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Land Titles Act 1980

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TASMANIA

Land Titles Act 1980

An Act to consolidate and amend the law relating to the registration of title to land, easements and possessory titles

[Royal Assent 21 May 1980]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I - General

1. Short title

This Act may be cited as the Land Titles Act 1980 .

2. Commencement

(1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1) , this Act shall commence on such date as may be fixed by proclamation.

3. Interpretation

(1) In this Act, except in so far as the context or subject matter otherwise indicates or requires –

approved form means a form approved by the Recorder under section 169A ;

Assistant Recorder of Titles means an Assistant Recorder of Titles appointed pursuant to section 4 (3A) ;

assurance fund means the assurance fund referred to in section 150 ;

caveator means the person by whom or on whose behalf a caveat has been lodged;

dealing means any document in writing (other than a grant) which is registrable or capable of being made registrable under this Act or in respect of which any recording in the Register is by this or any other Act required or permitted to be made and includes a priority notice, but for the purposes of Part IX does not include a caveat or a withdrawal of a caveat;

Deputy Recorder means the Deputy Recorder of Titles appointed pursuant to section 4 (3) ;

duplicate registered dealing means the duplicate of a registered dealing delivered pursuant to section 48 (6) ;

electronic communication has the same meaning as in the Electronic Transactions Act 2000 ;

electronic dealing means a dealing that is an electronic communication;

encumbrance means any charge on land created for the purpose of securing a current, future or contingent payment of an annuity, rent-charge, or sum of money other than a debt;

encumbrancee means the proprietor of an encumbrance;

encumbrancer means the registered proprietor of land subject to an encumbrance;

forestry right has the meaning assigned to that expression in the Forestry Rights Registration Act 1990 ;

grant means the grant of any land of the Crown;

instrument includes any grant, certificate of title, conveyance, assurance, deed, map, plan, survey, will, probate, or exemplification of will or probate, or any other document in writing relating to the disposition, devolution, or acquisition of land or evidencing title to land;

land includes –

(a) messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description (whatever may be the estate or interest in them), together with all paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals and quarries and all trees and timber on land or lying or being under land; and

(b) any structure which is above land but permanently anchored to, or otherwise kept in place above, the land;

legal practitioner means an Australian legal practitioner;

lessee means the registered proprietor of a lease;

lessor means the registered proprietor of the reversion immediately expectant upon the expiration of a registered lease;

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

mortgagee means the proprietor of a mortgage;

mortgagor means the registered proprietor of land subject to a mortgage;

newspaper does not include a newspaper published solely in electronic form;

office copy, in relation to an order, means a copy of the order that is certified by a legal practitioner, a justice or a Commissioner for Declarations to be a true copy of the order;

proclaimed date means the date fixed by proclamation under section 2 (2) ;

proprietor means any person seised or possessed of any estate or interest in land at law or in equity, in possession, in futurity, or in expectancy;

public record means a public record referred to in section 36 ;

qualified title means a folio of the Register on which is recorded a caution in accordance with section 21 (2) ;

Recorder means the Recorder of Titles appointed pursuant to section 4 (1) ;

Register means the register of title referred to in section 33 ;

registered means registered under this Act or any of the Acts specified in Schedule 2 ;

registered land means land which is subject to this Act;

registered proprietor means any person appearing by a folio of the Register, or by any registered dealing, to be the proprietor of any estate or interest in registered land;

repealed Act means the Real Property Act 1862 ;

transfer means the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise;

transmission means the acquisition of title to, or an interest in, land, consequent on the death, will, intestacy, or bankruptcy of a proprietor.

(2) The describing of any person as owner, proprietor, transferor, transferee, mortgagor, mortgagee, encumbrancer, encumbrancee, lessor, or lessee, or as seised of or having or taking any estate or interest in any land, shall include the executors, administrators, and assigns of that person.

3A. Crown to be bound

This Act binds the Crown, not only in right of Tasmania but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART II - Administration

4. Appointment of Recorder, &c.

- (1) The Governor may appoint a State Service officer or State Service employee to be Recorder of Titles, and that officer or employee is to hold that office in conjunction with State Service employment.
- (2) A person is not eligible for appointment as Recorder of Titles unless he is –
 - (a) a legal practitioner of not less than 5 years' standing; or
 - (b) an Australian lawyer who has been a legal practitioner for at least 5 years.
- (3) The Governor may appoint a State Service officer or State Service employee to be Deputy Recorder of Titles, and that officer or employee is to hold that office in conjunction with State Service employment.
- (3A) The Governor may appoint State Service officers and State Service employees to an office of Assistant Recorder of Titles and officers and employees so appointed are to hold office in conjunction with State Service employment.
- (4) Subject to and in accordance with the State Service Act 2000 , such persons as may be considered necessary may be appointed or employed for the purposes of this or any other Act.

5. Seal of office

The Recorder shall have and use a seal of office, bearing the impression of the arms of the State, and having inscribed in the margin thereof the words "Recorder of Titles, Tasmania".

6. Powers and immunities of Deputy Recorder, &c.

Anything that is by law or practice appointed, authorized, or required to be done by the Recorder may lawfully be done by the Deputy Recorder or a person appointed to the office of Assistant Recorder of Titles who when so doing has the same immunities and protection from suits as the Recorder.

7. Documents purporting to be sealed or signed by Recorder or Deputy Recorder, &c., to be received in evidence

All documents, whether purporting to be issued or written by or under the direction of the Recorder, and purporting either to be sealed with his seal of office or signed by him or by the Deputy Recorder or a person appointed to the office of Assistant Recorder of Titles, shall, if admissible, be received in evidence, and shall be deemed to have been issued or written by or under the direction of the Recorder, without further proof, unless the contrary is shown.

8. Facsimile signature of Recorder or Deputy Recorder, &c.

Whenever it is required or permitted by this or any other Act that the Recorder, the Deputy Recorder or an Assistant Recorder of Titles sign any document, memorial, recording, certificate, endorsement, or plan, the Recorder, Deputy Recorder or an Assistant Recorder may –

- (a) himself attach; or
- (b) authorize an officer to attach –

a facsimile of his signature to the document, memorial, recording, certificate, endorsement, or plan and the facsimile so attached has the same force and effect as if the Recorder, Deputy Recorder or an Assistant Recorder, as the case may be, had personally signed his name in the place of the facsimile signature, and all courts and judges shall take judicial notice of the facsimile signature of the Recorder, Deputy Recorder and Assistant Recorder and shall presume that it was properly attached.

PART III - Bringing land under this Act

Division 1 - Crown grant

9. Unalienated land, when alienated in fee, to be subject to this Act

Except as provided in section 10 (3) , all unalienated lands of the Crown, when alienated in fee, become subject to this Act.

10. Transfers to be used instead of grant deeds

(1) Except as provided in subsection (3) , land of the Crown that is not under this Act shall not be granted by letters patent but shall be granted by transfer in an approved form as if it had already been brought under this Act.

(2) The Recorder, upon receiving a transfer under subsection (1) , shall create a folio of the Register for the land comprised in the transfer, and upon a folio being created the transfer shall be deemed to be duly registered, and duly enrolled of record.

(3) When the Crown grants an easement to be appurtenant only to land that is not registered land, the grant shall be effected by letters patent as if this section had not been enacted.

(4) Where an easement is granted by letters patent in pursuance of subsection (3) , the letters patent shall be registered under the Registration of Deeds Act 1935 as an instrument and delivered to the grantee.

(5) On the registration of letters patent as provided in subsection (4) , the letters patent shall be deemed to have been duly enrolled of record.

Division 2 - Application

11. Applications to bring land under this Act

(1) Subject to subsection (2) , land may be brought under this Act on the application in writing in an approved form of any of the following persons:

(a) the person claiming to be the owner of the fee simple either at law or in equity;

(b) the person claiming to be entitled to a grant in fee from the Crown of any land under or by virtue of a contract with the Crown (other than a contract under any Act relating to the sale of Crown lands), or in equity and good conscience;

(c) the tenant for life, or person having the powers of a tenant for life, under the Settled Land Act 1884 ;

(d) the guardian of an infant or the administrator of the estate of a person under the Guardianship and Administration Act 1995 , if—

(i) the infant or patient would have been entitled, if not under disability, to apply under paragraph (a) , paragraph (b) , or paragraph (c) ; and

(ii) the application contains a direction that the infant or patient shall be registered as proprietor;

(e) a person holding power of attorney authorizing the sale of a freehold estate in the land in the name of the proprietor of that land, unless the power expressly prohibits his making such an application;

(f) the legal practitioner acting for a person referred to in paragraph (a) , (b) , (c) , (d) or (e) .

(2) An application under this section shall not be made by —

(a) a person claiming to be entitled to an undivided share of any land, unless the person who appears to be entitled to the other undivided shares of the land joins in the application with a view to bringing the entirety under this Act; or

(b) a tenant for life, or person having the powers of a tenant for life, under the Settled Land Act 1884 unless –

(i) he is selling or exchanging the fee simple pursuant to a provision of that Act or the Settled Land Act 1911 and directs that the purchaser or person to whom the fee simple is given in exchange shall be registered as proprietor; or

(ii) in the case of a life tenant in possession –

(A) where there is a vested estate in expectancy in the land (other than an estate vested in an infant), the application contains a direction that the person entitled to that estate shall be registered as proprietor of that estate; or

(B) where there is a vested estate in expectancy in the land to which an infant is entitled, or there is an estate in expectancy in the land capable of taking effect on the happening of a future event, the application contains a direction that the trustee of the settlement under which the estate in expectancy was created shall be registered as proprietor of that estate

–
so that upon the granting of the application and compliance with the direction, all the vested estates in the land are brought under this Act.

(3) A person who lodges an application under this section or a mortgagee or other person who has in his possession or under his control instruments constituting or in any way affecting the title of the land to which the application relates shall lodge those instruments and also, if required, an abstract of the title to that land with the Recorder.

(4) A person referred to in subsection (3) shall not lodge with the Recorder any instruments which a purchaser of the land to which the application relates would not be entitled to require pursuant to section 35 of the Conveyancing and Law of Property Act 1884 .

(5) A chamber in a building standing on land that is not under this Act shall not be brought under this Act separately from the land and building.

12. How application dealt with

(1) The Recorder may –

(a) do or require to be done such things as will, in his opinion, justify him in bringing the land to which an application under section 11 relates under this Act; and

(b) subject to sections 13 and 14 , bring the land under this Act by creating a folio of the Register for the land.

(2) In considering an application under section 11 in respect of land unalienated in fee from the Crown, the Recorder shall be guided by equity and good conscience and by the best evidence that can or may be procured, even though it is not such as he might require in other cases.

(3) Where, on considering an application under section 11 , the Recorder is of the opinion that the applicant's title is open to objection but is nevertheless a title the holding under which will not be disturbed, he may bring the land under this Act with a title other than a qualified title.

(4) Where an application under section 11 by a person claiming a life estate in possession directs that the person entitled to a vested estate in expectancy in the land shall be registered as proprietor of the estate in expectancy, the Recorder may refuse to bring the land to which the application relates under this Act unless he approves the title to the life estate and the vested estate in expectancy, and brings all the vested estates in the land under this Act.

13. Notices

(1) Where an application under section 11 is based on a claim by possession under a statute of limitations (other than a claim against the Crown), the applicant is to –

(a) post on the land, or at such place as the Recorder directs, and keep so posted for not less than one month before the granting of the application; and

(b) publish, not less than one month before the granting of the application, in at least one newspaper that is published, and circulating generally, in Tasmania and that is available in the locality in which the relevant land is situated –

a notice of the application in such form as the Recorder directs.

(2) The Recorder may refuse to bring land under this Act in a case to which subsection (1) applies until it has been proved to his satisfaction that the requirements of that subsection have been complied with.

(3) A notice under this section shall specify a time (being not less than one month) after the expiration of which the Recorder may, unless a caveat is lodged forbidding it, bring the land under this Act.

14. Caveat forbidding the bringing of land under this Act

(1) A person who claims an estate or interest in land that is the subject of an application under section 11 may, before the creation of a folio of the Register for that land, lodge a caveat with the Recorder in accordance with an approved form forbidding the bringing of the land under this Act.

(2) The Recorder, on the lodgment of a caveat pursuant to subsection (1), shall notify the person who lodged an application under section 11 in respect of the land and shall not proceed with the application until –

(a) the caveat has been withdrawn or has lapsed as provided in subsection (3); or

(b) a judgment or order in the matter has been obtained from a court of competent jurisdiction.

(3) On the expiration of 30 days after lodgment, a caveat lodged pursuant to subsection (1) lapses and ceases to have any effect unless the caveator has, within that period –

(a) commenced proceedings in a court of competent jurisdiction to establish his title to the estate or interest specified in the caveat and has given written notice that he has commenced proceedings to the Recorder, in which case the Recorder shall not proceed with the application until those proceedings have been determined; or

(b) obtained and served on the Recorder an injunction or order of a court of competent jurisdiction restraining the Recorder from bringing the land under this Act, in which case the Recorder shall not proceed with the application while that injunction or order is in force.

(4) Unless permitted by a Supreme Court order, a caveat that has lapsed under subsection (3) may not be renewed and a new caveat may not be lodged by or on behalf of the same person in respect of the same estate or interest.

(5) Section 133 (5) and (6) and section 135 apply to a caveat lodged pursuant to subsection (1).

15. Withdrawal of application to bring land under Act

An applicant may withdraw his application to bring land under this Act at any time before the creation of a folio of the Register for that land, and on the withdrawal of the application the Recorder shall return the muniments of title lodged in support of the application to the person from whom he received them.

Division 3 - Completing the Register

16. Appointed day

(1) The expression *appointed day*, in relation to a provision of this Division, means such day as the Governor, by order, declares to be the appointed day for the purposes of that provision.

(2) The Governor may declare different appointed days in respect of the provisions of this Division.

17. Land may be brought under this Act on registration of instruments under the *Registration of Deeds Act 1935*

(1) A person who lodges for registration under the Registration of Deeds Act 1935 –

- (a) a conveyance on sale; or
- (b) a legal mortgage by conveyance of the fee simple; or
- (ba) any other instrument that affects land –

shall leave with the Recorder, in addition to the documents required by section 12 of that Act –

- (c) a statement in an approved form signed by the purchaser or mortgagor or by the legal practitioner acting for and on behalf of the purchaser or mortgagor and addressed to the Recorder, which shall state the facts of the ownership of the land and such further information as may be required by the form; and
- (d) all instruments in his possession or under his control constituting or in any way affecting the title to the land except any instruments which a purchaser of the land to which the statement relates would not be entitled to require pursuant to section 35 of the Conveyancing and Law of Property Act 1884 , and also, if required, an abstract of that title.

(1A) A person who lodges for registration under the Registration of Deeds Act 1935 a forestry right shall leave with the Recorder, in addition to the documents required by section 12 of that Act –

- (a) a statement in a form approved by the Recorder signed by the owner of the land over which the forestry right is granted or by the legal practitioner acting for and on behalf of that owner and addressed to the Recorder, which shall state the facts of the ownership of the land and such further information as may be required by the form; and
- (b) all instruments in his possession or under his control constituting or in any way affecting the title to the land except any instruments which a purchaser of the land to which the statement relates would not be entitled to require pursuant to section 35 of the Conveyancing and Law of Property Act 1884 , and also, if required, an abstract of that title.

(2) The Recorder may refuse to register a conveyance on sale, a legal mortgage by conveyance of the fee simple, another instrument that affects land or a forestry right unless it is accompanied by a statement and other instruments as required by subsection (1) or (1A) .

(3) On registering under the Registration of Deeds Act 1935 a conveyance, mortgage, other instrument or forestry right to which subsection (1) or (1A) applies the Recorder may, if he thinks fit–

- (a) bring the land comprised in the conveyance, mortgage, other instrument or forestry right under this Act by creating a folio of the Register for that land; and
- (b) for the purposes of so bringing the land under this Act, return the conveyance, mortgage, other instrument or forestry right and any other instruments in his custody to the lodging party.

(4)

17A. Land to be brought under this Act upon subdivision

(1) On and after the appointed day the owner of land which is not registered land shall not subdivide any land –

- (a) held under the same title; or
- (b) included in one subsisting legal mortgage by conveyance of the fee simple –

unless the owner has made an application under section 11 to bring the land under this Act.

Penalty: Fine not exceeding 20 penalty units.

(2) In subsection (1) *subdivide*, in respect of land, means to divide the surface of that land legally by creating estates or interests giving separate rights of occupation.

18. Land may be brought under this Act upon subdivision

The Recorder may refuse to accept a sealed plan under Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 that is lodged with him on or after the appointed day and that includes land which is not registered land until all the land –

- (a) held under the same title as any of the land included in the plan; or
- (b) included in one subsisting legal mortgage by conveyance of the fee simple with any of the land included in the plan –

whichever the Recorder, in his discretion, directs, is brought under this Act.

19. Land may be brought under this Act at the instance of the Recorder

- (1) The Recorder may on or after the appointed day cause notice to be given to any person requiring him, within a time specified in the notice, not being a time less than 30 days from the date of the notice –
 - (a) to inform the Recorder in writing whether he claims an estate or interest in land (not being registered land) specified in the notice;
 - (b) where he claims an estate or interest by virtue of an assurance or other disposition or by devolution in law –
 - (i) to furnish to the Recorder a statement in an approved form; and
 - (ii) to produce to the Recorder all instruments constituting or in any way affecting his title to the land which are in his possession or under his control or in the possession or under the control of the mortgagee of the land except any instruments which a purchaser would not be entitled to require pursuant to section 35 of the Conveyancing and Law of Property Act 1884 ; and
 - (c) where he claims an estate by the operation of a statute of limitations, to furnish to the Recorder such evidence in support of that claim as he possesses.
- (2) Where the Recorder has given notice under subsection (1) he may bring any land specified in the notice under this Act by creating a folio of the Register for that land.
- (3) The Recorder shall, as far as possible, use his powers under this section so that by the operation of sections 17 and 18 and this section all land (other than Crown land) which is not registered land shall be brought under this Act.

20. Refusal to comply with notice under section 19; making false or misleading statement, &c.

- (1) Any person who wilfully refuses or neglects to comply with any requirement of a notice given to him under section 19 is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units and a daily fine not exceeding one penalty unit.
- (2) Any person who makes a statement under section 17 (1) (c) or section 19 (1) (b) , or furnishes the Recorder with evidence under section 19 (1) (c) , that to his knowledge is false or misleading in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years.

Division 4 - Qualified title

21. Qualified title

- (1) Land may be brought under this Act with a qualified title where –
 - (a) an applicant under section 11 –
 - (i) fails to satisfy the Recorder that he is entitled to the estate he claims;
 - (ii) fails to do or prove to the Recorder's satisfaction such things or matters as the Recorder may have required him to do or prove in order to justify the bringing of the land under this Act; or
 - (iii) requests the Recorder to register a qualified title;
 - (b) the proprietor of land to which section 17 applies or a person to whom the Recorder has given notice under section 19 requests the Recorder to register a qualified title;
 - (c) the Recorder is doubtful whether the title of any person to whom any provision of Division 3 of this Part applies is a title the holding under which will not be disturbed; or

(d) under any Act the Recorder is directed or empowered to register a qualified title.

(2) Where land is brought under this Act with a qualified title a caution shall be recorded on the folio of the Register for that land and may be –

(a) a general caution, that is to say, a caution that the registered proprietor holds his estate subject to all estates and interests in the land created before the land was brought under this Act; or

(b) a particular caution, that is to say, a caution that the registered proprietor holds his estate subject to any defect in title or the estate or interest of any person the existence or probable or possible existence of which is indicated in a minute signed by the Recorder and filed in his office.

(3) The Recorder's minute for the purpose of subsection (2) (b) –

(a) shall set forth any defect in the title or any estate or interest or probable or possible estate or interest of any person in the land and the acts or matters that ought to be done or proved and the requisitions that ought to be complied with in order to justify the cancellation of the caution recorded on the folio of the Register;

(b) does not form part of the Register; and

(c) shall be made available for inspection by any person on payment of the prescribed fee (if any).

(4) The Recorder may revise and amend a minute under subsection (2) so as to indicate which of the defects, estates, or interests referred to in the minute have been removed or resolved and which of the acts, matters, or requisitions so referred to have been done, proved, or complied with.

(5) Where a general caution is recorded on a folio of the Register, the Recorder may at any time cancel that caution and substitute a particular caution.

(6) The Recorder may, upon production to him of such evidence of title as he deems sufficient, cancel a caution recorded on a folio of the Register.

22. Subsisting estates and interests to be recorded on qualified title

(1) When bringing land under this Act with qualified title, the Recorder shall record on the relevant folio of the Register any subsisting estate or interest then apparent to him, but shall not be concerned to make searches or inquiries as to the existence of any such interest.

(2) The Recorder may, at any time after the creation of a qualified title –

(a) if a general caution is recorded on the qualified title, record on that qualified title any additional subsisting estate or interest in the land comprised in the title; or

(b) if a particular caution is recorded on the qualified title, record on that qualified title any additional subsisting estate or interest the existence or probable or possible existence of which is indicated in the relevant Recorder's minute –

and, in either case, in such a manner as to preserve the priority that the additional estate or interest would have had if it had been recorded on the relevant folio of the Register when the land was first brought under this Act.

23. Certain informal dealings may be registered

An instrument that affects any land brought under this Act and that might have been registered under the Registration of Deeds Act 1935 if the land had not been brought under this Act may, in the discretion of the Recorder, be registered under this Act notwithstanding that it is not an instrument in an approved form, and when registered has effect for all purposes as if it were such an instrument.

24. Qualified title may be cancelled or corrected in certain circumstances

(1) If, on application made to him for that purpose, it appears to the Recorder that the proprietor of an estate or interest in the land comprised in a qualified title has suffered judgment for the recovery of the land or a declaration, injunction, or other judgment destructive of that proprietor's estate or interest wholly or in part, the Recorder shall –

(a) cancel or correct the folio of the Register relating to that land; and

(b) call in and cancel or correct the corresponding certificate of title, as the circumstances may require.

(2) Subject to subsection (3), a person who claims an estate of freehold in the whole or any part of the land comprised in a qualified title of which some other person is the registered proprietor may apply to have the land brought under this Act as if that qualified title had not been created, and the Recorder, if satisfied of the grounds of his claim, shall –

(a) correct the folio of the Register; or

(b) cancel the folio of the Register constituting the qualified title and create a folio of the Register in the name of the applicant –

and shall call in the certificate of title corresponding to the corrected or cancelled folio of the Register and correct or cancel it as the circumstances require.

(3) Where a particular caution is recorded on a folio of the Register, a person may apply under subsection (2) only if he claims an estate or interest the existence or probable or possible existence of which is indicated in the Recorder's minute or arising from a defect in title indicated in the minute.

25. Caution to lapse after 20 years

(1) A caution lapses, unless it sooner ceases to have effect, at the expiration of a period of 20 years after the date on which the land was brought under this Act or the repealed Act .

(2) Where a caution lapses under this section the Recorder shall as soon as practicable cancel the caution.

(3) The lapsing of a caution under this section operates to free the land in respect of which it lapsed from any estates and interests that affected the land at the date on which it was brought under this Act or the repealed Act , except an estate or interest which is preserved by section 40 , section 46 , section 138W(4) or section 138X(4) or which was immediately before the lapsing–

(a) recorded on the relevant folio of the Register; or

(b) the subject of a caveat affecting the land comprised in that folio.

26. Application of this Act to land in qualified title

The provisions of this Act apply in respect of land comprised in a qualified title in like manner as if that qualified title were a title to the land comprised in a folio of the Register upon which no caution is recorded except that –

(a) if a general caution is recorded on the qualified title and the caution has not lapsed, the land comprised in the title is subject to every estate and interest in the land created before the date on which the land was brought under this Act or the repealed Act ; and

(b) if a particular caution is recorded on the qualified title and the caution has not lapsed, the land comprised in the title is subject to any defect in title or any estate or interest of any person the existence or probable or possible existence of which is indicated in the Recorder's minute.

Division 5 - General provisions

27. Land not alienated from the Crown may be brought under this Act

Land may be brought under this Act pursuant to Division 2 or Division 3 whether or not it has been alienated from the Crown and, where there appears to be no deed of grant or transfer from the Crown, no such deed or transfer is necessary before the Recorder brings the land under this Act.

27A. Certain Crown land may be brought under this Act

(1) This section does not apply to, or in relation to, any land in respect of which an application under section 11 has been made.

- (2) The Recorder may, on the application of the Director-General of Lands, bring under this Act any land of the Crown by creating a folio of the Register for the land.
- (3) Where land is brought under this Act pursuant to subsection (2) –
- (a) the Crown shall be registered as the proprietor of the land for an estate in fee simple;
 - (b) the land remains subject to any limitation, exception, reservation, condition, or restriction to which it was subject immediately before it was so brought under this Act; and
 - (c) the Recorder may record on the folio created under that subsection such particulars as he considers appropriate relating to any matter affecting the land in force under the Crown Lands Act 1976 or any other Act.
- (4) The Recorder may at any time cancel or amend in such manner as he considers appropriate an endorsement made on a folio under subsection (3) (c) .
- (5) Where particulars of a lease are recorded in the folio of the Register under subsection (3) (c) , the Recorder may –
- (a) create a folio of the Register for the lease; and
 - (b) record in that folio as the registered proprietor of the lease the name of a person who, in the opinion of the Recorder, is so entitled.
- (6) In an application made under subsection (2) , the Director-General of Lands may –
- (a) create any easement, covenant, limitation, exception, reservation, condition or restriction that he or she considers appropriate; and
 - (b) request the Recorder to note the creation of that new interest on the relevant folio of the Register for the land and any other limitation, exception, reservation, condition or restriction to which the land is subject in accordance with the Crown Lands Act 1976 .
- (7) Where on the commencement of the Crown Lands (Shack Sites) Act 1997 the Crown is the registered proprietor of any land, that land is subject to any limitation, exception, reservation, condition or restriction that is noted on the relevant folio.
- (8) On application by the Director-General of Lands, the Recorder may amend any easement, covenant, limitation, exception, reservation, condition or restriction noted on the folio.
- (9) A transfer of any land of which the Crown is the registered proprietor is, unless the parties otherwise agree, to be subject to any limitation, exception, reservation, condition, restriction, covenant or easement that is noted on the relevant folio under this section.
- (10) Where the Recorder brings land under this Act pursuant to an application made under subsection (2) , the application is taken to be a registered dealing.

28. How certain estates and interests dealt with when land brought under this Act

(1AA) In this section,

instrument means any deed, judgment, will, letters of administration or other document or writing affecting or intended to affect land in this State.

(1) When –

- (a) on the bringing of land under this Act, it appears to the Recorder that the land is subject to a legal mortgage by conveyance of the fee simple;
- (b) a legal mortgage by conveyance of the fee simple is to be recorded in the Register pursuant to section 22 ; or
- (c) in the case of land of the Crown for which a folio of the Register is created under section 27A (2) , it appears to the Recorder that the land is subject to a legal mortgage –

the Recorder shall register the mortgage on the relevant folio of the Register notwithstanding that it is not an instrument in the form of a memorandum of mortgage under this Act, and when so registered it has effect for all purposes as if it were such an instrument registered under this Act at the time the land was brought under this Act.

(2) Where –

(a) on the bringing of land under this Act, it appears to the Recorder that an instrument registered under the Registration of Deeds Act 1935 or Part 2K.2 of the Corporations Act creates an estate or interest in that land (other than the estate claimed by the person making application to bring land under this Act or the person who is to be registered as proprietor) that could have been created by an instrument registered under this Act if at the time of its creation the land were under this Act; or

(b) he is required to record the estate or interest referred to in paragraph (a) on the relevant folio of the Register pursuant to section 22 –

he may record that instrument as if it were the appropriate instrument under this Act to create the estate or interest, notwithstanding that –

(c) it is not in the form of an appropriate instrument; and

(d) it discloses the existence of other estates or interests that may not otherwise be registered under this Act.

(3) Subsection (2) allows the recording of an equitable mortgage or charge as a legal mortgage or encumbrance.

(4) Where an instrument is recorded on a folio of the Register pursuant to this section or is referred to on the folio –

(a) the Recorder shall–

(i) certify on the instrument that it is so recorded;

(ii) make a copy of the instrument, which he shall retain, and which shall for all purposes be deemed to be the original instrument; and

(iii) return the instrument to the person from whom he received it, and that instrument shall be produced to the Recorder whenever the duplicate instrument is required by this Act to be produced to him;

(b) dealings with the estate or interest so recorded are subject to this Act; and

(c) the proprietor of the estate or interest so recorded has all the rights of a registered proprietor of such an estate or interest instead of any rights of a like nature enjoyed by him before that registration.

(5) Where an instrument is registered under the Registration of Deeds Act 1935 or Part 2K.2 of the Corporations Act, the Recorder is not bound to require production of the instrument or to comply with subsection (4) (a) (i) .

(6) In registering instruments under this section the Recorder shall, in the absence of proof to the contrary, preserve such priority as they appear to have by virtue of the Registration of Deeds Act 1935 and for that purpose may assume that all instruments registered under that Act have been executed or taken in good faith by the purchasers.

(7) A power of sale arising from an instrument registered pursuant to this section shall be exercised, and the estate or interest sold shall be transferred, in accordance with this Act and not otherwise.

(8) Foreclosure of a mortgage registered pursuant to this section shall be effected by an application under section 85 and an order made and registered pursuant to section 86 , and not otherwise.

(9) Where a person is aggrieved by a decision of the Recorder –

(a) to register or refrain from registering an instrument under subsection (1) or subsection (2) ; or

(b) on the priority of an instrument so registered –

section 144 applies as if the decision were a refusal as mentioned in subsection (1) (a) of that section.

(10) Where –

- (a) on the bringing of land under this Act, it appears to the Recorder that the land is subject to an equitable interest incapable of registration under this Act; or
- (b) the Recorder is required under section 22 to record on a qualified title an equitable interest incapable of registration under this Act –

he shall record a caveat to protect the interest of the person entitled in equity and shall give notice of the caveat to that person and to the registered proprietor.

(11) A caveat recorded pursuant to subsection (10) –

- (a) may be withdrawn by the Recorder, upon proof to his satisfaction that the equitable interest no longer exists, or by the person protected by the caveat; and
- (b) is otherwise subject to the same provisions as if it were a caveat lodged by that person.

(12) Where–

- (a) on the bringing of land under this Act, it appears to the Recorder that a judgment registered under the Registration of Deeds Act 1935 affects that land; or
- (b) the Recorder is required under section 22 to record the interest of the judgment creditor under such a judgment–

the Recorder shall record a caveat to protect the interest of the judgment creditor, and shall give notice of the caveat to the judgment creditor or to the legal practitioner who registered the judgment, and to the registered proprietor.

(13) A caveat recorded pursuant to subsection (12) –

- (a) may be withdrawn by the Recorder upon proof to his satisfaction that the judgment has been satisfied, or by the person to whom the money payable under the judgment is payable or by his legal practitioner for him and on his behalf;
- (b) unless sooner withdrawn or lapsed, lapses at the expiration of 5 years after the date of the first registration of the judgment, or the latest re-registration of the judgment before the land was brought under this Act, whichever is the later date; and
- (c) is otherwise subject to the same provisions as if it were a caveat lodged by a judgment creditor.

(14) On recording an estate or interest referred to in subsection (2) , (10) or (12) , it is sufficient compliance with this section if the Recorder refers to an instrument registered under the Registration of Deeds Act 1935 which records that estate or interest, whether it was created in that instrument or in another instrument registered in the Registry of Deeds.

28A. Restraining orders not affected when land brought under Act

If land that is brought under this Act is subject to a restraining order within the meaning of the Criminal Injuries Compensation Act 1976 , the Recorder is to record particulars of the restraining order on the relevant folio of the Register.

29. Notice to be given in Registry of Deeds

When land is brought under this Act (otherwise than pursuant to Division 1 or section 27A), the Recorder shall give notice of that fact in the Registry of Deeds in the prescribed manner.

30. Disposal of antecedent documents of title

(1) Where land is brought under this Act or the repealed Act , the Recorder –

- (a) shall return to the person from whom he received them documents relating to any property other than the land included in the relevant folio of the Register; and

(b) may, in relation to any other documents –

(i) retain them in his office;

(ii) transfer them to the Tasmanian Library Board, to be dealt with as if they were State records within the meaning of the Archives Act 1983 ; or

(iii) subject to subsection (2) , sell or destroy them.

(2) The Recorder shall not destroy a document pursuant to subsection (1) unless –

(a) where the land was brought under this Act or the repealed Act with a title other than a qualified title, a period of at least 12 years has expired since the land was brought under this Act or the repealed Act ;
or

(b) where the land was brought under this Act or the repealed Act with a qualified title, the title has ceased to be qualified and a period of at least 12 years has expired since it ceased to be qualified.

(3) Instead of selling or destroying a document under the authority of subsection (1) , the Recorder may deliver it to any person who satisfies the Recorder that he intends to preserve the document for historical purposes.

(3A) If an application is made by a person who had an estate or interest in the land specified in a document at the time that document was lodged or deposited with the Recorder, the Recorder shall, if the Recorder considers that the document is of no value for the purpose of the Register, give possession of the document to that person free of charge.

(4) Before selling, returning or delivering a document pursuant to this section, the Recorder shall mark the document as cancelled so far as it relates to land brought under this Act or the repealed Act .

(5) A person is not entitled to the production of a document retained by the Recorder, or transferred to the Tasmanian Library Board, pursuant to subsection (1) , except upon the order of the Recorder or of the Supreme Court.

(6) In this section, *document* means, in relation to land brought under this Act or the repealed Act , an instrument constituting, or in any way affecting, the title to the land, being an instrument that is left with or surrendered to the Recorder by the applicant or any other person, other than an instrument that is registered pursuant to section 28 .

31. Persons to produce deeds

(1) Where, by any provision of this Part, a proprietor is required to produce to the Recorder instruments constituting, or in any way affecting, his title, a mortgagee or other person who holds those instruments shall, upon being requested to do so by the proprietor, at the cost of the proprietor, produce those instruments to the Recorder.

(2) The Supreme Court may, on the application of the Recorder or of a person who is required by any provision of this Part to produce it to the Recorder, order any specified person who has in his possession or under his control an instrument evidencing title to land to which that person claims title, within such time as may be limited by the order, to produce and leave that instrument at the office of the Recorder, upon such terms and subject to such conditions as to costs or otherwise as the Court considers necessary.

(3) Production of instruments to the Recorder under subsection (1) does not affect a lien which the person producing the instruments may have, and an order made under subsection (2) may preserve a lien.

(4) A person producing instruments to the Recorder under subsection (1) may do so subject to the condition that the Recorder shall deliver to that person the certificate of title issued upon the bringing of the land, or any part of the land, to which the instruments relate under this Act, and an order made under subsection (2) may contain a similar condition.

32. Land may be described by verbal description if no survey available, &c.

(1) Where, on the bringing of land under this Act pursuant to this Part (other than Division 1), there is not available to the Recorder a survey such as he could require under section 162 , the land may be described by a verbal description or by a plan prepared from information contained in a verbal description.

(2) Where, pursuant to subsection (1) , land is described by a verbal description or by a plan prepared from information contained in a verbal description, or where, under section 143E (1) , the remainder of any land included in a title is described by a plan prepared from information contained in a verbal description –

(a) subject to subsection (2A) , an action is not to be brought against –

(i) the Recorder; or

(ii) the assurance fund; or

(iii) in the case of a plan prepared by a surveyor – that surveyor –

by reason or in respect of any difference between the area of land or the position or dimensions of the boundaries so described and the actual area, position or dimensions as found by survey; and

(b) a legal practitioner who acts for any party taking or proposing to take any estate or interest in the land is not under any duty to check that that description agrees with the description in the antecedent documents of title; and

(c) on such evidence of boundaries as he deems sufficient, the Recorder may alter the description to accord with that evidence.

(2A) Where, pursuant to subsection (1) , the Recorder describes land by –

(a) a verbal description; or

(b) a plan prepared from information contained in a verbal description –

subsection (2) (a) does not exempt the Recorder from any liability under section 153 as a result of any omission, mistake or misfeasance of the Recorder or any of the Recorder's officers in respect of that description.

(3) The fact that land comprised in a folio of the Register is described by a verbal description or by a plan prepared from information contained in a verbal description shall be conclusive evidence that at the time the verbal description or plan was first inserted in that folio no survey such as he could require under section 162 was available to the Recorder.

(4) The Recorder may, at any time –

(a) add to a verbal description a plan prepared from information contained in that description; or

(b) replace a verbal description with a plan prepared from information contained in that description or with a plan from actual survey; or

(c) replace a plan prepared from information contained in a verbal description with an amended or corrected plan of the same kind or with a plan from actual survey.

(4A) A plan prepared from –

(a) information contained in a verbal description; or

(b) a plan prepared from information contained in a verbal description –

is to be endorsed "sketch by way of illustration only".

(5) A plan or sketch by way of illustration only shall not in any way govern, control, restrict, or enlarge the verbal description from which it has been prepared.

(6) In this section **verbal description** means a description –

(a) by metes and bounds; or

(b) in such form as may be prescribed.

PART IV - The Register and Certificates of Title

33. The Register, certificates of title and registration

- (1) Subject to this section, the Recorder shall keep or cause to be kept a register of title to land which is subject to this Act.
- (2) Regulations may prescribe the manner in which the Register is to be kept.
- (3) Subject to any regulation under this section the Register may be kept wholly or partly –
 - (a) on paper, on microfilm, or in or on such other medium as may be approved by the Recorder; or
 - (b) in such device for storing or processing information as may be approved by the Recorder.
- (4) The Register shall comprise –
 - (a) the folios of the Register;
 - (b) the dealings registered under this Act and any of the Acts specified in Schedule 2 ; and
 - (c) schemes under the Strata Titles Act 1998 –but shall not include any other maps and plans or documents deposited with the Recorder.
- (5) Each folio of the Register shall –
 - (a) be the record of the title to one or more parcels of land, or to an estate in one or more parcels of land being an estate of a kind referred to in subsection (6) ;
 - (b) be numbered or otherwise identified as prescribed;
 - (c) contain a record of such matters as the Recorder is, by or under this or any other Act, required to record on the folio; and
 - (d) contain such other particulars as may be prescribed.
- (6) The Recorder may, if he deems it convenient to do so, create a folio of the Register for any of the following:
 - (a) a leasehold estate created by a lease registered under this Act;
 - (b) a life estate;
 - (c) an estate in remainder or other future estate;
 - (d) an undivided share in land;
 - (e) any other estate or interest in land.
- (7) Land becomes subject to this Act when the Recorder creates a folio of the Register for it.
- (8) Except as may otherwise be prescribed, when the Recorder creates a folio of the Register, the Recorder may in the prescribed manner prepare a certificate of title to the same land.
- (9) A certificate of title shall be in an approved form and contain the prescribed particulars.
- (10) On the lodgment of a dealing, the Recorder is to ensure it is marked with a distinctive number, letter or code or marked in some other manner approved by the Recorder.
- (11) The Recorder shall register a dealing by making such recording or alteration on the folio of the Register or registered dealing to be affected thereby as, in his opinion, may be necessary to give effect to the dealing.
- (12) Where land is removed from a title, the Recorder shall create a new folio of the Register for that land, and shall cancel the folio from which the land is removed, so far as it relates to that land.
- (13) The Recorder may at any time, if he thinks fit, rearrange parts of the Register by creating a new folio containing the whole or part of land in one or more existing folios or in such other manner as may appear to him to be convenient.

- (14) In exercising his powers under subsection (13) , the Recorder –
- (a) shall not create a new folio so as to permit the subdivision of land contrary to the provisions of Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 ; and
 - (b) in creating a new folio, shall distinguish the parcels comprised in the new folio which may lawfully be separately alienated immediately before the proclaimed date.
- (15) Any parcels comprised in a new folio created pursuant to subsection (13) which may lawfully be separately alienated immediately before the proclaimed date may, on and after that date, be separately alienated.
- (16) Where the Recorder creates a new folio of the Register pursuant to subsection (13) , he shall cancel the folio of the Register from which the land comprised in the new folio is taken, so far as it relates to that land.
- (17) Where the Recorder creates a new folio of the Register pursuant to subsection (12) or subsection (13) , he may call in any certificate of title or grant referring to the same land and cancel it to the same extent as he has cancelled the corresponding folio of the Register.
- (18) The Recorder may, upon registering a dealing, or whenever he considers it convenient to do so –
- (a) create a new edition of a folio of the Register containing the subsisting recordings only;
 - (b) prepare a new edition of a certificate of title containing the subsisting recordings only, whether or not he has created a new edition of the relevant folio pursuant to paragraph (a) ; and
 - (c) destroy the superseded edition of a certificate of title –
- but shall retain a record of the registration of dealings which have ceased to affect the land comprised in that folio which record shall remain part of the Register.
- (19)

34. Power of Recorder to make transparencies

- (1) The Recorder may cause to be made a transparency of any dealing, map, plan, or document that is in his possession or custody or under his control and may, subject to the Archives Act 1983 , keep that transparency in lieu of, or in addition to, the dealing, map, plan, or document of which it is a transparency.
- (2) Where the Recorder, pursuant to subsection (1) , keeps a transparency in lieu of a dealing, map, plan, or document, he may –
- (a) deliver the dealing, map, plan, or document to any person who satisfies the Recorder that he intends to preserve it for historical purposes; or
 - (b) destroy the dealing, map, plan, or document.
- (3) In this section,

transparency, in relation to any dealing, map, plan or document, means –

- (a) a developed negative or positive photograph of that dealing, map, plan or document (in this definition referred to as an original photograph) made on a transparent base by means of light reflected from, or transmitted through, the dealing, map, plan or document; or
- (b) a copy of an original photograph made by the use of photosensitive material on a transparent base placed in surface contact with the original photograph; or
- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photosensitive material on a transparent base placed in surface contact with a copy referred to in paragraph (b) , and each succeeding copy in the series being made in the same manner from any preceding copy in the series.

34A. Power to sell, destroy or otherwise dispose of certain documents

- (1) The Recorder may, with the written permission of the State Archivist given in accordance with section 20
- (2) (b) of the Archives Act 1983 , sell, destroy or otherwise dispose of any document or any class of document

in the possession of the Recorder which the Recorder considers to be of no value for the purposes of the Register.

(2) Before selling or disposing of a document the Recorder shall mark it as no longer valid.

(3) For the purposes of this Act the Recorder is the Head of Agency for the purpose of section 3 of the Archives Act 1983 .

(4) If an application is made by a person who had an estate or interest in the land specified in a document at the time that document was lodged or deposited with the Recorder, the Recorder shall, if the Recorder considers that the document is of no value for the purpose of the Register, give possession of the document to that person free of charge.

(5) In this section *document* includes an instrument, a dealing, map, plan and transparency made in accordance with section 34 .

35. Lost certificate of title, folio of the Register, or duplicate registered dealing

(1) The Recorder, on application for that purpose and proof to his satisfaction that a certificate of title or duplicate grant has been lost, mislaid, or destroyed, may, subject to such advertisement, notice, or indemnity as he requires, issue a new certificate of title, and where he issues a new certificate of title he shall record on the relevant folio of the Register that he has done so pursuant to this section.

(2) Where a new certificate of title is issued under subsection (1) , the new certificate of title shall be produced to the Recorder whenever production of the certificate of title or duplicate grant is required.

(3) If a folio of the Register or registered dealing forming part of the Register is lost or destroyed, or so obliterated as to become illegible, the Recorder may create a substituted folio or dealing from such evidence as is available to him as to the contents of and entries upon the original, and where he creates a substituted folio or dealing he shall record on it that it is a substituted folio or dealing.

(4) Where a substituted folio or dealing is created under subsection (3) , the substituted folio or dealing shall be used for all purposes in place of the original folio or dealing.

(5) The Recorder, on application for that purpose and proof to his satisfaction that a duplicate registered dealing has been lost or destroyed, may, subject to such advertisement, notice, or indemnity as he requires, issue a substituted duplicate registered dealing in place of the lost duplicate, and where he issues a substituted duplicate registered dealing he shall record on the original dealing that the substituted duplicate has been issued.

(6) Where a substituted duplicate registered dealing is issued under subsection (5) , the substituted duplicate shall be produced to the Recorder whenever production of the duplicate registered dealing is required.

36. Searches of public records

(1) The following records are public records:

(a) the Register;

(b) dealings in the office of the Recorder awaiting registration, or re-execution, completion, or correction to make them registrable and instruments and documents lodged, deposited or filed in support of a dealing or instrument;

(c) caveats and priority notices;

(d) maps, plans and surveys deposited with the Recorder under this or any other Act whether or not they are capable of being withdrawn or rejected;

(e) any index of unregistered dealings kept in the office of the Recorder.

(2) Any information in a public record shall be available at the prescribed times, in the prescribed manner, and upon payment of the prescribed fee (if any).

37. Copies of public records

(1) The Recorder shall, on application and payment of the prescribed fee, furnish a person with a certified copy of any public record in his custody.

(2) A copy for the purposes of this section may, in the Recorder's discretion, be –

(a) in writing;

(b) made by such photocopying, facsimile or electronic transmission process as the Recorder determines; or

(c) made partly in accordance with paragraph (a) and partly in accordance with paragraph (b) .

(3) In this section –

certified copy in relation to a public record, means a copy of that public record that –

(a) is certified by the Recorder or some officer acting on the Recorder's behalf to be a copy of the public record; or

(b) in the case of a copy created by a facsimile or electronic transmission process – has recorded upon it by that process an indication that the transmission creating the copy was initiated in an office of the Recorder and a record of the time and date of the transmission;

machine copy, in relation to a public record, means a copy of the record made by –

(a) a machine in which, or a process by which, a latent image of the contents of the document is produced from surface contact with the document or by the use of photosensitive material other than transparent photographic film; or

(b) the electrostatic process known as Xerography or any similar process;

photocopying process, in relation to a copy of a public record, means the process of making a photographic copy or machine copy of the public record;

photographic copy, in relation to a public record, means a print made from a transparency of the public record;

transparency, in relation to a public record, means transparency as defined in section 34(3) .

(4)

38.

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PART V - The Effect of Registration

39. Folio of the Register conclusive evidence of title, &c.

- (1) A folio of the Register is evidence of the particulars recorded in the folio.
- (2) Except as otherwise provided in this Act, a folio of the Register is conclusive evidence that –
 - (a) the person named in the folio as registered proprietor of or as taking an estate or interest in the land described in the folio is entitled to that land for that estate or interest; and
 - (b) that land has been duly brought under this Act.

40. Estate of registered proprietor indefeasible

- (1) For the purposes of this section *indefeasible*, in relation to the title of a registered proprietor of land, means subject only to such estates and interests as are recorded on the folio of the Register or registered dealing evidencing title to the land.
- (2) Subject to subsections (3) and (4), the title of a registered proprietor of land is indefeasible.
- (3) The title of a registered proprietor of land is not indefeasible –
 - (a) in the case of fraud, in which case the person defrauded has, except as otherwise provided in sections 41 and 42, all rights and remedies that he would have had if the land were not registered land;
 - (b) where 2 or more folios of the Register subsist for conflicting estates in respect of the same land, in which case the title which was first brought under this Act or the repealed Act defeats the titles subsequently brought under this Act or the repealed Act;
 - (c) so far as regards the omission or misdescription of any reservations, exceptions, conditions, and powers contained in the Crown grant of the land, or of any right to the use and flow of water in a river, stream, watercourse, lake, pond, or marsh, or of any public right of way;
 - (d) so far as regards the interest of a tenant under –
 - (i) a periodic tenancy;
 - (ii) a lease taking effect in possession for a term not exceeding 3 years (whether or not the lessee is given power to extend the term) at the best rent that can be reasonably obtained without taking a fine; and
 - (iii) a lease capable of taking effect in equity only, except as against a *bona fide* purchaser for value without notice of the lease who has lodged a transfer for registration; and
 - (iv) a residential tenancy agreement to which the Residential Tenancy Act 1997 applies;
 - (e) so far as regards –
 - (i) an easement arising by implication or under a statute which would have given rise to a legal interest if the servient land had not been registered land; or
 - (ia) an easement created by deed but unintentionally omitted from the folio of the Register for the servient land when that servient land was brought under this Act or the repealed Act; or
 - (ib) an easement that has been created under this Act but unintentionally omitted from the folio of the Register for the servient land; or
 - (ii) an equitable easement, except as against a *bona fide* purchaser for value without notice of the easement who has lodged a transfer for registration;
 - (f) so far as regards any portion of land that may be erroneously included in the folio of the Register or registered dealing evidencing the title of that registered proprietor by a wrong description of parcels or boundaries;

(g) so far as regards any money charged on land under any Act; and

(h) subject to section 138W , so far as regards rights acquired, or in the course of being acquired, under a statute of limitations; and

(i) so far as regards land which under the Land Acquisition Act 1993 has vested in an acquiring authority, within the meaning of that Act, and in respect of which that authority has not been registered as proprietor.

(3A) The application of subsection (3)(e)(ia) extends to any land that was brought under this Act or the repealed Act before the commencement of the Land Titles Amendment (General Law Easements and Records) Act 1997 .

(4) If the estate of a registered proprietor is a leasehold estate, his estate is subject also to the provisions of the lease and of this Act affecting leases, lessors, and lessees, and subleases, sublessors, and sublessees.

(5) In every case, other than those mentioned in subsections (2) , (3) , and (4) , the title of a registered proprietor of land prevails, notwithstanding –

(a) the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which, but for this Act, might be held to be paramount, or to have priority; and

(b) any want of notice or insufficient notice of any application, or any error, omission, or informality in any application or proceedings under this Act.

(6) In this section, *interest* means –

(a) any interest, mortgage, encumbrance, charge, reservation, or right in respect of land;

(b) any covenant, the burden of which runs with freehold land; or

(c) any claim or demand in respect of land –

whether at law or in equity.

41. Purchaser from registered proprietor not to be affected by notice

(1) Subject to section 40 (3) (d) (iii) and to section 40 (3) (e) (ii) , except in the case of fraud, a person contracting or dealing with, or taking, or proposing to take a transfer from, the registered proprietor of any registered estate or interest shall not be required to inquire or ascertain the circumstances in or the consideration for which the registered proprietor or any previous registered proprietor of the estate or interest in question is or was registered, or to see to the application of the purchase-money, or of any part of that money, or shall not be affected by notice direct or constructive of any trust or unregistered interest.

(2) The knowledge that any trust or unregistered interest is in existence shall not of itself be imputed as fraud.

42. Purchasers and mortgagees protected

Nothing in this Act shall be so interpreted as to leave subject to action for recovery of damages as provided in section 152 , or to action of ejectment as provided in section 149 , or to deprivation of the estate or interest in respect to which he is registered as proprietor, any purchaser or mortgagee in good faith for valuable consideration of registered land on the plea that his vendor or mortgagor may have been registered as proprietor through fraud or error, or under any void or voidable instrument, or may have derived from or through a person registered as proprietor through fraud or error, or under any void or voidable instrument, whether that fraud or error consists in wrong description of the boundaries or of the parcels of any land or otherwise.

43. Validity of registration in name of deceased person

The creation of a folio of the Register, or registration of a grant or a dealing, in a case where the person named in the folio as registered proprietor or the person taking an estate or interest under the grant or dealing died before the date of creation of the folio or registration of the grant or dealing, is as valid and effectual, and the estate and interest of that registered proprietor or person devolves in like manner, as if the creation or registration had been effected before the death of that registered proprietor or person.

44. Persons jointly registered to be joint tenants

Two or more persons who are named in a dealing as transferees or proprietors of an estate or interest shall, in the absence of words of severance, be entitled as joint tenants, and every such dealing, when registered, takes effect accordingly.

45. In suit for specific performance, folio of the Register conclusive evidence of title, &c.

In any action for specific performance brought by a registered proprietor of registered land against a person who not having notice of any fraud affecting the title of the vendor may have contracted to purchase that land, the folio of the Register certifying the title of the registered proprietor is conclusive evidence that the registered proprietor has a good and valid title to the land, and for the estate or interest mentioned or described in the folio.

46. Folio of the Register void in certain cases

Any folio of the Register –

(a) created upon the first bringing of land under this Act or of the repealed Act other than a folio created upon the registration of a grant or transfer from the Crown under section 10 ; or

(b) which names an applicant under section 138W(4) as proprietor pursuant to a vesting order made under section 138X ; or

(c) which names an applicant under section 138D as proprietor pursuant to that section–

and every folio or new edition of a folio created in respect of the same land, or any part of the land, which names as proprietor of the land any person claiming or deriving title under or through the applicant proprietor, shall be void as against the title of any person adversely in actual occupation of, and rightfully entitled to, that land, or any part of that land, at the time when that land was so brought under this Act or the repealed Act , or the applicant was so registered as proprietor, and continuing in that occupation at the time of any subsequent folio or new edition of a folio being created in respect of the land.

47. Certificate, recording, &c., procured by fraud void as between all parties to fraud

If any person –

(a) fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or recording in the Register or of any cancellation or alteration in any recording in the Register, or in any instrument or form issued by the Recorder;

(b) fraudulently uses, assists in fraudulently using, or is privy to the fraudulent use of, any form purporting to be issued or sanctioned by the Recorder; or

(c) knowingly misleads or deceives any person authorized by this Act to demand explanation or information in respect of any land or the title to any land which is the subject of an application to bring it under this Act, or in respect of which any dealing or transmission is proposed to be registered or recorded –

any certificate of title, recording, cancellation, or alteration so procured or made by fraud is void as between all parties or privies to that fraud.

PART VI - Estates and Interests in Land and Registration of Dealings

Division 1 - General provisions

48. Dealings to be attested; order of registration; priority of dealings

(1) Every dealing lodged for registration shall –

- (a) except as may otherwise be prescribed, be attested by a witness who is not a party to the dealing;
- (b) be lodged singly, in duplicate, or otherwise as prescribed; and
- (c) comply with the prescribed requirements.

(1A) A dealing or instrument is taken to be lodged with the Recorder when a record is made in a device for storing or processing information approved under section 33 (3) (b) or 143A (3) (b) .

(2) Where two or more dealings affecting the same land are lodged for registration at the same time by the same person and are awaiting registration, the Recorder shall register the dealings in the order in which he is requested in writing to do so by the person lodging the dealings.

(3) Where two or more dealings, lodged by different persons, or lodged by the same person at different times, affect the same land, the Recorder shall, subject to subsection (4) , register them in the order which will give effect to the intentions of the parties as expressed in, or apparent to him from, the dealings.

(4) Where the intentions of the parties referred to in subsection (3) appear to the Recorder to conflict, the order of registration shall be determined in the order in which a record is made in a device for storing or processing information approved under section 33 (3) (b) or 143A (3) (b) .

(5) When registered, dealings affecting the same estate or interest shall, notwithstanding any express, implied, or constructive notice, be entitled in priority the one over the other according to the order in which they are registered and not according to the date of each dealing itself.

(6) The Recorder, upon registering a dealing, shall deliver any duplicate of the dealing to the person appearing to him pursuant to section 54 to be entitled to the duplicate.

(7) When registered, a dealing shall have the effect of a deed duly executed by the parties who signed it.

48A. Lodgment of dealings and instruments

A dealing or instrument that may be lodged with the Recorder under this or another Act may be so lodged –

- (a) by delivery of the original dealing or instrument; or
- (b) if authorised by the Recorder, by the transmission, by electronic communication, of a copy of the original dealing or instrument; or
- (c) by the lodgment of an electronic communication that –
 - (i) is set out in a format approved by the Recorder; and
 - (ii) allows the Recorder to produce the appropriate dealing or instrument in the approved form, the form approved by the Recorder or other form required by, or allowed under, this or another Act; or
- (d) in any other manner approved by the Recorder.

48B. Authority for lodgment by electronic process

(1) The Recorder may make an agreement with a person authorising the person to prepare, lodge or prepare and lodge any dealing or instrument that may be lodged with the Recorder under this or another Act otherwise than by production of the original dealing or instrument.

(2) An agreement must provide that the procedures to be followed –

(a) are comparable with the normal procedures adopted by the Recorder and will not adversely affect the register of title referred to in section 33 or the register of plans; and

(b) will ensure the accurate transmission by electronic communication of the dealing or instrument.

(3) The Recorder may require a person seeking to lodge a dealing or instrument by electronic means to produce documentary evidence that he or she is authorised to do so.

48C. Lodgment of supporting documents

The application of sections 48A and 48B extend to the preparation and lodgment by electronic means of any document required by the Recorder in support of the dealing or instrument.

49. Instruments not effectual until registered

(1) An instrument shall not be effectual to pass any estate or interest in registered land, or to render that land liable as security for the payment of money; but upon the registration of any instrument in accordance with this Act the estate or interest specified in the instrument shall pass, or the land shall become liable as security, in the manner and subject to the covenants, conditions, and contingencies set forth and specified in the instrument or by this Act declared to be implied in instruments of a like nature.

(2) A person on whom the right to be registered as the proprietor of registered land has –

(a) devolved by reason of the death or bankruptcy of the registered proprietor or otherwise by operation of law; or

(b) been conferred by a dealing –

may, subject to such conditions (if any) as may be prescribed, execute and lodge for registration instruments dealing with the land before he is himself registered as proprietor.

(3) An instrument lodged for registration pursuant to subsection (2) is, when registered, as valid and effectual as if the person executing it had been registered as proprietor at the date of execution of the instrument.

(4) Where two or more dealings which affect the same land are awaiting registration the Recorder may, if he thinks fit, register those dealings by making a single recording in the Register, referring in the recording to the lodgment numbers of those dealings or otherwise identifying them.

(5) For the purposes of Part XI, a person expressed in a dealing registered pursuant to subsection (4) as taking an estate or interest in registered land shall be deemed to have become registered as proprietor of that estate or interest according to the tenor of the dealing.

50. Dealings not to be registered except in accordance with this Act

(1) Subject to this section, the Recorder shall not register any dealing except as provided in this Act and unless the dealing is in accordance with this Act.

(2) Where a dealing that is not in accordance with this Act is lodged for registration, the Recorder shall –

(a) require it to be amended as provided in subsection (4) ;

(b) himself amend it as provided in subsection (6) ; or

(c) refuse to register it.

(3) Notwithstanding any other provision of this Act, the Recorder may, in his discretion, register a dealing notwithstanding any error in or omission from the dealing and where a dealing is so registered the error or omission does not invalidate its registration.

(4) If, in the opinion of the Recorder, a dealing which is lodged with the Recorder for registration is erroneous, incomplete, or defective in any particular, the Recorder may by notice in writing require the person by whom the dealing was lodged, or his agent, to re-execute, complete, or correct the dealing or procure the re-execution, completion, or correction of the dealing in such manner as may be specified in the notice.

(5) If a person to whom a notice under subsection (4) is forwarded fails, within the prescribed period, to re-execute, complete, or correct the dealing, or to procure the re-execution, completion, or correction of the

dealing in accordance with the notice, the Recorder shall, after such delay (if any) as he thinks proper, deal with the dealing as if he had not required any amendment.

(6) The Recorder may, of his own motion, correct a patent error in a dealing lodged for registration by notation, and after an error is so corrected the dealing has the same validity and effect as if the error so corrected had not been made.

(7) The Recorder may refuse to register a dealing which in his opinion cannot be registered because another dealing is required to be registered before it, and that other dealing has not been lodged, or is not in order, for registration.

(8) Where the Recorder refuses to register a dealing, he shall notify the person by whom the dealing was lodged or his agent of his refusal, and may retain one-half of the fees paid on the lodging of the dealing.

(9) Where the Recorder refuses to register a dealing, he may also refuse to register a dealing which appears to him to be intended to be registered subsequent to the first-mentioned dealing, or which, in his opinion, could only be registered after the registration of the first-mentioned dealing.

(10) All fees retained by the Recorder in accordance with subsection (8) shall be paid into the Consolidated Fund.

(11) The Recorder is not to register a dealing that purports to be executed under or in pursuance of a power of attorney unless he or she is satisfied that –

(a) the power of attorney is registered under the Powers of Attorney Act 2000 ; or

(b) in the case of a foreign power of attorney within the meaning of the Powers of Attorney Act 2000 , the foreign power of attorney is registered under, or taken to be registered in Tasmania for the purposes of, that Act.

(11A) If satisfied as specified in subsection (11) , the Recorder is entitled to assume that the execution of the dealing is within the powers conferred on the attorney by the relevant power of attorney or foreign power of attorney.

(12) If the Recorder is of the opinion that by reason of amendments made or to be made in a dealing the dealing will be inconvenient for subsequent use, he may require the person by whom it was lodged, or his agent, to lodge within 30 days from the date of the requisition a fresh dealing to the same effect as the original dealing has, or would have, after amendment.

(13) A dealing lodged pursuant to subsection (12) has effect as if it had been lodged in place of the original dealing, and if validly made in fact is not invalid merely because it could not have been validly made at the date of lodgment of the original dealing.

(14) A requirement or refusal made by the Recorder under this section in respect of a dealing shall be notified in writing to the person by whom the dealing was lodged or his agent.

(15) Where a legal practitioner is acting as or for the agent referred to in subsection (14) the notification shall be sent to that legal practitioner.

(16) For the purposes of this section –

registration includes all methods of recording in the office of the Recorder;

the prescribed period means –

(a) in the case of a caveat, or a writ referred to in section 61 , a period of 21 days; and

(b) in any other case, a period of 3 months –

after the date of the notice under subsection (4) .

51. Recording of dealing on certificate of title, &c.

(1) The Recorder shall not register a dealing unless the certificate of title, grant, or duplicate registered dealing to be affected by the dealing has been lodged with him for the purpose of registering that dealing.

(2) Subsection (1) does not apply to the following dealings:

- (a) the recording of a writ (referred to in section 61) and the registration of a transfer pursuant to a writ under section 61 ;
- (b) discharges of mortgages pursuant to section 90 , and discharges of mortgages or encumbrances pursuant to sections 91 and 148 ;
- (ba) in respect of the registration of a transfer on the exercise of a power of sale by a mortgagee or encumbrancee under section 78 , the memorandum of mortgage or the memorandum of encumbrance;
- (c) satisfactions of encumbrances pursuant to section 94 ;
- (d) orders under section 110 after notice has been given under subsection (4) of that section;
- (e) action taken by the Recorder under section 138A , section 138B , section 138D or section 138X ;
- (f) any other dealing where the Recorder considers that the production of the certificate of title, grant or registered dealing is not required.

(3) Subsection (1) does not apply –

- (a) where the Recorder dispenses with production of a certificate of title, grant, or duplicate registered dealing pursuant to section 160 (5) ; or
- (b) where by the provisions of this or any other Act the Recorder is, expressly or by necessary implication, required or authorized to make the recording without production of a certificate of title, grant, or duplicate registered dealing.

(4) On registering a dealing, the Recorder shall note on the dealing the fact and date of its registration, and that notation shall be conclusive evidence that the dealing was duly registered on that date.

(5) Where under subsection (1) a certificate of title, grant, or duplicate registered dealing is required to be lodged with the Recorder before he registers a dealing, the Recorder shall, except as may otherwise be prescribed –

- (a) make the same recording on the relevant certificate of title, grant, or duplicate registered dealing as he has made on the folio of the Register or registered dealing to give effect to the dealing; or
- (b) issue a certificate of title, or a new edition of the certificate of title, in accordance with the folio of the Register.

(6) Where the Recorder has registered a dealing without the certificate of title, grant, or duplicate registered dealing being produced to him, he may act as provided in subsection (5) when the certificate of title, grant, or duplicate registered dealing is next produced to him for any purpose.

(7) Nothing in this section affects any power of the Recorder to compel production to him of the certificate of title, grant, or duplicate registered dealing.

(8) A failure by the Recorder to comply with any of the requirements of subsections (1) , (5) , and (6) does not invalidate the registration of a dealing.

(9) Nothing in this section requires the Recorder to record –

- (a) on a certificate of title or grant –
 - (i) a caveat;
 - (ii) a priority notice; or
 - (iii) a dealing of a prescribed kind; or
- (b) on a registered dealing or duplicate registered dealing, any dealing –

which is recorded on the folio of the Register constituting the title to the land affected by the caveat, priority notice, or dealing.

52. Priority notices

(1) Any of the following persons may lodge with the Recorder a priority notice in accordance with subsection (2) :

- (a) a registered proprietor;
- (b) a person entitled to deal with registered land;
- (c) a person who has contracted in good faith and for value to deal with a person referred to in paragraph (a) or paragraph (b) or is entitled to execute and lodge dealings as and in the cases prescribed under section 49 (2) ;
- (d) the legal practitioner for a person referred to in paragraph (a) , paragraph (b) , or paragraph (c) ; and
- (e) a person authorized in writing to do so by any of the persons referred to in paragraphs (a) , (b) , (c) , and (d) ; and
- (f) the Director of Public Prosecutions where a restraining order has been made under section 18 of the Criminal Injuries Compensation Act 1976 .

(2) A priority notice –

- (a) shall be in an approved form;
- (b) except as provided by subsection (5A) , limits a period, not exceeding 60 days, after the day on which the notice is lodged with the Recorder during which priority shall be reserved for lodgment of the dealing specified in the notice;
- (c) shall, when lodged, be dealt with by the Recorder in the prescribed manner; and
- (d) operates to prevent registration or recording of any dealing lodged with, or served on, the Recorder after the lodgment of the priority notice, except as is otherwise provided in subsections (3) , (5) , (5A) and (7) .

(3) If a dealing specified in a priority notice is lodged with the Recorder within the period limited in the priority notice or, if that period expires on a day on which the office of the Recorder is closed, on the next day on which the office is open, that dealing shall, subject to subsections (4) , (5) , (5A) and (6) be registered, notwithstanding the lodgment with the Recorder of any other dealing after the lodgment of the priority notice.

(4) Subsection (3) does not authorize the registration of a dealing executed by a person entitled to be registered as the proprietor of registered land otherwise than as and in the cases prescribed under section 49 (2) .

(5) Except as provided by subsection (5A) , a priority notice ceases to have effect –

- (a) if no dealing specified in the priority notice is lodged with the Recorder within the period limited in the priority notice, at the expiration of that period; or
- (b) if a dealing specified in the priority notice is lodged within the period limited in the priority notice, when all dealings –
 - (i) which are specified in the priority notice; and
 - (ii) which have been lodged with the Recorder within the period limited in the priority notice – have been registered, have been withdrawn from registration, or have been refused registration.

(5A) A priority notice lodged by the Director of Public Prosecutions under subsection (1) (f) –

- (a) reserves priority, for the period commencing after the day on which the notice is lodged with the Recorder and ending on the day on which the notice ceases to have effect, for lodgment of the dealing specified in the notice; and
- (b) ceases to have effect when –
 - (i) the restraining order to which the notice relates ceases to have effect under section 23 of the Criminal Injuries Compensation Act 1976 ; or
 - (ii) the notice is withdrawn; or

(iii) the notice is otherwise removed under this section; or

(iv) if the dealing specified in the notice is lodged – the dealing is registered, withdrawn from registration or refused registration.

(5B) If a judge extends the period during which a restraining order to which a priority notice lodged under subsection (1) (f) relates is in force the Director may apply to the Recorder, on a form approved by the Recorder, to record particulars of the extension on the priority notice.

(5C) The Recorder may, if satisfied that an application under subsection (5B) is in order, record particulars of the extension on the relevant priority notice.

(6) After a priority notice ceases to have effect pursuant to subsection (5) or (5A), dealings lodged with, or served on, the Recorder while the priority notice was effective in respect of the land to which the priority notice relates shall be dealt with in the same manner, shall have the same priority as between themselves, and shall be as effectual, as if the priority notice had not been lodged.

(7) A priority notice does not prevent the registration or recording of a dealing lodged by the Crown or a public or local authority –

(a) pursuant to a power –

(i) to resume or take land;

(ii) to restrict the use or alienation of land;

(iii) to erect works on land; or

(iv) to give notice of its intention to do any one or more of the things referred to in subparagraphs (i), (ii), and (iii); or

(b) in prescribed circumstances or subject to prescribed conditions.

(8) Where a dealing is lodged for registration but its registration is prevented by a priority notice, the Recorder shall, as soon as practicable, notify the person who has lodged the dealing that it is so affected.

(9) Notwithstanding any other provision of this section, a person by whom or on whose behalf a priority notice has been lodged may, notwithstanding the notice, consent to the registration of a specified dealing, and the dealing to the registration of which he has consented may, if the consent is lodged with it, be registered as if the priority notice had not been lodged.

(10) A person who has lodged a priority notice may withdraw it by lodging with the Recorder a notice of withdrawal in an approved form.

(11) The Recorder shall not be concerned to satisfy himself that a person lodging a priority notice is a person entitled or authorized to do so pursuant to subsection (1).

(12) A person who lodges a priority notice with the Recorder and who is not entitled or authorized to do so under this section is liable to any person who may have sustained damage as a result of the priority notice being lodged for such compensation as a judge, on a summons in chambers, deems just.

(13) The cost of a summons referred to in subsection (12) and all proceedings in connection with the summons shall be in the discretion of the judge, and execution may issue for the amount of compensation, if any, and of costs ordered by him to be paid in the same manner as if the amount of compensation and costs had been recovered by a judgment in an action in the Supreme Court.

(14) A person having an interest in land to which a priority notice relates may take out a summons requiring the person who lodged the notice to show cause to a judge in chambers why the priority notice should not be removed.

(15) On the return of a summons under subsection (14), the judge may refer the matter to the Supreme Court, and the judge or the Court may make such an order as to him or it seems just, and may provide for the costs of the proceedings.

(16) The Recorder shall, upon being served with an order made under subsection (15) , give effect to the order so far as it relates to matters under his control.

52A. Attorney-General to give notice of forfeiture orders

Where, pursuant to section 29 of the Criminal Injuries Compensation Act 1976 , the State is registered as the owner of land under this Act, the Attorney-General is, within 30 days of the registration, to give notice of the registration to each person who appears to the Attorney-General, from the Register, to have an interest in that land.

53. Dealing may be registered prior to grant from the Crown

(1) Where a dealing is lodged with the Recorder for registration, accompanied by a receipt of, or a receipt purporting to be signed on behalf of the Treasurer, the Director-General of Lands, the Surveyor-General, or the managing director of Tasmania Development and Resources, acknowledging payment of all money required to be paid for a grant in fee of land affected by the dealing from the Crown to the person executing the dealing, the Recorder shall, subject to subsection (4) , record upon the receipt particulars of the dealing.

(2) Where particulars of a dealing are recorded pursuant to subsection (1) –

(a) the dealing shall be held to be duly registered under this Act; and

(b) the person named in the recording shall be held to be duly registered as proprietor of the estate or interest specified in the recording.

(3) On registering a dealing pursuant to subsection (1) , the Recorder shall retain the receipt and dealing in his office until a transfer granting the land by the Crown is registered; and the Recorder shall then record on the folio of the Register created pursuant to that transfer every dealing recorded upon the receipt.

(4) The Recorder is not bound to record under subsection (1) any dealing relating to part of the land to which the receipt relates.

54. Delivery of certificate of title or duplicate registered dealing

(1) The Recorder –

(a) where he considers it proper to do so, may deliver a certificate of title or duplicate registered dealing in his custody to the person by whom it was lodged unless that person has given written instructions to the Recorder to deliver the certificate or duplicate to some other person;

(b) shall not, where written instructions have been given as mentioned in paragraph (a) , deliver the certificate or duplicate otherwise than in accordance with those instructions or by order of the Supreme Court; and

(c) where he is unable to determine to whom a certificate of title or duplicate registered dealing should be delivered, may deliver it to the person he considers best entitled to the certificate of title or duplicate registered dealing, or may retain it in his office.

(2) A person who lodges any dealing or other document with the Recorder is taken to have authority from all persons claiming under, or having an interest in, the dealing or document–

(a) to lodge it with the Recorder;

(b) to collect it from the Recorder for amendment or to withdraw it from registration, and in either case to give a receipt for it; and

(c) to receive communications and notices in respect of it.

55. Effect of reference to plan

(1) Where land is described in a folio of the Register by reference to a plan filed, lodged or deposited with the Recorder under Division 3 of Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 , the Registration of Deeds Act 1935 or any other law, a transfer, mortgage, encumbrance or lease of that

land or any other dealing, instrument or plan is taken to import a statement that the land is similarly described by reference to that plan.

(2) For the purposes of subsection (1), a document is taken to be a plan if it incorporates by reference any information contained in another plan or document filed, deposited or lodged with the Recorder under this Act.

(3) The application of this section extends to a plan prepared by the Recorder.

56. General covenants implied in dealings

In every dealing charging, creating, or transferring an estate or interest in registered land, there shall be implied a covenant by the party charging, creating, or transferring the estate or interest that he will do such acts and execute such dealings as may be necessary to give effect to all covenants, conditions, and purposes expressly set forth in the dealing, or by this Act declared to be implied against that party in dealings of a like nature.

57. Implied covenants may be modified or negated

(1) Every covenant and power implied in any dealing by virtue of this Act may be negated or modified by express declaration in the dealing or endorsed on the dealing.

(2) In a declaration in an action for an alleged breach of a covenant referred to in subsection (1), the covenant alleged to be broken may be set forth; and it may be alleged that the party against whom the action is brought did so covenant precisely in the same manner as if that covenant had been expressed in words in that dealing.

(3) Every implied covenant referred to in this section has the same force and effect and is enforced in the same manner as if it had been set out at length in the dealing.

(4) Where any dealing is executed by more parties than one, such covenants as are by this Act declared to be implied in dealings of the like nature shall be construed to bind the parties jointly and severally.

Division 2 - Transfers

58. Transfer

(1) A registered proprietor may transfer his estate or interest in land by a memorandum of transfer in an approved form.

(2) On a transfer referred to in subsection (1) being registered, the estate or interest of the transferor, as set forth in the transfer, with all rights, powers, privileges, requirements and liabilities belonging or appertaining to that estate or interest, shall pass to the transferee.

(3) A registered proprietor may surrender land to the Crown by the form of transfer mentioned in subsection (1), and when registered the transfer shall be deemed to have been duly enrolled of record.

59. Transferee of land subject to mortgage or encumbrance to indemnify transferor

In every memorandum of transfer of an estate or interest in registered land which is subject to a mortgage or encumbrance, there shall be implied a covenant by the transferee –

(a) with the transferor and the mortgagee or encumbrancee, that he will pay the interest, annuity, and principal sum secured by that mortgage or encumbrance in the manner and at the time specified in the memorandum of mortgage and encumbrance; and

(b) with the transferor, that he will indemnify and keep harmless the transferor from and against all moneys secured by the memorandum of mortgage or encumbrance and from and against all liability in respect of any of the covenants contained in the memorandum, or by this Act implied, on the part of the transferor.

60. Transfers of mortgages, encumbrances, and leases

(1) On the registration of a transfer of a registered mortgage, a registered lease, or a registered encumbrance, the transferee shall become subject to and liable for the same requirements and liabilities to which he would have been subject and liable if named in that instrument originally as mortgagee, encumbrancee, or lessee.

(2) By virtue of every transfer referred to in subsection (1) –

(a) the right to sue upon a memorandum of mortgage or other dealing, and to recover any debt, sum of money, annuity, or damages under the memorandum of mortgage or other dealing (notwithstanding the same may be deemed or held to constitute a chose in action); and

(b) all interest in the debt, sum of money, annuity, or damages referred to in paragraph (a) –

shall be transferred so as to vest the same at law as well as in equity in the transferee.

(3) Nothing contained in this section shall prevent a court from giving effect to any trusts affecting the debt, sum of money, annuity, or damages referred to in subsection (2) , where the transferee holds the same as a trustee for any other person.

61. Sale under writ

(1) In this section, *writ* means –

(a) a writ of *feri facias* issued out of the High Court of Australia or out of the Supreme Court;

(b) a writ enforcing a judgment or order issued under the Magistrates Court (Civil Division) Act 1992 ;
or

(c) a direction, decree, or order of the High Court of Australia, the Supreme Court, the Family Court of Australia, or any court of competent jurisdiction directing or authorizing the sale of any estate or interest in land.

(2) No execution of any writ shall bind, charge, or affect any estate or interest in registered land except within the period of 3 months after it has been recorded in accordance with subsection (3) .

(3) The Recorder, pursuant to an application in an approved form which –

(a) is accompanied by a copy of a writ;

(b) identifies, by reference to a folio of the Register or to a registered dealing, the land sought to be affected by that writ; and

(c) incorporates, or is supported by, a statutory declaration that, to the Recorder's satisfaction, identifies the judgment debtor named in the writ with the registered proprietor of the land comprised in that folio or registered dealing –

shall record the writ on that folio or registered dealing.

(4) Subject to this section, where a writ recorded pursuant to subsection (3) is executed by sale of all or part of the land to which the recording relates, and a transfer pursuant to the sale is lodged for registration within 3 months after that recording, the Recorder shall register the transfer, notwithstanding that a dealing with the land by the registered proprietor has already been lodged for registration, and for that purpose may call in the relevant certificate of title or duplicate registered dealing or use the certificate of title or duplicate if it is in his possession.

(5) After a writ has been recorded pursuant to subsection (3) , the Recorder shall not register on that folio or registered dealing a dealing executed by the registered proprietor of the folio or registered dealing until –

(a) a period of 3 months has elapsed since the writ was so recorded; or

(b) satisfaction of the writ has been registered.

(6) After a writ is issued but before it is recorded in accordance with subsection (3) , a person dealing with the registered proprietor or with a mortgagee or encumbrancee exercising a power of sale may lodge a transfer for registration and, if that transfer is registered, the person is entitled to take his or her interest in priority even if the person had actual or constructive notice of the issue of the writ.

(7) The Recorder, on such evidence as he considers sufficient, may record on the relevant folio of the Register or registered dealing the satisfaction of any writ recorded under this section, and upon the satisfaction of any

writ being recorded that writ shall cease to bind, charge, or affect the estate or interest sought to be affected by the writ.

(8) On the expiration of 3 months after a writ has been recorded in accordance with subsection (3) , and if no transfer pursuant to a sale under the writ has within that period been lodged for registration –

- (a) the writ ceases to bind, charge, or affect the estate or interest sought to be affected by the writ; and
- (b) the Recorder may cancel the recording of the writ.

(9) For the purposes of calculating time under this section, a writ which is recorded pursuant to subsection (3) shall be deemed to have been recorded on the day on which the application to record it was lodged with the Recorder.

62. Dealings with lands of the Crown under Act

(1) A transfer under the hand of the Minister administering the Crown Lands Act 1976 of any land of which Her Majesty is registered proprietor, witnessed by the Director-General of Lands or an officer of his department, and duly registered, has the effect, for all purposes, of letters patent issued under the seal of the State and duly enrolled of record.

(2) The Recorder shall not record on a folio of the Register a notice of statutory duties or restrictions affecting lands of which Her Majesty is registered proprietor, and no reference in the Register to a notification in the *Gazette* shall be deemed to be notice of any subsisting statutory duty or restriction.

(3) Except where the contrary is expressly enacted, no statutory duty or restriction referred to in subsection (2) has, as against any registered estate or interest, any greater effect than if it were enforceable only in equity and not at law.

Division 3 - Severance of joint tenancy

63. Severance of joint tenancy

(1) A joint tenant of registered land may sever his joint tenancy by a declaration of severance in an approved form and registered under this Act.

(2) On registering a declaration of severance in accordance with subsection (1) , the Recorder shall notify every other joint tenant of the land by notice in writing.

(3) The mode of severance prescribed by this section is in addition to, and not in substitution for, any other mode available before the proclaimed date to a joint tenant of registered land.

(4) On the registration of a declaration of severance of a joint tenancy under this section, the joint tenants become tenants in common with equal shares in the land.

(5) Nothing in subsection (4) prevents the tenants in common referred to in that subsection executing a transfer so as to provide that the shares in the land are held by them in other than equal shares.

Division 4 - Leases

64. Leases

(1) The registered proprietor of land may lease it for any term exceeding 3 years by a memorandum of lease in an approved form.

(2) A lease for a term of 3 years or less is not registrable under this Act.

(3) A lease of mortgaged or encumbered land shall not be valid and binding against the mortgagee or encumbrancee unless the mortgagee or encumbrancee has consented in writing to the lease prior to the registration of the lease.

65. Surrender of lease

- (1) The lessee may surrender a registered lease by a memorandum of surrender in an approved form accepted by the lessor.
- (2) When a memorandum of surrender of lease has been registered under this Act, the estate or interest of the lessee in that land ceases.
- (3) A lease subject to mortgage or encumbrance shall not be surrendered in accordance with this section without the consent of the mortgagee or encumbrancee.

66. Covenants implied in every lease against lessee

In every memorandum of lease the following covenants shall be implied against the lessee, unless otherwise provided in that memorandum:

- (a) the lessee will pay the rent reserved by the lease, at the times mentioned in the lease, and all rates and taxes which may be payable in respect of the demised property during the continuance of the lease;
- (b) the lessee will keep and yield up the demised property in good and tenable repair, damage by fire, storm, tempest, act of Her Majesty's enemies, and reasonable wear and tear excepted.

67. Powers in lessor

In every memorandum of lease the following powers shall be implied in the lessor, unless otherwise provided in that memorandum:

- (a) the lessor may by himself or his agents, at all reasonable times, enter upon the demised property, and view the state of repair of the demised property, and may serve upon the lessee, or leave at his last or usual place of abode, or upon the demised property, a notice in writing of any defect, requiring him, within a reasonable time to be specified in the notice, to repair the demised property;
- (b) where the rent or any part of the rent is in arrears for 3 months, or where default is made in the fulfilment of any covenant, whether expressed or implied in that lease, on the part of the lessee, and is continued for 3 months, or where the repairs required by the notice referred to in paragraph (a) have not been completed within the time specified in the notice, the lessor may re-enter upon and take possession of the demised property.

68. Recovery of possession and determination of lease

(1) The Recorder, on proof to his satisfaction –

- (a) of lawful re-entry and recovery of possession by a lessor; or
- (b) that the lessee has abandoned the demised property, and that the lessor has re-entered and occupied the property by himself or tenants undisturbed by the lessee –

shall record the re-entry as prescribed.

(2) Where a re-entry is recorded pursuant to subsection (1) the lease shall determine without prejudice to any action or cause of action previously commenced or accrued in respect of any breach or non-observance of any covenant expressed or implied in the lease.

69. Provisions of Act as to leases to apply, with necessary modifications, to subleases

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

(2) If a lease is determined by forfeiture of a superior lease or otherwise by operation of law, the assurance fund shall not be liable for compensation for any loss, damage, or deprivation occasioned by that determination.

(3) In addition to the covenants specified by this Act to be implied in leases, there shall be implied in every sublease under this Act a covenant that the sublessor will during the term granted by the sublease pay the rent reserved by and perform and observe the covenants and agreements contained in the sublessor's lease and on his part to be paid, performed, and observed.

70. Extension or variation of lease

- (1) The term of a registered lease may be extended by a memorandum of extension in an approved form signed by the lessor and lessee and lodged for registration before the expiry of that term.
- (2) Subject to this section, on the registration of a memorandum of extension –
 - (a) the memorandum shall have the same effect as if it were a memorandum of lease for the extended term subject to the same covenants, conditions, and restrictions, with the necessary modifications, as are contained or implied in the lease;
 - (b) the estate of the lessee under the extended term of the lease shall be subject to all mortgages, encumbrances, and interests to which the lease is subject at the time of registration of the memorandum of extension; and
 - (c) all references in any Act or in any agreement, deed, instrument, notice, or other document to the lease or to the estate of the lessee under the lease shall, unless inconsistent with the context of this section, be deemed to be references to the lease as varied by the memorandum of extension or to the estate of the lessee under the extended term of the lease, as the case may be.
- (3) The covenants, conditions, and restrictions contained or implied in a lease may be expressly varied, negated, or added to by a memorandum of extension.
- (4) Notwithstanding that the term of a lease is not extended, the covenants, conditions, and restrictions contained or implied in a registered lease may be expressly varied, negated, or added to by a memorandum in an approved form signed by the lessor and the lessee and lodged for registration before the expiry of the term of the lease.
- (5) On the registration of a memorandum of extension of a lease in respect of which a separate folio of the Register has been created, that folio shall have full validity and effect during the extended term.
- (6) If the land affected by a lease is at the time of registration of a memorandum of extension or variation subject to a mortgage or an encumbrance, the memorandum shall not be binding on the mortgagee or encumbrancee unless he has consented to the memorandum of extension or variation in writing on the memorandum.

71. Folio of the Register for a leasehold estate

- (1) When a folio of the Register has been created for a leasehold estate, the Recorder –
 - (a) is to record the creation of that folio on the folio of the Register evidencing the lessor's title; and
 - (b) is to register on that leasehold folio all dealings with the lease.
 - (c)
- (2) On the determination of a lease, otherwise than by effluxion of time, the Recorder shall cancel the folio of the Register, or the edition of the folio of the Register, for the leasehold estate, and on the expiry of the term of the lease the folio, or the edition of the folio, of the Register for the leasehold estate shall be deemed to be so cancelled.

Division 5 - Mortgages and encumbrances

72. Creation of mortgage or encumbrance

The registered proprietor of a freehold or leasehold estate in registered land –

- (a) may mortgage it by a memorandum of mortgage in an approved form; and
- (b) may charge it with the payment of an annuity, rent-charge, or other sum of money by a memorandum of encumbrance in an approved form.

73. Mortgage or encumbrance not to operate as transfer

A mortgage or encumbrance when registered has effect as security, and is an interest in land, but does not operate as a transfer of the land mortgaged or charged.

74. Covenants implied in every memorandum of mortgage

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

75. Submortgages

- (1) A mortgagee may create a submortgage in favour of a person by executing a transfer of mortgage by way of security in an approved form.
- (2) Section 60 applies to a transfer of mortgage under this section, but nothing in that section prevents a court from giving effect to a covenant contained in a transfer of mortgage that the transferee will execute a registrable transfer of the mortgage to the transferor by way of discharge of the security.

76. Postponement of mortgages and encumbrances

- (1) The priority between themselves of the mortgages or encumbrances appearing by the Register to affect any land may from time to time be varied by an instrument in an approved form registered under this Act.
- (2) An instrument referred to in subsection (1) that postpones the priority of a mortgage or encumbrance must be executed by the registered proprietor of the mortgage or encumbrance that is postponed.

77. Procedure in case of default

- (1) Where default is made in the payment of any money secured by any registered mortgage or encumbrance, or in the observance of any covenant expressed or by this Act declared to be implied in any registered mortgage or encumbrance, and that default is continued for one month, or for such other period as may be expressly limited for that purpose in the mortgage or encumbrance, the mortgagee or encumbrancee may –
 - (a) give to the mortgagor or encumbrancer written notice in accordance with subsection (2) ; or
 - (b) leave that notice on the mortgaged or encumbered land or at the usual or last known place of abode in the State of the mortgagor or encumbrancer or other person claiming to be then entitled to the land.
- (2) A notice referred to in subsection (1) shall –
 - (a) require the mortgagor or encumbrancer to pay the money then due or owing under the mortgage or encumbrance or to observe the covenants expressed or implied in the mortgage or encumbrance; and
 - (b) state that sale will be effected if default in payment of the money referred to in paragraph (a) , or in the observance of covenants referred to in that paragraph, is continued.
- (3) A purchaser under a sale referred to in subsection (2) (b) shall not be bound to inquire whether default has been made or continued as provided in this section or whether the notice referred to in subsection (1) has been given, or otherwise as to the propriety or regularity of the sale of the land.
- (4) Where the trustee of the mortgagor or encumbrancer under the law relating to bankruptcy has disclaimed, or has notified the Recorder that he does not intend to claim, any land subject to mortgage or encumbrance, the mortgagee or encumbrancee, in lieu of giving notice to the mortgagor or encumbrancer as provided by this section, may publish in a newspaper a similar notice to all persons concerned.

78. Power to sell and appropriation of proceeds

- (1) After default in payment or in observance of covenants continuing for the further period of 30 days from the date of service or publication of the notice pursuant to section 77 , or for such other period as may be limited for that purpose in the memorandum of mortgage or memorandum of encumbrance, the mortgagee or encumbrancee may, in good faith and having regard to the interests of the mortgagor, encumbrancer, and other persons–
 - (a) sell or concur with any other person in selling the mortgaged or encumbered land or any part of that land, altogether or in lots, in such manner and subject to such terms and conditions as he thinks fit; and

(b) for the purpose of making a sale of the land or any part of the land at the best price, do anything that the mortgagor or encumbrancer could do in relation to the land.

(2) Without limiting the generality of subsection (1) (b) , the mortgagee or encumbrancee may –

- (a) subdivide, change the use of, or otherwise develop the land;
- (b) carry out works upon the land;
- (c) set aside part of the land for purposes other than sale, in the course of subdivision;
- (d) execute schedules of easements for the purposes of Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 , as if he were the owner; and
- (e) grant and reserve easements and *profits à prendre*, and enter into restrictive covenants; and
- (f) enter into an agreement under Part 5 of the Land Use Planning and Approvals Act 1993 .

(3) Anything made, done, or executed by the mortgagee or encumbrancee in pursuance of this section shall be as valid and effectual as if made, done, or executed by the mortgagor or encumbrancer.

(4) The receipt in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of the land or any portion of the land for so much of his purchase-money as may be expressed to be received by the receipt.

(5) A purchaser referred to in subsection (4) shall not be answerable for the loss, misapplication, or non-application, or be obliged to see to the application, of the purchase-money paid by him, and shall not be concerned to inquire whether any default or notice has been made or given.

(6) A memorandum of transfer by a registered mortgagee or encumbrancee expressed to be in exercise of the power of sale conferred by this Act may be accepted by the Recorder as sufficient evidence that the power of sale has been duly exercised.

(7) The purchase-money received by a mortgagee who has exercised the power of sale conferred by this section, after discharge of prior mortgages and encumbrances to which the sale is not made subject (if any), shall be applied –

- (a) firstly, in payment of all costs, charges, and expenses properly incurred, incidental to or for the purpose of the sale, or any attempted sale, or otherwise consequent on the default;
- (b) secondly, in payment of the money which is due and owing on the mortgage;
- (c) thirdly, in payment of subsequent mortgages and encumbrances (if any) in the order of their priority;
- (d) fourthly, in satisfaction of the claims of all persons who have lodged caveats subsisting when the power of sale was exercised, in accordance with their respective rights and priorities; and
- (e) fifthly, in payment of the residue (if any) to the mortgagor.

(8) The purchase-money received by an encumbrancee who has exercised the power of sale conferred by this section, after discharge of prior mortgages and encumbrances to which the sale is not made subject (if any), shall be applied –

- (a) firstly, in payment of all costs, charges, and expenses properly incurred, incidental to or for the purpose of the sale, or any attempted sale, or otherwise consequent on the default;
- (b) secondly, in accordance with any express provision in the memorandum of encumbrance for disposing of the money (either by setting aside the proceeds of sale or part of the proceeds of sale on investment to meet future periodical payments, or by payment to the encumbrancee out of the proceeds of a sum being the estimated capital value of the encumbrancee's interest, or otherwise); and in the absence of any provision in the memorandum of encumbrance for disposing of the money, in payment of the money which is due and owing on the encumbrance at the date of the sale;
- (c) thirdly, in payment of subsequent mortgages and encumbrances (if any) in the order of their priority;

(d) fourthly, in satisfaction of the claims of all persons who have lodged caveats subsisting when the power of sale was exercised in accordance with their respective rights and priorities; and

(e) fifthly, in payment of the residue (if any) to the encumbrancer.

(9) Where by this section a mortgagee or encumbrancee is required to account to a subsequent encumbrancee for money arising on a sale, the money shall be paid or applied in accordance with the express provision (if any) in the memorandum of encumbrance for disposing of the money, and, in the absence of express provision, in discharge of the money due to the subsequent encumbrancee at the date of the sale.

(10) Notwithstanding anything contained in subsection (9) , where by this section a mortgagee or encumbrancee is required to account to a subsequent mortgagee or encumbrancee for money arising on a sale –

(a) he may pay to the subsequent mortgagee or encumbrancee such sum as the subsequent mortgagee or encumbrancee claims in writing is owing upon the security of the subsequent mortgage or encumbrance; and

(b) the subsequent mortgagee or encumbrancee, and not the mortgagee or encumbrancee making the payment, is accountable to the mortgagor or encumbrancer for any amount in fact overpaid.

(11) Where a mortgagee or encumbrancee cannot reasonably ascertain how he is to satisfy claims of persons who have lodged caveats, he may pay all money available to satisfy those claims into the Supreme Court, and the receipt or certificate of the proper officer of the Supreme Court is a sufficient discharge to the mortgagee or encumbrancee for the money so paid in, and that money shall be dealt with in accordance with the orders of the Supreme Court.

79. Power of mortgagee to sell or lease mortgaged land and other land together

(1) In the exercise by the mortgagee of a power of sale or lease contained or implied in a mortgage, the mortgaged land may be sold or leased together with any other land of whatever nature or tenure and whether registered land or not that is the subject of the mortgage or of any other mortgage from the mortgagor to the mortgagee by one sale or lease at one price or rent; and the mortgagee shall fairly and equitably apportion all costs, expenses, purchase-money, and rent between the lands so sold or leased.

(2) A failure by the mortgagee to make the apportionment required by this section does not affect the purchaser or lessee or the title to any land in his hands.

80. Notice or lapse of time may be dispensed with

(1) Any notice or lapse of time prescribed by section 77 or section 78 may, by agreement expressed in the mortgage or encumbrance or otherwise in writing, be dispensed with, and in that case section 78 operates as if no notice or lapse of time were required.

(2) This section applies to mortgages and encumbrances made before or after the proclaimed date.

81. Effect of registration of sale by mortgagee or encumbrancee

(1) On the registration of a memorandum of transfer executed by a registered mortgagee or encumbrancee for the purpose of a sale pursuant to section 78 , the estate or interest of the mortgagor or encumbrancer described in that memorandum of transfer to be conveyed shall pass to and vest in the purchaser, freed and discharged from all liability on account of –

(a) the mortgage or encumbrance;

(b) any mortgage or encumbrance registered subsequent to the mortgage or encumbrance; or

(c) any caveat that if not removed would forbid the registration of any dealing by the purchaser.

(2) Where a memorandum of transfer to which subsection (1) relates is registered –

(a) the title of the purchaser is not impeachable on the ground that –

(i) a case had not arisen to authorize the sale;

(ii) due notice to pay the money due or owing to the mortgagee or encumbrancee as required by this Act was not given by the mortgagee or encumbrancee to the mortgagor or encumbrancer; or

(iii) the power of sale was otherwise improperly or irregularly exercised;

(b) a person who suffers any loss or damage by reason of the registration of the memorandum of transfer is entitled to recover damages, by action in a court of competent jurisdiction, from the person who exercised the power of sale; and

(c) the purchaser shall, for the purposes of section 41 , be deemed to have contracted, or dealt with, or taken a transfer from, the registered proprietor of the land.

82. Remedies of mortgagee or encumbrancee upon default

The mortgagee or encumbrancee, upon default in the payment of any money secured by the mortgage or encumbrance, may –

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

(b) distrain upon the occupier or tenant of the mortgaged or encumbered land under the power to distrain contained in section 83 ; or

(c) pursue the remedy provided by section 146 to obtain possession of the mortgaged or encumbered land –

and a registered mortgagee shall be entitled to foreclose the right of the mortgagor to redeem the mortgaged land as provided by sections 85 and 86 .

83. Mortgagee or encumbrancee may distrain for arrears of money secured under mortgage or encumbrance

When the payment of any money secured by a mortgage or encumbrance has been in arrears for 21 days, and 7 days have elapsed since demand was made for payment, the mortgagee or encumbrancee may distrain on the goods and chattels on the mortgaged or encumbered land, and Part V of the Landlord and Tenant Act 1935 applies as if the mortgagee or encumbrancee were a landlord and the mortgagor or encumbrancer were his tenant.

84. Mortgagee or encumbrancee of leasehold entering into possession of rent and profits becomes liable to lessor

Any mortgagee or encumbrancee of leasehold land under this Act, or any person claiming that land as a purchaser or otherwise from or under the mortgagee or encumbrancee, after entering into possession of that land or the rents and profits of that land, shall, during that possession 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 that land to the same extent as the lessee or tenant was subject and liable to the lessor prior to the mortgagee, encumbrancee, or other person entering into possession of that land, or the rents and profits of that land.

85. Mortgagee may apply to Recorder for order for foreclosure

(1) When default has been made for 6 months in the payment of any money secured by a registered memorandum of mortgage, the mortgagee may make application in writing to the Recorder for an order for foreclosure.

(2) An application under subsection (1) shall state that –

(a) default has been made for 6 months in the payment of the money secured by a registered memorandum of mortgage;

(b) the land, estate, or interest mortgaged has been offered for sale at a lawfully conducted public auction;

(c) prior to the attempted sale by public auction, notice of intention to sell had been given to the mortgagor pursuant to section 77 , unless the notice of intention has been dispensed with in accordance with section 80 ;

(d) the amount of the highest bid at the sale was not sufficient to satisfy the money secured by the mortgage, together with the expenses occasioned by the sale; and

(e) notice in writing of the intention of the mortgagee to make an application for an order for foreclosure has been served on the mortgagor in the manner provided in the mortgage for service of notices, or posted on the mortgaged land, or left at the usual or last known place of abode of the mortgagor.

(3) An application under subsection (1) shall be supported by a certificate of the person conducting the public auction at which the land was put up for sale, and such other proof of matters material to the application as the Recorder may require.

(4) The statements made in an application under subsection (1) shall be verified by the statutory declaration of the applicant.

86. Order for foreclosure

(1) The Recorder, if he does not reject an application under section 85, shall direct notice to be published once in a newspaper, published in this State, circulating in the locality in which the mortgaged land is situated offering the mortgaged land for sale, and shall appoint a time in the notice, not less than one month from the date of the advertisement in that newspaper, on or after which the Recorder may make and register an order for foreclosure in favour of the applicant unless in the interval a sufficient amount has been realized by the sale of land to satisfy the money due, and all expenses occasioned by the sale and proceedings.

(2) An order for foreclosure under the hand of the Recorder shall when registered have the effect of vesting in the mortgagee all the estate and interest of the mortgagor in the land mentioned in that order, free from all right and equity of redemption on the part of the mortgagor or of any person claiming through or under him.

87. First mortgagee or encumbrancee to produce title for registration of subsequent dealing

When a dealing subsequent to a first mortgage or encumbrance is made, the first mortgagee or encumbrancee, if he holds the certificate of title or duplicate registered dealing evidencing title to the land affected, shall, upon being requested to do so by the person entitled to the benefit of the subsequent dealing but at the cost of that person, produce the certificate of title or duplicate to the Recorder so that the subsequent dealing may be registered.

88. Variation of terms of mortgage and encumbrance

(1) A registered mortgage or encumbrance may be varied in any of the following ways:

(a) the amount secured by the mortgage or encumbrance may be increased or reduced;

(b) the rate of interest may be increased or reduced;

(c) the term or currency of the mortgage or encumbrance may be shortened, extended, or renewed;

(d) the covenants, conditions, and powers contained or implied in the mortgage or encumbrance may be varied, negated, or added to –

by an instrument in an approved form, executed by the respective parties or their successors in title, and registered under this Act.

(2) Notwithstanding anything in subsection (1), it is not necessary for –

(a) a mortgagor or encumbrancer to execute an instrument which reduces; or

(b) a mortgagee or encumbrancee to execute an instrument which increases –

the mortgage debt, or the money payable under an encumbrance, or the rate of interest payable under a mortgage or encumbrance, without otherwise varying the mortgage or encumbrance.

(3) An instrument under this section varying a mortgage or encumbrance affecting land subject to a subsequent mortgage or encumbrance is not binding on a subsequent mortgagee or encumbrancee unless he has consented to the variation in writing on that instrument, but that consent renders the instrument binding on the subsequent mortgagee or encumbrancee so consenting, and is binding on all persons who may subsequently derive from him any interest in the mortgaged or encumbered property.

89. Discharge of mortgage and encumbrance

(1) Whenever a registered mortgage or encumbrance is intended to be discharged wholly or partially, the registered mortgagee or encumbrancee shall execute a discharge in an approved form.

(2) On the registration of a discharge of mortgage or encumbrance, the mortgaged or encumbered estate or interest shall, to the extent specified in the discharge, cease to be charged with any money secured by the mortgage or encumbrance.

90. Recorder may facilitate discharge of mortgage in certain cases

(1) The Recorder, on proof to his satisfaction that all money secured by a registered mortgage has been paid, may record on the relevant folio of the Register or registered dealing that the mortgage is discharged, and upon that recording the mortgaged estate or interest ceases to be charged with any money secured by the mortgage.

(2) In any of the cases mentioned in subsection (3) , the Recorder may, if he considers that there is sufficient cause for so doing –

(a) on proof to his satisfaction of the amount of the debt owing under a registered mortgage, direct that amount to be paid to the Treasurer; and

(b) on production to him of the receipt of the Treasurer for that amount, proceed as if he had been satisfied, under subsection (1) , that all money secured by that mortgage had been paid.

(3) The cases in which the Recorder may act under subsection (2) are –

(a) when –

(i) a person who is entitled to receive payment of money secured by a mortgage –

(A) is out of the State;

(B) cannot be found; or

(C) is unknown; or

(ii) it is uncertain who is entitled to receive payment of money secured by a mortgage; and

(b) when the mortgagee or one of several mortgagees is dead, and there is no person within the State presently entitled to discharge the mortgage.

(4) Between the person who is liable to pay money by reason of a mortgage affected by a recording made pursuant to this section and the person entitled to be paid it, any amount in fact outstanding at the time of the making of the recording shall be deemed to be a specialty debt created by the instrument under which, but for the operation of this section, it would be payable.

(5) The Recorder may, if he thinks fit, hold an inquiry in order to satisfy himself as to any fact or matter of which he may require proof for the purposes of this section, and may make such order as to the costs of any person attending such an inquiry as he thinks fit.

(6) An order as to costs made under subsection (5) may be registered in the Supreme Court, and, on being so registered, is enforceable as if it were a judgment of that Court.

91. Application for order declaring mortgage, &c., discharged

(1) Subject to this section and section 92 , where on the application of the registered proprietor of any land which appears by the Register to be subject to a mortgage or encumbrance, the Recorder is satisfied that by virtue of the operation of a statute of limitation no action may be brought to recover the money secured by the mortgage or encumbrance, he may make an order declaring that the mortgage or encumbrance is discharged.

(2) An application under this section shall –

(a) be in an approved form;

(b) be verified by the statutory declarations of the applicant and of such other persons as the Recorder may require;

(c) be supported by proof of such matters material to the application as the Recorder may require; and

(d) state the full name and last known address of the mortgagee or encumbrancee.

(3) The Recorder may reject the application, or may make such requisitions as to any matter relating to the application as he thinks fit, and, at any time before granting the application, notwithstanding any direction previously given by him as to the application, reject the application if the applicant fails to comply to his satisfaction with any requisition made by him within such time as he considers to be reasonable.

(4) If the Recorder does not reject the application, he shall direct that notice of the application, in such form as he directs, be advertised in such newspaper as he directs and be given to every person appearing by the Register to have any interest in the mortgage or encumbrance, and to any person named by him.

(5) A notice under subsection (4) shall –

(a) specify the folio of the Register or registered dealing affected by the application, and the registered number of the mortgage or encumbrance; and

(b) be dated.

92. Caveat by persons claiming under mortgage, &c.

(1) Any person claiming any interest in a mortgage or encumbrance in respect of which an application under section 91 is made may, before the granting of the application, lodge a caveat in an approved form with the Recorder forbidding the granting of the application.

(2) A caveat under this section shall in all respects be subject to the same provisions, and have the same effect with respect to the application against which it is lodged, as a caveat against an application to bring land under this Act.

93. Registration of order

(1) If the Recorder makes an order under section 91, he shall on making the order make such recordings on the folio of the Register or registered dealing evidencing title to the mortgaged or encumbered estate or interest as are necessary to give effect to the order, and may call in the corresponding certificate of title, grant, or duplicate registered dealing, and the duplicate mortgage or encumbrance.

(2) On the making of such recordings under subsection (1) as are necessary to give effect to an order under section 91, the mortgaged or encumbered estate or interest shall cease to be charged with any money secured by the mortgage or encumbrance.

94. Recording of satisfaction of encumbrance

(1) On proof of the death of an annuitant, or the occurrence of the event or circumstance upon which, in accordance with the provisions of any registered memorandum of encumbrance, the money secured by the memorandum of encumbrance shall cease to be payable, and on proof that all arrears have been paid, the Recorder shall record on the relevant folio of the Register or registered dealing that the memorandum of encumbrance is discharged, and may call in the corresponding certificate of title, grant, or duplicate registered dealing and the duplicate encumbrance.

(2) On a recording being made pursuant to subsection (1), the encumbered estate or interest shall cease to be charged with any money secured by the encumbrance.

Division 6 - Transmissions

95. Interpretation

In this Division –

Commonwealth Act means the Bankruptcy Act 1966 of the Commonwealth and includes that Act as amended from time to time or any Act passed in substitution for that Act;

Official Receiver has the same meaning as in the Commonwealth Act .

96. Transmission on bankruptcy

- (1) The Official Receiver, a trustee, or any other person claiming to be entitled to registered land by virtue of the operation of the Commonwealth Act , or of anything done under that Act, may apply to the Recorder in writing to be registered as proprietor of that land.
- (2) On being satisfied that an applicant under subsection (1) is entitled to be registered as proprietor of the land to which the application relates, the Recorder may record on the relevant folio of the Register or registered dealing that the applicant is so registered.

97. Disclaimer or lease under Commonwealth Act

- (1) This section applies to a registered lease where –
 - (a) the lessee is a bankrupt within the meaning of the Commonwealth Act ;
 - (b) the trustee, as defined by the Commonwealth Act , has disclaimed the lease pursuant to that Act;
 - (c) a court having jurisdiction in bankruptcy under that Act has not made an order pursuant to section 133 (9) of the Commonwealth Act vesting the lease in some person other than the lessee; and
 - (d) no application has been made pursuant to that subsection to such a court, or any application so made has been dismissed.
- (2) A lessor under a lease to which this section applies may, by notice in an approved form, served in an approved manner on a person, other than the bankrupt lessee, who is registered as proprietor of an interest in the lease and any person who, by a caveat, claims to be entitled to an estate in the lease, require that person to state within a time specified for the purpose in the notice whether the person on whom the notice is so served claims the interest of the lessee or claims an interest derived from the lease.
- (3) Subject to subsection (4) , the Recorder may record on the relevant folio of the Register or registered dealing that a lease to which this section applies has been surrendered by operation of law where the lessor applies for such a recording to be made, and –
 - (a) there is no person, other than the bankrupt lessee, registered as proprietor of an estate or interest in the lease and the lease is not affected by any caveat; or
 - (b) the lessor lodges with his application evidence that notice has been served as provided in subsection (2) upon every person, other than the bankrupt lessee, who appears from the Register to have or to claim an interest in the lease and that a person on whom notice has been so served has not, within the time specified in the notice, claimed the interest of the lessee or (otherwise than as registered proprietor of a sublease) an interest derived from the lease, and any caveat affecting the lease has lapsed or has been withdrawn.
- (4) Before recording a surrender of lease under subsection (3) , the Recorder shall record any sublease claimed pursuant to subsection (2) on the folio of the Register or on the registered dealing, as the case may be, evidencing the title of the lessor, and that folio or registered dealing shall, upon the sublease being so recorded, evidence the title to the reversion expectant on the sublease.
- (5) Where a lease to which this section applies is subject to a registered mortgage, the mortgagee may, by notice in an approved form served in an approved manner on any person, other than the bankrupt lessee, who is registered as proprietor of an interest in the lease and any person who, by a caveat, claims to be entitled to an interest in the lease, require that person to state within a time specified for the purpose in the notice whether the person on whom the notice is so served claims the interest of the lessee or claims an interest derived from the lease.
- (6) Subject to subsection (7) , the Recorder may record on the relevant folio of the Register or registered dealing that a mortgage of a lease to which this section applies has been foreclosed where the mortgagee applies for such a recording to be made (the application being in respect of the whole of the land subject to the mortgage) and –
 - (a) there is no person, other than the mortgagee and the bankrupt lessee, registered as proprietor of an estate or interest in the lease and the lease is not affected by any caveat; or

(b) the mortgagee lodges with his application evidence that notice has been served as provided in subsection (5) upon every person, other than himself and the bankrupt lessee, who appears from the Register to have or to claim an interest in the lease and that a person on whom notice has been so served has not, within the time specified in the notice, claimed the interest of the lessee or (otherwise than as registered proprietor of a sublease) an interest derived from the lease, and any caveat affecting the lease has lapsed or has been withdrawn.

(7) Before recording a foreclosure of mortgage under subsection (6) , the Recorder shall record on the relevant folio of the Register or registered dealing any sublease claimed pursuant to that subsection that is binding on the mortgagee and that folio or registered dealing shall upon the sublease being so recorded evidence the title to the reversion expectant on the sublease.

(8) Where a lease to which this section applies is affected by a caveat, an application pursuant to subsection (3) or subsection (6) is, for the purposes of Part IX , a dealing the recording of which is prohibited by the caveat.

98. Transmission on death (old procedure)

(1) The devisee or other person claiming an estate of freehold in the land of a deceased registered proprietor, who died testate before 18th October 1935, or intestate before 1st October 1874, or a person having a power of disposition over an estate of freehold in land of a deceased testate proprietor who died before 18th October 1935 –

(a) may make application in an approved form to the Recorder to be registered as proprietor of the estate; and

(b) shall –

(i) where the deceased proprietor dies testate, deposit with the Recorder the certificate of the death, the will, or an office copy or probate of the will of the deceased proprietor or any settlement under which the applicant claims; or

(ii) where the deceased registered proprietor dies intestate, deposit with the Recorder such evidence of title as he is able to produce.

(2) A person who makes application under subsection (1) shall state in the application –

(a) the nature of every estate or interest held by any other person at law or in equity in the land referred to in that subsection that is within the applicant's knowledge; and

(b) that he believes himself to be entitled to the estate in that land.

(3) The statements made in an application referred to in subsection (1) shall be verified by the statutory declaration of the applicant.

(4) The Recorder, on being satisfied that the applicant is entitled to the estate claimed in the application, shall register him as proprietor of that estate.

(5) Before registering the applicant as proprietor pursuant to subsection (4) , the Recorder may, if he thinks fit, cause notice of the application to be published and given to such persons (if any) as he thinks fit, and shall in each notice appoint a time not less than one month from the completion of notice, after which he may, unless in the interval he receives a caveat forbidding him to do so, register the applicant as proprietor.

(6) A caveat under subsection (5) shall be subject to the same provisions, and have the same effect with respect to the application against which it is lodged, as a caveat against an application to bring land under this Act.

99. Transmission on death to personal representative

(1) Where registered land devolved under the Deceased Persons' Estates Act 1874 or devolves under the Administration and Probate Act 1935 on the personal representative of a deceased registered proprietor, the Recorder shall, on the lodgment of –

(a) an application by the personal representative in an approved form to be registered proprietor of the land; and

(b) the probate, letters of administration, or other authority constituting him as personal representative of the deceased registered proprietor –

make such recording on the relevant folio of the Register or registered dealing as may be necessary to register the personal representative as proprietor of the land.

(2) A recording made under subsection (1) may include a statement that the person named in the recording is registered proprietor as personal representative of the deceased proprietor.

100. Registration of survivor of joint proprietors, &c.

Where a person becomes entitled to an estate or interest in registered land –

(a) on the death of a person registered with him as joint proprietor of that estate or interest; or

(b) by the determination or defeasance, by death or the occurrence of some other event, of a registered estate or interest in land –

the Recorder may, on the application of the person so entitled and proof to his satisfaction of the death or other event, as the case may require, register that person as proprietor of the estate or interest.

Division 7 - Re-entry on condition broken

101. Re-entry determining fee

(1) Where the grantor of registered land in fee subject to a condition has re-entered and recovered possession of the land upon condition broken, the Recorder, on proof to his satisfaction of the breach and re-entry, shall make such recording on the relevant folio of the Register as is necessary to register the grantor as proprietor of the land and on that recording being made the estate of the former registered proprietor of the land determines, and the Recorder may call in and cancel or amend the corresponding certificate of title.

(2) In this section *grantor* includes a transferor and the successors in title of a grantor.

Division 8 - Covenants running with the land

102. Covenants which run with freehold registered land

(1) Except as provided in this Division, the burden of a covenant does not run with freehold registered land.

(2) Subject to subsection (3), the burden of a covenant runs with freehold registered land if –

(a) the covenant was –

(i) entered into before the land was brought under this Act or the repealed Act ; or

(ii) included in a transfer which was registered before the proclaimed date;

and –

(iii) notice of the covenant is recorded on the folio of the Register constituting the title to the land intended to be burdened; and

(iv) the land intended to be benefited by the covenant is identified in the instrument containing the covenant;

(b) the covenant is set forth in a sealed plan which has taken effect under Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 ;

(c) the covenant is contained in a dealing that was registered under section 27B or section 27D of the Real Property Act 1886 ;

(d) the covenant is created pursuant to subsection (7) or subsection (8) ; or

(e) the covenant is a covenant in gross, within the meaning of the Conveyancing and Law of Property Act 1884 .

(3) A covenant which runs with freehold registered land pursuant to subsection (2) may be enforced in equity notwithstanding any provision of this Act but has no greater operation or effect by the operation of this section than it would have if the land which it is intended to burden were not registered land and the registered proprietor of the land were affected in equity by express notice of the covenant.

(4) Where a transfer registered before the proclaimed date was expressed to be subject to two or more conditions including at least two of the prescribed conditions specified in subsection (5), the parties to the transfer shall be deemed not to have intended conditions of defeasance, but shall be deemed to have intended to enter into covenants to the same effect as the conditions.

(5) The following conditions are prescribed conditions for the purposes of subsection (4) :

(a) that the transferor shall not be required to contribute to the cost of erecting any boundary fence between the land sold and any adjoining land belonging to the transferor;

(b) that no building, other than –

(i) a building for a specific use;

(ii) a building of a kind approved by the transferor; or

(iii) a building constructed of materials of a specific kind or materials of a kind approved by the transferor –

shall be built on the land sold;

(c) that no trade or business, or no trade or business of a specified kind, shall be carried on the land sold.

(6) Where the Recorder is satisfied that a recording in the Register indicates the existence of –

(a) a covenant which does not run with the land; or

(b) conditions deemed in accordance with subsection (4) to be covenants which do not run with the land

–
he may cancel that recording.

(7) Where registered land is to be made subject to a covenant touching and concerning the land for the benefit of other land, whether registered land or not, and enforceable in equity by and against the assigns of the respective proprietors, a dealing in an approved form may be used and lodged for registration.

(8) Where land subject to a covenant touching and concerning it and enforceable in equity against the covenantor's assigns by the covenantee's assigns is brought under this Act, a memorandum of the covenant shall be made up by the Recorder and registered as if it were a dealing made under subsection (7) .

(9) Except as provided in subsection (10) , the Recorder shall register the dealing referred to in subsection (7) by recording it on the folio of the Register for the lands burdened by the covenant.

(10) The Recorder may refuse to register a dealing under subsection (9) where the provisions of the dealing are wholly or in part not enforceable in equity between assigns of the parties.

(11) A covenant that might have been made by a dealing under this section and has not been so made shall not be enforced in equity between assigns of the parties.

(12) Where a folio of the Register describes the land by reference to a sealed plan lodged with the Recorder under Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 , any obligations set forth in the plan that could be recorded under this section shall have effect as if embodied in an appropriate dealing recorded on the folios of the Register comprising the titles of all lands appearing by the Register to be subject to the sealed plan.

(13) Where a transfer between vendor and purchaser contains a condition of defeasance the purpose of which could be achieved by means of a dealing under this section, the Recorder may refuse to register the transfer until that condition has been deleted and the appropriate dealing in accordance with this section has been lodged with the Recorder.

103. Effect of identity of parties to covenant

- (1) A covenant which runs with freehold registered land is not affected by the same person being the registered proprietor at any time of the lands benefited and burdened by the covenant unless the covenant is expunged from the Register as provided in subsection (2) .
- (2) On the application of the registered proprietor of the lands benefited and burdened by a covenant, and proof to his satisfaction that the covenant would have been extinguished but for the operation of subsection (1) , the Recorder shall expunge the covenant from the Register.
- (3) A covenant comprised in a sealed plan lodged under Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 is to be dealt with under Division 5 of that Part .

104. Discharge of covenants

- (1) A covenant of a kind mentioned in paragraph (a) , paragraph (c) , or paragraph (d) of section 102 (2) may be discharged by a dealing in an approved form executed –
 - (a) where the land to which the benefit of the covenant is annexed is registered land, by the registered proprietor of that land and any other person having a registered interest in that land; or
 - (b) where the land to which the benefit of the covenant is annexed is not registered land, by a person entitled wholly to discharge the covenant.
- (2) When a dealing made under this section is lodged for registration, the Recorder shall record it on the relevant folio of the Register.
- (3) Where a dealing is executed under subsection (1) (b) , the Recorder shall not be concerned to investigate the title of the person executing it.

104A. Discharge of covenants in gross

A covenant that is a covenant in gross within the meaning of the Conveyancing and Law of Property Act 1884 may be discharged by a dealing in a form approved by the Recorder.

Division 9 - Easements and profits à prendre

105. Creation of easements

- (1) An easement may be granted in or over registered land for the benefit of any other land –
 - (a) by the registered proprietor of a freehold estate in the land, by memorandum of transfer in the form approved under section 58 ; and
 - (b) by the lessee, by memorandum of lease in the form approved under section 64 –and registered under this Act.
- (2) A proprietor transferring or leasing registered land may in the transfer or lease –
 - (a) grant an easement in or over other registered land of which he is registered proprietor or lessee, for the benefit of the land transferred or the estate of the lessee under the lease; and
 - (b) reserve an easement for the benefit of other land retained by him.
- (3) The Recorder, when registering a memorandum of transfer or lease which grants or reserves an easement, shall record the grant or reservation upon –
 - (a) the folio of the Register, or the registered lease, evidencing title to the land burdened by the easement; and
 - (b) where the land benefited by the easement is registered land, the folio of the Register or the registered lease which evidences title to the land benefited.
- (4) In a memorandum of mortgage or memorandum of encumbrance there may be expressed to be included as appurtenant to the land mortgaged or encumbered an easement over other registered land of which the

mortgagor or encumbrancer is registered proprietor or lessee and in such a case the folio of the Register or registered lease of that other land shall be specified in the memorandum of mortgage or memorandum of encumbrance.

(5) When an easement is expressed to be included in a dealing pursuant to subsection (4) , the Recorder shall when registering the memorandum of mortgage or memorandum of encumbrance record particulars of the easement upon the folio of the Register or registered lease evidencing title to the land over which the easement is expressed to be included.

(6) When the memorandum of mortgage or memorandum of encumbrance in which an easement is included pursuant to subsection (4) is registered, that easement shall be deemed to be an easement appurtenant to the land mortgaged or encumbered for the purpose of enjoyment, leasing, or transfer by the mortgagee or encumbrancee, or of foreclosure, and so that upon foreclosure in favour of, or lease or transfer by, the mortgagee or encumbrancee, that easement shall, unless expressly excluded, be created by the order for foreclosure or by the registration of the lease or transfer.

(7) On application in writing for that purpose, the Recorder may record in the Register any easement over or appurtenant to registered land which the Recorder is satisfied has been recognized by an order of the Supreme Court.

106. The Register as evidence of easements

(1) Subject to subsection (2) , a statement in a folio of the Register to the effect that the land comprised in the folio has the benefit of an easement shall be conclusive evidence that the land has that benefit.

(2) Subsection (1) shall not be construed so as to give effect as an easement to a right which is not recognized as an easement at common law.

(3) An easement shall not be implied from anything appearing on a plan deposited with the Recorder after the proclaimed date.

107. Profits à prendre

(1) A *profit à prendre* may be granted by an instrument in an approved form, which shall indicate clearly the nature of the *profit à prendre*, the period for which it is to be enjoyed, and whether it is to be enjoyed –

- (a) in gross or as appurtenant to other land; and
- (b) by the grantee exclusively or by him in common with the grantor.

(2) The Recorder shall register the instrument referred to in subsection (1) –

- (a) by recording it on the folio of the Register or the registered lease which it burdens; and
- (b) where it is appurtenant to registered land, by recording it on the folio of the Register or registered lease evidencing title to that land.

108. Release and extinguishment of easements and profits à prendre

(1) Subject to subsection (4) , an easement or *profit à prendre* which is recorded in the Register may be released wholly or partly by the person having the benefit of that easement or *profit à prendre* by an instrument in an approved form and registered under this Act.

(2) Subject to subsection (4) , the Recorder, upon the application of a person having an estate or interest in land affected by an easement or *profit à prendre*, or of his own motion, may cancel the registration of the easement or *profit à prendre*, in whole or in part, where it appears to his satisfaction that–

- (a) the period of time for which it was intended to subsist has expired;
- (b) the event upon which it was intended to determine has occurred; or
- (c) it has been abandoned.

(3) In considering whether an easement or *profit à prendre* has been abandoned, the Recorder, if satisfied on evidence that the easement or *profit à prendre* has not been used for a period of at least 20 years, is to treat that

failure to use as conclusive evidence that the easement or *profit à prendre* has been abandoned.

(4) This section has effect notwithstanding sections 28(14) , 40(3)(e)(ia) and 151(1)(e) .

109. Effect of unity of seisin on registered easements, &c.

(1) Registered easements and *profits à prendre* over or for the benefit of registered land are not affected by –

(a) unity of seisin of that land and of other land appearing from the Register to have the benefit or burden of the easement or *profit à prendre*; or

(b) identity at any time of the legal owner of a *profit à prendre* in gross and the registered proprietor of the land burdened by the *profit à prendre* –

unless the easements or *profits à prendre* are expunged from the Register as provided in subsection (2) .

(2) On the application of the registered proprietor in whom unity of seisin of the lands benefited and burdened by an easement or *profit à prendre* is united, or of the person who is both the legal owner of a *profit à prendre* in gross and the registered proprietor of the land burdened by the *profit à prendre*, and proof to his satisfaction that the easement or *profit à prendre* would have been extinguished but for the operation of subsection (1) , the Recorder shall expunge the easement or *profit à prendre* from the Register.

(3) An easement or *profit à prendre* comprised in a sealed plan lodged under Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 is to be dealt with under Division 5 of that Part .

110. Rectification of easements, &c., in old subdivisions

(1) In this section, *plan of subdivision* includes –

(a) a previously approved plan within the meaning of section 80 of the Local Government (Building and Miscellaneous Provisions) Act 1993 ; and

(b) a plan of subdivision that does not require the approval of the corporation under that Act.

(2) The Recorder may, with the consent of all persons having registered estates or interests in the land shown in a plan of subdivision comprising land which is under this Act or which he proposes to bring under this Act, make an order setting forth in respect of each lot or other piece of land shown in the plan –

(a) the easements and *profits à prendre* to be appurtenant to the lot or other piece of land or to which it is to be subject; and

(b) the benefit or burden of the covenants which are to run with the lot or other piece of land.

(3) Where some but not all the lots or other pieces shown in the plan are to be affected, the Recorder may make an order referred to in subsection (2) with the consent of all persons having registered estates or interests in the lots or other pieces which are to be affected by the order.

(4) The Recorder may, of his own motion or on the application of any person interested, give notice in accordance with subsection (6) that he proposes to make an order referred to in subsection (2) .

(5) Without limiting subsection (4) , the Recorder may act as provided in that subsection in any case in which the plan shows the position of drainage easements but where –

(a) easements have not been granted to the purchasers of lots; or

(b) in the opinion of the Recorder, the easements granted by registered assurances of lots shown in the plan are not in accordance with a reasonable scheme of easements for the subdivision.

(6) The Recorder shall give notice under subsection (4) or (14) –

(a) in the case of registered land which it is proposed to affect, to every person appearing by the Register to have an interest in that land;

(b) in the case of land not under this Act which it is proposed to affect, to every person whom the Recorder has found by searching the register of deeds to have an interest in the land; and

(c) to the council of the municipal area in which the land is situated, which shall be deemed to have an interest in the land affected—

and every notice shall include a copy of the proposed order and be accompanied by a plan showing the position of the easements referred to in the proposed order, and shall specify a time (being not less than 14 days from the giving of the notice) within which written objections to the proposed order may be lodged with the Recorder.

(7) After the expiration of the time limited by notice under subsection (6) , the Recorder –

(a) if written objections have not been lodged with him, may make an order in terms of the proposed order; or

(b) if written objections have been lodged with him, may either –

(i) vary his proposed order in the light of the objections, and give notice of his new proposal in accordance with subsection (6) ; or

(ii) give notice to such persons as he thinks proper that he will hear any person wishing to support or oppose the proposed order on a day to be specified in the notice, and at the conclusion of that hearing may make an order in terms of the proposed order or differing from it in the light of the objections, giving copies forthwith to all concerned.

(8) The Recorder shall not give effect to an order made under subsection (7) (b) (ii) before the expiration of 30 days from the making of that order, and during that period a person affected by the order may appeal to the Supreme Court which may –

(a) stay proceedings on the order wholly or in part;

(b) quash or vary the order; or

(c) make any order that the Recorder might have made.

(9) Subject to subsection (8) and to any order of the Supreme Court made under that subsection, the Recorder may give effect to an order made under this section by –

(a) registering it in the Registry of Deeds if any land affected by the order is not subject to this Act; and

(b) recording the order upon the folio of the Register evidencing title to any land affected by the order.

(10) On the completion of the registration or recording in accordance with subsection (9) –

(a) the easements specified in the order to be in favour of the Crown or of any public or local authority constituted by or under any Act or appurtenant to a highway vest accordingly without further assurance;

(b) the other easements and the *profits à prendre* and covenants specified in the order come into being and continue as if created by the most effectual instruments made between proper parties, and are not affected by –

(i) the unity of seisin of the lands having the burden and benefit of the easement or *profit à prendre*;

(ii) identity at any time of the legal owner of a *profit à prendre* in gross and the registered proprietor of the land burdened by the *profit à prendre*; or

(iii) identity of the parties to the covenant –

except that during that unity or identity they are in abeyance, and revive by force of this section when that unity or identity is broken or destroyed;

(c) any easements or *profits à prendre* or covenants which are created by an instrument registered before the completion of the registration or recording in accordance with subsection (9) and which are not continued by the order, are destroyed;

(d) any subsequent assurance of a block comprised in the plan to which the order relates shall, without any express mention and notwithstanding any contrary expression, assure that land together with and subject to any easements and *profits à prendre* which by the order exist upon or in favour of that land;

(e) any obligation set forth in the order that could be recorded under section 102 shall have effect as if embodied in an appropriate dealing recorded on the folios of the Register comprising the titles of all affected lands; and

(f) the Recorder shall amend any folio of the Register affected by the order and shall make the same amendments to the corresponding certificate of title when it is produced to him for any purpose, or may call in the certificate for amendment.

(11) The Recorder may proceed concurrently under this section and section 142 , if in his opinion it is necessary or convenient to do so, notwithstanding that the proceedings under that section may concern a plan which is not a plan of subdivision.

(12) The Recorder may make orders as to the payment of costs of the parties attending a hearing under this section, and those orders shall be filed in the Supreme Court and proceeded upon in the same manner as similar orders of a judge in chambers.

(13) The Recorder may, of his own motion or on the application of any person interested, cancel an order made under this section after it has been registered or recorded and make a fresh order.

(14) Before taking action under subsection (13) , the Recorder must give notice of the intention to cancel the order and make a fresh order in accordance with subsection (6) .

(15) If a fresh order is made under subsection (13) , that fresh order is taken to be an order made under this section.

Division 10 - Recording of highways

111. Highways not to be registered as estates

Where by any Act a highway is vested in a highway authority which is not the proprietor of the land lying under the highway, the highway authority shall not be registered under this Act as proprietor of the highway, and this Act shall not apply to any extension, diminution, or transfer of the estate of that authority in the highway.

112. Recording of highways

(1) Where a highway exists across registered land and is not recorded on the folio of the Register evidencing title to that land or in the plan or other description of the land in that folio, the highway authority charged with the control or maintenance of the highway may obtain a recording of the highway in accordance with this section.

(2) The highway authority may tender a consent to the recording of a highway to the registered proprietor of the land across which the highway exists which, if the registered proprietor signs it, operates as a deed made between the registered proprietor, the highway authority, and the Recorder, and may lodge it with the Recorder, who shall make such recording on the relevant folio of the Register, or in the plan or other description of the land in that folio, as he shall deem appropriate to show the existence of the highway.

(3) A consent under subsection (2) shall be in an approved form.

(4) If the registered proprietor referred to in subsection (2) refuses to sign the consent referred to in that subsection when tendered, the highway authority may apply by originating summons to a judge in chambers for a declaration that the highway exists as shown in the consent tendered and for an order that the registered proprietor produce his grant or certificate of title to the Recorder for amendment accordingly.

(5) Unless the registered proprietor referred to in subsection (2) satisfies the judge that he would have a good defence to an action to establish the existence of the whole or some part of the highway, as shown in the consent tendered, the judge shall make the declaration and order sought, but shall not award the highway authority any costs where the summons is undefended.

(6) If the registered proprietor satisfies the judge in accordance with subsection (5) , the judge shall direct the trial of an issue to determine the existence of so much of the highway as is in dispute, and on the trial of that issue the Supreme Court may make an appropriate declaration and order.

- (7) The Supreme Court may, by consent, make an appropriate declaration in respect of the highway.
- (8) Except as provided in subsection (5) , costs shall be in the discretion of the Supreme Court.
- (9) A declaration made under this section may be lodged with the Recorder and dealt with in the same manner as a consent under subsection (2) .

Division 11 - Estates tail

113. Tenancies in tail to pass fee simple

Where a limitation which would before 8th December 1886 have limited to a person an estate tail, whether legal or equitable, in registered land is made on or after that day, the limitation shall be deemed to give that person an estate in fee simple (legal or equitable, as the case may be) in that land.

114. Where successive life estates are given to parent and child with estate tail to grandchild, parent and child may bar entail

(1) Where under a will or settlement executed before 8th December 1886 an estate for life in registered land is given to a person, followed by an estate for life in remainder to a child of that person and ultimately or immediately by an estate tail in remainder to a grandchild of that person, that person and the child of that person may together, when that child attains the age of 18 years, bar the entail and dispose of the estate as fully and effectually as if the estate given to the child had been instead of an estate for life an estate tail similar to the estate tail given to the grandchild.

(2) Subsection (1) applies to equitable and legal estates.

115. Tenant in tail under this Act entitled to deal with estate as effectually as tenant in tail under general law

Subject to sections 113 and 114 , an estate tail under this Act has the same incidents as a similar estate under the general law, and the proprietor of such an estate has the same power to bar the estate tail and create an estate in fee simple absolute as against all persons whose estates are to take effect after the determination or in defeasance of the estate tail as is possessed by the owner of a corresponding estate tail in land not under this Act by virtue of the Estates Tail Act 1853 .

116. Transferee from tenant in tail may be registered for larger estate which tenant may confer

A transfer or mortgage in the ordinary form by a tenant in tail under this Act having power to create an estate in fee simple shall create that estate in favour of a transferee, mortgagee, or transferee under the power of sale in the mortgage, and a transferee from a tenant in tail, or under a mortgage from a tenant in tail or a mortgagee after foreclosure shall be entitled to be registered as proprietor of the larger estate which the tenant in tail is empowered to confer, but a mortgage under this Act, if discharged, shall not bar the entail.

Division 12 -

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Division 13 - Compulsory acquisition

125. Interpretation

In this Division, *acquiring authority* means –

- (a) any authority or person authorized by or under any Act or Commonwealth Act to acquire land compulsorily; and
- (b) where land vests in the Commonwealth pursuant to the Commonwealth of Australia Constitution Act, the Commonwealth or any authority incorporated by any Commonwealth Act in which the land is for the time being vested.

126. Registration of acquiring authority as proprietor

(1) Notwithstanding anything in any Act, where any land vests in an acquiring authority by the operation of the Commonwealth of Australia Constitution Act or of any Act or Commonwealth Act, without transfer or conveyance to the acquiring authority, then, upon lodgment by the acquiring authority, or otherwise as required by the relevant Act, of a plan of the land, and of the notification or notice of acquisition or other instrument prescribed to be lodged by or under that Act, or, where no instrument is prescribed, upon the lodgment of an application in an approved form –

- (a) where the land is registered land, the Recorder shall register the acquiring authority as proprietor of the land for the estate or interest acquired in the land and may issue a certificate of title in relation to the land in the name of the acquiring authority as registered proprietor; or
- (b) where the land is not registered land, the Recorder shall, without any further or other application or the production or examination of any documents of title, bring the land under this Act by creating a folio of the Register for the land and may issue such certificates of title in relation to the land as the Recorder considers proper.

(2)

(3) On registering the acquiring authority as proprietor pursuant to subsection (1) (a) , the Recorder shall make such cancellations, corrections, or recordings in the Register as are necessary, and shall make the like cancellations, corrections, or recordings upon the corresponding certificates of title, grants, or duplicate registered dealings when they are next produced to him, or may call them in for that purpose.

(4) Before or at the time of making compensation for the acquisition of registered land, the acquiring authority shall take possession of the certificates of title or duplicate registered dealings which are produced to it upon any claim for compensation, and shall forthwith lodge them with the Recorder for the making of such of the necessary cancellations, corrections, or recordings as have not already been made.

(5) Where the Recorder brings land under this Act pursuant to subsection (1) (b) , he shall give notice that he has brought the land under this Act in the Registry of Deeds in the prescribed manner.

(5A) Where land vests in an acquiring authority or a person on the gazettal of a notice which amends or revokes a notice of acquisition and a plan of the land affected and a copy of that first-mentioned notice is lodged with the Recorder, the Recorder –

- (a) must make such cancellations, corrections or recordings in the Register as are necessary; and

(b) must make the necessary cancellations, corrections and recordings on the corresponding certificates of title, grants or duplicate registered dealings when they are next produced to him or her.

(5B) For the purpose of complying with subsection (5A) (b) , the Recorder may call in such certificates of title, grants or duplicate dealings as he or she considers appropriate.

(6) A right to compensation in respect of or in any manner arising out of the acquisition or vesting of any land shall not be prejudiced or affected by a cancellation, correction, or recording made under the authority of this section.

127. Acquiring authority to be responsible to persons injured by operation of this Division

Any person who suffers any deprivation, loss, or damage by reason of –

(a) the bringing of land under this Act; or

(b) a cancellation, correction, or recording in the Register –

pursuant to this Division shall be indemnified by the acquiring authority concerned, but a person shall not be entitled to receive or shall not receive from the Recorder or out of the assurance fund any money or compensation or consideration –

(c) in respect of or in any manner arising out of the bringing of land under this Act;

(d) out of any cancellation, correction, or recording in the Register; or

(e) by reason that the Recorder acted under this Division in relation to what purported to be, but was not, an effective acquisition.

128. Acquiring authority not to have claim in respect of acquired land

An acquiring authority shall not at any time have a claim against the Recorder or the assurance fund in respect of land of which it becomes registered as proprietor pursuant to this Division.

129. Notice to treat, or notice of intention to acquire to be given to Recorder

(1) Where it is proposed to acquire compulsorily any registered land, and where the Act under which the acquisition will be made provides that notice to treat or notice of intention to acquire the land is to be served, a copy of the notice shall be lodged with the Recorder as soon as practicable after the notice is served, accompanied by a statement specifying the folio of the Register or registered dealing evidencing title to the land to be acquired, and the Recorder shall make an appropriate recording of the notice upon that folio or dealing, and the rights under the notice shall be deemed to be an interest for the purposes of section 40 .

(2)

(3) Where a notice to treat or a notice of intention is withdrawn, the acquiring authority must lodge with the Recorder as soon as practicable after that withdrawal a copy of the notice of withdrawal or other document effecting that withdrawal.

(4) The statement referred to in subsection (1) and the notice or other document referred to in subsection (3) are to be signed by –

(a) the acquiring authority; or

(b) the clerk, within the meaning of the Land Acquisition Act 1993 , or legal practitioner of the acquiring authority if the acquiring authority is not the Crown; or

(c) the Secretary of the Department responsible to the Minister for the time being administering that Act; or

(d) a person authorized by the acquiring authority or that Secretary.

(5) On receipt of a notice or other document referred to in subsection (3) , the Recorder must make such recordings in, or do such corrections to, the Register as the Recorder considers appropriate.

130.

PART VII - Settled Land

131. Application of Settled Land Act 1884 to land held under this Act

(1) In the application of the Settled Land Act 1884 to settled land held under this Act, the following provisions have effect:

(a) the registered proprietor or the registered proprietors shall be deemed to be the trustee or trustees of the settlement;

(b) where under the Settled Land Act 1884 any power or authority is conferred upon a tenant for life, then upon the written request of the tenant for life, and upon the performance by the tenant for life of the conditions imposed by that Act upon the exercise of that power or authority by a tenant for life, the registered proprietor or registered proprietors shall exercise that power or authority;

(c) where under the Settled Land Act 1884 an instrument is to be executed by a tenant for life in order to exercise any power or authority conferred on a tenant for life, that instrument shall be executed by the registered proprietor or registered proprietors, and that execution shall have the same operation as the execution of such an instrument by a tenant for life is declared to have under that Act;

(d) a registered proprietor or registered proprietors executing a power or authority in accordance with the Settled Land Act 1884 upon the written request of the tenant for life, or with the sanction of the Supreme Court if, being the tenant or the tenants for life, he is himself or they are themselves the sole trustee or trustees of the settlement, shall not by reason of executing that power or authority incur any personal liability to his or their beneficiaries or to any other person;

(e) the registered proprietor or registered proprietors referred to in paragraph (d) shall not, for the purpose of executing any power or authority or complying with any request referred to in that paragraph, be bound to enter into any personal covenant or contract;

(f) where under the Settled Land Act 1884 it is provided that land shall be conveyed to any uses or trusts, that expression shall be taken to mean that the land shall be transferred to trustees, and shall be held by them as trustees upon the uses or trusts;

(g) where under the Settled Land Act 1884 it is provided that a contract made by a tenant for life shall be binding on the settled land, that expression shall be taken also to mean that the contract shall be binding on the registered proprietor, and that he shall be bound to give effect to the contract in the same manner as if he had made it himself, subject, however, to that Act;

(h) the term *deed* used in the Settled Land Act 1884 includes any dealing executed in pursuance of this Act;

(i) notwithstanding anything contained in this section, a registered proprietor of a life estate in registered land may, in the exercise of the powers of a tenant for life under the Settled Land Act 1884, transfer the fee simple of that land by a transfer which contains a receipt for the purchase price by the trustees of the settlement and otherwise in an approved form.

(2) Nothing contained in subsection (1) shall be taken to require any person dealing with a registered proprietor of registered land to inquire whether all or any of the provisions of the Settled Land Act 1884 have been complied with in respect of the proposed dealing.

(3) In this section the term *registered proprietor* includes any person possessed of or entitled to any charge upon land.

PART VIII - Trusts

132. Trusts

- (1) The Recorder shall not record particulars of any trust in the Register.
- (2) A dealing may state that a person named in the dealing is a trustee –
 - (a) for the purpose of expressing the consideration;
 - (b) for the purpose of providing that the person named assumes liability only to the extent of an estate or interest of which he is a trustee; and
 - (c) where the person named is a trustee pursuant to an Act or Commonwealth Act (other than an Act applicable to trustees generally) –but shall not disclose particulars of a trust.
- (3) The Recorder, in his discretion, may in a folio of the Register or certificate of title describe a registered proprietor as a trustee where –
 - (a) the proprietor was so described in the dealing by which he became registered as a proprietor; or
 - (b) in the Recorder's opinion it is convenient for the administration of this Act that the proprietor should be so described.
- (4) The describing of a person as a trustee in a dealing or in a folio of the Register or certificate of title does not affect the operation of section 41 .
- (5) A registered proprietor who is a trustee shall hold the estate or interest of which he is registered proprietor in trust for the persons and purposes to which it is applicable by virtue of the instrument creating the trust, but for the purpose of a dealing with the estate or interest he shall be deemed to be the absolute proprietor of the estate or interest.

PART IX - Caveats

Division 1 - Caveats against dealings

133. Caveat against dealings

(1) Where –

- (a) a settlor transfers registered land to be held by the transferee as trustee; or
- (b) a person claims an estate or interest in registered land under an unregistered dealing, or by devolution in law or otherwise –

that settlor or person may, by caveat in an approved form lodged with the Recorder, forbid the registration of any dealing affecting that land, estate, or interest.

(2) A caveat under this section shall state–

- (a) the name and address of the caveator;
- (b) an address for service of notices on the caveator;
- (c) the estate or interest claimed by the caveator;
- (d) the folio of the Register, or the registered dealing, affected by the caveat; and
- (e) where the caveat relates to part only of the land in a folio of the Register or registered dealing, such further description as may be necessary to identify the subject land–

and shall be signed by the caveator or by his legal practitioner, attorney, or authorized agent.

(3) If the Recorder does not refuse to register a caveat lodged pursuant to this section he shall –

- (a) record the caveat on the folio of the Register or registered dealing affected by the caveat; and
- (b) give notice of the caveat to the registered proprietor of the estate or interest affected by the caveat.

(4) A notice relating to a caveat lodged pursuant to this section, or to any proceedings in respect of the caveat, shall be deemed to be duly served upon the caveator if served at his address for service stated in the caveat, or at the office of the legal practitioner, attorney, or authorized agent who may have signed the caveat.

(5) A caveat under this section may be withdrawn –

- (a) by –
 - (i) the caveator;
 - (ii) the caveator's legal practitioner; or
 - (iii) an agent authorized in writing by the caveator to withdraw the caveat;
- (b) where a caveator is dead –
 - (i) by his personal representative; or
 - (ii) by the surviving caveator where the estate or interest claimed by the caveat was stated in the caveat to be held by caveators as joint tenants;
- (c) where the caveator is bankrupt, by the trustee, the Official Receiver (within the meaning of section 95), or other person in whom the estate or interest claimed in the caveat has vested pursuant to the law relating to bankruptcy;
- (d) where the caveator is a defunct company which was incorporated under the Corporations Act, by ASIC;
- (e) where the caveator is a friendly society which has been dissolved, by the Registrar of Friendly Societies;

(f) where the caveator is a building society which has been terminated or dissolved, by the Registrar of Building Societies;

(g) by the administrator of the estate of a person under the Guardianship and Administration Act 1995 to whom is committed the management and care of the estate or interest claimed in the caveat; or

(h) by the legal practitioner to a person mentioned in paragraph (b) , paragraph (c) , or paragraph (g) .

(6) The Recorder shall not be concerned to satisfy himself that a legal practitioner who signs a withdrawal of caveat as legal practitioner to the caveator or to a person mentioned in paragraph (b) , paragraph (c) , or paragraph (g) of subsection (5) has authority to withdraw the caveat.

134. Caveat may be lodged by judgment creditor

(1) A judgment creditor of a person registered as the proprietor of registered land may lodge a caveat in an approved form.

(2) A caveat under this section shall –

(a) be accompanied by a copy of the judgment or order upon which it is founded; and

(b) identify, to the Recorder's satisfaction, the judgment debtor with the registered proprietor named in the folio of the Register or registered dealing affected by the caveat.

(3) The practice, procedure, and mode of dealing with a caveat under this section shall in all other respects be the same as if the judgment creditor referred to in subsection (1) claimed an estate or interest in that person's land within the meaning of section 133 .

(4) At the expiration of each period of 5 years from the entry or re-entry of a caveat under this section the caveat shall lapse and cease to be of any effect unless it is re-entered as provided by this section.

(5) When the time prescribed by subsection (4) expires on a day on which the office of the Recorder is closed the re-entry is effective if done on the next day on which the office is open.

(6) The Recorder shall re-enter a caveat under this section if, before it lapses, the caveator or the person for the time being entitled to enforce the judgment mentioned in the caveat so requests in an approved form and pays the prescribed fee.

(7) Nothing in this section –

(a) revives or restores a judgment which is extinguished or barred; or

(b) affects or prejudices a judgment as between the parties to the judgment, their representatives, or those deriving as volunteers under them.

(8) Where a judgment creditor lodges a caveat under section 48B , he or she must provide such particulars of the judgment or order on which the caveat is founded as the Recorder may require and in such manner as the Recorder may require.

135. Proceedings to remove caveat

(1) Any person, other than the caveator, who claims an estate or interest in land affected by a caveat under this Act may summon the caveator to attend before the Supreme Court to show cause why the caveat should not be removed.

(2) The Supreme Court, on proof that the caveator has been summoned, may make such order, either *ex parte* or otherwise, as it considers necessary and may determine by whom the costs of, and incidental to, the summons and the proceedings on the summons, and the entering and removal of the caveat shall be borne.

136. Lapsing of caveat on registration of dealing

(1) On the lodgment for registration of a dealing the registration of which is forbidden by a caveat lodged pursuant to this Part, and on the application of the registered proprietor against whom the caveat was lodged or of a person claiming under the dealing, the Recorder shall serve on the caveator a notice of his intention to

register the dealing on the expiration of the period of 28 days after the service of the notice, and shall register the dealing unless within that period –

- (a) an order to the contrary is made by the Supreme Court and that order or written notice of the order is served on the Recorder; or
- (b) the dealing is withdrawn or for any reason ceases to be in order for registration.

(2) For the purposes of subsection (1), a dealing shall not be deemed to have been lodged for registration until (except for the existence of the caveat in respect of which notice is to be given) it is in order for registration.

(3) Where, after the service of a notice of intention to register a dealing, the dealing to which the notice relates is withdrawn or for any reason becomes incapable of registration, the notice ceases to have effect and the caveat remains in full force and effect.

(4) Unless an order to the contrary has been made and served on the Recorder under subsection (1) (a), a caveat lapses and ceases to affect land at the expiration of 28 days after the service pursuant to subsection (1) of a notice of intention to register a dealing.

(5) Where, after serving a notice of intention to register a dealing, the Recorder registers a dealing that does not completely dispose of the estate of the registered proprietor in the land to which the caveat relates, the caveat shall be deemed to have lapsed only to the extent necessary to permit that registration.

136A. Cancellation of caveat on application of proprietor of estate or interest

(1) On application by a registered proprietor against whom a caveat is lodged, the Recorder is to serve on the caveator a notice in accordance with subsection (3).

(2) An application under subsection (1) is to be in a form approved by the Recorder.

(3) A notice under subsection (1) is to state that the Recorder will cancel the caveat on the expiry of 28 days after the day on which the notice is served unless –

- (a) an order is made by the Supreme Court extending the operation of the caveat –
 - (i) for such further period as is specified in the order; or
 - (ii) until the further order of that Court; and
- (b) that order, or an office copy of that order, is lodged with the Recorder.

(4) If an order referred to in subsection (3) has not been obtained and lodged with the Recorder before the expiry of the 28-day period referred to in subsection (3), the Recorder is to cancel the caveat on the expiry of that 28-day period.

137. No registration affecting land in respect of which caveat lodged

(1) Subject to this section, so long as a caveat forbidding the registration of a dealing remains in force, the Recorder shall not, except with the written consent of a person entitled to withdraw the caveat, record any dealing upon the folio of the Register, or the registered dealing, affected by the caveat.

(2) Subsection (1) does not operate to prevent the recording of –

- (a) a dealing which has been lodged for registration prior to the lodging of the caveat; or
- (b) a dealing lodged by or on behalf of the Crown or a public or local authority –
 - (i) pursuant to a power –
 - (A) to resume or take land;
 - (B) to restrict the use or alienation of land;
 - (C) to erect works on land;
 - (D) to charge land with the payment of money; or

(E) to give notice of its intention to do one or more of the things referred to in sub-paragraphs (A) , (B) , (C) , and (D) ;

(ii) pursuant to an Act which expressly or impliedly authorizes a recording notwithstanding the existence of a caveat; or

(iii) in prescribed circumstances; or

(c) a scheme within the meaning of section 3 of the Strata Titles Act 1998 ; or

(d) a final plan within the meaning of Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 .

(3) Except to the extent that it otherwise specifies, a caveat referred to in subsection (1) does not prevent the Recorder from recording in the Register –

(a) a transfer under Division 11 of Part 9 of the Local Government Act 1993 ;

(b) a writ within the meaning of section 61 ;

(ba) a declaration of severance of a joint tenancy pursuant to section 63 ;

(c) a dealing executed by a registered mortgagee, or a registered encumbrancee, in pursuance of a power of sale or lease contained in the mortgage or encumbrance or conferred on him by this Act;

(d) a discharge of mortgage or encumbrance pursuant to section 89 , section 90 , section 93 , section 94 , or section 148 ;

(e) if the caveat lapsed pursuant to section 136 so as to allow registration of a lease, mortgage or encumbrance, a subsequent dealing by the proprietor of the lease, mortgage or encumbrance (including a dealing that is an extension or variation of that lease, mortgage or encumbrance);

(ea) if the caveator consented to the registration of a lease, mortgage or encumbrance, a subsequent dealing by the proprietor of the lease, mortgage or encumbrance (other than a dealing that is an extension or variation of that lease, mortgage or encumbrance);

(f) an order for foreclosure under section 86 ;

(g) a transmission on the death of a registered proprietor under section 98 or section 99 ;

(h) the registration as proprietor of an applicant under section 100 ;

(i) the discharge of a covenant pursuant to section 104 ;

(j) on the folio or registered dealing constituting the title to the land benefited, a grant of easement or *profit à prendre*;

(k) on the folio or registered dealing constituting the title to the land burdened, a release or cancellation of easement or *profit à prendre*;

(l) an order under section 110 ;

(m) an expungement under section 103 or section 109 ;

(n) a highway under section 112 ;

(o) a vesting order under section 138B , section 138D or section 138X ;

(p) the registration of a person as proprietor under section 138A ;

(q) a final order under section 142 ; or

(r) a change in the name, or a notification of the full and correct name, of a registered proprietor.

(4) Where the Recorder pursuant to subsection (2) or subsection (3) records a dealing –

(a) that completely disposes of the estate of the registered proprietor in the land to which the caveat relates, the caveat lapses and ceases to have any effect; or

(b) that does not completely dispose of the estate of the registered proprietor in that land, the caveat remains in full force and effect after that recording.

(5) For the purpose of subsection (4) , a registration effected under section 98 or section 100 or a recording made under section 99 shall be deemed not to dispose completely of the estate of the registered proprietor whose estate is transmitted under those sections.

Division 2 - Compensation for lodging caveat without sufficient cause

138. Compensation for lodging caveat without sufficient cause

(1) A person who lodges a caveat under this Act with the Recorder without reasonable cause shall be liable to any person who may have sustained damage as a result of the caveat being lodged for such compensation as a judge, on a summons in chambers, deems just.

(2) The costs of a summons referred to in subsection (1) and all proceedings in connection with the summons shall be in the discretion of the judge, and execution may issue for the amount of compensation, if any, and of costs ordered by him to be paid in such and the like manner as if the amount had been awarded in a judgment in an action in the Supreme Court.

PART IXA - Orders to vest land

138A. Registration as proprietor of person entitled to land by operation of any Act

(1) In this section,

Act includes an Act of the Commonwealth.

(2) The Recorder, on proof to his or her satisfaction that a person other than the registered proprietor has become entitled to be registered as proprietor of registered land, either alone or jointly or in common with that registered proprietor, because –

(a) the land purports to have been vested in that person, or a person through whom he or she claims, by another Act, or by reason of anything done under another Act; or

(b) he or she is entitled to have that land so vested in him or her by the operation of another Act, either directly or by reason of anything done under that Act –

may, of his or her own motion, or on the application in an approved form of a person in whom the land is vested or who has become so entitled, on such evidence as appears to the Recorder sufficient, and after such notice (if any) to such person as the Recorder considers proper, register the person in whom the land is vested, or who has become so entitled, as the proprietor of such estate in the land as the Recorder considers appropriate.

(3) For the purposes of subsection (2), the Recorder may make such recordings, cancellations and corrections in the Register or a plan relevant to a folio of the Register, and issue such certificates of title, as appear to him or her to be necessary or proper and may call in any certificate of title, grant or duplicate registered dealing.

138B. Recorder to carry out order of Supreme Court vesting trust estate

(1) Where a person interested in registered land appears to the Supreme Court to be a trustee of that land and an order is made by the Supreme Court, the Recorder, on application supported by an office copy of the order, must make such recording in the Register as he or she thinks necessary to register the person in whom the order purports to vest the land as proprietor of the land.

(2) Unless and until a recording is made under subsection (1), the order referred to in that subsection has no effect or operation in transferring or otherwise vesting the land.

138C. Registration of dealing by person appointed by court

Where a direction, judgment or order of a court of competent jurisdiction directs, appoints or empowers a person other than the registered proprietor to dispose of registered land, the Recorder may refuse to register a dealing executed under the direction, judgment or order unless the dealing –

(a) indicates that it is executed under; and

(b) is supported by an office copy of –

the direction, judgment or order.

138D. Recorder may make vesting order in certain circumstances when purchaser in possession

(1) If, on application to the Recorder, it is proved to his or her satisfaction that the applicant –

(a) is in possession of registered land and no claim to recover the land has been made by the registered proprietor of that land or his or her heirs, personal representatives or assigns; and

(b) is entitled in equity and good conscience to be registered as proprietor of an estate in fee simple in the land in consequence of a sale of the land; and

(c) is unable to obtain a transfer of the land from the registered proprietor of the land because the registered proprietor is dead or residing out of Tasmania or cannot be found or for any reason it is impracticable to obtain his or her signature within a reasonable time –

the Recorder may, if in his or her opinion the case can properly be dealt with under this section rather than by an application under section 138W, make an order vesting the land in that person for an estate in fee simple.

(1A) An order under subsection (1) may be made only with respect to the whole of the land described in a folio of the Register.

(2) Where the sale referred to in subsection (1) was not made by the registered proprietor, the Recorder must not make an order under that subsection unless –

(a) at least 15 years have elapsed since the sale; and

(b) at least 15 years have elapsed since the last registration on the folio of the Register constituting the title to the land of a transfer, mortgage, encumbrance or lease.

(3) An order made under subsection (1) vests the land in the applicant subject to registered easements and other registered interests, except that it may vest the land free from any mortgage or encumbrance which could be discharged under section 91 if evidence satisfactory to the Recorder is produced.

(4) The Recorder may –

(a) reject an application under subsection (1) wholly or in part; or

(b) make such requisitions as to the title claimed to be acquired, or as to any other matter relating to the application, as he or she thinks fit.

(5) The Recorder, if he or she does not reject an application under subsection (1), must –

(a) direct that notice be given in a form approved by the Recorder in at least one newspaper that is published, and circulating generally, in Tasmania and that is available in the locality in which the relevant land is situated; and

(b) state in the notice that on the expiration of one month after the date of that notice the Recorder may make and register a vesting order in favour of the applicant.

(6) The notice is to be given to every person appearing by the Register to have any estate or interest in the land, or in any mortgage or encumbrance recorded on the folio of the Register relating to that land.

(7) An applicant under subsection (1) must cause a copy of the notice to be posted in a conspicuous place on the land or at such place as the Recorder may direct and to be kept so posted for not less than one month before the granting of the application.

(8) The notice is to appoint a time, not less than one month from the advertisement or service of the notice at or after the expiration of which the Recorder, unless a caveat is lodged forbidding it, may make a vesting order as provided in this section.

(9) At any time before making a vesting order under this section, the Recorder may, notwithstanding any direction previously given by him or her as to the application under subsection (1), reject the application wholly or in part if the applicant fails to comply to his or her satisfaction with any requisition made or direction given by him or her.

(10) On making a vesting order under this section, the Recorder –

(a) must make such recordings, cancellations and corrections in the Register as he or she considers necessary to give effect to the vesting order and to register the person in whom the order vests the land as proprietor of the land; and

(b) may call in any certificates of title and grants for the making of those recordings, cancellations and corrections.

138E. Caveat forbidding granting of application under section 138D

(1) A person claiming an estate or interest in the land in respect of which an application under section 138D is made may, before the Recorder makes a vesting order in respect of the application, lodge a caveat with the Recorder in an approved form forbidding the granting of the application.

(2) A caveat under this section lapses unless the caveator has, within 30 days after lodgment, lodged with the Recorder a document in an approved form specifying the grounds for the caveat.

(3) The Recorder must not proceed with the application to which the caveat relates unless –

(a) the caveat has been withdrawn; or

(b) the caveat has lapsed; or

(c) if grounds for the caveat have been lodged within the time specified in subsection (2), the Recorder has carried out an investigation of the caveat.

(4) In investigating the caveat, the Recorder may make such investigations as the Recorder considers necessary for the proper determination of the caveat, including conducting an inquiry under section 160(2).

(4A) On completing the investigation of the caveat, the Recorder may grant or refuse to grant the application to which the caveat relates.

(5) On the application of any person who the Supreme Court is satisfied has a proper interest in the matter, the Court may remove into the Court any proceedings before the Recorder on an application for an order under this Part.

(6) A caveat under this section may be withdrawn as provided by section 133(5) and (6) but the other provisions of that section do not apply to the caveat.

138F. Restriction on renewal of caveats

(1) Unless permitted by a Supreme Court order, a caveat that has lapsed or been withdrawn under section 138E may not be renewed and a new caveat may not be lodged by or on behalf of the same person in respect of the same estate or interest.

(2) A copy of an order made under subsection (1) is to be attached to the caveat to which it refers.

PART IXB - Possessory Title

Division 1 - Preliminary

138G. Interpretation

(1) In this Part –

dominant tenement means land that is claimed to have the benefit of rights amounting to an easement;

servient tenement means land that is claimed to have the burden of rights amounting to an easement.

(2) For the purposes of this Part, a person is taken to be under disability while –

(a) he or she is an infant; or

(b) he or she is incapable, by reason of mental illness, of managing his or her property or affairs.

(3) For the purposes of, but without limiting, subsection (2)(b), a person is presumed to be incapable, by reason of mental illness, of managing his or her property or affairs –

(a) while he or she is subject to an assessment order or treatment order under the Mental Health Act 2013 ; or

(b) while a guardianship order or an administration order in respect of his or her estate is in force under the Guardianship and Administration Act 1995 ; or

(c) while the Public Trustee has under Part VII of the Public Trustee Act 1930 the powers of the administrator of his or her estate.

138H. Application to unregistered land

This Part applies to a dealing with land that is not registered land where that dealing with that land is not otherwise covered by this Act.

Division 2 - Right to acquire easements

138I. Abolition of common law rules

(1) This Division supersedes the rules of the common law for the acquisition of easements by prescription.

(2) The rule of law known as the doctrine of lost modern grant for the acquisition of easements is abolished.

138J. Acquisition of easements by possession

(1) A person who has exercised rights which may amount to an easement at common law for a period of not less than 15 years, or not less than 30 years if the owner of the land is a person under disability, may apply, in accordance with Division 3, to the Recorder for an order vesting an easement in respect of those rights in the person.

(2) An application is to be in a form approved by the Recorder.

(3) The Recorder may make an order referred to in subsection (1) in favour of –

(a) an applicant who, after giving notice under section 138K(1), continues to exercise rights which the Recorder considers may amount to an easement; or

(b) an applicant who, after giving notice under section 138K(1), has been prevented or hindered in the exercise of rights which the Recorder considers may amount to an easement by the direct or indirect action of the owner of the servient tenement; or

(c) an applicant who has exercised rights in accordance with subsection (1) which the Recorder considers may amount to an easement but, before giving notice under section 138K(1), has been prevented or hindered in the further exercise of those rights by the direct or indirect action of the owner

of the servient tenement if the applicant gives notice under section 138K(1) within 6 months after first becoming so prevented or hindered in the further exercise of those rights.

Division 3 - Procedure for vesting of easements

138K. Applicant to notify owner of servient tenement

- (1) Before lodging an application for an easement under this Part, the applicant must give written notice of the claim, in the approved form, to the owner of the servient tenement and produce evidence satisfactory to the Recorder that he or she has done so.
- (2) The owner of the land may, within 30 days after receipt of the notice, lodge with the Recorder a notice of objection in an approved form against the easement claimed.
- (3) If the owner does not lodge a notice of objection, the Recorder must consider the application in accordance with this Part.
- (4) If the owner lodges a notice of objection, the Recorder may not consider the application unless he or she is satisfied that the applicant would suffer serious hardship if the application is not granted.

138L. Requirements for application

- (1) In addition to the requirements of section 138K(1), an applicant for an easement under this Part must show that –
 - (a) during the relevant period, he or she has enjoyed the easement in the relevant land as of right; and
 - (b) the easement has not been enjoyed by force or secretly; and
 - (c) during the relevant period, the enjoyment of the easement has not been by virtue of a written or oral agreement made before or during that period unless the applicant can show that the relevant period commenced after any such agreement had terminated; and
 - (d) during the relevant period, there has been no unity of seisin of the relevant dominant and servient tenements; and
 - (e) during the relevant period, the owner of the servient tenement knew, or as a reasonable owner of land diligent in the protection of his or her interests ought to have known, of the enjoyment of the easement; and
 - (f) the right for which the easement is claimed is not of a temporary nature; and
 - (g) the applicant is the holder of an estate in fee simple in the dominant tenement or is under this Act or any other law entitled to such an estate as against the holder of an estate in fee simple in the servient tenement –

and the applicant must produce evidence from at least one disinterested person in support of the easement claimed.

- (2) An application under this Division is, unless the Recorder otherwise directs, to be supported by a plan of survey, with survey notes, of the land in respect of which the easement is claimed certified as correct by a surveyor registered and certificated under the Land Surveyors Act 1909.
- (3) The Recorder may –
 - (a) reject an application under this Division wholly or in part; or
 - (b) make such requisitions as to the easement claimed, or as to any other matter relating to the application, as he or she thinks fit.
- (4) At any time before the making of an order referred to in section 138J, the Recorder may reject the application, wholly or in part, if the applicant has failed within a reasonable time to comply to the Recorder's satisfaction with any requisition made by the Recorder.

138M. Tenants in common

Where 2 or more applicants for an easement under this Part have interests in common, it is sufficient if one of them can show that he or she has complied with all the requirements of this Part.

138N. No easement in gross

Nothing in this Part is taken to confer a right to acquire an easement in a case where there is no land capable of benefitting from the easement.

138P. Character of easement

(1) An easement that is vested under this Part –

(a) is to be in respect of a right that is capable of being granted as an easement under the common law or any enactment; and

(b) is to be capable of existing as an easement appurtenant to the dominant tenement or an ascertainable part of the dominant tenement; and

(c) is to be limited to the same character, extent and degree of use throughout the relevant period.

(2) Where a person for whom an easement is vested under this Part has exercised additional rights for the period required under this Part, he or she is entitled to the grant of an additional easement in respect of those rights.

138Q. Power of Recorder to make recordings, &c.

On the vesting of an easement under this Part, the Recorder –

(a) must make such recordings in the Register as he or she considers necessary to give effect to the easement and its effect on the dominant tenement and the servient tenement; and

(b) may call in certificates of title, grants and duplicate registered dealings for making those recordings.

138R. Abolition of claim for *profit à prendre*

After the commencement of the Land Titles Amendment (Law Reform) Act 2001 a claim may not be made under this Part for a *profit à prendre*.

Division 4 - Caveat by owner

138S. Power of owner to lodge caveat

(1) An owner of land may lodge a caveat in an approved form with the Recorder giving notice that a person exercising rights which may amount to an easement is doing so with the permission of the owner.

(2) If the caveat is lodged before the period when an easement may be claimed under this Part and the caveat is in force under this section –

(a) time does not run against the caveator or any person claiming through the caveator; and

(b) time does not run in favour of the person named in the caveat exercising rights which may amount to an easement or any person claiming through any such person; and

(c) the period of enjoyment of the easement before the lodgment of the caveat is to be discounted, whether or not the caveat is later withdrawn.

(3) The caveat is to state –

(a) the name and address of the person exercising rights which may amount to an easement; and

(b) the folio of the Register of the dominant tenement; and

(c) the nature and description of the easement which may be claimed.

(4) The Recorder must give notice of the caveat to the person named in the caveat exercising rights which may amount to an easement.

(5) A caveat under this section may be withdrawn as provided by section 133(5) and (6) .

Division 5 - Title by possession

138T. Title by possession

A person who has been in possession of land owned by another person may acquire title to that land in accordance with this Division but not otherwise.

138U. Restriction on title by possession

(1) For the purposes of an application to acquire title to any land by possession, any period during which council rates have been or are paid by or on behalf of the owner is to be disregarded.

(2) This section does not apply to an application if the relevant council has certified in writing that it is unclear who has paid, or is paying, the relevant council rates.

138V. Requirements for title by possession

In determining an application for title based on possession, the Recorder must consider all the circumstances of the claim, the conduct of the parties and in particular –

- (a) whether, during the relevant period, the applicant enjoyed possession of the land as of right; and
- (b) whether there is any reason to suppose that during the relevant period that enjoyment was by force or secretly or that that enjoyment was by virtue of a written or oral agreement made before or during that period unless the applicant can show that any such agreement terminated before that period; and
- (c) the nature and period of the possession; and
- (d) the improvements on the land and in particular –
 - (i) when they were made; and
 - (ii) by whom they were made; and
- (e) whether or not the land has been enclosed by the applicant; and
- (f) whether during the relevant period the applicant acknowledged ownership, paid rent or made any other payment in respect of the land –

and the applicant must produce evidence from at least one disinterested person in support of the application.

138W. Registered proprietor to hold land on trust

(1) Subject to this section, the Limitation Act 1974 applies to the title of a registered proprietor of an estate in registered land in the same manner and to the same extent as that Act applies to the title of a proprietor of land which is not registered land.

(2) The estate of a registered proprietor of registered land is not extinguished by the Limitation Act 1974 , but where the estate would have been extinguished if the land had not been registered land, the registered proprietor of the estate is taken to hold that estate in trust for the person who, under that Act, would have acquired title to that estate if that land had not been registered land.

(3) Nothing in subsection (2) affects the estate or interest of any other person in the land which would not have been extinguished by that person's possession if that land had not been registered land.

(4) A person who claims that the registered proprietor of an estate in registered land holds that estate in trust for him or her under subsection (2) may apply to the Recorder in an approved form for an order vesting in him or her the legal estate which he or she would have acquired if the land had not been registered land.

(5) The right of a person to apply under subsection (4) is not affected during the period of his or her possession of the land by –

- (a) the bringing of the land in respect of which that person applies under this Part or the repealed Act; or
- (b) the making of a vesting order in respect of the land under –

(i) section 138D of this Act or section 14 of the Real Property Act 1893 ; or

(ii) the Real Property (Special Vesting Orders) Act 1973 .

(6) The right of a person to apply under subsection (4) is not affected –

(a) by the registration of any dealing by, or the registration of the transmission of the title of, a registered proprietor of the land in respect of which that person applies; or

(b) by the recertification by the Recorder in the course of the administration of this Act or the repealed Act of the estate in the land in respect of which that person applies –

unless that person's possession ceased on or before 31 October 1974.

(7) An application under subsection (4) is, unless the Recorder otherwise directs, to be supported by a plan of survey, with survey notes, of the land certified as correct by a surveyor registered and certificated under the Land Surveyors Act 1909 .

(8) Before making an application under subsection (4) , the applicant must –

(a) publish, in at least one newspaper that is published, and circulating generally, in Tasmania and that is available in the locality in which the relevant land is situated, a notice that –

(i) is in a form approved by the Recorder; and

(ii) states that the applicant intends to make the application; and

(b) give notice of the application in a form approved by the Recorder to any person who, as endorsed on the folio of the Register relating to that land, has an interest in the land or in any mortgage or encumbrance recorded on that folio; and

(c) give notice of the application in a form approved by the Recorder to any person who has an unregistered interest in the land which may have been lodged with the Recorder; and

(d) cause a copy of the notice referred to in paragraph (a) to be posted in a conspicuous place on the land and to be kept so posted for not less than one month before making the application.

(9) An application for title by possession is to be lodged with the Recorder not later than 2 months after the date of the last notice given under subsection (8) .

(10) A notice under this section is to be in a form approved by the Recorder.

(11) The Recorder may –

(a) reject an application under subsection (4) wholly or in part; or

(b) make such requisitions as to the estate claimed to be held in trust, or as to any other matter relating to the application, as he or she thinks fit.

(12) At any time before making the vesting order, the Recorder may reject the application, wholly or in part, if the applicant fails to comply to his or her satisfaction within a reasonable time with any requisition made.

138X. Power of Recorder to make vesting order

(1) Subject to section 138W , the Recorder may make an order vesting in the applicant under this Division the legal estate which the applicant would have acquired, if the land had not been registered land, free from –

(a) all estates and interests recorded on the folio of the Register or registered dealing evidencing title to the land which would have been determined or extinguished by the applicant's possession of the land; and

(b) any mortgage or encumbrance which could be discharged under section 91 if evidence satisfactory to the Recorder is produced; and

(c) any registered easement or *profit à prendre* which –

(i) is not an easement or *profit à prendre* created by a plan sealed under Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 ; or

- (ii) has been proved to the Recorder's satisfaction to have been abandoned –
but subject to any restrictive covenant notified on that folio or registered dealing.
- (2) For the purposes of subsection (1) , the Recorder may treat evidence of failure to use an easement or a *profit à prendre* for a period of not less than 20 years as conclusive evidence that the easement or *profit à prendre* has been abandoned.
- (3) On making a vesting order under this section, the Recorder –
- (a) must make such recordings, cancellations and corrections in the Register as he or she considers necessary to give effect to the vesting order and to register the person in whom the order vests the land as proprietor of the land; and
 - (b) may call in any certificates of title and grants for making those recordings, cancellations and corrections.
- (4) Where the registered proprietor whose registration is to be cancelled under subsection (3) is –
- (a) a legal owner referred to in section 13(2) of the Limitation Act 1974 ; or
 - (b) a trustee referred to in section 13(3) of that Act –
- his or her right to recover the land is not extinguished, notwithstanding the registration as proprietor of the applicant under this Division, or any person deriving title under him or her otherwise than as a purchaser in good faith for value, so long as any other person has a right under section 13 of that Act to recover the land.
- (5) The Recorder may, if he or she thinks fit, by reason of the imperfect nature of the evidence of title or otherwise, make a vesting order under this section subject to the condition that the title vested is to be a qualified title as mentioned in Division 4 of Part III .

138Y. Avoidance of sub-minimum lots

- (1) In this section,
- sub-minimum lot* means a lot that does not have the qualities of a minimum lot as provided by section 109 of the Local Government (Building and Miscellaneous Provisions) Act 1993 .
- (2) If the Recorder is not sure whether the granting of an application under this Division would result in the continuation or creation of a sub-minimum lot, the Recorder may require the applicant to produce a certificate from the relevant council –
- (a) that the application would not result in the continuation or creation of a sub-minimum lot; or
 - (b) that the council consents to the application.
- (3) If the applicant fails to produce a certificate required under subsection (2) , the Recorder is not required to proceed with the application.

Division 6 - Caveats against easements and title by possession

138Z. Caveat forbidding granting of application under this Part

- (1) A person claiming an estate or interest in the land in respect of which an application under this Part is made may, before the Recorder makes a vesting order in respect of the application, lodge a caveat with the Recorder in an approved form forbidding the granting of the application.
- (2) The application of section 138E extends to a caveat under subsection (1) .

138ZA. Restriction on renewal of caveats

- (1) A caveat under section 138Z that has lapsed or been removed under section 138E may not be renewed by or on behalf of the same person in respect of the same interest unless an order to that effect is made by the Supreme Court.
- (2) A copy of an order made under subsection (1) is to be attached to the caveat to which it refers.

PART X - Amendment of the Register

139. Correction of errors

- (1) Subject to subsection (2) and upon such evidence as appears to him sufficient, the Recorder may correct errors or supply omissions in the Register or in any instrument or duplicate registered dealing, and may call in any certificate of title, grant, or duplicate registered dealing for that purpose.
- (2) When the Recorder makes an alteration pursuant to subsection (1) –
 - (a) he shall, except as may be otherwise prescribed, authenticate the alteration and record the date of the alteration, and preserve a record of the matter which has been altered;
 - (b) the alteration does not prejudice or affect a right accrued from a recording made in the Register pursuant to a dealing lodged before the alteration; and
 - (c) subject to paragraph (b), the Register, instrument, or duplicate registered dealing shall, as so altered, have the same validity and effect as it would have had if the error or omission had not occurred.

140. Cancellation of superfluous recordings

The Recorder has power to cancel in such manner as he considers proper any recording in the Register which he is satisfied does not affect or has ceased to affect the land to which the recording purports to relate, and may for that purpose call in and cancel or correct any certificate of title, grant, or duplicate registered dealing.

141. Powers of Supreme Court to direct cancellation of folio or recording in certain cases

On the recovery of any land, estate, or interest, by any legal proceeding, from the person registered as proprietor of the land, the Supreme Court in any case in which that proceeding is not expressly barred by section 149 may direct the Recorder to cancel any folio of the Register, certificate of title, grant, or registered dealing, or any recording in the Register relating to that land, and to substitute a new folio, certificate of title, or recording, as the circumstances of the case may require, and the Recorder shall give effect to that order.

142. Rectification of boundaries, area or position of land

- (1) An interested person may apply to the Recorder for the taking of action or the making of an order under subsection (14) .
- (2) The application is to be –
 - (a) in the approved form; and
 - (b) accompanied by the prescribed fee; and
 - (c) accompanied by such evidence in support of the application as the Recorder requires.
- (3) On receipt of an application, or on the Recorder's own motion, the Recorder may give notice as specified in subsections (5) and (6) if the Recorder is satisfied that the case can properly be dealt with under this section, rather than by an application under section 138W(4) , and if –
 - (a) it appears to the Recorder that the boundary, area or position of the land described in a folio of the Register –
 - (i) was established without the benefit of a survey or a survey that the Recorder considers sufficient; and
 - (ii) differs from the actual boundary, area or position of the land as shown in the supporting evidence accompanying the application or, if no better evidence is available, as shown by the occupation of the land in good faith by the registered proprietor as being the land described in that folio; or
 - (b) it appears to the Recorder that the description of land in that folio is based on erroneous or imperfect information; or

(c) it appears to the Recorder that the boundary, area, position or description of the land contained in a forestry right –

(i) was established without the benefit of a survey or a survey that the Recorder considers sufficient; and

(ii) differs from the actual boundary, area or position of the land contained in the forestry right as shown in the supporting evidence accompanying the application or, if no better evidence is available, as shown by the use of the land in good faith by the registered proprietor as being the land contained in that forestry right; or

(d) it appears to the Recorder that the boundary, area, position or description of the land contained in a forestry right is based on erroneous or imperfect information.

(4) The Recorder may only act on his or her own motion if it appears to the Recorder that there is no interested person to make the application.

(5) If the Recorder gives notice under subsection (3) , he or she is to give the notice to the council of the municipal area in which the land is situated and also –

(a) in the case of registered land which it is proposed to affect or which may be affected, to every person appearing by the Register to have an interest in the land; and

(b) in the case of land, other than registered land, which it is proposed to affect or which may be affected, to every person whom the Recorder has found by searching the Registry of Deeds to have an interest in the land; and

(c) in the case of land subject to a highway which it is proposed to affect or which may be affected, to the highway authority concerned.

(6) The notice is to be accompanied by –

(a) in the case of notice given to a council and to a person referred to in subsection (5)(a) or (b) , a plan showing the extent to which the land is proposed to be or may be affected; and

(b) in the case of notice given to a highway authority, a plan showing the extent to which the highway is proposed to be or may be affected.

(7) If, after reasonable enquiry, an address for a person entitled to notice under subsection (5) cannot be ascertained, the Recorder may give the notice and relevant plan to The Public Trustee.

(8) On receipt of a notice under subsection (7) , The Public Trustee may –

(a) act on that person's behalf; and

(b) have a lien on that person's interest for expenses incurred in so acting.

(9) A person who has received a notice under subsection (5) may lodge a written objection with the Recorder within the period of not less than 21 days specified in the notice.

(10) An objection must specify the grounds on which it is based.

(11) If an objection has been lodged, the Recorder may conduct such investigations as he or she considers necessary for the proper determination of the matter.

(12) In conducting an investigation under subsection (11) , the Recorder –

(a) may hold a hearing for the purpose of receiving evidence and representations; and

(b) may require a person to attend a hearing; and

(c) at a hearing, may require a person –

(i) to make an oath or affirmation to answer relevant questions truthfully; and

(ii) to answer relevant questions; and

(d) at a hearing, may require a person to produce documents; and

(e) may retain documents produced at a hearing for such reasonable time as the Recorder thinks appropriate for the purposes of the investigation and make copies of those, or parts of those, documents; and

(f) is to proceed as expeditiously and with as little formality and technicality as is consistent with the requirements of this Act and the proper investigation of the matter; and

(g) is not bound by the rules of evidence and may gather information in any way the Recorder considers appropriate; and

(h) may, subject to this Act and the rules of natural justice, determine the procedures to be followed; and

(i) may enter on relevant land for the purpose of the investigation at any reasonable time after giving reasonable notice to the owner or occupier of that land.

(13) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (12) .

(14) If no objection has been lodged within the specified time, or on the completion of an investigation, the Recorder is to decide the matter and may do one or more of the following:

(a) amend any plan, folio of the Register, certificate of title, grant or registered dealing;

(b) order any person benefited by an amendment of a folio of the Register, certificate of title, grant or registered dealing to pay compensation to any person adversely affected by this section;

(c) order payment of compensation out of the assurance fund;

(d) order the rectification of an instrument registered in the Registry of Deeds;

(e) order the execution and registration of an instrument;

(f) vary, and order the registration of, an unregistered easement;

(g) redefine the boundaries of a highway;

(h) amend a sealed plan of subdivision under the Local Government (Building and Miscellaneous Provisions) Act 1993 if the amendment does not materially change the scheme of the subdivision;

(i) determine that no further action is to be taken in respect of the boundaries, area, position or description of the relevant land in a folio of the Register or a forestry right;

(j) make such order as to the costs of a person attending a hearing under subsection (12) as he or she thinks fit;

(k) take any other action necessary or convenient to give effect to his or her decision.

(15) The Recorder is to give a copy of his or her decision under subsection (14) to each person to whom notice has been given under subsection (5) .

(16) The Recorder may refuse to proceed or to proceed further under this section –

(a) if the Recorder considers that –

(i) a party ought to bring an action, suit or other proceeding; or

(ii) a party ought to apply for an order under section 138W(4) ; or

(iii) the Recorder cannot bring the matter to a satisfactory conclusion; or

(b) until a plan has been amended under Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 or an action, suit or other proceeding has been finalised.

(17) A decision under subsection (14) may be registered in the Supreme Court and may be enforced, subject to subsection (18) , as if it were a judgment of that Court.

(18) A decision under subsection (14) is not to be acted on for 30 days and within that period a person affected by the decision may appeal to the Supreme Court which may do any one or more of the following:

- (a) stay proceedings on the decision wholly or in part;
- (b) quash or vary the decision;
- (c) substitute for the decision any other decision that the Recorder was entitled to have made and do any thing that the Recorder could do under that subsection;
- (d) order the Recorder to amend any plan, folio of the Register, certificate of title, grant or registered dealing or do any other thing that he or she was entitled to do under that subsection.

(19) The powers conferred by this section are in addition to, but are not substituted for, any powers of correction, rectification or amendment conferred by any other provision of this Act.

(20) A rectification or amendment made under this section is to be taken to have been made prior to the registration of the instrument that is so rectified or amended.

(21) In this section –

interested person includes, but is not limited to –

- (a) the registered proprietor, mortgagee, lessee or encumbrancee of the relevant land; and
- (b) the council of the municipal area in which the relevant land is situated; and
- (c) if the relevant land is a highway, the highway authority for that land; and
- (d) the Crown in right of Tasmania; and
- (e) any other person the Recorder considers to be an interested person.

143. Effect of certain corrections

A correction or amendment of the Register or a registered dealing under this Act pursuant to section 9D or section 17A of the Roads and Jetties Act 1935 or Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993 shall be deemed to have been made before the registration of any dealing that is –

- (a) registered on a folio of the Register or registered dealing so corrected or amended; and
- (b) existing at the time of the correction or amendment.

PART XA - Approval of Plans

143A. Recorder may specify format, &c., of certain plans

- (1) A plan deposited or lodged with the Recorder in accordance with this or any other Act shall comply with the requirements of the Recorder, expressed generally or for the particular case, and the plan shall, if the Recorder so requires, be made from an actual survey and certified as correct by a surveyor registered and certified under the Land Surveyors Act 1909 .
- (2) Regulations may prescribe the manner in which a plan filed, deposited or lodged with the Recorder is to be kept.
- (3) A plan or accompanying document may be deposited or lodged with the Recorder and kept wholly or partly –
 - (a) on paper, on microfilm or in or on such other medium as may be approved by the Recorder; or
 - (b) in such device for storing or processing information as may be so approved.

143B. Recorder may require information, &c., in respect of plans, &c.

- (1) Where –
 - (a) in accordance with this or any other Act a plan is deposited or lodged with the Recorder; and
 - (b) the Recorder is of the opinion that the plan does not comply with the requirements of this or any other Act –
the Recorder may by notice in writing require –
 - (c) the plan or any accompanying document to be amended; or
 - (d) additional information specified by the Recorder to be supplied –within 3 months of the receipt of the notice or within such further period as the Recorder may allow.
- (2) Where the Recorder requires a person to amend a plan or accompanying document or to supply additional information a prescribed fee is payable unless the Recorder is satisfied that –
 - (a) no error was made by anyone; or
 - (b) any error made was minor in nature.
- (3) If a person fails –
 - (a) to comply with a requirement specified in a notice; or
 - (b) to pay the prescribed fee –

within 3 months of the receipt of the notice or such further period as the Recorder may allow the Recorder may reject the plan and any accompanying document.

143C. Recorder may correct errors on plans

- (1) The Recorder may, of the Recorder's own motion, correct an error on a plan or accompanying document deposited or lodged with the Recorder in accordance with this or any other Act.
- (2) The Recorder may, before correcting an error, give, to such people as the Recorder considers appropriate, at least 7 days written notice of the Recorder's intention to correct the error.
- (3) A person may object to the correction proposed to be made by the Recorder before the end of the period specified in the notice given under subsection (2) .
- (3A) An objection must be in writing and state the grounds on which it is based.
- (4) On receipt of an objection the Recorder may –

- (a) decide not to make the proposed amendment; or
- (b) amend the plan or accompanying document in accordance with the objection; or
- (ba) amend the plan in accordance with the notice given under subsection (2) ; or
- (c) reject the plan and any accompanying document.

(5) If the Recorder amends a plan without the approval of the person who deposited or lodged it the Recorder shall add to the plan a note to the effect that it has been amended by the Recorder.

143D. Recorder may require substitute plans

- (1) If the Recorder is of the opinion that a plan or accompanying document deposited or lodged with the Recorder in accordance with this or any other Act is, by reason of an amendment made in accordance with this Part inconvenient for subsequent use, the Recorder may by written notice require a fresh plan or accompanying document to the same effect as the original plan or accompanying document to be deposited or lodged with the Recorder within 30 days or such further period as the Recorder may allow.
- (2) A fresh plan or accompanying document deposited or lodged with the Recorder has effect as if it had been deposited or lodged in place of, and at the same time as, the original plan or accompanying document.
- (3) If a person fails to comply with a requirement specified in a notice within the time specified in that subsection the Recorder may reject the plan or accompanying document, or both such plan and document.

143E. Balance plans to be provided

- (1) Where a plan deposited or lodged with the Recorder in accordance with this Part relates to –
 - (a) part of the land included in a folio in the Register; or
 - (b) part of the land included in a title –

the Recorder may refuse to accept the plan unless there is also deposited or lodged with the Recorder a plan of the remainder of the land included in that folio or title, as the case may be.

- (2) A reference in subsection (1) to a plan deposited or lodged with the Recorder includes a plan lodged or deposited with the Recorder by or on behalf of the Crown.

143F. Notice of rejection of plan to be given

If, in accordance with this Part, the Recorder rejects a plan or any accompanying document the Recorder shall give notice accordingly and shall retain one-half of any prescribed fee paid when the plan or accompanying document was deposited or lodged with the Recorder.

143G. Giving of notice

- (1) Where the Recorder is required to give a written notice under this Part the notice is sufficiently given for the purposes of this Part if it is given to –
 - (a) the person required to deposit or lodge the plan or accompanying document with the Recorder; or
 - (b) the person who actually deposited or lodged the plan or accompanying document with the Recorder; or
 - (c) a person who the Recorder is satisfied is authorized to receive the notice.
- (2) Where the Recorder gives notice under this Part in respect of a sealed plan, strata plan or a building title plan the Recorder shall serve a copy of the notice on the municipal corporation that sealed the plan.
- (3) Where, in accordance with this or any other Act, a sealed plan, strata plan or a building title plan is deposited or lodged with the Recorder and–
 - (a) the Recorder rejects the plan in accordance with this Part; or
 - (b) the Recorder is informed that the plan has been withdrawn–

the Recorder shall forward the plan to the council that sealed it so that the plan may be cancelled.

(4) If a person upon whom a notice is to be served in accordance with this Part is a facsimile service subscriber or a subscriber to any electronic transmission service the notice is sufficiently served if a copy of the notice is sent via that service to that person's service number.

143H. Accompanying document defined

(1) A reference in this Part to an accompanying document is a reference to any document that is required by this or any other Act to be annexed to, attached to or deposited or lodged or presented with any plan that is required to be deposited or lodged with the Recorder under this or any other Act.

(2) When, in accordance with this Part, the Recorder rejects a plan the Recorder shall be taken to have rejected any accompanying document deposited or lodged with that plan.

143I. Power of Recorder to rearrange plans

(1) The Recorder may rearrange parts of any plan held by him or her by creating a new plan containing the whole or part of any other plan or plans or in such other manner as may appear to the Recorder to be convenient.

(2) In the exercise of his or her powers under subsection (1) , the Recorder must not create a new plan so as to permit the subdivision of land contrary to the Local Government (Building and Miscellaneous Provisions) Act 1993 .

PART XI - Civil Rights and Remedies

Division 1 - General

144. Proprietor if dissatisfied may summon Recorder to show cause

(1) Subject to subsection (6) , if the Recorder –

(a) refuses to do an act which he is required or empowered to do under this or any other Act; or

(b) gives a direction or makes an order upon his own motion or upon an application while exercising his powers under this or any other Act –

a person who believes himself to be aggrieved by the refusal, direction, or order may require the Recorder to state in writing the grounds for his refusal, direction, or order notwithstanding that the Recorder has acted under a discretionary power.

(1A) A requirement under subsection (1) must be lodged with the Recorder within 3 months after the relevant refusal, direction or order is given by the Recorder, or such longer period as the Recorder allows.

(2) A person referred to in subsection (1) may proceed against the Recorder by summons in the Supreme Court requiring him to justify his refusal, direction, or order, and the Court may make such order as it thinks fit.

(3) All expenses attendant upon any proceedings under this section shall be borne and paid by the person referred to in subsection (2) , unless the Supreme Court certifies that there were no probable grounds for the refusal, direction, or order referred to in subsection (1) .

(4) On being served with a summons referred to in subsection (2) , the Recorder shall, if the land to which his refusal, direction, or order relates –

(a) is registered land, record notice of the summons on the relevant folio of the Register; or

(b) is not registered land, register the summons in the Registry of Deeds.

(5) When the Supreme Court makes an order pursuant to a summons under this section, the Recorder shall cancel the recording of the summons or register the order in the Registry of Deeds, as the case may require.

(6) This section does not apply where the Recorder has acted pursuant to another Act that provides for an appeal to the Supreme Court.

145. Action by person claiming as beneficiary may be brought in name of trustee

(1) Where a person is entitled to or interested in land as a trustee and is entitled to bring or defend any action for the recovery of registered land, that person shall be bound to allow his name to be used as a plaintiff or defendant in an action for recovery of land by a beneficiary or person claiming an estate or interest in the land.

(2) Where subsection (1) applies, the person entitled or interested as a trustee is entitled to be indemnified in like manner as a trustee would before the passing of the repealed Act have been entitled to be indemnified in a similar case of his name being used in any action or proceeding referred to in subsection (1) by his *cestui que trust*.

146. Mortgagee, encumbrancee or lessor may obtain possession in certain cases

(1) Where the term of a lease has expired or default is made in the payment of any money secured by a mortgage or an encumbrance or payable under a lease for the time specified by this Act or in the mortgage, encumbrance, or lease–

(a) a mortgagee as against a mortgagor, either before or after entering into the receipt of the rents and profits of the mortgaged land or making any distress under the powers conferred by section 83 , either before or after a sale of the land is effected under the power of sale given or implied in the mortgage, and either before or after obtaining an order for foreclosure pursuant to section 86 ;

(b) an encumbrancee as against an encumbrancer, either before or after entering into the receipt of the rents and profits of the encumbered land or making any distress under the powers conferred by section 83 , and either before or after any sale of the land is effected under the power of sale given or implied in his encumbrance; or

(c) a lessor as against a lessee—

may without any formal demand or re-entry apply to the Supreme Court for an order for possession of the premises to which the expiry of the term of the lease relates or in respect of which the default is made.

(2)

(3) Service, on a lessee, mortgagor or encumbrancer, of an order under subsection (5) stands in lieu of—

(a) in the case of a lessor against a lessee, a demand and re-entry; and

(b) in the case of a mortgagee or encumbrancee against a mortgagor or encumbrancer, the notice required to be given in such a case by this Act.

(4)

(5) If an application is made under subsection (1), then, on proof of—

(a)

(b) default having been made in payment of the money due under the mortgage, encumbrance, or lease for the time specified by this Act, or otherwise provided in this section before the proceedings were commenced;

(c) in the case of a lessor against a lessee—

(i) insufficient distress then being found to be on the premises to counteract the money due; and

(ii) the plaintiff's power to enter; and

(d) the money due under the mortgage, encumbrance, or lease remaining unpaid—

the Supreme Court may order that possession of the premises mentioned in the application be given by the mortgagor, encumbrancer, or lessee to the applicant on or before such day, not being less than 4weeks from the day of hearing, as the Supreme Court thinks fit to specify, unless within that period all the money due and costs are paid.

(6) If an order referred to in subsection (5) is not obeyed and money due and costs are not paid, the Supreme Court, subject to subsection (6A) , shall, at the instance of the applicant, on proof of the service of that order, or that after diligent search made the party named in the order cannot be found, issue a writ authorizing and requiring the Sheriff to give possession of the premises to the applicant.

(6A) A writ is not to be issued under subsection (6) unless at least 60 days' written notice is given to the tenant of the affected mortgagor.

(7) Every writ referred to in subsection (6) shall be dated on the day next after the last day specified by the Supreme Court in the order for the delivery of the possession of the premises, and shall continue in force for not more than 3 months from that date.

(8) In the case of a lessor against a lessee, the applicant shall, from the time of the execution of a writ referred to in subsection (6) , except as otherwise provided in this Division, hold the premises discharged of the tenancy.

147. Right of mortgagee of lease not to be barred

Nothing in this Act extends to bar the right of a mortgagee or encumbrancee of a lease or any part of a lease who is not in possession if that mortgagee or encumbrancee, within 6 months after the execution of the writ referred to in section 146 , pays all rent in arrears and all costs and damages sustained by the lessor and performs all the covenants and agreements which, on the part and on behalf of the first lessee, are and ought to be performed.

148. Right of mortgagor or encumbrancer tendering principal, &c., and paying same to Treasurer to obtain discharge of mortgage, &c.

(1) If before the day specified in an order under section 146(5) as the day on which possession of the premises to which the order relates is to be given the person having the right to redeem any mortgaged or encumbered land to which the order relates pays to the mortgagee or encumbrancee or, in the case of the mortgagee's or encumbrancee's refusal, tenders in court and pays to the Treasurer all the principal money and interest due on the mortgage or encumbrance and costs, the money so paid to the mortgagee or encumbrancee or to the Treasurer shall be deemed and taken to be in full satisfaction and discharge of the mortgage or encumbrance.

(2) The Recorder, on the receipt of the Treasurer accompanied by a certificate of the Supreme Court that the money referred to in subsection (1) has been tendered and refused, shall record on the relevant folio of the Register or registered dealing that the mortgage or encumbrance is discharged, and on that recording the mortgaged or encumbered estate or interest shall cease to be charged with any money secured by the mortgage or encumbrance.

149. Registered proprietor protected against ejectment, except in certain cases

(1) An action of ejectment or other action for the recovery of registered land shall not lie or be sustained against the person registered as proprietor of the land under this Act, except in the following cases:

(a) a mortgagee as against a mortgagor in default;

(b) an encumbrancee as against an encumbrancer in default;

(c) a lessor as against a lessee in default;

(d) a person deprived of land by fraud as against the person registered as proprietor of the land through fraud, or as against a person deriving, otherwise than as a transferee *bona fide* for value, from or through a person so registered through fraud;

(e) a person deprived of or claiming land included in a folio of the Register evidencing the title to other land, by misdescription of that other land or of its boundaries, as against the registered proprietor of that other land, not being a transferee of that other land, or deriving from or through a transferee of that other land *bona fide* for value;

(f) the registered proprietor of land which was first brought under this Act or the repealed Act as against another registered proprietor, in a case where 2 or more folios of the Register subsist for conflicting estates in the same land.

(2) In any case not referred to in subsection (1), the production of a certified copy of the relevant folio of the Register, or, in the case of leasehold land where no folio of the Register exists for the leasehold estate, a certified copy of the lease, shall be held in every court to be an absolute bar and estoppel to any action referred to in subsection (1) against the person named in that folio as registered proprietor of the land described in that folio or the lessee.

(3) A certificate signed by the Recorder that no folio of the Register exists for the leasehold estate created by a lease registered under this Act shall be received in every court as evidence of that fact.

(4) For the purposes of subsection (2), *certified* means certified by the Recorder or by some officer acting on his behalf.

Division 2 - The assurance fund and compensation from that fund

150. The assurance fund

(1) The assurance fund created for the purposes of the repealed Act is continued for the purposes of this Act.

(2) All sums of money received by the Recorder under this Act as contributions to the assurance fund shall be paid by him to the Treasurer who shall invest those sums together with all interest accruing on those sums to augment the fund continued by subsection (1).

(3) If the assurance fund is at any time reduced by claims on the fund to an amount less than \$2 000 000, the Governor may make regulations providing that any of the fees prescribed in Schedule 3 be increased as prescribed, the increase to be a contribution to the assurance fund, until such time as that fund is increased to such sum as may be prescribed.

151. Assurance fund not liable in certain cases

(1) The assurance fund is not liable for compensation for loss, damage, or deprivation –

(a) occasioned by the breach by a registered proprietor of any trust, whether express, implied, or constructive;

(b) where the same land has been included in two or more grants from the Crown;

(c) arising out of a matter –

(i) into which the Recorder or Deputy Recorder is exonerated from inquiry; or

(ii) in respect of which either of them is protected from liability –

by any enactment; or

(d) occasioned by the inclusion of land with other land in the same folio of the Register through misdescription of boundaries or parcels; or

(e) arising from any failure of the Recorder to include an interest in a folio if the interest was not revealed in a search of title relating to the relevant period provided by section 35 of the Conveyancing and Law of Property Act 1884 .

(2) Notwithstanding anything contained in subsection (1) , the assurance fund is liable for compensation where a person deprived of land in the circumstances set out in subsection (1) (d) has obtained judgment for compensation or damages against a person liable for compensation or damages under section 152 and the latter person –

(a) is dead;

(b) cannot be found;

(c) has become bankrupt; or

(d) on the issue of a writ of *feri facias* or warrant of execution to enforce the judgment, has been certified by the person charged with the duty of enforcing the writ or warrant to be unable to pay the full amount of the judgment.

(3) In a case to which subsection (2) applies, the assurance fund is only liable for any money that the person deprived of land has not recovered from the person against whom he has obtained judgment.

(4) Notwithstanding paragraph (e) of subsection (1) , the assurance fund is liable for compensation for loss, damage or deprivation arising from any failure of the Recorder to include an interest in a folio if the interest was not revealed in a search of title relating to the relevant period referred to in that paragraph where the land was subject to this Act when the person obtained the interest in the land and where –

(a) the interest would not have come to the notice of that person if, at the time he or she acquired that interest, he or she as a prudent purchaser had inspected the land; or

(b) at the time compensation is claimed –

(i) the interest, if it is an easement, could not be removed by the Recorder on an application by the registered proprietor under section 108 ; or

(ii) in any other case, it could not be removed by the appropriate tribunal on an application by the registered proprietor under section 84C of the Conveyancing and Law of Property Act 1884 .

152. Compensation for party deprived of land

(1) Subject to section 42 , a person deprived of land or of any estate or interest in land –

- (a) in consequence of fraud;
- (b) through the bringing of that land under this Act;
- (c) by the registration of another person as proprietor of that land, estate, or interest; or
- (d) in consequence of any error, omission, or misdescription in the Register –

may bring an action for the recovery of damages.

(2) An action referred to in subsection (1) shall –

(a) in any case in which the land has been included in 2 or more grants, be brought against such person as the Governor may appoint as nominal defendant; or

(b) in any other case, subject to the provisions of subsections (3) , (4) , (5) , (6) , (7) , and (8) , be brought against the person –

(i) on whose application that land was brought under this Act;

(ii) on whose application the erroneous registration was made; or

(iii) who acquired title to the estate or interest in question through fraud, error, omission, or misdescription.

(3) Where a person is deprived of land because it is brought under this Act pursuant to Division 3 of Part III and the title registered on the bringing of the land under this Act is not a qualified title subject to a general caution, the person who is first registered as proprietor of the land shall be regarded as the person on whose application the land was brought under this Act.

(4) Where a person is deprived of land by the cancellation of a caution pursuant to section 21 (6) , the person who is the registered proprietor of the land at the time the caution is cancelled shall be regarded as the person on whose application the land was brought under this Act.

(5) Where a person is deprived of land by the lapsing of a caution pursuant to section 25 , that person shall be deemed to have been deprived of land through the bringing of land under this Act, and the person who is the registered proprietor at the time the caution lapses shall be regarded as the person on whose application the land was brought under this Act.

(6) In every case in which the fraud, error, omission, or misdescription occurs upon a transfer for value, the transferor receiving the consideration shall be regarded as the person on whose application the certificate of title was issued to the transferee.

(7) Subject to section 127 , except in the case of fraud or of error occasioned by an omission, misrepresentation, or misdescription in his application or an instrument executed by him, the person on whose application the land was brought under this Act or the erroneous registration was made, shall, on the transfer of the land in good faith for value, cease to be liable for the payment of any damages which might have been recovered from him under this section.

(8) In a case where a person referred to in subsection (7) –

(a) ceases to be liable for the payment of damages as provided in that subsection;

(b) is dead or bankrupt; or

(c) cannot be found –

the damages referred to in that subsection, with costs of action, may be recovered out of the assurance fund by action against the Recorder as nominal defendant.

(9) In estimating damages referred to in subsection (7) , the value of all buildings and other improvements erected or made subsequent to the deprivation shall be excluded unless they were erected or made in good faith by the claimant or by some person through whom he claims before he or that person, as the case may be, was aware of any defect in the title to the land.

(10) For the purposes of this section, a person who, but for the fraud or other act of any of the persons mentioned in subsection (2) , might have been possessed of any land, estate, or interest, or have been registered proprietor of any land, estate, or interest, shall be deemed to have been deprived of the land, estate, or interest.

153. When action may lie against Recorder as nominal defendant

(1) Subject to this Act, a person sustaining loss or damage –

(a) through an omission, mistake, or misfeasance of the Recorder or any of his officers in the execution of their duties under this Act; or

(b) by the registration of any other person as proprietor of land (except where that other person was registered as proprietor pursuant to section 138D or section 138X) or by an error, omission, or misdescription in the Register, and–

(i) who is barred by section 149 from bringing an action of ejectment or other action for the recovery of land or an estate or interest in land; or

(ii) to whose claim the remedy by action for damages pursuant to section 152 is inapplicable–

may bring an action against the Recorder as nominal defendant for recovery of damages.

(2) In estimating damages referred to in subsection (1) , the value of buildings and other improvements erected or made subsequent to the loss or deprivation shall be excluded unless they were erected or made in good faith by the claimant or by some person through whom he claims before he or that person, as the case may be, was aware of any defect in the title to the land.

154. Date of deprivation in certain cases

Where a person is deprived of land by the registration of another person as proprietor pursuant to a vesting order under section 138D or section 138X , the date of deprivation shall, for the purpose of calculating the damages to which he is entitled, be deemed to be–

(a) in the case of a vesting order under section 138X , the date on which he or his predecessors in title lost possession of the land; and

(b) in the case of a vesting order under section 138D , the date mentioned in paragraph (a) or the date of the sale pursuant to which the vesting order was made, whichever is the earlier.

155. Person sustaining loss may apply for compensation

(1) A person sustaining loss or damage in a case in which he is entitled to bring an action to recover damages against the Recorder as nominal defendant may, before commencing proceedings, make application in writing to the Recorder for compensation, and that application shall be supported by statutory declaration.

(2) If the Recorder admits the claim, or any part of the claim, and the Minister certifies the claim, or part of the claim, as so admitted –

(a) in a case where the claim, or part of the claim, that is so admitted and certified is less than \$10 000, the Minister may, in his or her discretion, issue a warrant to the Treasurer for payment of the amount so certified out of the assurance fund; or

(b) in a case where the claim, or part of the claim, that is so admitted and certified is \$10 000 or more, the Governor may, in his or her discretion, issue a warrant to the Treasurer for payment of the amount so certified out of the assurance fund.

(3) The Treasurer is to pay the amount so certified in accordance with a warrant issued under subsection (2) .

156. Notice of action

In a case in which an action for recovery of damages is permitted to be brought against the Recorder as nominal defendant as provided in this Division, notice in writing of that action and of the cause of that action shall be served on the nominal defendant at least one month before the commencement of that action.

157. Results of action

(1) If in an action under this Division judgment is given in favour of the nominal defendant, or if the plaintiff discontinues or is non-suited, the plaintiff shall pay all costs of defending the action, and the costs when taxed may be levied by execution in the name of the nominal defendant.

(2) If in an action under this Division the plaintiff recovers final judgment against the Recorder as nominal defendant, the Supreme Court shall certify the fact of the judgment and the amount of damages and costs recovered, and the amount of the damages and costs shall be paid to the person recovering the same, and shall be charged to the account of the assurance fund.

(3) If the balance to the credit of the assurance fund is inadequate to pay the amount specified, such sum as may be necessary for that purpose shall be paid out of the Consolidated Fund, which to the necessary extent is appropriated accordingly, and the amount so advanced shall be repaid from the assurance fund as it accrues.

158. Limitation of actions

(1) An action under section 152 or section 153 shall be deemed to be an action referred to in section 4 (1) (d) of the Limitation Act 1974 .

(2) The plaintiff in an action referred to in subsection (1) , at whatever time it may be brought, or the plaintiff in an action for the recovery of land, shall be non-suited in any case in which the deprivation complained of may have been occasioned through the bringing of land under this Act or the making of a vesting order under section 138D or section 138X , if it appears to the court before which the action is tried that the plaintiff, or the person through whom he claims title, had notice or was aware that application had been made to bring the land under this Act or for a vesting order under section 138D or section 138X , and had, wilfully or collusively, omitted to lodge a caveat forbidding it, or had allowed that caveat to lapse.

159. Moneys paid out of assurance fund may be recovered

(1) An amount paid out of the assurance fund on account of a person shall be deemed to be a debt due by that person to the Recorder and may be recovered accordingly.

(2) Where an amount has been paid out of the assurance fund on account of a person who has real or personal estate in this State and who cannot be found in this State, a court of competent jurisdiction may, upon the application of the Recorder and upon the production of a certificate signed by the Treasurer certifying that the amount has been paid in satisfaction of a judgment against the Recorder as nominal defendant, allow the Recorder to enter judgment against that person for the amount so paid out of the assurance fund together with the costs of the application.

(3) A judgment referred to in subsection (2) is final, and execution may issue immediately.

(4) Notwithstanding anything contained in the Limitation Act 1974 , if a person referred to in subsection (2) has not left real or personal estate in this State sufficient to satisfy the amount for which execution may have been issued under this section, the Recorder may recover that amount, or the unrecovered balance of the amount, by action against that person whenever he may be found.

PART XII - General Powers, Duties, and Immunities of Recorder

160. General powers of Recorder

(1) The Recorder may require a person who has custody, possession, or control of any instrument relating to land which is the subject of a dealing lodged with him under this or any other Act, or relating to the title to land, to produce that instrument, and he may retain an instrument, whether produced pursuant to this subsection or otherwise, until it is no longer required for action in connection with a dealing lodged with him or in connection with the bringing of land under this Act; and if that person refuses or neglects to produce that instrument he is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

(2) The Recorder may conduct an inquiry concerning any land, title to land, or instrument affecting or relating to land which is the subject of a dealing or application lodged with him under this or any other Act; and, if an instrument which the Recorder has required under subsection (1) is withheld, or if a person summoned to attend an inquiry under this subsection fails to attend or refuses or neglects to give an explanation or information which he is required to give at the inquiry, the Recorder is not bound to proceed with the application or register the dealing under this or any other Act.

(3) The Recorder may record a caveat on behalf of a person under disability (within the meaning of the Limitation Act 1974), or on behalf of the Crown, to prohibit the transfer or dealing with land belonging or supposed to belong to such a person or the Crown, and also to prohibit the dealing with land where it appears to him that an error has been made by misdescription of that land, or otherwise in any certificate of title or other instrument, or for the prevention of fraud or improper dealing, and sections 135 and 137 apply where the Recorder records a caveat pursuant to this subsection.

(4) The Recorder may, on such evidence as appears to him to be sufficient, record in the Register any change in the name of a registered proprietor or a notification of the full and correct name of a registered proprietor if he is satisfied that that name differs from the name of that proprietor as set forth in the Register.

(5) Notwithstanding anything in this Act, the Recorder may at his discretion dispense with the production to him of any instrument or document, or the duplicate of any instrument or document, or the supply of any information, or any advertisement or notice.

(6) Section 8 and Part 3 of the Commissions of Inquiry Act 1995 apply to an inquiry or hearing that the Recorder is by this or any other Act authorized or required to make or hold as if –

(a) the Recorder were a Commission established under section 4 of the Commissions of Inquiry Act 1995; and

(b) the matter the subject of the inquiry or hearing were the matter into which that Commission had been directed to inquire under that Act.

(7) If the Recorder is satisfied that the inquiry or hearing was occasioned by frivolous or vexatious conduct by a party to the inquiry or hearing, the Recorder may order that party to pay the reasonable costs of the inquiry or hearing.

(8) An order made under subsection (7) may be enforced as if it were a judgment made by a competent court of summary jurisdiction.

161. Recorder may state case for Supreme Court

(1) The Recorder may, whenever any question arises with regard to the performance of any of the duties or the exercise of any of the functions by this or any other Act conferred or imposed upon him, state a case for the opinion of the Supreme Court.

(2) Where a case has been stated for the opinion of the Supreme Court in accordance with subsection (1), the Supreme Court may give judgment on the case, and that judgment is binding on the Recorder.

162. Recorder may require map to be deposited

(1) The Recorder may require the proprietor applying under section 11 to have land brought under this Act, applying under section 108 for the release or partial release of an easement or *profit à prendre*, or desiring to transfer or otherwise deal with land, to deposit with the Recorder a map or plan of the land complying with the requirements of the Recorder, expressed generally or for the particular case, and the map or plan shall, if the Recorder so requires, be made from an actual survey and certified as correct by a surveyor registered and certificated under the Surveyors Act 2002 .

(2) If a proprietor referred to in subsection (1) neglects or refuses to comply with the Recorder's requirements, the Recorder may refuse to proceed with the bringing of the land under this Act or with the registration of the transfer or other dealing.

163. Power of Recorder to call in certificate of title, &c., in certain cases

(1) Where it appears to the satisfaction of the Recorder that –

- (a) a certificate of title, grant, or duplicate registered dealing has been issued in error or contains a misdescription of land or of boundaries;
- (b) a recording has been made in error on a certificate of title, grant, or duplicate registered dealing;
- (c) a certificate of title, grant, or recording in the Register has been fraudulently or wrongfully obtained;
- (d) a certificate of title, grant, or duplicate registered dealing is fraudulently or wrongfully retained; or
- (e) it is necessary for him to have the certificate of title, grant, or duplicate registered dealing for the purpose of registering a dealing, or of cancelling, correcting, or otherwise dealing with the certificate, grant, or duplicate, or for the purpose of inspection in case of the loss, destruction, or obliteration of a folio of the Register or registered dealing –

or the Recorder is, by this or any other Act, required or authorized to call in, or require a person to produce to him, a certificate of title, grant, or duplicate registered dealing, he may summon the person to whom that certificate, grant, or duplicate has been so issued, or by whom it has been so obtained or is retained, or who has the custody, possession, or control of it, to deliver up that certificate, grant, or duplicate for the purpose of registration, or of being cancelled, corrected, or otherwise dealt with, or inspected, as the case may require.

(2) Where a person referred to in subsection (1) refuses or neglects to comply with a summons referred to in that subsection, the Recorder may apply to a judge to issue a summons for that person to appear before the Supreme Court and show cause why the certificate, grant, or duplicate referred to in that subsection should not be delivered up for the purpose of registration, or to be cancelled, corrected, or otherwise dealt with, or inspected, as mentioned in that subsection.

(3) Where a person referred to in subsection (1) –

- (a) cannot be found within a reasonable time, so that the summons referred to in that subsection cannot be served upon him; or
- (b) is residing out of the State and refuses or neglects to comply with a summons referred to in that subsection –

the Recorder may, if in his opinion the circumstances of the case require it, act as authorized by section 35 or section 160 (5) .

(4) If a person referred to in subsection (1) , when served with a summons referred to in subsection (2) , neglects or refuses to attend before the Supreme Court at the time appointed in the summons, the Court may issue a warrant authorizing and directing the person so summoned to be arrested and brought before the Court for examination.

164. Powers of Court and Recorder

(1) On the appearance before the Supreme Court of any person summoned or brought up by virtue of a warrant under section 163 , the Court may examine that person on oath, and, where the Court considers it necessary, may order that person to deliver up the certificate of title, grant, or duplicate registered dealing in accordance

with section 163 , and on the refusal or neglect by that person to deliver it up pursuant to that order may commit that person to prison.

(2) Where a person –

(a) who has been summoned pursuant to section 163 (2) cannot be found, so that he cannot be arrested and brought before the Court for examination under section 163 (4) ; or

(b) has been committed to prison –

the Recorder may, if in his opinion the circumstances of the case require it, act as authorized by section 35 or section 160 (5) .

165. Protection of Recorder

(1) The Recorder, in registering a dealing or in bringing land under this Act –

(a) need not make any inquiry not required of;

(b) is not bound by any notice that would not bind; and

(c) has the same protection as if he were –

a purchaser as defined in the Conveyancing and Law of Property Act 1884 .

(2) Where a person registered as the personal representative of a deceased proprietor deals with land, or an estate or interest in land, which has devolved upon him under the Administration and Probate Act 1935 by way of –

(a) assent;

(b) mortgage;

(c) lease; or

(d) transfer for value to a purchaser who does not appear on the face of the transfer to be a personal representative, or trustee of the will, of the deceased proprietor, or the spouse or child of a personal representative, or trustee of the will, of a deceased proprietor –

the Recorder shall not be concerned to consider, or to call for any information concerning, the reason why the assent, mortgage, lease, or transfer is made, or the terms of the will, and, whether he has notice or not of its contents, he is entitled to assume that the personal representative is acting correctly and within his powers.

(3) The Recorder is not individually, nor is any person acting under his authority, liable to any action or proceeding for or in respect of any act or matter in good faith done, or omitted to be done, in the exercise or supposed exercise of the powers of this Act.

166. Payment of money received by Recorder to persons entitled under this Act

(1) Any money received by the Recorder or by the Treasurer, in trust or otherwise, on account of absentee mortgagees or other persons entitled under this Act, shall be paid into the Consolidated Fund.

(2) Any money paid into the Consolidated Fund pursuant to subsection (1) shall, on the receipt of a requisition from the Recorder and with the approval of the Treasurer, be paid to any person entitled to that money under this Act.

(3) The Consolidated Fund is, by force of this subsection, appropriated to such extent as may be necessary to give effect to subsection (2) .

PART XIII - Miscellaneous

167. Jurisdiction in relation to offences

Prosecutions for offences under this Act may be instituted by the Attorney-General or the Recorder and no other person.

168. Service, &c., of notices

(1) A notice that is required or authorized by this Act to be given to or served on a person may be given to or served on that person –

- (a) by posting it as prescribed to his address for service (within the meaning of this section) or to his last-known place of abode or business; or
- (b) by leaving it at his address for service (within the meaning of this section) or at his last-known place of abode or business; or
- (c) by sending it by way of facsimile transmission to a service operated or used by the person; or
- (d) by any other form of transmission of messages electronically where the Recorder is satisfied that the person to be notified will receive the notice; or
- (e) by a method of postal service where evidence may be provided that the notice has been received by the person to be notified.

(2) The address of a person, set forth in any instrument by which that person becomes a registered proprietor or in a caveat lodged by or on behalf of that person, or in a valuation roll prepared pursuant to the Valuation of Land Act 2001 , or in an electoral roll kept pursuant to the Electoral Act 2004 , may, for the purposes of this section, be treated as his address for service.

(3) On being notified in writing by a registered proprietor or a caveator of any change of the proprietor's or caveator's address, the Recorder shall alter that address as set forth in any instrument specified by the proprietor (being an instrument by which he became a registered proprietor) or in the caveat, or otherwise record the change of address as prescribed.

(3A) Where notice is required to be given under this Act before a dealing, instrument or other document is deposited or lodged with the Recorder and the Recorder is of opinion that the notice was inaccurate or insufficient, the Recorder may require that a supplementary notice be given in accordance with this Act.

(4) Notwithstanding anything in the foregoing provisions of this section, if for any special reason the Recorder thinks it desirable to do so he may direct any notice to be given or served in such manner as he may specify, either in addition to, or in substitution for, the mode of giving or serving notice prescribed in those provisions.

(4A) Where –

- (a) a person is required to notify interested persons of an application under this Act; and
- (b) the notice is not given within the required time –
the Recorder may, if it appears that it would be harsh and unconscionable to refuse the application –
- (c) extend the time for giving the notice; and
- (d) require the applicant to give further notice in such manner as the Recorder may direct; and
- (e) reinstate any objection or caveat lodged in respect of the application.

(5) Notwithstanding anything in this Act, if for any special reason the Recorder thinks it desirable to do so, he or she may dispense with a requirement to advertise or to give notice under this Act.

(6) If the Recorder considers it desirable in the interests of procedural fairness and the administration of this Act, he or she may require a person depositing or lodging an application, dealing, instrument or other document to do one or more of the following:

- (a) advertise in one or more newspapers published and circulating in Tasmania, as determined by the Recorder;
- (b) give notice to a person the Recorder considers to have an interest in the application, dealing, instrument or other document;
- (c) post notice of the application, dealing, instrument or other document on the relevant land.

169.

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169A. Power of Recorder to approve forms

- (1) The Recorder may approve forms for use under this Act, the Powers of Attorney Act 2000 , the Public Trusts Act 1882 , the Registration of Deeds Act 1935 , the Strata Titles Act 1998 and any other law which requires documents to be lodged with the Recorder.
- (2) An approval of a form does not have effect until 14 days after notice of the approval is given and published in accordance with subsection (3) .
- (3) Where the Recorder approves a form under subsection (1) –
 - (a) the Recorder must give written notification of the approval to the Law Society of Tasmania and cause notice of the approval to be published –
 - (i) in the publication known as the Land Titles Office Practice Book published by the Recorder and in any other publication published by the Recorder relating to the practice and procedure of the Land Titles Office; and
 - (ii) in each daily newspaper circulating generally in Tasmania with a statement that any new or amended form is available from the Land Titles Office; and
 - (iii) in such other manner as the Recorder thinks fit; and
 - (b) the Recorder may supply the form bearing the seal of office used under section 6 , free of charge or at a moderate charge; and
 - (c) the Recorder may license persons to print and sell the form bearing the seal of office used under section 6 ; and
 - (d) any previous approval under subsection (1) of a form for the same purpose ceases to have any force or effect.
- (4) Where the Recorder approves a form under subsection (1) , the Recorder may register, record or grant, as the case may be, any dealing or instrument that is lodged within a period of 12 months after the approval and takes the form required immediately before the approval.
- (5) The Recorder may, on receipt of the prescribed fee –
 - (a) approve a form that has been prepared by a person with the object of selling it for use by other persons; and
 - (b) license that person to print and sell the form being the seal of office used under section 6 .
- (6) Subject to subsection (11) , where the Recorder approves a form under subsection (5) , any previous approval under that subsection of a form for the same purposes ceases to have any force or effect.
- (7) Where the Recorder approves a form under subsection (5) , the Recorder may register, record or grant, as the case may be, any dealing or instrument that is lodged within a period of 12 months after the approval and takes the form required immediately before the approval.
- (8) The Recorder may, on receipt of the prescribed fee –
 - (a) approve a form under subsection (1) ; and

(b) authorise a person to print the form, bearing the seal of office used under section 6 , for use by that person.

(9) Subject to subsection (11) , where the Recorder approves a form under subsection (8) for use by a person, any previous approval under that subsection of a form for use by that person for the same purpose ceases to have effect.

(10) Where the Recorder approves a form under subsection (8) , the Recorder may register, record or grant, as the case may be, any dealing or instrument that is lodged within the period of 12 months after the approval and takes the form required immediately before the approval.

(11) A form approved under subsection (1) , (5) or (8) is to specify –

(a) the full names of the parties to the dealing to which the form relates; and

(b) a description of the land affected by the dealing; and

(c) the nature of the transaction to be effected by the dealing –

and on any such approval, the Recorder may register, record or grant, as the case may be –

(d) any dealing or instrument that the Recorder is satisfied –

(i) takes the form required by this Act at the time of its execution; or

(ii) is in accordance with a form previously approved under this section; or

(e) any dealing or instrument that contains departures, otherwise than in matters of substance, from an approved form but is sealed with the seal of office used under section 6 as if it were in an approved form.

169B. False representation as to approved forms

(1) If a person falsely represents that a form has been approved for use as mentioned in section 169A , that person must indemnify any other person who suffers loss, damage or deprivation in relying on the form.

(2) An indemnity under subsection (1) does not create any right to compensation from the assurance fund.

169C. Recording of common provisions

(1) A person may lodge with the Recorder a memorandum in the approved form containing one or more provisions which are intended for inclusion in dealings and instruments to be lodged subsequently for registration.

(2) The Recorder may retain a memorandum lodged under subsection (1) .

(3) The Recorder may prepare and retain a memorandum containing any provisions which seem appropriate for inclusion in dealings and instruments to be lodged subsequently for registration.

(4) A memorandum retained by the Recorder pursuant to this section is to be taken, for the purposes of section 36 , to be part of the Register.

169D. Incorporation of common provisions

A dealing or instrument lodged with the Recorder may incorporate a common provision lodged with the Recorder by reference to the provision in a way sufficient to identify it clearly.

169E. Prescribed fees

(1) Subject to section 169EA , the fees prescribed in Schedule 3 are payable under this Act for the matters to which they respectively relate.

(2) A prescribed fee –

(a) is to be paid to the Recorder or an agent appointed by the Recorder; and

(b) may be paid in any manner approved by the Recorder.

(3) A person may, if so authorised by the Recorder or an agent appointed by the Recorder for the purpose, pay a prescribed fee after the transaction to which it relates.

169EA. Exemptions from fees

(1) A fee is not payable under this Act for –

(a) a dealing for the purposes of, or in accordance with –

(i) an agreement, deed or other instrument referred to in section 90(1) of the *Family Law Act 1975* of the Commonwealth; or

(ii) an order made under the Relationships Act 2003 or a prescribed agreement; or

(b) a deed or other instrument executed by a person for the purposes of, or in accordance with, an order or financial agreement made under Part VIIIA of the *Family Law Act 1975* of the Commonwealth.

(2) In this section –

prescribed agreement means an agreement that is –

(a) a personal relationship agreement or separation agreement within the meaning of the Relationships Act 2003 ; and

(b) in accordance with paragraphs (b) , (c) , (d) and (e) of section 62(1) of that Act .

169F. Validation

No regulation that prescribed a fee for the purposes of this Act before the commencement of the Registration and Related Fees Act 2001 is to be taken as having ever been invalid by reason only of the amount of the fee so prescribed.

170. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting subsection (1) , the regulations may –

(a) prescribe the manner in which dealings are to be lodged for registration and the circumstances in which the Recorder may refuse to accept dealings for lodgment; and

(b) provide for the conduct of official searches of the Register, including provision for compensation from the assurance fund for a person suffering loss or damage arising from an error in an official search and exonerating a legal practitioner or other person in respect of loss that may arise from an error in an official search; and

(c) require any approved form or other form approved by the Recorder to be in the form of, or to have the same effect as, a statutory declaration; and

(d) require the substantiation by statutory declaration of all or any information given in an approved form which is not in the form of a statutory declaration; and

(e) provide for the meaning to be attached to a provision specified in a particular form in a dealing; and

(f)

(g)

(h)

(i) prescribe the fees, charges and expenses to be paid by persons licensed to print and sell approved forms, whether fixed by reference to the period of the licence, the number of forms sold or to be sold, or otherwise; and

(j) provide for the approval and sealing of forms for use under this Act, including fees to be paid for the approval and sealing.

(3) Subsection (2) (e) does not apply to a conveyance or other deed referred to in section 75A of the Conveyancing and Law of Property Act 1884 so far as the conveyance or deed contains the short provisions specified in Schedule 6 to that Act.

170A. Combination of forms

(1) An approved form may be combined with, or may be lodged simultaneously with, a form approved by the Recorder for the purposes of section 121 of the Local Government Act 1993 .

(2) If a form under section 121 of the Local Government Act 1993 does not comply with that Act, the dealing to which it relates is taken to be not in accordance with this Act.

(3) The Recorder may, of his or her own motion, correct a patent error in a form under section 121 of the Local Government Act 1993 by notation in the margin of the form and, after an error is so corrected, the dealing has the same validity as if the error had not been made.

170B. Duty of Recorder to transmit certain information

(1) The Recorder must, as soon as practicable after receiving a notice under section 121 of the Local Government Act 1993 in relation to land within a municipal area, transmit details of the notice to the general manager of the council in relation to the municipal area.

(2) The Recorder must provide to the Commissioner of State Revenue –

(a) the information, as specified in a notice received by the Recorder under section 121 of the Local Government Act 1993 ; and

(b) the information, about the dealing to which the notice relates –

that the Commissioner of State Revenue requires for the purposes of any Act related to taxation and requests the Recorder to provide to him or her.

(3) The Recorder must provide to the Valuer-General –

(a) the information, as specified in a notice received by the Recorder under section 121 of the Local Government Act 1993 ; and

(b) the information, about the dealing to which the notice relates –

that the Valuer-General requires for the purposes of the Valuation of Land Act 2001 and requests the Recorder to provide to him or her.

171.

The amendments effected by this section have been incorporated into the authorised version of the appropriate Acts.

172. Transitional provision

(1) Where an application made under Division 12 of Part VI, as in force immediately before the commencement of the Land Titles Amendment (Law Reform) Act 2001 , has not been finally dealt with before that commencement, the Recorder must, on and after that commencement, take whichever of the following courses of action he or she considers to be the more favourable to the applicant:

(a) deal with the application as if that Act had not been enacted;

(b) deal with the application as if it had been made under this Act after that commencement.

(2) Where, immediately before the commencement of this subsection, a form was prescribed and in force under the regulations, that form continues to be in force until the Recorder approves another form to be used in its place under section 169A .

173. Repeal

(1) The Acts specified in Schedule 2 are repealed.

(2) All lands, estates, and interests which at the proclaimed date are subject to any of the Acts repealed by subsection (1) shall be subject to this Act.

SCHEDULE 1 - Consequential Amendments

Section 171

The amendments effected by this Schedule have been incorporated into the authorised version of the appropriate Acts.

SCHEDULE 2 - ACTS REPEALED

Section 173

Year and number of Act	Short title of Act
25 Vict. No. 16	<i>Real Property Act 1862</i>
42 Vict. No. 9	<i>Real Property Act 1878</i>
50 Vict. No. 8	<i>Real Property Act 1886</i>
57 Vict. No. 5	<i>Real Property Act 1893</i>
24 Geo. V No. 26	<i>Real Property (Commonwealth Titles) Act 1933</i>
No. 94 of 1973	<i>Real Property (Special Vesting Orders) Act 1973</i>
No. 56 of 1976	<i>Real Property Act 1976</i>
No. 30 of 1978	<i>Real Property (Special Vesting Orders) Act 1978</i>

SCHEDULE 3 - Prescribed fees

Section 169E

Item	Matter for which fee is payable	Fee \$
	<i>(1) Applications, caveats and dealings</i>	
1.	Lodgment of a dealing, instrument or withdrawal of caveat, request or application (other than an application made by a person for a change of name following a change in the person's family status) or making an entry or entering a memorial or notification for which a fee is not otherwise prescribed	85.50
2.	Lodgment for registration of a memorandum of transfer	131.00
3.	Lodgment of a caveat, discharge of mortgage or discharge of charge	106.00
4.	Lodgment for registration of a memorandum granting land of the Crown	131.00
	<i>(2) Copies</i>	
5.	Application or request for a copy of a single document, dealing, instrument, plan, strata plan, building title plan or diagram or part of a single document, dealing, instrument, plan, strata plan, building title plan or diagram or the field notes or survey notes of a single plan or diagram –	
	(a) if the copy is prepared by a photocopying process, transparency process, electronic process or facsimile process, for a copy of a single folio of the Register, dealing, instrument or document or part of a single folio of the Register, dealing, instrument or document	20.00
	(b) if a typed copy is requested	20.00
	In addition, for each hour or part of an hour to prepare the copy	20.00
	(c) in addition to any fee under paragraph (a) or (b) , if the application or request is received, or the copy is to be despatched, by post, and no reference number or an incorrect reference number is quoted	30.00
	In addition, for each hour or part of an hour taken to search for the copy	20.00
	<i>(3) Certification</i>	
6.	Application or request for the certification by the Recorder, Deputy Recorder or Assistant Recorder of a copy of a single document, dealing, instrument, plan or diagram or part of a single document, dealing, instrument, plan or diagram or the field notes or survey notes of a single plan or diagram, either as a machine copy or print made from a transparency	50.50
	In addition, for each hour or part of an hour taken to prepare the copy for certification	30.00
	<i>(4) Notices</i>	
7.	Lodgment of a priority notice or notice of withdrawal of priority notice	15.10
8.	For preparing and serving notice to a caveator of intention to register a dealing under section 136	85.50
	<i>(5) Maps and plans</i>	
9.	Lodgment of each map, plan or building title plan	505.00
	In addition, for each parcel shown on that map, plan or building title plan	50.50
10.	Lodgment of a plan prepared solely for the purpose of placing survey information on public record	50.50
11.	Lodgment of an application to amend a plan	505.00
	In addition, if the application involves the amendment of the Register, for each certificate of title to issue pursuant to such amendment	50.50
12.	Supply of a plan for which a fee is not otherwise prescribed	505.00

	In addition, for each hour or part of an hour taken to prepare the plan	50.50
	(6) Sealing of instruments	
13.	Examination and sealing of an instrument or dealing not prepared on a form bearing the Recorder's seal	85.50
14.	Lodgment of a request for the sealing of a printed form	85.50
	(7) Miscellaneous	
15.	Application or request to search a single folio of the Register (including the face plan of the plan supporting that folio), dealing, instrument or document	20.00
16.	Request to search for and supply copies of plans and field notes relevant to one specified proposed survey	30.00
	In addition, for each hour or part of an hour taken to comply with the request	20.00
17.	Exhibiting deeds surrendered by the applicant	30.00
18.	Each requisition made by the Recorder –	
	(a) for payment of additional fees	15.10
	(b) under section 50	30.00
	(c) under section 143B	30.00
19.	Lodgment of requisition for statement of grounds under section 144	85.50
20.	Lodgment of objection to correction of plan or accompanying document under section 143C	30.00