

NORTHERN TERRITORY OF AUSTRALIA

REAL PROPERTY ACT

As in force at 9 June 1999

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 9 June 1999. Any amendments that may come into operation after that date are not included.

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## REAL PROPERTY ACT

**An Act to consolidate and amend the "Real Property Act, 1861," the "Real Property Act Amendment Act, 1878," and the "Rights-of-Way Act, 1881," and for other purposes**

### 1. Short title

This Act may be cited for all purposes as the "*Real Property Act*". (See back note 1)

### 2. [Repealed]

## PART I - INTRODUCTORY

### 3. Interpretation

In the construction and for the purposes of this Act, and in all instruments made or purporting to be made thereunder, the following terms shall, so far as not inconsistent with the context or subject, and except when such context or subject or the other provisions hereof require a different construction, have the respective meanings hereinafter assigned to them, that is to say –

"Caveatee" shall mean the registered proprietor of any land in respect of which a caveat has been lodged;

"Caveator" shall mean any person lodging a caveat;

"Certificate as to title" means a certificate as to title referred to in section 49;

"Computer" means a device for storing or processing information;

"Computer print-out" means a document that –

(a) is –

(i) a record of;

(ii) an extract from; or

(iii) derived from,

information stored in, or processed by, a computer; or

(b) is produced by a computer, or a series or combination of computers, directly or (with or without human intervention) with the aid of other equipment;

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"Court" shall mean the Supreme Court;

"Dealing" shall mean any instrument or matter, whereby any land or the title to any land can be affected, or dealt with;

"Document" means paper or other material containing writing, words, figures, drawings or symbols;

"Dominant land" shall mean any land having a right-of-way or other easement appurtenant thereto or annexed to the ownership thereof;

"Encumbrancee" shall mean the registered proprietor of an encumbrance;

"Encumbrancer" shall mean the registered proprietor of land subject to an encumbrance;

"Folio of the Register" means a folio of the Register referred to in section 47;

"Instrument" means a document capable of registration under this Act or in respect of which an entry is by or under this Act directed, required or permitted to be made in the Register, and includes an entry which is by this or any other Act required or permitted to be made in the Register;

"Land" shall extend to and include all tenements and hereditaments corporeal and incorporeal of every kind and description, and every estate and interest in land;

"Lessee" shall mean the registered proprietor of a lease;

"Lessor" shall mean the registered proprietor of land subject to a Lease;

"Lodge", in relation to a document, includes, in addition to the physical lodgement of the document, such other methods of lodgement permitted by the Registrar-General under section 59A;

"Mortgagee" shall mean the registered proprietor of a mortgage;

"Mortgagor" shall mean the registered proprietor of land subject to a mortgage;

"overriding statutory charge", in relation to land, means a statutory charge that is expressed in the Act by or under which it is established to be an overriding charge within the meaning of this Act or to have priority over all other charges on the land;

"prescribed" in relation to fees, means prescribed under the *Registration Act*;

"Record of administrative interests and information" means the record of administrative interests and information referred to in section 191E;

"Record of dealings" means the record of dealings referred to in section 51;

"Register" means the Register referred to in section 47;

"Registered proprietor" shall mean any person appearing by the Register to be the proprietor of any land;

"Registrar-General" means the Registrar-General for the Northern Territory and includes a Deputy Registrar-General appointed under the *Registration Act*;

"Servient land" shall mean land subject to any easement;

"Statutory assignment" shall mean any deed assigning a debtor's estate for the benefit of his creditors, executed under or in pursuance of the *Bankruptcy Act 1966* of the Commonwealth, the Corporations Law, or any other Act;

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"statutory charge" means a charge on land (other than a mortgage or encumbrance) established by or under a law in force in the Territory that is expressed in the Act by or under which it is established to be a statutory charge within the meaning of this Act or which, after it is registered

- (a) imposes a restriction on the use of or dealing with the land; or
- (b) gives a right to a person to deal with the land, including the right of sale,

and, for the purposes of sections 48A, 53, 142A, 142B, 143 and 277 includes an overriding statutory charge;

"Transmission" shall mean the passing of title to land in any manner other than by transfer;

The description of any person as proprietor, transferor, transferee, mortgagor, mortgagee, caveator, caveatee, encumbrancer, encumbrancee, lessor, lessee, or trustee, or as seized of, having, or taking any estate or interest in land shall be deemed to extend to and include the heirs, executors, administrators, and assigns of such person.

### **4. – 7. [Repealed]**

### **8. Land not to be withdrawn**

No land once subject to the provisions of this Act shall ever be withdrawn therefrom.

### **9. Commencement**

This Act shall come into operation on 1 January, 1887.

## **PART II – OBJECTS OF THIS ACT**

### **10. Objects**

The objects of the Act are –

- (a) to simplify the title to land;
- (b) to facilitate dealings with land;
- (c) to secure indefeasibility of title to registered proprietors except in certain cases specified in this Act;
- (d) to facilitate access to information about administrative interests and other information in respect of land; and
- (e) to facilitate the collection and disposal of information in relation to land or to the buying or selling of land.

### **11. Construction**

This Act shall always be construed in such manner as shall best give effect to the objects hereinbefore declared.

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**PART III – THE LAND TITLES REGISTRATION OFFICE**

**12. – 20. [Repealed]**

**21. Seal of office, &c., to be received in evidence**

(1) The Registrar-General shall have and use a seal of office bearing the impression approved by the Minister; and every instrument bearing the imprint of such seal, and purporting to be signed or issued by the Registrar-General, or by one of his deputies or by the Acting Registrar-General, shall be received in evidence, and shall be deemed to be signed or issued by or under the direction of the Registrar-General, or Acting Registrar-General, without further proof, unless the contrary be shown.

(2) A reference in subsection (1) to the seal of office or to the signature of the Registrar-General or of one of his deputies or the Acting Registrar-General includes a reference to a production by electronic means of the seal or of the signature, as the case may be.

**22. Fees**

(1) The Registrar-General may demand and receive such fees as are prescribed.

(2) The Registrar-General may provide credit facilities for the payment of fees referred to in subsection (1) at such intervals as he thinks fit.

**23. [Repealed]**

**24. Registrar-General not to be liable for Acts done bona fide**

The Registrar-General shall not individually, nor shall any person acting under his authority, be liable to any action, suit, or proceeding for or in respect of any act or matter bona fide, done or omitted to be done, in the exercise or supposed exercise of the powers of this Act.

**PART IV – THE BRINGING OF LAND UNDER THE ACT**

**25. [Repealed] (See back note 3)**

**26. Land on alienation from Crown to be under Act**

As to land hereafter alienated in fee from the Crown, the same shall, immediately on alienation, be subject to the provisions of this Act.

**27. – 46. [Repealed] (See back note 3)**

**PART V – THE REGISTER**

**47. Register**

(1) The Registrar-General shall keep a Register relating to land.

(2) Subject to this section and the Regulations, the Registrar-General may –

(a) keep the Register –

(i) in such form or combination of forms;

(ii) on such medium or combination of mediums; and

(iii) in such manner,

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as he thinks fit; and

(b) at any time, vary the form, medium or manner in which the Register or part of the Register is kept.

(3) A reference to a medium in subsection (2) or (6)(d) includes, but is not limited to –

(a) a computer;

(b) micro film; or

(c) paper.

(4) The Register consists of folios of the Register and registered documents.

(5) The Minister may, by notice in the *Gazette*, determine a day on and after which a folio of the Register shall be a division of the Register comprising particulars relating to –

(a) one parcel of land; or

(b) one unit of land that is subject to title issued in accordance with the *Unit Titles Act*,

being one parcel or unit of land for which approval under the *Planning Act* for the transfer of the parcel or unit of land separate from other land is not required.

(6) A folio of the Register –

(a) shall contain the entries that are required or authorized to be made in the Register by or under this Act or any other law in force in the Territory and that affect the land for which the folio is created;

(b) shall include a distinctive identifying reference for the folio;

(c) may contain records of such other information as the Registrar-General thinks appropriate to record; and

(d) shall describe the parcel of land by reference to a diagram of the land held in a medium.

(7) The Registrar-General creates a folio of the Register by making an entry –

(a) describing the land for which it is created;

(b) identifying the proprietor for the time being of the land for which it is created;

(c) specifying the time and date of registration of an entry; and

(d) recording such other particulars as the Registrar-General thinks fit of –

(i) other estates or interests, if any, affecting the land;

(ii) other information, if any, that relates to the land and is required to be entered on the folio by or under this Act or any other law in force in the Territory; and

(iii) a reservation or restrictive covenant in favour of the Crown or of the Territory, that was noted in the original grant in relation to the land,

and by allocating a distinctive identifying reference to those entries.

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- (8) On –
  - (a) the grant of an estate in fee simple or a lease of Crown land;
  - (b) the approval of a plan of subdivision in accordance with a law for the time being in force relating to the subdivision of land; or
  - (c) being required by or under any other law in force in the Territory to do so,

the Registrar-General shall create a folio or folios of the Register for the land.

(9) Subject to subsection (8), the Registrar-General may create or amend a folio of the Register where the Registrar-General thinks it appropriate to do so.

(10) The Registrar-General may, when creating a folio of the Register, determine the information to be entered on the folio of the Register by reference to any other records or documents kept by, or available to, the Registrar-General or in any other manner the Registrar-General thinks fit.

- (11) If the Registrar-General creates or amends a folio of the Register, the Registrar-General may –
  - (a) make such other amendments in the Register that he considers necessary because of the creation or amendment of the folio; and
  - (b) call in and cancel a certificate as to title produced for the folio so created or amended.

### **48. Entries in Register**

(1) An instrument capable of registration under this Act is registered by making or altering entries in the Register to the extent necessary to give effect to the instrument and to this Act.

(2) The Registrar-General shall note the time of making or altering an entry in the Register.

(3) Other information required or authorized by or under this Act or any other law in force in the Territory to be recorded in the Register is recorded in the Register by –

- (a) recording that information in an appropriate part of the Register; or
- (b) altering an existing record so as to comprise or include that information.

(4) Subject to the Regulations, the Registrar-General may –

- (a) make entries in the Register –
  - (i) in such form or combination of forms; or
  - (ii) in such manner,

as he thinks fit; and

- (b) at any time, vary the manner and form in which entries are made.

(5) The Registrar-General shall, where necessary, make deletions from, or alterations in, records in the Register so that each folio of the Register contains only records of information concerning subsisting estates or interests in the land to which the folio relates.

(6) The Registrar-General may make an entry in the Register as a substitute for an existing entry if satisfied that the existing record has been lost or destroyed or has become illegible or unavailable.

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(7) The Registrar-General may, under subsection (6), determine the information to be recorded by reference to other records or documents kept by or available to the Registrar-General or in such other manner as he thinks fit.

(8) If the Registrar-General makes an entry in the Register, the Registrar-General may make such amendments in the Register as he considers necessary because of the making of the entry.

### **48A. Registration of statutory charges**

(1) A person for whose benefit a statutory charge is established by or under a law in force in the Territory may, in accordance with the prescribed form and on payment of the prescribed fee, apply to the Registrar-General to have the charge registered.

(2) On receiving an application under subsection (1), the Registrar-General shall register the statutory charge in the prescribed manner.

(3) The Registrar-General shall give notice of the registration of a statutory charge to all persons who have a registered interest in the land the subject of the charge.

### **49. Certificate as to title**

(1) A certificate as to title is a document containing the information, or an extract of the information, on a folio of the Register as at the date of production of the certificate as to title.

(2) A certificate as to title shall –

(a) indicate that it is registered by authority of the Registrar-General, whether by being initialled, signed or sealed by the Registrar-General, or by bearing a facsimile of those initials or the signature or seal, or in such other manner as the Registrar-General thinks fit;

(b) set out all reservations or restrictive covenants, if any, in favour of the Crown;

(c) state –

(i) the distinctive identifying reference of the folio of the Register to which it relates;

(ii) the distinctive identifying reference allocated for the certificate as to title; and

(iii) the date on which it was registered; and

(d) contain, subject to -

(i) a direction from the Minister; or

(ii) another Act,

a diagram describing the parcel of land to which the folio relates.

(3) Subject to the Regulations, a certificate as to title may –

(a) include information that the Registrar-General considers appropriate, whether in diagrammatic form or otherwise;

(b) include information contained in the folio of the Register to which it relates in a form that the Registrar-General considers appropriate, whether or not in the form in which the information is recorded on the folio; and

(c) be in such form and produced in such manner as the Registrar-General considers appropriate.

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- (4) Without limiting subsection (3), a certificate as to title may be produced –
- (a) on paper by manual or mechanical means;
  - (b) as a computer print-out; or
  - (c) as a reproduction of a document.

(5) The Registrar-General shall deliver the relevant certificate as to title produced under this section to the person entitled to it.

- (6) Subject to subsections (7) and (8), on –
- (a) the creation of a folio of the Register;
  - (b) the registration under this Act of an instrument, other than an instrument not required to be recorded on the certificate as to title; or
  - (c) being required by or under this Act or any other law in force in the Territory to do so,

the Registrar-General shall produce a new certificate as to title for the folio.

(7) The Registrar-General is not required to produce a new certificate as to title where the folio of the Register, including the diagram for the parcel of land, is not held in the computer medium.

(8) The Registrar-General may record the details of a dealing on a duplicate of an instrument that has been registered or may issue a certificate as to the registration of the dealing.

(9) If the Registrar-General considers it necessary or convenient to do so, the Registrar-General may at any time produce a certificate as to title for a folio of the Register.

(10) For the purpose of producing a new certificate as to title for a folio of the Register, the Registrar-General may call in and cancel a subsisting certificate as to title for the folio.

(11) A person is not required to submit a certificate as to title to the Registrar-General under subsection (10) if the person satisfies the Registrar-General that the certificate has been destroyed or lost.

- (12) On –
- (a) the production of a new certificate as to title for a folio of the Register; or
  - (b) the deletion of a folio from the Register,

a certificate as to title subsisting for the folio ceases to have effect and, on its being submitted to the Registrar-General, the Registrar-General shall cancel it.

(13) The Registrar-General may, in the same document, include a certificate as to title and such other information as the Registrar-General considers appropriate, but the other information is not part of the certificate as to title.

### **50. Time of registration**

The time of –

- (a) creation of a folio in the Register; or
- (b) registration of an instrument,

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is the time when the Registrar-General makes the entry of the creation or the registration in the Register.

### **51. Record of non-current or historical dealings**

(1) The Registrar-General shall keep a record of all dealings, including non-current or historical dealings, recorded in, or action taken in respect of, a folio of the Register, and such other non-current or historical information in relation to folios of the Register, as the Registrar-General thinks fit.

(2) The record of dealings referred to in subsection (1) is not part of the Register.

(3) The Registrar-General may provide access to the record of dealings referred to in subsection (1) on payment of the prescribed fee, if any, by the person requesting access.

### **52. Evidence**

(1) In any proceedings, a document certified in writing by the Registrar-General to be a record, as at a particular date, of any information recorded on a folio of the Register or any other record, is conclusive proof without production of the folio of the Register that, at the date, the records to which the document applies were as stated in the document.

(2) A document referred to in subsection (1) may relate to entries on a folio of the Register or to entries of non-current or historical dealings.

(3) Where a document referred to in subsection (1) relates to records other than the entries on a folio of the Register, the records may be based on information derived from other records or documents kept by or available to the Registrar-General.

(4) The Registrar-General shall not be obliged to provide other evidence of title to land otherwise than as referred to in subsection (1).

(5) This section does not affect or limit –

(a) Part IV of the *Evidence Act*; or

(b) any other mode of proof of facts and documents permitted by law.

### **53. Submission of documents to facilitate registration**

(1) Subject to subsection (2), the Registrar-General shall not register an instrument under this Act unless there is submitted to the Registrar-General –

(a) in the case of a dealing for which the consent of the person in possession of the certificate as to title is required - the relevant certificate as to title for the land concerned; and

(b) such other document affecting the land concerned as the Registrar-General requires to be submitted.

(2) The Registrar-General may, under section 48A, register a statutory charge without the certificate as to title for the land concerned being produced.

### **54. Instruments to be according to Act**

The Registrar-General shall not, except as herein otherwise provided, register any instrument purporting to transfer or otherwise deal with or affect any estate or interest in land under the provisions of this Act except in the manner herein provided, nor unless such instrument be in accordance with this Act or the Regulations.

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### **55. [Repealed]**

### **56. Instruments entitled to priority according to time of registration**

(1) Subject to subsection (2), every instrument presented for registration shall be attested by a witness, and shall be registered in the order of time in which the same is produced for that purpose; and instruments registered in respect of or affecting the same estate or interest shall, notwithstanding any express, implied, or constructive notice, but subject to section 56A, be entitled to priority, the one over the other according to the date of registration, and not according to the date of the instrument itself; and the Registrar-General, upon registration thereof, shall record the registration of the instrument and, subject to the Regulations, deal with such instruments or copies of such instruments in such manner as the Registrar-General thinks fit.

(2) If 2 or more instruments which affect the same land are awaiting registration, the Registrar-General may register those instruments in the order which will give effect to the intentions of all the parties, as expressed in, or apparent to the Registrar-General from, those instruments.

### **56A. Variation of priority between mortgages and encumbrances**

(1) Subject to subsection (2), the Registrar-General may register a memorandum in the prescribed form executed by the holders of 2 or more registered mortgages and purporting to vary the priority of those mortgages as between themselves.

(2) Where there is a registered mortgage intervening between any 2 mortgages whose priority a memorandum under subsection (1) purports to vary, the Registrar-General shall not register the memorandum unless the proprietor of the intervening mortgage is also a party to it.

(3) On the registration of a memorandum under subsection (1), the mortgages held by the parties to the memorandum shall be entitled to priority as between each other as if they had been registered in the order in which they are expressed by the memorandum to have priority.

(4) The Registrar-General shall record the registration of a memorandum under subsection (1) on the certificate of title affected by the mortgages in question.

(5) Nothing in this section affects the validity of any other contractual arrangement between mortgagees relating to priorities between themselves.

(6) In this section, references to a mortgage include an encumbrance or other security for the payment of money.

### **56B. Priority and effect of statutory charges**

(1) An overriding statutory charge prevails over all other interests in the land to which it relates, except a pre-existing overriding statutory charge recorded in the register.

(2) Unless a statutory charge, not being an overriding statutory charge, has been registered –

(a) a restriction imposed by the statutory charge on the use of or dealing with the land does not exist; or

(b) a power arising under the statutory charge in relation to the land is not exercisable.

### **57. Instruments registered, deemed part of Register**

Every instrument shall, when registered, be deemed part of the Register, and shall have the effect of and be deemed and taken to be a deed duly executed by the parties who have signed the same.

**58. Where 2 or more instruments presented at same time**

Should 2 or more instruments executed by the same proprietor, and purporting to affect the same estate or interest, be at the same time presented to the Registrar-General for registration, he shall register that instrument which shall be presented by the person producing to him the certificate as to title or other instrument evidencing title to such estate or interest.

**58A. Provision for single recording of more than one instrument**

Where 2 or more instruments affecting the same land are lodged and are awaiting registration, the Registrar-General may, despite anything to the contrary in this Act, register the instruments by making one or more recordings in one or more parts of the Register as the Registrar-General considers appropriate instead of recording each instrument separately in the Register.

**59. Provision for registration in case of death of party executing instrument**

In case any person, who either before or after his death shall be registered as proprietor of any land, shall die after signing any instrument affecting such land, and before registration thereof, the registration of such instrument may nevertheless be proceeded with in accordance with this Act, and shall be valid notwithstanding such death.

**59A. Lodgement of documents**

(1) For the purposes of the lodgement of documents under this Act or for the purposes of any other law in force in the Territory, the Registrar-General may, in his discretion, allow the lodgement of documents by such means, including electronic means, as he thinks fit.

(2) In subsection (1) "lodgement of a document" includes depositing of a document pursuant to section 101.

**60. Person to whom certificate as to title or instrument issued in error**

In case it shall appear to the satisfaction of the Registrar-General that any certificate as to title or other instrument has been issued in error, or contains any misdescription of land or of boundaries, or that any entry or indorsement has been made in error on any certificate as to title or other instrument, or that any certificate as to title, instrument, entry, or indorsement has been fraudulently or wrongfully obtained, or that any certificate as to title or instrument is fraudulently or wrongfully retained, he may summon the person to whom such certificate as to title or instrument has been so issued, or by whom it has been so obtained or is retained, to deliver up the same for the purpose of being cancelled or corrected, as the case may require.

**61. Person refusing to deliver up instrument**

In case such person shall refuse or neglect to comply with such summons, the Registrar-General may apply to the Court to issue a summons for such person to appear before the Court and show cause why such certificate as to title or other instrument should not be delivered up to be cancelled or corrected; and if such person, when served with such summons, shall neglect or refuse to attend before such Court at the time therein appointed, it shall be lawful for such Court to issue a warrant of arrest.

**62. Court may order delivery of instrument**

Upon the appearance before the Court of any person summoned or brought up by virtue of a warrant as aforesaid, it shall be lawful for the Court to examine such person upon oath, and to order him to deliver up such certificate as to title or other instrument, and, upon refusal or neglect by such person to deliver up the same pursuant to such order, to commit him to gaol for any period not exceeding 6 months, unless such certificate as to title or instrument shall be sooner delivered up.

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### **63. Court may order instrument to be cancelled**

In such case, or in case a summons by the Registrar-General or a Judge cannot be served upon such person as hereinbefore directed, the Court may direct the Registrar-General to cancel or correct any certificate as to title or other instrument, or any record in the Register relating to such land, and to substitute and issue such certificate as to title or other instrument, or make such entry as the circumstances of the case may require, and the Registrar-General shall give effect to such order.

### **64. Powers of court to direct cancellation of certificate or entry**

In any proceeding in a court respecting any land, or any transaction, contract, or application relating thereto, or any instrument, caveat, memorial, or other entry affecting any such land, the court in question may direct the Registrar-General to take such action as may be necessary to give effect to any judgment, decree, or order given or made in such proceeding, and the Registrar-General shall obey every such direction.

### **65. Searches of Register**

(1) The Registrar-General shall, on receipt of the prescribed fee, if any, or in such other circumstances that may include the provision of credit facilities for payment at specified intervals as the Registrar-General thinks fit, provide adequate access to the Register and documents, or copies of them, registered for the purposes of this Act.

(2) The access referred to in subsection (1) may, in the Registrar-General's discretion, be provided by way of certificate, statement, visual display unit, computer print-out, microfiche reader or any other means.

### **66. Conflict between certificate as to title and Register**

Whenever there shall be any conflict, difference, or variation between the contents of the Register and any certificate as to title the Register shall prevail.

## **PART VI – THE TITLE OF REGISTERED PROPRIETORS**

### **67. Instruments not effectual until registration**

No instrument shall be effectual to pass any land or to render any land liable as security for the payment of money, but upon the registration of any instrument in manner herein prescribed, the estate or interest specified in such instrument shall pass, or, as the case may be, the land shall become liable as security in manner and subject to the covenants, conditions, and contingencies set forth and specified in such instrument or by this Act declared to be implied in instruments of a like nature.

### **68. Registered proprietor**

The person named in the Register as the owner or taking any estate or interest in land shall be the registered proprietor thereof.

### **69. Title of registered proprietors indefeasible**

The title of every registered proprietor of land shall, subject to such encumbrances, liens, estates, or interests as may be recorded in the Register or which were notified on the original grant of title from the Crown for such land, be absolute and indefeasible, subject only to the following qualifications:

- I. In the case of fraud, in which case any person defrauded shall have all rights and remedies that he would have had if the land were not under the provisions of this Act: Provided that nothing included in this subsection shall affect the title of a registered proprietor who has taken bona fide for valuable consideration, or of any person bona fide claiming through or under him:
- II. In the case of a recording in the Register made as the result of fraud or forgery, or a certificate as to title or other instrument of title obtained by forgery or by means of an insufficient power

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of attorney or from a person under some legal disability, in which case the recording in the Register or the certificate as to title, or other instrument of title shall be void: Provided that the title of a registered proprietor who has taken bona fide for valuable consideration shall not be affected by reason that a certificate as to title or other instrument of title was obtained by any person through whom he claims title from a person under disability, or by any of the means aforesaid:

- III. Where any portion of land has been erroneously included, by wrong description of parcels or boundaries, in the certificate or other instrument evidencing the title of the registered proprietor: In which case the rights of the person who but for such error would be entitled to such land shall prevail, except as against a registered proprietor taking such land bona fide for valuable consideration, or any person bona fide claiming through or under him:
- IV. Where a right-of-way or other easement not barred or avoided by the provisions of the "Rights-of-way Act, 1881," or of this Act, has been omitted or misdescribed in any folio of the Register or certificate as to title, or other instrument of title: In which case such right-of-way or other easement shall prevail, but subject to the provisions of the said "Rights-of-way Act, 1881," and of this Act:
- V. Where 2 or more folios have been created under any of the Real Property Acts in respect of the same land: In which case the title originally first in date of registration shall prevail:
- VI. Any certificate issued upon the first bringing of land under the provisions of any of the Real Property Acts, and every certificate issued in respect of the said land, or any part thereof, to any person claiming or deriving title under or through the first registered proprietor, shall be void, as against the title of any person adversely in actual occupation of, and rightfully entitled to, such land, or any part thereof, at the time which such land was so brought under the provisions of the said Acts, and continuing in such occupation at the time of any subsequent certificate being issued in respect of the said land:  

\* \* \* \*
- VIII. Where at the time when the proprietor becomes registered a tenant shall be in actual possession of the land under an unregistered lease or an agreement for a lease or for letting for a term not exceeding one year: In which case the title of the tenant under such lease or agreement shall prevail.

### **70. Title of registered proprietor to prevail**

In all other cases the title of the registered proprietor of land shall prevail, notwithstanding the existence in Her Majesty, Her heirs, or successors, or in any person of any estate or interest whatever whether derived by grant from the Crown or otherwise, which but for this Act might be held paramount or to have priority; and notwithstanding any want of notice or insufficient notice of any application, or any error, omission, or informality in any application or proceedings.

### **71. Saving of certain rights and powers**

Nothing in sections 69 and 70 contained shall be construed so as to affect any of the following rights or powers, that is to say –

- I. The power of an officer of a court to sell the land of a judgment debtor under a warrant of execution:
- II. The power of a court to order the sale of land:
- III. The right of the Official Receiver or of any trustee to land transmitted on the insolvency or statutory assignment of the registered proprietor:

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- IV. The rights of a person with whom the registered proprietor shall have made a contract for the sale of land or for any other dealing therewith:
- V. The right of a *cestui que trust* where the registered proprietor is a trustee, whether the trust shall be express, implied or constructive.

Provided that no unregistered estate, interest, power, right, contract, or trust shall prevail against the title of a registered proprietor taking bona fide for valuable consideration, or of any person bona fide claiming through or under him.

### **71A. Effect of registration of instruments under other laws**

(1) A person presenting a dealing for registration under this Statute is not to be deemed to have had notice of an instrument or a fact or thing contained in an instrument by virtue only of the registration of the instrument in a register kept under another law in force in the Territory.

(2) [Omitted]

### **71B. Protection against notice before registration**

On presentation for registration of a dealing in respect of land, the person presenting the dealing has the same protection over a prior equitable interest in the land of which he does not then have notice as that given at common law to a person who has, without any such notice, acquired the legal estate in the land.

### **72. Knowledge of trust not evidence of want of bona fide**

Knowledge of the existence of any unregistered estate, interest, contract, or trust shall not of itself be evidence of want of bona fides so as to affect the title of any registered proprietor.

## **PART VII – CERTIFICATES AS TO TITLE**

### **73. Certificate as to title**

(1) Subject to subsection (2), the registered proprietor of an estate in land, other than a leasehold for a life or lives, shall be entitled to receive a certificate as to title for the same, which certificate as to title shall be in the prescribed form and shall set forth the nature of the estate in respect of which it is issued.

(2) The Registrar-General may issue a certificate as to title referred to in subsection (1) noted by him as being qualified as to boundaries where he is not satisfied that the description of the land to which it relates accurately identifies the boundaries of the land.

### **74. Persons registered as joint proprietors to be joint tenants**

Two or more persons registered as joint proprietors of an estate or interest in land shall be deemed to be entitled to the same as joint tenants; and in all cases where 2 or more persons are entitled as tenants in common to an estate of freehold in any land, such persons may receive one certificate as to title for the entirety, describing them as tenants in common, or each may receive a separate certificate as to title for his undivided share.

75. – 80. [Repealed]

## **PART VIII – EASEMENTS**

### **81. Certificate may contain statement of right-of-way or easement**

The Register may contain a statement therein or entry thereon to the effect that the land therein described has appurtenant thereto any easement, or that the person therein named is entitled to any easement in gross, or that the land therein described is subject to any right or rights-of-way or other easement.

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### **82. Nature of statement**

Every such statement or entry shall fully set forth a true and accurate description of the easement, or, if the instrument creating the same be recorded in the Register, may refer to such instrument.

### **83. Registered proprietor not subject to ways not mentioned in certificate**

The registered proprietor of land brought under the provisions of the "Real Property Act of 1861" after the passing of the "Rights-of-Way Act 1881" or of land hereafter brought under the provisions of this Act shall be deemed to hold the land comprised in the Register subject to such rights-of-way only as are mentioned and set forth in the folio of the Register.

### **84. Right-of-way to be entered**

No easement hereafter created by express grant or transfer over or in respect of any servient land under the provisions of this Act, shall be binding on any registered proprietor subsequently taking the land bona fide for valuable consideration, unless such easement shall be entered in the Register.

### **85. Land to be held free of rights-of-way**

The registered proprietor of any land shall, as from 18 November, 1886, hold the same freed and discharged from all rights-of-way existing on or before that date, and not entered in the Register of such land in pursuance of an application made on or before such date under the "Rights-of-Way Act, 1881".

### **86. Public rights-of-way, &c., not in Act**

Rights-of-way or other easements now or hereafter acquired or enjoyed by the public, in, over, along, or across any servient land shall not be deemed to be rights-of-way or easements within the meaning of this part of this Act, or in respect of which applications may be made or caveats entered, and nothing herein contained shall derogate from any such rights or easements, or be deemed to confer on the registered proprietor of any such servient land a right to interfere with or obstruct the public use of any way or other easement so acquired or enjoyed as aforesaid.

### **87. Certificates issued conclusive evidence**

Every certificate issued before 18 November, 1881, containing therein a statement to the effect that the registered proprietor is seized of the land therein described, subject to or together with any right-of-way therein described or delineated, or together with any easement therein described, shall be deemed to operate as a grant or reservation, as the case may be, of such right-of-way or other easement, and such certificate shall, except in the case of fraud, be received in all Courts as conclusive evidence of the existence of such right-of-way or other easement: Provided that this section shall not apply to any right-of-way or other easement, the title to which is now the subject of pending litigation in any Court of Law, or to any right-of-way or other easement, the right to which has been concluded in any Court adversely to such right-of-way or easement.

### **88. Rights-of-way to be entered upon certificates as to title**

Whenever any right-of-way or other easement appurtenant to land under the provisions of this Act over land also under its provisions shall hereafter be granted or created, the Registrar-General shall enter the memorial of the instrument granting or creating such right-of-way or easement upon the folios of the Register of the dominant and servient lands respectively, and also upon the certificates as to title.

### **89. Form of describing right-of-way**

The words "together with a free and unrestricted right-of-way" in any instrument shall be deemed to imply the words set forth in the Fifth Schedule hereto so far as they shall be applicable as fully and effectually as if set out at length in such instrument.

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### **90. Proprietor may deposit plan showing rights-of-way**

Any registered proprietor of any land may deposit with the Registrar-General a plan of the said land, showing the rights-of-way intended to be created by such proprietor over such land, and every subsequent registered proprietor of the said land, or any part thereof, shall be entitled to a right-of-way over all the rights-of-way shown in such plan, unless otherwise declared in the Register.

## **PART VIII A – MODIFICATION AND EXTINGUISHMENT OF EASEMENTS AND RESTRICTIVE COVENANTS**

### **90A. Definition**

In this Part, "restrictive covenant" means a negative obligation in respect of the use, ownership or maintenance of particular land made for the benefit of other land.

### **90B. Modification or extinguishment of easements and restrictive covenants**

(1) Where land is subject to the burden of an easement or a restrictive covenant, the Court may, on application by a person who has an interest in the land, make an order modifying or wholly or partially extinguishing the easement or restrictive covenant.

- (2) The Court may not make an order under subsection (1) unless it is satisfied that –
- (a) because there has been a change in the user of the land having the benefit of the easement or restrictive covenant, in the character of the area in the vicinity of the land or in any other circumstance that the Court considers material, the easement or restrictive covenant is obsolete;
  - (b) the continued existence of the easement or restrictive covenant would impede the reasonable user of the land or that the easement or restrictive covenant, in impeding that user, is –
    - (i) no longer necessary or advantageous to the person or persons entitled to the benefit of the easement or restrictive covenant; or
    - (ii) contrary to the public interest,

and each person who suffers loss or disadvantage from the modification or extinguishment of the easement or restrictive covenant can be adequately compensated in money for his or her loss or disadvantage;

- (c) each adult who is entitled to the use or benefit of the easement or restrictive covenant and who has capacity to do so –
  - (i) has agreed to the modification or extinguishment of the easement or restrictive covenant; or
  - (ii) by his or her acts or omissions may reasonably be considered to have abandoned the easement or to have waived the benefit of the restrictive covenant in whole or in part; or
- (d) the proposed modification or extinguishment will not substantially injure the persons entitled to the use or benefit of the easement or restrictive covenant.

(3) In determining whether to make the order, the Court must take into account the operation of the *Planning Act* and in particular the control plan, within the meaning of that Act, applying to the land.

(4) The power of the Court to make an order modifying an easement or restrictive covenant includes power to amend the instrument creating the easement or restrictive covenant to include new terms as to the use, ownership or maintenance of the servient land or land subject to the restrictive covenant.

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(5) In making an order under subsection (1), the Court may also make an order directing the applicant to pay a person entitled to the use or benefit of the easement or restrictive covenant the amount that appears to the Court to be just to award consideration for –

- (a) any loss or disadvantage suffered as a consequence of the modification or extinguishment; or
- (b) any reduction in any compensation received for the land affected by the easement or restrictive covenant when it was created that is attributable to its imposition.

### **90C. Notice of application**

Where an application is made to modify or extinguish an easement or restrictive covenant, the Court may, if it thinks just, direct that the applicant must give notice of the application in the manner and to the consent authority, within the meaning of the *Planning Act*, or any other person it specifies in the direction.

### **90D. Effect of order**

An order made under section 90B is binding on all persons, whether or not adults or otherwise having capacity, who are or become entitled to the use or benefit of the easement, or are or become interested in enforcing the restrictive covenant, and whether or not they were parties to the proceedings under that section or were served with notice under section 90C.

### **90E. Powers of Court**

- (1) In proceedings under this Part, the Court may do any one or more of the following –
  - (a) direct that a survey is to be made of land and a plan of survey is to be prepared in respect of the land;
  - (b) order a person to execute an instrument, in registrable or other form, that is necessary to give effect to an order made under this Part;
  - (c) order a person to produce to another person specified in the order any certificate as to title or other document relating to land;
  - (d) make an order declaring whether or not land is or would in specified circumstances be affected by an easement or restrictive covenant;
  - (e) give directions for the conduct of proceedings;
  - (f) make orders in respect of the costs of any of the matters referred to in this section and of the proceedings generally.
- (2) Where a Court makes an order under subsection (1)(d), the order may include a declaration as to any of the following –
  - (a) the nature and extent of the easement or restrictive covenant;
  - (b) whether or not the easement or restrictive covenant is enforceable;
  - (c) if the easement or restrictive covenant is enforceable - who may enforce it and against whom.

## **PART IX – CROWN GRANTS**

### **91. Definitions**

In this Part –

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"Crown lands" does not include land an estate in fee simple in which is held by the Territory;

"Crown lease" means a lease of Crown lands.

### **92. Person holding may surrender**

Every person now holding any Crown lands under any lease or agreement for sale, granted or made by or on behalf of the Crown may, subject to the approval of the Minister, surrender his lease or agreement for a Crown lease of the land remaining, subject to such lease or agreement upon all the same terms as shall have been applicable to such land prior to the surrender, but so that every person having any estate or interest in the surrendered land shall concur in the surrender.

### **93. Issue of certificate as to title in relation to estate in fee simple, &c., under other Acts**

(1) The Registrar-General shall issue a certificate as to title in the prescribed form in accordance with a grant of an estate in fee simple, or a lease of Crown land, under a law of the Territory relating to the alienation of land if requested to do so by the Minister responsible for the administration of that law.

(2) A person who is entitled to an estate in fee simple or a lease from the Crown is entitled to receive a certificate as to title as referred to in subsection (1).

### **94. Registrar-General to enter forfeiture**

The Registrar-General, upon receipt of notice from the Minister that any Crown lease has been lawfully forfeited or determined in whole or in part, shall make an entry to that effect in the Register, and such forfeiture or determination, shall thereupon have effect.

### **95. Effect of this Act**

Nothing herein contained or hereby implied shall be construed to give any greater effect or different construction to any Crown lease registered pursuant to this part of this Act than would have been given to it if this Act had not been passed, nor shall any right or remedy, which the Crown would otherwise have possessed, be in any way prejudiced or altered.

## **PART X – TRANSFERS**

### **96. Transfers**

When any land is intended to be transferred, or any right-of-way or other easement is intended to be created or transferred, the dealing shall be effected by a transfer in the prescribed form which shall be executed -

- (a) by the registered proprietor or, in the case of a transfer of land by a mortgagee, encumbrancee or receiver exercising a power of sale, that mortgagee, encumbrancee or receiver; and
- (b) unless the Registrar-General has directed otherwise with respect to the dealing in question or dealings of a class to which it belongs, by the transferee or grantee.

### **97. Transferee to indemnify transferor**

In every instrument purporting to transfer land mortgaged or encumbered there shall be implied the following covenant by the transferee with the transferor, and so long as such transferee shall remain the registered proprietor, with the mortgagee or encumbrancee, that is to say - That the transferee will pay the principal, interest, and other moneys secured by such mortgage or encumbrance, after the rate and at the time or times specified therein, and will indemnify and keep harmless the transferor from and against such principal, interest, and other moneys, and from and against all liability in respect of any of the covenants contained in such mortgage or encumbrance or by this Act implied on the part of the transferor.

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### **98. – 100. [Repealed]**

#### **101. Subdivisions of land**

(1) Where the Surveyor-General has approved under section 49(3) of the *Licensed Surveyors Act* a plan of survey relating to a subdivision of land in respect of which consent has been given under Part 7 of the *Planning Act*, then, subject to subsection (4) –

- (a) the registered proprietor or registered proprietors of the whole of the land included in the subdivision may deposit with the Registrar-General –
  - (i) a copy of the plan;
  - (ii) the certificate or certificates as to title to the land;
  - (iii) the prescribed fee; and
  - (iv) the consent to the subdivision of those registered proprietors of an interest in any part of the land whose interest will be affected by the subdivision; and
- (b) the Registrar-General shall thereupon –
  - (i) register the copy;
  - (ii) issue a new certificate as to title or, as the case may require, certificates as to title in accordance with the plan; and
  - (iii) make such entries in the Register as he may consider necessary.

(1A) A consent under subsection (1)(a)(iv) must –

- (a) be noted on the plan of survey; or
- (b) be in writing.

(2) If the Surveyor-General deposits with the Registrar-General the plan of survey referred to in subsection (1), or a copy of that plan, then, subject to subsection (4) –

- (a) the registered proprietor or registered proprietors of the whole of the land included in the subdivision may deposit with the Registrar-General the items specified in subsection (1)(a)(ii), (iii) and (iv); and
- (b) the Registrar-General shall thereupon register the plan or copy and comply with subsection (1)(b)(ii) and (iii).

(3) Where a copy of a plan of survey is registered by virtue of subsection (1) or (2) –

- (a) section 65(1) and (5) of the *Planning Act* shall take effect as if the plan itself had been deposited under this section and registered; and
- (b) the Registrar-General shall accordingly make such entries in the Register as he thinks fit to record the vesting of any land under, or to evidence any easement arising by virtue of, either of the provisions referred to in paragraph (a).

(4) Subsections (1) and (2) do not apply where the development permit in respect of a subdivision has lapsed under section 56 of the *Planning Act*.

(4A) The Registrar-General shall not register a dealing that puts a subdivision into effect unless –

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- (a) there is a consent granted under section 52 of the *Planning Act* in relation to the subdivision; or
- (b) the subdivision is prescribed as an excluded subdivision under that Act.

(5) Sections 267 and 273 do not apply to or in relation to a plan, plan of survey or copy of a plan of survey to which this section applies.

- (6) In this section –

"subdivision", in relation to land, means –

- (a) the rendering of separate parts of the land available for separate occupation or use; or
- (b) the consolidating of parcels of land into one or more allotments,

otherwise than by lease, licence or other right to occupy or use the land or a part of the land for a term not exceeding 12 years.

### **102. Memorial of order for sale of land**

Where a court has made an order for the sale of any land under the provisions of this Act, the Registrar-General shall, upon being served with a copy of the order, record in the Register the fact of such service and such details as the Registrar-General thinks fit, and the record shall operate as a caveat against alienation other than in pursuance of such order while the same remains in force.

### **103. Registration of transfer under order**

On the production to the Registrar-General of a transfer of land duly executed in pursuance of an order under section 102, the Registrar-General shall, without requiring production of the certificate as to title, register the transfer and amend the Register so that the folio of the Register for the land shall be freed from all encumbrances, charges, exceptions, qualifications and conditions whatsoever, other than those mentioned in the transfer.

### **104. [Repealed]**

### **105. Sale under writ of *fi. fa.*, decree or order of Court**

No execution issued prior to or after the passing of this Act shall bind, charge, or affect any land, but the Registrar-General shall, on being served with a copy of any warrant of execution against land, or of any decree or order (other than an order for sale for non-payment of rates) affecting land issued out of or made by a court, accompanied by a statement signed by any party interested, or by his attorney, solicitor, or agent, specifying the land sought to be affected thereby, mark upon such copy the time of such service, and shall record in the Register details of such warrant, decree, or order, which shall operate as a caveat against alienation other than in pursuance of such warrant, decree, or order, while the same remains in force.

### **106. Transfer not valid against purchaser until entry of writ**

Until such service and entry no sale or transfer under any such decree, order or warrant shall be valid as against a purchaser for valuable consideration, notwithstanding the purchaser had actual or constructive notice of such decree, order or warrant.

### **107. Transfer on sale under writ, warrant, decree or order**

After any land so specified as aforesaid shall have been sold under any warrant, decree, or order, the Registrar-General, on receiving a transfer thereof in such one of the prescribed forms as shall be applicable, shall, subject to the provisions hereinafter contained, register such transfer by making an entry thereof in the Register, and on such entry being made the purchaser shall be deemed the transferee and registered proprietor of the land so sold; and every sale under any such warrant, decree or order shall take priority over and be effectual

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as against any other dealing affecting such land, entered into or transacted after the service of the warrant, decree, or order, and the entry thereof in the Register.

### **108. Production of duplicate instrument not required**

The Registrar-General may register a transfer under any decree or order, or under any warrant of execution as hereinbefore mentioned, without requiring the production of the certificate as to title.

### **109. Satisfaction of warrant, decree, or order**

The Registrar-General shall, upon production to him of sufficient evidence of the satisfaction of any such decree, order, or warrant as aforesaid, cause an entry of such satisfaction to be made in the Register, and on such entry such warrant, decree, or order shall be deemed to be satisfied.

### **110. Lapse of writ, decree, warrant, or order**

Every decree, order, or warrant of execution shall cease to bind, charge, or affect any land, unless a transfer upon a sale under such warrant, decree, or order shall be presented for registration within 6 months from the day on which the copy was served, or within such extended time as the court shall order.

### **111. Proprietor may vest estate jointly**

The registered proprietor of any estate or interest in land may, by any of the forms of transfer provided by this Act, modified as may be necessary, transfer such estate or interest, or any part thereof, to the wife or husband of such registered proprietor, or to such registered proprietor, and any other person or persons, as joint tenants or tenants in common, and may limit any estates by remainder or otherwise, without limiting any use, or executing any re-assignment; and upon the registration of any such transfer the estate or interest thereby dealt with or transferred shall vest in the transferee or transferees, according to the intent and meaning appearing in and expressed by such instrument.

### **112. [Repealed]**

### **113. Registration after statutory vesting or grant**

(1) Where the Registrar-General is satisfied, either on an application in the prescribed form or of his own motion, that land or any interest in land has become vested in or granted to a person by or under an Act (including an Act of the Commonwealth), the Registrar-General –

- (a) shall make in the Register such entries in relation to the land as he considers necessary in connection with the vesting or grant; and
- (b) may issue such certificates of title as he thinks fit in consequence thereof and, where that is necessary or appropriate, cancel any existing certificate of title.

(2) The Registrar-General may exercise the power conferred by subsection (1)(a) whether or not the certificate as to title to the land in question is produced to him.

(3) Where an interest in land is transferred to the Territory pursuant to section 69(5) of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, the interest shall be treated for the purposes of subsection (1) as having vested in the Territory under that Act on the execution of the transfer.

114. – 115. [Repealed]

**PART XI - LEASES AND SURRENDERS**

**116. Land, how leased**

When any land is intended to be leased for a life or lives, or for any term of years exceeding one year, the registered proprietor shall, or for any less term may, execute a lease in the prescribed form.

**117. Contents of lease**

Every such lease shall, for description of the land intended to be dealt with, refer to the certificate of the land, or shall give such other description as may be necessary to identify the land, and a right for or covenant by the lessee to purchase the land therein described may be stipulated in such lease, and shall be binding.

**118. Leases not to bind non-consenting mortgagees or encumbrances**

No lease of mortgaged or encumbered land shall be valid and binding against any mortgagee or encumbrancee of the land unless such mortgagee or encumbrancee shall have consented in writing to such lease prior to the same being registered.

**119. Lease for one year need not be registered**

Every registered dealing with land shall be subject to any prior unregistered lease or any agreement for lease or for letting for a term not exceeding one year to a tenant in actual possession thereunder: Provided that no right or covenant to purchase the freehold contained in any such unregistered lease or agreement, nor any right or covenant for renewal of such lease or agreement shall be valid as against any subsequent purchaser of the reversion, lessee, mortgagee, or encumbrancee unless such lease or agreement be registered or protected by caveat.

**120. Surrender of lease**

Whenever any registered lease is intended to be surrendered, and the surrender thereof is effected otherwise than by operation of law, or as hereinafter provided on insolvency or statutory assignment, the lease shall be surrendered by an instrument in the prescribed form, signed by the lessee and the lessor and upon any such instrument being presented for registration, the Registrar-General shall make an entry in the Register recording the date of the surrender.

**121. Registrar-General may enter surrender**

Where a lessee shall have delivered to the lessor, or his agent, the duplicate of the lease, accompanied by some writing signed by the lessee evidencing his intention to give up possession of the land comprised in such lease, the Registrar-General may, upon application in the prescribed form by the lessor, and production of such evidence as he may require that the lessee has abandoned the occupation of the land comprised in the lease, make an entry in the Register of the surrender.

**122. Effect of entry of surrender**

Upon every entry made in the Register, in pursuance of section 120 or 121, the estate or interest of the lessee in the land shall revert in the lessor, and evidence of such an entry in the Register shall be sufficient evidence that the lease has been so surrendered.

**123. Surrender where lease subject to mortgage or under-lease**

No lease mortgaged or encumbered, or of land mortgaged or encumbered, prior or subsequently to the registration of such lease, shall be so surrendered without the consent thereto in writing of the mortgagee or encumbrancee, and every surrender of a lease, whether by operation of law, by act of parties, or pursuant to the provisions hereinafter contained on insolvency or statutory assignment, shall be subject to any registered under-

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lease, or to any unregistered under-lease, or agreement for under-lease or under-letting for a term not exceeding one year to a tenant in actual possession thereunder.

### **124. Covenants to be implied in every lease against the lessee**

In every lease there shall be implied the following covenants by the lessee with the lessor, that is to say –

- (1) That he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property, during the continuance of the lease:
- (2) That he will keep and yield up the demised property in good and tenantable repair, reasonable wear and tear excepted.

### **125. Powers to be implied in lessor**

In every lease there shall also be implied the following powers in the lessor, that is to say –

- (1) [Omitted]
- (2) That he may, by himself or his agents, at all reasonable times, enter upon the demised property, and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode in the Territory, or upon the demised property, a notice in writing of any defect, requiring him within a reasonable time, to be therein prescribed, to repair the same:
- (3) That in case the rent, or any part thereof, shall be in arrear for the space of 3 months, although no demand shall have been made thereof, or in case default shall be made in the fulfilment of any covenant, whether expressed or implied in such lease, on the part of the lessee, and shall be continued for the space of 3 months, or in case the repairs required by such notice as aforesaid shall not have been completed within the time therein specified, it shall be lawful for the lessor to re-enter upon and take possession of the leased premises.

### **126. Registrar-General to note particulars of re-entry in Register**

The Registrar-General, upon proof to his satisfaction of re-entry by the lessor, in manner prescribed by the lease, or under the power in the third subsection of section 125 provided for, or of recovery of possession by a lessor, by any proceeding in law, shall note the same by entry in the Register, and the estate of the lessee in such land shall thereupon determine, but without releasing him from his liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar-General shall cancel such lease if delivered up to him for that purpose.

### **127. [Repealed]**

## **PART XII – MORTGAGES, ENCUMBRANCES AND DISCHARGES**

### **128. Lands, how mortgaged or encumbered**

(1) Whenever any land is intended to be charged or made security in favour of any person the registered proprietor shall execute a mortgage in the prescribed form; and whenever any land is intended to be charged with, or made security for, the payment of an annuity, rent-charge, or sum of money, in favour of any person, the registered proprietor shall execute an encumbrance in the prescribed form.

(2) For the purposes of this Part the registered proprietor of land shall be deemed to have executed an encumbrance to secure the payment of any statutory charge to which the land is subject, subject to the terms and conditions, if any, under the law by which the statutory charge was established.

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### **129. [Repealed]**

### **130. Covenant to be implied in every mortgage**

In every mortgage and encumbrance there shall be implied a covenant by the mortgagor or encumbrancer with the mortgagee or encumbrancee that he will repair and keep in repair all buildings and other improvements erected and made upon the mortgaged or encumbered land, and that the mortgagee or encumbrancee may, at all convenient times, until the mortgage or encumbrance be redeemed, be at liberty, with or without surveyors or others, to enter into and upon such land to view and inspect the state of repair of such buildings and improvements. (*See back note 2*)

### **131. Subsequent mortgagees or encumbrancees may redeem prior mortgages, &c.**

In case the money secured by any mortgage or encumbrance shall be due, and the mortgagee or encumbrancee shall require payment of the same, it shall be lawful for any other mortgagee or encumbrancee of the same land to tender and pay to the mortgagee or encumbrancee requiring such payment, the money due upon his security, and the mortgagee or encumbrancee making such payment shall be entitled to a transfer of the estate and interest of the mortgage or encumbrancee requiring such payment.

### **132. Mortgage or encumbrance not to operate as transfer**

Every mortgage and encumbrance under this Act shall have effect as a security, but shall not operate as a transfer of the land thereby charged, and in case default be made in the payment of the principal sum, interest, annuity, or rent-charge, or any part thereof thereby secured, or in the observance of any covenant therein expressed or implied, and such default be continued for the space of one month, or for such other period of time as may therein for that purpose be expressly limited, the mortgagee or encumbrancee may give to the mortgagor or encumbrancer notice in writing to pay the money then due or owing on such mortgage or encumbrance, or to observe the covenants therein expressed or implied, as the case may be, and that sale will be effected if such default be continued, or may leave such notice on the mortgaged or encumbered land, or at the usual or last known place of abode in the Territory of the mortgagor or encumbrancer.

### **133. Power of sale**

If such default be continued for the further space of one month from the date of such notice, or for such other period as may in such instrument be for that purpose limited, the mortgagee or encumbrancee is hereby authorized and empowered to sell the land so mortgaged or encumbered, or any part thereof, and all the estate and interest therein of the mortgagor or encumbrancer, and either altogether or in lots, by public auction or by private contract, or by both such modes of sale, and subject to such conditions as he may think fit, and to buy in and resell the same without being liable for any loss occasioned hereby, and to make and execute all such instruments as shall be necessary for carrying the sale thereof into effect.

### **134. Mortgagee's receipt to discharge purchaser**

All sales contracts, matters, and things, authorized by section 133 shall be as valid and effectual as if the mortgagor or encumbrancer had made, done, or executed the same, and the receipt or receipts in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of the land, or any portion thereof, for so much of his purchase-money as may be thereby expressed to be received; and no such purchaser shall be answerable for the loss, misapplication, or non-application, or be obliged to see to the application of the purchase-money by him paid, nor shall he be concerned to inquire as to the fact of any default, or notice having been made or given, as aforesaid.

### **135. Appropriation of proceeds**

(1) The proceeds from the sale of land by a person entitled to the benefit of an overriding statutory charge shall be applied –

- (a) first – in payment of the expenses of the sale;

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- (b) secondly – in payment of any money owing to a person entitled under a law of the Commonwealth to priority over an overriding statutory charge;
- (c) thirdly – in payment of any money owing to a person entitled to the benefit of a prior overriding statutory charge having priority;
- (d) fourthly – in payment of the money then owing to the person entitled to the benefit of the overriding statutory charge; and
- (e) further, in accordance with subsection (2)(b), (c), (d) and (e).

(2) The proceeds from the sale of land by a mortgagee, encumbrancee or person entitled to the benefit of a statutory charge, not being an overriding statutory charge, shall be applied –

- (a) first – in payment of the expenses of the sale;
- (b) secondly – in payment of any money owing to a person entitled under a law of the Commonwealth to priority over a statutory charge;
- (c) thirdly – in payment of any money owing to a person entitled to the benefit of a registered overriding statutory charge;
- (d) fourthly – in payment of a prior mortgage, encumbrance or statutory charge, if any, where the mortgagee, encumbrancee or person entitled to the benefit of the prior statutory charge, who have concurred in the sale, have executed a discharge of their respective mortgage, security or charge;
- (e) fifthly – in payment of the money then owing to the mortgagee, encumbrancee or person entitled to the benefit of the statutory charge; and
- (f) sixthly – in payment of subsequent mortgages, encumbrances and statutory charges, if any, in order of their priority.

### **136. Transfer upon sale by mortgagee or encumbrancee**

(1) Upon the registration of a transfer by a mortgagee or encumbrancee exercising the power of sale conferred by this Act the estate or interest of the mortgagor or encumbrancer passes to the transferee –

- (a) freed and discharged from the mortgage or encumbrance and from all estates, interests and rights to which the mortgage or encumbrance has priority,

but–

- (b) subject to all estates, interests and rights that have priority to the mortgage or encumbrance.

(2) The registration of a transfer by a mortgagee or encumbrancee exercising the power of sale conferred by this Act is not prevented by a caveat or an instrument that has effect as a caveat where the caveat or the instrument relates to an estate, interest or right to which the mortgage or encumbrance has priority and, upon registration of the transfer –

- (a) any such caveat; and
- (b) the registration of any such instrument that has effect as a caveat,

shall be deemed to have been cancelled.

- (3) This section shall be deemed to have had effect on and from 1 January 1911.

**137. Case of default**

The mortgagee or encumbrancee, upon default in payment of the principal sum, interest, annuity, or rent-charge, secured by any mortgage or encumbrance, or any part thereof, may enter into possession of the mortgaged or encumbered land and receive the rents and profits thereof, or may from time to time let the said land for any term not exceeding one year, or may bring an action for recovery of the land either before or after entering into the receipt of the rents and profits, and either before or after any sale of the land shall be effected under the power of sale given or implied in his mortgage or encumbrance.

**138. [Repealed]**

**139. Mortgagee or encumbrancee of leasehold coming into possession of rent and profits**

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

**140. Mortgagee may apply to Registrar-General for order for foreclosure**

When default has been made for 6 months in the payment of the principal or interest secured by any mortgage, the mortgagee may make application, in writing, to the Registrar-General for an order for foreclosure. Such application shall state that such default has been made as aforesaid, and that the land mortgaged has been offered for sale at public auction by a licensed auctioneer, after notice given to the mortgagor, as in this Act or by the mortgage provided; that the amount of the highest bid at such sale was not sufficient to satisfy the money secured by such mortgage, together with the expenses occasioned by the attempted sale; and that notice in writing of the intention of the mortgagee to make such application has been served on the mortgagor, by being given to him or by being left on the mortgaged land, or by the same being sent through the post office by a registered letter directed to him at his address appearing in the Register; and also that a like notice of such intention has been served on every person appearing by the Register to have any estate or interest in the mortgaged land, subsequently to such mortgage, by being given to him or sent through the post office by a registered letter directed to him at his address appearing in the Register; and such application shall be accompanied by a certificate of the licensed auctioneer by whom such land was put up for sale, and such other proof of the matters stated by the applicant as the Registrar-General may require; and the statements made in such application shall be verified by declaration.

**141. Registrar-General to offer land for sale**

The Registrar-General shall cause notice to be published for 4 consecutive weeks in the *Government Gazette*, offering the land for sale; and shall in such case limit and appoint a time, not less than one month from the date of the first publication in such *Gazette*, upon or after which the Registrar-General may issue to the applicant an order for foreclosure, unless in the interval a sufficient amount has been realized by the sale of the land to satisfy the principal and interest moneys due, and all expenses occasioned by the attempted sale and by the proceedings for foreclosure.

**142. Effect of order for foreclosure**

Every such order for foreclosure shall be under the hand of the Registrar-General, and be entered in the Register, and shall when so entered have the effect of vesting in the mortgagee all the estate and interest of the mortgagor in the land mentioned in such order, free from all right and equity of redemption on the part of the mortgagor, or of any person claiming through or under him subsequently to the mortgage so foreclosed, and upon such entry the mortgagee shall be deemed the registered proprietor of the said estate and interest.

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### **142A. Statutory charges**

(1) In the absence of anything to the contrary in an Act by or under which a statutory charge is established, section 132 applies to the person entitled to the benefit of the statutory charge as if the reference to the mortgagee and the mortgage were a reference to that person and that charge.

(2) Before the person entitled to the benefit of a statutory charge exercises a power of sale pursuant to the charge, the person shall give to the registered proprietor of the land not less than 28 days notice, in the prescribed form, of the proposed exercise of the power.

(3) The notice referred to in subsection (2) shall contain particulars of the action that the registered proprietor may take in order to avoid the exercise of the power of sale and the period within which the action may be taken.

(4) If the registered proprietor does not take the action specified in the notice referred to in subsection (2) within the time specified in the notice, the person entitled to the benefit of the statutory charge –

- (a) may lodge with the Registrar-General a notice of the proposed exercise of the power of sale; and
- (b) having lodged such a notice, may, subject to the Regulations, proceed to exercise the power of sale.

(5) Nothing in this Act affects the accrual of statutory charges under this or any other Act before the exercise of a power pursuant to a statutory charge.

### **142B. Application of other provisions**

The following sections, with the necessary changes, apply to a sale of land in pursuance of a statutory charge –

- (a) section 133;
- (b) section 134, as if the sale had taken place pursuant to section 133;
- (c) section 136, as if the sale were a sale by a mortgagee and the reference to estates in section 136(1)(b) were a reference to an overriding statutory charge;
- (d) section 137, as if a reference to –
  - (i) the mortgagee were a reference to the person entitled to the benefit of the statutory charge; and
  - (ii) the default in payment of the principal sum, interest, annuity or rent-charge were a reference to the failure of the registered proprietor of the land the subject of the statutory charge to comply with a notice under section 142A(2);
- (e) section 139, as if a reference to the mortgagee were a reference to the person entitled to the benefit of the statutory charge;
- (f) section 140, as if a reference to –
  - (i) payment of the principal or interest secured by a mortgage were a reference to compliance by the registered proprietor with a notice under section 142A(2);
  - (ii) a mortgagee were a reference to the person entitled to the benefit of the statutory charge;

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- (iii) mortgaged were a reference to charged; and
- (iv) mortgagor were a reference to the registered proprietor of the land;
- (g) section 141, as if the reference to principal and interest on moneys due were a reference to the statutory charge; and
- (h) section 142, as if the reference to –
  - (i) a mortgage were a reference to a statutory charge;
  - (ii) a mortgagor were a reference to the registered proprietor of the land; and
  - (iii) a mortgagee were a reference to the person entitled to the benefit of the statutory charge.

### **143. Discharge of mortgages and encumbrances, &c.**

(1) Upon the production of an instrument in the prescribed form, signed by the mortgagee or encumbrancee, or by one or more of the mortgagees or encumbrancees where the mortgage or encumbrance shall be held on a joint account, and attested by a witness, discharging the land, or any part thereof, from the whole or part of the moneys or annuity secured, the Registrar-General shall make an entry in the Register, and on the certificate as to title produced to him for that purpose, noting that such mortgage or encumbrance is discharged wholly or partially, or that part of the land is wholly or partially discharged as aforesaid, as the case may require, and upon such entry being so made in the Register, the land, or the said part thereof, shall cease to be subject to or liable for the said moneys, or annuity, or the part thereof noted in such entry as discharged, as the case may be.

(2) If the Registrar-General, on the production of an instrument in the prescribed form signed by the person entitled to the benefit of a statutory charge and accompanied by the prescribed fee, is satisfied that the charge has been spent, the Registrar-General shall cancel the registration of the charge and on that cancellation the land ceases to be subject to the charge.

- (3) The Registrar-General shall –
- (a) on the application of a person who has a registered interest in land that has been subject, for more than 5 years, to a registered statutory charge or encumbrance; and
  - (b) on payment of the prescribed fee,

give notice in writing to the person entitled to the benefit of the charge or encumbrance that, on the expiration of a period of not less than 28 days specified in the notice, the Registrar-General will remove the statutory charge or encumbrance from the Register unless the person entitled to the benefit of the charge or encumbrance gives to the Registrar-General, within the period, a notice in the prescribed form accompanied by the prescribed fee, and, if the person does not do so, the Registrar-General may remove the statutory charge or encumbrance from the Register accordingly.

### **144. [Repealed]**

### **145. Entry of satisfaction of annuity**

Upon the making of an application in the prescribed form and proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any encumbrance, the annuity or sum of money thereby secured shall cease to be payable; and that all arrears of the said annuity or money have been paid, satisfied, or discharged, the Registrar-General shall make an entry in the Register, and on the certificate as to title or other instrument produced to him for that purpose, noting that such annuity or sum of

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money is satisfied and discharged; and upon such entry being made in the Register the land comprised in the encumbrance shall cease to be subject to or liable for such annuity or sum of money.

### **146. Payment of mortgage moneys to public trustee**

(1) The Public Trustee may, in his absolute discretion, receive moneys on behalf of a mortgagee, or the estate of a mortgagee who –

- (a) is dead;
- (b) cannot be found; or
- (c) is incapable of executing a discharge of the mortgage.

(2) The Public Trustee may if he thinks fit require a person at whose instance he proposes to exercise his power under subsection (1) to undertake to indemnify him in respect of any costs or liabilities incurred in connection with or by reason of that exercise.

- (3) Moneys received by the Public Trustee under subsection (1) shall –
- (a) be deemed for the purposes of the mortgage and of section 147 to have been paid to the mortgagee; and
  - (b) be held by the Public Trustee upon trust for the mortgagee or other person entitled thereto.

### **147. Discharge of mortgage by Public Trustee**

(1) Where all the moneys secured by a mortgage have been paid by the mortgagor, and the mortgagee –

- (a) is dead;
- (b) cannot be found; or
- (c) is incapable of executing a discharge of the mortgage,

the Public Trustee may, in his absolute discretion, execute a discharge of the mortgage.

(2) The Public Trustee may if he thinks fit require a person at whose instance he proposes to exercise his power under subsection (1) to undertake to indemnify him in respect of any costs or liabilities incurred in connection with or by reason of that exercise.

(3) A discharge executed under subsection (1) shall have the same effect as a discharge executed by the mortgagee, save that it shall not operate as a discharge of the personal covenants of the mortgage.

(4) In the case of a mortgage to secure contingent liabilities, or to secure both the payment of moneys and contingent liabilities, the reference in subsection (1) to all the moneys secured by a mortgage having been paid is or includes (as the case may require) a reference to the contingency or contingencies in question having become incapable of occurring.

### **148. [Repealed]**

### **149. Equitable mortgage may be created**

An equitable mortgage of land may be created by deposit of the certificate or other instrument of title, and such deposit shall have the same effect as a deposit by way of equitable mortgage of the title deeds of land not under the provisions of this Act.

**150. Transfer of mortgage, lease, or encumbrance**

A registered mortgage, lease, or encumbrance may be transferred to any person by a transfer as aforesaid, or by an instrument in the prescribed form.

**151. Effect of transfer**

Upon such transfer or other instrument being registered, the estate or interest of the transferor, as set forth in the instrument transferred, with all rights, powers, and privileges thereto belonging or appertaining, including the right to sue upon and recover in his own name any debt, sum of money, annuity, or damages, under such transferred instrument, shall pass to the transferee, and such transferee shall, while he remains the registered proprietor of such estate or interest, be subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in the transferred instrument originally as mortgagee, lessee, or encumbrancee.

**151A. Alterations of title affecting mortgages, leases and encumbrances**

- (1) Where the land comprised in a grant in fee simple or a Crown lease ("the new Crown lease") –
  - (a) is or includes the land, or part of the land, comprised in an existing Crown lease ("the old Crown lease"); and
  - (b) so far as comprised in the old Crown lease, is subject to one or more leases, mortgages or other encumbrances,

the Registrar-General, on an application made in the prescribed form by the registered proprietor of the old Crown lease and (subject to subsection (5)) if satisfied that the registered proprietor of each such interest as is referred to in paragraph (b) has consented to the transfer of his interest to the land comprised in the grant in fee simple or new Crown lease, or to a part of that land specified in the application, shall –

- (c) notwithstanding that the interests referred to in paragraph (b) have not been surrendered or discharged, register the surrender of the old Crown lease in relation to the land comprised in the grant in fee simple or new Crown lease; and
- (d) register the grant in fee simple or new Crown lease subject to those interests (limited where appropriate to the land specified in the application).

(1A) The registration of a grant in fee simple or new Crown lease pursuant to subsection (1)(d) shall be deemed to have occurred before the creation of an interest to which the grant in fee simple or new Crown lease is subject as provided in subsection (1)(d) and every such interest shall be deemed to relate to the grant in fee simple or new Crown lease, as the case may be.

- (2) Where an instrument adds land to, or removes land from, land which is –
  - (a) comprised in a Register; and
  - (b) subject to one or more leases, mortgages or other encumbrances,

the Registrar-General may, on an application made in the prescribed form by the registered proprietor of the land so comprised and (subject to subsection (5)) if satisfied that the registered proprietor of each such interest as is referred to in paragraph (b) has consented to the application, register the instrument notwithstanding that those interests are not expressed to relate to the land to be added or, as the case may be, have not been surrendered or discharged in relation to the land to be removed.

(3) On the registration of an instrument pursuant to subsection (2), the interests referred to in paragraph (b) of that subsection shall, subject to subsection (4), apply to the land thereby added to the title or, as the case may be, cease to apply to the land removed therefrom.

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(4) Subsection (3) does not have the effect of extending to land added to a title a lease relating to a part only of the land formerly included in the title unless an intention that the lease be so extended is indicated in the application for registration.

(5) The consents required by subsection (1) and, in a case where land is added to land comprised in a registered title but not where it is removed therefrom, the consents required by subsection (2) do not include the consent of the Territory, the Commonwealth, or a body corporate established by or under an Act (including an Act of the Commonwealth) as registered proprietor of any encumbrance other than a mortgage.

(6) In this section, references to a lease include a sublease.

### **152. Covenants implied in transfer of lease**

In every transfer of a lease there shall be implied a covenant by the transferee with the transferor, thenceforth to pay the rent by the lease reserved, and to perform and observe all the covenants in the lease contained, or by this Act declared to be implied therein on the part of the lessee to be performed and observed, and to indemnify and keep harmless the transferor against all actions, claims, and expenses in respect of the non-payment of such rent, or the breach or non-observance of such covenants or any of them.

## **PART XIII – VARIATIONS**

### **153. Variations of mortgages, encumbrances and leases**

(1) Any mortgage, encumbrance, or lease may be varied at any time and from time to time by an instrument of variation in the prescribed form executed by all the parties to the mortgage, encumbrance, or lease.

(2) On production to the Registrar-General of the instrument of variation, he shall retain the instrument and record details of the variation in the Register.

(3) No dealing registered subsequent to any mortgage, encumbrance, or lease and prior to an instrument of variation of the mortgage, encumbrance, or lease, shall be affected by the variation unless the proprietor in whose favour the dealing was registered shall have consented in writing to the variation.

(4) The power conferred by this section to vary a mortgage, encumbrance or lease includes power to vary the land to which the mortgage, lease or encumbrance applies.

### **154. [Repealed]**

### **155.-160. [PART XIV] [Repealed]**

## **PART XV - TRUSTS AND TRANSMISSIONS**

### **161. Trusts contained in grant to be inserted in certificate as to title**

Whenever any grant from the Crown shall contain the particulars of any trust for public purposes, every certificate as to title issued in respect of the same land, or any part thereof, while such trusts subsist and affect such land, shall contain the like particulars of trust as were contained in the original grant.

### **162. No particulars of trust to be entered in register**

(1) Subject to section 161, the Registrar-General shall not make an entry in the Register of the particulars of a trust and shall not register an instrument under this Act that declares or contains trusts relating to land under this Act.

(2) Subsection (1) does not prevent registration of an instrument that contains a reference to a trust and a reference to the trust in an instrument that has been registered does not operate as notice of particulars of the trust.

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(3) In the absence of a caveat, a registered proprietor is, for the purpose of a sale, mortgage or contract for valuable consideration of or relating to land under this Act, deemed to be the absolute proprietor of the land freed from all trusts.

### **163. Insertion of "no survivorship" in instruments**

Upon the transfer of any estate or interest in land, to 2 or more persons, as joint proprietors, intended to be held by them as trustees, it shall be lawful for the transferor or transferees to insert in the transfer the words "no survivorship"; and the Registrar-General shall in such case record such words in the Register and on the certificate as to title for the land.

### **164. Trustees may authorize insertion**

Any 2 or more persons registered as joint proprietors of any estate, or interest in land held by them as trustees, may, by writing under their hands, authorize the Registrar-General to enter the words "no survivorship" in the Register and on the certificate as to title for the land.

### **165. Effect of such insertion**

After any such entry as in sections 163 and 164 mentioned has been made in the Register, it shall not be lawful for any less number of joint proprietors than the number then registered to transfer or otherwise deal with the said estate, or interest, without obtaining an order of the Court: Provided that, if it be intended not to apply the said restriction until the trustees registered as such proprietors be reduced below a certain specified number, words indicative of such intention may be entered in like manner, and in that case the power of disposition by survivors shall continue until the number be so reduced.

### **166. Court may direct notice to be published before order is made**

The Court may, before making any such order as aforesaid, direct notice of the intention to apply for such order to be given, either by public advertisement or otherwise, and may appoint a period within which any person interested may show cause why such order should not be made.

### **167. Court may protect persons interested**

The Court may in such order give directions for the transfer of such estate, or interest, to any new proprietor or proprietors, solely or jointly, with, or in the place of, any existing proprietor or proprietors, or may make such order in the premises as may be just for the protection of the persons beneficially interested in such estate, or interest, or in the proceeds thereof; and upon any such order being deposited with the Registrar-General, he shall make such entries and perform such acts as in accordance with the provisions of this Act may be necessary for the purpose of giving effect to such order.

### **168. Survivors may perform duties or transfer to new trustees**

Nothing hereinbefore contained shall prevent the surviving or remaining trustee or trustees from exercising all the powers and duties of the trust other than in regard to transfers and dealings under this Act, nor from so transferring the land as to give effect to any valid appointment of a new trustee or new trustees. And so far as shall be necessary to ascertain the sufficiency of any such appointment, it shall be lawful for the Registrar-General to refer to the provisions of any instrument relating to the trust, notwithstanding the same be not registered.

### **169. Persons may disclaim by deed or otherwise**

Any person who shall, without his consent, have been registered as proprietor of any estate or interest in land, or to whom any such estate or interest shall have been transferred, bequeathed, or devised, may execute a deed or other instrument of disclaimer of such estate or interest; and if such person shall have been registered as proprietor, the Registrar-General shall, upon production of such deed or other instrument of disclaimer, cancel, alter, or correct the Register, certificate as to title or other instrument of title, or make such other entry in the

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Register, and upon the certificate as to title or other instrument of title, as shall give effect to such disclaimer: Provided that no person so disclaiming shall be released from any trust or other liability in case he shall have acted in the trust, or by his own act incurred such liability.

### **170. Transmission by insolvency or statutory assignment**

Upon the registered proprietor of any estate or interest in land becoming bankrupt or making a statutory assignment, the Official Receiver (if no trustee has been appointed) or the trustee of such bankrupt or assignor shall be entitled to be registered as proprietor of such estate or interest.

### **171. Transmission to be entered in Register book**

The Registrar-General shall in any such case, upon being furnished with evidence of the bankruptcy and the non-appointment of a trustee, or of the appointment of or assignment to the trustee, accompanied by an application in the prescribed form, under the hand of the Official Receiver or trustee, to be registered as proprietor of the estate or interest to be therein specified and described, shall enter in the Register a memorandum notifying the bankruptcy or the appointment of or assignment to the trustee, as the case may require, and upon such entry being made the Official Receiver or trustee shall be the registered proprietor of the estate or interest of the bankrupt or assignor in such land.

### **172. Proceedings in case assignment declared void**

If any such statutory assignment shall afterwards be declared fraudulent and void by the Court, and the assignor shall thereupon be adjudged bankrupt, the Registrar-General shall, upon being furnished with evidence thereof, and of the appointment or non-appointment of a trustee under such bankruptcy, enter in the Register a memorandum notifying the same, and thereupon the Official Receiver, or the trustee under such bankruptcy, as the case may be, shall be the registered proprietor of the estate and interest of the bankrupt and of the trustee under such assignment in the land.

### **173. Bankruptcy or assignment of lessee**

In any case where the registered proprietor of a lease has heretofore, or shall hereafter, become bankrupt, or has heretofore made or shall hereafter make, a statutory assignment –

- I. If such lease be not mortgaged or encumbered under the provisions of this Act, the Registrar-General shall, upon the application in writing of the lessor, accompanied by a statement in writing, signed by the Official Receiver or the trustee under such bankruptcy or assignment, certifying his refusal to accept such lease, enter in the Register a note of such refusal, and such entry shall operate as a surrender of such lease:
- II. If such lease be mortgaged or encumbered, the Registrar-General shall, upon the application in writing of any mortgagee or encumbrancee, accompanied by a statement in writing signed by the Official Receiver, or the trustee under such bankruptcy or assignment, certifying his refusal to accept such lease, or by proof that the Official Receiver or trustee has neglected or refused to certify such refusal or to become registered as proprietor of such lease within one month after being thereunto required by notice in writing given to him by the mortgagee or encumbrancee, enter in the Register a note of such refusal or neglect, and such entry shall operate as a foreclosure, and the estate or interest of the bankrupt or assignor in such lease shall thereupon vest in such mortgagee or encumbrancee, free from all other charges subsequent to his mortgage or encumbrance, and such mortgagee or encumbrancee shall thereupon be deemed to be the registered proprietor of such estate or interest, and shall, while he remains such registered proprietor, be subject to and liable for the same requirements and liabilities to which he would have been subject and liable if named in the lease originally as lessee:
- III. No such entry shall be made unless it be proved to the satisfaction of the Registrar-General that the applicant mortgagee, or encumbrancee, has given 14 days' notice in writing of his intended application to every subsequent mortgagee or encumbrancee of the lease, or has obtained his

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written consent; and any such subsequent mortgagee or encumbrancee shall be entitled to pay to the applicant mortgagee or encumbrancee the amount due to him under his mortgage or encumbrance, with costs, at any time before foreclosure, and shall thereupon be entitled to a transfer from him of such mortgage or encumbrance:

- IV. If the Official Receiver or the trustee under the bankruptcy or assignment shall certify his refusal to accept the lease, or shall neglect or refuse to become registered as proprietor of the lease, within one month after having been thereunto required by notice in writing given to him by the lessor, and the mortgagees or encumbrancees (if any) of the lease shall neglect or refuse to have an entry operating as a foreclosure made in the Register under the provision in that behalf hereinbefore contained within the period of 2 months after having been thereunto required by notice in writing given to them by the lessor, the Registrar-General shall, upon the application in writing of the lessor, and, upon proof of such certificate or such neglect or refusal as aforesaid, enter in the Register a note of such neglect or refusal, and every such entry shall operate as a surrender of such lease.

### **174. Entry of surrender or foreclosure not to prejudice cause of action**

Under the preceding provisions as regards a lessee becoming bankrupt or making a statutory assignment, no entry of surrender or foreclosure respectively shall prejudice any cause of action in respect of any breach or non-observance of any covenants in such lease, encumbrance, or mortgage respectively contained or implied which shall have accrued previously to such lessee becoming bankrupt or making a statutory assignment.

### **175. [Repealed]**

### **176. Application to be made on transmission on death**

The executor, administrator, or Public Trustee shall, before dealing with the estate or interest in land of a deceased registered proprietor, make application in the prescribed form to the Registrar-General to be registered as proprietor, and shall produce to the Registrar-General the certificate as to title, or other instrument of title, and the probate or letters of administration, or the order of the Court authorizing the Public Trustee to administer the estate of the deceased registered proprietor, or an office copy of the probate, letters of administration, or order, as the case may be.

### **177. Registrar-General shall record details of transmission**

The Registrar-General shall record in the Register details of an application under section 176.

### **178. Effect of such entry**

When the details of the application under section 176 are recorded under section 177 in the Register, the executor, administrator, or Public Trustee, as the case may be, shall be the registered proprietor of such estate or interest, and his title shall relate back to and take effect from the date of the death of the deceased registered proprietor.

### **179. Where 2 or more executors or administrators, all to concur**

Where probate or letters of administration shall be granted to more persons than one, all of them for the time being shall concur in every instrument relating to the real estate of the deceased registered proprietor.

### **180. Persons registered in place of deceased, bankrupt or assigning proprietor**

Any person registered in place of a deceased registered proprietor, or as Official Receiver, or as trustee of a registered proprietor becoming bankrupt or making a statutory assignment, shall hold the land in respect of which he is so registered upon the trusts, and for the purposes for which the same is applicable by law; but shall, for the purpose of any dealing with such land, be deemed to be the absolute proprietor thereof.

**181. – 183. [Repealed]**

**184. Order of court vesting land**

Where the registered proprietor of land holds land on trust and a court, by order, vests the land in another person, the Registrar-General shall, on being served with a sealed copy of the order and on production of the certificate as to title for the land, record details of the order in the Register.

**185. Action may be brought by beneficiary in name of trustee**

Every trustee who shall be registered as proprietor of any land, shall, on being indemnified, be bound to allow his name to be used by any beneficiary, or person claiming an estate or interest in the land, as plaintiff or defendant in any action for recovery of possession of the land or any part thereof. And, in case there shall be any dispute as to the sufficiency of any indemnity, the same shall be decided by the Master of the Court.

**185A. Vesting orders under *Encroachment of Buildings Act***

Where the Court has, under the *Encroachment of Buildings Act*, made a vesting order, the Registrar-General shall, upon being served with a sealed copy of such order, enter in the Register the date of the vesting order, the date and hour of its production to him and the name, residence and description of the person in whom the order shall purport to vest the said land; and, upon such entry in the Register, such person shall be the registered proprietor of the land and, unless and until such entry in the Register shall be made, the order shall have no effect or operation in transferring or otherwise vesting the land.

**186. Purchaser not to be affected by notice of trusts**

No person contracting or dealing with, or taking or proposing to take a transfer or other instrument from the registered proprietor of any estate or interest in land, shall be required, or in any manner concerned to inquire into or ascertain the circumstances under, or the consideration for, which such registered proprietor or any previous registered proprietor of such estate or interest is or was registered, or to see to the application of the purchase-money, nor be affected by notice direct or constructive of any trust or unregistered interest, any law or equity to the contrary notwithstanding.

**187. In case of fraud**

Section 186 shall not protect any person who has acted fraudulently or been a party to fraud, but the contracting, or dealing, or taking, or proposing to take a transfer or other instrument as aforesaid, with actual knowledge of any trust, charge, or unregistered instrument, shall not of itself be imputed as fraud.

**188. Survivor of joint proprietors, and of remainder man entitled to estate in possession**

Upon the death of any person registered together with any other person as joint proprietor of any estate or interest in land, or when the life estate in respect of which any certificate has been issued has determined, and the registered estate next in remainder or reversion has become vested in possession, or the person to whom such certificate for a life estate has been issued has become entitled to the land for an estate in fee simple in possession, the Registrar-General shall, upon an application in the prescribed form by the person entitled, and upon proof to his satisfaction of any such occurrence as aforesaid, make an entry thereof in the Register, and thereupon such person shall be the registered proprietor of the estate or interest to which he is entitled, as if the same had been transferred to him.

189. [Repealed]

**PART XVI – CAVEATS**

**191. Caveats**

Any settlor of land or beneficiary claiming under a will or settlement, or any person claiming to be interested at law or in equity, whether under an agreement, or under an unregistered instrument, or otherwise howsoever in any land, may lodge a caveat with the Registrar-General forbidding the registration of any dealing with such land, either absolutely or unless such dealing shall be expressed to be subject to the claim of the caveator, or to any conditions conformable to law expressed therein:

- I. A caveat shall be in the prescribed form and may be signed and lodged by the caveator or the agent of the caveator:
- II. Upon the receipt of a caveat the Registrar-General shall enter details thereof in the Register, and shall forthwith send a notice of such caveat to the person against whose title such caveat shall have been lodged, directed to his address appearing in the Register:
- III. Subject to section 136 of this Act, so long as a caveat remains in force forbidding the registration of a dealing in respect of any land, the Registrar-General shall not register a dealing in respect of that land unless either the written consent of the caveator or his agent has been given or the dealing had been presented for registration before the lodgment of the caveat:
- IV. The registered proprietor or any other person claiming estate or interest in the land may, by summons, call upon any caveator, including the Registrar-General, to attend before the Court to show cause why the caveat should not be removed; and the Court may, upon proof that the caveator has been summoned, and upon such evidence as the Court may require, make such order in the premises, either *ex parte* or otherwise, as shall seem just:
- V. The caveatee may, except when the caveat is lodged by a settlor, or by a beneficiary under a will or settlement, or by the Registrar-General, make application in in the prescribed form to the Registrar-General to remove the caveat, and shall in such application give an address in the Territory to which notices or proceedings relating to the caveat may be sent, and the Registrar-General shall thereupon give 21 days' notice in writing to the caveator, requiring that the caveat be withdrawn:
- VI. The Registrar-General shall, after the lapse of 21 days from the posting of such notice to the address mentioned in the caveat, or of such extended time as may be ordered by the Court, remove the caveat from the Register by entering therein a memorandum that the same is discharged:
- VII. The caveator may apply to the Court, by motion or summons, for an order to extend the time beyond the 21 days mentioned in such notice, and notice of such motion or such summons may be served at the address given in the application of the caveatee; and the Court may, upon proof of the service of such notice of motion or summons, and upon such evidence as the Court may require, make such order in the premises, either *ex parte* or otherwise, as shall seem just:
- VIII. Any caveator may, by notice in writing to the Registrar-General, withdraw his caveat at any time, but the Court may, notwithstanding such withdrawal, order payment by the caveator to the caveatee or other person interested of any costs incurred by the caveatee prior to the receipt by him of notice in writing of the withdrawal of the caveat:
- IX. An entry shall be made by the Registrar-General in the Register of any order made by the Court relating to any caveat, or the withdrawal, lapse, or removal of any caveat:

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- X. Any caveator other than the Registrar-General who shall have lodged or refused or neglected to withdraw any caveat wrongfully and without reasonable cause, shall be liable to make compensation to any person who may have sustained damage thereby, and such compensation may be recovered by action: Provided that, if proceedings shall have been taken in the Court by the caveatee or other person interested, the amount of such compensation may be assessed by the Court acting in the same proceedings; or the Court may direct an action to be brought to ascertain and recover such amount:
- XI. It shall not be lawful for any caveator other than the Registrar-General, or for any one acting on behalf of such caveator, to lodge a further caveat relating to the same matter without the leave of the Court:
- XII. Where any caveat lodged by the Registrar-General shall be removed by the Court, such Court may order the costs sustained by the person at whose instance such caveat was removed to be paid out of the estate on behalf of which such caveat was entered.

### **PART XVIA – MEMORIALS INDICATING RESTRICTIONS ON USE**

#### **191A. Caution notices**

(1) Upon a first grant or transfer of land, freehold or leasehold, from the Crown or at any time afterwards with the consent in writing of the registered proprietor of any interest in the land, the Minister or, as the case may be, Commonwealth Minister having administrative responsibility for the first grant or transfer of the land, may, if he or she is of the opinion that characteristics of or relating to the land may adversely affect its use or occupation, lodge with the Registrar-General a memorandum –

- (a) identifying the land;
- (b) setting out the characteristics of or relating to that land that, in the opinion of the Minister or, as the case may be, Commonwealth Minister, may adversely affect its use or occupation; and
- (c) where the memorandum is lodged other than upon the first grant or transfer of the land, containing the consent of the registered proprietor of any interest in the land.

(2) Without limiting the generality of subsection (1), characteristics of or relating to land which may be set out in a memorandum include –

- (a) a propensity towards flooding;
- (b) the presence of unexploded bombs or other ordnance; and
- (c) the presence of rubbish disposal or landfill sites, whether compacted or not.

(3) The Registrar-General shall register a memorandum lodged under subsection (1), and shall enter a memorial (in this Part referred to as a caution notice) in the relevant register against the land to which the memorandum relates.

- (4) A caution notice does not, of itself, preclude any dealing with the land.

#### **191B. Notices of statutory restrictions**

(1) Where, pursuant to a law of the Territory, a restriction is imposed on the use or occupation or any dealing with land the Minister having responsibility for the administration of the law imposing the restriction may or, where the land is prescribed property within the meaning of the *Associations Incorporation Act* and was granted to an association by section 46(1A) of the *Lands Acquisition Act*, shall lodge with the Registrar-General a memorandum –

- (a) identifying the land which is subject to the restriction;

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- (b) specifying the statutory authority under which the restriction was imposed, and the date on which it was imposed; and
- (c) requesting that a memorial be entered in the appropriate register in relation to the land.

(2) A restriction under this section includes the right of the Crown to revoke the reservation on land held by a council on lease pursuant to section 337 of the *Local Government Act 1985* as saved by Part 14 of the *Local Government Act 1993*.

(3) Where land is prescribed property within the meaning of the *Associations Incorporation Act* and was acquired wholly or partly from or using funds obtained under a grant from the Commonwealth, the appropriate Commonwealth Minister may lodge the memorandum referred to in subsection (1) instead of the Territory Minister.

(4) The Registrar-General shall register a memorandum lodged under this section, and shall enter a memorial (in this Part referred to as a statutory restrictions notice) in the relevant register against the land to which the memorandum relates.

(5) A statutory restrictions notice does not, of itself, preclude any dealings with land but has effect according to the tenor of the statutory restriction to which it refers.

### **191C. Removal of memorials**

The Minister may, if satisfied that the reason for the entry of a memorial under this Part no longer exists, direct the Registrar-General to remove the memorial, and the Registrar-General shall remove it accordingly.

### **191D. No liability on minister, &c.**

No action or proceeding shall lie against a Minister or Commonwealth Minister or the Territory or the Commonwealth on account of anything done or omitted to be done for the purposes of this Part or done or omitted to be done in good faith and purported to be done in pursuance of this Part.

## **PART XVIB – RECORD OF ADMINISTRATIVE INTERESTS AND INFORMATION**

### **191E. Record of administrative interests and information**

(1) The Registrar-General may keep a record of administrative interests and information, as the Registrar-General thinks fit, in relation to land.

(2) For the purposes of subsection (1), "administrative interests and information" means particulars and information in relation to land –

- (a) required under an Act in force in the Territory that may presently or prospectively affect the title to or possession or enjoyment of the land; and
- (b) such matters as the Minister determines or as are prescribed.

(3) The record of administrative interests and information referred to in subsection (1) is not part of the Register.

(4) The Registrar-General may allow a person such access as the Registrar-General thinks fit to the record of administrative interests and information referred to in subsection (1), subject to and in accordance with the Regulations or by agreement with the person, and on payment of the prescribed fee, if any.

(5) The Registrar-General may provide the information referred to in subsection (4) by means of a certificate or by a statement.

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(6) The Registrar-General may, in relation to access by a person, provide access in a way to limit the liability of –

- (a) the Registrar-General or the Territory;
- (b) the Commonwealth;
- (c) a statutory authority of the Territory or the Commonwealth, a local government body or a prescribed organization; or
- (d) an employee of the Territory or the Commonwealth or of a statutory authority, local government body or prescribed organization referred to in paragraph (c),

for an omission from, or misstatement or inaccuracy in, information obtained by provision by the Registrar-General of access referred to in subsection (4) or of a certificate or statement referred to in subsection (5).

### **PART XVII – EJECTMENT**

**192. – 200. [Repealed]**

**201. – 219. [PART XVIII] [Repealed]**

### **PART XIX – SPECIAL POWERS AND DUTIES OF REGISTRAR-GENERAL**

#### **220. Miscellaneous special powers**

The Registrar-General may exercise the following powers, that is to say –

- (1) He may summon the proprietor, or mortgagee, or any other person interested in any land in respect of which any instrument, transmission, or other dealing is about to be registered, issued, or transacted, to produce any document of title, certificate as to title, instrument of title, or other instrument in his possession or under his control affecting such land, or the title thereto, and to appear and give any explanation or information respecting such land, and the documents and instruments of title relating thereto, and may examine any such person in respect thereof; and the Registrar-General, if the document, instrument, explanation, or information required by him be withheld, and the same appear to him material, shall not be bound to proceed with the registration or issuing of such instrument, transmission, or dealing:
- (2) He may administer oaths, or, in lieu of administering an oath, may require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination:
- (3) He shall whenever the production of a certificate as to title is required, for the purpose of entering or making on it an entry by this Act directed to be entered or made thereon, or for the purpose of cancelling or correcting the same under the provisions of this Act, summon any proprietor, mortgagee, encumbrancee, or other person having the possession, custody, or control thereof, to produce the same for such purpose, and such proprietor, mortgagee, encumbrancee, or other person shall thereupon produce the same on payment of the prescribed fee: Provided that he may, at his discretion, before so summoning any person, require evidence that such person has neglected or refused to produce such duplicate instrument on being requested so to do, and on being offered a reasonable sum for his expenses of production:
- (4) He shall, upon such evidence as shall appear to him sufficient in that behalf, make corrections of errors and other matters to the Register and to certificates as to title, and supply omitted entries: Provided that, in the correction of any such error, he shall ensure that a record is kept of both the material corrected and such other identifying information as the Registrar-General

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considers necessary with effect so that the Register or any certificate as to title is so corrected. Every certificate as to title, or entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted, except as regards any instrument which may have been registered previously to the actual time of correcting the error or supplying the omitted entry:

- (4A) He may, on an application made in the prescribed form and supported by such evidence as he considers appropriate, make such alterations in the Register as are necessary by reason of a change in the name or address of a registered proprietor:
- (4B) He may, if he considers it appropriate to do so, register a document lodged for and awaiting registration notwithstanding a patent error in the document but shall not erase or make illegible the error.
- (5) He may, on behalf of Her Majesty, Her heirs or successors, or for the prevention of any fraud or improper dealing, or in any case in which it shall appear to him that an error has been made by misdescription or otherwise in any instrument, or for the protection of any person absent from the Territory, or under the disability of infancy, coverture, lunacy, or unsoundness of mind, enter caveats forbidding the registration of any instrument, transmission, or dealing affecting any land:
- (6) He shall, where a caveat is entered to protect a sum of money, upon payment of such sum to him, withdraw such caveat:
- (7) He may, with the consent of the Minister, from time to time, make such alterations in the several forms of instruments prescribed as he may deem requisite; and every form of instrument so altered shall be published in the *Government Gazette*, and may thereafter be used in lieu of, and shall have the same effect as, the corresponding form prescribed by this Act, and shall be deemed an authorized form:
- (8) He may require any registered proprietor desiring to transfer or otherwise to deal with the land or any portion of the land comprised in his certificate, or other instrument of title, to deposit with him a map or plan of such land, verified by the declaration of a Licensed Surveyor; and if such person or proprietor shall neglect or refuse to comply with such requirement, it shall not be incumbent on the Registrar-General to proceed with the bringing of such land under the provisions of this Act, or with the registration of such transfer or dealing:
- (9) He may dispense with the production of any duplicate instrument upon which any memorial of a transfer or other dealing is by this Act required or authorized to be entered or made; and upon the registration in any such case of a transfer or other dealing the Registrar-General shall notify in the memorial in the Register that no such entry has been made on the duplicate instrument; and such transfer or other dealing shall thereupon be as valid and effectual as if the duplicate instrument had been produced and such memorial or entry had been entered or made thereon: Provided that, before dispensing with the production of any such duplicate instrument, and before registering such transfer or other dealing, the Registrar-General shall, except in the case of a transmission, require the transferor or other party dealing to make a declaration that the duplicate instrument has not been deposited as security for any loan, and is not subject to any lien other than appears in the Register, and shall give at least 14 days' notice of his intention to register such transfer or dealing in the *Government Gazette*, and in at least one newspaper published in that part of the Territory where the land is situated.

### **220A. Powers where certificate or instrument lost, damaged, &c.**

- (1) Where –
  - (a) the Registrar-General is satisfied on an application made in the prescribed form that –

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- (i) a certificate as to title;
- (ii) a duplicate Crown lease; or
- (iii) a copy of any other instrument registered under this Act,

has been lost, mislaid or destroyed; or

- (b) it appears to the Registrar-General, either on an application in the prescribed form or of his own motion, that the condition of any such duplicate or copy is such as to make its replacement necessary or desirable,

the Registrar-General may, in the case of a certificate as to title, issue a new certificate as to title, and, in any other case, issue such certificate as is appropriate under subsection (2).

- (2) The appropriate certificate is –

- (a) in the case of a duplicate Crown lease, a certificate identifying the lease by its number in the Register, and stating that the person named in the certificate is the registered proprietor thereof; and
- (b) in the case of any other instrument, a certificate describing its nature, naming the parties to it, and identifying it by reference to its number in the Register.

- (3) The Registrar-General shall note on –

- (a) any new certificate as to title issued under subsection (1); and
- (b) any certificate issued under that subsection in respect of a Crown lease,

all registered interests subsisting in the land in question and, so far as still capable of having effect, any instrument lodged in relation thereto.

(4) Before issuing any certificate under this section, the Registrar-General may if he considers it necessary or desirable to do so give notice of his intention to issue it in the *Gazette* or in a newspaper circulating in the locality in which the land in question is situated.

(5) References in this Act to a duplicate Crown lease or a copy of any instrument registered under this Act include where appropriate references to a certificate issued in place of such a duplicate or copy in accordance with subsection (2).

(6) A certificate issued under subsection (1) is not liable to duty under the *Taxation (Administration) Act*.

### **221. Registrar-General to show cause**

If, upon the application of any proprietor to have land brought under the provisions of this Act, or to have any dealing or transmission registered or recorded, or to have any instrument or foreclosure order issued, or to have any act or duty done or performed which by this Act is prescribed to be done or performed by the Registrar-General, the Registrar-General shall refuse so to do, or, if such proprietor shall be dissatisfied with the direction upon his application given by the Registrar-General such proprietor may require the Registrar-General to set forth the grounds of his refusal, or the grounds upon which such direction was given, and such proprietor may, if he think fit, at his own cost, summon the Registrar-General to appear before the Court to substantiate and uphold the grounds of his refusal or of such direction as aforesaid.

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### **222. Hearing of summons**

Such summons shall be issued under the hand of a Judge, and shall be served upon the Registrar-General 6 clear days at least before the day appointed for hearing; and upon such hearing, the Registrar-General, or his counsel, shall open and have the right of reply, and the Court may, if any question of fact be involved, direct an issue to be tried to decide such question, and may make such order in the premises as the circumstances of the case may require, and the Registrar-General shall obey such order. All expenses of and incidental to any such proceedings shall be borne and paid by the person instituting the same, unless the Court shall certify that there were no reasonable grounds for such refusal or direction as aforesaid.

### **223. Registrar-General to state case for Court**

The Registrar-General may, whenever any question shall arise with regard to the performance or exercise of any of the duties by this Act conferred or imposed upon him, state a case for the opinion of the Court, and it shall be lawful for the Court to give judgment thereon, and such judgment shall be binding upon the Registrar-General.

## **PART XX – PROCEDURE AND PENALTIES**

### **224. – 224. [Repealed]**

### **226. Form of summons by Registrar-General**

Any summons issued by the Registrar-General under the authority of this Act may be in the form of the Twenty-second Schedule hereto.

### **227. Refusal or neglect of person summoned**

If any person shall refuse or neglect to obey or comply with the requirements of any such summons the Registrar-General may apply to the court for a summons calling upon such person to show cause why he should not obey or comply with the same, and the court may, on the hearing of such summons, make such order as it thinks fit, and unless the court shall on such hearing certify that such refusal or neglect was reasonable, such person shall forfeit and pay a penalty, to be enforced by the court, not exceeding 200 dollars.

### **228. Declarations**

Any declaration under this Act may be made before the Registrar-General, any Deputy Registrar-General, a Notary Public, or a Justice of the Peace.

### **229. – 231. [Repealed]**

### **232. Penalty for certifying incorrect instruments**

Any person who shall falsely or negligently certify to the correctness of any application or instrument under this Act, shall incur therefor a penalty not exceeding \$2000; but such penalty shall not prevent any person sustaining loss or damage in consequence of error or mistake in any such application or instrument from recovering damages against the person who shall have certified the same.

### **233. Certain fraudulent acts to be misdemeanors**

A person commits an offence if he –

- (I) Wilfully and fraudulently makes any false statement in any application to be registered as proprietor, whether in possession, reversion, remainder, or otherwise on a transmission, or in any other application to be registered under this Act as proprietor of any land, or any estate or interest in any land:

## *Real Property Act*

- (II) Wilfully and fraudulently suppresses, withholds, or conceals, or assists, or joins in, or is privy to the suppressing, withholding, or concealing from the Registrar-General, the Acting Registrar-General, or any Deputy Registrar-General any material document, fact, or matter of information:
- (III) Wilfully and fraudulently gives false evidence, or makes a false statement in his examination before the Registrar-General, the Acting Registrar-General, or any Deputy Registrar-General:
- (IV) Without lawful authority and knowing that no such authority exists, intentionally alters or causes to be altered –
  - (a) a folio in the Register or a certificate as to title;
  - (b) an entry made by the Registrar-General;
  - (c) an instrument comprising part of the Register;
  - (d) an instrument, certificate, statement or form issued by the Registrar-General;
  - (e) information contained in the record of administrative interests and information (if any) kept under section 191E; or
  - (f) information contained in the record of dealings kept under section 51.
- (V) Fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar-General:
- (VI) Knowingly misleads or deceives any person hereinbefore authorized to demand explanation or information in respect of any land, or the title to any land, which is the subject of any application to bring the same under the provisions of this Act, or in respect of which any instrument or dealing is proposed to be registered or recorded:

Penalty: \$40,000 or imprisonment for 10 years.

### **234. Certificate as to title, &c., procured by fraud to be void**

Any certificate as to title, folio of the Register, instrument, entry, erasure, or alteration procured, or made by fraud as in section 233 mentioned shall, whether there shall be a finding of guilt under such section or not, be void as regards all parties or privies to such fraud.

### **235. – 240. [Repealed]**

## **PART XXI – MISCELLANEOUS**

### **241. Plans and maps**

(1) Where, in his opinion a plan or map is necessary or desirable for the purpose of registering or recording any dealing with land, the Registrar-General may require the person who has lodged documents in connection with the dealing to lodge an appropriate plan or map.

(2) A plan or map lodged with the Registrar-General pursuant to subsection (1) must comply with his requirements as to its dimensions, the scale to which it is drawn and the information that it includes.

(3) The Registrar-General may reject a plan or map which does not comply with his requirements under this section or is inaccurate or deficient in any respect.

**242. – 245. [Repealed]**

**246. Unregistered instruments to confer claim to registration**

Every instrument signed by a registered proprietor, or by any person claiming through or under a registered proprietor, purporting to pass an estate or interest in land for the registration of which estate or interest provision is made in this Act shall, until registered, be deemed to confer upon the person intended to take under such instrument, or any person claiming through or under him, a right or claim to the registration of such estate or interest. The Registrar-General, upon application for such registration by any person other than the person immediately claiming from a registered proprietor, may reject the same altogether or may register the applicant as proprietor of the estate or interest, either forthwith or at the expiration of some defined period of time, and may direct such other entries to be made in the Register, and such advertisements to be published, as he may deem necessary.

**247. Informal documents may be registered**

The Registrar-General may, in the event of great loss or inconvenience being likely to arise, register any document signed by a registered proprietor, or by any person claiming through or under a registered proprietor, notwithstanding that such document be not in any of the forms prescribed by this Act, nor otherwise in accordance with the provisions hereof: Provided that such document purports to create an estate or interest in land for the registration of which estate or interest provision is made in this Act, and would in equity, apart from the provisions of this Act, be regarded as vesting such estate or interest in the person intended to take under such document. The Registrar-General, upon application for such registration, may reject the same altogether, or may proceed as directed in section 246.

**248. Protection of rights under previously registered instruments**

The Registrar-General shall not register a document in accordance with section 246 or 247 if the registration would interfere with the right of a person under an instrument previously registered.

**249. Equities not abolished**

Nothing contained in this Act shall affect the jurisdiction of the Courts of law and equity in cases of actual fraud or over contracts or agreements for the sale or other disposition of land or over equities generally. And the intention of this Act is that, notwithstanding the provisions herein contained for preventing the particulars of any trusts from being entered in the Register, and without prejudice to the powers of disposition or other powers conferred by this Act on proprietors of land, all contracts and other rights arising from unregistered transactions may be enforced against such proprietors in respect of their estate and interest therein, in the same manner as such contracts or rights may be enforced against proprietors in respect of land not under the provisions of this Act: Provided that no unregistered estate, interest, contract, or agreement shall prevail against the title of any bona fide subsequent transferee, mortgagee, lessee, or encumbrancee, for valuable consideration, duly registered under this Act.

**250. *Lis pendens* not to be registered**

No *lis pendens* affecting lands under the provisions of this Act shall hereafter be registered.

**251. No title by adverse possession**

No person shall acquire any right or title to land under the provisions of this Act by any length of adverse possession, nor shall the right of the registered proprietor to recover possession of any such land be barred by any length of adverse possession.

**252. – 259. [Repealed]**

**260. Valuable consideration may be proved by prior instruments**

Whenever in any action, suit, or other proceeding, affecting the title to any land, it shall become necessary to determine the fact whether any person is a purchaser, transferee, mortgagee, encumbrancee, or lessee, for valuable consideration or not, any party to such action, suit, or other proceeding, may give in evidence any transfer, mortgage, encumbrance, lease, or other instrument affecting the title to such land, although the same may not be referred to in the folio of the Register or may have been cancelled by the Registrar-General.

**261. General covenants to be implied in instruments**

In every instrument charging, creating, or transferring any estate or interest in land, there shall be implied the following covenant by the party charging, creating, or transferring such estate or interest, with the party in whose favour such estate or interest is charged or created, or to whom the same is transferred, and his executors, administrators, and transferees, that is to say - That he, the covenanting party, will do such acts and execute such instruments as in accordance with the provisions of this Act may be necessary to give effect to all covenants, conditions, and purposes expressly set forth in such instrument, or by this Act declared to be implied against such party in instruments of a like nature.

**262. Implied powers and covenants may be modified or negatived**

Every covenant and power by this Act implied in any instrument may be negatived or modified by express declaration contained in or indorsed on the instrument.

**263. Action for breach of implied covenant**

In any action for a breach of any such covenant, it shall be lawful to allege that the party against whom such action is brought did covenant precisely in the same manner as if such implied covenant, with or without modification, as the case may be, had been expressed in words in such instrument, any law or practice to the contrary notwithstanding; and every such implied covenant shall have the same force and effect and be enforced in the same manner as if it had been set out at length in such instrument.

**264. Implied covenants to be joint and several**

Where any covenants are by this Act implied against 2 or more persons, such implied covenants shall be construed to be joint and several.

**265. Short forms of covenant in mortgages and leases**

Where in any mortgage or encumbrance the short form of covenant given in the Sixteenth Schedule hereto and numbered 1, or where in any lease any of the other short forms of covenant given in such Schedule shall be used, the covenant set opposite such short form in the said Schedule shall be implied in such mortgage, encumbrance, or lease as fully and effectually as if set out at length therein: Provided that the parties to any such instrument may by express words add to or modify any such short form, in which case the same shall imply the covenant as set out at length, with the addition or modification so expressed.

**265A. Recording and use of common form provisions**

(1) A person may lodge with the Registrar-General, and the Registrar-General may retain, a memorandum in the prescribed form containing one or more provisions which are intended for incorporation by reference in instruments subsequently lodged for registration under this Act.

(2) The Registrar-General may prepare such a memorandum and retain it.

(3) A memorandum retained by the Registrar-General under subsection (1) or (2) shall be deemed to be part of the Register kept under section 47.

## *Real Property Act*

(4) An instrument under this Act may provide that a provision in a memorandum retained under subsection (1) or (2) is incorporated in the instrument, or is incorporated in it subject to specified modifications.

(5) Where a provision is incorporated in an instrument by virtue of subsection (4), the party by or on behalf of whom the incorporation is effected shall, before the instrument is executed, provide the other party or parties with a copy of the provision or, as the case may be, of the provision and the modifications thereof.

Penalty: \$1,000.

(6) A failure to comply with subsection (5) in respect of an instrument does not affect the validity or effect of the instrument.

### **266. Short form for expressing exception of mines and minerals**

Whenever, in any application or instrument under this Act, the following words shall be used "Except and always reserved to all coals, seams of coal, mines, minerals, and quarries, but paying reasonable compensation to \_\_\_\_\_," they shall be taken to have the same effect, and be construed as if the form of words contained in the Seventeenth Schedule hereto had been inserted therein; and the Registrar-General, on issuing a certificate as to title, shall insert the words so used in the application or instrument, and the same shall be as binding and effectual as if he had inserted therein the words at length contained in the said Seventeenth Schedule.

### **267. Attestation of instruments executed by individuals**

The execution of an instrument under this Act by a person other than a corporation shall be attested by one witness, being a person who has attained the age of 18 years and is of a description prescribed for the purposes of this section.

### **268. [Repealed]**

### **269. Registrar-General may dispense with proof**

The Registrar-General may, in any case where he is satisfied of the due execution of an instrument, or in any special case, dispense with the proof of execution hereinbefore required.

### **270. Execution of instrument by Corporation**

(1) A Corporation may execute instruments under the provisions of this Act by affixing thereto its common seal, and such execution shall be equivalent to signature.

(2) Instruments under this Act may, instead of being executed by a corporation as mentioned in subsection (1), be executed or authenticated by, or made on behalf of, the corporation in any manner permitted to that corporation by law.

### **271. and 272. [Repealed]**

### **273. Authority to Register**

(1) The Registrar-General shall not receive any instrument purporting to deal with or affect land, unless there shall be indorsed thereon a certificate that the same is correct for the purposes of this Act, signed by the applicant or party claiming under or in respect of such instrument by a practitioner of the Supreme Court, by a person whose name is entered in the Register of Practitioners kept at the Principal Registry of the High Court or by a licensed conveyancing agent within the meaning of the *Agents Licensing Act*.

(2) Where the applicant or party referred to in subsection (1) is a corporation, the requirement that the certificate be signed by the applicant or party is a requirement that it be authenticated by or on behalf of the corporation in any manner permitted to that corporation by law.

## *Real Property Act*

### **274. Registrar-General may provide particulars of dealings in land**

(1) In this section, "government authority" means –

- (a) a municipal council or community government council, within the meaning of the *Local Government Act*;
- (b) the Power and Water Authority, within the meaning of the *Power and Water Authority Act*; or
- (c) the Valuer-General.

(2) The Registrar-General may, subject to the direction of the Minister, enter into an agreement with a government authority to provide to that authority the information, or a part of the information, that a person who disposes of or acquires an estate or interest in land is required by or under an Act to provide to the government authority in respect of that land.

(3) An agreement under subsection (2) may –

- (a) relate to the provision of all or a part only of the information required to be provided by a person who disposes of or acquires an estate or interest in land; and
- (b) specify that the information be provided in a particular form, including in an electronic form.

(4) Where the Registrar-General enters into an agreement under subsection (2), the Registrar-General shall, while the agreement remains in force, provide the information to the government authority in accordance with that agreement.

### **275. Prescribed forms**

(1) The Registrar-General may make arrangements with a person for the printing by that person of forms prescribed for the purposes of this Act, and the Registrar-General and any other person authorized by the Minister to do so by notice in the *Gazette* may sell to the public forms printed in accordance with any such arrangements.

(2) A direction in or under this Act that a prescribed form is to be used shall apply equally to any form to the like effect or for a similar purpose authorized in conformity with the provisions of this Act.

### **275A. Delivery of instruments in custody of Registrar-General**

(1) Subject to subsection (2), the Registrar-General may deliver an instrument in his custody to the person by whom the instrument was lodged, or to that person's legal practitioner, known agent or attorney.

(2) Where the person by whom an instrument was lodged has given written instructions to the Registrar-General for the delivery of the instrument otherwise than as mentioned in subsection (1), the Registrar-General shall deliver it only in accordance with those instructions.

(3) Where, but for this subsection, the Registrar-General would be unable to determine to whom an instrument in his custody should be delivered, he may deliver it to the person he considers best entitled to the instrument.

(4) Where a person has authorized the Registrar-General in writing to deliver instruments to him by placing them in a delivery box (whether at the Registrar-General's office or elsewhere), the placing of an instrument in the box by or on behalf of the Registrar-General shall be treated as its delivery to that person.

### **275B. Disposal of obsolete documents**

(1) The Registrar-General may, in accordance with a scheme to be prepared by him in consultation with the Northern Territory Archives Service, dispose of any instrument, plan, map or other document registered

## *Real Property Act*

or deposited at the Land Titles Office which appears to him to be unnecessary for the purpose of establishing or evidencing any interest or right in or over land.

(2) The scheme may provide for the disposal of documents by their destruction, their sale, their delivery to a former registered proprietor, or their delivery to any person or body for preservation as being of historic interest.

(3) The disposal of documents by virtue of this section shall be subject to any restrictions or limitations prescribed by regulations.

### **276. Service of notices**

(1) Where this Act requires a notice to be served on or given to a person the requirement is satisfied if the notice is –

- (a) served personally;
- (b) sent by registered or certified post, or by facsimile or telex –
  - (i) to the address for service noted in the Register;
  - (ii) in the case of a company - either to that address or to the address of the company's registered office for the purposes of the Corporations Law; or
  - (iii) where the address or addresses authorized by subparagraphs (i) and (ii) appear to the Registrar-General to be unsatisfactory - to any other address which he may consider appropriate; or
- (c) published in such manner as the Registrar-General may direct.

(2) The address for service noted in the Register may be a post office box, and may in the case of any person be a business address.

### **277. Regulations**

- (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 the generality of subsection (1), the Regulations may prescribe the form or medium, or combinations of them, for, and the manner of –

- (a) keeping the Register; or
- (b) making entries in the Register.

(3) Without limiting the generality of subsection (1), the Regulations may prescribe the procedures to be followed in exercising a power (including a power of sale) pursuant to a statutory charge, mortgage or encumbrance.

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*Real Property Act*

THE FIRST SCHEDULE  
[Repealed]

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THE SECOND SCHEDULE  
[Repealed] (*See* back note 4)

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THE THIRD SCHEDULE  
[Repealed] (*See* back note 4)

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THE FOURTH SCHEDULE  
[Repealed]

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THE FIFTH SCHEDULE

Section 89

*Right-of-Way*

Together with full and free right and liberty to and for the proprietor or proprietors for the time being taking or deriving title under or through this instrument, so long as he or they shall remain such proprietors, and to and for his and their tenants, servants, agents, workmen, and visitors, to pass and repass for all purposes, and either with or without horses or other animals, carts, or other carriages.

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THE SIXTH SCHEDULE – THE FIFTEENTH SCHEDULE  
[Repealed]

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THE SIXTEENTH SCHEDULE

Section 256

*Short Forms of Covenants and their Interpretation*

Short Form	Covenant at length
1. The mortgagor or encumbrancer will insure:	The mortgagor or and during encumbrancer will the continuance of this mortgage keep insured, against loss or damage by fire, in the name of the mortgagee or encumbrancee, in some public insurance office to be approved by the mortgagee or encumbrancee, to the amount of their full value, all buildings and erections which shall for the time being be erected on the mortgaged land, and shall be of a nature or kind capable of being so insured, and will when required by the mortgagee or encumbrancee deposit with him the policy of every such insurance, and within 7 days after each premium shall become payable the receipt for such premium, and if default shall be made in the observance or performance of this covenant, it shall be lawful for the

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mortgagee or encumbrancee, without prejudice, nevertheless to and concurrently with the powers granted him by this mortgage and by "The Real Property Act, 1886," so to insure such buildings and erections, and the costs of such insurance shall be a debt from the mortgagor or encumbrancer to the mortgagee or encumbrancee, and shall be added to the principal moneys hereby secured, and shall, during the continuance of this mortgage, be a charge upon the mortgaged land, and bear interest at the same rate as the said principal moneys, and all moneys which shall be received by virtue of any such insurance as aforesaid, shall, at the option of the mortgagee or encumbrancee, be laid out in making good the loss or damage in respect of which the same shall be received or be applied by the mortgagee or encumbrancee in or towards satisfaction of the moneys hereby secured.

2. The lessee will insure:

The lessee will insure, and during the continuance of this lease keep insured, against loss or damage by fire, in the joint names of the lessor and the lessee, in some public insurance office to be approved by the lessor, to the amount of their full value, all buildings and erections which shall for the time being be erected on the land hereby leased, and shall be of a nature or kind capable of being so insured, and will, when required by the lessor, deposit with him the policy of every such insurance, and within 7 days after each premium shall become due the receipt for such premium, and on any breach or non-observance of this covenant the lessor may, without prejudice to and concurrently with the other powers granted to him by this lease and "The Real Property Act, 1886," so insure such buildings and erections, and the costs of effecting such insurance shall be added to the rent hereby reserved, and shall be a charge upon the said leased land, and recoverable by action or distress in the same manner as the said rent is recoverable. All moneys which shall be received under or by virtue of any such insurance as aforesaid shall be laid out and expended in making good the loss or damage in respect of which the same shall be received.
3. The lessee will paint outside every alternate year:

The lessee will, in every alternate year during the currency of this lease, paint all the outside woodwork and ironwork belonging to the premises hereby leased, with 2 coats of proper oil colours, in a workmanlike manner.
4. The lessee will paint and paper inside every year:

The lessee will, in every third year during the currency of this lease paint the inside wood, iron, and other work belonging to the premises hereby leased, and now or usually painted, with 2 coats of proper oil colours, in a workmanlike manner, and also re-paper, with paper of the quality now used, such parts of the said premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now washed, stopped, whitened, or coloured respectively.



## *Real Property Act*

also will from time to time during the continuance of this lease, at the proper times for that purpose, apply for and endeavour to obtain, at his own expense, all such licences as are or may be necessary for carrying on the said trade or business of a licensed victualler or publican in and upon the said leased premises, and keeping the said messuage, tenement, or inn open as and for an inn or public-house as aforesaid: and also will at, or if necessary before, the expiration or other sooner determination of this lease, sign and give such notice or notices for renewal or transfer of any licence as may be requisite or as may be desired by the lessor, and allow such notice or notices for renewal or transfer of any licence as may be required by law to be affixed to the said messuage, tenement, or inn, to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf, and generally will do all such further acts, matters, and things as shall be necessary to enable the lessor, or any person authorized by him, to obtain the renewal of any licence, or any new licence, or the transfer of any licence then existing and in force.

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### THE SEVENTEENTH SCHEDULE

Section 266

Except and always reserved to his heirs, executors, administrators, and assigns, all coals, seams of coal, mines, minerals, and quarries of stone and slate which now are, or at any time hereafter may be found in, upon, or under the said land and premises, with full liberty of ingress, egress, and regress, at all times, to and for the said his heirs, executors, administrators, and assigns, and his and their agents, servants, and workmen, and all others to be by him or them authorized, at all times, with or without horses and other cattle, carts, or other carriages, laden or unladen, engines, machinery, and all necessary implements and things, into, upon and from the said land and premises, and every or any part thereof, and full right there to view, survey, dig for, work, store, carry away, sell, and dispose of the said coals, mines, minerals, and quarries of stone and slate; and also for the purposes aforesaid, to erect steam-engines and other machinery, with the buildings necessary thereto, and to sink pits, make wagon-ways, and use all other inventions and means for draining, sinking, storing, leading, carrying away, selling and disposing of such coals, mines, minerals, stone, and slate, doing or suffering to be done as little damage as possible in the exercise of the said liberties and rights, and paying and allowing to his heirs, executors, administrators, and assigns, a reasonable compensation for damage to the surface of the said land, or any buildings or fences thereon.

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### THE EIGHTEENTH SCHEDULE – THE TWENTY-FIRST SCHEDULE [Repealed]

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### THE TWENTY-SECOND SCHEDULE

Section 226

#### *Summons by Registrar-General*

In the matter of "The Real Property Act, 1886."

*Real Property Act*

A.B. [*here insert addition*] is hereby summoned to appear before me at the Lands Titles Office, on the day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ of the clock in the [*fore or after*] noon, then and there [*here insert purpose of summons and describe the documents or instruments (if any) required to be produced*].

Given under my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, Registrar-General. (*L.S.*)

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THE TWENTY-THIRD AND THE TWENTY-FOURTH SCHEDULES  
[Repealed]

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*Notes*

1. The *Real Property Act* Act comprises "The Real Property Act, 1886" of the State of South Australia as amended by the other South Australian Acts referred to in Part I of the following Table, and as further amended by the Ordinances and Acts of the Northern Territory of Australia referred to in Part II of that Table:

Act	Number and year	Date of assent	Date of commencement
The Real Property Act, 1886	1886, No. 380	17 Nov 1886	1 Jan 1887
The Real Property Amendment Act, 1887	1887, No. 403	16 Nov 1887	16 Nov 1887
The Real Property Amendment Act, 1893	1893, No. 569	23 Dec 1893	23 Dec 1893
<i>Licensed Surveyors Act 1896</i>	1896, No. 657	19 Dec 1896	19 Dec 1896

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PART II – ORDINANCES AND ACTS OF THE NORTHERN TERRITORY OF AUSTRALIA

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Ordinance, Act	Number and year	Date notified in <i>Commonwealth Gazette</i>	Date of commencement
<i>Real Property Ordinance</i> 1918	No. 13, 1918	14 Nov 1918	14 Nov 1918
<i>Real Property Ordinance</i> 1926	No. 12, 1926	27 May 1926	27 May 1926
<i>Real Property Ordinance</i> 1932	No. 11, 1932	26 May 1932	26 May 1932
		Date of assent by Administrator	
<i>Real Property Ordinance</i> 1955	No. 19, 1955	20 Dec 1955	20 Dec 1955
<i>Real Property Ordinance</i> 1965	No. 15, 1965	24 May 1965	7 July 1965
		Date of notification of Governor- General's assent in N.T. Govt Gazette	
<i>Real Property Ordinance</i> 1969	No. 2, 1969	29 Jan 1969	29 Jan 1969
		Date of assent by Administrator	
<i>Real Property Ordinance</i> 1973	No. 63, 1973	11 Dec 1973	11 Dec 1973
<i>Ordinances Revision Ordinance</i> 1973 as amended (a)	No. 87, 1973	11 Dec 1973	11 Dec 1973, but <i>see</i> s. 12(2)
	No. 34, 1974	26 Aug 1974	11 Dec 1973, but <i>see</i> s. 3(2)
	No. 69, 1974	24 Oct 1974	11 Dec 1973, but <i>see</i> s. 3
	No. 27, 1976	28 June 1976	Ss 1, 2 and 6: 28 June 1976, but <i>see</i> s. 6(2) Ss 3 and 4: 11 Dec 1973 S. 5: 24 Oct 1974

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<i>Transfer of Powers (Self-Government) Ordinance 1978</i>	No. 54, 1978	1 July 1978	1 July 1978, but <i>see</i> s. 8
<i>Real Property Act 1978</i>	No. 93, 1978	5 Sept 1978	5 Sept 1978
<i>Statute Law Revision Act (No. 2) 1978</i>	No. 19, 1979	2 Feb 1979	2 Feb 1979
<i>Real Property Amendment Act 1981</i>	No. 48, 1981	1 July 1981	1 Jan 1981(b)
<i>Real Property Amendment Act 1982</i>	No. 67, 1982	8 Oct 1982	10 Dec 1982
<i>Real Property Amendment Act (No. 2) 1982</i>	No. 83, 1982	14 Dec 1982	14 Dec 1982
<i>Real Property Amendment Act 1983</i>	No. 8, 1983	27 Apr 1983	14 Mar 1984
<i>Real Property Amendment Act 1984</i>	No. 17, 1984	12 July 1984	12 July 1984
<i>Real Property Amendment Act 1986</i>	No. 27, 1986	14 July 1986	S. 7: 14 July 1986 Remainder: 18 Aug 1986
<i>Real Property Amendment Act 1988 as amended by</i>	No. 38, 1988	14 Sept 1988	1 Feb 1990
	No. 60, 1989	2 Oct 1989	2 Oct 1989

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<i>Real Property Amendment Act 1989</i>	No. 59, 1989	2 Oct 1989	15 Nov 1989
<i>Real Property Amendment Act (No. 2) 1989 as amended by</i>	No. 66, 1989 No. 33, 1990	10 Nov 1989 11 June 1990	1 Feb 1990 11 June 1990
<i>Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act 1989</i>	No. 78, 1989	22 Dec 1989	1 Mar 1990
<i>Corporations (Consequential Amendments) Act 1990</i>	No. 59, 1990	14 Dec 1990	1 Jan 1991
<i>Statute Law Revision (Registration of Instruments) Act 1991</i>	No. 12, 1991	31 May 1991	31 May 1991
<i>Statute Law Revision Act 1991</i>	No. 31, 1991	25 June 1991	25 June 1991
<i>Real Property Amendment Act 1991</i>	No. 32, 1991	25 June 1991	1 Oct 1991
<i>Real Property Amendment Act (No. 2) 1991</i>	No. 53, 1991	26 Sept 1991	26 Sept 1991
<i>Registration (Consequential Amendments) Act 1991</i>	No. 55, 1991	26 Sept 1991	1 Jan 1992
<i>Real Property Amendment Act 1993</i>	No. 19, 1993	16 June 1993	1 Aug 1993
<i>Real Property Amendment Act (No. 2) 1993</i>	No. 76, 1993	23 Nov 1993	1 Oct 1994

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<i>Local Government (Consequential Amendments) Act 1993</i>	No. 84, 1993	31 Dec 1993	1 June 1994
	No. 86, 1993	31 Dec 1993	18 Apr 1994
<i>Planning (Consequential Amendments) Act 1993</i>			
<i>Sentencing (Consequential Amendments) Act 1996</i>	No. 17, 1996	19 Apr 1996	S. 7: 19 Apr 1996 Remainder: 1 July 1996
<i>Real Property Amendment Act 1999</i>	No. 17, 1999	5 May 1999	9 June 1999

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(a) General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (as amended) to the following provisions: ss 25, 32, 33, 34, 58, 62, 69, 71, 74, 79, 85, 87, 93A, 110, 122, 125, 126, 134, 138, 140, 141, 163, 164, 173, 187, 191, 193, 220, 222, 227, 231, 232, 234, 235, 237, 238, 239, 241, 247, 248, 267, First Schedule, Second Schedule, Sixth Schedule, Seventh Schedule, Eighth Schedule, Ninth Schedule, Tenth Schedule, Eleventh Schedule, Sixteenth Schedule, Twenty-first Schedule, Twenty-second Schedule, Twenty-third Schedule and Twenty-fourth Schedule.

(b) Section 2 of the *Real Property Amendment Act 1981* provides as follows:

"This Act shall be deemed to have come into operation on 1 January 1981."

2. Section 3 of The Real Property Amendment Act, 1893 provides as follows:

"3. In every incumbrance hereafter executed, unless it shall be therein otherwise provided, there shall be implied a covenant by the incumbrancer with the incumbrancee that he will pay the annuity, rent, charge, or other sum of money thereby secured, at the times and in the manner therein mentioned."

3. Section 15 of the *Real Property Amendment Act (No. 2) 1989* provides as follows:

"15. SAVINGS

"Notwithstanding their repeal by this Act, sections 27 to 46 (inclusive) of, and Schedules 2 and 3 to, the Principal Act shall continue to have effect in relation to land alienated in fee from the Crown before 1 January 1887 (the commencement of that Act)."

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### Table of Amendments

#### Section

1. Amended by No. 58, 1978, s. 4
2. Repealed by No. 66, 1989, s. 14
3. Amended by No. 63, 1973, s. 3; No. 54, 1978, s. 5; No. 66, 1989, s. 14; No. 59, 1990, s. 4; No. 32, 1991, ss 4 and 23; No. 55, 1991, s. 5; No. 76, 1993, s. 4
4. Repealed by No. 32, 1991, s. 23
5. Repealed by No. 32, 1991, s. 23

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- 6. Repealed by No. 32, 1991, s. 23
- 7. Repealed by No. 32, 1991, s. 23
- 10. Substituted by No. 32, 1991, s. 5
- 12. Repealed by No. 54, 1978, s. 5
- 13. Repealed by No. 54, 1978, s. 5
- 14. Repealed by No. 54, 1978, s. 5
- 15. Repealed by No. 54, 1978, s. 5
- 16. Repealed by No. 54, 1978, s. 5
- 17. Repealed by No. 54, 1978, s. 5
- 18. Repealed by No. 54, 1978, s. 5
- 19. Repealed by No. 54, 1978, s. 5
- 20. Repealed by No. 54, 1978, s. 5
- 21.(1) Amended by No. 54, 1978, s. 5; No. 19, 1979, s. 24; No. 32, 1991, s. 23
- 21.(2) Added by No. 32, 1991, s. 6
- 22.(1) Amended by No. 54, 1978, s. 5; No. 27, 1986, s. 4
- 22.(2) Added by No. 32, 1991, s. 7
- 23. Repealed by No. 54, 1978, s. 5
- 25. Repealed by No. 66, 1989, s. 14
- 27. Repealed by No. 66, 1989, s. 14
- 28. Repealed by No. 66, 1989, s. 14
- 29. Repealed by No. 66, 1989, s. 14
- 30. Repealed by No. 66, 1989, s. 14
- 31. Repealed by No. 54, 1978, s. 5
- 32. Repealed by No. 66, 1989, s. 14
- 33. Repealed by No. 66, 1989, s. 14
- 34. Repealed by No. 66, 1989, s. 14
- 35. Repealed by No. 66, 1989, s. 14
- 36. Repealed by No. 66, 1989, s. 14
- 37. Repealed by No. 66, 1989, s. 14
- 38. Repealed by No. 66, 1989, s. 14
- 39. Repealed by No. 66, 1989, s. 14
- 40. Amended by No. 83, 1982, s. 3; repealed by No. 66, 1989, s. 14
- 41. Repealed by No. 66, 1989, s. 14
- 42. Repealed by No. 66, 1989, s. 14
- 43. Repealed by No. 66, 1989, s. 14
- 44. Repealed by No. 66, 1989, s. 14
- 45. Repealed by No. 66, 1989, s. 14
- 46. Repealed by No. 66, 1989, s. 14
- Heading
- Part V Amended by No. 32, 1991, s. 23
- 47. Substituted by No. 32, 1991, s. 8
- 48. Substituted by No. 32, 1991, s. 8
- 48A. Inserted by No. 76, 1993, s. 5
- 49. Substituted by No. 32, 1991, s. 8
- 50. Substituted by No. 32, 1991, s. 8
- 51. Substituted by No. 32, 1991, s. 8
- 52. Substituted by No. 32, 1991, s. 8
- 53.(1) Substituted by No. 32, 1991, s. 8
- 53.(2) Added by No. 76, 1993, s. 6
- 54. Amended by No. 38, 1988, s. 4
- 55. Repealed by No. 32, 1991, s. 23
- 56.(1) Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 9
- 56.(2) Added by No. 32, 1991, s. 9
- 56A. Inserted by No. 66, 1989, s. 14
- 56B. Inserted by No. 76, 1993, s. 7
- 57. Amended by No. 32, 1991, s. 23
- 58. Amended by No. 32, 1991, s. 23

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- 58A. Inserted by No. 32, 1991, s. 10
- 59A. Inserted by No. 32, 1991, s. 11
60. Amended by No. 32, 1991, s. 23
61. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
62. Amended by No. 32, 1991, s. 23
63. Amended by No. 32, 1991, s. 23
64. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
65. Amended by No. 27, 1986, s. 5; substituted by No. 32, 1991, s. 12
66. Amended by No. 32, 1991, s. 23
68. Amended by No. 32, 1991, s. 23
69. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
71. Amended by No. 87, 1973, s. 12; No. 66, 1989, s. 14
- 71A. Inserted by No. 63, 1973, s. 4
- 71A.(2) Amended by No. 66, 1989, s. 14; omitted by No. 32, 1991, s. 23
- 71B. Inserted by No. 63, 1973, s. 4
- 73.(1) Amended by No. 17, 1984, s. 2; No. 38, 1988, s. 4; No. 32, 1991, s. 23
- 73.(2) Added by No. 17, 1984, s. 2; No. 33, 1991, s. 23
74. Amended by No. 32, 1991, s. 23
75. Repealed by No. 32, 1991, s. 23
76. Repealed by No. 32, 1991, s. 23
77. Repealed by No. 32, 1991, s. 23
78. Amended by No. 66, 1989, s. 14; repealed by No. 32, 1991, s. 23
79. Repealed by No. 66, 1989, s. 14
80. Repealed by No. 32, 1991, s. 23
81. Amended by No. 32, 1991, s. 23
82. Amended by No. 32, 1991, s. 23
83. Amended by No. 32, 1991, s. 23
84. Amended by No. 32, 1991, s. 23
85. Amended by No. 32, 1991, s. 23
88. Amended by No. 32, 1991, s. 23
90. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
- Heading
- Part VIIIA Inserted by No. 17, 1999, s. 5
- 90A. Inserted by No. 17, 1999, s. 5
- 90B. Inserted by No. 17, 1999, s. 5
- 90C. Inserted by No. 17, 1999, s. 5
- 90D. Inserted by No. 17, 1999, s. 5
- 90E. Inserted by No. 17, 1999, s. 5
- Heading
- Part IX Amended by No. 32, 1991, s. 23
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92. Amended by No. 54, 1978, s. 5
93. Substituted by No. 12, 1926, s. 2; No. 32, 1991, s. 13
- 93A. Inserted by No. 2, 1969, s. 3; repealed by No. 48, 1981, s. 5
94. Amended by No. 54, 1978, s. 5; No. 32, 1991, s. 23
95. Amended by No. 54, 1978, s. 5
96. Amended by No. 38, 1988, s. 6
98. Repealed by No. 32, 1991, s. 23
99. Repealed by No. 32, 1991, s. 23
100. Repealed by No. 32, 1991, s. 23
101. Substituted by No. 66, 1989, s. 5; amended by No. 17, 1999, s. 4
- 101.(1) Amended by No. 32, 1991, s. 23; No. 86, 1993, s. 3; No. 17, 1999, s. 4
- 101.(3) Amended by No. 32, 1991, s. 23; No. 86, 1993, s. 3
- 101.(4) Amended by No. 86, 1993, s. 3
- 101.(4A) Inserted by No. 19, 1993, s. 3; amended by No. 86, 1993, s. 3
- 101.(6) Substituted by No. 19, 1993, s. 3
102. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23

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- 103. Substituted by No. 32, 1991, s. 14
- 104. Repealed by No. 66, 1989, s. 14
- 105. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
- 106. Amended by No. 66, 1989, s. 14
- 107. Amended by No. 38, 1988, s. 7; No. 66, 1989, s. 14; No. 32, 1991, s. 23
- 108. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
- 109. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
- 110. Amended by No. 66, 1989, s. 14
- 112. Amended by No. 54, 1978, s. 5; repealed by No. 32, 1991, s. 23
- 113. Substituted by No. 78, 1989, s. 15
- 113.(1) Amended by No. 32, 1991, s. 23
- 113.(2) Amended by No. 32, 1991, s. 23
- 114. Repealed by No. 78, 1989, s. 15
- 115. Repealed by No. 78, 1989, s. 15
- 116. Amended by No. 38, 1988, s. 8
- 120. Amended by No. 38, 1988, s. 9; amended by No. 32, 1991, s. 23
- 121. Amended by No. 38, 1988, s. 10; No. 32, 1991, s. 23
- 122. Amended by No. 87, 1973, s. 12; No. 32, 1991, s. 23
- 125.(1) Amended by No. 66, 1989, s. 14
- 125.(2) Amended by No. 32, 1991, s. 23
- 126. Amended by No. 32, 1991, s. 23
- 127. Repealed by No. 66, 1989, s. 14
- 128.(1) Amended by No. 38, 1988, s. 11
- 128.(2) Added by No. 76, 1993, s. 8
- 129. Repealed by No. 32, 1991, s. 23
- 132. Amended by No. 66, 1989, s. 14
- 135. Substituted by No. 76, 1993, s. 9
- 136. Substituted by No. 83, 1982, s. 4
- 137. Amended by No. 66, 1989, s. 14
- 138. Repealed by No. 66, 1989, s. 14
- 140. Amended by No. 32, 1991, s. 23
- 142. Amended by No. 32, 1991, s. 23
- 142A. Inserted by No. 76, 1993, s. 10
- 142B. Inserted by No. 76, 1993, s. 10
- 143.(1) Amended by No. 38, 1988, s. 12; No. 32, 1991, s. 23
- 143.(2) Added by No. 76, 1993, s. 11
- 143.(3) Added by No. 76, 1993, s. 11
- 144. Repealed by No. 38, 1988, s. 13
- 145. Amended by No. 38, 1988, s. 14; No. 32, 1991, s. 23
- 146. Amended by No. 54, 1978, s. 5; substituted by No. 66, 1989, s. 6
- 147. Amended by No. 54, 1978, s. 5; substituted by No. 66, 1989, s. 6
- 148. Amended by No. 38, 1988, s. 15; repealed by No. 66, 1989, s. 6
- 150. Amended by No. 38, 1988, s. 16; No. 32, 1991, s. 23
- 151A. Inserted by No. 38, 1988, s. 17
- 151A.(1A) Inserted by No. 31, 1991, s. 8
- 151A.(2) Amended by No. 32, 1991, s. 23
- Heading Amended by No. 66, 1989, s. 14
- Part XIII
- 153. Substituted by No. 19, 1955, s. 2
- 153.(1) Amended by No. 38, 1988, s. 17; No. 66, 1989, s. 8
- 153.(2) Amended by No. 66, 1989, s. 8; No. 32, 1991, s. 23
- 153.(3) Amended by No. 66, 1989, s. 8
- 153.(4) Added by No. 66, 1989, s. 8
- 154. Repealed by No. 19, 1955, s. 2
- Heading Omitted by No. 12, 1991, s. 4
- Part XIV
- 155. Amended by No. 38, 1988, s. 18; repealed by No. 12, 1991, s. 4

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- 156. Repealed by No. 12, 1991, s. 4
- 157. Amended by No. 38, 1988, s. 19; repealed by No. 12, 1991, s. 4
- 158. Repealed by No. 12, 1991, s. 4
- 159. Repealed by No. 12, 1991, s. 4
- 160. Repealed by No. 12, 1991, s. 4
- 161. Amended by No. 32, 1991, s. 23
- 162. Substituted by No. 12, 1991, s. 3
- 163. Amended by No. 32, 1991, s. 23
- 164. Amended by No. 32, 1991, s. 23
- 165. Amended by No. 87, 1973, s. 12; No. 32, 1991, s. 23
- 169. Amended by No. 32, 1991, s. 23
- 170. Amended by No. 11, 1932, s. 2
- 171. Amended by No. 11, 1932, s. 2; No. 32, 1991, s. 23
- 172. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
- 173. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
- 174. Amended by No. 66, 1989, s. 14
- 175. Repealed by No. 66, 1989, s. 14
- 176. Amended by No. 38, 1988, s. 20; No. 66, 1989, s. 14; No. 32, 1991, s. 23
- 177. Substituted by No. 32, 1991, s. 23
- 178. Amended by No. 32, 1991, s. 23
- 180. Amended by No. 66, 1989, s. 14
- 181. Repealed by No. 66, 1989, s. 14
- 182. Repealed by No. 66, 1989, s. 14
- 183. Repealed by No. 66, 1989, s. 14
- 184. Amended by No. 66, 1989, s. 14; substituted by No. 32, 1991, s. 16
- 185A. Inserted by No. 67, 1982, s. 3; amended by No. 32, 1991, s. 17
- 188. Amended by No. 38, 1988, s. 21; No. 32, 1991, s. 23
- 190. Repealed by No. 66, 1989, s. 14
- 191. Amended by No. 63, 1973, s. 6; No. 83, 1982, s. 5; No. 38, 1988, s. 22; No. 66, 1989, s. 14; No. 31, 1991, s. 8; No. 32, 1991, s. 23

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- Part XVIA Inserted by No. 59, 1989, s. 4
- 191A. Inserted by No. 59, 1989, s. 4
- 191B. Inserted by No. 59, 1989, s. 4
- 191B.(1) Amended by No. 78, 1989, s. 15
- 191B.(2) Amended by No. 84, 1993, s. 6
- 191B.(3) Amended by No. 78, 1989, s. 15
- 191C. Inserted by No. 59, 1989, s. 4
- 191D. Inserted by No. 59, 1989, s. 4

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- Part XVIB Inserted by No. 32, 1991, s. 18
- 191E. Inserted by No. 32, 1991, s. 18
- 193. Repealed by No. 66, 1989, s. 14
- 194. Repealed by No. 66, 1989, s. 14
- 195. Repealed by No. 66, 1989, s. 14
- 196. Repealed by No. 66, 1989, s. 14
- 197. Repealed by No. 66, 1989, s. 14
- 198. Repealed by No. 66, 1989, s. 14
- 199. Repealed by No. 66, 1989, s. 14
- 200. Repealed by No. 66, 1989, s. 14

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- Part XVIII Repealed by No. 54, 1978, s. 5
- 201. Repealed by No. 54, 1978, s. 5
- 202. Repealed by No. 54, 1978, s. 5
- 203. Repealed by No. 54, 1978, s. 5
- 204. Repealed by No. 54, 1978, s. 5
- 205. Repealed by No. 54, 1978, s. 5

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- 206. Repealed by No. 54, 1978, s. 5
- 207. Repealed by No. 54, 1978, s. 5
- 208. Repealed by No. 54, 1978, s. 5
- 209. Repealed by No. 54, 1978, s. 5
- 210. Repealed by No. 54, 1978, s. 5
- 211. Repealed by No. 54, 1978, s. 5
- 212. Repealed by No. 54, 1978, s. 5
- 213. Repealed by No. 54, 1978, s. 5
- 214. Repealed by No. 54, 1978, s. 5
- 215. Repealed by No. 54, 1978, s. 5
- 216. Repealed by No. 54, 1978, s. 5
- 217. Repealed by No. 54, 1978, s. 5
- 218. Repealed by No. 54, 1978, s. 5
- 219. Repealed by No. 54, 1978, s. 5
- 220.(1) Amended by No. 32, 1991, s. 23
- 220.(3) Amended by No. 32, 1991, s. 23
- 220.(4) Amended by No. 32, 1991, s. 23
- 220.(4A) Inserted by No. 66, 1989, s. 9; No. 32, 1991, s. 23
- 220.(4B) Inserted by No. 32, 1991, s. 23
- 220.(5) Amended by No. 66, 1989, s. 14
- 220.(7) Amended by No. 54, 1978, s. 5; No. 32, 1991, s. 23
- 220.(8) Amended by No. 32, 1991, s. 23
- 220.(9) Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 23
- 220A. Inserted by No. 66, 1989, s. 10
- 220A.(1) Amended by No. 32, 1991, s. 23
- 220A.(2) Amended by No. 32, 1991, s. 23
- 220A.(3) Amended by No. 32, 1991, s. 23
- 221. Amended by No. 66, 1989, s. 14
- 224. Repealed by No. 66, 1989, s. 14
- 225. Repealed by No. 66, 1989, s. 14
- 227. Amended by No. 66, 1989, s. 14
- 228. Amended by No. 66, 1989, s. 14
- 229. Repealed by No. 66, 1989, s. 14
- 230. Repealed by No. 66, 1989, s. 14
- 231. Repealed by No. 66, 1989, s. 14
- 232. Amended by No. 32, 1991, s. 23
- 233. Amended by No. 66, 1989, s. 14; No. 32, 1991, s. 20
- 234. Amended by No. 32, 1991, s. 23; No. 17, 1996, s. 6
- 235. Repealed by No. 66, 1989, s. 14
- 236. Repealed by No. 66, 1989, s. 14
- 237. Repealed by No. 66, 1989, s. 14
- 238. Repealed by No. 66, 1989, s. 14
- 239. Amended by No. 66, 1989, s. 14
- 240. Repealed by No. 66, 1989, s. 14
- 241. Substituted by No. 66, 1989, s. 11
- 242. Repealed by No. 66, 1989, s. 14
- 243. Repealed by No. 657, 1896, s. 2
- 244. Repealed by No. 66, 1989, s. 14
- 245. Repealed by No. 66, 1989, s. 14
- 246. Amended by No. 32, 1991, s. 23
- 248. Substituted by No. 32, 1991, s. 21
- 249. Amended by No. 32, 1991, s. 23
- 252. Repealed by No. 66, 1989, s. 14
- 253. Repealed by No. 66, 1989, s. 14
- 254. Repealed by No. 66, 1989, s. 14
- 255. Repealed by No. 38, 1988, s. 23
- 256. Repealed by No. 38, 1988, s. 23

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257.	Repealed by No. 38, 1988, s. 23
258.	Repealed by No. 66, 1989, s. 14
259.	Repealed by No. 66, 1989, s. 14
260.	Amended by No. 32, 1991, s. 23
265A.	Inserted by No. 38, 1988, s. 24
265A.(3)	Amended by No. 32, 1991, s. 23
266.	Amended by No. 32, 1991, s. 23
267.	Substituted by No. 38, 1988, s. 25 as amended by No. 60, 1989, s. 6
268.	Repealed by No. 38, 1988, s. 25
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270.(2)	Added by No. 38, 1988, s. 26
271.	Repealed by No. 19, 1955, s. 4; inserted by No. 15, 1965, s. 3; repealed by No. 32, 1991, s. 23
271.(5)	Amended by No. 27, 1986, s. 6
272.	Repealed by No. 19, 1955, s. 4
273.(1)	Amended by No. 13, 1918, s. 4; No. 38, 1988, s. 27; No. 32, 1991, s. 23; No. 19, 1993, s. 4
273.(2)	Added by No. 38, 1988, s. 27
274.	Amended by No. 13, 1918, s. 5; repealed by No. 66, 1989, s. 14; inserted by No. 53, 1991, s. 2
274.(1)	Amended by No. 84, 1993, s. 6
275.	Substituted by No. 38, 1988, s. 28
275A.	Inserted by No. 38, 1988, s. 29
275B.	Inserted by No. 66, 1989, s. 12
276.	Substituted by No. 66, 1989, s. 13; amended by No. 59, 1990, s.4
276.(1)	Amended by No. 56, 1990, s. 4; No. 32, 1991, s. 23
277.(1)	Added by No. 27, 1986, s. 7
277.(2)	Added by No. 32, 1991, s. 22
277.(3)	Added by No. 76, 1993, s. 12
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Twenty-  
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Schedule

Repealed by No. 32, 1991, s. 23

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