

NORFOLK



ISLAND

LAND TITLES ACT 1996

[NB – sections 5 and 153 have not yet commenced]

[Consolidated as at 29 June 2007
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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NORFOLK



ISLAND

Land Titles Act 1996

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

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Land Titles Act 1996*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the Gazette.
(2) The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

Interpretation

3. (1) In this Act, unless the contrary intention appears —
“action to recover” in relation to a parcel, includes an action to redeem a mortgage of the parcel;
“Administrative Review Tribunal” means the Administrative Review Tribunal established under the *Administrative Review Tribunal Act 1996*;
“appropriate form”, in relation to an instrument, means —
 - (a) the approved form for the instrument; or
 - (b) if a form is approved or prescribed for the instrument under another Act — that form;“approved form” means a form approved by the executive member;
“caveatee”, in relation to a parcel over which a caveat has been lodged, means —
 - (a) a registered proprietor of an interest in the parcel; or
 - (b) a person (other than the caveator) who has an interest in the parcel;“caveator”, in relation to a parcel over which a caveat has been lodged, means a person in whose favour the caveat is lodged;
“certificate of title” means a certificate issued by the Registrar under section 41;
“Chief Executive Officer” means the Chief Executive Officer within the meaning of the *Public Sector Management Act 2000*;
“correct” includes correct by addition, omission or substitution;

“Crown lease” means a lease granted, or continued in force, under the *Crown Lands Act 1996*;

“deed of grant” means an instrument evidencing a grant of land by the Crown;

“deposit” means file in the Registrar’s office other than for registration;

“error” includes an error by omission;

“instrument” includes—

- (a) a Crown lease, deed of grant or certificate of title;
- (b) a will, grant of representation, or exemplification of a will, that may be used to deal with a parcel of land;
- (c) a deed that relates to or may be used to deal with a parcel of land;
- (d) a request, application or other document that deals with a parcel of land and may be registered under this Act; and
- (e) a map or survey plan that may be lodged;

“interest”, in relation to land, means —

- (a) any legal or equitable interest in the land; or
- (b) any easement, right, power or privilege in, or in connection with, the land;

“lease” does not include a Crown lease;

“legal representative” means —

- (a) a parent or guardian of a person under a legal disability;
- (b) a person who is entitled under a power of attorney to acquire, hold or dispose of land on behalf of another person; and
- (c) an executor, administrator, trustee or any other person who is entitled at law to acquire, hold or dispose of land on behalf of another person;

“lodge” means file in the Registrar’s office for registration;

“mortgage” includes a charge on land, or on an interest in land, for securing money or money’s worth;

“Official Survey” means the Official Survey under the *Official Survey Act 1978*;

“ordinary certificate” means a certificate of title issued under subsection 41(1);

“parcel” means a separate, distinct parcel of land created on —

- (a) the registration of title under subsection 33(3) on grant of a fee simple interest or a Crown lease;
- (b) the registration of title under subsection 40(1) on creation of a single registered title;
- (c) the registration of title under section 50 on subdivision or amalgamation; or

- (d) the registration of title or qualified title under subsection 138(1);

“particulars of title” means the information necessary to identify an area of land and the registered interests held in that land including —

- (a) details of the original deed of grant of the land or of the Crown lease of the land;
- (b) a description of the land by reference to the Official Survey;
- (c) details of every registered interest in the land;
- (d) the name of each person who holds title to a registered interest in the land; and
- (e) if a registered interest in the land is held under a trust — details of the trust;

“proposed particulars of title” means the information necessary to identify an area of land and the registrable interests held in that land, including —

- (a) details of the original deed of grant of the land or of the Crown lease of the land;
- (b) a description of the land by reference to the Official Survey;
- (c) details of every registrable interest in the land;
- (d) the name of each person who holds title to a registrable interest in the land; and
- (e) if a registrable interest in the land is held under a trust — details of the trust;

“public road” means —

- (a) a public road open under Part 2 of the *Roads Act 2002*; or
- (b) a public road that is to be taken to be open under Part 2 of that Act by virtue of section 29 of that Act;

“public servant” means an officer or employee appointed or engaged under the *Public Sector Management Act 2000*;

“public service” means the public service referred to in section 35 of the *Public Sector Management Act 2000*;

“qualified certificate” means a certificate of qualified title issued by the Registrar under paragraph 142(1)(b);

“Register” means the Register kept under section 27;

“registered land” means a parcel of land in respect of which the Registrar has registered title;

“registered owner”, in relation to a parcel, means the person recorded in the Register as the person entitled to the fee simple or Crown leasehold interest in the parcel;

“registered proprietor”, in relation to a registered interest in a parcel, means the person recorded in the Register as the person entitled to that interest;

“registered qualified title”, in relation to a parcel, means the current particulars of title recorded in the Register where the Registrar has registered title in respect of that parcel under paragraph 138(1)(b);

“registered title”, in relation to a parcel, means the current particulars of title recorded in the Register;

“registrable interest” means a fee simple interest, a Crown lease, a mortgage, a lease or an easement held by a person where the person holds title to the interest free of any defect;

“Registrar” means the Registrar of Titles provided for by section 6;

“Registrar’s minute” means a minute of the Registrar entered in the Register under paragraph 140(1)(b) in connection with the registration of qualified title;

“road project” means a proposal under the *Roads Act 2002* for —

- (a) the opening of a public road;
- (b) the closing of a public road; or
- (c) a combination of the opening and closing of a public road or public roads;

“road project development approval” has the same meaning as in the *Roads Act 2002*;

“seal” means the official seal of the Registrar referred to in subsection 7(1);

“short lease” means a lease —

- (a) for a term of 3 years or less; or
- (b) from year to year or a shorter period;

“subdivision development approval” has the same meaning as in the *Subdivision Act 2002*;

“subdivision proposal” means a proposal for —

- (a) the subdivision of a single parcel of land into 2 or more separate parcels;
- (ba) the adjustment of a boundary between two or more adjacent parcels of land so as neither to amalgamate nor subdivide the parcels; or
- (b) the amalgamation of 2 or more adjacent parcels of land into a single parcel; or
- (c) any combination of such a subdivision or amalgamation;

“subdivision survey plan” means a survey plan lodged with a subdivision application;

“term” includes covenant or condition;

“writ of execution” means a writ or warrant of execution after judgment in any court.

(2) A reference in this Act to a certificate of title shall be read as including a reference to a certificate of qualified title.

(3) A reference in this Act to registered title shall be read as including a reference to registered qualified title.

(4) A reference in this Act to the term of a lease shall be read as meaning the period beginning when the lessee is first entitled to possession of a parcel or part of a parcel under the lease and ending when the lessee is last entitled to possession, even if the lease consists of 2 or more discontinuous periods.

(5) Unless the contrary intention appears, in this Act or in an instrument made or executed under this Act, a reference to a person in relation to an interest in land shall be read as including a reference to the person's personal representatives, successors and assigns.

Act binds the Crown and the Administration

4. This Act binds the Crown and the Administration.

Dealings in land

5. Land in respect of which title has been registered under this Act may not be transferred, mortgaged, leased or otherwise dealt with, and an instrument that purports to deal with such land shall not be registered, except in accordance with this Act.

Deemed application for registration of title

5A. (1) After 1 December 1997, any transaction under section 3 of the *Conveyancing Act 1913* in respect of land, is deemed to be an application under section 133 for registration of title in respect of that land made by a person referred to in subsection 133(1).

(2) Section 134 does not apply to a deemed application under subsection 5A(1).

PART 2 — ADMINISTRATION

Division 1 — Registrar of Titles

Registrar of Titles

6. (1) There shall be a Registrar of Titles of Norfolk Island.

(2) The Chief Executive Officer shall appoint an officer or employee of the Public Service to be the Registrar of Titles of Norfolk Island.

Seal

7. (1) The Registrar shall have an official seal.

(2) Judicial notice shall be taken of the signature, or the imprint of the seal, of the Registrar appearing on a document and the document shall be presumed to have been properly signed or sealed unless the contrary is proved.

Functions and powers

8. (1) The Registrar has such functions and powers as are imposed or conferred on the Registrar by any law in force in Norfolk Island.

(2) The functions of the Registrar include —

- (a) making any changes to the Register;
- (b) issuing or making any changes to any certificate; and
- (c) doing any other thing;

in accordance with a direction to the Registrar by the Supreme Court.

Protection for Registrar and staff

9. No action, suit or proceeding lies against a person who is or has been the Registrar, or a member of the staff of the Registrar's office, in relation to an act done or omitted to be done in good faith in the performance or purported performance of a function under this Act or any other law in force in Norfolk Island.

Invalidity of documents

10. A document is not invalid on the ground that there was —

- (a) an informality in connection with the affixing of the seal; or
- (b) a failure to affix the seal.

Delegation

11. (1) The Registrar may delegate 1 or more of the Registrar's powers under this Act or any other law in force in Norfolk Island to a public servant.

(2) A delegate, in making a decision in accordance with a delegation under this section, shall comply with the requirements of this Act which the Registrar is required to comply with in making such a decision.

Division 2 — Powers of the Registrar

Correction of minor errors

12. (1) The Registrar may correct the Register if the Registrar is satisfied that —

- (a) the Register is incorrect; and
- (b) the correction will not prejudice the rights of the holder of an interest recorded in the Register.

(2) The Registrar's power to correct the Register includes power to correct a particular in the Register or in an instrument forming part of the Register.

(3) A correction shall be made in such a manner as to preserve the record and show that a correction has been made and the time, date and circumstances of the correction.

Alteration of certificate of title

13. Where a change is made to the contents of the Register, the Registrar may —

- (a) alter a certificate of title in accordance with that change; and
- (b) require the production of the certificate for that purpose.

Amend or alter name or address recorded in the Register

14. The Registrar shall —

- (a) on receipt of a written request made by a person whose name is recorded in the Register or the person's solicitor; and
- (b) on production of any further evidence required by the Registrar;

alter the name or address recorded in the Register in relation to that person.

Registrar may prepare and register caveat

15. The Registrar may prepare and register a caveat over a parcel of land —

- (a) in favour of the registered owner of the parcel, or another person who has a registered interest in the parcel, who is under a legal disability or who is absent from Norfolk Island;
- (b) in favour of the Commonwealth or the Administration;
- (c) in the Registrar's name, where it appears to the Registrar that an error has been made by misdescription of the parcel, in the Register or in the certificate of title or any other document relating to the parcel; or
- (d) in the Registrar's name, to prevent any fraud or improper dealing in relation to the parcel.

Caveat as to trustees without power to sell

16. Where a certificate of title is issued under this Act in the name of a trustee who does not have express power to sell the land comprised in the certificate, the Registrar shall prepare and register a caveat over the land for the protection of persons with a beneficial interest under the trust.

Registrar may require public notice to be given of certain proposed action

17. (1) This section applies if a person asks the Registrar to do any of the following things:

- (a) register a transfer of a registered interest;
- (b) issue a substitute registered instrument;
- (c) dispense with production of an instrument.

(2) The Registrar may, by written notice, require the person to give public notice of the request.

(3) The Registrar may specify in the notice to the person —

- (a) what is to be included in the public notice;
- (b) how many times the public notice is to be published; and
- (c) how and when the public notice is to be published.

(4) The person must satisfy the Registrar that public notice has been given as required by the Registrar.

(5) Where a person has been required by the Registrar to give public notice of his or her request, the Registrar may refuse to take the action requested unless the Registrar is satisfied that the public notice has been given as required.

*Division 3 — Inquiries***Purpose of inquiry**

- 18.** The Registrar may hold an inquiry under this Division —
- (a) to decide whether the Register should be corrected;
 - (b) to consider whether a person has fraudulently or wrongfully —
 - (i) obtained, kept or procured an instrument affecting land in the Register; or
 - (ii) procured a particular in the Register or an endorsement on an instrument affecting land; or
 - (c) in circumstances prescribed by Regulation.

Registrar's duties on inquiry

- 19.** When conducting an inquiry, the Registrar —
- (a) shall observe natural justice; and
 - (b) shall act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

Registrar may decide procedures

- 20.** When conducting an inquiry, the Registrar —
- (a) is not bound by the rules of evidence;
 - (b) may inform himself or herself in any way the Registrar considers appropriate;
 - (c) may decide the procedures to be followed at the inquiry; and
 - (d) shall comply with this Division and the procedural rules (if any) that may be prescribed by Regulation.

Registrar's powers on inquiry

- 21. (1)** When conducting an inquiry, the Registrar may —
- (a) act in the absence of a person who has been given reasonable notice;
 - (b) receive evidence on oath or affirmation or by statutory declaration;
 - (c) adjourn the inquiry;
 - (d) disregard a defect, error or insufficiency in a document; and
 - (e) permit or refuse to permit a person (including a legal practitioner) to represent someone at the inquiry.

(2) The Registrar may administer an oath or affirmation to a person appearing as a witness before an inquiry.

Notice to witness

22. (1) The Registrar may, by written notice given to a person, require the person to attend an inquiry at a specified time and place as a witness to give evidence or produce specified documents or things.

(2) A person required to appear as a witness before an inquiry is entitled to the witness fees and allowances prescribed by regulation.

Offences by witnesses

- 23. (1)** A person who is given a notice under section 22 shall not —
- (a) fail, without reasonable excuse, to attend as required by the notice; or
 - (b) fail, without reasonable excuse, to continue to attend at an inquiry as required by the Registrar until excused from further attendance.

Penalty: 5 penalty units.

- (2)** A person appearing as a witness at an inquiry shall not —
- (a) fail to take an oath or make an affirmation when required by the Registrar;
 - (b) fail, without reasonable excuse, to answer a question the person is required to answer by the Registrar; or
 - (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 22.

Penalty: 5 penalty units.

(3) It is a reasonable excuse for a person to fail to answer a question or produce a document or thing if answering the question or producing the document or thing might tend to incriminate the person.

Division 4 — Registrar may refer matter to Supreme Court

Referral to Supreme Court from inquiry

24. (1) If, in an inquiry under Division 3, a person contravenes section 23, the Registrar may apply to the Supreme Court for an order to compel the person to comply with the notice or requirement.

(2) The Supreme Court may make any order to assist the Registrar in the Registrar's conduct of the inquiry that the Supreme Court considers appropriate.

Other referrals by the Registrar to Supreme Court

- 25.** The Registrar may, for the purposes of any matter under this Act —
- (a) apply to the Supreme Court for directions;
 - (b) apply to the Supreme Court for an order directing a person to produce 1 or more documents; or
 - (c) state a case for decision by the Supreme Court.

Supreme Court directions

26. (1) In any proceedings in the Supreme Court in relation to —

- (a) any land;
- (b) any transaction, contract or application relating to land; or
- (c) any instrument, or entry in the Register, affecting land;

the Court may, by order, direct the Registrar —

- (d) to alter, issue or cancel any certificate, or to alter, make or cancel any entry in the Register, notwithstanding that the relevant certificate has not been produced to the Registrar; or
- (e) to do any act, refrain from any act or make any entry that is necessary to give effect to any judgment or order of the Court given or made in those proceedings.

(2) An order made under subsection 26(1) is not effective to vest a registrable interest in any person before the appropriate entry is made in the Register.

PART 3 — LAND TITLES REGISTER**Register**

27. (1) The Registrar shall keep a Register.

(2) The Register shall include —

- (a) the particulars of title for each area of land in respect of which title has been registered;
- (b) each registered instrument;
- (c) any other document or information required or permitted to be entered or recorded in the Register by this Act or another law of Norfolk Island; and
- (d) any other document or information that the Registrar considers should be recorded to ensure that the Register is an accurate, comprehensive and useable record of land titles in Norfolk Island.

Form of Register

28. (1) The Registrar may keep the Register —

- (a) in such form or combination of forms;
- (b) on such medium or combination of media; and
- (c) in such manner;

as the Registrar considers appropriate.

(2) Without limiting subsection 28(1), the Registrar may change the form or medium in which the Register or a part of the Register is kept.

Other information kept by the Registrar

29. (1) The Registrar may enter in the Register or keep separately from the Register a document or information that the Registrar considers necessary or desirable for the effective or efficient operation of the Register.

(2) Where the Registrar keeps a document or information under subsection 29(1), he or she may make a notation in the Register in the particulars about the parcel to which the document or information relates.

Entitlement to search Register

30. At any time when the Registrar's office is open for business and on payment of the fee prescribed under the *Land Administration Fees Act 1996*, a person may —

- (a) search and obtain a copy of —
 - (i) the registered title of a parcel of land;
 - (ii) a registered instrument;
 - (iii) an unregistered instrument that has been lodged with the Registrar and is still in the possession of the Registrar; or
 - (iv) information kept under this Act; and
- (b) obtain a copy of the registered title of a parcel of land, or a registered instrument, certified by the Registrar to be an accurate copy.

Evidentiary effect of certified copies

31. (1) A document purporting to be a certified copy of the registered title of a parcel of land, obtained under paragraph 30(b), is evidence of the registered title.

(2) A document purporting to be a certified copy of a registered instrument obtained under paragraph 30(b) is evidence of the registered instrument.

PART 4 — REGISTRATION OF TITLE*Division 1 — Effect of registration of title***Interests and proprietors become registered on registration of title**

- 32.** On registration of title to a parcel of land —
- (a) each registrable interest that is recorded in the Register in relation to that parcel becomes a registered interest;
 - (b) the person recorded in the Register as holding the interest becomes the registered proprietor of that interest; and
 - (c) where the details of a trust are recorded in relation to the parcel, the trust becomes a registered trust.

Division 2 — Registration of fee simple and Crown leasehold interests

Alienated Crown land

33. (1) Where the Crown grants a fee simple interest in land, the deed of grant shall be lodged in the Registrar's office.

(2) Where the Crown grants a Crown lease of land, the Crown lease shall be lodged in the Registrar's office.

(3) The Registrar shall register the deed of grant or the Crown lease and register title to the land.

(4) Registration of title under subsection 33(3) shall be by recording in the Register the proposed particulars of title for the interest in land granted under subsection 33(1) or 33(2).

Land held by Administration

34. The Administration may, under this Act, acquire, hold and deal with a parcel of land.

Effect of surrender of a Crown lease

35. (1) Where a Crown lease of registered land is surrendered by a person and a new Crown lease is granted to, and accepted by, that person in its place —

- (a) any sub-lease or mortgage of the land shall not be terminated or discharged, as the case may be, by force only of the surrender; and
- (b) unless otherwise terminated or discharged, as the case may be, the sub-lease or mortgage shall continue in all respects as if it had been made under the new Crown lease.

(2) Where a mortgage continues in force under subsection 35(1), the mortgage shall be read as if references to the land comprised in the original Crown lease were references to the land comprised in the new Crown lease.

(3) This section applies only —

- (a) in relation to a sub-lease where the land comprised in the sub-lease is wholly included within the land comprised in the new Crown lease;
- (b) in relation to a mortgage where the land comprised in the new Crown lease includes substantially the same land as that comprised in the surrendered Crown lease; and
- (c) where any easement is reserved in the new Crown lease which was not reserved in the surrendered Crown lease — in relation to a sub-lease of land which is not subject to the easement.

Division 3 — Indefeasible title

Paramourcy of registered interests

36. (1) A registered proprietor of an interest in a parcel of land holds the interest subject to all registered interests affecting the parcel but free from any other interest unless —

- (a) there has been fraud by the registered proprietor, whether or not there has been fraud by a person from or through whom the registered proprietor has derived the registered interest; or

- (b) the other interest is 1 of the following:
 - (i) an interest specified in a Registrar's minute entered in the Register in relation to the parcel;
 - (ii) an equity arising from the act of the registered proprietor;
 - (iii) the interest of a lessee under a short lease over all or part of the parcel;
 - (iv) the interest of a person entitled to the benefit of an easement over the parcel if its particulars have been omitted from, or misdescribed in, the Register;
 - (v) the interest of another registered proprietor making a valid claim under an earlier existing registered title for all or part of the parcel;
 - (vi) the interest of another registered owner if there are 2 registered titles for the same interest in the parcel and the inconsistency has arisen through failure on transfer to cancel, wholly or partly, the registered title of the first registered owner;
 - (vii) the interest of another registered proprietor if the parcel described in the registered title wrongly includes land in which the other registered proprietor has an interest.
- (2) Unless subsection 36(1) applies, the registered proprietor —
 - (a) is not affected by actual or constructive notice of an unregistered interest affecting the parcel; and
 - (b) is liable to a proceeding for possession of the parcel or an interest in the parcel only if the proceeding is brought by the registered proprietor of an interest affecting the parcel.
- (3) The interest of the lessee under subparagraph 36(1)(b)(iii) does not include —
 - (a) a right to acquire the fee simple or other reversionary interest on or after the ending of the short lease; or
 - (b) a right to renew or extend the term of the short lease beyond 3 years from the beginning of the original term.
- (4) For the purposes of subparagraph 36(1)(b)(iv), an easement is taken to have been omitted if —
 - (a) the easement was in existence when the parcel burdened by it was first registered but particulars are no longer recorded in the Register against the parcel burdened; or
 - (b) the easement was registered but later omitted by an error of the Registrar.

No adverse possession

37. No person shall gain an interest in registered land, by reason only of possession of the land for a period of time adverse to the registered owner.

Action to correct wrong inclusion of a parcel

38. (1) The Registrar may correct a registered title, if satisfied that subparagraph 36(1)(b)(vii) applies to the registered title.

(2) Where the Registrar corrects a registered title under subsection 38(1), the Registrar shall give written notice of the correction to each person who is the registered proprietor of an interest affected by the correction.

(3) A person affected by the correction may apply to the Supreme Court for an order that the correction be amended or set aside.

(4) The application shall be made within 1 month after the person receives written notice of the correction.

Orders by Supreme Court about fraud and competing interests

39. (1) If there has been fraud by the registered proprietor or subparagraph 36(1)(b)(iv), 36(1)(b)(v), 36(1)(b)(vi) or 36(1)(b)(vii) applies, the Supreme Court may make the order it considers just.

(2) Without limiting subsection 39(1), the Supreme Court may, by order, direct the Registrar —

- (a)** to cancel or correct the registered title or other particulars in the Register;
- (b)** to cancel, correct, execute or register an instrument;
- (c)** to create a new registered title;
- (d)** to issue a new instrument; or
- (e)** to do anything else.

(3) An order made under this section is not effective to vest a registrable interest in any person before the appropriate entry is made in the Register.

Single registered title for 2 or more parcels

40. (1) The Registrar may create a single registered title for 2 or more parcels of land held in fee simple that have the same registered owner, by removing from the Register the particulars of title for each parcel and registering title to the new parcel by recording in the Register the proposed particulars of title for the new parcel.

(2) The Registrar may act under this section only if —

- (a)** the Registrar considers that, in the special circumstances of the case, it is appropriate for the parcels to have a single registered title; and
- (b)** the parcels share a common boundary.

*Division 4 — Certificates of title***Issuing of certificates of title**

41. (1) As soon as practicable after registration of title in respect of land, the Registrar shall issue a certificate of title for the land.

(2) A certificate of title issued in respect of land shall specify the particulars of title recorded in the Register in relation to that land.

(3) The Registrar shall issue the certificate of title —

- (a) by sending it by post to —
 - (i) the registered owner; or
 - (ii) on written request by the registered owner—another person specified in the request at the specified address; or
- (b) by personally giving it to the registered owner or to another person specified by the registered owner in writing.

Certification to be included in certificate of title

42. The certificate of title of a parcel of land shall certify that the particulars of title specified in the certificate are the registered particulars in respect of the parcel at the time of issue of the certificate.

Evidentiary effect of certificate of title

43. A certificate of title of a parcel of land is conclusive evidence of the registered title for the parcel when it is issued except —

- (a) in the circumstances described in paragraph 36(1)(a) or subparagraph 36(1)(b)(i), 36(1)(b)(iv), 36(1)(b)(v), 36(1)(b)(vi) or 36(1)(b)(vii); or
- (b) to the extent to which the particulars specified in the certificate differ from the registered title.

*Division 5 — Effect of registration***Valuable consideration not required**

44. This Division applies to an instrument whether or not valuable consideration has been given.

Interest in a parcel not transferred or created until registration

45. An instrument does not transfer or create an interest in a parcel at law until it is registered.

Effect of registration on interest

46. On registration of an instrument that is expressed to transfer or create a registrable interest in a parcel, the interest —

- (a) is transferred or created in accordance with the instrument;
- (b) is registered; and
- (c) vests in the person identified in the instrument as the person entitled to the interest.

Right to have interest registered

47. A person to whom a registrable interest is to be transferred, or in whose favour a registrable interest is to be created, has a right to have the instrument transferring or creating the interest registered if —

- (a) the instrument has been executed;
- (b) the person lodges the instrument and deposits any documents required by the Registrar to effect registration of the instrument; and
- (c) the person has otherwise complied with this Act in relation to the registration of the instrument.

Division 6 — Subdividing and amalgamating parcels

Notation of subdivision development approvals

48. Where the Registrar receives a copy of subdivision development approval, the Registrar shall make a notation of that approval on the Register in relation to the land referred to in the subdivision proposal.

Subdivision or amalgamation of registered land

49. Registered land may be subdivided or amalgamated by registering a subdivision proposal to which subdivision development approval has been given and notice is given under section 11 of the *Subdivision Act 2002* in relation to the subdivision to the Registrar.

Particulars of title for proposed parcels

50. On registering a subdivision proposal, the Registrar shall register title for each proposed parcel of land not designated as being for a public purpose, by recording in the Register the proposed particulars of title for the parcel.

Lodged subdivision proposal that is withdrawn and re-lodged

51. If a subdivision proposal is lodged for registration and is withdrawn and re-lodged under section 118, it shall be treated for the purposes of section 113 to have been lodged when it was first lodged.

Division 7 — Registration of roads

Notation of road project development approvals

52. Where the Registrar receives a copy of a road project development approval, the Registrar shall make a notation of that approval on the Register.

Opening and closing of roads

53. Where —

- (a) land is dedicated as a public road by notice in the Gazette under subsection 6(3) of the *Roads Act 2002*;
- (b) a public road is closed by notice in the Gazette under subsection 7(1) of the *Roads Act 2002*; or
- (c) land is dedicated as a public road or as part of a public road by notice in the Gazette under subsection 35(1) of the *Roads Act 2002*;

the Registrar shall make such entries in the Register, and do such other things, as are necessary to reflect the dedication or closing of the road.

Division 8 — Joint ownership

Registering life interests and remainders

54. The Registrar may record in the Register a registrable interest in a parcel for life and a registrable interest in remainder in the way the Registrar considers appropriate.

Registering co-owners

55. (1) In registering an instrument transferring a registrable interest to co-owners, the Registrar shall also register the co-owners as holding their interests as tenants in common or as joint tenants.

(2) If the instrument does not show whether co-owners are to hold as tenants in common or as joint tenants, the Registrar shall register the co-owners as tenants in common.

Division 8A — Registration of a company as owner

Interpretation

55A. In this Division —

“property-owning company” means a company that —

- (a) is incorporated or registered as a foreign company under the *Companies Act 1985*; and
- (b) holds a fee simple or Crown leasehold interest in land;

“change in the shareholding”, in relation to a property-owning company, means —

- (a) a change in the shareholders; or
- (b) a change in the shareholding of 1 or more shareholders,

of the company or of a related corporation of that company.

Registration of title

55B. (1) Where the Registrar registers a property-owning company as the proprietor of a fee simple or Crown leasehold interest in land, the Registrar shall record in the Register —

- (a) the name of each shareholder of the company; and
- (b) the particulars of each shareholding; and
- (c) if the company is a related corporation of another company that is a shareholder, the name of that other company and of all related corporations of that company

but this section does not apply to a company that is a public company listed on a stock exchange or a company that has more than 20 shareholders none of whom have or control more than 15% of the voting power at an ordinary meeting of shareholders.

(2) Where the Registrar registers an instrument of share transfer lodged under section 55C, the Registrar shall record in the Register the change in the shareholding specified in the instrument.

(3) A company cannot be the registered proprietor of land unless it is incorporated or registered as a foreign company under the *Companies Act 1985* or exempted by the executive member in accordance with a direction made in a disallowable instrument.

(4) A company that is the registered proprietor of land and upon the commencement of subsection (3) is a foreign company but is not registered as a foreign company must if not exempted, be so registered before 31 March 2006.

(5) The Registrar is empowered to remove from the Register a registered proprietor in default under subsection (4) and proceed to sell the interest by public tender or auction and after payment of all expenses connected with the sale and of any moneys owing to the Administration or a Territory instrumentality, hold the balance for the benefit of the former registered proprietor.

(6) The Registrar must not do anything under subsection (5) until he or she has given the company notice, sent by prepaid post to the registered office of the company in its place of incorporation and, if he or she thinks fit, to a person who is a director, secretary or shareholder of the company, to the effect that if the company does not comply with subsection (3) within 90 days of the posting of the notice he or she will so act.

Validity of share transfers

55C. (1) Where there is a change or purported change in the shareholding of a property-owning company, the company shall lodge for registration an instrument of share transfer together with the fee prescribed under the *Land Administration Fees Act 1996* —

- (a) within 14 days after the change; or
- (b) within such further period as the Registrar allows (either before or after the expiration of the 14 days referred to in paragraph 55C(1)(a)).

(2) Where a property-owning company fails to comply with subsection 55C(1) the change or purported change in shareholding is void.

(3) Where the Registrar allows a further period during which an instrument of share transfer may be lodged and the instrument is lodged together with the prescribed fee within that period, subsection 55C(2) does not apply to the change or purported change in shareholding at any time after the expiration of the 14 days referred to in paragraph 55C(1)(a).

Information to be provided to Registrar

55D. (1) A person seeking to register an interest in land must provide the Registrar with a statement sufficient to enable the Registrar to record the information required by sections 55B and 55C and in addition complete details of any beneficial interest in the land that does not appear on the face of any transfer or other document lodged with the Registrar.

(2) In subsection (1) “complete details” means the full name, address nationality and quantum of the beneficial owner of the beneficial interest and how and by whom it is held for the beneficial owner.

Seller under Power of Attorney to provide statement

55E. A person who sells an interest in land under a power of attorney must provide the Registrar with a statement certifying whether or not the proceeds of the sale are to be applied for the sole benefit of the registered proprietor (including any registered mortgagee) or for some other person and if so the name of the person and the proportion of the sale price to be paid to such person.

Failure to comply with Division 8A

55F. A person who fails to disclose to the Registrar the information required to be provided under this division commits an offence.

Penalty: 50 penalty units.

Division 9 — Compensation for loss of title

Entitlement to compensation

56. A person is entitled to be indemnified by the Administration if the person is deprived of a registrable interest in a parcel or suffers loss or damage because of —

- (a) the fraud of another person;
- (b) the incorrect creation of a registered title in the name of another person;
- (c) incorrect registration;
- (d) an error in a registered title or in the Register;
- (e) tampering with the Register;
- (f) reliance on the incorrect state of the Register;
- (g) the destruction or improper use of a document deposited or lodged at the Registrar’s office;
- (h) an error in a search by the Registrar or a member of the staff in the Registrar’s office carried out at someone else’s request; or
- (j) an omission, a mistake or breach of duty or negligence or misfeasance of or by the Registrar or a member of the staff in the Registrar’s office.

Matters for which there is no entitlement to compensation

57. A person is not entitled to be indemnified by the Administration for deprivation, loss or damage —

- (a) because of a breach of a trust or fiduciary duty (whether express, implied or constructive) including a breach of duty arising in the administration of the estate of a deceased person;
- (b) if the person, a person acting as agent for the person, or a legal practitioner acting or purporting to act for the person, caused or substantially contributed to the deprivation, loss or damage by fraud, neglect or wilful default, including, for example, failure to take reasonable steps in response to a notice that the Registrar intended to create a new registered title for the relevant parcel;
- (c) suffered by a corporation through the improper use of its seal or by an act of an authorised signatory of the corporation who exceeds the signatory's authority;
- (d) caused when the Registrar corrected a registered title that mistakenly included the person's land, unless the person was deprived under paragraph 56(f);
- (e) because of an error in the location of a parcel's boundaries or in a parcel's area;
- (f) because of an error or shortage in area of a parcel according to a plan lodged in the Registrar's office; or
- (g) if the loss, damage or deprivation arises out of a matter about which the Registrar is by an Act or law, either expressly or by necessary implication, excused from inquiring.

Recovery of compensation

58. (1) On payment of any compensation under section 56, the Administration is subrogated to the rights of the claimant against the person responsible for the deprivation, loss or damage under that section.

(2) If the Administration, in exercising its rights under subsection 58(1), receives an amount that is more than the amount it paid to the claimant, the Administration shall pay the difference to the claimant after deduction of the Administration's costs.

PART 5 — DEALINGS*Division 1 — Transfers***Registering an instrument of transfer**

59. (1) A registered interest in a parcel of land may be transferred by registering an instrument of transfer.

(2) In the case of the transfer of a Crown leasehold interest, the instrument of transfer shall not be registered unless it is made in accordance with the *Crown Lands Act 1996*.

(3) Before registering an instrument of transfer the Registrar may require the person who lodged the instrument to deposit at the Registrar's office 1 or more specified documents relating to the interest to be transferred.

Requirements of transfer

60. (1) An instrument of transfer of a registered interest in a parcel of land shall —

- (a) be validly executed;
- (b) include particulars sufficient to identify the parcel to which the interest applies;
- (c) include an acknowledgment of the amount paid or details of other consideration; and
- (d) include a description sufficient to identify the interest to be transferred.

(2) Subsection 60(1) does not limit the matters that the approved form for an instrument of transfer may require to be included in the instrument.

(3) A person presenting an instrument of transfer under subsection (1) must at the same time produce to the Registrar either —

- (a) an original contract for the sale or deed of gift of the land the subject of the instrument; or
- (b) a copy of such contract or deed of gift certified to be a true and accurate copy of the original by a person carrying on business as a solicitor or legal practitioner or real estate agent; or
- (c) if no contract or deed of gift is in existence, a document setting out a brief statement of all of the material conditions of the contract or deed of gift and certified to be true and correct by a solicitor or legal practitioner or a real estate agent.

(4) A person who falsely certifies a contract or document under subsection (3) commits an offence.

Penalty: 50 penalty units.

Effect of registration of transfer

61. (1) On registration of an instrument of transfer of an interest in land, all the rights, powers, privileges and liabilities of the transferor in relation to the interest vest in the transferee.

(2) Without limiting subsection 61(1), on registration of an instrument of transfer —

- (a) of a registered mortgage, the transferee is bound by and liable under the mortgage to the same extent as the original mortgagee; and
- (b) of a registered lease, the transferee is bound by and liable under the lease to the same extent as the original lessee.

(3) In this section —

“rights”, in relation to a mortgage or lease, includes the right to sue on the terms of the mortgage or lease and to recover a debt or enforce a liability under the mortgage or lease.

Transfer of mortgaged interest

62. (1) If an interest in land subject to a registered mortgage is transferred, the transferee is liable —

- (a) to comply with the terms of the mortgage and the terms implied by an Act; and
- (b) to indemnify the transferor against liability under the mortgage and under this or another Act.

(2) If a parcel is transferred to a mortgagee of the parcel, the Registrar shall register the mortgagee as registered owner discharged from the mortgage.

(3) The Registrar shall act under subsection 62(2) unless the mortgagee asks the Registrar not to act under that subsection.

Division 2 — Leases

Registering an instrument of lease

63. A registered lease of a parcel, or part of a parcel, may be created by registering an instrument of lease for the parcel or part.

Requirements of instrument of lease

64. (1) An instrument of lease for a parcel or part of a parcel shall —

- (a) be validly executed;
- (b) include a description sufficient to identify the parcel or part of the parcel to be leased; and
- (c) include an acknowledgment of the amount paid or details of other consideration.

(2) If the instrument of lease is for part of the parcel, the instrument shall also include —

- (a) a calculated plan identifying the part of the parcel drawn to a standard to the Registrar's satisfaction; or
- (b) if required by the Registrar — a survey identifying the part of the parcel.

(3) Notwithstanding subsection 64(2), the Registrar may allow the part of the parcel to be identified by a description alone if the Registrar is satisfied that the part is sufficiently identified by the description in the lease.

(4) This section does not limit the matters that the approved form for an instrument of lease may require to be included in the instrument.

Validity of lease or amendment of lease against mortgagee

65. A lease or amendment of a lease executed after registration of an instrument of mortgage of a parcel is valid against the mortgagee only if the mortgagee consents to the lease or amendment before its registration.

Amending a lease

66. (1) Subject to subsection 66(2), a registered lease may be amended by registering an instrument of amendment of the lease.

(2) The instrument of amendment shall not —

- (a) increase or decrease the area leased;
- (b) add or remove a party to a lease; or
- (c) be lodged after the lease's term has ended.

(3) The procedure for amendment specified in this section is in addition to other rights that are not inconsistent with this Act.

(4) In this section —

“term” of a registered lease includes a period of possession under the lease because of —

- (a) the exercise of an option to renew in the lease; or
- (b) a registered instrument of amendment extending the term of the lease.

Re-entry by lessor

67. (1) If a lessor under a registered lease lawfully re-enters and takes possession under the lease, the lessor may lodge a request for the Registrar to register the details of re-entry.

(2) The interest of the lessee ends on the registration of the details of re-entry.

Surrendering a lease

68. (1) Subject to subsection 68(2), a registered lease may be wholly or partly surrendered by operation of law or by registering an instrument of surrender of the lease executed by the lessor and the lessee.

(2) A registered lease may be surrendered by registering an instrument of surrender only with the consent of every mortgagee and sublessee of the lessee.

(3) On registration of an instrument of surrender of a registered lease, the interest of the lessee vests in the lessor.

Validity of unregistered lease

69. An unregistered lease of a parcel or part of a parcel is not invalid merely because it is unregistered.

*Division 3 — Mortgages***Mortgaging parcel etc. by registration**

70. A registered mortgage of a registered interest in a parcel may be created by registering an instrument of mortgage.

Requirements of instrument of mortgage

71. (1) An instrument of mortgage shall —

- (a) be validly executed;
- (b) include a description sufficient to identify the parcel to be mortgaged;
- (c) include a description sufficient to identify the registered interest to be mortgaged; and
- (d) include a description of the debt or liability secured by the mortgage.

(2) If the mortgagor is borrowing as a trustee, a document specifying the details of the trust, or the document creating the trust, shall be deposited with the mortgage unless —

- (a) a document has already been deposited with an instrument of transfer under subsection 87(2); and
- (b) the details of the trust have not since changed.

(3) Subsection 71(1) does not limit the matters that the approved form for an instrument of mortgage may require to be included in the instrument.

Effect of registration of a mortgage

72. A registered mortgage of an interest in land operates only as a charge on the interest for the debt or liability secured by the mortgage.

Amending a mortgage

73. (1) Subject to subsection 73(2), a registered mortgage may be amended by registering an instrument of amendment of the mortgage.

(2) The instrument of amendment shall not —

- (a) increase or decrease the area of land charged by the mortgage; or
- (b) add or remove a party to the mortgage.

Amending priority of mortgages

74. (1) The priority of registered mortgages may be amended by registering an instrument amending priority.

(2) The instrument amending priority shall —

- (a) specify the order of priority of all affected registered mortgages; and
- (b) be executed by all mortgagees affected by the amendment.

(3) On registration of the instrument amending priority, the mortgages have priority in the order specified in the instrument.

Sale by mortgagee — vesting of interest

75. (1) This section applies in respect of the registration of an instrument of transfer executed by a registered mortgagee after the exercise of the power of sale under the mortgage.

(2) Where this section applies, registration of the instrument of transfer vests in the transferee the mortgagor's interest, free from all liability on account of —

- (a) the mortgage;
- (b) any other mortgage registered after the registration of the interest of the mortgagor but before the registration of the transfer; or
- (c) any other mortgage over which the first-mentioned mortgage has priority under an instrument amending priority registered under section 74.

Liability of mortgagee in possession of leased parcel

76. (1) Subject to subsection 76(2), a registered mortgagee of a registered leasehold interest in a parcel who enters into possession under the lease (whether by taking the rents or profits or in another way) is liable under the lease to the same extent as the lessee was liable under the lease before the mortgagee entered into possession.

(2) The liability of the mortgagee under the lease is limited to the amount of rents, profits or other benefits received by the mortgagee during the mortgagee's possession.

Discharge of mortgage

77. (1) A registered mortgage may be discharged to the extent shown in the discharge instrument, by registration of an instrument of discharge of mortgage.

(2) The instrument of discharge of mortgage may discharge the debt or liability secured for —

- (a) all or part of the mortgage; or
- (b) 1 or more of the mortgagors.

Division 4 — Easements

Registration of easement

78. (1) A registered easement burdening a parcel of land may be created by registering an instrument of easement executed —

- (a) by the registered owner of the parcel of land to be burdened by the easement; or
- (b) in the case of an instrument attached to a subdivision proposal — by the registered owner or owners of the land that is the subject of the proposal.

(2) A registered easement is not created by the registration of a subdivision survey plan unless it is accompanied by an instrument of easement in respect of that easement.

Easement in gross for a public purpose

79. (1) The Registrar may register an instrument of easement under section 78 for an easement that does not benefit any land and is registered in favour of 1 of the following:

- (a) the Norfolk Island Administration;
- (b) the Commonwealth or a Commonwealth corporation or instrumentality;
- (c) a person or body providing a lawful public utility service.

(2) If the easement is registered in favour of a person or body, the registered owner of the parcel burdened by the easement may recover from the person or body a reasonable contribution towards the cost of keeping the part of the parcel affected by the easement in a condition appropriate for enjoyment of the easement.

(3) The liability to contribute may be amended or excluded by agreement.

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

(5) Where —

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

the easement —

- (c) shall, on application by the transferee under subsection 79(2), be registered in the name of the person or body to whom the business of providing that service is transferred; or
- (d) where the transfer of the easement has not been so registered within 30 days of the transfer of the business or where there is no such transferee—shall be extinguished.

(6) In this section —

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

Requirements of instrument of easement

- 80. (1)** An instrument of easement shall include —
- (a) in the case of an instrument attached to a subdivision proposal — the subdivision survey plan showing clearly the nature and location of the proposed easement; or
 - (b) in any other case —
 - (i) a sketch plan showing clearly the nature and location of the proposed easement, drawn to a standard to the Registrar's satisfaction; or
 - (ii) if required by the Registrar — a survey plan showing clearly the nature and location of the proposed easement.
- (2)** The instrument shall specify —
- (a) the nature of the proposed easement and its terms;
 - (b) the parcel to be burdened by the proposed easement; and
 - (c) either —
 - (i) the parcel to be benefited by the proposed easement; or
 - (ii) in the case of an easement to be registered in accordance with section 79 — the person or body in whose favour the proposed easement is to be registered.

(3) This section does not limit the matters that the approved form for an instrument of easement may require to be included in the instrument.

Particulars to be registered

81. When registering an instrument of easement, the Registrar shall record particulars of the following in the Register:

- (a) the parcel burdened by the easement;
- (b) either —
 - (i) the parcel to be benefited by the proposed easement; or
 - (ii) in the case of an easement being registered in accordance with section 79 — the person or body in whose favour the proposed easement is to be registered;
- (c) any registered lease benefited or burdened by the easement.

Limitation of registered easements

82. A registered easement may be limited wholly or partly in height or depth, or both.

83. (1) If a fee simple interest in, or a Crown lease of, a parcel burdened by a registered easement, is surrendered to the Crown, the easement continues over the resulting Crown land only if —

- (a) the easement is registered in favour of a person or body providing a public utility service; and
- (b) the executive member approves continuation of the easement.

(2) If an easement continues over Crown land, the continuation shall be recorded in the Register.

Same owner of benefited and burdened parcels

84. An instrument of easement may be registered even if —

- (a) the parcel benefited and the parcel burdened by the easement have, or are to have, the same registered owner; or
- (b) the registered owner of the parcel benefited by the easement has a registered interest in the parcel burdened by the easement.

Extinguishment of easement

85. (1) A registered easement shall —

- (a) be wholly or partly extinguished by the registration of an instrument of extinguishment of the easement;
- (b) be extinguished by the registration of a single registered title for the parcel burdened and the parcel benefited by the easement; or
- (c) subject to section 83, be extinguished by the surrender to the Crown of the fee simple interest in, or the Crown lease of, the parcel burdened by the easement.

(2) The instrument of extinguishment shall be signed by —

- (a) the registered owner of the parcel benefited by the easement or the person or body in whose favour the easement is registered; and
- (b) each registered mortgagee and lessee (other than a lessee who does not receive a benefit from the easement) of the parcel benefited by the easement.

Amending an easement

86. (1) Subject to subsection 86(2), a registered easement may be amended by registering an instrument of amendment of the easement.

(2) The instrument of amendment shall not —

- (a) change the location of the easement;
- (b) increase or decrease the area of land affected by the easement; or
- (c) change a party to the easement.

*Division 5 — Trusts and deceased estates***Registration of trusts**

87. (1) The trustee of a registered interest in a parcel, may be registered as trustee of the interest by registration of an instrument of transfer that —

- (a) transfers a registered interest in a parcel to the trustee; or
- (b) declares that the registered owner holds the registered interest in a parcel as trustee.

(2) A document specifying details of the trust, or the document creating the trust, shall be deposited with the instrument of transfer.

(3) The document deposited with the instrument of transfer does not form part of the Register.

(4) The Registrar shall keep a certified copy of the document and return the original to the person who deposited it.

Registering personal representative

88. (1) The Registrar may, on application, register a person as proprietor of the interest of a deceased registered proprietor, only if —

- (a) where the person has obtained a grant of representation, or the resealing of a grant of representation, in Norfolk Island — the grant or resealing, or an office copy of the grant or resealing issued by the Supreme Court, is deposited;
- (b) where paragraph 88(1)(a) does not apply and the registered proprietor died without a will —
 - (i) letters of administration of the deceased person's estate have not been granted in Norfolk Island within 6 months after the death;
 - (ii) the gross value of the deceased person's Norfolk Island estate at the date of death was no more than \$150,000; and
 - (iii) the Registrar is of the opinion that the person would succeed in an application for a grant of representation; or
- (c) where paragraph 88(1)(a) does not apply and the registered proprietor died leaving a will — the Registrar is of the opinion that the person would succeed in an application for a grant of representation.

(2) Where the Registrar registers a person as proprietor of an interest in land under subsection 88(1), the Registrar shall also record details of the grounds on which the person was registered as proprietor.

(3) A person registered under this section without a grant of representation has the same rights, powers and liabilities in respect of the parcel or interest as if a grant of representation had been made to the person.

(4) The validity of an act done or payment made in good faith by a person registered under this section is not affected by a later grant of representation.

(5) If the grantee of a grant of representation is different from the person registered under subsection 88(2), the person registered shall —

- (a) account to the grantee for all property of the deceased person controlled by the person before the grant; and
- (b) take all action necessary to divest from the person and vest in the grantee all property of the deceased person remaining under the person's control.

Registering beneficiary

89. (1) Subject to subsection 89(2), a person who is beneficially entitled under a will to a parcel or an interest in a parcel of a deceased registered proprietor may apply to the Registrar to be registered as proprietor of the parcel or the interest, as the case requires.

(2) The Registrar may register the person only if —

- (a) written consent is given by —
 - (i) the deceased's personal representative; or
 - (ii) a person who, in the Registrar's opinion, would succeed in an application for a grant of representation; and
- (b) the person satisfies the Registrar that the person is beneficially entitled to the parcel.

Applying for Supreme Court order

90. (1) This section applies to —

- (a) the executive member;
- (b) a trustee of, or beneficiary under, a trust of a registered interest; or
- (c) a personal representative, a devisee or anyone else interested in —
 - (i) a registered interest of a deceased registered proprietor; or
 - (ii) a trust involving a registered interest of a deceased registered proprietor.

(2) A person to whom this section applies may apply to the Supreme Court for an order that a specified person be registered as proprietor of the relevant registered interest in a parcel.

(3) The Supreme Court may make 1 or more of the following orders:

- (a) that a person be registered as proprietor of the interest in the parcel;
- (b) that a person be removed from the Register as proprietor of the interest in the parcel;
- (c) that a caveat be registered to protect a person's interest in the parcel;
- (d) that a person advertise in a specified form, content or way;
- (e) that costs be paid by any person or out of any property.

(4) The Registrar shall register particulars of an order if a request to register the order is lodged and an office copy of the order is deposited at the Registrar's office.

(5) An order does not vest a registrable interest in a parcel until the order is registered.

Division 6 — Writs of execution

Registering a writ of execution

91. The Registrar may register a writ of execution only if a request to register it, and an office copy of it, is lodged.

Effect of registering a writ of execution

92. For purchasers, lessees, mortgagees and creditors, a writ of execution —
- (a) cannot, until registered, bind or affect registered land, whether or not there is actual or constructive notice of the writ; and
 - (b) binds or affects registered land only if the writ is executed and put in force within —
 - (i) 6 months of its lodgment; or
 - (ii) the extended time allowed by the court where the writ is filed and notified to the Registrar.

Cancellation of registration

93. Registration of a writ of execution may be cancelled if —
- (a) a request to cancel it is lodged; and
 - (b) the Registrar is satisfied that the time, or extended time, for executing the writ has ended.

Discharging or satisfying writ of execution

94. The discharge or satisfaction of a writ of execution may be registered if a request to register it is lodged.

Transfer of parcels sold in execution

95. (1) If a parcel is sold under a registered writ of execution, the sheriff or registrar of the Supreme Court may execute an instrument of transfer.

(2) On registration of the instrument of transfer, the transferee becomes the registered owner of the parcel subject to —

- (a) registered interests; and
- (b) equitable mortgages notified by caveat lodged before registration of the writ of execution.

*Division 7 — Caveats***Requirements of caveats**

- 96. (1)** A caveat shall be signed by or on behalf of the caveator.
- (2)** The caveat shall state —
- (a) the name of the caveator;
 - (b) an address where documents can be served on the caveator;
 - (c) unless the Registrar dispenses with it, the name and address of —
 - (i) the registered owner of the parcel affected by the caveat; and
 - (ii) anyone else having the right to deal with the parcel affected by the caveat;
 - (d) the registered interest affected by the caveat;
 - (e) the interest claimed by the caveator; and
 - (f) the grounds on which the interest is claimed;

and, if the caveat relates to only a part of a parcel, it shall include a description of the affected part.

Lodging a caveat

97. (1) Subject to subsection 97(2), a caveat may be lodged by any of the following:

- (a) a person claiming an interest in a parcel;
- (b) the Registrar under section 15 or 16;
- (c) the registered owner of the parcel;
- (d) a person to whom an Australian court has ordered that an interest in a parcel be transferred;
- (e) a person who has the benefit of a subsisting order of an Australian court in restraining a registered proprietor from dealing with a parcel.

(2) A caveat may only be lodged by an equitable mortgagee if it is a caveat to which section 101 applies.

Notifying caveat

98. The Registrar shall give written notice of lodgment of a caveat to each person whose registered interest or whose right to registration of an instrument is affected by the caveat.

Effect of lodging caveat

99. (1) Subject to subsection 99(2), lodgment of a caveat prevents registration of an instrument affecting the parcel until the caveat lapses or is withdrawn, removed or cancelled.

(2) Lodgment of a caveat does not prevent registration of the following:

- (a) an instrument specified in the caveat as an instrument to which the caveat does not apply;
- (b) an instrument if the caveator consents to its registration;
- (c) an instrument executed by a mortgagee whose interest was registered before lodgment of the caveat if —
 - (i) the mortgagee has power under the mortgage to execute the instrument; and
 - (ii) the caveator claims an interest in the parcel as security for the payment of money or money's worth;
- (d) an instrument of transfer of mortgage executed by a mortgagee whose interest was registered before lodgment of the caveat;
- (e) another interest that, if registered, will not affect the interest claimed by the caveator.

(3) The exceptions referred to in paragraphs 99(2)(c) and 99(2)(d) do not apply to a caveat lodged by the Registrar.

(4) The exception in paragraph 99(2)(d) does not apply to a caveat lodged by the registered owner.

Withdrawing a caveat

100. A caveator may withdraw a caveat by lodging a request to withdraw it.

Lapsing of caveat

101. (1) This section does not apply to a caveat if —

- (a) it is lodged by the registered owner;
- (b) the consent of the registered owner is deposited when the caveat is lodged;
- (c) an office copy of a court order mentioned in paragraph 97(d) or 97(e) is deposited when the caveat is lodged; or
- (d) it is lodged by the Registrar under section 15 or 16.

(2) A caveatee of a caveat to which this section applies may serve on the caveator a notice requiring the caveator to start a proceeding in the Supreme Court to establish the interest claimed under the caveat.

(3) The caveatee shall notify the Registrar within 14 days of service of the notice on the caveator.

(4) If a caveator does not want a caveat to which this section applies to lapse, the caveator shall —

- (a) commence proceedings in the Supreme Court to establish the interest claimed under the caveat —
 - (i) if a notice under subsection 101(2) is served on the caveator — within 14 days after the notice is served on the caveator; or
 - (ii) if a notice under subsection 101(2) is not served on the caveator — within 3 months after the lodgment of the caveat; and
- (b) notify the Registrar within the 14 days or the 3 months that proceedings have been commenced and identify the proceedings.

(5) If the caveator does not comply with subsection 101(4), the caveat lapses.

(6) The caveator is taken to have complied with subsection 101(4)(a) if proceedings have been commenced in the Supreme Court to establish the interest claimed under the caveat before the caveat was lodged.

(7) The Registrar may remove from the Register a caveat that has lapsed.

Removing a caveat

102. (1) A caveatee may at any time apply to the Supreme Court for an order that a caveat be removed.

(2) The Supreme Court may make the order whether or not the caveator has been served with the application, and may make the order on the terms it considers appropriate.

Cancelling a caveat

103. (1) The Registrar may cancel a caveat if a request to cancel the caveat is lodged and the Registrar is satisfied that —

- (a) the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn;
- (b) the claim of the caveator has been settled by agreement or otherwise satisfied; or
- (c) the nature of the interest claimed does not entitle the caveator to prevent registration of an instrument that has been lodged.

(2) The Registrar shall notify the caveator of the Registrar's intention to cancel the caveat at least 7 days before cancelling it.

(3) If an instrument that has been lodged will, on registration, give full effect to an interest claimed in a caveat, the Registrar may remove the caveat immediately before registering the instrument.

Further caveat

104. If a caveat lapses or is withdrawn, cancelled or removed, the person who was the caveator may not lodge another caveat in relation to the same parcel on the same, or substantially the same, grounds without the leave of the Supreme Court.

Compensation for improper caveat

105. (1) A person who lodges or continues a caveat without reasonable cause shall compensate anyone else who suffers loss or damage as a result.

(2) In a proceeding for compensation under subsection 105(1), the Supreme Court may include in a judgment for compensation a component for exemplary damages.

(3) In a proceeding for compensation under subsection 105(1), the onus of proving that a caveat was lodged or continued with reasonable cause is on the person who lodged or continued the caveat.

*Division 8 — Disabilities***Persons under a disability**

106. The Supreme Court may authorise a person to act for a registered proprietor of an interest in land who appears to the court to be incapable of managing his or her own affairs because of a legal disability.

Acts for persons under a legal disability

107. If—

- (a) an act is required or permitted to be done by or in relation to a person under this Act; and
- (b) the person can not manage his or her own affairs because of a legal disability;

the act may be done by or in relation to a person who is responsible by law for the management and care of the first person's interests.

PART 6 — INSTRUMENTS*Division 1 — Registration of instruments***Registration of instruments**

108. (1) The Registrar registers an instrument by recording in the Register in relation to the parcel to which the instrument relates —

- (a) the particulars necessary to identify the instrument; and
- (b) if the instrument creates or transfers an interest in a parcel —
 - (i) the details of the interest; and
 - (ii) the name of the person who holds title to the interest.

(2) In registering an instrument affecting a parcel of land, the Registrar shall give the instrument a distinguishing reference and record the reference in the particulars in the Register about the parcel.

(3) On registration of an instrument in the Register, the instrument forms part of the Register.

Title must be registered before registration of instrument

109. An instrument (other than a deed of grant, Crown lease or certificate of title) may be registered in relation to a parcel only if title to that parcel has previously been registered under paragraph 138(1)(a) or 138(1)(b).

When instrument capable of registration

110. (1) Subject to subsection 110(2), the Registrar may register an instrument only if —

- (a) it complies with this Act;
- (b) it appears on its face to be capable of registration;
- (c) it is in the appropriate form; and
- (d) it is accompanied by the fee (if any) prescribed under the *Land Administration Fees Act 1996* for that type of instrument.

(2) The Registrar may register an instrument that is not in the appropriate form if the Registrar is satisfied it is not reasonable to require the instrument to have been lodged or executed in the appropriate form.

Additional requirements about survey plans

110A. (1) The fee referred to in paragraph 110(1)(d) may include for survey plans of specified types specified amounts reflecting the usual reasonable costs of assessing the accuracy of plans of those types.

(2) If the actual cost of assessing the accuracy of a survey plan is greater than the amount specified under subsection 110A(1), the person who lodges a survey plan shall pay, in addition to the fee, the difference to the extent that the cost is reasonable.

- (3)** The Registrar may refuse to register a survey plan unless —
 - (a) all instruments of title relevant to the survey are lodged with the Registrar; and
 - (b) the amount payable under subsection 110A(2) is paid.

Required number of executed copies to be lodged

111. (1) The Registrar may refuse to register an instrument if the number of executed copies of the instrument required by the Registrar under subsection 111(2) are not lodged.

(2) The Registrar may require a specified class of instruments to be lodged in duplicate or triplicate.

Order of registration of instruments

112. Subject to section 118, instruments shall be registered in the order in which they are lodged.

Priority of registered instruments

113. (1) Registered instruments have priority according to when each of them was lodged and not according to when each of them was executed.

(2) An instrument is taken to be lodged on the date and at the time endorsed on the instrument by the Registrar as the date and time of the lodgment unless the contrary is proved.

Correcting instruments lodged for registration

114. (1) The Registrar may correct an obvious error in a lodged survey plan or other instrument if the Registrar is satisfied that —

- (a) the instrument is incorrect; and
- (b) the correction will not prejudice the rights of a person.

(2) A correction shall be made in such a manner as to preserve the record and show that a correction has been made and the time, date and circumstances of the correction.

(3) An instrument corrected by the Registrar under this section has the same effect as if the relevant error had not been made.

Requisitions

115. (1) The Registrar may, by written notice given to a person who has lodged or deposited an instrument or other document, require the person —

- (a) to re-execute, complete or correct the instrument or document if it appears to the Registrar to be wrong, incomplete or defective; or
- (b) to produce to the Registrar specified information, or deposit a specified instrument or document, in support of the person's application to register the instrument.

(2) The Registrar may require the instrument, document or information to be verified by statutory declaration or affidavit.

(3) The notice may specify when, and the place where, it shall be complied with.

(4) The Registrar may extend the time for complying with the notice.

(5) The Registrar may refuse to deal with the instrument or document lodged or deposited by the person (and any instrument that depends on it for registration) until the person complies with the notice.

Rejecting instrument for failure to comply with requisition

116. (1) If a notice under section 115 is not complied with by a person within the time specified or extended by the Registrar, the Registrar may reject the instrument or document to which the notice relates and any instrument that depends on it for registration.

(2) An instrument rejected under subsection 116(1) loses its priority under section 113 and shall be returned by the Registrar to the person who lodged it.

(3) A memorandum recording the rejection of an instrument under subsection 116(1) may be endorsed on the rejected instrument or in a separate record kept in the Registrar's office.

(4) This section does not prevent re-lodgment of a rejected instrument after the notice has been complied with.

Borrowing lodged instrument before registration

117. (1) The Registrar may permit the following persons to borrow a lodged instrument before it is registered:

- (a) the person who lodged or deposited the instrument;
- (b) a person on whose behalf the instrument was lodged or deposited;
- (c) the agent of a person mentioned in paragraph 117(1)(a) or 117(1)(b).

(2) The person shall return the instrument to the Registrar within the time specified by the Registrar.

(3) The Registrar may extend the time for returning the instrument.

(4) A person shall not fail to return the instrument to the Registrar within the time specified or extended by the Registrar, unless the person has a reasonable excuse.

Penalty for an offence against subsection 117(4): 5 penalty units.

Withdrawing lodged instrument before registration

118. (1) A person who lodges an instrument may withdraw it before registration.

(2) If the Registrar is satisfied that the order in which an instrument has been lodged in relation to other instruments is such that the instrument will not give effect to the intention expressed in it or a related instrument, or is an instrument that should not have been lodged, the Registrar may withdraw the instrument.

(3) An instrument that is withdrawn by the Registrar under subsection 118(1) shall be retained by the Registrar, unless the instrument is an instrument that should not have been lodged.

(4) The Registrar may re-lodge an instrument that has been withdrawn by the Registrar.

(5) On receiving a written application, the Registrar may re-lodge an instrument that has been withdrawn under subsection 118(1).

(6) An instrument withdrawn under subsection 118(1) or 118(2) loses its priority and is taken to have been lodged on the date and at the time endorsed on it by the Registrar at the time of its re-lodgment.

(7) Subsection 118(6) does not apply to a subdivision proposal referred to in section 51.

Consent for dealing

119. If the consent of a person is necessary for the sale or other dealing with a parcel of land, the consent shall be —

- (a) written on the relevant instrument; or
- (b) if the Registrar considers it appropriate — deposited with the relevant instrument.

Execution and proof

120. (1) An instrument required or permitted to be executed shall be in the appropriate form when it is executed.

(2) Subject to subsection 120(3), for an individual, an instrument is validly executed if it is executed in a way permitted by law and is witnessed.

(3) The Registrar may register an instrument executed by an individual even though the execution was not witnessed, if he or she considers that it is appropriate in all the circumstances.

(4) If an instrument is executed by a legal practitioner authorised by a transferee or a person in whose favour an interest is created, the execution need not be witnessed.

(5) The witnessing of an instrument may be proved in any way permitted by law.

(6) This section does not apply to a survey plan.

Execution of certain instruments

121. (1) An instrument to transfer or create an interest in a parcel of land shall be executed by —

- (a) the transferor or the person creating the interest; and
- (b) the transferee or the person in whose favour the interest is to be created or a solicitor authorised by the transferee or the person.

(2) A total or partial discharge of mortgage need only be executed by the mortgagee.

Obligations of witness for individual

122. A person who witnesses an instrument executed by an individual shall —

- (a) first take reasonable steps to ensure that the individual is the person entitled to sign the instrument;
- (b) have the individual execute the document in the presence of the person; and
- (c) not be a party to the instrument.

Evidentiary effect of recording particulars in the Register

123. In all proceedings, the particulars of a registered instrument recorded in the Register are conclusive evidence of —

- (a) the registration of the instrument;
- (b) the contents of the instrument;
- (c) all terms stated or implied in it by this or another Act; and
- (d) when the instrument was lodged and registered.

*Division 2 — General***Registrar may call in instrument for correction or cancellation**

124. The Registrar may require a person to deposit an instrument for correction or cancellation.

Instrument lost or destroyed

125. (1) If the Registrar is satisfied that a registered instrument has been lost or destroyed, the Registrar may issue a substitute instrument.

(2) The Registrar may endorse on the substitute instrument —

- (a) that the instrument is a substitute replacing a lost or destroyed instrument;
- (b) the date that the substitute instrument was issued;
- (c) that the substitute is to be used in place of the original instrument;
- (d) the location of the original instrument so far as it is known; and
- (e) other known circumstances of the loss or destruction.

(3) On the issue of the substitute instrument under subsection 125(1) the substitute instrument —

- (a) becomes the registered instrument instead of the original instrument; and
- (b) has the priority to which the original instrument was entitled.

(4) The Registrar shall record in the Register that the substitute instrument has been issued and the date it was issued.

Dispensing with production of instrument

126. (1) The Registrar may dispense with the production of an instrument.

(2) Where an instrument has been lost or destroyed and a person is seeking to deal with a relevant interest in a parcel, the Registrar may require evidence that the person is the registered proprietor of that interest, and that the instrument —

- (a) has been lost or no longer exists; and
- (b) is not deposited as security.

(3) The Registrar shall record in the Register that production of the instrument has been dispensed with and the date production of it was dispensed with.

Requiring survey plan to be lodged

127. (1) The Registrar may require a registered proprietor of an interest in a parcel who proposes to transfer, lease or otherwise deal with all or part of the interest to lodge a survey plan of the parcel.

(2) The survey plan shall be certified as accurate by a surveyor authorised under the *Surveys Act 1937*.

Destroying instrument in certain circumstances

128. The Registrar may destroy a part of the Register or an instrument held in the Registrar's office if the part of the Register or the instrument —

- (a) is not evidence of an existing registered interest; or
- (b) is evidence of an existing registered interest of which there is accurate and sufficient evidence in another part of the Register and will not be required for registering the effect of a transaction.

Transferor shall do everything necessary etc.

129. A person who, for valuable consideration, executes an instrument to transfer or create a registrable interest in a parcel shall do everything necessary to give effect to the terms and other matters stated in the instrument or implied by this or another Act.

PART 7 — MISCELLANEOUS**Jurisdiction of Supreme Court**

130. Where a provision of this Act, whether expressly or by implication, authorises a civil or criminal proceeding to be commenced in the Supreme Court in relation to a matter —

- (a) that provision shall —
 - (i) be deemed to vest the Court with jurisdiction in that matter; and
 - (ii) be construed as providing that the jurisdiction is vested so far only as the Constitution permits; and
- (b) except so far as the contrary intention appears, the jurisdiction so vested is not limited by any limits to which any other jurisdiction of the Court may be subject.

Regulations

131. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection 131(1), Regulations may be made in relation to prescribing penalties not exceeding 10 penalty units for a contravention of the Regulations.

PART 8 — TRANSITIONAL — REGISTRATION OF TITLE*Division 1 — Preliminary***Application of Part**

132. This Part applies to land in respect of which title has not previously been registered.

*Division 2 — Applications for registration of title***Applications**

133. (1) Application for registration of title in respect of land may be made by —

- (a) a person who claims to be the person in whom the fee simple is vested;
- (b) a legal representative of a person of the type described in paragraph 133(1)(a), in the name of that person; or
- (c) if the land is held under a Crown lease — the Administrator.

- (2) An application shall —
- (a) be in a form approved by the Registrar;
 - (b) describe the land in a manner consistent with the Official Survey;
 - (c) describe the interest of the applicant in the land;
 - (d) describe any other interests in the land known to the applicant;
 - (e) be accompanied by any documents held by the applicant that provide evidence as to title to the land;
 - (f) where an application is made for the purposes of registering a document in relation to the land — state the nature of the document;
 - (g) be accompanied by the fee prescribed under the *Land Administration Fees Act 1996*; and
 - (h) be given to the Registrar.

(3) The Registrar may, by written notice given to a person who has made an application under subsection 133(1), require the person to produce to the Registrar specified information, or to deposit a specified document, in support of the person's application.

Withdrawal of application

134. (1) An applicant may withdraw the application at any time prior to the registration of title or qualified title.

(2) Where an applicant withdraws the application, the Registrar shall return to the applicant all documents lodged with the application.

Division 3 — Registration of title

Receipt of application to be published

135. (1) Where an application has been made in accordance with section 133, the Registrar shall publish a notice in the Gazette —

- (a) stating that an application has been made for registration of title in respect of specified land; and
- (b) inviting submissions about the title to the land within 14 days of the date of the notice.

(2) The Registrar shall publish the notice within 14 days after the date of receipt of the application.

Examination of title

136. (1) The Registrar shall examine the title to the land described in each application made in accordance with section 133.

(2) For the purposes of the examination, the Registrar shall have regard to —

- (a) any documents or other information submitted to the Registrar with the application;
- (b) any documents or other information held by the Registrar that relate to the title to that land;
- (c) any submissions received by the Registrar in response to a notice under subsection 135(1) in relation to that application; and
- (d) any other matter or document that the Registrar considers to be relevant.

(3) For the purposes of the examination the Registrar may hold an inquiry under Division 3 of Part 2.

Order in which applications are examined

137. (1) The Registrar shall, subject to subsection 137(2), examine applications made in accordance with section 133 in the order in which they are received at the Registrar's office.

(2) The Registrar shall give priority to an application that has been made for the purposes of registering a document in relation to the land that is the subject of the application.

Application to be determined

138. (1) Subject to subsection 138(2) and on completion of the examination of title to land, the Registrar shall —

- (a) register title to the land in accordance with section 139;
- (b) register qualified title to the land in accordance with section 140; or
- (c) reject the application.

(2) The Registrar shall not register title or qualified title before —

- (a) the expiry of the period of 30 days after the day on which a notice under section 141 is published in respect of that title; or
- (b) if an application has been made to the Administrative Review Tribunal under section 151 before the expiry of that period —
 - (i) the application to the Tribunal has been withdrawn; or
 - (ii) the proceedings (including any appeal to a court in relation to those proceedings) have otherwise been determined;

whichever is later.

(3) As soon as practicable after the Registrar has made a decision under subsection 138(1), he or she shall give the applicant notice of the decision including —

- (a) a statement of reasons for the decision; and
- (b) particulars of the applicant's right to apply to the Administrative Review Tribunal for review of the decision.

Registration of title

139. (1) The Registrar shall register title by recording in the Register the proposed particulars of title for the land.

(2) The Registrar shall not register title to the land where he or she is aware of any uncertainty as to the description of the land.

(3) The Registrar shall not register title to the land unless satisfied, on reasonable grounds that —

- (a) the proposed owner is entitled to hold the land;
- (b) each other proposed proprietor of a registrable interest in the land is entitled to hold that interest; and
- (c) there are no defects of title in the land.

Registration of qualified title

140. (1) The Registrar shall register qualified title by —

- (a) recording in the Register the proposed particulars of title for the land; and
- (b) entering in the Register a minute in relation to the land which describes each probable or possible registrable interest in the land that has not been proved to the satisfaction of the Registrar.

(2) The Registrar shall not register qualified title to the land if he or she is aware of any uncertainty as to the description of the land.

(3) The Registrar shall not register qualified title to the land unless he or she is satisfied, on reasonable grounds that —

- (a) the proposed owner is entitled to hold the land;
- (b) each proposed proprietor of a registrable interest in the land that has been proved to the satisfaction of the Registrar is entitled to hold that interest; and
- (c) each probable or possible registrable interest in the land that has not been proved to the satisfaction of the Registrar is described in the proposed Registrar's minute.

Intention to register title to be published

141. (1) Where the Registrar makes a decision under subsection 138(1), the Registrar shall publish a notice of the decision in the Gazette.

(2) The notice shall —

- (a) contain a description of the land in respect of which title is proposed to be registered;
- (b) state that a person may apply to the Administrative Review Tribunal for review of the decision of the Registrar under paragraph 138(1)(a), 138(1)(b) or 138(1)(c) during the period of 30 days after the day on which the notice is published;
- (c) state that proposed certificates of title, proposed qualified certificates of title and proposed Registrar's minutes, may be inspected at the Registrar's office at any time that the Office is open for business; and
- (d) state that on registration of title the interests in the land described in the Register are indefeasible as against any unregistered interests (other than interests recorded in a Registrar's minute in relation to the land).

(3) The notice may be in respect of 1 or more decisions.

Issue of certificates

142. (1) As soon as practicable after registration of title or registration of qualified title in respect of a parcel of land, the Registrar shall issue —

- (a) a certificate of title for the land under subsection 41(1); or
- (b) a certificate of qualified title together with a copy of the Registrar's minute for the land;

as the case requires.

(2) A certificate of qualified title issued in respect of a parcel of land shall —

- (a) state that it is evidence of qualified title to the parcel;
- (b) specify the particulars of title recorded in the Register in relation to that land; and
- (c) indicate that there is a Registrar's minute in relation to the parcel of land that specifies probable or possible registrable interests in the parcel and that the registered interests specified on the certificate are defeasible by an interest specified in the minute.

(3) The Registrar shall issue the certificate of qualified title —

- (a) by sending it by post to—
 - (i) the registered owner; or
 - (ii) on written request by the registered owner - another person specified in the request at the specified address; or
- (b) by personally giving it to the registered owner or to another person specified by the registered owner in writing.

Dealings with interests mentioned in Registrar's minute

143. Where a Registrar's minute specifies the probable or possible existence of a registrable interest in land, a document affecting that interest is not capable of being registered until that interest is registered.

Applications in relation to Registrar's minute

144. An application to the Registrar to resolve a matter specified in a Registrar's minute may be made by —

- (a) a registered proprietor of an interest in the land; or
- (b) a person claiming an interest in land in relation to that matter.

Alteration of qualified certificate and Registrar's minute

145. (1) Where the Registrar is satisfied that an interest specified in a Registrar's minute is a registrable interest, he or she shall —

- (a) register the interest;
- (b) call in the relevant qualified certificate and record that interest on the certificate; and
- (c) alter the Registrar's minute to remove the reference to that interest.

(2) If the Registrar is satisfied that an interest specified in a Registrar's minute is not a registrable interest, the Registrar shall alter the minute to remove the reference to that interest.

(3) Where the Registrar alters a Registrar's minute, the Registrar shall send by post a copy of the altered minute to each person named in the qualified certificate or the minute in relation to an interest in the land.

Conversion of qualified title

146. (1) The Registrar shall not issue an ordinary certificate in substitution for a qualified certificate except as provided in this section.

(2) Subject to subsection 146(3), where —

- (a) the Registrar is satisfied —
 - (i) that each matter specified in the Registrar's minute relating to a parcel of land has been resolved; or
 - (ii) that, by reason of lapse of time or for any other reason, the resolution of those matters has become unnecessary; or
- (b) 12 years have expired since the registration of qualified title in relation to a parcel of land and title has not previously been registered in accordance with section 139 in respect of that land;

the Registrar shall, acting in accordance with any relevant decisions of the Administrative Review Tribunal or a court —

- (c) cancel the registration of qualified title in respect of that parcel;
- (d) call in and cancel the qualified certificate for that parcel;
- (e) remove from the Register the Registrar's minute in relation to the parcel;
- (f) register title to the parcel in accordance with section 139; and

- (g) issue an ordinary certificate in relation to the parcel under subsection 41(1).

(3) The Registrar shall not take any action under subsection 146(2) before —

- (a) the expiry of the period of 3 months after the day on which a notice under section 147 is published in respect of that title; or
- (b) if an application has been made to the Administrative Review Tribunal under section 151 before the expiry of that period —
 - (i) the application to the Tribunal has been withdrawn; or
 - (ii) the proceedings (including any appeal to a court in relation to those proceedings) have otherwise been determined;

whichever is later.

(4) As soon as practicable after making a decision under subsection 146(2), the Registrar shall give notice in writing of the decision and the reasons for the decision, to each person —

- (a) who is, or will be after the registration of title, a registered proprietor of an interest in the parcel; and
- (b) who is listed in the Registrar's minute in relation to a probable or possible interest in the parcel.

(5) A notice under subsection 146(4) shall include particulars of the applicant's right to apply to the Administrative Review Tribunal for review of the decision.

Intention to register title to be published

147. (1) Where the Registrar makes a decision under subsection 146(2), the Registrar shall publish a notice of the decision in the Gazette.

(2) The notice shall —

- (a) state that the Registrar has decided to cancel the registration of qualified title in respect of a specified parcel of land and to register title in respect of that parcel;
- (b) describe the land in respect of which title is proposed to be registered;
- (c) state that a person may apply to the Administrative Review Tribunal for review of the decision of the Registrar under subsection 146(2) during the period of 3 months after the day on which the notice is published;
- (d) state that proposed certificates of title may be inspected at the Registrar's office at any time that the office is open for business; and
- (e) state that on registration of title the registered interests in the land described in the Register are indefeasible as against any unregistered interests.

(3) The notice may be in respect of 1 or more decisions.

*Division 4 — Miscellaneous***Inspection of documents**

148. In addition to the rights conferred by section 30, at any time when the Registrar's office is open for business and on payment of the fee prescribed under the *Land Administration Fees Act 1996*, a person may inspect and obtain a copy of any of the following documents:

- (a) an application under section 133 or 144 held by the Registrar;
- (b) a proposed certificate of title;
- (c) a proposed certificate of qualified title;
- (d) a proposed Registrar's minute.

Application of this Act to qualified title

149. (1) Subject to this Part, the provisions of this Act relating to registered title, to an ordinary certificate and to land comprised in an ordinary certificate apply, as far as possible, to registered qualified title, to a qualified certificate, to the land comprised in a qualified certificate and to the registration of instruments and other matters affecting registered qualified title.

(2) Subject to subsection 149(3), a qualified certificate is evidence as to title in all respects as if it were an ordinary certificate.

(3) Where, in any proceedings, a question arises concerning an interest in land that is specified in a Registrar's minute, a qualified certificate is not, in relation to that question, evidence as to the title to that land or any interest in that land.

Registration of informal deeds

150. An instrument that is not in the appropriate form may be registered if it bears a date before, or within 6 months after, the earliest date on which title, or qualified title, to the land was registered under section 138.

Review of administrative decisions

151. (1) Application may be made to the Administrative Review Tribunal for review of a decision of the Registrar —

- (a) to register title to land under paragraph 138(1)(a);
- (b) to register qualified title to land under paragraph 138(1)(b);
- (c) to reject an application to register title to land under paragraph 138(1)(c); or
- (d) to register title to land under paragraph 146(2)(f).

Period during which application may be made for review

152. (1) The purpose of this section is to modify the operation of the *Administrative Review Tribunal Act 1996* in relation to this Act.

(2) A person may make an application under section 151 for review of a decision of the kind referred to —

- (a) in paragraph 151(1)(a), 151(1)(b) or 151(1)(c), during the period commencing on the day on which the decision was made and ending on the 30th day after the day on which a notice is published under section 141 in respect of the decision; or
- (b) in paragraph 151(1)(d), during the period commencing on the day on which the decision was made and ending on the expiration of 3 months after the day on which a notice is published under section 147 in respect of the decision.

PART 9 — REPEALS AND TRANSITIONAL**Repeals**

153. (1) The Acts listed in the Schedule are repealed.

(2) Sections 3, 4 and 5 of the *Conveyancing Act 1913* are repealed.

Subdivision of land

154. Where —

- (a) a person has obtained approval to subdivide an area of land under the *Land Subdivision Act 1967*;
- (b) that approval is still in force; and
- (c) title to the land has been registered under this Act;

the Registrar may register the subdivision under section 49 as if the subdivision application had been given subdivision development approval within the meaning of the *Subdivision Act 2002*.

SCHEDULE

Subsection 153(1)

REPEALED ACTS*Titles to Land Act 1913**Land (Easements) Act 1984**Partition Act 1931*

NOTE**Penalty units**

See section 12A of the *Interpretation Act 1979*.

NOTES

The *Land Titles Act 1996* as shown in this consolidation comprises Act No. 20 of 1996 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Land Titles Act 1996</i>	20, 1996	Sections 1 and 2 commenced on 23 June 1996, (Gazette 46/97). Remaining sections (other than sections 5 and 153) commenced on 23 June 1997 (Gazette 34/97). Sections 5 and 153 to be commenced on a date to be fixed by the Administrator by notice in the Gazette.	
<i>Land Titles Amendment Act 1997</i>	18, 1997	4.12.97 (Gazette 62/97). <i>[previously consolidated as at 1 May 1998]</i>	
<i>Land Titles Amendment Act 2002</i>	8, 2003	27 February 2004 (Gazette No. 12, 27.02.04).	
<i>Land Titles (Amendment) Act 2005</i>	20, 2006	On notification – 3 November 2006 (Gazette No. 50, 3.11.06)	

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and
inserted substituted

Provisions affected	How affected
3	am 8, 2003
4	rs 8, 2003
5	am 18, 1997
5A	ad 18, 1997
6(2)	am 8, 2003
11(2)	ad 8, 2003
48	rs 8, 2003
49	am 8, 2003
52	rs 8, 2003
53	am 8, 2003
55A	am 20, 2006
55B(1)(c,)	ad 20, 2006
55B(3), (4), (5), (6)	ad 20, 2006
55D	ad 20, 2006
55E	ad 20, 2006
55F	ad 20, 2006
60(3), (4)	ad 20, 2006
110A	ad 8, 2003
154	am 8, 2003

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