13 commencement of this section.
- 14 **241** **Acquisitions of reversions at under value**
- 15 (1) An acquisition of a reversionary interest in property honestly made
16 for money or moneys worth must not be set aside only because it
17 was made for less than full value.
- 18 (2) This section does not affect the jurisdiction of a court to set aside or
19 change unconscionable bargains.
- 20 (3) In this section:
- 21 *reversionary interest* includes an expectancy or possibility.

1 **Part 2.5 Partition**

2 **242 Definitions—pt 2.5**

3 In this part:

4 *interested person*, in relation to property, means a person with an
5 interest in the property.

6 *proceeding for partition of property* includes a proceeding for sale
7 of the property and distribution of the proceeds.

8 **243 Court may order partition of land held in co-ownership**

9 If 2 or more people hold an interest in land as joint tenants or
10 tenants in common, the Supreme Court may, on an application made
11 by 1 or more of those people (the *applicants*)—

- 12 (a) order a partition of the interest in the land held by the
13 applicants; and
14 (b) make any further orders, and give any consequential directions,
15 it considers appropriate.

16 **244 Power of Supreme Court to order sale instead of partition**

17 (1) In a proceeding for partition of property, instead of ordering
18 partition—

19 (a) the Supreme Court may, on the application of an interested
20 person, order the sale of the property if the court considers that
21 sale (and a distribution of the proceeds) would be more
22 beneficial than partition because of—

- 23 (i) the nature of the property; or
24 (ii) the number of interested people; or

- 1 (iii) the absence or disability of an interested person; or
2 (iv) any other circumstances; and
3 (b) the court must (unless it sees good reason not to), on the
4 application of interested people with a collective interest in the
5 property of at least a half share in the property, order the sale
6 of the property; and
7 (c) the court may, on the application of an interested person, order
8 the sale of the property unless other interested people agree to
9 buy the share of the applying person.
- 10 (2) The power of the Supreme Court to order the sale of property
11 includes the power to order the sale of a part of the property and the
12 partition of the rest of the property.
- 13 (3) If the Supreme Court orders the sale of property, it may—
14 (a) appoint trustees to receive and apply proceeds of the sale; or
15 (b) give any consequential directions it considers appropriate,
16 including, for example, directions about—
17 (i) the valuation of an interested person's share in the
18 property; and
19 (ii) the application, investment and distribution of proceeds of
20 sale.
- 21 *Note* An example is part of the Act, is not exhaustive and may extend, but
22 does not limit, the meaning of the provision in which it appears (see
23 Legislation Act, s 126 and s 132).
- 24 (4) In a proceeding for partition of property, it is sufficient to claim sale
25 and distribution of the proceeds and it is not necessary to claim a
26 partition.

1 **245 Authority for interested person to bid**

2 (1) The Supreme Court may allow an interested person in relation to
3 property to bid at the sale of the property under this part on the
4 conditions that the court considers appropriate, including, for
5 example, conditions about—

6 (a) nonpayment of deposit; or

7 (b) setting off or accounting for the purchase money or any part
8 instead of paying it; or

9 (c) anything else.

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

13 (2) This section does not limit section 244 (3).

14 **246 Parties to partition proceedings**

15 (1) A person who, apart from this part, might have brought a proceeding
16 for partition of property may bring the proceeding against any
17 interested person without serving any other interested person.

18 (2) A defendant in a proceeding cannot object for want of parties.

19 **247 Several sales in same partition proceeding**

20 (1) This section applies if, in a proceeding for partition of property—

21 (a) 2 or more sales are made; and

22 (b) a person (the *excluded person*) is excluded from participation
23 in the proceeds of any of the sales (the *excluded sale*).

24 (2) If the excluded person establishes the person's claim to take part in
25 the proceeds of another of the sales, the shares of the other people
26 interested in the proceeds of that sale must be reduced to the extent
27 that their share of the proceeds of the excluded sale were increased

- 1 by the exclusion of the excluded person from the proceeds of that
2 sale.
- 3 (3) The amount mentioned in subsection (2) must be put towards
4 payment to the excluded person of the share of the proceeds of the
5 excluded sale that the person would have been entitled to if the
6 person had not been excluded.

1 **Part 2.6** **Apportionment**

2 **248** **Definitions—pt 2.6**

3 In this part:

4 *annuity* includes salary and pension.

5 *dividend* includes—

6 (a) a payment called a dividend or bonus; and

7 (b) a payment otherwise made out of the revenue of a company
8 that is divisible between members of the company, whether or
9 not a payment of that kind is usually made or declared at fixed
10 times;

11 but does not include a return of capital.

12 *rent* includes—

13 (a) a payment under a rent charge or for rent service; and

14 (b) a periodical payment in the nature of rent, or instead of rent.

15 **249** **Application of pt 2.6 to dividends of companies**

16 For this part, the divisible revenue mentioned in section 248,
17 definition of *dividend*, paragraph (b) is taken to have accrued by
18 equal daily increments during the period in relation to which the
19 payment out of revenue is declared or expressed to be made.

20 **250** **Income apportionable in relation to time**

21 All rents, annuities dividends and other periodical payments in the
22 nature of income (whether reserved or made payable by an
23 instrument or otherwise) are, like interest on an amount lent, taken
24 to accrue from day-to-day, and must be apportioned in relation to
25 time accordingly.

1 **251 Time when apportioned part is payable**

2 An apportioned part of a payment mentioned in section 250 is
3 payable or recoverable—

4 (a) if the payment is a continuing payment—when the entire
5 portion of which the apportioned part forms part becomes
6 payable; or

7 (b) if the payment is terminated by re-entry, death or otherwise—
8 when the next entire portion of the payment would have
9 become payable if it had not been terminated.

10 **252 Recovery of apportioned parts**

11 (1) In this section:

12 *lessor* means the person who, if the rent for any land had not been
13 apportionable, would have been entitled to the entire or continuing
14 rent for the land.

15 *person* includes—

16 (a) the person's personal representatives, successors and assigns;
17 and

18 (b) the personal representatives, successors and assigns of a person
19 whose interest ended on that person's death.

20 (2) The person entitled to an apportioned part of a payment mentioned
21 in section 250 (Income apportionable in relation to time) may
22 recover the part, when payable, in the same way as the person could
23 recover the entire payment if entitled to it.

24 (3) However, an apportioned part of a payment of rent for land is not by
25 itself recoverable from the person liable to pay the rent, but may be
26 recovered from that person by the lessor together with the remaining
27 part of the payment.

- 1 (4) If the lessor does so, the person entitled to the apportioned part may
2 then recover it from the lessor.

3 **253 Exceptions and application**

- 4 (1) This part does not make apportionable an annual amount payable
5 under a policy of assurance.
- 6 (2) This part does not apply to any case in which it is expressly
7 stipulated that apportionment is not to take place.

1 **Part 2.7** **Children and children's property**

2 **254 Receipts by certain children**

3 A child in a domestic partnership has power to give valid receipts
4 for all income (including statutory accumulations of income made
5 during childhood) to which the child may be entitled as if the child
6 were an adult.

7 **255 Management of land during childhood**

8 (1) This section applies if—

9 (a) a beneficial interest in land is held in trust for a child; and

10 (b) the trustees of the beneficial interest are—

11 (i) if the settlement that created the interest appointed
12 trustees of the interest—the trustees appointed; or

13 (ii) if the settlement that created the interest did not appoint
14 trustees of the interest but there are trustees of the
15 settlement—the trustees of the settlement, unless the
16 settlement or an order of the Supreme Court that
17 appointed the trustees of the settlement or their
18 predecessors in office provides otherwise; or

19 (iii) in any other case—people appointed as trustees of the
20 beneficial interest by the Supreme Court on the
21 application of a litigation guardian of the child.

22 *Note* **Settlement** is defined in s 200.

23 (2) The trustees of the interest may take possession of, hold and manage
24 the land for the child.

25 (3) This section does not apply so far as a contrary intention appears
26 from the settlement that created the beneficial interest of the child.

1 **256 Power to appoint trustees of child's property**

2 (1) This section applies if—

3 (a) a child is absolutely entitled under the will, or on the intestacy,
4 of a person (the *deceased person*) to a devise or legacy, or to
5 the residue of the estate of the deceased person, or to a share in
6 the deceased person's estate; and

7 (b) the devise, legacy, residue or share is not, under a will of the
8 deceased person, devised or bequeathed to trustees for the
9 child.

10 *Note* A *devise* is a disposal of real property by a will. To *bequeath* property
11 is to dispose of personal property (ie property other than real property)
12 by a will.

13 (2) The personal representatives of the deceased person may, by
14 registered deed, appoint a trust corporation or 2 or more individuals
15 (not more than 4), or both, to be—

16 (a) trustees of the devise, legacy, residue or share for the child;
17 and

18 (b) trustees for section 255 (Management of land during
19 childhood) of any land devised or any land that is, or forms
20 part of, the residue or share.

21 (3) If a trust corporation, or a trust corporation and 1 or more
22 individuals, are the personal representatives of the deceased person,
23 the personal representatives may, by registered deed, appoint the
24 trust corporation either alone or with 1 or 2 individuals to be the
25 trustees for the child.

26 (4) The personal representatives of the deceased person may—

27 (a) appoint 1 or more of themselves to be trustees under
28 subsection (2); or

- 1 (b) appoint 1 or 2 of themselves who are individuals to be trustees
2 under subsection (3).
- 3 (5) On the appointment—
- 4 (a) the *Trustee Act 1925*, section 9 (Vesting on appointment and
5 retirement) applies to the vesting in the trustees of the devise,
6 legacy, residue or share; and
- 7 (b) the personal representatives, in that capacity, are discharged
8 from further liability in relation to the devise, legacy, residue
9 or share; and
- 10 (c) the rights of the child in relation to the devise, legacy, residue
11 or share are restricted to the property that, under this section
12 and the *Trustee Act 1925*, section 9, is vested in the trustees for
13 the child and do not extend to any other property; and
- 14 (d) the devise, legacy, residue or share may be kept in its existing
15 form or converted into money and the money invested in
16 accordance with the *Trustee Act 1925*.
- 17 (6) If land held under the *Land Titles Act 1925* is affected by a
18 registered deed mentioned in this section, the registrar-general must,
19 as the registrar-general considers appropriate—
- 20 (a) make an entry in the register of the vesting of the land; or
21 (b) enter or withdraw caveats.
- 22 (7) However, the registrar-general is not required to comply with
23 subsection (6) unless the person the land is to be vested in—
- 24 (a) asks, in writing, that the entry be made; and
25 (b) gives any evidence supporting the request that the
26 registrar-general reasonably requires; and
- 27 (c) gives any notice of the request that the registrar-general
28 reasonably requires to be given.

- 1 (8) In this section:
- 2 *registered deed* means a deed registered under the *Registration of*
3 *Deeds Act 1957*.
- 4 *trust corporation* does not include the public trustee.
- 5 **257 Powers and duties of guardian**
- 6 (1) A guardian of a child—
- 7 (a) may take into the guardian's custody, and may manage, the
8 child's real and personal property (other than property held by
9 a trustee under a trust) until the guardian stops being the
10 guardian of the child; and
- 11 (b) holds any of the child's real and personal property that comes
12 into the guardian's custody as trustee for the child; and
- 13 (c) may bring a proceeding necessary to give effect to all or any of
14 the guardian's powers under this section, including the
15 guardian's powers as trustee for the child; and
- 16 (d) is responsible for accounting to the child, when the child
17 becomes an adult, for the guardian's custody and management
18 of the property.
- 19 (2) Subsection (1) does not apply in relation to—
- 20 (a) the chief executive responsible for administering the *Children*
21 *and Young People Act 1999*, chapter 2 (General objects,
22 principles and parental responsibility) when the chief executive
23 has parental responsibility for the long-term care, welfare and
24 development of a child because of that Act; or
- 25 (b) a testamentary guardian of a child.

1 **Part 2.8** **Rights-of-way**

2 **258** **No right-of-way by user against Territory etc**

3 A right-of-way cannot be created only by continuous use against—

4 (a) the Territory; or

5 (b) the Commonwealth; or

6 (c) a person holding land for a public purpose.

1 **Chapter 3** **Mortgages**

2 *Note to ch 3*

3 In this chapter, a reference to a mortgage includes a reference to a charge on
4 property for securing money or moneys worth (see dict, def *mortgage*).

5 **Part 3.1** **Powers in relation to mortgages**

6 **300** **Application—pt 3.1**

- 7 (1) This part applies to mortgages made to secure an amount advanced
8 or to be advanced as a loan, or to secure an existing or future debt.
- 9 (2) The powers given under this part are subject to anything provided in
10 the mortgage.
- 11 (3) The powers given under this part have the same effect as express
12 powers to the same effect in the mortgage would have had and no
13 more.

14 **301** **Powers incidental to mortgages**

- 15 (1) If a mortgage is made in writing, the mortgagee has, because of this
16 Act, the following powers:
- 17 (a) a power to sell or agree with someone else to sell all or any
18 part of the mortgaged property;
- 19 (b) a power to appoint or have appointed, in accordance with this
20 part, a receiver of the income of all or any part of the property;
- 21 (c) a power to insure from loss or damage all or any part of the
22 property and to add the premiums paid for the insurance to the
23 principal secured at the same rate of interest.

- 1 (2) The power of sale under subsection (1) includes the following
2 powers:
- 3 (a) a power to sell the property by public auction or private
4 contract on any reasonable conditions the mortgagee considers
5 appropriate;
- 6 (b) a power to rescind or vary contracts for sale;
- 7 (c) a power to buy in and resell the property with all the powers of
8 sale given by this section.
- 9 (3) A mortgagee must not exercise the power given by
10 subsection (1) (a) or (b) until—
- 11 (a) 1 year after the day the principal becomes payable under the
12 mortgage; or
- 13 (b) interest on the principal has been in arrears for longer than
14 6 months.
- 15 (4) A mortgagee may exercise the power given by subsection (1) (c)
16 only if the mortgagor has failed to pay a premium for insurance that
17 the mortgagor is by the mortgage obliged to pay.

18 **302 Receipt for purchase money sufficient discharge**

- 19 (1) A receipt for purchase money given by a mortgagee exercising the
20 power of sale given under this part is sufficient discharge to the
21 purchaser.
- 22 (2) The purchaser need not be concerned with the application of the
23 purchase money.

24 **303 Notice of sale**

25 A sale of property may be made under this part only if the person, or
26 1 of the people, entitled to the property has been given 6 months
27 written notice.

- 1 **304 Purported exercise of power of sale**
- 2 (1) If a sale is purportedly made under this part, the purchaser's title
- 3 must not be questioned on the ground that—
- 4 (a) no circumstances had arisen to permit the sale; or
- 5 (b) the notice required by section 303 had not been given.
- 6 (2) If a person suffers loss because of an unauthorised sale under this
- 7 part, the person may recover damages from the mortgagee.
- 8 **305 Application of purchase money by mortgagee**
- 9 (1) The amount received from a sale under this part must be applied by
- 10 the mortgagee as follows:
- 11 (a) first, in payment of the expenses incidental to the sale or
- 12 incurred in any attempted sale;
- 13 (b) second, in discharge of the interest and costs then owing in
- 14 relation to the mortgage because of which the sale was made;
- 15 (c) third, in discharge of the principal then owing under the
- 16 mortgage;
- 17 (d) finally, in payment of the balance to or on behalf of the person
- 18 entitled to the property mortgaged.
- 19 (2) To remove any doubt, this section is subject to the *Rates Act 2004*,
- 20 section 22 (Charge of rates on land) and the *Land Tax Act 2004*,
- 21 section 20 (Charge of land tax on rateable land).
- 22 **306 Property that may be transferred to purchaser**
- 23 A mortgagee exercising a power of sale over property under this
- 24 part may transfer to the purchaser, in writing, all the interest in the
- 25 property that the mortgagor could dispose of.

1 **307 Mortgagee may call for documents relating to property**

2 At any time after the power of sale under this part has become
3 exercisable, the mortgagee may demand and recover from anyone
4 (other than a person having an interest in the mortgaged property
5 that has priority to the mortgage) every document relating to the
6 property that a purchaser under the power of sale would have been
7 entitled to demand and recover from the person.

8 **308 Appointment of receiver**

- 9 (1) A mortgagee entitled to appoint a receiver, or have a receiver
10 appointed, under this part may appoint the receiver, or have the
11 receiver appointed, in accordance with this section.
- 12 (2) If the mortgage document nominates the person to be appointed
13 receiver, the mortgagee may appoint that person to be the receiver.
- 14 (3) If the mortgage document does not nominate the person to be
15 appointed receiver, the mortgagee may, by written notice given to
16 the person entitled to the mortgaged property, require the person to
17 appoint an appropriate person to be the receiver not later than
18 10 days after the day the notice is given.
- 19 (4) A notice under subsection (3) may be given to the person entitled to
20 the mortgaged property—
- 21 (a) by giving the notice to the person entitled to the property, or, if
22 2 or more people are entitled to the property, to any of them; or
- 23 (b) by attaching the notice to a conspicuous part of the mortgaged
24 property.
- 25 (5) If a notice under subsection (3) is given to the person entitled to
26 mortgaged property in accordance with subsection (4) and the
27 person fails to appoint an appropriate person to be the receiver not
28 later than 10 days after the day the notice is given, the mortgagee
29 may appoint a person the mortgagee considers appropriate to be the
30 receiver.

1 **309 Receiver taken to be agent of mortgagor**

2 A receiver appointed under this part is taken to be the agent of the
3 mortgagor and the mortgagor is solely responsible for the receiver's
4 acts or omissions, unless the document creating the mortgage
5 provides otherwise.

6 **310 Powers of receiver**

7 (1) A person appointed as receiver under this part may demand and
8 recover all the income of which the person is appointed receiver, by
9 proceeding or otherwise, in the name of either the mortgagor or the
10 mortgagee to the full extent of the interest that the mortgagor could
11 dispose of.

12 (2) The person may give valid receipts for the income of which the
13 person is appointed receiver.

14 **311 Ending appointment of receiver etc**

15 (1) The power under this part to appoint a receiver includes power to
16 end the appointment and appoint someone else.

17 (2) The power to end the appointment of a receiver and appoint a new
18 receiver is exercisable in the same way, and under the same
19 conditions, as the power to make the first appointment.

20 (3) The Legislation Act, part 19.3 (which deals with appointments) does
21 not apply to the appointment of a receiver.

22 **312 Commission to receiver**

23 (1) A receiver appointed under this part is not entitled to the payment of
24 costs, charges or expenses but is instead entitled to a commission on
25 the money received.

- 1 (2) The commission to which the receiver is entitled is the amount, not
2 more than 8% of the gross amount of all money received, stated in
3 the receiver's appointment or, if no amount is stated in the
4 appointment, 4% of the gross amount.

5 **313 Receiver to insure if required**

- 6 (1) The mortgagee may, in writing, direct a receiver appointed under
7 this part to insure and keep insured from loss or damage all or a
8 stated part of the property included in the mortgage (whether or not
9 a fixture) so far as it is insurable.
10 (2) The receiver must comply with the direction.

11 **314 Application of amounts received by receiver**

12 Amounts received by a receiver appointed under this part must be
13 applied as follows:

- 14 (a) first, in discharge of all taxes, rates and assessments, in
15 payment of the receiver's commission, and in payment of
16 insurance premiums;
17 (b) second, in discharge of the interest then owing under the
18 mortgage because of which the receiver was appointed;
19 (c) third, in discharge of the principal then owing under the
20 mortgage;
21 (d) finally, in payment of the balance to or on behalf of the person
22 entitled to the property mortgaged.

1 **Part 3.2** **Mortgages—other provisions**

2 **315** **Effect of repayment on ejectment by mortgagee**

3 (1) This section applies if a proceeding for ejectment is brought by a
4 mortgagee for possession of mortgaged property and no proceeding
5 is pending for—

6 (a) foreclosure of the mortgagor’s equity of redemption; or

7 (b) redemption of the mortgaged property.

8 (2) If the mortgagor appears as a defendant in the proceeding and pays
9 the outstanding amount to the mortgagee or into court, the amount
10 paid is taken to be full satisfaction and discharge of the mortgage.

11 (3) On the payment of the outstanding amount in accordance with this
12 section—

13 (a) each mortgagor or defendant in the proceeding is discharged
14 from liability for the amount; and

15 (b) the court must order the mortgagee, at the mortgagor’s cost,
16 to—

17 (i) give the mortgagor a discharge of the mortgage under the
18 *Land Titles Act 1925*, section 101 or transfer the interest
19 of the mortgagee in the mortgaged property to the
20 mortgagor; and

21 (ii) give all documents of title to the mortgaged property that
22 are in the possession or control of the mortgagee to the
23 mortgagor.

24 (4) This section does not affect a subsequent mortgage or encumbrance.

- 1 (5) In this section:
2 *outstanding amount*, for a mortgage, means the total of—
3 (a) the amount of the principal of the mortgage that has not been
4 repaid; and
5 (b) the interest payable under the mortgage; and
6 (c) the reasonable costs and expenses of the mortgagee in the
7 proceeding for ejectment.

8 **316 Section 315 not to apply in certain cases**

- 9 Section 315 does not apply to a proceeding for ejectment if—
10 (a) before the outstanding amount is paid under section 315 (2) of
11 that section, the mortgagee asserts in writing given to the
12 mortgagor—
13 (i) that the mortgagor does not have a right of redemption; or
14 (ii) that the mortgaged property is chargeable with a principal
15 different from that stated in the mortgage or admitted to
16 by the mortgagor; or
17 (b) there is a dispute between defendants in the proceeding about
18 the right of redemption.

19 **317 Redemption if mortgagee absent or unknown**

- 20 (1) This section applies if—
21 (a) a person entitled to receive payment of all or part of a debt
22 secured by a mortgage—
23 (i) cannot be found; or
24 (ii) is unknown; or
25 (b) it is uncertain who is entitled to receive all or part of the debt
26 secured by a mortgage.

Section 317

- 1 (2) On application by the person entitled to redeem the mortgaged
2 property, the Supreme Court may, by order, direct that—
- 3 (a) the amount of the debt secured by the mortgage, or part of it,
4 be worked out in the way the court directs; and
- 5 (b) the amount worked out be paid into court.
- 6 (3) A certificate of the registrar of the Supreme Court that a payment
7 into court was ordered to be made under subsection (2) (b) and has
8 been made may be registered with the registrar-general.
- 9 (4) On registration, the amount paid is a discharge of the mortgage debt,
10 or part of it, to the extent of the amount paid.
- 11 (5) However, an amount that is eventually shown by the person entitled
12 to the mortgage debt, or a part of it, to have been in fact owing in
13 addition to the amount paid into court continues to be a debt owing
14 on the mortgage.
- 15 (6) On application by the person entitled to an amount paid into court
16 under subsection (2) (b), the Supreme Court may order the amount
17 be paid to the person.
- 18 (7) However, an amount must not be paid under subsection (6) until the
19 registrar of the Supreme Court is satisfied that the mortgage
20 document and all documents of title that were given by the
21 mortgagor to the mortgagee for the mortgage have been given to the
22 person who paid the amount into court.
- 23 (8) If the amount of principal and interest owing under a mortgage is
24 paid into court under this section and is afterwards paid under an
25 order of the Supreme Court to the person mentioned in the order, the
26 order operates as a discharge of mortgage of any land subject to the
27 mortgage.
- 28 (9) An order mentioned in subsection (8) takes effect as a discharge of
29 mortgage only when it has been registered by the registrar-general.

1 **Chapter 4 Leases**

2 **Part 4.1 Leases—general provisions**

3 **Division 4.1.1 Lessee's and lessor's obligations**

4 **400 Lessee's obligations attach to reversion**

- 5 (1) The rent provided for by a lease, the benefit of every provision of
6 the lease relating to the subject matter of the lease that is to be
7 complied with by the lessee, and every condition of re-entry and
8 other condition of the lease, is attached to, and goes with, the
9 reversionary estate in the land (and in any part of the land)
10 immediately expectant on the term granted by the lease, despite any
11 severance of the reversionary estate.
- 12 (2) Any rent, provision or condition mentioned in subsection (1) may be
13 recovered, received, enforced or taken advantage of by the person
14 from time to time entitled (the *entitled person*), subject to the term
15 granted by the lease, to the income of all or a part of the land leased.
- 16 (3) The entitled person may recover, receive, enforce or take advantage
17 of the rent, provision or condition even though the person becomes
18 entitled to the reversionary interest after the condition of re-entry or
19 forfeiture has become enforceable.
- 20 (4) This section does not make enforceable by a person a condition of
21 re-entry or forfeiture, or any other condition, that had been waived
22 or released before the person became entitled to enforce the
23 condition.

- 1 (5) This section applies to—
2 (a) a lease granted on or after 26 June 1986; and
3 (b) a lease granted before 26 June 1986, but only in relation to rent
4 accruing due on or after that day and to the benefit of a
5 condition of re-entry or forfeiture for a breach of a provision of
6 the lease committed on or after that day.

7 **401 Lessor's obligations to run with reversion**

- 8 (1) If land is leased, the obligation imposed on the lessor by a provision
9 of the lease relating to the subject matter of the lease—
10 (a) is, so far as the lessor had power to bind the reversionary estate
11 expectant on the term granted by the lease, attached to, and
12 goes with, the reversionary estate in the land (and in every part
13 of the land); and
14 (b) may be enforced or taken advantage of by the person in whom
15 the term is from time to time vested; and
16 (c) may, so far as the lessor had power to bind the person from
17 time to time entitled to the reversionary estate, be enforced,
18 and taken advantage of, against a person so entitled.
19 (2) This section applies to—
20 (a) a lease granted on or after 26 June 1986; and
21 (b) a breach committed on or after 26 June 1986 of a provision in a
22 lease granted before that day.

- 1 **402 Lessee to give notice of ejectment to lessor**
- 2 (1) This section applies to a lessee of premises against whom a
3 proceeding for ejectment is begun.
- 4 (2) The lessee must give notice of the proceeding to the lessor or the
5 lessor's agent immediately after being served with the originating
6 process for the proceeding.
- 7 (3) A lessee who contravenes subsection (2) is liable to the lessor for
8 any damage suffered by the lessor because of the failure.
- 9 (4) This section does not—
- 10 (a) apply to a lessee who holds the premises leased under—
- 11 (i) a residential tenancy agreement under the *Residential*
12 *Tenancies Act 1997*; or
- 13 (ii) a lease under the *Leases (Commercial and Retail)*
14 *Act 2001*; or
- 15 (b) bind the Territory.
- 16 (5) Subsection (4) (b) has effect despite the Legislation Act, section 121
17 (Binding effect of Acts).

18 **Division 4.1.2 Renewal of headlease without**
19 **surrender of sublease**

- 20 **403 Renewal of headlease**
- 21 (1) This section applies to a lease from which subleases have been
22 derived.
- 23 (2) If a lease is surrendered for renewal and a new lease is granted by
24 the head lessor without a surrender of 1 or more of the subleases, the
25 new lease is as valid for all purposes as if the subleases had been
26 surrendered for renewal at or before the grant of the new lease.

- 1 **404 Rights on renewal**
- 2 When a new lease is granted on the surrender of a lease (the *original*
- 3 *lease*)—
- 4 (a) a person in whom an estate for the life of the lessee, or for a
- 5 fixed term, is vested by the new lease—
- 6 (i) is entitled to the rents payable under a sublease derived
- 7 from the original lease; and
- 8 (ii) is entitled to have the obligations and duties imposed on
- 9 the sublessee by a sublease derived from the original lease
- 10 properly performed; and
- 11 (iii) is entitled to the same remedies for the recovery of the
- 12 rents, or for a breach of the obligations or duties, as if the
- 13 original lease had not been surrendered but had remained
- 14 in force; and
- 15 (b) a sublessee under a sublease derived from the original lease
- 16 continues to hold the lands sublet as if the original lease had
- 17 not been surrendered but had remained in force; and
- 18 (c) the head lessor is entitled to the same remedies by way of entry
- 19 on the lands sublet by a sublease derived from the original
- 20 lease, for rents payable under the new lease or for breaches of
- 21 the obligations and duties imposed by the new lease (so far as
- 22 the rents, obligations and duties are not greater than the rents
- 23 payable under, or the obligations and duties imposed by, the
- 24 original lease), as the head lessor would have if the original
- 25 lease had not been surrendered but had remained in force or if
- 26 each sublease derived from the original lease had been
- 27 surrendered and regranted under the new lease.

1 **Part 4.2** **Leases to and for children and**
2 **for absent lessors**

3 **405 Leases for children**

- 4 (1) This section applies if—
5 (a) a child is entitled to a lease of premises; and
6 (b) the child, or someone for the child, applies to the Supreme
7 Court for an order under this section.
- 8 (2) The Supreme Court may, by order, direct a nominated person to—
9 (a) surrender the lease; and
10 (b) accept instead a lease of the premises to be held by the
11 nominated person for the child's benefit.
- 12 (3) A lease mentioned in subsection (2) (b) must be held—
13 (a) on the same terms as the surrendered lease would have been
14 held except so far as the Supreme Court orders otherwise; and
15 (b) for the same purposes as the surrendered lease would have
16 been held; and
17 (c) subject to the same trusts, charges, encumbrances, dispositions
18 and arrangements as the surrendered lease would have been
19 held.

20 **406 Costs of lease authorisation application for child**

- 21 (1) If an order is made under section 405 (2) in relation to a lease for a
22 child, the costs of the order must be paid from the child's property
23 as the Supreme Court orders.

Section 407

- 1 (2) The costs of an order mentioned in subsection (1) include—
2 (a) the costs of the application for the order; and
3 (b) the costs of surrendering the lease the child was entitled to; and
4 (c) the costs of obtaining the substitute lease including any fine,
5 premium or other amount paid for the lease.

6 **407 Renewal of leases by children**

- 7 (1) This section applies if—
8 (a) a child could, under a lease or other agreement or arrangement,
9 be compelled to renew a lease if the child were not a child; and
10 (b) 1 of the following people applies to the Supreme Court for the
11 renewal:
12 (i) the child;
13 (ii) someone for the child;
14 (iii) a person entitled to the renewal of the lease.
15 (2) The Supreme Court may, by order, direct a nominated person to
16 renew the lease for the child and, if necessary for the renewal of the
17 lease, accept the surrender of an existing lease.
18 (3) A renewal of a lease under an order under subsection (2) must,
19 except so far as the Supreme Court orders otherwise, be in
20 accordance with the right of renewal.

21 **408 Renewal of leases for people not amenable to process**

- 22 (1) This section applies if—
23 (a) a person who is outside the ACT, and not amenable to the
24 process of the Supreme Court, could be compelled to renew a
25 lease if the person were in the ACT and amenable to the
26 process of the court; and

1 (b) the person (or any of the people) entitled to the renewal of the
2 lease applies to the Supreme Court for the renewal.

3 (2) The Supreme Court may direct a nominated person to renew the
4 lease and, if necessary for the renewal of the lease, accept the
5 surrender of an existing lease.

6 **409 Preconditions for grant or renewal of lease to be satisfied**

7 (1) A lease must not be granted or renewed under this part until—

8 (a) any fine or other amount required to be paid for the grant or
9 renewal of the lease has been paid; and

10 (b) anything required to be done before the lease is granted or
11 renewed has been done.

12 (2) A lease or a renewal of a lease to be granted under this part must be
13 properly executed by the lessee.

14 **410 Application of amounts paid for lease renewal under
15 pt 4.2**

16 An amount paid for the renewal of a lease under section 407
17 (Renewal of leases by children) or section 408 (Renewal of leases
18 for people not amenable to process) must, after deducting the costs
19 and expenses payable for the renewal, be applied as the Supreme
20 Court directs.

21 **411 Validity of surrenders and leases under pt 4.2**

22 A lease or other disposition, or a surrender of a lease, granted, made
23 or accepted under this part is as valid as if the person by or for
24 whom it was granted, made or accepted had been an adult without a
25 disability who had personally granted, made or accepted it.

1 **412** **Costs of applications under pt 4.2**

2 The Supreme Court may order that the costs and expenses of, or
3 resulting from, an application under this part be raised from the
4 premises or leasehold interest in relation to which the application is
5 made in a way the court considers appropriate.

1 **Part 4.3 Breach of insurance provisions**

2 **413 Application—pt 4.3**

3 This part applies to—

4 (a) a lease for a fixed term, whether or not the lease may be
5 terminated before the end of the fixed term; and

6 (b) a lease for the life of the lessee.

7 **414 Relief against forfeiture for failure to insure**

8 (1) The Supreme Court may, on application by a lessee under a lease,
9 grant the lessee relief against forfeiture of the lease for breach of a
10 provision of the lease requiring the lessee to insure the leased
11 property against loss or damage if—

12 (a) no loss or damage to which the insurance would have applied
13 has happened; and

14 (b) insurance of the kind required by the lease is in effect at the
15 time of the application.

16 (2) The Supreme Court may grant the relief on conditions.

17 **415 Record of relief granted**

18 If the Supreme Court grants relief under section 414 in relation to a
19 lease, the court may order that a record of the relief having been
20 granted be endorsed on the lease or be made in some other way.

1 **416 Limit on relief**

2 The Supreme Court must not grant relief to a person under this part
3 in relation to a lease if—

4 (a) the court has already granted relief to the person under the part
5 in relation to the same provision of the lease; or

6 (b) a forfeiture of the lease under the same provision has already
7 been waived for the person other than in a court proceeding.

8 **417 Noncomplying insurance**

9 (1) In this section:

10 *complying insurance*, in relation to a lease or mortgage of a lease,
11 means insurance against loss of or damage to any of the leased
12 property required by the insurance provisions of the lease or
13 mortgage.

14 *insurance provisions*, of a lease or mortgage of a lease, means
15 provisions of the lease or mortgage requiring the lessee or
16 mortgagor to insure any of the leased property against loss or
17 damage.

18 *noncomplying insurance*, in relation to a lease or mortgage of a
19 lease, means insurance against loss of or damage to any of the
20 leased property that was obtained by the lessee or mortgagor to
21 cover his or her interest in the property and that does not comply
22 with the insurance provisions of the lease or mortgage.

23 (2) The person entitled to the benefit of insurance provisions of a lease
24 or mortgage of a lease has the same rights in relation to
25 noncomplying insurance of any of the leased property as the person
26 would have in relation to complying insurance of the property.

- 1 **418 Protection of purchaser of leasehold against forfeiture**
- 2 (1) This section applies in relation to a lease containing a provision (the
- 3 *insurance provision*) requiring the lessee to insure any of the leased
- 4 property against loss or damage.
- 5 (2) An honest purchaser of the leasehold interest under the lease is not
- 6 liable to forfeiture, for damages or in any other way for a breach of
- 7 the insurance provision that happened before completion of the
- 8 purchase if—
- 9 (a) the purchaser was given the written receipt of the person
- 10 entitled to receive the rent for the last payment of rent owing
- 11 before completion of the purchase; and
- 12 (b) there was, at the time of completion of the purchase, insurance
- 13 that complied with the insurance provision.
- 14 (3) This section does not affect any remedy the lessor has against a
- 15 lessee for breach of the insurance provision.

1 **Part 4.4** **Restriction of effect of licence or**
2 **waiver by lessor**

3 **419** **Application—pt 4.4**

- 4 (1) This part applies to—
- 5 (a) a lease for a fixed term, whether or not the lease may be
- 6 terminated before the end of the fixed term; and
- 7 (b) a lease for the life of the lessee.
- 8 (2) This part does not—
- 9 (a) apply to a residential tenancy agreement under the *Residential*
- 10 *Tenancies Act 1997*; or
- 11 (b) bind the Territory.
- 12 (3) Subsection (2) (b) has effect despite the Legislation Act, section 121
- 13 (Binding effect of Acts).

14 **420** **Effect of licence given to lessee**

- 15 (1) If a lessee is given licence to do an act that contravenes a provision
- 16 of the lease, the licence, unless otherwise expressed, extends only
- 17 to—
- 18 (a) the permission actually given; or
- 19 (b) the particular breach of the provision; or
- 20 (c) anything else specifically authorised to be done by the licence.
- 21 (2) The licence does not prevent a proceeding for a later breach of a
- 22 provision of the lease unless the licence specifically authorises the
- 23 breach.

- 1 (3) Despite the licence—
- 2 (a) all rights under the provisions of the lease remain in force and
- 3 are available against a subsequent breach of the provisions not
- 4 specifically authorised or waived by the licence in the same
- 5 way as if the licence had not been given; and
- 6 (b) the provision of the lease in relation to which the licence was
- 7 given remains in force as if the licence had not been given,
- 8 except in relation to the particular thing authorised to be done.

9 **421 Operation of partial licences**

- 10 (1) This section applies if a licence gives a power of re-entry on a lessee
- 11 assigning, subletting or doing another specified act without licence
- 12 and licence is given—
- 13 (a) to 1 of 2 or more lessees to assign or sublet the lessee's share
- 14 or interest or to do another act prohibited without licence; or
- 15 (b) to a lessee, or 1 of 2 or more lessees, to assign or sublet part
- 16 only of the property, or to do an act prohibited without licence
- 17 in relation to part only of the property.
- 18 (2) The licence does not extinguish the right of entry for a breach of a
- 19 provision of the lease by co-lessees of the other shares or interests in
- 20 the property, or by the lessee or lessees of the rest of the property, in
- 21 relation to those shares or interests or the rest of the property, but
- 22 the right of entry remains in force in relation to the shares, interests
- 23 or property not subject to the licence.

1 **422 Appportionment of conditions of entry on severance**

2 (1) This section applies if the reversion of a lease is severed and the rent
3 or other reservations under the lease are apportioned among the
4 reversionary interests.

5 (2) The assignee of a part of the reversion is, in relation to the
6 apportioned rent or other reservation allotted to the assignee,
7 entitled to the benefit of all the powers of re-entry for nonpayment
8 of the rent or failure to render the other reservation in the same way
9 as if the powers of re-entry had been given to the assignee as
10 incident to the assignee's part of the reversion in relation to the rent
11 or other reservation allotted to the assignee.

12 **423 Waiver of benefit of lease provision**

13 If a lessor waives the benefit of a provision of the lease in a
14 particular instance, the waiver is not taken—

- 15 (a) to extend to an instance, or a breach of a provision of the lease,
16 other than that to which the waiver specially relates; or
17 (b) to operate as a general waiver of the benefit of the provision.

1 **Part 4.5** **Forfeiture of leases**

2 **424** **Definitions—pt 4.5**

3 In this part:

4 *lease* includes—

- 5 (a) a sublease; and
- 6 (b) an agreement for a lease if the person to be the lessee is
- 7 entitled to have the lease granted.

8 *lessee* includes a sublessee.

9 *lessor* includes a sublessor.

10 *sublease* includes an agreement for a sublease if the person to be the

11 sublessee is entitled to have the sublease granted.

12 **425** **Application—pt 4.5**

- 13 (1) This part applies to a lease despite any provision of the lease to the
- 14 contrary.
- 15 (2) However, this part does not apply to a residential tenancy agreement
- 16 under the *Residential Tenancies Act 1997*.

17 **426** **Restrictions on re-entry or forfeiture**

- 18 (1) A right of re-entry or forfeiture under a lease for breach of a
- 19 provision of the lease is not enforceable by proceeding or otherwise
- 20 unless—
- 21 (a) the lessor gives the lessee a notice—
- 22 (i) specifying the breach; and
- 23 (ii) requiring the lessee to pay compensation for the breach;
- 24 and

- 1 (iii) if the breach can be remedied—requiring the lessee to
2 remedy the breach; and
- 3 (b) the lessee fails within a reasonable time after being given the
4 notice—
- 5 (i) to pay reasonable compensation for the breach; and
6 (ii) if the breach can be remedied—to remedy the breach.
- 7 *Note* If a form is approved under s 502 for a notice, the form must be used.
- 8 (2) If the lessor under a lease seeks to enforce, by proceeding or
9 otherwise, a right of re-entry or forfeiture under the lease for breach
10 of a provision of the lease, the lessee may apply to the Supreme
11 Court for relief.
- 12 (3) If the lessee applies to the Supreme Court for relief, the court may
13 grant or refuse relief.
- 14 (4) If the Supreme Court grants relief, it may grant relief on the
15 conditions it considers appropriate, including the granting of an
16 injunction to restrain similar breaches of the lease in the future.
- 17 (5) This section does not apply in relation to—
- 18 (a) a lease granted by the Territory or the Commonwealth; or
19 (b) a lease for a term of 1 year or less; or
20 (c) a provision of a lease for forfeiture on the bankruptcy of the
21 lessee; or
22 (d) the taking of the lessee’s interest in execution; or
23 (e) re-entry or forfeiture for nonpayment of rent.
- 24 (6) For this section, the term of a lease limited to continue only while
25 the lessee does not breach the lease is taken to be the term for which
26 the lease could continue apart from a breach.

1 **427 Notices under s 426 (1)**

- 2 (1) A notice under section 426 (1) must be in writing.
- 3 (2) If the lessee is not in the ACT, the notice may be given to the lessee
- 4 by serving it personally on the lessee’s lawyer or agent in the ACT.
- 5 (3) Subsection (2) does not limit any other territory law that allows
- 6 service of the notice in another way.

7 **428 Protection of sublessees**

- 8 (1) If the lessor under a lease seeks to enforce, by proceeding or
- 9 otherwise, a right of re-entry or forfeiture under the lease for breach
- 10 of a provision of the lease, a person (the *interested person*) claiming
- 11 an interest in all or part of the leased property as sublessee may
- 12 apply to the Supreme Court for relief.
- 13 (2) If the interested person applies to the Supreme Court for relief, the
- 14 court may grant or refuse relief.
- 15 (3) Without limiting subsection (2), the Supreme Court may stay a
- 16 proceeding brought by the lessor to enforce the right of re-entry or
- 17 forfeiture under the lease and vest all or a part of the leased property
- 18 in the interested person as sublessee, or in any other capacity, for a
- 19 term not longer than the term of the lease.
- 20 (4) If the Supreme Court grants relief, it may grant relief on the
- 21 conditions it considers appropriate.
- 22 (5) For this section, the term of a lease limited to continue only while
- 23 the lessee does not breach the lease is taken to be the term for which
- 24 the lease could continue apart from a breach.

1 **Part 4.6** **Leases invalidly granted under**
2 **powers**

3 **429 Pt 4.6 does not bind the Territory**

- 4 (1) This part does not bind the Territory.
5 (2) This section has effect despite the Legislation Act, section 121
6 (Binding effect of Acts).

7 **430 Leases taken to be granted in intended exercise of power**

8 If—

- 9 (a) a valid power of leasing is vested in or may be exercised by a
10 person granting a lease; and
11 (b) the lease cannot have effect, or continue to have effect,
12 according to its terms independently of the power (because of
13 the ending of the estate or interest of the person or otherwise);

14 the lease is, for this part, taken to be granted in the intended exercise
15 of the power, even though the power is not mentioned in the lease.

16 **431 Certain invalid leases taken to be agreements to lease**

- 17 (1) This section applies if—
18 (a) in the intended exercise of a power to lease property, a lease is
19 granted that is invalid against—
20 (i) the person entitled to the reversionary interest in the
21 property at the end of the interest of the person granting
22 the lease; or
23 (ii) anyone else who, subject to a lease validly granted under
24 the power, would have an interest in the property; and

- 1 (b) the lease is invalid for failure to comply with the terms of the
2 power; and
- 3 (c) the lease is honestly granted; and
- 4 (d) the lessee or a person claiming under the lessee has entered
5 into possession of the property.
- 6 (2) An invalid lease mentioned in subsection (1) is taken in equity to be
7 a contract for the grant, at the request of the lessee, of a valid
8 lease—
- 9 (a) under the same power as the invalid lease was granted under;
10 and
- 11 (b) in the same terms as the invalid lease apart from any changes
12 necessary to comply with the terms of the power.
- 13 (3) Anyone who would have been bound by the invalid lease if it had
14 been validly granted is bound in equity by the contract mentioned in
15 subsection (2).
- 16 (4) However, no-one is entitled under the contract mentioned in
17 subsection (2) to obtain a variation of the lease if the other people
18 bound by the contract are willing to confirm the lease without
19 variation.
- 20 (5) In this section:
- 21 *possession*—to remove any doubt, *possession* of land does not
22 include receipt of income from the land.

23 **432 Certain leases validated**

- 24 (1) This section applies if—
- 25 (a) a lease granted in the intended exercise of a power of leasing is
26 invalid because, when the lease was granted, the person
27 granting the lease could not lawfully grant it; and
- 28 (b) the person was at least 18 years old at that time; and

- 1 (c) the person can, at a later time, lawfully grant the lease or a
2 similar lease under the power.
- 3 (2) If this section applies, the lease is taken to have been granted by the
4 person under the power at the later time.
- 5 (3) This part applies to the lease.
- 6 **433 Acceptance of rent taken to be confirmation of lease**
- 7 (1) This section applies if, on or before acceptance of rent under an
8 invalid lease, a written receipt, memorandum or note confirming the
9 lease is signed by the person accepting the rent or by someone
10 authorised by that person.
- 11 (2) The acceptance of the rent is, as against the person accepting the
12 rent, taken to be a confirmation of the lease.
- 13 **434 Lessee bound to accept confirmation**
- 14 (1) This section applies if—
- 15 (a) a person (the *first person*) is in possession of land under an
16 invalid lease; and
- 17 (b) someone else (the *other person*) is entitled, subject to the
18 interest of the first person in the land, to possession of the land
19 or to receipt of its rents and profits; and
- 20 (c) the other person can confirm the lease without variation.
- 21 (2) The first person (or a person deriving title to the lease under or from
22 the first person), or anyone else who would have been bound by the
23 lease if it had been valid, must, if asked by the other person, accept
24 confirmation of the lease by the other person.
- 25 (3) The confirmation may be made by a written memorandum or note
26 signed by the other person and the person accepting the
27 confirmation.

1 (4) On the confirmation of the lease, the lease is taken to have been
2 valid from the time it was granted.

3 **435 Pt 4.6 does not affect certain other rights**

4 This part does not affect the rights of anyone in relation to a breach
5 of a provision of an invalid lease.

6 **Example**

7 rights of a person named as lessor of an invalid lease to re-entry or forfeiture for
8 breach of a provision of the lease

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

1 **Part 4.7 Recovery of leased premises**

2 **436 Application—pt 4.7**

- 3 (1) This part does not—
4 (a) apply to—
5 (i) a residential tenancy agreement under the *Residential*
6 *Tenancies Act 1997*; or
7 (ii) a lease under the *Leases (Commercial and Retail)*
8 *Act 2001*; or
9 (b) bind the Territory.
10 (2) Subsection (1) (b) has effect despite the Legislation Act, section 121
11 (Binding effect of Acts).

12 **437 Who is an agent for pt 4.7?**

13 In this part:

14 **agent** means—

- 15 (a) a person usually employed by a lessor in leasing premises or
16 collecting rents; or
17 (b) a person authorised in writing by the lessor of premises to act
18 in relation to the premises.

- 1 **438 Recovery of possession**
- 2 (1) This section applies—
- 3 (a) if—
- 4 (i) the term of a lease has ended; or
- 5 (ii) a lease has been terminated by a notice to quit or a
- 6 demand for possession; and
- 7 (b) the lessee, or a person claiming under the lessee who is
- 8 occupying the leased premises or a part of the premises, fails to
- 9 quit and give possession of the premises or a part of the
- 10 premises to the lessor.
- 11 (2) The lessor or the lessor’s agent may apply to the Supreme Court or
- 12 Magistrates Court for an order for recovery of possession of the
- 13 premises.
- 14 (3) If the court is satisfied that the term of the lease has ended or that
- 15 the lease has been terminated, it may make an order for recovery of
- 16 possession of the premises by the lessor and may—
- 17 (a) issue a warrant authorising a police officer or someone else to
- 18 enter (with any reasonable and necessary force) into the
- 19 premises and give possession to the lessor or the lessor’s agent;
- 20 or
- 21 (b) postpone the issue of a warrant mentioned in paragraph (a), or
- 22 suspend the execution of the warrant, for a time it considers
- 23 appropriate.
- 24 (4) In this section:
- 25 *possession*—to remove any doubt, *possession* of land does not
- 26 include receipt of income from the land.

1 **Chapter 5** **Miscellaneous**
2 **Part 5.1** **Debts charged on property of**
3 **deceased person**

4 **500** **Charges on property of deceased person to be paid**
5 **primarily out of property charged**

- 6 (1) This section applies if a person dies possessing or being entitled to,
7 or, under a general power of appointment, disposes of by will—
- 8 (a) property that at the time of the person’s death is charged with
9 the payment of an amount, whether by legal mortgage,
10 equitable charge or in some other way (including a lien for
11 unpaid purchase money); or
- 12 (b) land for which an amount is owing at the time of the person’s
13 death under a contract of purchase.
- 14 (2) Unless the deceased person has by will indicated a contrary
15 intention, the property charged or land for which purchase money is
16 owing is, as between the different people claiming through the
17 deceased person, primarily liable for the payment of the charge or
18 purchase money and—
- 19 (a) each part of property that is subject to a charge must bear a
20 proportionate part of the charge on the whole of the property;
21 and
- 22 (b) each part of a parcel of land for which purchase money is
23 owing must bear a proportionate part of the amount owing for
24 the whole parcel.

- 1 (3) A contrary intention is not taken to be indicated—
- 2 (a) by a general direction in the deceased person’s will for the
- 3 payment of debts, or all debts, of the person out of—
- 4 (i) the person’s personal estate; or
- 5 (ii) the person’s residuary real and personal estate; or
- 6 (iii) the person’s residuary real estate; or
- 7 (b) by a charge in the deceased person’s will of debts, or all debts,
- 8 of the person on any estate mentioned in paragraph (a).
- 9 (4) However, a contrary intention is taken to be indicated by words in
- 10 the deceased person’s will expressly or by necessary implication
- 11 indicating an intention that a general direction in the will of the kind
- 12 mentioned in subsection (3) (a), or a charge in the will of the kind
- 13 mentioned in subsection (3) (b), is to apply to a charge on property
- 14 mentioned in subsection (1) (a) or an amount of unpaid purchase
- 15 money mentioned in subsection (1) (b).
- 16 (5) This section does not affect the right of a person entitled to a charge
- 17 on property mentioned in subsection (1) (a), or to unpaid purchase
- 18 money mentioned in subsection (1) (b), to obtain payment of the
- 19 charge or purchase money out of other assets of the deceased person
- 20 or in some other way.

1 **Part 5.2** **Stipulations in contracts**

2 **501** **Stipulations not of the essence of contracts**

3 Stipulations in a contract, about time or anything else, that, in
4 accordance with the rules of equity, are taken not to be, or not to
5 have been, of the essence of the contract must be interpreted and
6 have effect at law in accordance with those rules.

1 **Part 5.3** **Miscellaneous—other provisions**

2 **502** **Approved forms**

3 (1) The Minister may, in writing, approve forms for this Act.

4 (2) If the Minister approves a form for a particular purpose, the
5 approved form must be used for that purpose.

6 *Note* For other provisions about forms, see the Legislation Act, s 255.

7 (3) An approved form is a notifiable instrument.

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

9 **503** **Regulation-making power**

10 The Executive may make regulations for this Act.

11 *Note* A regulation must be notified, and presented to the Legislative
12 Assembly, under the Legislation Act.

1 **Part 5.4 Transitional**

2 **504 References to repealed Act**

- 3 (1) In any Act, instrument made under an Act or document, a reference
4 to a repealed Act (or a provision of a repealed Act) is, in relation to
5 anything to which this Act applies, a reference to this Act (or the
6 corresponding provision of this Act).

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

- 10 (2) In this section:

11 *repealed Act* means—

- 12 (a) the *Conveyancing Act 1919*; or
13 (b) the *Conveyancing and Law of Property Act 1898*; or
14 (c) the *Forfeiture and Validation of Leases Act 1905*; or
15 (d) the *Landlord and Tenant Act 1899*; or
16 (e) the *Law Reform (Miscellaneous Provisions) Act 1955*.

17 **505 Transitional regulations**

- 18 (1) A regulation may prescribe transitional matters necessary or
19 convenient to be prescribed because of the enactment of this Act.
- 20 (2) A regulation may modify this part (including its operation in
21 relation to another territory law) to make provision in relation to
22 anything that, in the Executive's opinion, is not, or is not adequately
23 or appropriately, dealt with in this part.
- 24 (3) A regulation under subsection (2) has effect despite anything
25 elsewhere in this Act or another territory law.

- 1 **506** **Expiry of pt 5.4**
- 2 This part expires 2 years after the day it commences.

1 **Part 5.5** **Repeals and consequential**
2 **amendments**

3 **507** **Legislation repealed**

- 4 (1) The following legislation is repealed:
- 5 • *Conveyancing Act 1919* A1919-6
 - 6 • *Conveyancing and Law of Property Act 1898* A1898-17
 - 7 • *Forfeiture and Validation of Leases Act 1905* A1905-8
 - 8 • *Forfeiture of Leases Act 1901—Form 1* AF2002-18
 - 9 • *Landlord and Tenant Act 1899* A1899-18
 - 10 • *Law Reform (Miscellaneous Provisions) Act 1955* A1955-3.
- 11 (2) The following laws are declared to be laws to which the Legislation
12 Act, section 88 (Repeal does not end effect of transitional laws etc)
13 applies:
- 14 (a) the *Conveyancing Act 1919*, division 6.2 (Covenants for title);
 - 15 (b) the *Landlord and Tenant Act 1899*, section 3 (Short forms),
16 section 4 (Deed to include buildings etc), schedule 1 and
17 schedule 2;
 - 18 (c) the *Law Reform (Miscellaneous Provisions) Act 1955*, part 14
19 (Abolition of maintenance, champerty and a form of barratry).

20 **508** **Legislation amended—sch 1**

21 This Act amends the legislation mentioned in schedule 1.

1 **Schedule 1** **Consequential amendments**

2 (see s 508)

3 **Part 1.1** **Administration and Probate Act**
4 **1929**

5 **[1.1] Section 49P**

6 *substitute*

7 **49P Simultaneous deaths—devolution of property generally**

8 (1) This section applies if—

9 (a) a person who has died (the *beneficiary*) would, if the person
10 had not died, have been entitled, under a will or on an
11 intestacy, to an interest in the estate of someone else who has
12 died (the *benefactor*); and

13 (b) the beneficiary and the benefactor died at the same time or in
14 an order that is uncertain.

15 (2) The property of the benefactor devolves as if the benefactor had
16 survived the beneficiary and had died immediately after the
17 beneficiary.

18 **49Q Simultaneous deaths—devolution of jointly owned**
19 **property**

20 (1) This section applies to property—

21 (a) that was owned jointly and exclusively by 2 or more people
22 who died at the same time or in an order that is uncertain; and

23 (b) that was not held by them as trustees.

24 (2) The property devolves as if the joint owners had, at the time of their
25 deaths, held the property as tenants in common in equal shares.

1 **Part 1.2 Civil Law (Wrongs) Act 2002**

2 **[1.2] Section 221 (1), note**

3 *substitute*

4 *Note* For the abolition of the common law offences of maintenance,
5 champerty and being a common barrator, see the *Law Reform*
6 *(Miscellaneous Provisions) Act 1955* (rep), s 68 and the *Civil Law*
7 *(Property) Act 2005*, s 507 (2).

8 **Part 1.3 Confiscation of Criminal Assets**
9 **Act 2003**

10 **[1.3] Section 115 (1) (b)**

11 *substitute*

12 (b) the *Trustee Act 1925* or the *Civil Law (Property) Act 2005*,
13 division 2.4.1 (Dispositions on trust for sale or with power of
14 sale).

15 **Part 1.4 Court Procedures Act 2004**

16 **[1.4] New division 10.9 heading**

17 *insert*

18 **Division 10.9 Writs of habeas corpus**

19 **[1.5] New section 143**

20 *insert*

21 **143 Expiry of div 10.9**

22 (1) This division expires on the existing rules expiry day or, if the rules
23 fix an earlier expiry day for this division, that day.

- 1 (2) In this section:
2 *existing rules expiry day*—see section 100 (3).

3 **Part 1.5 Law Reform (Miscellaneous**
4 **Provisions) Act 1955**

5 **[1.6] Section 61 heading**

6 *substitute*

7 **61 Treason trials**

8 **[1.7] Section 61 (as amended)**

9 *relocate to Crimes Act 1900 as section 280A*

10 **[1.8] Section 62**

11 *relocate to Court Procedures Act 2004, division 10.9 as section 142*

12 **Part 1.6 Legislation Act 2001**

13 **[1.9] Section 121 (1)**

14 *substitute*

- 15 (1) An Act binds everyone, including people who are not Australian
16 citizens and all governments.

17 *Note* See the Self-Government Act, s 27 which provides that, except as
18 provided by the regulations under that Act, an ACT enactment does not
19 bind the Crown in right of the Commonwealth. See also s 120.

20 **[1.10] Schedule 1, part 1.1, items about *Conveyancing and Law***
21 ***of Property Act 1898, Landlord and Tenant Act 1899 and***
22 ***Forfeiture and Validation of Leases Act 1905***

23 *omit*

1 **[1.11] Schedule 1, part 1.1**
2 *renumber items when Act next republished under Legislation Act*

3 **[1.12] Schedule 1, part 1.2, item about Conveyancing Act 1919**
4 *omit*

5 **[1.13] Schedule 1, part 1.2**
6 *renumber items when Act next republished under Legislation Act*

7 **Part 1.7 Trustee Act 1925**

8 **[1.14] New section 7A**
9 *insert*

10 **7A Children not to be appointed trustees**

- 11 (1) The appointment of a child as trustee is void.
12 (2) This section does not affect the power to appoint a new trustee to fill
13 the vacancy.

14 **[1.15] Section 36 (4)**
15 *omit*

16 **[1.16] Section 36 (6) (b)**
17 *omit*

18 subsection (7)

19 *substitute*

20 subsection (6)

21 **[1.17] Section 36 (5) to (11) (as amended)**
22 *renumber as section 36 (4) to (10)*

1 **[1.18] Section 43 (9)**
2 *omit everything from*
3 , and so that if
4 *to*
5 arising

6 **[1.19] Section 44 (6)**
7 *omit everything from*
8 , or applicable
9 *to*
10 part 4

1 Dictionary

2 (see s 3)

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

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

- 6 • adult
- 7 • child
- 8 • corporation
- 9 • Corporations Act
- 10 • domestic partnership (see s 169 (2))
- 11 • individual
- 12 • instrument (see s 14)
- 13 • interest
- 14 • land
- 15 • person
- 16 • police officer
- 17 • proceeding
- 18 • provision (see s 16)
- 19 • public trustee
- 20 • registrar-general.

21 *Note 3* See also the Legislation Act, s 168 (References to person with interest
22 in land include personal representative etc).

23 ***administrator*** includes anyone to whom administration of the estate
24 of a deceased person is granted, and includes the public trustee
25 acting under the *Administration and Probate Act 1929*, part 6.

26 ***agent***, for part 4.7 (Recovery of leased premises)—see section 437.

27 ***annuity***, for part 2.6 (Apportionment)—see section 248.

28 ***assurance*** includes a conveyance and a disposition made otherwise
29 than by will.

1 **bankruptcy** includes any act or proceeding in law having effects or
2 results similar to those of bankruptcy.

3 **Example**

4 winding-up of a company

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

8 **conveyance** includes an assignment, appointment, lease, settlement
9 or other assurance by deed of any property.

10 **deed**, in relation to land under the *Land Titles Act 1925*, includes an
11 instrument that has the effect of a deed under that Act.

12 **disposition** includes—

13 (a) a conveyance; and

14 (b) an acknowledgment under the *Administration and Probate*
15 *Act 1929*, section 56 (Executor may sign acknowledgment
16 instead of conveyance); and

17 (c) a vesting instrument, declaration of trust, disclaimer, release or
18 any other assurance of property by an instrument other than a
19 will; and

20 (d) a release, devise, bequest or appointment of property in a will.

21 **dividend**, for part 2.6 (Apportionment)—see section 248.

22 **encumbrance** includes—

23 (a) a mortgage; and

24 (b) a trust for securing money; and

25 (c) a lien or charge of a portion, annuity, or other capital or annual
26 sum.

27 **executor** means the executor to whom probate has been granted, and
28 includes an executor by right of representation.

29 **income**, of land, includes rents and profits.

- 1 **instrument** includes a deed, a will, an agreement for settlement, and
2 a law of the Territory, the Commonwealth, a State or another
3 Territory.
- 4 **interested person**, in relation to property, for part 2.5 (Partition)—
5 see section 242.
- 6 **lease**, for part 4.5 (Forfeiture of leases)—see section 424.
- 7 **lessee**, for part 4.5 (Forfeiture of leases)—see section 424.
- 8 **lessor**, for part 4.5 (Forfeiture of leases)—see section 424.
- 9 **life interest**, for division 2.2.3 (Ending life interests)—see
10 section 215.
- 11 **mortgage**—
- 12 (a) for land under the *Land Titles Act 1925*—see that Act,
13 section 6 (1); and
- 14 (b) for other property—includes a charge on property for securing
15 money or money’s worth.
- 16 **mortgagee**—
- 17 (a) for land under the *Land Titles Act 1925*—see that Act,
18 section 6 (1); and
- 19 (b) for other property—includes a person taking title to the
20 mortgage under the original mortgagee.
- 21 **mortgagor**—
- 22 (a) for land under the *Land Titles Act 1925*—see that Act,
23 section 6 (1); and
- 24 (b) for other property—includes any of the following:
- 25 (i) a person taking title to the equity of redemption under the
26 original mortgagor;
- 27 (ii) a person entitled to redeem a mortgage, according to the
28 person’s interest in the mortgaged property.

- 1 ***personal representative*** means the executor or administrator of a
2 deceased person.
- 3 ***person with a legal disability*** means—
- 4 (a) a child; or
- 5 (b) a person with a mental disability.
- 6 ***person with a mental disability*** means—
- 7 (a) in relation to a proceeding—a person (other than a child) who
8 is not legally competent to be a party to the proceeding; and
- 9 (b) in relation to the doing of something—a person (other than a
10 child) who is not legally competent to do the thing;
- 11 and includes such a person even if a guardian or manager has not
12 been appointed for the person under the *Guardianship and*
13 *Management of Property Act 1991*.
- 14 ***possession***, of land, includes receipt of income from the land.
- 15 ***proceeding for partition of property***, for part 2.5 (Partition)—see
16 section 242.
- 17 ***purchaser***—
- 18 (a) for division 2.4.1 (Dispositions on trust for sale or with power
19 of sale)—see section 230; and
- 20 (b) for division 2.4.2 (Voidable dispositions)—see section 238;
21 and
- 22 (c) for any other provision—means a purchaser for valuable
23 consideration, and includes—
- 24 (i) a lessee or mortgagee; and
- 25 (ii) anyone else who acquires an interest in property for
26 valuable consideration.
- 27 ***registered*** means registered in the appropriate register kept by the
28 registrar-general.

- 1 **rent**—
- 2 (a) includes yearly or other rent; and
- 3 (b) for part 2.6 (Apportionment)—see section 248.
- 4 **securities** includes stocks, funds and shares.
- 5 **settlement**—see section 200.
- 6 **sublease**, for part 4.5 (Forfeiture of leases)—see section 424.
- 7 **trust corporation** means—
- 8 (a) the public trustee or a trustee company; or
- 9 (b) the Official Trustee in Bankruptcy under the *Bankruptcy*
- 10 *Act 1966* (Cwlth); or
- 11 (c) the trustee in whom the property of a bankrupt is vested.
- 12 **trustee company**—see the *Trustee Companies Act 1947*, dictionary.
- 13 **trustees for sale** means the people holding property on trust for sale.
- 14 **trust for sale** means a binding trust for sale, whether or not
- 15 exercisable at the request or with the consent of anyone, and with or
- 16 without a discretionary power to postpone sale.
- 17 **valuable consideration** includes marriage, but does not include a
- 18 nominal consideration in money.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
