

Authorised Version No. 177
Transfer of Land Act 1958
No. 6399 of 1958

Authorised Version incorporating amendments as at
14 February 2018

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Transfer of Land Act 1958

No. 6399 of 1958

Authorised Version incorporating amendments as at
14 February 2018

An Act to consolidate the Law relating to the Simplification of
the Title to and the Dealing with Estates and Interests in Land.

**BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):**

1 Short title and commencement

This Act may be cited as the **Transfer of Land
Act 1958** and shall come into operation on a day
to be fixed by proclamation of the Governor in
Council published in the Government Gazette.

* * * * *

S. 1
amended by
Nos 6867
s. 2(Sch. 1),
9976 s. 11,
7/1986 s. 4(2).

S. 2
repealed by
No. 42/2017
s. 7

3 Application of other laws etc.

No. 5842 s. 3.

- (1) Except so far as is expressly enacted to the
contrary no Act or rule of law, so far as
inconsistent with this Act, shall apply or be
deemed to apply to land under the operation of
this Act; but save as aforesaid any Act or rule of
law relating to land, unless otherwise expressly or
by necessary implication provided by this or any
other Act, shall apply to land under the operation
of this Act whether expressed so to apply or not.

S. 3(2)
substituted by
No. 85/1998
s. 4.

(2) Save as otherwise expressly provided, Part I of the **Property Law Act 1958** does not apply to land which is under the operation of this Act.

(3) This Act applies to and in relation to the Crown, whether in right of the State or of the Commonwealth.

S. 3(4)
inserted by
No. 18/1989
s. 4 (as
amended by
No. 48/1991
s. 70(a)).

(4) This Act as amended by sections 5, 7, 8, 9, 10 and 12 of the **Transfer of Land (Computer Register) Act 1989** applies to matters, circumstances and things existing or arising before, on or after the date of commencement of this subsection.

No. 5842 s. 4.

4 Definitions

(1) In this Act unless inconsistent with the context or subject-matter—

S. 4(1) def. of
administrative notice
inserted by
No. 70/2014
s. 3.

administrative notice means a notice in the approved form;

S. 4(1) def. of
allotment
inserted by
No. 7814 s. 2,
repealed by
No. 53/1988
s. 45(Sch. 2
item 79).

* * * * *

annuity means a sum of money payable periodically and charged on land under the operation of this Act by an instrument of charge;

S. 4(1) def. of
approved form
inserted by
No. 9976
s. 4(a),
amended by
No. 47/2007
s. 18.

approved form means, subject to section 121, a form approved by the Registrar for the purposes of the provision in which the expression appears;

approved or registered in relation to a plan, means approved or registered by the Registrar under any Act;

S. 4(1) def. of *approved or registered* inserted by No. 53/1988 s. 45(Sch. 2 item 79A) (as amended by No. 47/1989 s. 18(1)(n)).

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S. 4(1) def. of *Assurance Fund* repealed by No. 9861 s. 3(1).

authorised representative means a person who—

S. 4(1) def. of *authorised representative* inserted by No. 70/2014 s. 3.

- (a) is entitled to conduct a conveyancing transaction in accordance with the law of this State; and
- (b) is representing a party to a conveyancing transaction; and
- (c) has entered into a client authorisation with that party in accordance with Division 2A of Part V;

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S. 4(1) def. of *bankruptcy* repealed by No. 42/2017 s. 8(a).

building subdivision means—

S. 4(1) def. of *building subdivision* inserted by No. 6646 s. 2(a), substituted by No. 7551 s. 49(a)(i).

- (a) the subdivision of a building or buildings in accordance with a plan of subdivision approved by the Registrar pursuant to this Act; or
- (b) a strata subdivision of land a plan of which has been approved by the Registrar pursuant to this Act;

S. 4(1) def. of
client
authorisation
inserted by
No. 70/2014
s. 3.

client authorisation has the meaning given by
section 91K;

S. 4(1) def. of
computer
inserted by
No. 18/1989
s. 5(a),
repealed by
No. 42/2017
s. 8(a).

* * * *

S. 4(1) def. of
computer
print-out
inserted by
No. 18/1989
s. 5(a),
repealed by
No. 42/2017
s. 8(a).

* * * *

S. 4(1) def. of
conversion
scheme
inserted by
No. 85/1998
s. 5(1),
amended by
No. 80/2009
s. 3(a).

conversion scheme means a procedure for
bringing land under this Act set out in
section 14 or 15;

S. 4(1) def. of
conveyancer
inserted by
No. 75/2006
s. 192(Sch. 2
item 6.2) (as
amended by
No. 17/2007
s. 33).

conveyancer means a licensee under the
Conveyancers Act 2006;

S. 4(1) def. of
conveyancing
transaction
inserted by
No. 70/2014
s. 3.

conveyancing transaction has the same meaning
as it has in the Electronic Conveyancing
National Law (Victoria);

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court means court of competent jurisdiction;

S. 4(1) def. of *Court* amended by Nos 16/1986 s. 22(a), 19/1989 s. 16(Sch. item 53), 57/1989 s. 3(Sch. item 201.1(a)), substituted as *court* by No. 80/2009 s. 3(b).

Crown grant means the grant by Her Majesty of land whether in fee or for years;

* * * *

S. 4(1) def. of *Division* repealed by No. 18/1989 s. 5(b).

* * * *

S. 4(1) def. of *electronic instrument* inserted by No. 23/2004 s. 3, repealed by No. 7/2013 s. 16(1).

* * * *

S. 4(1) def. of *electronic lodgement network* inserted by No. 23/2004 s. 3, repealed by No. 7/2013 s. 16(1).

ELN means ELN within the meaning of the Electronic Conveyancing National Law (Victoria);

S. 4(1) def. of *ELN* inserted by No. 7/2013 s. 11.

S. 4(1) def. of
*entitled
person*
inserted by
No. 85/1998
s. 5(1).

encumbrance in respect of any land includes any estate interest mortgage charge right claim or demand which is or may be had made or set up in to upon or in respect of the land;

entitled person means a person who is entitled under section 10 to have land brought under this Act;

S. 4(1) def. of
*folio of the
Register*
inserted by
No. 18/1989
s. 5(c).

folio of the Register means a folio of the Register under section 27;

grantor in relation to an annuity means the proprietor of land charged with the payment of an annuity;

S. 4(1) def. of
identified folio
inserted by
No. 85/1998
s. 5(1).

identified folio means a folio of the Register created pursuant to section 26E;

S. 4(1) def. of
instrument
amended by
Nos 18/1989
s. 5(d),
80/2009
s. 3(c),
42/2017
s. 8(b).

instrument includes every document registered or capable of registration under this Act or in respect of which any recording is, by this Act or any other Act, directed, required or permitted to be made in the Register, and a plan within the meaning of the **Subdivision Act 1988**, where the context permits;

S. 4(1) def. of
land
amended by
Nos 92/1990
s. 128(Sch. 1
item 29),
63/2006
s. 61(Sch.
item 30),
substituted by
No. 78/2012
s. 27.

land includes any estate or interest in land but does not include—

- (a) an interest in land arising under the **Mineral Resources (Sustainable Development) Act 1990**; or
- (b) a carbon sequestration right or soil carbon right granted in relation to Crown land under a Carbon Sequestration Agreement within the

meaning of the **Climate Change Act 2010**;

legal practitioner means an Australian legal practitioner;

S. 4(1) def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 107.1), amended by No. 17/2014 s. 160(Sch. 2 item 98.1).

legal practitioner's certificate means a certificate under section 16;

S. 4(1) def. of *legal practitioner's certificate* inserted by No. 35/1996 s. 453(Sch. 1 item 83.1(a)), amended by No. 85/1998 s. 5(2)(a).

licensed surveyor has the same meaning as in the **Surveying Act 2004**;

S. 4(1) def. of *licensed surveyor* amended by Nos 9180 s. 2(1), 47/2004 s. 71(Sch. item 6.1(a)).

* * * *

S. 4(1) def. of *limited folio* inserted by No. 18/1989 s. 5(e), repealed by No. 85/1998 s. 5(2)(b).

* * * *

S. 4(1) def. of *manual folio* inserted by No. 18/1989 s. 5(e), repealed by No. 42/2017 s. 8(a).

S. 4(1) def. of
ordinary folio
inserted by
No. 18/1989
s. 5(e),
substituted by
No. 85/1998
s. 5(2)(c).

ordinary folio means a folio of the Register that is
not a provisional folio or an identified folio;

S. 4(1) def. of
ordinary title
inserted by
No. 128/1986
s. 4(a),
repealed by
No. 18/1989
s. 5(b).

* * * *

S. 4(1) defs of
Part and
prescribed
repealed by
No. 18/1989
s. 5(b).

* * * *

S. 4(1) def. of
priority notice
inserted by
No. 70/2014
s. 3.

priority notice means a notice described in
section 91C;

proprietor means any person seised or possessed
of or entitled to any estate or interest in land
and includes any person who is the donee of
a power to appoint or dispose thereof;

S. 4(1) def. of
*provisional
folio*
inserted by
No. 85/1998
s. 5(1).

provisional folio means a folio of the Register on
which there is recorded—

- (a) a warning in the form of Part III of the
Fifth Schedule; or
- (b) a warning in the form of Part IV of the
Fifth Schedule; or
- (c) a warning in the form of Part III of the
Fifth Schedule and a warning in the
form of Part IV of the Fifth Schedule;
or

-
- (d) a warning in the form of Part IV of the Fifth Schedule and a warning in the form of Part V of the Fifth Schedule; or
- (e) a warning in the form of Part V of the Fifth Schedule;

* * * * *

S. 4(1) def. of *qualified folio* inserted by No. 18/1989 s. 5(f), repealed by No. 85/1998 s. 5(2)(d).

record of dealings means the record of dealings under section 27C;

S. 4(1) def. of *record of dealings* inserted by No. 18/1989 s. 5(f).

* * * * *

S. 4(1) def. of *qualified title* inserted by No. 128/1986 s. 4(b), repealed by No. 18/1989 s. 5(b).

* * * * *

S. 4(1) def. of *recorded common provision* inserted by No. 9976 s. 4(b), repealed by No. 42/2017 s. 8(a).

Register means the Register of land kept under section 27;

S. 4(1) def. of *Register* inserted by No. 80/2009 s. 3(d).

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S. 4(1) def. of
*registered
proprietor*
amended by
Nos 18/1989
s. 12(Sch. 1
item 1),
85/1998
s. 5(2)(e),
substituted by
No. 42/2017
s. 8(c).

registered proprietor means a person registered in the Register (other than on an identified folio) as the proprietor of any estate or interest in land;

S. 4(1) def. of
Registrar
amended by
No. 9324
s. 2(1).

Registrar means the Registrar of Titles under this Act and includes any Deputy Registrar of Titles and any Assistant Registrar of Titles;

S. 4(1) def. of
*registry
instrument*
inserted by
No. 7/2013
s. 11,
substituted by
No. 7/2013
s. 16(2).

registry instrument means instrument;

S. 4(1) def. of
Regulations
repealed by
No. 18/1989
s. 5(b).

* * * * *

S. 4(1) def. of
*relevant
person*
inserted by
No. 70/2014
s. 3.

relevant person, in Division 2B of Part V, means a person who signs, or purports to sign, an instrument or other document in connection with a conveyancing transaction;

S. 4(1) def. of
reproduction
inserted by
No. 18/1989
s. 5(g),
repealed by
No. 69/2009
s. 54(Sch. Pt 1
item 58.1).

* * * * *

residual land means—

- (a) in respect of a building subdivision other than a strata subdivision, all the land comprised in the subdivision which is not included in any of the several stratum estates; or
- (b) in respect of a strata subdivision, so much of the land shown on a plan of strata subdivision as is for the time being described by legend or otherwise as common property.

S. 4(1) def. of *residual land* inserted by No. 6646 s. 2(b), substituted by No. 7551 s. 49(a)(ii), amended by No. 8181 s. 2(1)(Sch. item 184).

* * * * *

S. 4(1) def. of *Schedule* repealed by No. 18/1989 s. 5(b).

* * * * *

S. 4(1) def. of *seal of the Office of Titles* inserted by No. 9976 s. 4(c), repealed by No. 42/2017 s. 8(a).

search of title means a search under section 26J;

S. 4(1) def. of *search of title* inserted by No. 128/1986 s. 4(c), substituted by No. 85/1998 s. 5(2)(f).

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S. 4(1) def. of
*service
company*
inserted by
No. 6646
s. 2(c),
amended by
Nos 7551
s. 49(a)(iii),
53/1988
s. 45(Sch. 3
item 77) (as
amended by
No. 47/1989
s. 23(1)(2)),
69/2006 s. 224
(Sch. 3
item 10.1),
repealed by
No. 70/2013
s. 3(Sch. 1
item 56(a)).

* * * * *

S. 4(1) def. of
*service
agreement*
inserted by
No. 6646
s. 2(c).

service agreement, in relation to a building subdivision, means an agreement entered into or to be entered into by the proprietor of a stratum estate in the subdivision and the service company as to their respective rights and obligations in relation to or in connexion with any of the purposes referred to in the interpretation of "service company";

S. 4(1) def. of
*service
company*
inserted by
No. 70/2013
s. 3(Sch. 1
item 56(b)).

service company, in respect of a building subdivision, means a company or other body corporate which was or is formed or incorporated or which operates or is intended to operate for the purpose of carrying out the common purposes of the proprietors of the several stratum estates in the subdivision including, without limiting the generality of the foregoing, the provision of common services, the maintenance repair and insurance against fire of the building or buildings as a whole and the control and maintenance of the residual land but does not include an owners corporation within the

meaning of the **Owners Corporations Act 2006**;

sheriff includes the sheriff and any deputy sheriff or person appointed to execute any process of execution under any Act of the Victorian Parliament or of the Parliament of the Commonwealth of Australia;

S. 4(1) def. of *sheriff* amended by No. 110/1986 s. 140(2).

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S. 4(1) def. of *solicitor's certificate* inserted by No. 128/1986 s. 4(d), repealed by No. 35/1996 s. 453(Sch. 1 item 83.1(b)).

specified dealing, in Part II, means—

- (a) an instrument of transfer of land in an appropriate approved form; or
- (b) a conveyance in fee simple of land; or
- (c) a mortgage in fee simple of land; or
- (d) a mortgage of the equity of redemption in land; or
- (e) an assignment of a possessory interest in land (whether or not that land can be lawfully dealt with in accordance with section 8A of the **Sale of Land Act 1962** without being subdivided)—

S. 4(1) def. of *specified dealing* inserted by No. 85/1998 s. 5(1).

but does not include a reconveyance or a conveyance in the nature of a discharge of mortgage;

strata subdivision means a subdivision of land by sale transfer or partition into two or more units or into two or more units and common property whether or not any unit is on the same level as any other unit; and **subdivide in strata** has a corresponding meaning;

S. 4(1) def. of *strata subdivision* inserted by No. 7551 s. 49(a)(iv).

S. 4(1) def. of
stratum
inserted by
No. 7551
s. 49(a)(iv).

stratum means a part of land consisting of a space of any shape below, on, or above the surface of the land, or partly below and partly above the surface of the land, all the dimensions of which are limited; and "strata" is the plural of "stratum";

S. 4(1) def. of
stratum estate
inserted by
No. 6646
s. 2(d),
amended by
No. 7272
s. 8(1),
substituted by
No. 7551
s. 49(a)(v).

stratum estate means—

- (a) an estate in fee-simple in an allotment in a building subdivision above or below or between certain levels such allotment being a part of a building or parts of a building or buildings (together with any land surrounding or adjacent thereto) intended for separate occupation; or

- (b) an estate in fee-simple in a unit;

S. 4(1) def. of
subscriber
inserted by
No. 70/2014
s. 3.

subscriber has the same meaning as it has in the Electronic Conveyancing National Law (Victoria);

S. 4(1) def. of
subsisting interest
inserted by
No. 85/1998
s. 5(1).

subsisting interest, in Part II, in relation to land, means—

- (a) an estate or interest in land that was in existence at the date on which a provisional folio or identified folio of the Register was first created for the land under Division 3 of that Part; or
- (b) any interest by prescription that was in existence or being acquired at that date;

S. 4(1) def. of
survey
amended by
Nos 9180
s. 2(1),
47/2004
s. 71(Sch.
item 6.1(b)).

survey has the same meaning as in the **Surveying Act 2004**;

Transfer of Land Act 1958
No. 6399 of 1958

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S. 4(1) def. of
sworn
valuator
inserted by
No. 6653
s. 16(a),
repealed by
No. 91/1994
s. 36(10).

transmission means the acquiring of any estate or interest in land consequent on the death will intestacy or bankruptcy of a registered proprietor;

unit means a stratum which is shown as a unit on a plan of strata subdivision approved by the Registrar pursuant to section 97 and includes a unit specified as an accessory unit on any such plan; and

S. 4(1) def. of
unit
inserted by
No. 7551
s. 49(a)(vi).

accessory unit means a unit intended for separate ownership and use with any other unit or units as a garden, garage, car-parking space, storage space, swimming pool, laundry, stairway or passage, utility space, or for any other like purpose or partly for one and partly for any other like purpose.

S. 4(1) def. of
accessory
unit
inserted by
No. 7551
s. 49(a)(vi).

- (2) In and for the purposes of this Act unless inconsistent with the context or subject-matter any description of or reference to any person as proprietor transferor transferee mortgagor mortgagee annuitant grantor caveator lessor or lessee or as seised of or having or taking any estate or interest in land shall extend to his executors administrators successors transferees and assigns to the intent that every right power authority liability or obligation vested in or imposed on any such person by or under this Act shall devolve upon any such executor administrator successor transferee or assign.

Part I—The Office of Titles

5 Registrar of Titles

No. 5842 s. 5.

S. 5(1)
amended by
No. 9019
s. 2(1)(Sch.
item 226),
substituted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 207).

- (1) A Registrar of Titles may be employed under Part 3 of the **Public Administration Act 2004** to have the charge and control of the Office of Titles and to carry out the duties and functions vested by or under this or any other Act in the Registrar of Titles.

S. 5(2)
amended by
Nos 9019
s. 2(1)(Sch.
item 226),
9324 s. 2(2)(a),
substituted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 207).

- (2) Any Deputy Registrars of Titles and any Assistant Registrars of Title and other employees that are necessary for the purposes of this Act may be employed under Part 3 of the **Public Administration Act 2004**.

S. 5(3)
amended by
No. 9324
s. 2(2)(b),
substituted by
No. 10128
s. 6(1).

- (3) Anything by this or any other Act appointed or authorized or required to be done or signed or initialled by the Registrar may be done or signed or initialled by any such Deputy Registrar or Assistant Registrar and shall be as valid and effectual as if done or signed or initialled by the Registrar.
- (4) Any reference to the Commissioner of Titles in any Act Order in Council regulation instrument or document shall be deemed and taken to refer to the Registrar of Titles unless the context otherwise requires.

6 Certain signatures to be judicially noticed

No. 5842 s. 6.

(1) All courts judges and persons acting judicially shall take judicial notice of the signature of the Registrar and of any Deputy Registrar of Titles or Assistant Registrar of Titles.

S. 6(1)
amended by
No. 9324
s. 2(3)(a).

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S. 6(2)
amended by
No. 9324
s. 2(3)(b),
repealed by
No. 80/2009
s. 4.

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S. 6(3)
amended by
No. 9324
s. 2(3)(c),
repealed by
No. 80/2009
s. 4.

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S. 7
repealed by
No. 6653
s. 16(b),
new s. 7
inserted by
No. 18/1989
s. 6,
amended by
Nos 46/1998
s. 7(Sch. 1),
10/2005
s. 3(Sch. 1
item 22),
repealed by
No. 42/2017
s. 9.

Part II—Bringing land under the Act

Division 1—General

No. 5842
ss 8–13,
15–26.
Pt 2
(Headings
and ss 8–26)
amended by
Nos 7332
s. 2(Sch. 1
item 112),
8091 s. 3, 9075
s. 5(1), 9976
s. 11, 128/1986
ss 5, 12(a)–(f),
55/1987
s. 57(3)(Sch. 5
item 56),
18/1989
s. 12(Sch. 1
items 2–42),
45/1994
s. 42(Sch.
item 10),
35/1996
s. 453(Sch. 1
items 83.2–
83.7),
substituted as
Pt 2
(Headings
and
ss 8–26W) by
No. 85/1998
s. 6.

S. 8
substituted by
No. 85/1998
s. 6.

S. 8(2)
substituted by
Nos 49/2001
s. 4(1),
39/2006 s. 3.

S. 8(3)
repealed by
No. 49/2001
s. 4(2).

8 Land granted by Crown to be subject to this Act

- (1) All unalienated lands of the Crown shall, when alienated in fee or by way of perpetual lease or for years, be under the operation of this Act.
- (2) The Crown grant of that land must be delivered to the Registrar.

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9 Bringing land under the Act

S. 9 (Heading)
inserted by
No. 42/2017
s. 3(1).

S. 9
substituted by
No. 85/1998
s. 6.

- (1) The Registrar must bring under the operation of this Act all land which has been granted by the Crown for an estate in fee simple and is not under the operation of this Act.
- (2) The Registrar may bring land under the operation of this Act by the creation of an ordinary folio, a provisional folio or an identified folio under this Part.
- (3) The Registrar may take all necessary steps to bring land under the operation of this Act.

S. 9(1)
amended by
No. 42/2017
s. 3(2).

S. 9(3)
inserted by
No. 42/2017
s. 3(3).

10 Who may bring land under this Act?

S. 10
substituted by
No. 85/1998
s. 6.

- (1) Any of the following persons is entitled under this Part to have land brought under this Act—
 - (a) the person claiming to be the owner of the fee simple either at law or in equity;
 - (b) persons who collectively claim to be the owners of the fee simple either at law or in equity;
 - (c) persons who have the power of appointing or disposing of the fee simple;
 - (d) trustees for the sale of the fee simple, but where any previous consent to their selling is requisite the proposal to bring land under this Act must first be consented to by the persons required to give that consent;

- (e) the guardian of any minor or administrator of any represented person if the guardian or administrator directs that the minor or represented person is to be recorded as the registered proprietor on the relevant folio of the Register;
- (f) a tenant for life within the meaning of the **Settled Land Act 1958**, if the tenant for life directs that the trustees of the settlement within the meaning of that Act are to be recorded as registered proprietor on the relevant folio of the Register and the trustees consent to the proposal to bring the land under this Act.

(2) Despite subsection (1)—

- (a) a mortgagor is not entitled to apply under section 14, 15 or 23 to bring land under this Act unless the mortgagee consents to the application; and
- (b) a mortgagee is not entitled to lodge a deed, conveyance or instrument under section 22 or apply under section 14, 15 or 23 to bring land under this Act unless—
 - (i) in the case of the exercise of a power of sale, there is a direction that the relevant folio of the Register is to be created in the purchaser's name; and
 - (ii) in any other case, there is a direction that the relevant folio of the Register is to be created in the mortgagor's name.

S. 10(2)(b)
amended by
No. 80/2009
s. 5.

S. 11
substituted by
No. 85/1998
s. 6.

11 Leased land may be brought under the Act

- (1) Land leased for a term of years of which at least 10 years are unexpired, or leased for years determinable with a life or lives, may be brought under this Act.

- (2) The provisions of this Act relating to freehold land extend and apply so far as applicable and with any adaptations that are necessary to the bringing of leasehold land under this Act.
- (3) Every folio of the Register for leasehold land is subject to the rights and powers of the lessor or other proprietor of the reversion immediately expectant on the term.

Division 2—On legal practitioner's certificate

12 Choice of conversion schemes

- (1) An entitled person who wishes to have land brought under this Act may use the procedure in any of the conversion schemes under this Division.
- (2) If a person uses the procedure in one conversion scheme but fails to bring land under this Act this does not stop the person trying to have the land brought under this Act by means of any other conversion scheme or under Division 3.
- (3) An entitled person may use the procedure in any of the conversion schemes for the creation of an ordinary folio or provisional folio under this Division in respect of land even if a provisional folio or identified folio has been created for the land under Division 3 and for that purpose this Division applies as if any reference to the bringing of land under this Act were a reference to the creation of an ordinary folio or provisional folio under this Division.

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S. 12
substituted by
No. 85/1998
s. 6.

S. 13
substituted by
No. 85/1998
s. 6,
repealed by
No. 80/2009
s. 6.

S. 14
substituted by
No. 85/1998
s. 6.

14 Application (non-survey) conversion scheme

S. 14(2)
amended by
No. 42/2017
s. 10(1).

- (1) An entitled person may apply under this section to the Registrar to have the land brought under this Act.
- (2) An application must be in the approved form and the applicant must lodge with the application—
 - (a) the deeds that relate to the title to the land and that are in the applicant's possession; and
 - (b) the deeds that relate to the title to the land and that the person may compel another person to produce except—
 - (i) deeds which are deposited with the Registrar-General under the **Property Law Act 1958**; and
 - (ii) deeds which are retained by the Registrar under section 26T or any corresponding previous provision; and
 - (c) a search of title; and
 - (d) a legal practitioner's certificate relating to the title to the land.
- (3) The procedure in this section cannot be used to bring land under this Act if the title to the land is claimed by possession.
- (4) If in respect of land the provisions of subsections (1) and (2) are complied with, and the deeds lodged show a good root of title which is at least 30 years old, the Registrar may create—
 - (a) an ordinary folio; or
 - (b) a provisional folio on which there is recorded a warning in the form of Part III of the Fifth Schedule, a warning in the form of Part IV of the Fifth Schedule or both those warnings, as the Registrar considers appropriate.

- (5) An applicant may withdraw an application at any time before the creation of a folio of the Register.
- (6) On the withdrawal of an application, the Registrar must return to the applicant or to the person appearing to be entitled to them the documents lodged in support of the application.

15 Application (survey) conversion scheme

S. 15
substituted by
No. 85/1998
s. 6.

- (1) An entitled person may apply under this section to the Registrar to have the land brought under this Act.
- (2) An application must be in the approved form and the applicant must lodge with the application—
 - (a) a plan of survey of the land (with an abstract of field records) certified by a licensed surveyor or any other plan, diagram or document describing the land which satisfies the Registrar as to description; and
 - (b) the deeds that relate to the title to the land and that are in the applicant's possession; and
 - (c) the deeds that relate to the title to the land and that the person may compel another person to produce except—
 - (i) deeds which are deposited with the Registrar-General under the **Property Law Act 1958**; and
 - (ii) deeds which are retained by the Registrar under section 26T or any corresponding previous provision; and
 - (d) a search of title; and
 - (e) a legal practitioner's certificate relating to the title to the land; and
 - (f) if the applicant's title to the land is claimed by possession, the material on which the legal practitioner's certificate is based.

S. 15(2)
amended by
No. 42/2017
s. 10(1).

- (3) The Registrar must cause notice of the proposed creation of the folio to be given in accordance with section 26Q.
- (4) If in respect of land the provisions of subsection (1) and of subsection (2)(a), (b), (c), (d) and (e) and of sections 26Q and 26R are complied with and the deeds lodged show a good root of title which is at least 30 years old, the Registrar may create—
 - (a) an ordinary folio; or
 - (b) a provisional folio on which there is recorded a warning in the form of Part III of the Fifth Schedule, a warning in the form of Part IV of the Fifth Schedule or both those warnings, as the Registrar considers appropriate.
- (5) If in respect of a title to land claimed by possession, the provisions of subsection (1) and subsection (2)(a), (d), (e) and (f) and of sections 26Q and 26R are complied with, the Registrar may create—
 - (a) an ordinary folio; or
 - (b) a provisional folio on which there is recorded a warning in the form of Part III of the Fifth Schedule, a warning in the form of Part IV of the Fifth Schedule or both those warnings, as the Registrar considers appropriate.
- (6) An applicant may withdraw an application at any time before the creation of a folio of the Register.
- (7) On the withdrawal of an application, the Registrar must return to the applicant or to the person appearing to be entitled to them the documents lodged in support of the application.

16 Legal practitioner's certificate

A legal practitioner's certificate must—

- (a) be prepared and signed by a legal practitioner; and
- (b) be in the appropriate form in Schedule 5A as amended and in force for the time being.

S. 16
substituted by
No. 85/1998
s. 6.

17 Act to apply to conversion scheme land

The land comprised in a provisional folio created under this Division is subject to any warning recorded on the folio and to any qualifications in any warning recorded on the folio, as if the warning were an encumbrance.

S. 17
substituted by
No. 85/1998
s. 6.

18 Power of Registrar to create folio for conversion scheme land and require assurance contribution

- (1) The Registrar may in respect of land which is the subject of a conversion scheme—
 - (a) create an ordinary folio; or
 - (b) create a provisional folio on which the only warning recorded is a warning in the form of Part IV of the Fifth Schedule; or
 - (c) create a provisional folio on which there is recorded a warning in the form of Part III of the Fifth Schedule which mentions—
 - (i) if there is only one qualification in the legal practitioner's certificate relating to the title to the land, that qualification; or
 - (ii) if there is more than one qualification mentioned in the legal practitioner's certificate relating to the title to the land, one or more but not all of those qualifications; or

S. 18
substituted by
No. 85/1998
s. 6.

- (d) create a provisional folio on which there is recorded a warning in the form of Part IV of the Fifth Schedule and a warning in the form of Part III of the Fifth Schedule which mentions—
 - (i) if there is only one qualification in the legal practitioner's certificate relating to the title to the land, that qualification; or
 - (ii) if there is more than one qualification mentioned in the legal practitioner's certificate relating to the title to the land, one or more but not all of those qualifications—

and may require the payment of an assurance contribution.

- (2) This section does not limit section 108(3).

19 In whose name title to issue

- (1) A folio created under a conversion scheme is to be in the name of—
 - (a) the person who in accordance with the documents lodged is entitled to be registered as proprietor of the fee of the land; or
 - (b) if conversion is based on the delivery of a document which is a conveyance of the land by way of mortgage, the person who in accordance with the documents lodged is entitled to be registered as proprietor of the equity of redemption; or
 - (c) if a person mentioned in paragraph (a) or (b) directs the folio to be created in the name of another person, that other person.

S. 19
substituted by
No. 85/1998
s. 6.

- (2) If before a folio of the Register is created under a conversion scheme, the person who is to be recorded as registered proprietor on the folio dies, the folio is to be created recording as registered proprietor the dead person and the land is to pass as if the folio had been created before the person died.

20 Removal of warning relating to subsisting interests

S. 20
substituted by
No. 85/1998
s. 6.

- (1) On the creation of an ordinary folio or provisional folio under this Division in respect of land for which a provisional folio was created under Division 3, the Registrar must delete the warning in the form of Part V of the Fifth Schedule from the folio and make any necessary amendments to the Register.
- (2) On the deletion of the warning from the folio under subsection (1), the land in the folio ceases to be subject to the subsisting interests referred to in that warning.

21 Removal of warnings relating to title

S. 21
substituted by
No. 85/1998
s. 6.

- (1) Land in a provisional folio created under this Division ceases to be subject to the qualifications stated in the legal practitioner's certificate and recorded on the provisional folio at the end of 15 years from the date of creation of the provisional folio.
- (2) When registering a dealing that relates to a provisional folio created under this Division, the Registrar may delete the warning from the folio if satisfied that the land has ceased under subsection (1) to be subject to the qualifications in the legal practitioner's certificate.

Division 3—Without legal practitioner's certificate

S. 22
substituted by
No. 85/1998
s. 6.

22 Lodgment of specified dealing

- (1) An entitled person may lodge with the Registrar a specified dealing relating to the land.
- (2) The person who lodges the specified dealing must lodge—
 - (a) the deed or instrument of transfer, conveyance, mortgage or assignment of possessory interests that comprises the specified dealing; and
 - (b) the last deed or other instrument which indicates the person's entitlement to deal with the land; and
 - (c) a search of title relating to the land.
- (3) An applicant may withdraw the specified dealing at any time before the creation of a folio of the Register.
- (4) On the withdrawal of the specified dealing, the Registrar must return to that person or to the person appearing to be entitled to them the documents lodged under subsection (2).
- (5) For the purposes of any regulations under section 120(2)(b), an instrument of conveyance of the fee simple in land lodged under this section is deemed to be an instrument of transfer of the land.

S. 23
substituted by
No. 85/1998
s. 6.

23 Application for creation of provisional folio

- (1) An entitled person may apply under this section to the Registrar to have land brought under this Act by the creation of a provisional folio.
- (2) An application cannot be made under this section if the entitled person could lodge a specified dealing in respect of the land under section 22.

(3) An application must be in the approved form.

S. 23(3)
amended by
No. 42/2017
s. 10(1).

(4) Except as provided in subsection (5), the applicant must lodge with the application—

- (a) if there has been a dealing in the land by the applicant the deed, instrument or document that comprises the dealing; and
- (b) if the person's entitlement to deal with the land arises from a conveyance or mortgage, the last deed or other instrument which indicates that person's entitlement to deal with the land; and
- (c) if the person's entitlement to deal with the land arises from an assignment of possessory interests, evidence to the satisfaction of the Registrar of the person's entitlement to deal with the land; and
- (d) a search of title relating to the land.

(5) If the application relates to the vesting in fee simple of land in any person or body by order of a court or by or under an Act, the applicant must lodge with the application such information as the Registrar reasonably requires for the creation of the folio.

(6) An applicant may withdraw the application at any time before the creation of a folio of the Register.

(7) On the withdrawal of the application, the Registrar must return to that person or to the person appearing to be entitled to them the documents lodged under subsection (2).

S. 24
substituted by
No. 85/1998
s. 6.

24 Creation of provisional folio

If section 22 or 23 is complied with and the Registrar is satisfied that there is sufficient information available to identify the land and the applicant's interest in the land, the Registrar may create a provisional folio for the land.

S. 25
substituted by
No. 85/1998
s. 6.

25 Warning as to subsisting interests

- (1) The Registrar must record on a provisional folio created under this Division a warning in the form of Part V of the Fifth Schedule.
- (2) The land comprised in a provisional folio created under this Division is subject to any subsisting interests.
- (3) Nothing in subsection (2) affects the operation of section 42(2).
- (4) Section 43 does not operate to defeat any claim based on a subsisting interest affecting the land in a provisional folio created under this Division.

S. 26
substituted by
No. 85/1998
s. 6.

26 Warning as to title dimensions

- (1) The Registrar may record on a provisional folio created under this Division a warning in the form of Part IV of the Fifth Schedule.
- (2) The land comprised in a provisional folio created under this Division on which there is recorded a warning in the form of Part IV of the Fifth Schedule is subject to that warning as if that warning were an encumbrance.

S. 26A
substituted by
No. 85/1998
s. 6.

26A In whose name provisional folio created

- (1) A provisional folio under this Division is to be created in the name of—
 - (a) the person who in accordance with the documents is entitled to be registered as proprietor of the fee of the land; or

- (b) if the creation of the folio is based on the delivery of a document which is a conveyance of the land by way of mortgage, the person who in accordance with the documents lodged is entitled to be registered as proprietor of the equity of redemption; or
 - (c) if a person mentioned in paragraph (a) or (b) directs the folio to be created in the name of another person, that other person.
- (2) If before a provisional folio of the Register is created under this Division, the person who is to be recorded as registered proprietor on the folio dies, the folio is to be created recording as registered proprietor the dead person and the land is to pass as if the folio had been created before the person died.

26B Lodgment of competing interest

S. 26B
substituted by
No. 85/1998
s. 6.

- (1) If a provisional folio has been created under this Division in respect of land and a person other than the registered proprietor or a person claiming through the registered proprietor purports to lodge a specified dealing in respect of the land or any part of the land, the Registrar may refuse to register the specified dealing unless a court declares otherwise.
- (2) The Registrar must give the person who purports to lodge the specified dealing notice of the existence of the provisional folio for the land.
- (3) The person given notice under subsection (2) may apply to a court for a declaration that the land described in the provisional folio is subject to the specified dealing.

S. 26B(1)
amended by
No. 80/2009
s. 7.

S. 26B(3)
amended by
No. 80/2009
s. 7.

S. 26B(4)
amended by
No. 80/2009
s. 7.

- (4) The Registrar must give effect to a declaration of a court under this section.

S. 26C
substituted by
No. 85/1998
s. 6.

**26C Removal of warning as to subsisting interests—
general**

- (1) Land in a provisional folio created under this Division (other than a folio created in respect of a possessory interest) ceases to be subject to the subsisting interests referred to in the warning in the form of Part V of the Fifth Schedule recorded on the folio at the end of 15 years from the date of creation of the provisional folio.
- (2) When registering a dealing that relates to a provisional folio created under this Division the Registrar may delete the warning in the form of Part V of the Fifth Schedule from the folio if satisfied that the land has ceased under subsection (1) to be subject to subsisting interests.

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S. 26D
substituted by
No. 85/1998
s. 6,
repealed by
No. 42/2017
s. 4(1).

S. 26E
substituted by
No. 85/1998
s. 6.

26E Creation of identified folio

- (1) The Registrar may create an identified folio of the Register for land not under the operation of this Act—
- (a) if the Registrar is directed, required or permitted by or under an Act to make a recording in or amendment to the Register in respect of a dealing with or interest in that land (other than a specified dealing) and the Registrar does not consider it appropriate to create a provisional folio or ordinary folio under this Part for that land; or

- (b) if a person lodges with the Registrar an instrument or document showing evidence of that person's interest in that land (other than an instrument or document showing evidence of a specified dealing in the land); or
 - (c) otherwise if sufficient information is available to the Registrar to properly identify the land.
- (2) The Registrar must not create an identified folio unless the Registrar is satisfied that sufficient information is available to the Registrar to properly identify the land.
- (3) This section does not apply to unalienated land of the Crown.
- (4) In this section—
- interest*** includes a judgment, decree, order or process of execution of a court;
- specified dealing*** includes a vesting in fee simple of land in any person or body by order of a court or by or under an Act.

26F Recording of interests on identified folio

S. 26F
substituted by
No. 85/1998
s. 6.

- (1) Any person with or claiming an interest in land described in an identified folio may lodge with the Registrar a notice in an appropriate approved form together with an instrument or document showing evidence of that person's interest in that land (other than a specified dealing in the land).
- (2) The Registrar may record on an identified folio for land—
- (a) an interest in that land for which evidence is given under subsection (1); or
 - (b) any matter, notice or document relating to that land (other than a specified dealing) in respect of which the Registrar is directed,

required or permitted by or under an Act to make a recording in or amendment to the Register.

(3) In this section—

interest includes a judgment, decree, order or process of execution of a court;

specified dealing includes a vesting in fee simple of land in any person or body by order of a court or by or under an Act.

S. 26G
substituted by
No. 85/1998
s. 6.

26G Effect of recording of interest on identified folio

- (1) The recording of an interest in land on an identified folio under section 26F(2)(a) must not be taken to create, pass or confirm that interest or to make any person the registered proprietor under this Act of that interest.
- (2) Section 40 does not apply in respect of an interest in land recorded on an identified folio.
- (3) Section 89 does not apply in respect of land in an identified folio.

S. 26H
substituted by
No. 85/1998
s. 6.

26H Interests in identified folio subject to subsisting interests

- (1) An interest in land recorded on an identified folio is subject to all subsisting interests existing at the time the interest is recorded on the folio.
- (2) Nothing in subsection (1) affects the operation of section 42(2).
- (3) Section 43 does not operate to defeat any claim based on an interest in land recorded in an identified folio or a subsisting interest affecting that land.

26I Priority of interests

Despite anything to the contrary in this Act, the priority of any interest in land recorded on a folio created under this Division in relation to any subsisting interest must be determined as if—

- (a) the land were not under the operation of this Act; and
- (b) the interest could have been registered under section 6 of the **Property Law Act 1958** at the time that it was recorded on the folio and was so registered.

S. 26I
substituted by
No. 85/1998
s. 6.

Division 4—General provisions applying to conversion under this Part

26J Search of title

A search of title—

- (a) must set out in the approved form the results of searches relating to the title to the land; and
- (b) must be prepared and signed in accordance with the regulations.

S. 26J
substituted by
No. 85/1998
s. 6.

S. 26J(a)
amended by
No. 42/2017
s. 10(1).

26K Warnings on provisional folios

- (1) Section 106(1)(c) does not apply to a warning recorded on a provisional folio created under Division 2 or 3.
- (2) If by a wrong description of parcels or of boundaries land is incorrectly included in a provisional folio on which there is recorded a warning in the form of Part IV of the Fifth Schedule, section 42 does not operate to defeat

S. 26K
substituted by
No. 85/1998
s. 6.

S. 26K(1)
amended by
No. 42/2017
s. 5.

any estate or interest in the land adverse to or in derogation of the title of the registered proprietor and not recorded on the provisional folio, whether or not the registered proprietor is a purchaser or mortgagee of that land for value or derives title from such a purchaser or mortgagee.

S. 26L
substituted by
No. 85/1998
s. 6.

26L Land in a provisional folio cannot be subdivided or consolidated

- (1) Despite anything to the contrary in any other Act, land in a provisional folio cannot be subdivided or consolidated with other land while it remains in that folio.
- (2) Subsection (1) does not apply to land in a provisional folio which contains only a warning in the form of Part IV of the Fifth Schedule.
- (3) Nothing in subsection (1) prevents the compulsory acquisition of the land or part of the land in a provisional folio or affects the operation of section 35 of the **Subdivision Act 1988**.

S. 26M
substituted by
No. 85/1998
s. 6.

26M Mortgages

- (1) If land is brought under this Act by the creation of an ordinary folio or provisional folio under Division 2 or 3 and the creation of that folio is based on the delivery of a document which is a conveyance of the land by way of mortgage, the mortgage is deemed to be a mortgage registered under section 74.
- (2) Any second or subsequent conveyance by way of mortgage under the general law of the land in the ordinary folio or provisional folio is deemed to be a second or subsequent mortgage registered under section 74.
- (3) If a second or subsequent mortgage under the general law was registered under the **Property Law Act 1958** before the creation of the ordinary folio or provisional folio and a first or legal

mortgage of the land which was not registered under the **Property Law Act 1958** is deemed under subsection (1) to be registered under this Act, the registered proprietors of the mortgages may apply jointly to the Registrar for the variation of the priority of the mortgages.

- (4) If an application is made under subsection (3), the Registrar may vary the priority of the mortgages between or amongst themselves, on the creation of the ordinary folio or provisional folio.

26N Notice of creation of ordinary folio or provisional folio for land in identified folio

S. 26N
substituted by
No. 85/1998
s. 6.

- (1) Before a provisional folio or an ordinary folio is created under this Part for land in an identified folio, the person seeking the creation of the folio may apply to the Registrar in the appropriate approved form for the giving of a notice under subsection (3) to a person claiming an interest recorded on the identified folio.
- (2) An application under this section must—
- (a) specify the land and the interest in the land in respect of which the application is made; and
 - (b) be supported by a certificate signed by a legal practitioner to the effect that the person claiming the interest recorded on the identified folio does not have the interest claimed.
- (3) On receiving an application and certificate under this section and on being satisfied that the applicant has an interest in the land in respect of which the application is made, the Registrar must give notice to the person claiming the interest recorded on the identified folio.

S. 26N(4)(b)
amended by
No. 80/2009
s. 8(1).

- (4) The notice must state to the effect that the recording of that interest will be deleted from the identified folio on a day specified in the notice unless before that time—
 - (a) the application is abandoned by notice in writing given to the Registrar by or on behalf of the applicant; or
 - (b) notice in writing is given to the Registrar that proceedings in a court to substantiate the claim of the person claiming the interest recorded on the identified folio have commenced.
- (5) The Registrar must not cause a day to be specified in the notice that is less than 30 days after the day on which the notice is served, or if the notice is sent by post, the day on which it is introduced into the course of the post.
- (6) On the specified day, the Registrar must make all necessary amendments to the Register to delete the recording of the interest in respect of which the application is made unless—
 - (a) the application has been abandoned in accordance with subsection (4); or
 - (b) written notice has been given to the Registrar in accordance with subsection (4) that proceedings have commenced.
- (7) An application under this section may be abandoned either wholly or as to part of the land or the interest in the land in respect of which it is made either before or after the notice is given under subsection (3), but, if notice has been given, only with the consent of the person claiming the interest or the agent of that person.

S. 26N(5)
amended by
No. 80/2009
s. 8(2).

- (8) If in proceedings of which notice is given to the Registrar in accordance with subsection (4), the interest of the person bringing the proceedings is not substantiated to the satisfaction of the court—
- (a) the court may make any order in relation to the recording of the interest as the court thinks fit; and
- (b) the Registrar must give effect to that order.
- (9) If there is served on the Registrar a copy of any notice or an office copy of any order of a court disclosing that proceedings of which notice was given in accordance with subsection (4) have been discontinued, withdrawn or struck out or evidence to the satisfaction of the Registrar that those proceedings have been dismissed, the Registrar may make all necessary amendments to the Register to delete the recording of the interest in respect of which the proceedings were commenced.
- (10) This section does not apply to any interest in land created by another Act.

S. 26N(8)
amended by
No. 80/2009
s. 8(3).

S. 26N(8)(a)
amended by
No. 80/2009
s. 8(3).

S. 26N(9)
amended by
No. 80/2009
s. 8(4).

26O Notice of creation of folio under Division 2 for land in provisional folio created under Division 3

S. 26O
substituted by
No. 85/1998
s. 6.

- (1) If a folio of the Register is to be created under a conversion scheme under Division 2 in relation to land for which a provisional folio has been created under Division 3, the Registrar must give notice of the proposed creation of a folio under that Division to the registered proprietor of that provisional folio in accordance with section 26Q.
- (2) The Registrar is not required to give notice under subsection (1) if the registered proprietor of the new folio is the same as the registered proprietor of the folio created under Division 3.

S. 26P
substituted by
No. 85/1998
s. 6.

26P Removal of warning relating to title dimensions

S. 26P(1)
amended by
No. 42/2017
s. 10(1).

- (1) The registered proprietor of the land in a provisional folio on which there is recorded a warning in the form of Part IV of the Fifth Schedule may apply to the Registrar in the approved form to have the warning deleted from the folio.
- (2) An application under subsection (1) must be lodged with a plan of survey of the land (with an abstract of field records) certified by a licensed surveyor.
- (3) If the Registrar is satisfied that the land in the plan of survey represents the land actually and bona fide occupied by the applicant and purporting to be so occupied under the provisional folio, the Registrar may delete the warning from the folio and make any necessary amendments to the Register.
- (4) This section does not prevent an applicant under subsection (1) from including in the application by separate definition in the plan of survey lodged with the application such additional land as the applicant claims by possession or otherwise.
- (5) If an application includes additional land in accordance with subsection (4), the Registrar must cause notice of the proposed creation of the folio to be given in accordance with section 26Q.
- (6) In addition to the requirements of sections 26Q and 26R, the provisions of this Act relating to the granting of vesting orders by the Registrar as are appropriate to land which is, and land which is not under the operation of this Act, apply to the land included in the application.

- (7) This section does not limit section 106(e).
- (8) Section 102 applies to an application under this section as if it referred to an application under this section instead of an application to bring land under this Act.

26Q Notice of creation of folio or removal of warning

S. 26Q
inserted by
No. 85/1998
s. 6.

- (1) The Registrar must cause the notice required to be given to a person under section 15 or 26P in respect of land to be given—
 - (a) by publication at least once in a newspaper circulating in the city of Melbourne or in the district in which the land is situate; and
 - (b) personally or by post—
 - (i) to the occupiers of the land and to the owners and occupiers of contiguous land; and
 - (ii) to such other persons (if any) as the Registrar thinks fit.
- (2) The Registrar must cause the notice required to be given under section 26O to be given personally or by post to the registered proprietor of the land in the provisional folio.
- (3) If the folio to be created or the folio from which the warning is to be removed is or was created on the basis of a claim by possession, the Registrar, in addition to the notice under subsection (1), must cause the person who is or is to be the registered proprietor of the land in the folio to be created or from which the warning is to be removed—

S. 26Q(1)
amended by
No. 42/2017
s. 4(2).

S. 26Q(3)(b)
amended by
No. 80/2009
s. 9(1).

S. 26Q(4)
amended by
No. 80/2009
s. 9(2).

S. 26R
inserted by
No. 85/1998
s. 6.

- (a) to post a notice of the proposal in an appropriate approved form on the land or at a place the Registrar directs; and
- (b) to keep the notice so posted for not less than 30 days prior to the creation of the folio or the removal of the warning.
- (4) A notice under this section must specify a time (being not less than 30 days) after the expiration of which the Registrar may, unless a caveat is lodged forbidding that action, create the relevant folio of the Register for the land or remove the warning from the folio.

26R Caveats

- (1) Any person claiming an estate or interest in the land for which notice is required to be given in accordance with section 26Q(1) may, before the creation of the folio for the land or the removal of the warning, lodge a caveat with the Registrar in an appropriate approved form forbidding the creation of the folio or the removal of the warning.
- (2) The registered proprietor of land to whom notice is required to be given in accordance with section 26Q(2) may, before the creation of the new folio for the land, lodge a caveat with the Registrar in an appropriate approved form forbidding the creation of the folio.
- (3) On the lodgment of a caveat under this section, the Registrar—
 - (a) must notify the person who is to be the registered proprietor of the folio which is to be created or the registered proprietor of the folio from which the warning is to be removed, of the caveat; and

- (b) must not proceed with the creation of the folio or the removal of the warning until—
- (i) the caveat has been withdrawn or has lapsed; or
 - (ii) a judgment or order in the matter has been obtained from a court.
- (4) The person notified under subsection (3)(a) may summon the caveator to attend before a court to show cause why the caveat should not be removed.
- (5) The court may make any order in the matter either ex parte or otherwise and as to costs as the court thinks fit.
- (6) A caveat under this section is deemed to lapse after the expiration of 30 days from the lodgment of the caveat unless the caveator has within that time—
- (a) given notice in writing to the Registrar that proceedings in a court to substantiate the claim of the caveator in relation to the land and the estate or interest therein in respect of which the application is made are on foot; or
 - (b) obtained and served on the Registrar an injunction or order of a court restraining the Registrar from creating the folio or removing the warning.
- (7) A caveat must not be renewed by or on behalf of the same person in respect of the same estate or interest.
- (8) If an application has been withdrawn under section 15 and a caveator has been put to expense without sufficient cause by reason of the application, the caveator is entitled to receive

S. 26R(3)(b)(ii)
amended by
No. 80/2009
s. 10(1).

S. 26R(4)
amended by
No. 80/2009
s. 10(1).

S. 26R(5)
amended by
No. 80/2009
s. 10(2).

S. 26R(6)(a)
substituted by
No. 80/2009
s. 10(3)(a).

S. 26R(6)(b)
amended by
No. 80/2009
s. 10(3)(b).

S. 26R(8)
amended by
No. 80/2009
s. 10(4).

from the applicant any compensation that the court considers just and orders.

S. 26S
inserted by
No. 85/1998
s. 6.

26S Registrar's discretions

(1) The Registrar may—

- (a) refuse to bring land under this Act by means of a conversion scheme in Division 2 if in the Registrar's opinion—
 - (i) the documents lodged under the conversion scheme are unsatisfactory or incomplete; or
 - (ii) the information in a document lodged under the scheme conflicts with the information in records kept in the office of the Registrar-General or in the Office of Titles; or
 - (iii) insufficient information has been supplied to enable the Registrar to create a folio of the Register under Division 2; or
 - (iv) because of the time involved in processing and checking documents or for any other reason it is not convenient to bring the land under this Act by using a conversion scheme under Division 2;
- (b) create a provisional folio or identified folio under Division 3 if—
 - (i) a conversion scheme under Division 2 has been used in respect of the land and the Registrar is satisfied that an ordinary folio or provisional folio should not be created under Division 2 for the reasons set out in paragraph (a); or

- (ii) in any other case, the Registrar considers it appropriate to do so;
- (c) create an identified folio under Division 3 for land if the Registrar is not satisfied that a provisional folio should be created under that Division;
- (d) create an identified folio for land not under the operation of this Act which the Registrar can identify from the records held in the Office of Titles or in the office of the Registrar-General;
- (e) create a new identified folio for land or part of the land in an existing identified folio or provisional folio;
- (f) refuse to create any folio of the Register for land if a folio of the Register has already been created for that land;
- (g) refuse to create any folio for the land if the land is not able to be identified;
- (h) amend an identified folio or provisional folio created under Division 3 to record such particulars as the Registrar thinks fit of any encumbrance or other estate or interest which the Registrar is satisfied affects the land;
- (i) cancel a provisional folio created under Division 3, if an ordinary folio or a provisional folio under Division 2 is created for the land;
- (j) cancel a provisional folio created under Division 2, if an ordinary folio is created for the land;
- (k) cancel an identified folio if an ordinary folio or provisional folio is created for the land.

- (2) If the Registrar refuses to bring land under this Act by means of a conversion scheme under Division 2, the Registrar must give notice of the refusal and the reasons for it to the person who lodged the legal practitioner's certificate relating to the title of the land.
- (3) If the Registrar refuses to bring land under this Act by the creation of a provisional folio under Division 3, the Registrar must give notice of the refusal and the reasons for it to the person who lodged the specified dealing or application relating to the land.
- (4) Section 116 does not apply to the Registrar's refusal to bring land under this Act under Division 2.
- (5) The Registrar is not to be treated as having notice of the contents of a document merely because the document was lodged with or produced to the Registrar under this Part or deposited with the Registrar-General.
- (6) If documents are lodged with the Registrar under this Part, the Registrar is not required to examine any document lodged with, or referred to in, the legal practitioner's certificate or produced to the Registrar or deposited with the Registrar-General, before bringing the land concerned under the operation of this Act.
- (7) The refusal of the Registrar to bring land under this Act by a conversion scheme under Division 2 does not prevent the Registrar from bringing the land under this Act under Division 3.

S. 26T
inserted by
No. 85/1998
s. 6.

26T Documents lodged in support of application

- (1) The Registrar must retain documents which have been lodged under this Part unless the Registrar returns a document in accordance with subsection (2) or (3) or another provision of this Part.

- (2) The Registrar must on request return to the person who lodged it or appears to be entitled to it any document which has been lodged under this Part and which—
 - (a) relates to land which is brought under this Act and is a subsisting lease, mortgage or charge; or
 - (b) relates to land which is not brought under the operation of this Act and—
 - (i) is a subsisting lease, mortgage or charge; or
 - (ii) is the last deed which constitutes, or are the last deeds which together constitute, the fee or equity of redemption.
- (3) The Registrar may—
 - (a) on request return to the person who lodged it or appears to be entitled to it any document which has been lodged under this Part and which the Registrar is not required to return under subsection (2); and
 - (b) impose conditions or requirements in relation to the return of that document.
- (4) Before returning a document under subsection (2) or (3) the Registrar must take a copy or require a copy to be taken of the document and must retain that copy with other documents lodged under the conversion scheme.
- (5) No action shall be brought on—
 - (a) any covenant or agreement for the production of any documents retained under this section; or
 - (b) any agreement to give or enter into a covenant for the production of any documents retained under this section.

- (6) If any action referred to in subsection (5) is commenced it is a sufficient answer to that action that the documents are retained under this Act.

S. 26U
inserted by
No. 85/1998
s. 6.

26U Notice of creation of folio

If the Registrar considers it appropriate to do so, the Registrar must give notice of the creation of an ordinary folio or provisional folio of the Register under this Part—

- (a) to every person having any estate or interest evidenced by any recording on the folio; and
- (b) to any other persons that the Registrar thinks fit.

S. 26V
inserted by
No. 85/1998
s. 6.

26V Recording of instruments affecting land

S. 26V(1)
amended by
No. 42/2017
s. 10(2).

- (1) The Registrar may make a recording in the Register of an instrument which affects land brought under this Act under this Part even though the instrument is not in the appropriate approved form if—
- (a) the instrument is dated before or not later than 6 months after the date of creation of the first folio of the Register to the land; and
 - (b) the instrument is in a form which complies with the requirements which applied to the registration of instruments under section 6 of the **Property Law Act 1958** as in force immediately before the commencement of section 22 of the **Transfer of Land (Single Register) Act 1998**.
- (2) If—
- (a) an instrument of transfer or mortgage in an appropriate approved form is lodged with the Registrar for recording under this Act—

- (i) together with a legal practitioner's certificate relating to the title to the land; or
 - (ii) after a legal practitioner's certificate relating to the title to the land has been lodged with the Registrar; or
 - (iii) as a specified dealing under Division 3; or
 - (iv) after a specified dealing in relation to the land has been lodged under Division 3; and
 - (b) the Registrar refuses to bring the land under this Act otherwise than by the creation of an identified folio—
the instrument—
 - (c) is deemed to be a deed; and
 - (d) operates as a conveyance of the fee or equity of redemption (as the case requires); and
 - (e) in all other respects has effect as a conveyance or mortgage under the general law.
- (3) If—
- (a) an instrument of mortgage in an appropriate approved form is entered into in anticipation of the lodging under Division 2 of a legal practitioner's certificate relating to the title to the land; and
 - (b) either—
 - (i) the legal practitioner's certificate is not so lodged; or

- (ii) the Registrar refuses to accept the legal practitioner's certificate for lodgment under Division 2—

the instrument—

- (c) is deemed to be a deed; and
- (d) operates as a conveyance of the fee or equity of redemption (as the case requires); and
- (e) in all other respects has effect as a mortgage under the general law.
- (4) It is not necessary for any person to enquire whether a mortgage was entered into in an appropriate approved form in anticipation of the lodging of a legal practitioner's certificate under Division 2.
- (5) In this section *specified dealing* does not include an assignment of possessory rights.

S. 26W
inserted by
No. 85/1998
s. 6.

26W Requirement to Registrar to bring land under this Act

If under any Act, whether enacted before or after the **Transfer of Land (Single Register) Act 1998**, the Registrar is required to make any amendments or recordings in the Register in respect of land and the land is not under the operation of this Act and is not unalienated Crown land, that requirement is to be read and construed as including a requirement to bring the land under the operation of this Act.

S. 26X
inserted by
No. 42/2017
s. 6.

26X Registrar may bring land under this Act

- (1) The Registrar may make enquiries with municipal councils, statutory authorities or other persons for personal information that identifies ratepayers and mortgagors of land, for the purpose of comparing that information with information retained by the Registrar or the Registrar-General in relation to land that is to be brought under this Act.

- (2) For the purpose of bringing land under this Act, a municipal council, statutory authority or mortgagee may disclose personal information that identifies who is a ratepayer or mortgagor of the land.
- (3) The Registrar may create a provisional folio for land to be brought under this Act in the name of the person who appears to be a freehold owner of the land.

26Y Provisional folio becomes ordinary folio after 15 years

S. 26Y
inserted by
No. 42/2017
s. 6.

A provisional folio of land brought under this Act becomes an ordinary folio, unless an ordinary folio of the land has otherwise been created, 15 years after the creation of the provisional folio.

Pt 3
(Heading)
amended by
No. 18/1989
s. 12(Sch. 1
item 43).

Part III—The Register

No. 5842 s. 27.
S. 27
substituted by
No. 18/1989
s. 7.

27 Register of land

(1) The Registrar must keep a Register of land which is under the operation of this Act.

S. 27(2)
amended by
No. 70/2014
s. 4(1).

(2) The Registrar—

(a) may keep the Register—

(i) in any form or combination of forms;
and

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

(iii) in any manner—

that he or she thinks fit; and

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

(3) A reference to a medium in subsection (2)
includes but is not limited to—

(a) a computer; or

(b) micro film; or

(c) paper.

(4) The Register consists of folios of the Register.

(5) A folio of the Register is a division of the Register
that relates to one or more parcels of land.

(6) A folio of the Register—

- (a) must contain the recordings that are required or authorised to be made in the Register by or under this Act or any other Act and that affect the land for which the folio is created; and
- (b) must include a distinctive identifying reference for the folio; and
- (c) may contain recordings of any other information that the Registrar thinks appropriate to record on the folio; and
- (d) may describe any land by reference to a separate map or plan in the Office of Titles—

and so much of a separate map or plan as relates to the land in the folio is deemed to form part of the folio in which it is described.

(7) The Registrar creates a folio of the Register by making a recording of—

- (a) a description of the land for which it is created; and
- (b) except in the case of an identified folio, a description of—
 - (i) the proprietor; and
 - (ii) the nature of the interest held by the proprietor; and
- (c) such other particulars as the Registrar thinks fit of—
 - (i) other estates or interests, if any, affecting the land; and

S. 27(7)(b)
substituted by
Nos 85/1998
s. 7(1),
80/2009 s. 11.

- (ii) other information, if any, that relates to the land and is required to be recorded on the folio by or under this Act or any other Act—

and by allocating a distinctive identifying reference to those recordings.

S. 27(7A)
inserted by
No. 85/1998
s. 7(2).

- (7A) The Registrar must not include a description of the proprietor for the time being of the land when an identified folio is created.

- (8) Subject to section 24(4) of the **Subdivision Act 1988**, on—

- (a) the bringing of land under the operation of this Act; or
- (b) the approval of a plan of consolidation; or
- (c) the approval of a plan of subdivision in accordance with any law for the time being in force relating to the subdivision of land; or
- (d) being required by or under this Act or any other Act to do so—

the Registrar must create any folios of the Register that are necessary.

S. 27(9)
amended by
No. 70/2014
s. 4(2).

- (9) The Registrar may create, amend or cancel a folio of the Register where the Registrar thinks it appropriate to do so.

S. 27(10)
repealed by
No. 70/2014
s. 4(3).

* * * * *

S. 27(11)
amended by
No. 70/2014
s. 4(4)(a).

- (11) If the Registrar creates, amends or cancels a folio of the Register, the Registrar may—

- | | |
|---|--|
| (a) make any other amendments in the Register that he or she considers necessary because of the creation amendment or cancellation of the folio; and | S. 27(11)(a) amended by No. 70/2014 s. 4(4)(b). |
| (b) call in and, subject to section 27BA, destroy any certificate of title produced for the folio so created amended or cancelled. | S. 27(11)(b) amended by Nos 49/2001 s. 6(1), 70/2014 s. 4(4)(c). |
| (11A) For the purposes of subsection (11)(b), the Registrar may treat a certificate of title as destroyed without calling it in if the Registrar is provided with a certification that is in terms satisfactory to the Registrar. | S. 27(11A) inserted by No. 70/2014 s. 4(5). |
| (12) In this section and in section 27A, Act includes Commonwealth Act. | S. 27(12) amended by No. 42/2017 s. 11. |
| 27A Recordings in the Register | |
| (1) An instrument capable of registration under this Act is registered by— | S. 27A inserted by No. 18/1989 s. 7. |
| (a) making recordings in the Register; or | |
| (b) altering recordings in the Register; or | S. 27A(1)(b) substituted by No. 42/2017 s. 12(1)(a). |
| (c) removing recordings in the Register— | S. 27A(1)(c) inserted by No. 42/2017 s. 12(1)(a). |
| to the extent necessary to give effect to the instrument. | |

Transfer of Land Act 1958
No. 6399 of 1958
Part III—The Register

S. 27A(1A)
inserted by
No. 80/2009
s. 12(1),
repealed by
No. 42/2017
s. 12(2).

* * * *

- (2) Other information required or authorised by or under this Act or any other Act to be recorded in the Register is recorded in the Register by—
- (a) recording that information in an appropriate part of the Register; or
 - (b) altering an existing recording so as to comprise or include that information; or
 - (c) removing recordings in the Register.

S. 27A(2)(b)
substituted by
No. 42/2017
s. 12(1)(b).

S. 27A(2)(c)
inserted by
No. 42/2017
s. 12(1)(b).

S. 27A(3)
amended by
No. 70/2014
s. 5.

- (3) The Registrar—
- (a) may make recordings in the Register—
 - (i) in any form or combination of forms; or
 - (ii) in any manner—that he or she thinks fit; and
 - (b) may at any time vary the manner and form in which recordings are made.

S. 27A(4)
repealed by
No. 80/2009
s. 12(2).

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S. 27A(5)
amended by
No. 80/2009
s. 12(3).

- (5) The Registrar may make any deletions from, or alterations in, recordings in the Register so that each folio of the Register contains only recordings of subsisting information.

- (6) The Registrar may make a recording in the Register as a substitute for an existing recording, if satisfied that the existing recording has been lost or destroyed or has become illegible or unavailable.
- (7) The Registrar may, under subsection (6), determine the information to be recorded in a substitute recording by reference to any other records or documents kept by, or available to, the Registrar or in any other manner the Registrar thinks fit.
- (8) If the Registrar makes a recording in the Register, the Registrar may make any other amendments in the Register that the Registrar considers necessary because of the making of that recording.

27AB Verification of identity

- (1) The Registrar is not required to register an instrument under section 27A if the Registrar is not satisfied as to the identity of any person by or on behalf of whom the instrument was executed.

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S. 27AB
inserted by
No. 23/2004
s. 4.

S. 27AB(2)(3)
repealed by
No. 70/2014
s. 6.

27B Certificates of title

- (1) A certificate of title is a document in writing containing the information, or an extract of the information, on a folio of the Register as at the date of production of the certificate of title.
- (2) A certificate of title—
 - (a) must indicate that it is produced by authority of the Registrar, whether by being initialled, signed or sealed by the Registrar, or by bearing a facsimile of those initials or

S. 27B
inserted by
No. 18/1989
s. 7.

signature or seal, or in any other manner that the Registrar thinks fit; and

- (b) must state—
 - (i) the distinctive identifying reference of the folio of the Register to which it relates; and
 - (ii) the distinctive identifying reference allocated for that certificate of title; and
 - (iii) the date on which it was produced.

S. 27B(3)
amended by
No. 70/2014
s. 7(1).

- (3) A certificate of title—
 - (a) may include any other information that the Registrar considers appropriate, whether in diagramatic form or otherwise; and
 - (b) may record information contained in the folio of the Register to which it relates in any form that the Registrar considers appropriate, whether in the form in which the information is recorded on that folio or in some other form; and
 - (c) may be in any form that the Registrar considers appropriate; and
 - (d) may be produced in any manner that the Registrar considers appropriate.

S. 27B(4)
repealed by
No. 70/2014
s. 7(2).

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S. 27B(5)
amended by
No. 70/2014
s. 7(3).

- (5) The Registrar may at any time vary the form or manner in which certificates of title are produced.

S. 27B(6)
amended by
No. 42/2017
s. 13.

- (6) The Registrar must provide each certificate of title produced under this section to the person entitled to it.

(7) Subject to subsections (7A) and (7B), on—

- (a) the creation of a folio of the Register; or
- (b) the registration of an instrument under this Act, other than an instrument that is not required to be recorded on the certificate of title; or
- (c) being required by or under this Act or any other Act to do so—

the Registrar must produce a certificate of title for that folio.

S. 27B(7)
amended by
Nos 49/2001
s. 5(1),
70/2014
s. 7(4).

(7A) The Registrar is not required to produce a certificate of title for a folio of the Register if that folio is to be amended, substituted or deleted and a new folio immediately created.

S. 27B(7A)
inserted by
No. 49/2001
s. 5(2).

(7B) The Registrar is not required to produce a certificate of title for a folio of the Register if satisfied that it is appropriate in the circumstances to not produce a certificate of title.

S. 27B(7B)
inserted by
No. 80/2009
s. 13,
substituted by
No. 70/2014
s. 7(5).

(7C) The Registrar may produce a certificate of title for a folio if—

S. 27B(7C)
inserted by
No. 70/2014
s. 7(5).

- (a) a person entitled to receive the certificate of title requests a certificate; and
- (b) a certificate does not already exist; and
- (c) the Registrar is satisfied that the request is appropriate in the circumstances.

(7D) A request under subsection (7C)(a) must be in the approved form.

S. 27B(7D)
inserted by
No. 70/2014
s. 7(5).

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

S. 27B(9)
amended by
No. 49/2001
s. 6(2).

(9) For the purpose of producing a certificate of title for a folio of the Register, the Registrar may call in and, subject to section 27BA, destroy any subsisting certificate of title for that folio.

S. 27B(10)
amended by
No. 70/2014
s. 7(6).

(10) A person required to submit a certificate of title to the Registrar under subsection (9) need not do so if the person satisfies the Registrar that the certificate has been destroyed, obliterated or lost.

S. 27B(11)
amended by
No. 49/2001
s. 6(3).

(11) On—
(a) the production of a new certificate of title for a folio of the Register; or
(b) the deletion of a folio from the Register—
any certificate of title subsisting for that folio ceases to have effect, and, upon it being submitted to the Registrar, the Registrar, subject to section 27BA, must destroy it.

(12) The Registrar may, in the same document, include a certificate of title and any other information that the Registrar considers appropriate, but that information is not part of the certificate of title.

S. 27B(13)
inserted by
No. 85/1998
s. 8.

(13) Despite anything to the contrary in this section, the Registrar must not produce a certificate of title for an identified folio.

S. 27BAA
inserted by
No. 70/2014
s. 8.

27BAA Declaration voiding certificates of title

- (1) The Registrar, by notice published in the Government Gazette, may declare certificates of title or classes of certificate of title to be void and of no effect.
- (2) A declaration published by notice under subsection (1) takes effect from the date specified in the notice that is not earlier than the date of publication of the notice in the Government Gazette.

- (3) Any certificate of title, or a certificate of title in a declared class of certificates of title, in existence immediately before the date specified in the notice referred to in subsection (1) is, on and after that date, void and of no effect.

27BA Power not to destroy certain certificates of title

S. 27BA
inserted by
No. 49/2001
s. 7.

- (1) If a folio of the Register has been deleted or amended, the Registrar is not required to destroy the certificate of title for that folio if the Registrar ensures that the certificate of title is marked, stamped or otherwise rendered unusable.
- (2) The Registrar may return a certificate of title which has been rendered unusable to the last registered proprietor shown on the deleted or amended folio of the Register to which that certificate of title related.

S. 27BA(1)
amended by
No. 80/2009
s. 14(1).

S. 27BA(2)
amended by
No. 80/2009
s. 14(2).

27C Record of dealings

S. 27C
inserted by
No. 18/1989
s. 7.

- (1) The Registrar must keep a record of all dealings recorded in, or action taken in respect of, any folio of the Register, and any other information in relation to folios of the Register that the Registrar thinks fit.
- (2) The record of dealings is not part of the Register.

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S. 27C(3)
repealed by
No. 42/2017
s. 14.

27D Evidence

S. 27D
inserted by
No. 18/1989
s. 7.

- (1) In any proceedings a document certified in writing signed by the Registrar to be a record, as at a particular date, of the information recorded on any part of a folio of the Register is conclusive proof,

without production of the folio of the Register, that at that date the recordings on the folio to which the document applies were as stated in the document.

- (2) A document under subsection (1) may relate to recordings on a folio of the Register or to recordings existing at any earlier time.
- (3) If a document under subsection (1) relates to recordings other than the recordings on a folio of the Register, the document may be based on information derived from other records or documents kept by or available to the Registrar.
- (4) Subsections (2) and (3) also apply, with the necessary modifications, to a document certified under subsection (1) that relates to a recording in the Register that has become illegible or unavailable.
- (5) Subject to this section, that part of a certificate of title that contains, or purports to contain, a record of information recorded on a folio of the Register, is evidence and, in the absence of evidence to the contrary, is proof that, at the date of the certificate that folio of the Register contained a recording of that information.
- (6) If in relation to any matter there is an inconsistency between a statement on a certificate of title and a statement recorded in the Register, the statement in the Register prevails.
- (7) This section does not effect or limit any mode of proof of facts or documents permitted by law.

S. 27D(7)
substituted by
No. 69/2009
s. 54(Sch. Pt 1
item 58.2).

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S. 27E
inserted by
No. 18/1989
s. 7,
amended by
No. 80/2009
s. 15,
repealed by
No. 70/2014
s. 9.

27F Construction of references

S. 27F
inserted by
No. 18/1989
s. 7.

(1) Where—

(a) this section provides that a reference to an expression is to be construed in a particular way; and

(b) the expression is used in—

(i) an Act other than this Act; or

(ii) an instrument (including a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**) made under an Act other than this Act; or

(iii) any document whatever—

in relation to a matter arising under this Act, but the expression is not defined—

the reference is to be construed as provided in this section, unless inconsistent with the context or subject-matter.

(2) Where this section provides that a reference to one matter is to be construed as including a reference to another matter, the reference is to be so construed whether that other matter arose or arises before, on or after the date of commencement of this section.

(3) In—

- (a) this Act; and
- (b) an instrument (including a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**) made under this Act; and
- (c) a provision of a document that relates to a matter under this Act—

a reference—

- (d) to the Register includes a reference to the Register Book consisting of original registered Crown grants, original registered certificates of title and registered instruments; and
- (e) to a folio of the Register includes a reference to a folium of the Register Book constituted by a certificate of title in or to the effect of the form in Part I of the Fifth Schedule as in force immediately before that date of commencement, or by a Crown grant; and
- (f) to the creation of a folio of the Register includes a reference to the registration of a certificate of title in or to the effect of the form of Part I of the Fifth Schedule as in force immediately before that date of commencement, or the registration of a Crown grant; and
- (g) to the registration of an instrument includes a reference to the making of an entry in, or the entering of an endorsement or memorandum in, the Register Book or on a registered instrument; and
- (h) to recordings or amendments in the Register includes a reference to the making or altering of recordings in, or the deletion of recordings

S. 27F(3)(g)
amended by
No. 80/2009
s. 16(a).

- from the Register and the creation, substitution or deletion of folios of the Register; and
- (i) to the deletion of a folio from the Register includes a reference to the cancellation of a folium of the Register constituted by a Crown grant or by a certificate of title in or to the effect of the form in Part I of the Fifth Schedule as in force immediately before the date of commencement of this section; and
 - (j) to the making of a recording in the Register includes a reference to—
 - (i) the making of an entry or the entering of a memorandum in the Register Book; or
 - (ii) the making of an endorsement, memorandum or entry on a registered instrument; and
 - (k) to a distinctive identifying reference of a folio of the Register includes a reference to the volume and folio number allocated to a folium of the Register Book; and
 - (l) to an ordinary folio includes a reference to a certificate of title in the form of Part I of the Fifth Schedule as in force immediately before the date of commencement of this section; and
 - (m) to a qualified folio includes a reference to a certificate of title in the form of Part I of the Fifth Schedule as in force immediately before the date of commencement of this section, on which there is noted a warning in the form of Part III of that Schedule, a warning in the form of Part IV of that Schedule or both those warnings; and

S. 27F(3)(i)(ii)
amended by
No. 80/2009
s. 16(b).

S. 27F(3)(o)
amended by
No. 80/2009
s. 16(c).

- (n) to a limited folio includes a reference to—
 - (i) a certificate of title in the form of Part II of the Fifth Schedule as in force immediately before the date of commencement of this section; and
 - (ii) a certificate of title in the form of Part I of the Fifth Schedule as in force immediately before the date of commencement of this section that includes a limitation in the form of Part II of that Schedule as in force on or after that date; and
- (o) to the deletion of a recording from the Register includes a reference to the cancellation of any entry, memorandum or endorsement in the Register Book; and
- (p) to the production of a certificate of title includes a reference to the issue of a duplicate Crown grant or a duplicate certificate of title in the form of Part I of the Fifth Schedule as in force immediately before that date of commencement; and
- (q) to a certificate of title includes a reference to—
 - (i) the duplicate of a certificate of title in the form of Part I of the Fifth Schedule as in force immediately before the date of commencement of this section; and
 - (ii) the duplicate of a registered Crown grant; and
- (r) to creating a folio of the Register by recording a description of land and allocating a distinctive identifying reference to that recording, includes a reference to reserving a folium in the Register Book.

27G Record of plans

- (1) The Registrar may keep a record of the information in registered plans within the meaning of the **Subdivision Act 1988** and any changes to the information.
- (1A) The registration of a plan (within the meaning of section 3 of the **Subdivision Act 1988**) by the Registrar under section 22 of the **Subdivision Act 1988** occurs when the Registrar creates a record that the plan has been registered.
- (2) Except as provided in section 27(6), the record is not part of the Register.
- (3) A person may have access to the record of plans, subject to and in accordance with the regulations, and on the payment of the prescribed fee (if any).
- (4) Sections 27(2) and (3) and 27A(3) apply to the record of plans and the recordings in it as if those provisions referred to the record of plans instead of the Register.
- (5) If the Registrar establishes a record of plans, the **Subdivision Act 1988** has effect as if—
 - (a) anything required or permitted to be recorded by the Registrar on a plan were required or permitted to be recorded in the record of plans; and
 - (b) any provision requiring or permitting an amendment, replacement or modification of a registered plan required or permitted the substitution, deletion or amendment, as appropriate, of recordings in the record of plans; and
 - (c) any provision requiring or permitting the substitution of sheets in a registered plan required or permitted the substitution of recordings in the record of plans; and

S. 27G
inserted by
No. 18/1989
s. 7 (as
amended by
No. 48/1991
s. 71).

S. 27G(1A)
inserted by
No. 42/2017
s. 15.

- (d) any provision requiring or permitting the cancellation of a plan required or permitted the deletion of appropriate recordings in the record of plans.
- (6) Section 27D(1) applies to a recording in the record of plans as if it were a folio of the Register.
- (7) On the application of any person or for the purpose of any legal proceeding, the Registrar may issue a certified copy of any recording made in the record of plans, and that copy is admissible in any legal proceeding.

Heading
preceding
s. 28
repealed by
No. 18/1989
s. 12(Sch. 1
item 44),

* * * *

No. 5842 s. 28.
S. 28
(Heading)
inserted by
No. 39/2006
s. 4(1),
amended by
No. 42/2017
s. 16(1).

28 Creation of folio of the Register

S. 28(1)
amended by
Nos 18/1989
s. 12(Sch. 1
item 45(a)(b)),
49/2001
s. 8(1),
substituted by
Nos 39/2006
s. 4(2),
42/2017
s. 16(2).

- (1) A Crown grant in fee or by way of a perpetual lease or a lease for years, received in accordance with section 8, is registered by the creation of a new folio of the Register

S. 28(1A)
inserted by
No. 49/2001
s. 8(2),
repealed by
No. 39/2006
s. 4(2).

* * * *

Transfer of Land Act 1958
No. 6399 of 1958
Part III—The Register

(1B) When, in accordance with this Act, a certificate of title is created for the folio of the Register relating to the land referred to in subsection (1) for delivery to the person entitled to that certificate, the Registrar must forward to that person a copy of the applicable conditions, exceptions and reservations relating to that land as contained in the Crown grant or Crown lease (as the case requires).

S. 28(1B)
inserted by
No. 49/2001
s. 8(2),
amended by
No. 39/2006
s. 4(3).

* * * *

S. 28(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 46),
repealed by
No. 39/2006
s. 4(4).

* * * *

S. 28(3)
inserted by
No. 8091 s. 2,
substituted by
Nos 18/1989
s. 12(Sch. 1
item 47),
49/2001
s. 8(3),
repealed by
No. 80/2009
s. 17.

* * * *

S. 28(4)
inserted by
No. 8091 s. 2,
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 80/2009
s. 17.

(5) Notwithstanding anything to the contrary in this section, a Crown grant may describe any land by reference to a separate map or plan in the Office of Titles and so much of any separate map or plan as relates to the land described shall be deemed to form part of the Crown grant in which the land is comprised.

S. 28(5)
inserted by
No. 9324
s. 3(a),
amended by
Nos 18/1989
s. 12(Sch. 1
item 48),
49/2001
s. 8(4).

No. 5842 s. 29.

29 Registration of grants and certificates

S. 29(1)
repealed by
No. 18/1989
s. 12(Sch. 1
item 49).

* * * *

S. 29(2)
amended by
No. 9324
s. 3(b),
substituted by
No. 18/1989
s. 12(Sch. 1
item 50).

- (2) The registration of a Crown grant shall be deemed to be an enrolment of record of the grant dating back to the date of the grant.

S. 29(3)
amended by
No. 18/1989
s. 12(Sch. 1
item 51).

- (3) On the surrender to or acquisition by the Crown of the fee simple or other the whole registered estate in any land the Registrar may make any necessary recordings in the Register.

No. 5842 s. 30.

30 Joint proprietors

S. 30
(Heading)
inserted by
No. 80/2009
s. 18(1).

S. 30(1)
amended by
No. 18/1989
s. 12(Sch. 1
item 52),
repealed by
No. 80/2009
s. 18(2).

* * * *

S. 30(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 53).

- (2) Two or more persons who are registered as joint proprietors of land shall be deemed to be entitled thereto as joint tenants and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, the Registrar may make any necessary recordings in the Register and may create a single folio for the entirety or separate folios for each of the individual shares, and may produce a certificate of title or certificates of title accordingly.

31 Lost grant or certificate etc.

No. 5842 s. 31.

The Registrar, on application in the appropriate approved form and on proof to the Registrar's satisfaction of the loss, destruction or obliteration of a certificate of title, may cancel the folio and create a new folio of the Register.

S. 31(1) amended by Nos 18/1989 s. 12(Sch. 1 item 54), 80/2009 s. 19, substituted as s. 31 by No. 42/2017 s. 17.

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S. 31(2) substituted by No. 7814 s. 3, repealed by No. 18/1989 s. 12(Sch. 1 item 55).

32 Issue of new certificate of title

No. 5842 s. 32.

(1) On the application of any registered proprietor or person entitled to be registered as proprietor of land under one or more folios of the Register, the Registrar may, on delivery of the certificates of title for those folios, create folios of the Register for parts of the land that can be disposed of separately without subdivision, and may delete any existing relevant folios of the Register.

S. 32(1) substituted by Nos 53/1988 s. 45(Sch. 2 item 80), 48/1991 s. 50(a).

(1A) The Registrar shall not create a single folio of the Register for any land, part of which can be disposed of separately without subdivision, unless the Registrar believes there are special circumstances.

S. 32(1A) inserted by No. 9324 s. 3(c), substituted by No. 53/1988 s. 45(Sch. 2 item 81), amended by No. 18/1989 s. 12(Sch. 1 item 57).

S. 32(2)
substituted by
No. 18/1989
s. 12(Sch. 1
item 58).

- (2) The Registrar may, upon the production of the certificate of title, create a new folio of the Register in the place of the existing folio of the Register, and must thereupon delete that existing folio.

S. 32(3)
substituted by
No. 18/1989
s. 12(Sch. 1
item 58).

- (3) Where a folio of the Register is partially deleted from the Register or the condition of a certificate of title is such that the Registrar considers it advisable to produce a new certificate of title, the Registrar may produce a new certificate of title.

Heading
preceding
s. 33
repealed by
No. 18/1989
s. 12(Sch. 1
item 59).

* * * * *

33 Instruments when registered

S. 33(1)–(3A)
repealed.¹

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S. 33(4)
inserted by
No. 6975
s. 27(a).

- (4) Any two or more persons named in any instrument as transferees mortgagees lessees or as taking any estate or interest in land shall unless the contrary is expressed be deemed to be entitled jointly and not in shares and every such instrument when registered shall take effect accordingly.

No. 5842 s. 34.

34 Instruments entitled to priority according to date of lodgment for registration

S. 34(1)
amended by
No. 18/1989
s. 12(Sch. 1
item 61).

- (1) Save as otherwise expressly provided every instrument lodged for registration shall be registered in the order in which and as from the time at which it is lodged for that purpose, and instruments purporting to affect the same estate or interest shall be entitled to priority as between themselves according to order of lodgment for

registration and not according to the date of the instrument or any other factor.

* * * * *

S. 34(2)
amended by
Nos 18/1989
ss 8(a),
12(Sch. 1
item 62),
80/2009 s. 20,
repealed by
No. 42/2017
s. 18.

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

S. 34(3)
inserted by
No. 18/1989
s. 8(b).

34A Dealings may be registered together

S. 34A
inserted by
No. 18/1989
s. 9.

- (1) If two or more instruments affecting the same land are lodged and are awaiting registration, the Registrar may, despite anything to the contrary in this Act, register the instruments by making one or more recordings in one or more parts of the Register as the Registrar considers appropriate instead of recording each instrument separately in the Register.
- (2) Instruments registered under subsection (1) are deemed to have been duly registered, despite any requirement in this Act that the instrument be executed by the registered proprietor.

* * * * *

S. 35
amended by
Nos 9324
s. 3(d),
18/1989
s. 12(Sch. 1
items 63, 64),
23/2004 s. 5,
repealed by
No. 80/2009
s. 21.

S. 36
repealed by
No. 18/1989
s. 12(Sch. 1
item 65).

No. 5842 s. 37.

S. 37
amended by
Nos 18/1989
s. 12(Sch. 1
item 66),
80/2009 s. 22,
substituted by
No. 42/2017
s. 19.

37 Entry of trusts in Register

The Registrar shall not record in the Register notice of any trust whether express, implied or constructive.

38 Grants and certificates endorsed "no survivorship"

S. 38(1)
amended by
Nos 6544 s. 2,
18/1989
s. 12(Sch. 1
item 67).

- (1) At the time of the registration of every Crown grant in fee to two or more persons in joint tenancy for any public purpose the Registrar shall record in the Register the words "no survivorship".

S. 38(2)
amended by
Nos 6867
s. 2(Sch. 1),
18/1989
s. 12(Sch. 1
item 68).

- (2) Upon the transfer of any land to two or more persons as joint proprietors with the words "no survivorship" endorsed thereon the Registrar shall record those words in the Register.

S. 38(3)
amended by
No. 18/1989
s. 12(Sch. 1
item 69).

- (3) Two or more joint proprietors of any land may by writing under their hands direct the Registrar to record the words "no survivorship" on the relevant folio of the Register.

S. 38(4)
amended by
Nos 18/1989
s. 12(Sch. 1
item 70),
80/2009
s. 23(1).

- (4) After the words "no survivorship" have been recorded pursuant to this section it shall not be lawful for any persons other than the registered proprietors to transfer or otherwise deal with the land without an order of a court.

S. 38(5)
amended by
No. 80/2009
s. 23(2).

- (5) Before making any such order the court may cause notice of the intention so to do to be advertised once at least in one newspaper published in the city of Melbourne or circulating

in the neighbourhood of the land, and in such notice shall appoint a time within which it shall be lawful for any person interested to show cause against such order being made.

- (6) The court may (but, where any such notice has been given, only after the expiration of the time therein appointed) give the necessary order for the transfer of the land to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor or proprietors or otherwise give effect to the dealing or make such order in the matter as is just for the protection of any persons beneficially interested in the land or in the proceeds thereof, and on such order being deposited with the Registrar he shall make such recordings and perform such acts for giving effect thereto as are necessary.

S. 38(6)
amended by
Nos 18/1989
s. 12(Sch. 1
item 71),
80/2009
s. 23(3).

39 Dealings registered prior to issue of Crown grant

No. 5842 s. 39.

- (1) Upon submission of a receipt of the Minister administering the **Conservation, Forests and Lands Act 1987** for the full purchase money of any land sold by Her Majesty in fee together with any instrument dealing with such land the Registrar shall make a recording of such instrument upon such receipt and thereupon every such instrument shall be held to be duly registered.
- (2) Upon the registration of the Crown grant of the land the Registrar shall make in the Register a recording of every instrument entered on such receipt.

S. 39(1)
amended by
Nos 6544 s. 3,
18/1989
s. 12(Sch. 1
item 72(a)(b)),
46/1998
s. 7(Sch. 1).

S. 39(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 73).

Effect of registration

40 Instruments not effectual until registered

No. 5842 s. 40.

- (1) Subject to this Act no instrument until registered as in this Act provided shall be effectual to create vary extinguish or pass any estate or interest or

S. 40(1)
amended by
No. 6544
s. 6(3)(a)(b).

encumbrance in on or over any land under the operation of this Act, but upon registration the estate or interest or encumbrance shall be created varied extinguished or pass in the manner and subject to the covenants and conditions specified in the instrument or by this Act prescribed or declared to be implied in instruments of a like nature.

S. 40(2)
amended by
No. 23/2004
s. 8,
repealed by
No. 70/2014
s. 10.

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No. 5842 s. 41.
S. 41
substituted by
No. 18/1989
s. 12(Sch. 1
item 74).

41 Certificate to be conclusive evidence of title

No folio of the Register under this Act shall be impeached or defeasible by reasons or on account of any informality or irregularity in any application or instrument or in any proceedings previous to the creation of the folio or the making of any recording on it; and every folio of the Register shall be received in all courts as evidence of the particulars recorded in it and all the recordings of those particulars in the Register, and shall be conclusive evidence that the person named in the folio as the proprietor of, or having any estate or interest in, or power to appoint or dispose of, the land described in the folio is seised or possessed of that estate or interest or has that power.

No. 5842 s. 42.

42 Estate of registered proprietor paramount

S. 42(1)
amended by
No. 18/1989
s. 12(Sch. 1
item 75(a)).

- (1) Notwithstanding the existence in any other person of any estate or interest (whether derived by grant from Her Majesty or otherwise) which but for this Act might be held to be paramount or to have priority, the registered proprietor of land shall, except in case of fraud, hold such land subject to such encumbrances as are recorded on the relevant

folio of the Register but absolutely free from all other encumbrances whatsoever, except—

- (a) the estate or interest of a proprietor claiming the same land under a prior folio of the Register;
S. 42(1)(a) amended by No. 18/1989 s. 12(Sch. 1 item 75(b)).
- (b) as regards any portion of the land that by wrong description of parcels or boundaries is included in the folio of the Register or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser.
S. 42(1)(b) amended by No. 18/1989 s. 12(Sch. 1 item 75(c)).
- (2) Notwithstanding anything in the foregoing the land which is included in any folio of the Register or registered instrument shall be subject to—
S. 42(2) amended by No. 18/1989 s. 12(Sch. 1 item 76(a)(b)).
 - (a) the reservations exceptions conditions and powers (if any) contained in the Crown grant of the land;
 - (b) any rights subsisting under any adverse possession of the land;
 - (c) any public rights of way;
 - (d) any easements howsoever acquired subsisting over or upon or affecting the land;
 - (e) the interest (but excluding any option to purchase) of a tenant in possession of the land;
 - (f) any unpaid land tax, and also any unpaid rates and other charges which can be discovered from a certificate issued under section 229 of the **Local Government Act 1989**, section 158 of the **Water Act 1989** or any other enactment specified for the purposes of this paragraph by
S. 42(2)(f) amended by Nos 81/1989 s. 3(Sch. item 52), 42/2017 s. 20.

proclamation of the Governor in Council
published in the Government Gazette—

notwithstanding the same respectively are not
specially recorded as encumbrances on the
relevant folio of the Register.

No. 5842 s. 43.

**43 Persons dealing with registered proprietor not
affected by notice**

Except in the case of fraud no person contracting
or dealing with or taking or proposing to take a
transfer from the registered proprietor of any land
shall be required or in any manner concerned to
inquire or ascertain the circumstances under or the
consideration for which such proprietor or any
previous proprietor thereof was registered, or to
see to the application of any purchase or
consideration money, or shall be affected by
notice actual or constructive of any trust or
unregistered interest, any rule of law or equity to
the contrary notwithstanding; and the knowledge
that any such trust or unregistered interest is in
existence shall not of itself be imputed as fraud.

No. 5842 s. 44.

44 Certificate etc. void for fraud

S. 44(1)
amended by
No. 18/1989
s. 12(Sch. 1
item 77).

- (1) Any folio of the Register or amendment to the
Register procured or made by fraud shall be void
as against any person defrauded or sought to be
defrauded thereby and no party or privy to the
fraud shall take any benefit therefrom.
- (2) But nothing in this Act shall be so interpreted as
to leave subject to an action of ejectment or for
recovery of damages or for deprivation of the
estate or interest in respect of which he is
registered as proprietor any bona fide purchaser
for valuable consideration of land on the ground
that the proprietor through or under whom he
claims was registered as proprietor through fraud
or error or has derived from or through a person

Transfer of Land Act 1958
No. 6399 of 1958
Part III—The Register

registered as proprietor through fraud or error; and
this whether such fraud or error consists in wrong
description of the boundaries or of the parcels of
any land or otherwise howsoever.

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Pt 3A
(Heading and
ss 44A–44N)
inserted by
No. 23/2004
s. 6,
amended by
Nos 18/2005
s. 18(Sch. 1
item 107.2),
80/2009
ss 24–26,
7/2013 s. 12,
repealed by
No. 7/2013
s. 17.

Pt 3B
(Heading and
ss 44O–44S)
inserted by
No. 7/2013
s. 13.

Part IIIB—Registry instruments

S. 44O
inserted by
No. 7/2013
s. 13.

44O Powers of Registrar

- (1) If a registry instrument is lodged for registration under this Act, the Registrar may—
 - (a) refuse to register the registry instrument if, in the opinion of the Registrar, the registry instrument—
 - (i) is not in the approved form (if any); or
 - (ii) is incomplete; or
 - (iii) contains errors; or
 - (iv) is not completed correctly; or
 - (b) seek further information in respect of the registry instrument; or
 - (c) register the registry instrument under section 27A without issuing a certificate of title; or
 - (d) register the registry instrument under section 27A and produce a certificate of title under section 27B.
- (2) Nothing in subsection (1) affects any other power of the Registrar to refuse registration of a registry instrument.
- (3) Nothing in section 27B requires the Registrar to produce a certificate of title in respect of the registration of a registry instrument.
- (4) Nothing in this Part prevents the Registrar from producing a certificate of title under section 27B at any time after the registration of a registry instrument.

- (5) If the Registrar refuses to register a registry instrument and the parties to the registry instrument wish to proceed with the relevant dealing, the Registrar may require the relevant instruments to be executed and lodged for registration in a form other than an electronic communication.

44P Duty of Registrar in relation to priority of registry instruments

S. 44P
inserted by
No. 7/2013
s. 13.

The Registrar must ensure that a registry instrument lodged for registration is dealt with in a manner that ensures that section 34 is complied with.

44Q ELN malfunction

S. 44Q
inserted by
No. 7/2013
s. 13.

- (1) The Registrar may amend the Register to correct errors in the Register and supply entries or recordings omitted to be made in the Register under this Act if the error or omission resulted from a malfunction of the ELN.
- (2) The Registrar must keep a record of every correction under subsection (1).
- (3) Every correction under subsection (1) is to have the same validity and effect as if the error or omission had not occurred.

- (4) For the purposes of this section—

ELN includes the electronic lodgement network referred to in section 44B as in force before its repeal by section 17 of the **Electronic Conveyancing (Adoption of National Law) Act 2013**.

S. 44Q(4)
inserted by
No. 7/2013
s. 18.

44R Evidence of registry instruments

S. 44R
inserted by
No. 7/2013
s. 13.

- (1) The Registrar must, on the application of any person, produce a document in writing recording information contained in a registry instrument that has been lodged for registration under this Act.

- (2) A document produced under subsection (1) must be certified by the Registrar as a true representation of the information in the registry instrument.
- (3) A document certified under subsection (2) is evidence of the matters contained in the document.
- (4) An application under this section must be in the appropriate approved form and be accompanied by the prescribed fee (if any).

S. 44R(5)
inserted by
No. 7/2013
s. 19.

- (5) For the purposes of this section—

Old Part IIIA instrument means an electronic instrument under Part IIIA as in force before its repeal by section 17 of the **Electronic Conveyancing (Adoption of National Law) Act 2013**;

registry instrument includes an Old Part IIIA instrument.

S. 44S
inserted by
No. 7/2013
s. 13.

44S Electronic certification of registry instrument

- (1) The Registrar may produce in an electronic form a representation of any registry instrument lodged in the ELN.
- (2) The Registrar may certify the electronic representation in any manner determined by the Registrar.
- (3) A representation of a registry instrument certified in accordance with this section is evidence of the contents and nature of the registry instrument.
- (4) For the purposes of this section—

S. 44S(4)
inserted by
No. 7/2013
s. 20.

ELN includes the electronic lodgement network referred to in section 44B as in force before its repeal by section 17 of the **Electronic Conveyancing (Adoption of National Law) Act 2013**;

Old Part IIIA instrument means an electronic instrument under Part IIIA as in force before its repeal by section 17 of the **Electronic Conveyancing (Adoption of National Law) Act 2013**;

registry instrument includes an Old Part IIIA instrument.

Part IV—Registration of dealings with land

Division 1—Transfers

No. 5842 s. 45.
S. 45(1)
amended by
No. 9976 s. 11.

45 Form of transfer

- (1) A registered proprietor may transfer his estate or interest in land by an instrument in an appropriate approved form.
- (2) Upon the registration of the transfer the estate or interest of the proprietor as set out in such instrument or which he is entitled or able to transfer or dispose of under any power, with all rights powers and privileges thereto belonging or appertaining, shall pass to the transferee; and such transferee shall thereupon become the registered proprietor thereof.

S. 45(3)
inserted by
No. 53/1988
s. 45 (as
amended by
No. 47/1989
s. 19(zg)),
repealed by
No. 42/2017
s. 21.

* * * * *

No. 5842 s. 46.

46 Transfer to include right to sue

- (1) By virtue of every such transfer the right to sue upon any instrument and to recover any debt sum of money annuity or damages thereunder (notwithstanding that it constitutes a chose in action) and all interest in any such debt sum annuity or damages shall be transferred so as to vest at law as well as in equity in the transferee thereof; but nothing herein shall prevent a court from giving effect to any trusts affecting such debt sum annuity or damages if the transferee as between himself and any other person holds as trustee.

- (2) In every such transfer of land which is subject to a mortgage or annuity there shall be implied a covenant with the transferor by the transferee binding the latter to pay the interest secured by the mortgage at the rate and times and in the manner specified in the mortgage, or to pay the annuity at the times and in the manner specified in the instrument of charge, and in the case of land subject to a mortgage to indemnify the transferor against all liability in respect of the principal sum secured by the mortgage and any of the covenants therein contained or by this Act declared to be implied therein on the part of the transferor.

47 Power to Registrar to make a vesting order in cases of completed purchase

- (1) The Registrar may, in the Registrar's discretion, make a vesting order to give effect to the sale of land if it is proved to the satisfaction of the Registrar that—
- (a) land has been sold by the registered proprietor and—
 - (i) the whole of the purchase money has been paid; or
 - (ii) the time specified in section 8 of the **Limitation of Actions Act 1958** has elapsed since the last payment was due to be paid by the purchaser to the registered proprietor under the contract of sale for the land; and
 - (b) the purchaser or any person claiming under the purchaser has entered and taken possession under the purchase and that entry and possession have been acquiesced in by the vendor or the vendor's representatives; and

No. 5842 s. 47.
S. 47
amended by
Nos 18/1989
s. 12(Sch. 1
item 78),
80/2009 s. 27,
substituted by
No. 42/2017
s. 22.

- (c) a transfer cannot be obtained as the registered proprietor is—
- (i) a natural person who is deceased and has no legal personal representative who can act on the deceased's behalf, or whose signature cannot for any reason be obtained within a reasonable time; or
 - (ii) a body corporate and the authorised agent of the body corporate cannot be located or the agent's signature cannot be obtained within a reasonable time.
- (2) Upon making a vesting order under subsection (1), the Registrar must record, in any relevant part of the Register, the person in whom the order vests the land as the proprietor of the land, and that person becomes the registered proprietor and transferee of the land.

S. 48
repealed by
No. 80/2009
s. 28.

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Division 2—Transmissions

No. 5842 s. 49.

S. 49(1)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 79(a)(b)),
80/2009 s. 29.

49 Registration of personal representatives

- (1) Upon the legal personal representative of any deceased registered proprietor making application in an appropriate approved form to be registered as proprietor in respect of any land and submitting his authority in that behalf the Registrar shall in any relevant part of the Register make a recording of the appointment of such personal representative; and thereupon such personal representative shall become the transferee and be the proprietor of the estate or interest of the deceased proprietor.

(2) The personal representative shall hold the land subject to all equities upon which the deceased held it, but for the purpose of any dealing with the land under the provisions of this Act shall be the registered proprietor thereof.

(3) The title of every personal representative becoming a transferee under this section shall upon such recording being made in the Register relate back to and be deemed to have arisen upon the death of the proprietor of the land as if there has been no interval of time between such death and recording.

S. 49(3)
amended by
No. 18/1989
s. 12(Sch. 1
item 80(a)(b)).

50 Registration of survivor of joint proprietors of fee simple lease mortgage etc.

No. 5842 s. 50.
S. 50
amended by
No. 9976 s. 11.

Subject to this Act upon the death of any person registered with any other person as joint proprietor of any land the Registrar, on application in an appropriate approved form by the survivor and proof to the satisfaction of the Registrar of the death, shall register the applicant as the proprietor thereof, and thereupon such survivor shall become the transferee of such land and be the registered proprietor thereof.

51 Registration of trustee of bankrupt

No. 5842 s. 51.

(1) Upon the bankruptcy of the registered proprietor of any land, or upon any bankrupt before obtaining his discharge or certificate becoming the proprietor of any land, his trustee shall be entitled to be registered as proprietor in respect thereof; and the Registrar, upon the receipt of an office copy of the appointment of the trustee and an application in an appropriate approved form by the trustee to be so registered, shall in any relevant part of the Register make a recording (by the appropriate description whether as trustee assignee or official receiver) of the appointment of such trustee.

S. 51(1)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 81).

- (2) Thereupon such trustee shall become the transferee and be the proprietor of the estate or interest of the bankrupt and shall hold subject to all equities upon which the bankrupt held; but for the purpose of any dealing with the land under the provisions of this Act such trustee shall be the registered proprietor thereof.
- (3) Unless prior to a bankrupt registered proprietor dealing with any land under the operation of this Act the trustee in his bankruptcy has either applied to be registered as proprietor thereof or has lodged a caveat against dealings by the bankrupt any dealings by the bankrupt with any person dealing bona fide and for value with him shall not be affected by any order of sequestration.
- (4) This section shall be read and construed as subject to any law of the Commonwealth of Australia relating to bankruptcy.

Division 3—Sales by sheriff etc.

No. 5842 s. 52.

52 Sale under writ of fieri facias or decree of Supreme Court etc.

S. 52(1)
amended by
No. 85/1998
s. 9.

- (1) Save as in this Division or Division 3 of Part II provided no execution or *lis pendens* shall bind or affect any land under the operation of this Act².

- (2) The Registrar, on being served with a copy of any judgment, decree, order or process of execution of a court that identifies a folio or folios of the Register that are affected by the judgment, decree, order or process of execution, must record notice of the receipt of the judgement, decree, order or process of execution.
- (3) After any land so specified has been sold under any such judgment decree order or process the Registrar shall, on lodgment of a transfer thereof in an appropriate approved form, register such transfer if lodged within the period of three months from the day on which the copy of such judgment decree order or process was served on the Registrar, in which case no other instrument dealing with the land lodged with the Registrar after the time of service of the copy and before the lodging of the transfer shall be registered or be deemed to have been lodged for registration.
- (4) On registration of such transfer the purchaser shall become the transferee and be the proprietor of the land in all respects as if the transfer were a transfer for valuable consideration to the purchaser by the registered proprietor, but until a recording of the service of the copy has been made in the Register as aforesaid no sale under the judgment, decree, order or process shall be made by the sheriff or other officer.

S. 52(2)
amended by
Nos 6544 s. 4,
110/1986
s. 140(2),
18/1989
s. 12(Sch. 1
item 82),
35/1996
s. 453(Sch. 1
item 83.8),
75/2006
s. 192(Sch. 2
item 6.3) (as
amended by
No. 17/2007
s. 33),
substituted by
No. 80/2009
s. 30.

S. 52(3)
amended by
Nos 9976
s. 11, 110/1986
s. 140(2).

S. 52(4)
amended by
Nos 110/1986
s. 140(2),
18/1989
s. 12(Sch. 1
item 83).

Transfer of Land Act 1958
No. 6399 of 1958
Part IV—Registration of dealings with land

S. 52(5)
amended by
No. 110/1986
s. 140(2).

- (5) Unless a transfer on sale under such judgment decree order or process is lodged with the Registrar within the period of three months from the day on which the copy of such judgment decree order or process was served on the Registrar such judgment decree order or process shall cease to bind or affect the land.

S. 52(6)
amended by
Nos 110/1986
s. 140(2),
18/1989
s. 12(Sch. 1
item 84).

- (6) Upon production to the Registrar of sufficient evidence of the satisfaction of any judgment decree order or process a copy whereof has been served as aforesaid he shall make a recording in the Register to that effect, whereupon such judgment decree order or process shall cease to bind or affect the land.

S. 52(6A)
inserted by
No. 42/2017
s. 23.

- (6A) A judgment creditor may apply to the Registrar in the appropriate approved form to remove a notice of the receipt of the judgment, decree, order or process of execution of a court recorded on the relevant folio of the Register under subsection (2).

S. 52(6B)
inserted by
No. 42/2017
s. 23.

- (6B) On receiving an application by a judgment creditor under subsection (6A), the Registrar may amend the Register to remove the notice of the relevant receipt of the judgment, decree, order or process of execution of a court recorded on the relevant folio of the Register.

S. 52(7)(a)
amended by
No. 57/1989
s. 3(Sch.
item 201.2).

- (7) This section shall with such adaptations as are necessary extend and apply to—

 (a) writs of fieri facias issued out of the High Court of Australia and decrees and orders of that Court and officers thereof.

S. 52(7)(b)
repealed by
No. 9324
s. 3(e).

* * * * *

Division 4—Acquisition by statute, order of Court etc.

53 Acquiring authority

No. 5842 s. 53.

- (1) In this Division ***acquiring authority*** means any person corporation or body of persons authorized by or under any Victorian or Commonwealth Act or law to acquire land compulsorily.
- (2) The provisions of this Division shall be read and construed as in aid of and not in derogation from the provisions of any other Act or enactment or law whereby an acquiring authority may become registered as the proprietor of any land acquired by or vested in that authority.
- (3) Apart from the operation of Part III nothing in this Act shall affect or delay the vesting in any acquiring authority of any land by virtue of any other Act or law.

54 Issue of certificates of title in respect of lands vested in acquiring authority

No. 5842 s. 54.

S. 54
amended by
Nos 9976
s. 11, 121/1986
s. 112, 53/1988
s. 45(Sch. 2
item 82) (as
amended by
No. 47/1989
s. 4(5)).

Notwithstanding anything in any Act where any land vests, whether free from encumbrances or subject to any particular encumbrances, in any acquiring authority by the operation of the **Land Acquisition and Compensation Act 1986** or of any other Victorian or Commonwealth enactment without transfer or conveyance thereto, and a plan of subdivision is not required by section 35 of the **Subdivision Act 1988**, upon the granting of an application made in an appropriate approved form by the acquiring authority (which application shall be made as soon as practicable after the vesting)—

- (a) where the land so vested is under the operation of this Act—the acquiring authority shall, without any further transfer conveyance disposition or assurance or the

S. 54(a)
amended by
No. 18/1989
s. 12(Sch. 1
item
85(a)(i)(ii)).

production of any certificate of title or any other instrument or document, be registered as the proprietor of the land in fee simple free from all encumbrances or subject to the encumbrances hereinbefore referred to (as the case requires) by the creation of a new folio of the Register recording the name of the acquiring authority as registered proprietor;

S. 54(b)
amended by
Nos 18/1989
s. 12(Sch. 1
item
85(b)(i)(ii)),
48/1991 s. 52.

- (b) where the land so vested is not under the operation of this Act—the land shall, without any further or other application or any conveyance or assurance or the publication of any notice or the production or examination of any documents of title whatsoever or the payment of any sum to the Consolidated Fund, be brought under the operation of this Act and a folio of the Register in fee simple free from all encumbrances or subject to the encumbrances hereinbefore referred to (as the case requires) shall be created in the name of the acquiring authority as registered proprietor.

No. 5842 s. 55.

55 Registrar to make necessary cancellations entries etc.

S. 55(1)
substituted by
No. 18/1989
s. 12(Sch. 1
item 86).

- (1) In respect of any land for which a folio of the Register is so created and which at the time of vesting was under the operation of this Act, the Registrar shall make any necessary amendments to the Register.

S. 55(2)
substituted by
No. 18/1989
s. 12(Sch. 1
item 86).

- (2) A person's right to compensation in respect of, or in any manner arising out of, the acquisition or vesting of land shall not be prejudiced or affected by any amendments to the Register made under subsection (1).

- (3) Where the creation of a folio of the Register has been applied for or a folio of the Register has been created pursuant to the last preceding section the acquiring authority shall before or at the time of making compensation for the acquisition of the land take possession of any certificate of title or other document produced to it on any claim for compensation and shall forthwith lodge them with the Registrar, and the Registrar must make any necessary amendments to the Register, and must return those documents (if any) which are not wholly cancelled and any certificate of title produced in consequence of the making of recordings in the Register under this section to the acquiring authority for return to the persons entitled to them.

S. 55(3)
amended by
Nos 18/1989
s. 12(Sch. 1
item 87(a)(b)),
80/2009 s. 31.

56 Acquiring authority to be responsible to persons injured by issue of certificate etc.

Any person who suffers any deprivation loss or damage by reason of the creation or deletion of a folio of the Register or the making of any amendment to the Register pursuant to this Division shall be indemnified by the acquiring authority concerned, but no person shall be entitled to receive or shall receive from the Registrar or out of the Consolidated Fund any money or compensation or consideration whatsoever in respect of or in any manner arising out of any such creation deletion or amendment.

No. 5842 s. 56.
S. 56
amended by
Nos 18/1989
s. 12(Sch. 1
item 88(a)(b)),
48/1991 s. 52.

57 Notice to be given to Registrar of intention to acquire land compulsorily

- (1) Whenever any acquiring authority proposes to acquire compulsorily any land under the operation of this Act, if the Act under which the acquisition will be made provides that any notice (whether individual or general) of intention so to acquire is to be served then notification in an appropriate

No. 5842 s. 57.

S. 57(1)
amended by
No. 9976 s. 11.

approved form of such intention shall be lodged with the Registrar forthwith upon service of such notice of intention.

S. 57(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 89(a)(b)).

- (2) The Registrar shall make an appropriate recording in any relevant part of the Register concerned or (where this is not practicable) shall by displaying a map or other appropriate means make such notice of intention to acquire available for inspection and, on notification by the acquiring authority of withdrawal of any such notice in whole or in part, shall delete the recording from the Register map or other relevant document in whole or in part accordingly.

S. 57(3)
amended by
No. 18/1989
s. 12(Sch. 1
item 90(a)(b)).

- (3) Any such notice of intention to acquire whether so recorded in any relevant part of the Register or so made available for inspection shall for the purposes of section forty-two of this Act be deemed to be an encumbrance recorded in any relevant part of the Register.

- (4) No person shall be entitled to receive from any acquiring authority any damages or compensation whatsoever resulting from compliance by the authority with the provisions of this section or anything arising therefrom.

S. 57(5)
inserted by
No. 121/1986
s. 112.

- (5) This section does not apply to a notice of intention to acquire under the **Land Acquisition and Compensation Act 1986**.

No. 5842 s. 58.

58 Registrar to give effect to order vesting trust estate

S. 58(1)
amended by
Nos 16/1986
s. 22(b),
18/1989
s. 12(Sch. 1
item 91),
80/2009 s. 32,
42/2017 s. 24.

- (1) Whenever any person interested in land under the operation of this Act appears to any court or to the Registrar to be a trustee or beneficiary of such land within the intent and meaning of any Act relating to trustees or beneficiaries and any vesting order is made in the premises by any such court or by the Registrar (which order he is hereby empowered to make concurrently with the court),

the Registrar on making or being served with such order or an office copy thereof must register that person as the proprietor of the land, and that person becomes the registered proprietor and transferee of the land..

- (2) Until a recording is made as aforesaid no vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting the land.

S. 58(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 92).

59 Application to become registered proprietor by person whose land is vested in by Act or court order

No. 5842 s. 59.

- (1) A person may apply to the Registrar to become the registered proprietor of land that has been vested in the person—

S. 59
amended by
Nos 6867
s. 2(Sch. 1),
18/1989
s. 12(Sch. 1
item 93),
80/2009 s. 33,
substituted by
No. 42/2017
s. 25.

(a) by or under any Act, including a
Commonwealth Act; or

(b) by order of a court.

- (2) An application under subsection (1) must be in the appropriate approved form.

- (3) Upon granting of an application made under subsection (1), the Registrar must register the applicant as the proprietor of the land, and that person becomes the registered proprietor and transferee of the land.

59A Amendment of Register to reflect successor at law

S. 59A
inserted by
No. 80/2009
s. 34.

- (1) Where by operation of law a person or body corporate is established as the successor in law to a person or body corporate that is the registered proprietor of land, the Registrar must make any necessary amendments in the Register—

S. 59A(1)
amended by
No. 42/2017
s. 26(1).

(a) on being requested to do so; and

S. 59A(2)
substituted by
No. 42/2017
s. 26(2).

(b) on delivery of a certificate described in subsection (2).

(2) A request under subsection (1) must be accompanied by a certificate certifying that the property, rights or liabilities of the former person or body corporate specified in the certificate have been vested in, or become the property, right or liabilities of, the successor in law to the former person or body corporate, that is signed by—

(a) in the case of a successor body corporate in law, the chief executive officer (however described) of the successor body corporate in law; or

(b) in the case of a successor in law that is a natural person or corporation sole, the natural person or corporation sole.

S. 59A(3)
amended by
No. 42/2017
s. 26(3).

(3) For the purposes of subsection (1), a certificate described in subsection (2) is admissible as evidence in any proceeding for the purpose of establishing proof that the property, rights or liabilities of the former person or body corporate specified in the certificate have been vested in, or become the property, rights or liabilities of, the successor in law to the former person or body corporate, and is conclusive proof of those matters.

Division 5—Acquisition by possession

No. 5842 s. 60.

60 Application for order by person claiming title by possession

S. 60(1)
amended by
Nos 9976
s. 11, 128/1986
s. 12(g),
85/1998 s. 10,
80/2009
s. 35(1).

(1) A person who claims that he has acquired a title by possession to land which is under this Act may apply to the Registrar in writing in an appropriate approved form, accompanied by a plan of survey (with an abstract of field records) of the land

certified by a licensed surveyor or any other plan, diagram or document describing the land which satisfies the Registrar as to description, for an order vesting the land in him for an estate in fee simple or other the estate claimed.

- (2) The Registrar shall cause notice of the application to be advertised once at least in a newspaper circulating in the city of Melbourne or in the neighbourhood of the land and to be given to any person he thinks proper including every person appearing by the Register to have any estate or interest in the land. **S. 60(2) amended by No. 18/1989 s. 12(Sch. 1 item 94).**
- (3) The applicant shall cause a copy of the notice to be posted in a conspicuous place on the land or at such place as the Registrar directs and to be kept so posted for not less than 30 days prior to the granting of the application. **S. 60(3) amended by No. 80/2009 s. 35(2).**
- (3A) A notice under subsection (3) must be posted on the day on which the application is advertised under subsection (2). **S. 60(3A) inserted by No. 80/2009 s. 35(3).**
- (4) The Registrar shall appoint a period of not less than 30 days from the publication of the advertisement or service of the notice after the expiration of which he may, unless a caveat is lodged as hereinafter provided, grant the application altogether or in part. **S. 60(4) amended by No. 80/2009 s. 35(4).**

61 Caveat

No. 5842 s. 61.

- (1) A person claiming any estate or interest in the land in respect of which any such application is made may before the granting of the application lodge a caveat in an appropriate approved form with the Registrar forbidding the granting thereof. **S. 61(1) amended by No. 9976 s. 11.**

S. 61(2)
amended by
Nos 9976
s. 11, 85/1998
s. 11(1).

- (2) The caveat shall in all other 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 under section 26R against the creation of a folio.

No. 5842 s. 62.

62 Power to make vesting order

S. 62(1)
amended by
No. 18/1989
s. 12(Sch. 1
item 95).

- (1) Subject to this Act after the expiration of the period appointed the Registrar if satisfied that the applicant has acquired a title by possession to the land may make an order vesting the land in the applicant, or in such person as the applicant directs, for an estate in fee simple or other the estate or interest acquired by the applicant free from all encumbrances which have been determined or extinguished by such possession and free from any easement recorded as an encumbrance which has been proved to the satisfaction of the Registrar to have been abandoned by reason of non-user for a period of not less than thirty years³.

- (2) Where a vesting order is so made the Registrar shall—

S. 62(2)(a)
substituted by
No. 18/1989
s. 12(Sch. 1
item 96(a)).

- (a) make any amendments to the Register that are necessary to give effect to the vesting order;

S. 62(2)(b)
amended by
No. 18/1989
s. 12(Sch. 1
item
96(b)(i)(ii)),
substituted by
No. 80/2009
s. 36(1).

- (b) create in the name of the applicant, or of any person the applicant directs, a new folio of the Register, dated as at the date of making the vesting order—
- (i) for an estate in fee simple or other estate acquired in the land described in the vesting order, free from all encumbrances extinguished under subsection (1); or

- (ii) at the Registrar's discretion, consolidating the land described in subparagraph (i) with any adjoining parcel of land owned by the applicant.
- (3) If the applicant or such other person dies before the vesting order is made the land shall be registered in his name and shall pass in like manner as if the folio of the Register had been created before the death. S. 62(3) amended by No. 18/1989 s. 12(Sch. 1 item 97).
- (4) As soon as practicable after making a vesting order, the Registrar must notify the Council of the municipal district where the land is located. S. 62(4) inserted by No. 53/1988 s. 45(Sch. 2 item 83) (as amended by No. 47/1989 s. 4(5)).
- (5) In this section, ***encumbrance*** includes, but is not limited to, any estate, interest, mortgage, charge, right, claim, demand, caveat, lease, sub-lease, restrictive covenant or statutory charge or an agreement under section 173 of the **Planning and Environment Act 1987**. S. 62(5) inserted by No. 80/2009 s. 36(2).
- * * * * *
- Pt 4 Div. 6 (Heading and ss 63–65) repealed by No. 7286 s. 9(2).

Division 7—Leases

66 Leases

- (1) The registered proprietor of freehold land may lease it for any term exceeding three years by an instrument in an appropriate approved form. No. 5842 s. 66. S. 66(1) amended by No. 9976 s. 11.
- * * * * *
- S. 66(2) repealed by No. 70/2014 s. 11.

S. 66(3)
inserted by
No. 80/2009
s. 37.

- (3) A lease described in subsection (1) must state the date of commencement and date of expiration of the lease.

No. 5842 s. 67.

67 Covenants to be implied in leases

- (1) In every instrument of lease under this Division there shall be implied the following covenants and powers—
- (a) that the lessee will pay the rent reserved by the lease at the times therein mentioned and all rates and taxes which may be payable in respect of the leased property during the continuance of the lease, except in so far as the same are or shall be payable exclusively by the owner of the property under any Act now or hereafter in force relating to local government;
 - (b) that the lessee will keep and yield up the leased property in good and tenantable repair, accidents and damage from storm and tempest and reasonable wear and tear excepted;
 - (c) that the lessor may with or without surveyors workmen or others once in every year during the term at a reasonable time of the day enter upon the leased property and view the state of repair thereof;
 - (d) that if the rent or any part thereof is in arrear for the space of one month, although no legal or formal demand has been made for payment thereof, or in case of any breach or non-observance of any of the covenants expressed in the lease or by this Act declared to be implied therein on the part of the lessee and such breach or non-observance continuing for the space of one month, it

shall be lawful for the lessor to re-enter upon and take possession of the leased property⁴.

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

67A Variation of registered leases

- (1) The registered proprietor of a lease of freehold land or of a perpetual Crown lease or of a Crown lease for years may, with the consent in writing of the lessor, vary the covenants or conditions of that lease by an instrument of variation in an appropriate approved form.

* * * * *

S. 67A
inserted by
No. 39/2006
s. 5.

S. 67A(2)
repealed by
No. 70/2014
s. 12.

- (3) For the purposes of this section the variation of a lease does not include any of the following—
- (a) a transfer or assignment of a lease;
 - (b) an alteration of—
 - (i) the term of a lease; or
 - (ii) an area of leased land; or
 - (iii) the parties to a lease.

No. 5842 s. 68.

68 Foreclosure or surrender of mortgaged lease where lessee is bankrupt

S. 68(1)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 98),
39/2006
s. 6(1).

- (1) Subject to the next succeeding subsection, on the bankruptcy of the registered proprietor of a lease of freehold land or of a perpetual Crown lease or of a Crown lease for years which is subject to one mortgage only, or to two or more mortgages of which the same person is registered proprietor, the Registrar, on lodgment by the mortgagee of an application in an appropriate approved form accompanied by a statement in writing signed by the trustee in bankruptcy that such trustee disclaims the lease, shall make a recording of the disclaimer in the Register, and that recording shall operate as a foreclosure and transfer to the mortgagee of the interest of the bankrupt in the lease.

S. 68(2)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 99),
39/2006
s. 6(2),
80/2009 s. 38.

- (2) The lessor of freehold land or of a perpetual Crown lease or of a Crown lease for years may serve notice in writing on the mortgagee that after the expiration of a period of 30 days from the service of such notice he intends to apply for the surrender of the lease; and if within such period the mortgagee makes no application under the last preceding subsection he shall be deemed to have abandoned his rights thereunder and the Registrar, on lodgment by the lessor of an application in an appropriate approved form accompanied by a disclaimer of the trustee in bankruptcy as aforesaid and a copy of the lessor's notice to the mortgagee and a statutory declaration as to service thereof, shall make in the Register a recording of the disclaimer and the mortgagees' failure to apply, and that recording shall operate as a surrender of the lease discharged from the mortgage but 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 Surrender of lease

No. 5842 s. 69.
S. 69
amended by
No. 18/1989
s. 12(Sch. 1
item 100),
substituted by
No. 39/2006
s. 7.

(1) The registered proprietor of a lease of freehold land or of a perpetual Crown lease or of a Crown lease for years may surrender the lease by an instrument in an appropriate approved form.

S. 69(1)
amended by
No. 70/2014
s. 13.

(1A) A lease may be partially surrendered under subsection (1) where the partial surrender applies to all of the land in a folio.

S. 69(1A)
inserted by
No. 80/2009
s. 39.

(1B) The surrender of lease under subsection (1) must be agreed to by the lessor and lessee of the lease.

S. 69(1B)
inserted by
No. 42/2017
s. 27(1).

(2) Subsection (1) is in addition to any other method of determining the operation of a lease.

(3) On lodgement of an instrument in an appropriate approved form under subsection (1), the Registrar must remove the recording of the lease from the relevant folio of the Register and, on the removal of the recording, the estate and interest of the lessee vests—

S. 69(3)
amended by
No. 42/2017
s. 27(2).

- (a) in the case of the surrender of a perpetual Crown lease or a Crown lease for years, in the Crown; or
- (b) in any other case, in the registered proprietor of the land.

No. 5842 s. 70.
S. 70
amended by
Nos 18/1989
s. 12(Sch. 1
item 101),
39/2006 s. 8.

70 Recovery of possession by lessors and determination of leases to be entered in Register

In the case of any lease of freehold land or any perpetual Crown lease or any Crown lease for years, the Registrar upon proof to his satisfaction—

- (a) of recovery of possession of the leased premises by the lessor by any legal proceeding;
- (b) that the lessor has re-entered upon the leased premises in strict conformity with the provisions for re-entry contained or implied in the lease; or
- (c) that the lessee has abandoned the leased premises and the lease and that the lessor has thereupon re-entered upon and occupied the premises by himself or tenants undisturbed by the lessee—

shall make an appropriate recording in the Register, whereupon 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.

No. 5842 s. 71.

S. 71(1)
amended by
No. 9976 s. 11.

71 Sub-leases

- (1) The registered proprietor of any lease may subject to any provision in his lease affecting his right so to do sub-let for any term of not less than three years by an instrument in an appropriate approved form.
- (2) Save as otherwise expressly provided the provisions of this Act affecting leases lessors and lessees shall apply to sub-leases sub-lessors and sub-lessees with such adaptations as are necessary.

- (3) If a lease is determined by forfeiture or operation of law or by surrender under any Act or law relating to bankrupts such determination shall determine the sub-lease.
- (4) In addition to the covenants specified by this Act to be implied in leases, there shall be implied in every sub-lease under this Act a covenant that the sub-lessor will during the term thereby granted pay the rent reserved by and perform and observe the covenants and agreements contained in the original lease and on his part to be paid performed and observed.

Division 8—Easements

72 Notification of easements in Register

- (1) A folio of the Register may contain a recording to the effect that the land therein described is subject to or has appurtenant thereto an easement⁵.
- (2) Upon application in an appropriate approved form the Registrar shall on the relevant folio of the Register make a recording of any easement over or upon or appurtenant to any land under this Act which the Registrar is satisfied has been created by compulsory acquisition in accordance with section 36 of the **Subdivision Act 1988** or by any instrument deed or other written document or recognized by an order of any court or award of an arbitrator.
- (2A) Subsection (2) does not apply to the creation of an easement—
 - (a) which is part of a plan of subdivision or consolidation; or

Nos 5842
s. 72, 5934
s. 5.

S. 72(1)
amended by
No. 18/1989
s. 12(Sch. 1
item
102(a)(b)).

S. 72(2)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 103),
57/1993
s. 19(1).

S. 72(2A)
inserted by
No. 53/1988
s. 45(Sch. 2
item 84) (as
amended by
No. 47/1989
s. 6(4)).

Transfer of Land Act 1958
No. 6399 of 1958
Part IV—Registration of dealings with land

S. 72(2A)(b)
amended by
Nos 48/1991
s. 51, 57/1993
s. 19(2)(a).

(b) if the creation of the easement is authorised
by a planning scheme or permit under the
Planning and Environment Act 1987;

S. 72(2A)(c)
repealed by
No. 57/1993
s. 19(2)(b).

* * * * *

S. 72(2B)
inserted by
No. 85/1998
s. 12.

(2B) The Registrar may accept a legal practitioner's
certificate as evidence of the creation of an
easement over or upon or appurtenant to any land
under this Act.

S. 72(3)
amended by
No. 18/1989
s. 12(Sch. 1
item 104).

(3) When in any folio of the Register or instrument an
easement is referred to or created or reserved by
the use of the words "Together with [*or*
Reserving] a right of carriage-way over"
[*specifying the roads subject to the easement and*
referring to a map or plan of subdivision] such
words shall have the same effect and shall be
construed as if the words contained in the Twelfth
Schedule had been inserted in the folio of the
Register or instrument.

No. 5842 s. 73.

73 Removal of easement etc.

S. 73(1)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 105).

(1) A registered proprietor may make application in
an appropriate approved form to the Registrar for
the deletion from the Register of any easement in
whole or in part where it has been abandoned or
extinguished.

S. 73(1A)
inserted by
No. 53/1988
s. 45(Sch. 2
item 85) (as
amended by
No. 47/1989
s. 6(4)).

(1A) Subsection (1) does not apply to the removal of an
easement in whole or in part if—
(a) the removal is part of a plan of subdivision
or consolidation; or

- | | |
|---|--|
| (b) the removal is authorised by a planning scheme or permit under the Planning and Environment Act 1987 ; or | S. 73(1A)(b) amended by No. 48/1991 s. 51. |
| (c) section 36 of the Subdivision Act 1988 applies to the removal. | |
| (1B) A registered proprietor may make application in the appropriate approved form to the Registrar for a declaration that the whole or a part of an easement has been abandoned or extinguished if the removal of the easement is mentioned in subsection (1A)(a). | S. 73(1B) inserted by No. 53/1988 s. 45(Sch. 2 item 85) (as amended by No. 47/1989 s. 6(4)). |
| (1C) The Registrar must give to each person who appears by the Register to have an estate or interest in the land benefited by the easement notice of the application and, if the Registrar is of the opinion that the easement has been abandoned or extinguished in whole or in part, must issue a written declaration to that effect to the applicant. | S. 73(1C) inserted by No. 53/1988 s. 45(Sch. 2 item 85) (as amended by No. 47/1989 s. 6(4)). |
| (2) The Registrar shall give to every person who appears from the Register to have any estate or interest in the land to which the easement is appurtenant notice of the application and if he is of opinion that any such easement has been abandoned or extinguished in whole or in part shall make appropriate amendments in the Register. | S. 73(2) amended by No. 18/1989 s. 12(Sch. 1 item 106). |
| (3) Where it is proved to the satisfaction of the Registrar that any such easement has not been used or enjoyed for a period of not less than thirty years, such proof shall constitute sufficient evidence that such easement has been abandoned. | |

S. 73(4)
amended by
Nos 9976
s. 11, 53/1988
s. 45(Sch. 2
item 86) (as
amended by
No. 47/1989
s. 6(4)),
18/1989
s. 12(Sch. 1
item 107),
85/1998
s. 11(2).

- (4) Any person claiming an estate or interest in the land to which the easement to which subsection (1) applies is appurtenant may before the deletion of the easement from the Register lodge a caveat in an appropriate approved form with the Registrar forbidding the deletion, which caveat shall be subject to the same provisions and have the same effect with respect to the application for deletion as a caveat under section 26R against the creation of a folio.

No. 3791
s. 271.

S. 73A
inserted by
No. 6544 s. 5,
amended by
No. 18/1989
s. 12(Sch. 1
item
108(a)(b)).

73A Abandonment of easement of right of way

Upon an application to bring land under this Act or to amend a folio of the Register, if it is proved to the satisfaction of the Registrar that any land constituting a private road street or way or a portion of a private road street or way subject to an easement of right of way has been exclusively continuously and adversely occupied by the applicant or by him and those through whom he claims for a period of not less than thirty years the Registrar may notwithstanding anything to the contrary in this Act at his discretion create a folio of the Register for the fee simple of that land without recording any right or easement of way as an encumbrance thereon, and thereafter the said right or easement shall not be preserved by section forty-two.

S. 73B
inserted by
No. 42/2017
s. 28.

73B Right of carriageway

The Registrar must not register or record an instrument that creates or surrenders a right of carriageway unless satisfied that the council of the municipal district in which the land is located has consented to the creation or surrender of the right of carriageway.

Division 9—Mortgages and annuities

74 Creation and nature of mortgages and charges

- | | |
|---|--|
| <p>(1) By instrument in the approved form, the registered proprietor of any land may—</p> <ul style="list-style-type: none">(a) mortgage the land; or(b) charge it with the payment of an annuity. <p>(1A) The Registrar may register a mortgage if the mortgagee has—</p> <ul style="list-style-type: none">(a) signed the mortgage; and(b) certified that—<ul style="list-style-type: none">(i) the mortgagee holds a mortgage granted by the mortgagor; and(ii) the mortgage held by the mortgagee is on the same terms as the mortgage lodged for registration. <p>(2) Any such mortgage or charge shall when registered have effect as a security and be an interest in land, but shall not operate as a transfer of the land thereby mortgaged or charged.</p> <p>(3) A mortgage held by a mortgagee in accordance with subsection (1A) must be retained by the mortgagee until the mortgage is discharged.</p> <p>(4) If a mortgage registered in accordance with subsection (1A) ceases to be retained by the mortgagee—</p> <ul style="list-style-type: none">(a) the mortgage is no longer taken to be a mortgage or charge on the land and is void; and(b) the mortgagee must discharge the mortgage as soon as practicable. | <p>No. 5842 s. 74.
S. 74(1)
amended by
No. 9976 s. 11,
substituted by
No. 70/2014
s. 14(1).</p> <p>S. 74(1A)
inserted by
No. 70/2014
s. 14(1).</p> <p>S. 74(1A)(b)(ii)
amended by
No. 42/2017
s. 29.</p> <p>S. 74(3)
inserted by
No. 70/2014
s. 14(2).</p> <p>S. 74(4)
inserted by
No. 70/2014
s. 14(2).</p> |
|---|--|

S. 74(5)
inserted by
No. 70/2014
s. 14(2).

- (5) A registered mortgage does not operate as a mortgage or charge on the land if for any reason the mortgage is, or is found to be, void or not enforceable at law or in equity and the mortgagee must discharge the mortgage as soon as practicable.

No. 5842 s. 75.

75 Covenants to be implied in every mortgage

In every such mortgage there shall be implied covenants and powers—

- (a) that the mortgagor will pay the principal money therein mentioned on the day therein appointed, and will so long as the principal money or any part thereof remains unpaid pay interest thereon or on so much thereof as for the time being remains unpaid at the rate and on the days and in the manner therein specified;
- (b) that the mortgagor will repair and keep in repair all buildings or other improvements which have been or are erected or made upon the mortgaged land;
- (c) that the mortgagee may at all reasonable times until the mortgage is redeemed enter into and upon the land with or without surveyors or others to view and inspect the state of repair of such buildings or improvements;
- (d) that the mortgagor will insure in or to the effect of the terms in the Fifteenth Schedule.

S. 75A
inserted by
No. 6544
s. 6(1),
amended by
Nos 9324
s. 4(1), 9976
s. 11, 80/2009
s. 40 (ILA
s. 39B(1)).

75A Variation of registered mortgage

- (1) A mortgagee or annuitant may, with the consent in writing of the registered proprietor of the land subject to the mortgage or charge and of the registered proprietors of any mortgage or charge registered subsequent thereto, vary the terms of the mortgage or charge or the principal sum

interest or annuity secured thereby by an instrument of variation in an appropriate approved form.

- (2) For the purposes of this section, the variation of a mortgage does not include the following—

S. 75A(2)
inserted by
No. 80/2009
s. 40.

- (a) a transfer or assignment of a mortgage; or
- (b) an alteration of—
 - (i) the length of the term of the mortgage;
or
 - (ii) an area of mortgaged land; or
 - (iii) the parties to a mortgage.

75B Variation of priority of mortgages and charges

S. 75B
inserted by
No. 9324
s. 5(1).

- (1) The priority between or amongst themselves of the registered mortgages and charges affecting any land may, if each of them affects the whole of the land and that land only, be varied from time to time by an instrument in an appropriate approved form.
- (2) The instrument shall set out in the order in which they are to rank in priority all registered mortgages and charges affecting the land concerned and shall subject to this Act be executed by the registered proprietor of each mortgage and charge to be postponed to a mortgage or charge over which it previously had priority.
- (3) Upon registration of the instrument, the mortgages and charges shall have priority between or amongst themselves in the order set out in the instrument and shall be deemed to have been registered in that order.

S. 75B(1)
amended by
No. 9976 s. 11.

No. 5842 s. 76.

76 Procedure in case of default in payment of moneys secured

S. 76(1)
amended by
Nos 6975
s. 27(b),
18/1989
s. 12(Sch. 1
item 109).

(1) If default is made in payment of the principal sum interest or annuity secured or any part thereof or in the performance or observance of any covenant express or implied in any such mortgage or charge and continues for one month or such other period as is therein expressly fixed, the mortgagee or annuitant may serve on the mortgagor or grantor of the annuity and such other persons as appear by the Register to be affected notice in writing to pay the money owing or to perform and observe the covenants (as the case may be).

(2) Where money secured by any such mortgage is made payable on demand a demand in writing pursuant to the mortgage shall for the purposes of this Act be equivalent to serving the notice aforesaid.

S. 76(3)
inserted by
No. 106/2004
s. 17.

(3) A notice or demand referred to in subsection (1) or (2) must also be served on the Director within the meaning of the **Housing Act 1983** if—

- (a) the mortgage or charge affects land in which the Director has an interest under section 107 of that Act; and
- (b) the interest of the Director is recorded on the Register.

No. 5842 s. 77.

77 Power of sale under a mortgage or charge

(1) If within one month after the service of such notice or demand or such other period as is fixed in such mortgage or charge the mortgagor grantor or other persons do not comply with the notice or demand the mortgagee or annuitant may, in good faith and having regard to the interests of the mortgagor grantor or other persons, sell or concur with any other person in selling the mortgaged or charged land or any part thereof, together or in

lots, by public auction or by private contract, at one or several times, and for a sum payable in one amount or by instalments, subject to such terms and conditions as the mortgagee or annuitant thinks fit, with power to vary any contract for sale and to buy in at any auction or to rescind any contract for sale and to resell without being answerable for any loss occasioned thereby and with power to make such roads streets and passages and grant and reserve such easements as the circumstances of the case require and the mortgagee or annuitant thinks fit, and may make and sign such transfers and do such acts and things as are necessary for effectuating any such sale.

- (2) An instrument of transfer by a mortgagee or annuitant expressed to be in exercise of the power of sale and in an appropriate approved form may be accepted by the Registrar as sufficient evidence that the power has been duly exercised.
- (3) The purchase money received arising from the sale shall be applied—
- (a) firstly in payment of all costs charges and expenses properly incurred incidental to the sale and consequent on such default;
 - (b) secondly in payment of the moneys which are due or owing on the mortgage or charge;
 - (c) thirdly in payment of moneys owing under or in respect of subsequent mortgages and charges in the order of their respective priorities;
 - (d) fourthly in payment of the residue (if any) to the mortgagor or into the Supreme Court under the provisions so far as they are applicable of section sixty-nine of the **Trustee Act 1958** and the rules referred to

S. 77(2)
amended by
No. 9976 s. 11.

S. 77(3)(c)
amended by
No. 7332
s. 2(Sch. 1
item 113).

S. 77(3)(d)
amended by
Nos 11/2001
s. 3(Sch.
item 78.1),
30/2004 s. 11.

therein, or if the sale is made by a mortgagee and the land is charged with a subsequent annuity or if the sale is made by an annuitant, in payment of the said residue into an account on deposit at interest in an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth in the joint names of the annuitant and the Registrar to satisfy the accruing payments of the charge and subject thereto for the benefit of the parties who are or become entitled to the residue of the deposited money.

S. 77(4)
amended by
Nos 9324
s. 7(2),
18/1989
s. 12(Sch. 1
item 110),
70/2014
s. 15(a).

- (4) Upon the registration of any transfer under this section all the estate and interest of the mortgagor or grantor of the annuity as registered proprietor of the land mortgaged or charged shall vest in the purchaser as proprietor by transfer, freed and discharged from all liability on account of such mortgage or charge and (except where such a mortgagor or grantor is the purchaser) of any mortgage charge or encumbrance recorded in the Register subsequent thereto and the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised but any person thereby damnified shall have his remedy in damages against the person exercising the power, and for the purposes of Part III the purchaser shall be deemed to have dealt with the registered proprietor of the land.

S. 77(4)(a)(b)
repealed by
No. 70/2014
s. 15(b).

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78 Power to mortgagee or annuitant to enter into possession or bring ejectment

No. 5842 s. 78.

- (1) The mortgagee or annuitant upon default in payment of the principal sum or interest or annuity or any part thereof respectively at the due time—
 - (a) may enter into possession of the mortgaged or charged land by receiving the rents and profits thereof; or
 - (b) may bring an action of ejectment to recover the land, either before or after entering into the receipt of the rents and profits and either before or after any sale of the land as aforesaid.
- (2) A mortgagee of or annuitant upon leasehold land after entering into possession of the land or the receipt of the rents and profits thereof shall, during such possession or receipt and to the extent of any benefit rents and profits which are received, be subject to and liable for the payment of the rent reserved and the performance and observance of the covenants contained or implied in the lease on the part of the lessee.

79 Foreclosure

Nos 5842
s. 79, 5934
s. 6.

- (1) Whenever default is made in payment of the principal sum or interest secured by a mortgage and such default continues for six months after the due time for payment the mortgagee may make application in an appropriate approved form to the Registrar for an order for foreclosure.
- (2) The application shall be accompanied by a statutory declaration stating—
 - (a) that such default has been made and has continued for the period aforesaid;

S. 79(1)
amended by
Nos 9324
s. 6(1)(a), 9976
s. 11.

S. 79(2)
amended by
No. 9324
s. 6(1)(b)
(i)–(iii).

S. 79(2)(c)
amended by
No. 84/2001
s. 14.

- (b) that notice to pay has been served as hereinbefore provided⁶;
- (c) that the land mortgaged has within a period of two years prior to the date of such application been offered for sale at public auction;
- (d) that the amount of the highest bidding at such sale was not sufficient to satisfy the moneys secured by such mortgage together with the expenses occasioned by such sale;
- (e) that notice in writing of the intention of the mortgagee to make an application for foreclosure has been served on the mortgagor in manner provided by this Act; and
- (f) that a like notice of such intention has been so served on every person appearing from the Register to have any estate or interest in the mortgaged land subsequent to such mortgage—

S. 79(2)(f)
amended by
No. 18/1989
s. 12(Sch. 1
item 111).

and by a certificate of the auctioneer by whom such land was put up for sale and such other proof of the matters stated by the applicant as the Registrar requires.

- (3) Upon such application the Registrar shall cause notice to be published once in each of three successive weeks in at least one newspaper published in the city of Melbourne offering such land for private sale, and shall appoint a time not less than one month from the date of the first of such advertisements upon or after which he will issue to such applicant an order for foreclosure unless in the interval a sufficient amount has been obtained by the sale of such land to satisfy the principal and interest secured and all expenses occasioned by such sale and proceedings.

- (4) Every such order for foreclosure when recorded in the Register shall have the effect of vesting in the mortgagee as registered proprietor the land mentioned in such order freed and discharged from any estate or interest of the mortgagor therein and from any mortgage charge or encumbrance except—

S. 79(4)
amended by
Nos 6867
s. 2(Sch. 1),
9324 s. 7(3),
18/1989
s. 12(Sch. 1
item 112).

- (a) a lease easement or restrictive covenant to which the mortgagee has consented in writing or to which he is a party; or
- (b) a mortgage charge easement or other right that is for any reason binding upon the mortgagee.

* * * * *

S. 80
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 113),
repealed by
No. 85/1998
s. 13.

81 Other rights etc. of first mortgagee

No. 5842 s. 81.

- (1) In addition to and concurrently with any rights and powers aforesaid a first mortgagee shall, until a discharge from the whole of the money secured or a transfer upon a sale or an order for foreclosure has been registered, have the same rights and remedies at law and in equity as he would have had if the legal estate in the mortgaged land had been vested in him as mortgagee with a right in the mortgagor of quiet enjoyment until default in payment of any principal or interest or a breach in the performance or observance of some covenant.
- (2) Nothing in this section shall affect or prejudice the rights or liabilities of any such mortgagee after an order for foreclosure has been recorded in the Register or shall, until the recording in the

S. 81(1)
amended by
No. 57/1989
s. 3(Sch.
item 201.3).

S. 81(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 114).

Register of such an order, render a first mortgagee of land leased under this Act liable for the payment of the rent reserved by or the performance or observance of any covenant under the lease.

- (3) A mortgagor shall not, either before or after default or breach as aforesaid, commence in his own name any action for or in respect of any cause of action for which a first mortgagee may sue under the foregoing provisions of this section without obtaining the consent in writing of such mortgagee or his agent to such action, which consent may be obtained whether before or after the commencement of the action; and after the giving of such consent such mortgagee shall not be entitled to bring in his name any action in respect of such cause of action.

No. 5842 s. 82.

82 Application of moneys obtained from actions by the mortgagor

- (1) Any sum of money which becomes payable to the mortgagor under any judgment decree or order in any action by him for or on account of any waste or damage of or to the land mortgaged shall be paid to the first mortgagee in reduction or satisfaction of the money secured; and if he is not willing to receive it or thereby is fully paid off, such sum or the balance shall be paid to any subsequent mortgagee according to priority in like reduction or satisfaction; and if no mortgagee is willing or entitled to receive it, then to the mortgagor for his own benefit.

- (2) Any mortgagee may, either before or after judgment or execution obtained in any action brought by the mortgagor, apply to a court for a summons in such action calling on the plaintiff and defendant or their legal practitioners, conveyancers or agents to attend before the court and show cause why any sum beyond \$50 which has been or is recovered for damages in such action or which becomes payable on the settlement thereof should not be paid to such persons and for such purposes as are hereinbefore mentioned with respect to money payable under any judgment decree or order in any action by the mortgagor; and the court shall determine the matter in a summary manner and make such order therein as to costs and all other matters as appears to be just and reasonable.

S. 82(2)
amended by
Nos 35/1996
s. 453(Sch. 1
item 83.9),
75/2006
s. 192(Sch. 2
item 6.4) (as
amended by
No. 17/2007
s. 33), 80/2009
s. 41.

83 Application of moneys obtained in proceedings by a mortgagee

No. 5842 s. 83.

Any money received by a first mortgagee under any proceedings commenced in his name shall after payment thereof of his costs be applied in reduction or satisfaction of the moneys secured, and subject thereto shall be disposed of according to the equities of the parties interested.

84 Discharge of mortgages and annuities

No. 5842 s. 84.

- (1) Upon submission of an instrument in an appropriate approved form signed by the mortgagee or annuitant discharging the land or part thereof from the whole or part of the moneys or annuity secured, the Registrar must remove the recording of the mortgage, charge or annuity from the relevant folio of the Register and that land or portion of land ceases to be subject to the mortgage, charge or annuity.

S. 84(1)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item
115(a)(b)),
substituted by
No. 42/2017
s. 30(1).

Transfer of Land Act 1958
No. 6399 of 1958
Part IV—Registration of dealings with land

S. 84(2)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 116
(a)–(c)),
substituted by
No. 80/2009
s. 42(1).

- (2) The Registrar may amend the Register to remove the recording of a mortgage on a folio or folios of the Register if it is proved to the Registrar's satisfaction that—

S. 84(2)(a)
substituted by
No. 42/2017
s. 30(2).

- (a) either—

- (i) all principal and interest due in respect of the mortgage have been paid to the person entitled to receive them; or
- (ii) section 20 of the **Limitation of Actions Act 1958** applies; and

S. 84(2)(b)
substituted by
No. 42/2017
s. 30(3).

- (b) a discharge of mortgage instrument cannot be obtained because the mortgagee is—

- (i) a natural person who is deceased and has no legal personal representative who can act on the deceased's behalf, or whose signature cannot for any reason be obtained within a reasonable time; or
- (ii) a body corporate and the authorised agent of the body corporate cannot be located or the agent's signature cannot be obtained within a reasonable time.

S. 84(2A)
inserted by
No. 9976 s. 5,
amended by
No. 18/1989
s. 12(Sch. 1
item
117(a)(b)),
repealed by
No. 80/2009
s. 42(2).

* * * * *

Transfer of Land Act 1958
No. 6399 of 1958
Part IV—Registration of dealings with land

- (3) Upon proof to the satisfaction of the Registrar of the death of the annuitant or of the occurrence of the event or circumstance upon which in accordance with the provisions of any charge the annuity thereby secured ceases to be payable and that no moneys are owing in respect of the annuity the Registrar must remove the recording of the annuity from the relevant folio of the Register and that land or portion of land ceases to be subject to the annuity.

S. 84(3)
amended by
Nos 18/1989
s. 12(Sch. 1
item 118),
No. 42/2017
s. 30(4).

* * * * *

S. 84(4)
inserted by
No. 128/1986
s. 6,
amended by
No. 18/1989
s. 12(Sch. 1
item 119),
repealed by
No. 42/2017
s. 30(5).

* * * * *

S. 84(5)
inserted by
No. 128/1986
s. 6,
amended by
No. 18/1989
s. 12(Sch. 1
item 120),
repealed by
No. 42/2017
s. 30(5).

85 Mortgage money payable to Treasurer if mortgagee absent from Victoria and mortgage discharged

No. 5842 s. 85.

- (1) If a mortgagee is absent from Victoria and there is no person authorized to give a receipt for the mortgage money the Treasurer of Victoria may receive such money with all arrears of interest due thereon in trust for the mortgagee or other person entitled thereto; and thereupon the interest upon such mortgage shall cease to run or accrue and the Registrar shall, upon production of the receipt of the Treasurer for the amount of the mortgage

S. 85(1)
amended by
Nos 6867 s. 2,
18/1989
s. 12(Sch. 1
item 121
(a)(b)).

money and interest, make a recording in the Register discharging the land from such mortgage, and that recording shall be a valid discharge from such mortgage.

S. 85(2)
amended by
No. 80/2009
s. 43.

- (2) The Treasurer shall hold such moneys, together with all dividends and interest which accrue thereon, in the Trust Fund until an application is made to the Treasurer by the mortgagee or other person entitled to the moneys for payment of those moneys.

No. 5842 s. 86.

S. 86
(Heading)
inserted by
No. 70/2014
s. 16(1).

S. 86
amended by
Nos 18/1989
s. 12(Sch. 1
item
122(a)(b)),
70/2014
s. 16(2).

S. 86(a)
inserted by
No. 70/2014
s. 16(2).

S. 86(b)
inserted by
No. 70/2014
s. 16(2).

86 First mortgagee to produce certificate of title for registration of subsequent instrument

When any instrument subsequent to a first mortgage is made by the registered proprietor of any land and such proprietor or the person entitled to the benefit of the subsequent instrument desires the registration of the subsequent instrument the first mortgagee must—

- (a) if the first mortgagee holds the certificate of title concerned, on being requested by the registered proprietor or person entitled to the benefit of the subsequent instrument and at the cost of the person making the request, produce the certificate of title to the Registrar; or
- (b) if the certificate of title does not exist, on being requested by the registered proprietor or person entitled to the benefit of the subsequent instrument for production of the certificate, if the Registrar requires, provide an administrative notice to the Registrar.

87 Puisne mortgagee may tender payment

No. 5842 s. 87.

If the money secured by any mortgage is due and the mortgagee requires payment thereof any other mortgagee of the same land may tender and pay to the mortgagee requiring such payment the money due upon his security, and the mortgagee making such payment shall be entitled at his own cost to a transfer of the interest of the mortgagee requiring such payment who shall effect the transfer accordingly.

87A Mortgagee to verify identity of mortgagor for execution of mortgage or variation of mortgage

S. 87A
inserted by
No. 70/2014
s. 17.

- (1) In respect of a mortgage or a variation of mortgage, a mortgagee must take reasonable steps to verify the authority and identity of a mortgagor to ensure that the person executing the mortgage, or on whose behalf the mortgage is executed, as mortgagor is the same person who is, or is to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates.
- (2) For the purposes of subsection (1), the mortgagee is considered to have taken reasonable steps to verify the authority and identity of the mortgagor if the mortgagee has taken steps consistent with any verification of identity and authority requirements—
 - (a) determined by the Registrar in accordance with section 106A; or
 - (b) set out in the participation rules (within the meaning of the Electronic Conveyancing National Law (Victoria)).
- (3) If, in relation to a mortgage, the Registrar is satisfied that the mortgagee did not take reasonable steps to verify the authority and

S. 87A(1)
amended by
No. 42/2017
s. 31.

identity of the mortgagor and the registered proprietor of the land did not grant the mortgage, the Registrar may—

- (a) if the mortgage has not been registered, refuse to register the mortgage; or
 - (b) if the mortgage has been registered, remove the mortgage from the Register.
- (4) If, in relation to a variation of mortgage, the Registrar is satisfied that the mortgagee did not take reasonable steps to verify the authority and identity of the mortgagor and the registered proprietor of the land did not grant the mortgage, the Registrar may—
- (a) if the variation of mortgage has not been registered, refuse to register the variation; or
 - (b) if the variation of mortgage has been registered, remove the variation from the Register.
- (5) If the Registrar removes a mortgage from the Register under subsection (3)—
- (a) the mortgagee no longer has an indefeasible interest in the mortgaged land; and
 - (b) the mortgage is void.
- (6) If the Registrar removes a variation of mortgage from the Register under subsection (4) the variation is void.

S. 87B
inserted by
No. 70/2014
s. 17.

87B Transfer of mortgage—transferee to confirm, or verify, identity of mortgagor

S. 87B(1)
amended by
No. 42/2017
s. 32.

- (1) In respect of a transfer of mortgage, a transferee mortgagee must—
- (a) take reasonable steps to confirm that the original mortgagee took reasonable steps; or

- (b) take reasonable steps themselves—
to verify the authority and identity of the mortgagor to ensure that the person who executed the mortgage, or on whose behalf the mortgage was executed, as mortgagor is the same person who is the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates.
- (2) For the purposes of this section, a transferee mortgagee is considered to have taken reasonable steps to verify the authority and identity of the mortgagor if—
- (a) the transferee mortgagee confirms that the original mortgagee took steps consistent with any verification of identity and authority requirements—
 - (i) determined by the Registrar in accordance with section 106A; or
 - (ii) set out in the participation rules (within the meaning of the Electronic Conveyancing National Law (Victoria)); or
 - (b) the transferee mortgagee takes steps consistent with any verification of identity and authority requirements—
 - (i) determined by the Registrar in accordance with section 106A; or
 - (ii) set out in the participation rules (within the meaning of the Electronic Conveyancing National Law (Victoria)).

- (3) If, in relation to a transfer of a mortgage, the Registrar is satisfied that the transferee mortgagee or the original mortgagee did not take reasonable steps and the registered proprietor of the land did not grant the mortgage, the Registrar may—
 - (a) if the transfer of mortgage has not been registered, refuse to register the transfer of mortgage and remove the mortgage from the Register; or
 - (b) if the transfer of mortgage has been registered, remove the mortgage and the transfer of mortgage from the Register.
- (4) If the Registrar removes a mortgage from the Register, or removes a mortgage and a transfer of a mortgage from the Register, under subsection (3)—
 - (a) the mortgagee no longer has an indefeasible interest in the mortgaged land; and
 - (b) the mortgage and any transfer of mortgage is void.

S. 87C
inserted by
No. 70/2014
s. 17.

87C Mortgagee or annuitant consent required for lease, easement or restrictive covenant

The creation, variation or surrender of a lease or the creation or variation of an easement or restrictive covenant, in respect of land subject to a mortgage or charge, is not valid or binding against a mortgagee or annuitant unless the mortgagee or annuitant has consented in writing to (as the case requires)—

- (a) the creation, variation or surrender of the lease; or
- (b) the creation or variation of the easement or restrictive covenant.

87D Registered proprietor in case of fraudulent mortgage

S. 87D
inserted by
No. 70/2014
s. 17.

- (1) This section applies to a registered proprietor of land if—
 - (a) the land has been mortgaged fraudulently; and
 - (b) the registered proprietor is not a party to that fraud; and
 - (c) the registered proprietor is entitled to be indemnified under this Act because of that fraud.
- (2) If this section applies to a registered proprietor, any amount payable to the mortgagee by the registered proprietor for the purposes of obtaining a discharge of mortgage must not exceed the amount payable under section 110(4)(c).

87E Amount recoverable by mortgagee under section 77 in case of fraudulent mortgage

S. 87E
inserted by
No. 70/2014
s. 17.

- (1) This section applies if—
 - (a) land has been mortgaged fraudulently; and
 - (b) the registered proprietor of the land is not a party to that fraud; and
 - (c) the registered proprietor is entitled to be indemnified under this Act because of that fraud; and
 - (d) the land has been sold under a mortgage or charge in accordance with section 77.
- (2) If this section applies, the amount to be applied in accordance with section 77(3) must not exceed the amount payable under section 110(4)(c) in respect of the payment of money due or owing (as appropriate)—

- (a) on the first mortgage or charge, in accordance with section 77(3)(b); or
- (b) in respect of subsequent mortgages and charges, in accordance with section 77(3)(c); or
- (c) on the first mortgage or charge and subsequent mortgages and charges, in accordance with section 77(3)(b) and (c).

Division 10—Restrictive covenants, charges etc.

88 Notification of restrictive covenants

No. 5842 s. 88.

S. 88(1)
amended by
Nos 7130
s. 2(a),
18/1989
s. 12(Sch. 1
item 123),
substituted by
No. 80/2009
s. 44(1),
amended by
No. 70/2014
s. 18(1),
substituted by
No. 42/2017
s. 33(1).

- (1) The Registrar may record on the relevant folio of the Register the following—

- (a) subject to subsection (1A), a restrictive covenant, if all of the registered proprietors of the land to be affected by the covenant agree to the creation of the restrictive covenant;
- (b) subject to subsection (1A), (1B) and (1C), a variation or release of a recorded restrictive covenant.

S.
88(1AA)(1AB)
inserted by
No. 80/2009
s. 44(1),
repealed by
No. 42/2017
s. 33(1).

* * * *

S. 88(1AC)
inserted by
No. 80/2009
s. 44(1),
amended by
No. 70/2014
s. 18(2),
repealed by
No. 42/2017
s. 33(1).

* * * *

(1A) The Registrar must not, under this section, record a creation, variation or release of a restrictive covenant—

- (a) that is part of a plan under the **Subdivision Act 1988**; or
- (b) authorised by a planning scheme or permit under the **Planning and Environment Act 1987**.

S. 88(1A) inserted by No. 53/1988 s. 45(Sch. 2 item 87) (as amended by No. 47/1989 s. 6(4)), amended by No. 48/1991 s. 51, substituted by No. 42/2017 s. 33(1).

Note

Creations, variations and releases of restrictive covenants created in plans under the **Subdivision Act 1988** and authorised by planning schemes and permits under the **Planning and Environment Act 1987** must be dealt with under the **Subdivision Act 1988**.

(1B) A recording on a folio of a restrictive covenant created by a plan under the **Subdivision Act 1988** must not be amended or deleted by the Registrar under this section unless the restrictive covenant is varied or released by—

- (a) the agreement of all of the registered proprietors of the land affected by the covenant with the consent of the council of the municipal district in which the land is located; or
- (b) an order of a court or VCAT.

S. 88(1B) inserted by No. 53/1988 s. 45(Sch. 2 item 87) (as amended by No. 47/1989 s. 6(4)), repealed by No. 80/2009 s. 44(2), new s. 88(1B) inserted by No. 42/2017 s. 33(1).

(1C) A recording on a folio of a restrictive covenant that was created in any way other than by a plan under the **Subdivision Act 1988** may be amended or deleted by the Registrar under this section if the restrictive covenant is varied or released by—

- (a) the agreement of all of the registered proprietors of the land affected by the covenant; or
- (b) an order of a court or VCAT.

S. 88(1C) inserted by No. 42/2017 s. 33(1).

S. 88(2)
amended by
Nos 9324
s. 7(1)(a), 9976
s. 11, 18/1989
s. 12(Sch. 1
item 124),
42/2017
s. 33(2).

- (2) Where in pursuance of any Victorian or Commonwealth Act an easement or any other right over or affecting land is acquired (other than a tax or rate which need not be specially recorded in the Register) upon such easement or right being acquired the authority or person concerned may lodge with the Registrar a notification in an appropriate approved form specifying the volume and folium of any relevant folio of the Register and the Crown description of any land affected thereby; and the Registrar may on any relevant folio of the Register make an appropriate recording of such easement or right⁷.

S. 88(3)
amended by
Nos 9324
s. 7(1)(b),
18/1989
s. 12(Sch. 1
item 125),
42/2017
s. 33(3).

- (3) Apart from the operation of Part III a recording in the Register of any such restrictive covenant easement or right shall not give it any greater operation than it has under the instrument or Act creating it.

Pt 4 Div. 11
(Heading and
ss 88A, 88B)
inserted by
No. 70/2014
s. 19.

Division 11—Mortgagee or annuitant may apply for removal or reinstatement of a lease, easement or restrictive covenant

S. 88A
inserted by
No. 70/2014
s. 19.

88A Mortgagee or annuitant may apply for removal or reinstatement of lease if no consent

- (1) A mortgagee or annuitant may apply to the Registrar for the removal of a lease, the removal of a variation of a lease or a reinstatement of a lease if—
- (a) section 77 applies; and
 - (b) the written consent of the mortgagee or annuitant was not obtained before the registration of—
 - (i) the lease; or

- (ii) the variation of the lease; or
 - (iii) the surrender of the lease.
- (2) An application under subsection (1) must be in the approved form.
- (3) If an application is made under subsection (1), the Registrar must serve on a person benefited by the lease, or the variation of the lease or the surrender of the lease, notice—
 - (a) of the application of the mortgagee or annuitant; and
 - (b) requiring the person to produce evidence, by a day specified in the notice that is not less than 30 days after service of the notice, of the written consent of the mortgagee or annuitant to—
 - (i) the lease; or
 - (ii) the variation of the lease; or
 - (iii) the surrender of the lease.
- (4) The Registrar may grant and process an application made under subsection (1) if—
 - (a) no evidence is produced as required by the notice in subsection (3) within the time specified in that subsection; or
 - (b) the evidence produced by the person served with a notice under subsection (3) does not prove to the satisfaction of the Registrar that the mortgagee or annuitant provided written consent to—
 - (i) the lease; or
 - (ii) the variation of the lease; or
 - (iii) the surrender of the lease.

S. 88B
inserted by
No. 70/2014
s. 19.

88B Mortgagee or annuitant may apply for removal, or removal of a variation, of easement or restrictive covenant if no consent

- (1) A mortgagee or annuitant may apply to the Registrar for the removal of an easement or restrictive covenant or the removal of a variation of an easement or restrictive covenant if—
 - (a) section 77 applies; and
 - (b) the written consent of the mortgagee or annuitant was not obtained before the registration or recording of—
 - (i) the easement or restrictive covenant; or
 - (ii) the variation of the easement or restrictive covenant.
- (2) An application under subsection (1) must be in the approved form.
- (3) If an application is made under subsection (1), the Registrar must serve on a person benefited by the easement or restrictive covenant, or the variation of the easement or restrictive covenant, notice—
 - (a) of the application of the mortgagee or annuitant; and
 - (b) requiring the person to produce evidence, by a day specified in the notice that is not less than 30 days after service of the notice, of the written consent of the mortgagee or annuitant to—
 - (i) the easement or restrictive covenant; or
 - (ii) the variation of the easement or restrictive covenant.

- (4) The Registrar may grant and process an application made under subsection (1) if—
- (a) no evidence is produced as required by the notice in subsection (3) within the time specified in that subsection; or
 - (b) the evidence produced by the person served with a notice under subsection (3) does not prove to the satisfaction of the Registrar that the mortgagee or annuitant provided written consent to—
 - (i) the easement or restrictive covenant; or
 - (ii) the variation of the easement or restrictive covenant.

Part V—Incidental provisions

Division 1—Caveats against dealings

No. 5842 s. 89. **89 Caveats temporarily forbidding dealings with lands**

S. 89(1)
amended by
Nos 9324
s. 8(a)(b), 9976
s. 11, 10128
s. 6(2).

- (1) Any person claiming any estate or interest in land under any unregistered instrument or dealing or by devolution in law or otherwise or his agent may lodge with the Registrar a caveat in an appropriate approved form forbidding the registration of any person as transferee or proprietor of and of any instrument affecting such estate or interest either absolutely or conditionally and may, at any time, by lodging with the Registrar an instrument in an appropriate approved form, withdraw the caveat as to the whole or any part of the land.

S. 89(2)
substituted by
No. 18/1989
s. 12(Sch. 1
item 126).

- (2) A recording of every caveat lodged under this section must be made in any relevant part of the Register.

- (3) The Registrar shall give to the registered proprietor of the estate or interest concerned notice of the caveat together with a copy of the caveat or of such particulars thereof as the Registrar deems material to such person.

S. 89(4)
amended by
No. 80/2009
s. 45.

- (4) Every notice relating to any such caveat and any proceedings in respect thereof if served at the address specified in the caveat shall be deemed to be duly served.

89A Removal of caveat on application to Registrar

S. 89A
inserted by
No. 7244 s. 2,
substituted by
No. 9324
s. 9(1).

- (1) Subject to the provisions of this section, where a recording of a caveat (not being a caveat lodged by the Registrar) has been made pursuant to section 89(2), any person interested in the land affected thereby or in any part thereof may make application in an appropriate approved form to the Registrar for the service of a notice pursuant to subsection (3).
- (2) An application under this section shall—
- (a) specify the land and the estate or interest therein in respect of which it is made; and
 - (b) be supported by a certificate signed by a person for the time being engaged in legal practice in Victoria, referring to the caveat and stating the person's opinion that, as regards the land and the estate or interest therein in respect of which the application is made, the caveator does not have the estate or interest claimed by the caveator.
- (3) Upon receiving any such application and certificate and upon being satisfied that the applicant has an interest in the land in respect of which the application is made, the Registrar shall give notice to the caveator that the caveat will lapse as to the land and the estate or interest therein in respect of which the application is made on a day specified in the notice unless in the meantime either—
- (a) the application is abandoned by notice in writing given to the Registrar by or on behalf of the applicant; or

S. 89A(1)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 127).

S. 89A(2)(b)
amended by
Nos 35/1996
s. 453(Sch. 1
item 83.10),
42/2017
s. 34(a).

S. 89A(3)(b)
amended by
Nos 80/2009
s. 46(1),
42/2017
s. 34(b).

(b) notice in writing is given to the Registrar that proceedings in a court or VCAT to substantiate the claim of the caveator in relation to the land and the estate or interest therein in respect of which the application is made are on foot.

S. 89A(4)
amended by
No. 80/2009
s. 46(2).

(4) The Registrar shall not cause a day to be specified in the notice that is less than 30 days after the day on which the notice is served or, if the notice is sent by post, the day on which it is introduced into the course of post.

S. 89A(5)
amended by
No. 18/1989
s. 12(Sch. 1
item 128).

(5) Upon the specified day, unless—

(a) the application has been abandoned as aforesaid; or

(b) notice in writing has been given to the Registrar that proceedings as aforesaid are on foot—

the caveat shall lapse as to the land and the estate or interest therein to which the application then relates, and the Registrar shall make all necessary amendments in the Register.

S. 89A(6)
amended by
No. 42/2017
s. 34(c).

(6) An application under this section may be abandoned either wholly or as to part of the land or the estate or interest therein in respect of which it is made either before or after notice is given pursuant to subsection (3), but where notice has been given, only with the consent of the caveator or the caveator's agent.

(7) Where notice in writing of the kind referred to in paragraph (b) of subsection (3) is given to the Registrar—

S. 89A(7)(a)
amended by
Nos 80/2009
s. 46(3)(a),
42/2017
s. 34(d).

(a) if in the proceedings in question the claim of the caveator is not substantiated to the satisfaction of a court or VCAT—the court or VCAT may make such order in relation

to the caveat as the court or VCAT thinks fit and the Registrar shall give effect thereto;

- (b) if there is subsequently served upon the Registrar a copy of any notice, or an office copy of any order of the court or VCAT, disclosing that the proceedings in question have been discontinued, withdrawn or struck out or evidence to the satisfaction of the Registrar that those proceedings have been dismissed—the caveat shall lapse as to the land and the estate or interest therein to which the application then relates, and the Registrar shall make all necessary amendments to the Register.

S. 89A(7)(b) amended by Nos 18/1989 s. 12(Sch. 1 item 129), 85/1998 s. 14, 80/2009 s. 46(3)(b), 42/2017 s. 34(e).

90 Except in certain cases caveat to lapse after thirty days notice given to caveator

No. 5842 s. 90.

- (1) Subject to this Act every such caveat except a caveat lodged by the Registrar shall lapse as to any land affected by any transfer or other dealing other than—

S. 90(1) amended by No. 9324 s. 10(1)(a)(i).

- (a) a transmission under Division two of Part IV; or
- (b) a transfer or dealing as to which the caveator, or the caveator's agent, has consented in writing;
- (c) in the case of a caveat lodged by or on behalf of a beneficiary claiming under a will or settlement—a transfer or dealing giving effect to the appointment of a new trustee or to any other transaction which in the opinion of the Registrar is not inimical to the interests of the beneficiaries; or
- (d) a transfer or dealing which is expressed to be subject to the rights of the caveator; or

S. 90(1)(b) substituted by No. 42/2017 s. 35(1).

S. 90(1)(d) inserted by No. 6544 s. 7, amended by No. 9324 s. 10(1)(a)(i).

S. 90(1)(e)
inserted by
No. 9324
s. 10(1)(a)(i).

(e) a transfer or dealing the registration or entry
of which is provided for in the caveat—

upon the expiration of thirty days after notice
given by the Registrar to the caveator that a
transfer or dealing has been lodged for
registration, but in the case of a transfer or other
dealing which does not dispose of the whole of the
estate or interest of the registered proprietor in the
land affected thereby the caveat shall lapse only to
the extent necessary to permit the registration of
the transfer or dealing.

S. 90(2)
amended by
Nos 80/2009
s. 47(1),
42/2017
s. 35(2).

(2) If before the expiration of the said period of thirty
days or such further period as is specified in any
order made under this subsection the caveator or
the caveator's agent appears before a court and
gives such undertaking or security or lodges such
sum as the court considers sufficient to indemnify
every person against any damage that may be
sustained by reason of any disposition of the
property being delayed, the court may direct the
Registrar to delay registering any dealing with the
land for a further period specified in the order, or
may make such other order (and in either case
such order as to costs) as is just.

S. 90(3)
amended by
No. 80/2009
s. 47(2).

(3) Any person who is adversely affected by any such
caveat may bring proceedings in a court against
the caveator for the removal of the caveat and the
court may make such order as the court thinks fit.

S. 90(4)
substituted by
No. 9324
s. 10(1)(a)(ii),
amended by
Nos 18/1989
s. 12(Sch. 1
item 130),
42/2017
s. 35(3).

(4) Where a caveat lapses in whole or in part by
virtue of subsection (1) in consequence of the
lodging of a transfer or dealing and the transfer
or dealing is withdrawn from registration or the
Registrar exercises any of the powers conferred
on the Registrar by section 105(1) in respect of it,
the Registrar shall reinstate the recording of the
caveat in any relevant part of the Register to

which the caveat relates and the caveat shall thereupon have effect as if it had not lapsed.

- (5) Nothing in subsections (1), (2), (3) and (4) shall apply to or in relation to the case where there is lodged for registration a transfer or dealing that is to pass to the caveator upon being registered the estate or interest in any land that he claims in the caveat.

S. 90(5)
inserted by
No. 9324
s. 10(1)(a)(ii).

- (6) In any case of the kind referred to in subsection (5), the caveat shall lapse as to the land affected by the transfer or dealing upon registration thereof.

S. 90(6)
inserted by
No. 9324
s. 10(1)(a)(ii).

91 No entry to be made in Register affecting land in respect of which caveat in force

No. 5842 s. 91.

- (1) So long as any such caveat remains in force the Registrar shall not except to register or give effect to—
- (a) a transfer or dealing referred to in section 90(1)(a)(b)(c)(d) or (e);
 - (b) a transfer or dealing referred to in section 90(5); or
 - (c) a transfer or dealing in respect of which the caveat has lapsed—

S. 91(1)
amended by
Nos 6544 s. 8,
9324
s. 10(1)(b)(i),
18/1989
s. 12(Sch. 1
item 131).

record in the Register any change in the proprietorship of or any dealing purporting to affect the estate or interest in respect of which the caveat is lodged.

- (2) Notwithstanding anything in the foregoing no instrument lodged for registration shall be in any way affected by any caveat lodged at a time later than the lodgment of such instrument.

S. 91(2A)
inserted by
No. 9976
s. 6(1),
amended by
No. 70/2014
s. 20(b).

(2A) Notwithstanding anything to the contrary in this Division, the registration of an instrument of transfer executed by the registered proprietor of a mortgage or charge in exercise of the power of sale conferred on him by this Act shall not be prevented by a caveat that—

(a) was lodged after the mortgage or charge was lodged; and

S. 91(2A)(b)
amended by
No. 70/2014
s. 20(a).

(b) claims an estate or interest in the land transferred by virtue of an unregistered mortgage or charge or other unregistered document intended to create a security for the payment of moneys.

S. 91(2B)
inserted by
No. 9976
s. 6(1).

(2B) Upon the registration of an instrument of transfer by the registered proprietor of a mortgage or charge in exercise of the power of sale conferred on him by this Act, any caveat that—

(a) was lodged after the mortgage or charge was lodged; and

(b) claims an estate or interest in the land transferred by virtue of an unregistered mortgage or charge or other unregistered document intended to create a security for the payment of moneys—

shall lapse to the extent that it claims an estate or interest in the land transferred.

S. 91(3)
inserted by
No. 9324
s. 10(1)(b)(ii).

(3) Notwithstanding anything to the contrary in this Division, no dealing by the registered proprietor of a mortgage charge lease or sub-lease in respect of which a caveat has lapsed shall be in any way affected by the caveat.

S. 91(4)
inserted by
No. 9324
s. 10(1)(b)(ii),
amended by
No. 80/2009
s. 48.

(4) A caveat that has lapsed or been removed by an order of a court shall not be renewed by or on behalf of the same person in respect of the same interest.

Division 1A—Recorded common provisions

Pt 5 Div. 1A
(Heading and
ss 91A, 91B)
inserted by
No. 9976 s. 7.

91A Recording of common provisions

S. 91A
inserted by
No. 9976 s. 7.

- (1) Any person may lodge with the Registrar a memorandum in the approved form containing one or more provisions which are intended for inclusion in instruments to be subsequently lodged for registration.
- (2) The Registrar may retain a memorandum lodged under subsection (1).
- (3) The Registrar may prepare and retain a memorandum containing any provisions which seem appropriate for inclusion in instruments to be subsequently lodged for registration.
- (4) A memorandum retained by the Registrar pursuant to this section shall, for the purposes of section 114, be deemed to be part of the Register.

S. 91A(4)
amended by
No. 18/1989
s. 12(Sch. 1
item 132).

91B Incorporation of common provisions

An instrument lodged in the Office of Titles may incorporate a common provision in a memorandum retained by the Registrar under section 91A(2) by reference to the provision in a way sufficient to clearly identify it.

S. 91B
inserted by
No. 9976 s. 7,
amended by
Nos 10128
s. 6(3),
42/2017 s. 36.

Division 1B—Priority notices

Pt 5 Div. 1B
(Heading and
ss 91C–91J)
inserted by
No. 70/2014
s. 21.

91C Priority notice

A recorded priority notice gives any instrument specified in the notice, for the purposes of registration or recording of the specified

S. 91C
inserted by
No. 70/2014
s. 21.

instrument, priority for 60 days from the date the notice is lodged.

S. 91D
inserted by
No. 70/2014
s. 21.

91D Lodgement of priority notice

- (1) A priority notice—
 - (a) must be in the approved form; and
 - (b) may only be lodged using an ELN; and
 - (c) may be in respect of any type of instrument and regardless of the proposed method of lodgement of the instrument specified in the priority notice.
- (2) If a priority notice is in the approved form, the Registrar may accept lodgement of the priority notice as sufficient evidence that the applicant who lodged the priority notice, or who had the priority notice lodged on their behalf, is entitled to lodge the priority notice.
- (3) The Registrar is not required to give any person notice of a priority notice recorded in the Register.

S. 91E
inserted by
No. 70/2014
s. 21.

91E Instruments lodged after priority notice

Subject to section 91F, any instrument lodged after a priority notice but before the instrument specified in the priority notice is lodged must not be registered until—

- (a) after the instrument specified in the priority notice is registered or recorded; or
- (b) the priority notice ceases to have effect.

S. 91F
inserted by
No. 70/2014
s. 21.

91F Certain instruments not affected by priority notice

An instrument that is capable of being recorded is not affected by a priority notice and may be lodged and recorded at any time.

Examples

Examples of instruments that are recorded include caveats, warrants, statutory charges and notifications.

91FA Extension of priority notice

- (1) An applicant specified in a priority notice may apply to the Registrar for an extension of the priority notice.
- (2) An application for extension of a priority notice under subsection (1)—
 - (a) must be in the approved form; and
 - (b) must be made before the expiry or withdrawal of the priority notice; and
 - (c) may only be lodged using an ELN; and
 - (d) may be made only once.
- (3) An extension of a priority notice extends the period of priority given to an instrument specified in the notice to 90 days from the date of lodgement of the priority notice.

S. 91FA
inserted by
No. 42/2017
s. 37.

91G Expiry or withdrawal of priority notice

- (1) A priority notice expires on the earlier of—
 - (a) registration or recording of the instrument specified in the priority notice; or
 - (b) 60 days after the date of lodgement of the priority notice; or
 - (c) 90 days after the date of lodgement of the priority notice if the notice has been extended under section 91FA.
- (2) A priority notice may be withdrawn at any time before its expiry by lodging a withdrawal of priority notice.
- (3) A withdrawal of priority notice—
 - (a) must be in the approved form; and
 - (b) may only be lodged using an ELN.

S. 91G
inserted by
No. 70/2014
s. 21.

S. 91G(1)(b)
amended by
No. 42/2017
s. 38(a).

S. 91G(1)(c)
inserted by
No. 42/2017
s. 38(b).

S. 91H
inserted by
No. 70/2014
s. 21.

**91H Instrument lodged must match instrument
described in any applicable priority notice**

- (1) If an instrument lodged is not consistent with the details of an instrument specified in any priority notice, the instrument must not be registered or recorded.
- (2) If a priority notice contains incorrect details, the priority notice—
 - (a) may not be corrected; and
 - (b) may be withdrawn and a new priority notice lodged.

S. 91I
inserted by
No. 70/2014
s. 21.

**91I Proceedings may be brought by a person adversely
affected by priority notice**

Any person who is adversely affected by a priority notice may bring proceedings in a court against the applicant specified in the priority notice for the removal of the priority notice and the court may make any order the court thinks fit.

S. 91J
inserted by
No. 70/2014
s. 21.

**91J Compensation for lodging priority notice without
reasonable cause**

If a priority notice is lodged without reasonable cause under this Part, the applicant specified in the priority notice is liable to compensate any person who sustains damage as a result of the recording of that notice as the court considers appropriate.

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Pt 5 Div. 2
(Heading and
ss 92, 93)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
items 133,
134),
repealed by
No. 80/2009
s. 49.

Division 2A—Client authorisation

Pt 5 Div. 2A
(Heading and
ss 91K, 91L)
inserted by
No. 70/2014
s. 22.

91K Client authorisations

S. 91K
inserted by
No. 70/2014
s. 22.

(1) In this Act, a *client authorisation* is a document—

- (a) that is in the form required by the Registrar;
and

Note

See section 106A.

- (b) by which a party to a conveyancing transaction authorises an authorised representative to do one or more things on that party's behalf in connection with the transaction.

(2) Without limiting subsection (1)(b), a client authorisation may authorise an authorised representative to do any of the following—

- (a) sign instruments or other documents;
- (b) present instruments or other documents for lodgement;
- (c) authorise or complete any associated financial transaction.

91L Effect of client authorisation

S. 91L
inserted by
No. 70/2014
s. 22.

(1) A properly completed client authorisation—

- (a) has effect according to its terms; and
- (b) is not a power of attorney for the purposes of any other law relating to powers of attorney.

(2) If a client authorisation is properly completed, the requirements of any other law relating to the execution, signing, witnessing, attestation or

sealing of documents must be regarded as having been fully satisfied.

- (3) This section does not limit or affect the application of any law relating to powers of attorney in relation to—
- (a) the execution of client authorisations under a power of attorney; or
 - (b) a client authorisation executed under a power of attorney.

Pt 5 Div. 2B
(Heading and
s. 91M)
inserted by
No. 70/2014
s. 22.

Division 2B—Signatures

S. 91M
inserted by
No. 70/2014
s. 22.

91M Reliance on, and repudiation of, signatures

- (1) Subject to subsection (2), if a relevant person signs an instrument or other document in connection with a conveyancing transaction—
- (a) the signature is binding, in relation to that instrument or other document, on—
 - (i) the relevant person; and
 - (ii) any other person for whom the relevant person acts under a client authorisation with respect to that conveyancing transaction; and
 - (b) the signature is binding, in relation to that instrument or other document, for the benefit of—
 - (i) each of the parties to that conveyancing transaction; and
 - (ii) each authorised representative who acts under a client authorisation with respect to that conveyancing transaction; and

- (iii) any person claiming through or under any person to whom subparagraph (i) applies; and
 - (iv) the Registrar, once the instrument or other document is lodged.
- (2) A relevant person may repudiate the signature with respect to an instrument or other document if the relevant person establishes—
 - (a) that the signature was not the relevant person's signature; and
 - (b) that the signature was not the signature of a person who, at the time of signing the instrument or other document—
 - (i) was an employee, agent, contractor or officer of the relevant person; and
 - (ii) had the relevant person's express or implied authority to sign any document; and
 - (c) that neither of the following enabled the signing of the instrument or other document—
 - (i) a failure of the relevant person, or any of the relevant person's employees, agents, contractors or officers, to fully comply with the Registrar's requirements;
 - (ii) a failure by the relevant person, or any of the relevant person's employees, agents, contractors or officers, to take reasonable care.

- (3) For the purposes of subsection (2)(b)(ii), it does not matter whether the authority was—
- (a) general; or
 - (b) limited or restricted to documents of a particular class or to a particular document or in any other way.

Division 3—Powers of attorney

No. 5842 s. 94.

94 Powers of attorney and revocation thereof

- (1) A person may by power of attorney in an appropriate form appoint another person to act for him in bringing any land under the operation of this Act or dealing in any way with any land under the operation of this Act or of which he is or thereafter becomes the registered proprietor.
- (2) Where it appears to the Registrar that anything done by a person purporting to act under a power of attorney falls within the scope of the power, the Registrar shall not be concerned to inquire whether or not the power was in force when the thing was done.

S. 94(2)
substituted by
No. 9421
s. 5(2)(a).

S. 94(3)
repealed by
No. 6544 s. 9.

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Division 4—Surveys and subdivisions

No. 5842 s. 95.

95 Requirements as to surveys

- (1) In respect of any application under this Act or of any proposed subdivision of land under this Act the Registrar may require such surveys and plans to be made and lodged and such particulars of the boundaries and abutments to be furnished at the cost of the applicant or registered proprietor as the Registrar thinks fit.

- (2) All surveys required by the Registrar and except in accordance with the regulations or with the prior consent of the Registrar all plans lodged under this Division shall be made and certified by a licensed surveyor and, subject to the requirements of the **Surveying Act 2004**, shall comply with any requirements of the Registrar.
- (3) The Registrar may dispense with surveys in so far as there is sufficient survey information available to the Office of Titles.

S. 95(2)
amended by
Nos 6975
s. 27(c), 7814
s. 4, 9180
s. 2(1),
47/2004
s. 71(Sch.
item 6.2).

96 Abuttals used in description of land

No. 5842 s. 96.

S. 96
(Heading)
inserted by
No. 42/2017
s. 39.

- (1) In any folio of the Register the land may be described by its abuttals in addition to but not in substitution for dimensions, unless the Registrar specially authorizes the land or any boundary of the land to be described by abuttals only.
- (2) Mention of an abuttal in any folio of the Register shall not give title to the abuttal or be evidence of the title of any person who is referred to in the description as owner or occupier of the land upon which any abuttal stands or of any land constituting an abuttal.

S. 96(1)
amended by
No. 18/1989
s. 12(Sch. 1
item 135).

S. 96(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 135).

97 Requirements as to plans of subdivision etc.

No. 5842 s. 97.

- (1) This Act and any subordinate instrument (within the meaning of the **Interpretation of Legislation Act 1984**) made under it apply to the **Subdivision Act 1988** as if that Act formed part of this Act, and that Act must be read as one with this Act.

S. 97(1)
amended by
S.R. No.
152/1974
reg. 2,
substituted by
Nos 53/1988
s. 45(Sch. 2
item 89),
48/1991 s. 48.

Transfer of Land Act 1958
No. 6399 of 1958
Part V—Incidental provisions

S. 97(2)
amended by
No. 6972
s. 9(3),
repealed by
No. 8531
s. 2(2),
new s. 97(2)
inserted by
No. 48/1991
s. 48.

- (2) If a provision of the **Subdivision Act 1988** or the regulations made under that Act is inconsistent with a provision of this Act or a subordinate instrument made under this Act, the provision of that Act or those regulations prevails.

S. 97(2A)–(3)
repealed.⁸

* * * * *

S. 97(4)
amended by
No. 53/1988
s. 45(Sch. 2
items 91–93).

- (4) After the plan of subdivision has been approved or registered by the Registrar the numbers of the allotments or lots marked upon the plan may be used to describe the land for the purpose of dealings with any allotment or lot according to the plan of subdivision.

S. 97(4A)
inserted by
No. 10128
s. 4(1),
amended by
Nos 53/1988
s. 45(Sch. 2
items 94, 95),
18/1989
s. 12(Sch. 1
item 136).

- (4A) After a plan of subdivision has been approved or registered by the Registrar under this section the Registrar may, in respect of each allotment or lot or other parcel of land recorded on the plan, create a folio of the Register by recording the description of the land and allocating a distinctive identifying reference to the recording.

S. 97(4B)
inserted by
No. 10128
s. 4(1),
amended by
Nos 53/1988
s. 45(Sch. 2
items 96, 97),
18/1989
s. 12(Sch. 1
item
137(a)(b)).

- (4B) Where a folio of the Register is created under subsection (4A) in respect of an allotment or a lot or parcel of land, the allotment or lot or parcel may, for the purpose of a dealing with the allotment or lot or parcel, be described as the land contained in the folio of the Register.

(4C) Until a plan of subdivision has been approved or registered, the Registrar shall not on the relevant folio of the Register make a recording giving effect to a dealing with an allotment or a lot and may refuse to accept for lodgment and may return to the party producing the same any instrument giving effect to a dealing with an allotment or a lot.	S. 97(4A) inserted by No. 7898 s. 5(b), re-numbered as s. 97(4C) by No. 53/1988 s. 45(Sch. 2 item 98), amended by Nos 53/1988 s. 45(Sch. 2 items 99, 100), 18/1989 s. 12(Sch. 1 item 138(b)).
* * * * *	S. 97(5) repealed by No. 53/1988 s. 45(Sch. 2 item 101).
(6) In this section sale has the same meaning as in the Sale of Land Act 1962 .	S. 97(6) inserted by No. 7272 s. 8(2)(b).
97A Application for approval of plan of consolidation	S. 97A inserted by No. 7814 s. 6.
* * * * *	S. 97A(1) repealed by No. 53/1988 s. 45(Sch. 2 item 102).
(2) Where the Registrar approves or registers a plan of consolidation he shall create with respect to the land delineated on the plan a single folio of the Register in which the land is described by reference to the plan, and shall forthwith delete any existing folio of the Register with respect to that land.	S. 97A(2) amended by Nos 53/1988 s. 45(Sch. 2 item 103), 18/1989 s. 12(Sch. 1 item 140).
(3) After a plan of consolidation has been approved or registered by the Registrar the land delineated thereon may be described by reference to the plan	S. 97A(3) amended by No. 53/1988 s. 45(Sch. 2 item 104).

for the purpose of any dealings therewith under this Act.

S. 97A(3A)
inserted by
No. 10128
s. 4(2),
amended by
Nos 53/1988
s. 45(Sch. 2
item 104),
18/1989
s. 12(Sch. 1
item 141).

- (3A) After a plan of consolidation has been approved or registered by the Registrar the Registrar may create a folio of the Register by recording the description of the land and allocating a distinctive identifying reference to the recording.

S. 97A(3B)
inserted by
No. 10128
s. 4(2),
amended by
No. 18/1989
s. 12(Sch. 1
item
142(a)(b)).

- (3B) Where a folio of the Register is created under subsection (3A) for land, the land may, for the purpose of a dealing with the land, be described as the land contained in the folio of the Register.

S. 97A(4)
repealed by
No. 53/1988
s. 45(Sch. 2
item 104A) (as
amended by
No. 47/1989
s. 19(zh)).

* * * * *

S. 97B
inserted by
No. 9128
s. 9(1),
repealed by
No. 53/1988
s. 45(Sch. 2
item 105).

* * * * *

S. 98
substituted by
No. 6544 s. 10,
amended by
No. 53/1988
s. 45(Sch. 2
items 106,
107).

98 Easements arising from plan of subdivision

The proprietor of an allotment of land shown on an approved plan of subdivision or a lot shown on a registered plan shall be entitled to the benefit of the following easements which shall be and shall be deemed at all times to have been appurtenant to the allotment or the lot, namely—

- (a) all such easements of way and drainage and for party wall purposes and for the supply of water gas electricity sewerage and telephone and other services to the allotment or the lot on over or under the lands appropriated or set apart for those purposes respectively on the plan of subdivision as may be necessary for the reasonable enjoyment of the allotment or the lot and of any building or part of a building at any time thereon; and
- (b) in the case of the subdivision of a building, all such additional easements of way drainage support and protection and for the supply of water gas electricity sewerage and telephone and other services to the allotment or the lot on or over the other allotments or other lots in the subdivision as may be necessary for the reasonable enjoyment of the allotment or the lot as part of that building or any building at any time situated on the land in the subdivision—

S. 98(a)
amended by
No. 53/1988
s. 45(Sch. 2
item 107).

S. 98(b)
amended by
No. 53/1988
s. 45(Sch. 2
items 107,
108) (as
amended by
No. 47/1989
s. 22(g)).

in all respects as if all such easements had been expressly granted.

98A As to relationship between title to stratum estate and shares in service company etc.

S. 98A
inserted by
No. 6646 s. 3.

- (1) Notwithstanding anything to the contrary in any Act or law the following provisions shall have effect in respect of every building subdivision in relation to which a service company operates or is intended to operate—
 - (a) no shares or other like interests in the service company to which are attached any voting rights or any rights of participation in profits or capital distribution shall be allotted except those which are intended to be issued or sold with or in respect of the several stratum estates in the subdivision;

S. 98A(1)(b)
amended by
No. 18/1989
s. 12(Sch. 1
item 143).

- (b) the shares or other like interests in the service company which are issued or sold with or in respect of any stratum estate in the subdivision shall be an interest in land, shall be included in any folio of the Register created in respect of the stratum estate and shall pass with the stratum estate and not otherwise;
- (c) no sale transfer assignment mortgage charge or other dealing with the shares or like interests in the service company which were issued or sold with or in respect of any stratum estate shall be of any force or effect in law or in equity unless made or having effect as part of or in conjunction with a sale transfer assignment mortgage charge or other appropriate dealing with the relevant stratum estate; and
- (d) no transfer or other dealing with any stratum estate shall be registered until the service company is registered as the proprietor of the residual land.

S. 98A(2)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 144).

- (2) The registered proprietor of any stratum estate in respect of which a folio of the Register was created before the commencement of the **Transfer of Land (Stratum Estates) Act 1960** may make application in an appropriate approved form to the Registrar for the inclusion in that certificate of the shares or other like interests sold or issued with or in respect of that estate and such shares or interests may be included in the certificate accordingly, and where so included shall be an interest in land and shall pass with the stratum estate and not otherwise.

**98B Restriction on amendment of memorandum articles
or rules affecting shares in service company**

S. 98B
inserted by
No. 6646 s. 3.

Notwithstanding anything to the contrary in any Act or law, no amendment or alteration of the memorandum or articles or rules of a service company operating in relation to a building subdivision, which amendment or alteration affects the allotment or issue of shares or other like interests in the service company or the rights privileges (including rights of voting) attached to any such shares or other interests, shall be made except—

- (a) with the consent in writing of each of the registered proprietors for the time being of the several stratum estates in the subdivision or of the persons for the time being empowered by law to deal with those estates; or
- (b) in accordance with an order made by a court upon application made in a summary way (which order a court is hereby authorized to make) dispensing with the need for all or any such consents in the circumstances of a particular case (including any case where any such consent has in the opinion of the court been unreasonably withheld) either absolutely or subject to such conditions as are specified in the order.

S. 98B(b)
amended by
Nos 57/1989
s. 3(Sch. item
201.4(a)–(c)),
80/2009 s. 50.

98C Registration of service agreement

S. 98C
inserted by
No. 6646 s. 3.

- (1) The service company in a building subdivision which has entered into a service agreement with the proprietor of any stratum estate therein (whether before or after the commencement of the **Transfer of Land (Stratum Estates) Act 1960**) or the registered proprietor of the stratum estate to

S. 98C(1)
amended by
No. 7114
s. 2(1).

which the service agreement relates may lodge the service agreement in the Office of Titles for registration under this Act.

S. 98C(2)
amended by
Nos 7114
s. 2(2), 9976
s. 11.

- (2) A service agreement registered under this Act may be cancelled or varied by agreement of the service company and the registered proprietor for the time being of the stratum estate or of the person for the time being empowered by law to deal with that estate, and such cancellation or variation may be registered by the lodging of an instrument in an appropriate approved form, upon the application of the service company or of the said registered proprietor or person.

S. 98C(2A)
inserted by
No. 80/2009
s. 51.

- (2A) For the purposes of this section, the variation of a service agreement does not include an alteration of—

- (a) the length of the term of the service agreement; or
- (b) the area to which the service agreement applies.

- (3) The following provisions shall have effect in relation to every registered service agreement which is in force (including any such agreement as varied pursuant to the last preceding subsection)—

- (a) the rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to any provision of the service agreement; and
- (b) all those conditions covenants and agreements set forth in the service agreement (whether positive or negative and whether touching and concerning land or not) which bind or benefit the proprietor of the stratum estate or the service company (as the case

may be) shall be binding upon and shall enure for the benefit of—

- (i) the person for the time being entitled to receive or who, if the stratum estate were let to a tenant at a rent, would be entitled to receive the rent thereof; or
- (ii) the service company and its successors—

(as the case requires) notwithstanding that any such person or successor was not a party to or named in the service agreement or was not in existence at the time of its execution.

98CA Conversion of building subdivisions

- (1) A service company or the registered proprietor of an allotment shown on the plan of building subdivision may apply to the Registrar to have the plan of building subdivision cancelled and a plan of subdivision prepared under the regulations under the **Subdivision Act 1988** registered.

S. 98CA inserted by No. 53/1988 s. 45(Sch. 2 item 109) (as amended by No. 47/1989 s. 22(h)(i)–(iii)).

- (2) The application must—

- (a) be in the approved form; and

S. 98CA(2)(a) amended by No. 42/2017 s. 10(3).

- (b) contain the prescribed particulars; and

- (c) be accompanied by a plan of subdivision under the regulations under the **Subdivision Act 1988**; and

- (ca) be accompanied by the relevant owners corporation documents; and

S. 98CA(2)(ca) inserted by No. 6/2008 s. 38(1).

- (d) if a service company operates in relation to the building subdivision but is not the applicant, be accompanied by the consent under seal of the service company to the

granting of the application or, if no service company operates in relation to the building subdivision, the consent in writing of the registered proprietors of not less than one-half of the allotments on the plan of building subdivision to the granting of the application.

S. 98CA(3)
inserted by
No. 6/2008
s. 38(2).

- (3) In this section and section 98CB *owners corporation documents* means the documents required under Part 5 of the **Subdivision Act 1988** to accompany a plan of subdivision.

S. 98CB
inserted by
No. 53/1988
s. 45(Sch. 2
item 109).

98CB Procedure if Registrar is satisfied that plan is suitable for registration

- (1) If the Registrar is satisfied that—
- (a) the boundaries of the allotments on the plan of building subdivision other than those determined by levels substantially agree with the corresponding boundaries of the lots on the plan of subdivision; and
 - (b) the plan of subdivision is suitable for registration under the **Subdivision Act 1988**—

the Registrar must comply with subsection (2).

S. 98CB(1A)
inserted by
No. 48/1991
s. 49(1).

- (1A) If a plan of subdivision adopts the interior face of a wall, ceiling or floor of a part of a building as a boundary of a lot on a plan of subdivision, the Registrar may accept that boundary as substantially or, where necessary, exactly agreeing with the corresponding boundary of an allotment on the plan of building subdivision for the purposes of subsection (1).

- (2) The Registrar must—

S. 98CB(2)(a)
amended by
Nos 48/1991
s. 50(c),
6/2008
s. 38(3)(a).

- (a) serve a copy of the application, the plan of building subdivision, the plan of subdivision and the owners corporation documents on each person appearing from the Register or

from any instrument or application lodged in the Office of Titles as at the time of the lodging of the application to have or to claim to have an interest in any part of the land in the building subdivision; and

- (b) require each person served under paragraph (a) to notify the Registrar in writing whether that person consents to the granting of the application; and
- (c) if there is a service company and the service company was registered under the Co-operatives National Law (Victoria), serve a notice in the prescribed form on the Registrar of Co-operatives.

S. 98CB(2)(c)
amended by
Nos 84/1996
s. 467(Sch. 6
item 13.1),
44/2001
s. 3(Sch.
item 113),
substituted by
No. 80/2009
s. 52,
amended by
No. 9/2013
s. 42(Sch. 2
item 17).

(3) Subsection (2)(a) does not apply to—

- (a) the applicant; or
- (b) any person who has consented in writing to the application; or
- (c) any person who since the application was lodged has ceased to appear from the Register or from any instrument or application lodged in the Office of Titles to have or to claim to have an interest in any part of the land in the building subdivision.

S. 98CB(3)(c)
amended by
No. 48/1991
s. 50(c).

- (4) The Registrar may with the consent of the parties who have consented to the application under section 98CA(2)(d) amend the application and the plan of subdivision and owners corporation documents before complying with this section.

S. 98CB(4)
amended by
No. 6/2008
s. 38(3)(b).

S. 98CC
inserted by
No. 53/1988
s. 45(Sch. 2
item 109).

98CC Cancellation of plan of building subdivision and registration of the plan of subdivision

S. 98CC(1)(c)
amended by
No. 48/1991
s. 49(2),
substituted by
No. 48/1991
s. 50(d).

(1) If the Registrar is satisfied that every person served under section 98CB(2)(a) has consented in writing to the application the Registrar may—

- (a) cancel the plan of building subdivision; and
- (b) register the plan of subdivision under the **Subdivision Act 1988**; and
- (c) delete all relevant folios of the Register for the land in the building subdivision and create folios of the Register for each lot and (if appropriate) the common property; and

S. 98CC
(1)(d)
amended by
Nos 84/1996
s. 467(Sch. 6
item 13.2),
74/2000
s. 3(Sch. 1
item 127),
44/2001
s. 3(Sch.
item 113),
substituted by
No. 80/2009
s. 53(1),
amended by
No. 9/2013
s. 42(Sch. 2
item 17).

- (d) where a service company operated in relation to the building subdivision and the service company was registered under the Co-operatives National Law (Victoria), serve a notice in the form prescribed by the regulations on the Registrar of Co-operatives; and

- (e) do any other act, matter or thing as may be necessary to give effect to the conversion.

(2) The Registrar must not register the plan of subdivision unless—

S. 98CC(2)(a)
substituted by
No. 48/1991
s. 50(e),
amended by
No. 80/2009
s. 53(2).

- (a) there has been delivered to the Registrar the certificate of title for each folio of the Register for every part of the land comprised in the building subdivision; and

- (b) the Registrar has reasonable grounds for believing that any service company which operates in relation to the building subdivision is not the proprietor of any real estate or chattel real other than the residual land in the building subdivision and that there is no subsisting security over the residual land.
- (3) The Registrar may dispense with the delivery of any document referred to in subsection (2)(a) or may be directed to dispense with the delivery of any document referred to in subsection (2)(a) under section 98CE.

S. 98CC(3)
amended by
No. 48/1991
s. 50(f).

98CD Effect of registration of plan of subdivision

S. 98CD
inserted by
No. 53/1988
s. 45(Sch. 2
item 109).

- (1) In addition to sections 24 and 28 of the **Subdivision Act 1988**, the following provisions apply as from the registration of the plan of subdivision—
 - (a) if a service company operated, all rights and obligations arising under any service agreement are extinguished and any charge given to the service company affecting any land in the subdivision is discharged;
 - (b) all easements affecting any land in the subdivision are extinguished to the extent that they are appurtenant to any land in the subdivision;
 - (c) all restrictions and obligations arising under any covenant or otherwise which affect any land in the subdivision imposed for the benefit of any land or the owner of any land in the subdivision are discharged;
 - (d) any lease or other right of occupancy in any part of the common property other than a registered lease or a lease lodged for

registration prior to the lodging of the plan of subdivision is determined;

S. 98CD(1)(e)
amended by
No. 80/2009
s. 54(a).

- (e) any reference in any document to an allotment on the plan of building subdivision is to be construed as a reference to the corresponding lot on the registered plan of subdivision together with any right over the common property.

S. 98CD(1)(f)
amended by
No. 69/2006
s. 224(Sch. 3
item 10.2(a)),
repealed by
No. 80/2009
s. 54(b).

* * * * *

- (2) Without limiting subsection (1), the following provisions apply as from the registration of the plan of subdivision—

S. 98CD(2)(a)
amended by
No. 69/2006
s. 224(Sch. 3
item 10.2(b))

- (a) the property, rights and other assets that immediately before the registration were those of the service company vest in the owners corporation;

S. 98CD(2)(b)
amended by
No. 6/2008
s. 38(4).

- (b) the debts, obligations and liabilities of the service company immediately before the registration become the debts, obligations and liabilities of the owners corporation;

S. 98CD(2)(c)
amended by
No. 6/2008
s. 38(4).

- (c) the owners corporation by force of this section becomes party to any proceedings pending in any court in which the service company was a party immediately before the registration;

S. 98CD(2)(d)
amended by
No. 6/2008
s. 38(4).

- (d) the owners corporation by force of this section becomes a party to any arrangement or contract entered into by or on behalf of the service company as a party and in force immediately before the registration;

- | | |
|---|---|
| (e) except so far as they are altered or modified expressly or by necessary implication by reason of the registration the rights, interests, duties, obligations and liabilities of the members of the service company existing immediately before its dissolution continue in existence in relation to the owners corporation; | S. 98CD(2)(e) amended by No. 6/2008 s. 38(4). |
| (f) all acts, matters and things of a continuing nature made, done or commenced by or on behalf of the service company and immediately before its dissolution of any force or effect or capable of acquiring any force or effect are taken to have been done or commenced by or on behalf of the owners corporation; | S. 98CD(2)(f) amended by No. 6/2008 s. 38(4). |
| (g) any reference to the service company in any notice, demand, order, legal or other proceeding, deed, contract, agreement, instrument or document if not inconsistent with the context or subject-matter is to be taken to refer to the owners corporation. | S. 98CD(2)(g) amended by No. 6/2008 s. 38(4). |

98CE Power of courts to consent or dispense

S. 98CE inserted by No. 53/1988 s. 45(Sch. 2 item 109).

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| (1) If any person whose consent is required to the granting of an application is dead or cannot be found or refuses to consent or does not consent within a reasonable time or where for any reason it is impracticable to obtain the consent of the person, a court, on the application of any applicant, may if it thinks fit consent to the granting of the application on behalf of that person. | S. 98CE(1) amended by No. 80/2009 s. 55(1). |
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S. 98CE(2)
amended by
Nos 48/1991
s. 50(g)(i)(ii),
57/1993 s. 22,
80/2009
s. 55(2).

- (2) When a court consents to the granting of an application it may by the same or by any subsequent order require any person having the custody or control of any certificate of title to deliver the same to the Registrar or authorise the Registrar to dispense with the production thereof.

S. 98CF
inserted by
No. 53/1988
s. 45(Sch. 2
item 109).

98CF Special provisions

- (1) In this section *specified date* means 31 March 1966.
- (2) If an application is made in respect of a building subdivision the plan of which was approved on or before the specified date and in respect of which no service company operates and the Registrar is satisfied—
- (a) that one or more lots on the plan of building subdivision had been sold on or before the specified date; and
 - (b) that on or before the specified date there was in existence a scheme of development under which the proprietors of allotments on the plan of building subdivision enjoyed or were intended to enjoy exclusive use and possession of parts of the common property on the proposed plan—

there may be included in a lot on the proposed plan a stratum of any land the exclusive use and possession of which under the scheme is or was intended to be enjoyed by the owner of the corresponding allotment on the plan of building subdivision and the proposed plan may be registered notwithstanding that to that extent the boundaries of the allotments on the plan of building subdivision do not substantially correspond with the boundaries of the lots on the plan of subdivision.

Division 4A—Share interests

Pt 5 Div. 4A
(Heading and
s. 98D)
inserted by
No. 7/1986
s. 4(1).

98D Issue of certificates of title for share interests

S. 98D
inserted by
No. 7/1986
s. 4(1).

- (1) In this section *share interest* in any land means an estate in fee simple in one or more undivided parts or shares in the land.
- (2) A person who is the registered proprietor of land and who proposes to create share interests in the land may apply in an appropriate approved form to the Registrar for the creation of folios of the Register for the share interests.
- (3) On an application made in accordance with subsection (2) and on submission of the relevant certificate of title the Registrar may create folios of the Register for share interests in the land in accordance with the application.
- (4) No fee is payable on an application under this section.

S. 98D(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 145).

S. 98D(3)
amended by
No. 18/1989
s. 12(Sch. 1
item 146
(a)–(c)).

Division 5—Amendment of the Register etc.

Pt 5 Div. 5
(Heading)
amended by
No. 18/1989
s. 12(Sch. 1
item 147).

99 Application by proprietor for amendment of Register

No. 5842 s. 99.

- (1) A proprietor may make an application in an appropriate approved form for amendment of the folio of the Register—

S. 99(1)
amended by
Nos 9976
s. 11, 18/1989
s. 12(Sch. 1
item 148(a)).

S. 99(1)(a)
amended by
No. 18/1989
s. 12(Sch. 1
item 148(b)).

(a) of his own land, in any case in which the boundaries area or position of the land differ from the boundaries area or position of the land actually and bona fide occupied by him and purporting to be so occupied under the title in respect of which the folio of the Register was created, or in any case in which the description in a folio of the Register is erroneous or imperfect on the face of it;

S. 99(1)(b)
amended by
No. 18/1989
s. 12(Sch. 1
item 148(c)).

(b) of the land of any other proprietor, where by reason of any error in survey or other misdescription part of such land is actually and bona fide occupied by the applicant together with the land described in the applicant's folio of the Register.

S. 99(2)
amended by
No. 18/1989
s. 12(Sch. 1
item
149(a)(b)).

(2) The Registrar shall send by post, to every person who appears from the Register to be affected by the application, notice that application has been made to amend the folio of the Register in the manner specified together with a plan showing the effect of the application and appointing a time after the expiration of which the application may be granted unless a caveat is lodged forbidding the granting thereof.

S. 99(3)
amended by
No. 9976 s. 11.

(3) The Registrar on the request in the approved form of any registered proprietor or his agent and upon payment of the fee (if any) fixed by the Registrar shall inform him as to whether the boundaries area and position of any land the subject-matter of any proposed application under this section are accurately shown on any plan of survey in the Office of Titles.

No. 5842
s. 100.

S. 100
amended by
Nos 9976
s. 11, 85/1998
s. 11(3).

100 Caveats

Any person claiming any estate or interest in the land in respect of which any such application is made may before the granting thereof lodge a caveat in an appropriate approved form with the

Registrar forbidding the granting of the application, which caveat shall so far as applicable be subject to the same provisions and have the same effect with respect to the application as a caveat under section 26R against the creation of a folio.

101 Grant of application

No. 5842
s. 101.

- (1) The Registrar may grant any such application or any application to bring land under this Act although the folio of the Register to be created or the amendment to be made may affect land comprised in any other folio of the Register if it appears that the land so affected has been included in such other folio of the Register by reason of some error in survey or other misdescription unless the title to the land so affected has been theretofore determined against the applicant in a contested proceeding in which the right to such land was in question.
- (2) Upon granting any such application the Registrar shall make any amendments to the Register that are necessary because of the granting of the application.
- (3) Any such amendment shall unless the Registrar otherwise directs be deemed to have been made as on the date when the application was lodged with the Registrar and bear date accordingly.
- (4) The Registrar shall give notice in writing of the amendment to the proprietor of the land comprised in any folio of the Register so amended and on the certificate of title being brought into the Office of Titles, the Registrar must destroy the certificate and provide (free of cost) a new certificate of title to the person entitled to it.

S. 101(1)
amended by
No. 18/1989
s. 12(Sch. 1
item
150(a)(b)).

S. 101(2)
amended by
No. 18/1989
s. 12(Sch. 1
item 151).

S. 101(4)
amended by
No. 18/1989
s. 12(Sch. 1
item 152).

No. 5842
s. 102.

102 Adjustment of discrepancies in boundaries

S. 102(1)
amended by
No. 18/1989
s. 12(Sch. 1
item
153(a)(b)).

- (1) If land included in any application to bring land under this Act or in any folio of the Register or lodged plan of subdivision is found by reason of erroneous measurements in the original survey to exceed or fall short of the dimensions given the Registrar may create a new folio of the Register or amend the recordings in the Register to accord with the dimensions marked on the ground or otherwise to adjust equitably the discrepancy.

- (2) The Registrar may—

S. 102(2)(a)
amended by
No. 53/1988
s. 45(Sch. 3
item 78) (as
amended by
No. 47/1989
s. 23(1)(2)).

- (a) in appropriate cases, make a distribution among the allotments or lots concerned of any surplus area; or

S. 102(2)(b)
amended by
Nos 53/1988
s. 45(Sch. 3
item 79) (as
amended by
No. 47/1989
s. 23(1)(2)),
18/1989
s. 12(Sch. 1
item 154).

- (b) where the proprietor of an allotment or lot or his predecessor in title has been for over fifteen years in possession of any of such surplus, include in the folio of the Register of such proprietor so much of such surplus so held in possession as does not exceed the area attributable to his allotment or lot; or

- (c) in any case, make such adjustments as the Registrar considers equitable and expedient.

No. 5842
s. 103.

103 General provision as to correction of errors etc.

S. 103(1)
amended by
Nos 18/1989
s. 12(Sch. 1
item
155(a)(b)),
80/2009
s. 56(1).

- (1) In any proceeding in a court relating to any land or any instrument or dealing in respect thereof if the court directs the Registrar to make any amendments to the Register or otherwise to do any act or make any recordings necessary to give

effect to any judgment decree or order of the court the Registrar shall obey such direction.

(1AA) In any proceeding in VCAT relating to land or any instrument or dealing in respect of land, if VCAT directs the Registrar to make any amendment to the Register or otherwise to do any act or make any recordings necessary to give effect to an order of VCAT, the Registrar must obey that direction.

S. 103(1AA) inserted by No. 71/2005 s. 7(1), amended by No. 80/2009 s. 56(2).

(1AB) The Registrar may only make amendments to the Register under subsections (1) and (1AA) if an application in the appropriate approved form is lodged.

S. 103(1AB) inserted by No. 42/2017 s. 40(1).

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S. 103(1A) inserted by No. 18/1989 s. 10(a), repealed by No. 80/2009 s. 56(3).

(2) (a) The Registrar may upon such evidence as appears to the Registrar sufficient correct errors in the Register or in any plan of subdivision or unregistered instrument and supply entries or recordings omitted to be made therein under the provisions of this Act, but in any such case the Registrar shall not erase, delete or render illegible the original entry or recording, and shall indicate on that entry or recording the date on which the correction or recording was made.

S. 103(2)(a) amended by Nos 18/1989 s. 12(Sch. 1 item 156(a)), 80/2009 s. 56(4), 42/2017 s. 40(2).

(b) Every correction recording or entry under subsection (2)(a) shall have the like validity and effect as if the error or omission had not occurred, but without prejudicing any rights accrued from any recording made in the Register prior to the actual time of correcting the error or supplying the omitted entry or recording.

S. 103(2)(b) amended by Nos 18/1989 ss 10(b), 12(Sch. 1 item 156(b)(i)–(iii)), 80/2009 s. 56(5).

Division 6—General powers of Registrar

104 Registrar may require documents and information

S. 104
amended by
Nos 9324
s. 11, 9976
s. 11, 53/1988
s. 45(Sch. 2
item 110),
18/1989
s. 12(Sch. 1
items
157–163),
48/1991
s. 50(h),
71/2005
s. 7(2),
80/2009 s. 57,
67/2014
s. 147(Sch. 2
item 36),
70/2014 s. 23,
substituted by
No. 42/2017
s. 41.

- (1) The Registrar, for the purposes of this Act or any other Act, may require any person to—
 - (a) submit any certificate of title, instrument, administrative notice or other document; or
 - (b) give any information; or
 - (c) comply with any requisition relating to any land.
- (2) If the Registrar considers it necessary or appropriate to do so, the Registrar, by notice in writing to any person who has or may have the custody or control of any certificate of title, may require the person to bring the certificate of title into the Office of Titles within a period specified in the notice, being not less than 30 days from the date the notice bears, to be destroyed, inspected or otherwise dealt with, as the case requires.
- (3) Despite anything in this Act or any other Act, the Registrar, at the Registrar's discretion, may dispense with the submission of any certificate of title or any instrument or document or any signature or the supply of any information or any advertisement or notice.
- (4) The Registrar, for the purposes of this Act or any other Act, may require any person to verify any matter by statutory declaration.
- (5) The Registrar, for the purposes of this Act or any other Act, may require a person to provide a certification in accordance with section 106A in place of evidence.

105 Registrar to refuse registration if documents or evidence not supplied

If the Registrar is of the opinion that the submission of any document, a response to any requisition or the giving of any information, evidence or notice or the doing of any act is necessary or desirable, then, if the document, information, evidence or notice is not supplied or given or the act is not done within such time as the Registrar allows—

- (a) the Registrar may refuse to accept, complete or proceed with any application, registration, dealing or matter whatsoever or to do any act or make any entry or memorandum; and
- (b) the Registrar may return all or any of the instruments and documents lodged in connection with the matter that the Registrar thinks fit; and
- (c) the fees paid in respect of the matter are forfeited.

S. 105
amended by
Nos 18/1989
s. 12(Sch. 1
item 164),
80/2009 s. 58,
substituted by
No. 42/2017
s. 42.

106 Powers of Registrar

(1) The Registrar—

- (a) may record a caveat on behalf of the Crown, a minor or a person of unsound mind—
 - (i) to prohibit any transfer or dealing with any land registered in the name of that person; or
 - (ii) to prohibit dealing with any land in any case in which it appears that an error has been made by misdescription of

No. 5842
s. 106.

S. 106
amended by
No. 80/2009
s. 59(2) (ILA
s. 39B(1)).

S. 106(1)(a)
amended by
Nos 9075
s. 5(2),
18/1989
s. 12(Sch. 1
item 165(a)),
substituted by
No. 80/2009
s. 59(1)(a).

that land or otherwise in any folio or folios of the Register; or

(iii) for the prevention of any fraud or improper dealing;

S. 106(1)(b) repealed by No. 7244 s. 3, new s. 106(b) inserted by No. 53/1988 s. 45(Sch. 2 item 111) (as amended by No. 47/1989 s. 19(zi)).

(b) may, in respect of any instrument, dealing or plan lodged with the Registrar under any Act, require the consent of the council of the municipality in the municipal district of which the land is situated before registering the instrument dealing or plan;

S. 106(1)(c) amended by No. 18/1989 s. 12(Sch. 1 item 165(b)(i)(ii)).

(c) if it is proved to his satisfaction that any encumbrance recorded in the Register has been fully satisfied extinguished or otherwise determined and no longer affects the land, may make a recording to that effect in the Register;

S. 106(1)(d) amended by No. 80/2009 s. 59(1)(b).

(d) whenever any question arises with regard to the performance of any duty or the exercise of any of the functions conferred or imposed on him by this Act, may state a case for the opinion of a court whose judgment shall be binding upon and given effect to by the Registrar;

S. 106(1)(e) substituted by No. 9324 s. 12, amended by No. 80/2009 s. 59(1)(c).

(e) may—

S. 106(1)(e)(i) substituted by No. 18/1989 s. 12(Sch. 1 item 165(c)).

(i) delete a folio from the Register; or

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| (ii) create a new folio of the Register; or | S. 106(1)(e)(ii)
substituted by
No. 18/1989
s. 12(Sch. 1
item 165(c)). |
| (iii) make any amendment of the Register or
of any other instrument or document— | S. 106(1)(e)(iii)
substituted by
No. 18/1989
s. 12(Sch. 1
item 165(c)). |
| wherever it is necessary to do so by reason of
the operation of this or any other Act; | |
| (f) may take any other step necessary to protect
the operation, effectiveness and integrity of
the Register, including, but not limited to,
the making of a notation on a folio of the
Register. | S. 106(1)(f)
inserted by
No. 80/2009
s. 59(1)(d). |
| (2) The Registrar must not record in the Register a
dealing with a folio on which a caveat has been
recorded under subsection (1)(a) unless the
Registrar is satisfied that the dealing is compatible
with the purpose for which the caveat was
recorded. | S. 106(2)
inserted by
No. 80/2009
s. 59(2). |
| (3) The Registrar may remove a caveat recorded
under subsection (1)(a) if the Registrar is satisfied
that the caveat is no longer required for the
purpose for which it was recorded. | S. 106(3)
inserted by
No. 80/2009
s. 59(2). |
| 106A Registrar's requirements for paper conveyancing
transactions | S. 106A
inserted by
No. 70/2014
s. 24. |
| (1) The Registrar may from time to time determine
requirements for paper conveyancing transactions,
which may include the following— | |
| (a) the verification of identity and authority
including any of the following— | |
| (i) the standards to which identity and
authority are to be verified; | |

- (ii) the classes of person in respect of whom identity and authority are to be verified;
 - (iii) the classes of document in relation to which verification of identity and authority requirements apply;
 - (iv) the classes of person who can undertake verification of identity and authority;
 - (v) any supporting evidence and retention requirements;
- (b) the retention of documents supporting or authenticating instruments generally, including periods of retention;
- (c) setting out matters to be certified or relating to the certification of matters for the purposes of conveyancing transactions, including any of the following—
 - (i) the form of certifications;
 - (ii) the classes of person who may certify those matters;
 - (iii) any supporting evidence and retention requirements;
- (d) the classes of instrument that must be lodged using an ELN;
- (e) the classes of person who must lodge specified classes of instrument;
- (f) client authorisations, including any of the following—
 - (i) the form of a client authorisation;
 - (ii) the classes of instrument to which a client authorisation applies;
 - (iii) any supporting evidence and retention requirements;

(g) the classes of mortgagee able to certify the matters specified under section 74(1A).

- (2) The Registrar must publish notice in the Government Gazette of any requirements determined under this section.

106B Notice of a statutory charge

S. 106B
inserted by
No. 42/2017
s. 43.

- (1) A person that acquires a statutory charge under a law of Victoria or the Commonwealth may, under this section, lodge with the Registrar a notice of a statutory charge in the appropriate approved form.
- (2) If a statutory charge no longer affects the land, the person who benefits from the statutory charge must, under this section, request the Registrar to remove or delete the notice of the charge from the relevant folio of the Register.

106C Application to Registrar under other Act

S. 106C
inserted by
No. 42/2017
s. 43.

If a provision of another Act permits or requires an application to be made to the Registrar, the application is to be made under this section in the appropriate approved form.

Part VI—General

Division 1—Financial

No. 5842
s. 107.
S. 107
amended by
No. 9549
s. 2(1)(Sch.
item 232),
substituted by
No. 9861
s. 3(1).

107 Application of fees and penalties

All penalties and fees received under this Act shall be carried to and form part of the Consolidated Fund.

No. 5842
s. 108.

108 Fees to be paid under Act

S. 108(1)
amended by
No. 9976 s. 11.

(1) Subject to this Act there shall be paid such fees as are prescribed.

S. 108(2)
amended by
Nos 7814 s. 5,
9861 s. 3(1),
128/1986
s. 12(h).

(2) In the case of land brought under this Act by alienation from Her Majesty the price paid for such land shall for the purpose of ascertaining the assurance contribution be deemed to be the value thereof.

S. 108(3)
amended by
No. 9861
s. 3(1).

(3) The Registrar may grant any application or waive any requisition under this Act conditioned upon an assurance contribution of such sum as the Registrar certifies to be in his judgment a sufficient indemnity—

S. 108(3)(b)
amended by
No. 9861
s. 3(1).

- (a) by reason of the non-production of any document affecting the title, or the inability to obtain a consent serve a notice or comply with any requisition, or the imperfect nature of the evidence of title; or
- (b) as against any uncertain or doubtful claim or demand incident to or which may arise upon the title or any risk to which the Consolidated Fund may be exposed.

Transfer of Land Act 1958
No. 6399 of 1958
Part VI—General

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| * | * | * | * | * | |
| | | | | | S. 108(4)
amended by
Nos 9861
s. 3(1),
18/1989
s. 12(Sch. 1
item 166),
repealed by
No. 85/1998
s. 15. |
| (5) | Notwithstanding anything in subsection (2) of this section, in the case of an application by an acquiring authority (within the meaning of Division four of Part IV) to bring land under this Act the value of such land at the date of acquisition shall be deemed to be the value thereof for the purposes of ascertaining the assurance contribution and other fees payable and, if the Registrar is of opinion that the granting of the application will not expose the Consolidated Fund to any risk, the acquiring authority shall not be required to make any assurance contribution. | | | | S. 108(5)
amended by
No. 9861
s. 3(1). |
| (6) | Except for any contribution which the Registrar may require under subsection (3), no assurance contribution is payable after the commencement of this subsection in respect of the bringing of land under this Act, on application, by direction, or under a conversion scheme. | | | | S. 108(6)
inserted by
No. 128/1986
s. 7. |
| (7) | If— | | | | S. 108(7)
inserted by
No. 128/1986
s. 7. |
| | (a) a person applied to bring land under this Act before the commencement of this subsection but the application had not been determined at that date of commencement; or | | | | |
| | (b) a person applies to bring land under this Act after that date of commencement— | | | | |
| | the Registrar need not require the applicant to pay an assurance contribution under subsection (3) if, considering how small the amount of the | | | | |

contribution is, the Registrar thinks it appropriate to do so.

S. 108(8)
inserted by
No. 57/1993
s. 20(1).

- (8) The Registrar must not, under subsection (3), require the payment of an assurance contribution from an applicant for the registration of a plan under the **Subdivision Act 1988** only because a consent to the registration of the plan required from a person is treated as being given on behalf of that person in the circumstances set out in section 22(1AB) or (1AC) of that Act.

S. 108(9)
inserted by
No. 80/2009
s. 60.

- (9) If any application, dealing or other matter is withdrawn after lodgment of any instruments or documents in connection with the matter—
- (a) the fees paid in respect of the matter are forfeited; and
 - (b) the Registrar may return all or any of the instruments and documents lodged in connection with the matter as the Registrar thinks fit.

S. 108(10)
inserted by
No. 80/2009
s. 60.

- (10) If—
- (a) the fees paid in respect of a matter are forfeited under subsection (9) or section 105; and
 - (b) a subsequent application is made—
 - (i) for the same purpose; or
 - (ii) in respect of any instrument or document that is relodged for registration—

the fee payable in respect of the application or relodgment is one-half of the fee otherwise payable.

109 Application of Consolidated Fund

No. 5842
s. 109.

* * * * *

S. 109(1)
repealed by
No. 9861
s. 3(1).

(2) The Consolidated Fund shall not under any circumstances be liable—

S. 109(2)
amended by
No. 9861
s. 3(1).

- (a) for any loss damage or deprivation occasioned by the breach of any trust, whether express implied or constructive;
- (b) in any case in which the same land has been included in two or more Crown grants;
- (c) in any case in which any loss damage or deprivation has been occasioned by any land being included in the same folio of the Register with other land through misdescription of boundaries or parcels of any land, unless it is proved that the person liable for compensation or damages is dead or has absconded or has been adjudged bankrupt or the sheriff certifies that such person is unable to pay the full amount awarded in any action for recovery of such compensation and damages;
- (d) for any loss or damage arising out of the registration by the Registrar of a plan under the **Subdivision Act 1988** which appeared to the Registrar to be certified by the Council under that Act, unless the damage arose from an act or omission of the Registrar or any officer after the date of apparent certification;
- (e) for any loss or damage arising out of the registration by the Registrar of a plan under the **Subdivision Act 1988** where, under

S. 109(2)(c)
amended by
Nos 53/1988
s. 45(Sch. 2
item 112),
18/1989
s. 12(Sch. 1
item 167).

S. 109(2)(d)
inserted by
No. 53/1988
s. 45(Sch. 2
item 112).

S. 109(2)(e)
inserted by
No. 57/1993
s. 20(2).

section 22(1AC) of that Act, the Registrar has treated a consent or request made on behalf of the person whose consent to the registration of the plan is required as being the consent of that person, in consequence of that consent being given or that request being made without lawful authority.

S. 109(3)(a)
amended by
No. 9861
s. 3(1).

(3) (a) Whenever pursuant to this Division an amount has been paid out of the Consolidated Fund such amount may be recovered from the person actually responsible, or from his estate, as a debt by action in the name of the Registrar; and a certificate signed by the Treasurer of Victoria certifying the fact of such payment out of the Consolidated Fund shall be sufficient proof of such debt;

S. 109(3)(b)
amended by
No. 9861
s. 3(1).

(b) if such person has absconded or cannot be found the Court upon the application of the Registrar and upon production of a certificate signed by the Treasurer as aforesaid may order that the Registrar sign judgment against such person forthwith for the amount so paid out of the Consolidated Fund together with the costs of the application.

S. 109(4)
amended by
No. 9549
s. 2(1)(Sch.
item 232),
repealed by
No. 9861
s. 3(1),
new s. 109(4)
inserted by
No. 128/1986
s. 8,
amended by
No. 35/1996
s. 453(Sch. 1
item 83.11(a)
(b)).

(4) A reference in subsection (3)(a) to the person actually responsible includes but is not limited to a legal practitioner who negligently or fraudulently fails to disclose in a legal practitioner's certificate a defect in title or the existence of an estate or interest in land.

110 Entitlement to indemnity

No. 5842
s. 110.

(1) Subject to this Act any person sustaining loss or damage (whether by deprivation of land or otherwise) by reason of—

(a) the bringing of any land under this Act under Division 2 of Part II or by the creation of a provisional folio under Division 3 of Part II;

S. 110(1)(a)
amended by
No. 85/1998
s. 16.

(aa) a legal practitioner's failure to disclose in a legal practitioner's certificate a defect in title or the existence of an estate or interest in land;

S. 110(1)(aa)
inserted by
No. 128/1986
s. 9(1),
amended by
No. 35/1996
s. 453(Sch. 1
item 83.12(a)).

(b) any amendment of the Register;

S. 110(1)(b)
amended by
No. 18/1989
s. 12(Sch. 1
item 168(a)).

(c) any error omission or misdescription in the Register or the registration of any other person as proprietor;

S. 110(1)(c)
amended by
No. 18/1989
s. 12(Sch. 1
item 168(a)).

(d) any payment or consideration given to any other person on the faith of any recording in the Register;

S. 110(1)(d)
amended by
No. 18/1989
s. 12(Sch. 1
item 168(b)).

(e) the loss or destruction of any document lodged at the Office of Titles for inspection or safe custody or any error in any official search;

(f) any omission mistake or misfeasance of the Registrar or any officer in the execution of his duties;

(g) the exercise by the Registrar of any of the powers conferred on him in any case where the person sustaining loss or damage has not

been a party or privy to the application or dealing in connexion with which such power was exercised—

shall be entitled to be indemnified.

S. 110(1A)
inserted by
No. 128/1986
s. 9(2).

(1A) Section 109(2)(c) does not apply to a person entitled to be indemnified under subsection (1)(aa) of this section.

(2) Any person claiming to be so entitled may bring an action against the Registrar as nominal defendant for recovery of damages or join the Registrar as nominal co-defendant in any action brought by such person in respect of such loss against any other person and the Registrar may join any other person as co-defendant in any such proceedings.

(3) No indemnity shall be payable under this Act—

S. 110(3)(a)
amended by
Nos 18/1989
s. 12(Sch. 1
item 169),
35/1996
s. 453(Sch. 1
item 83.12(b)),
75/2006
s. 192(Sch. 2
item 6.5) (as
amended by
No. 17/2007
s. 33).

(a) where the claimant his legal practitioner, conveyancer or agent caused or substantially contributed to the loss by fraud neglect or wilful default or derives title (otherwise than under a disposition for valuable consideration which is registered in the Register) from a person who or whose legal practitioner, conveyancer or agent has been guilty of such fraud neglect or wilful default (and the onus shall rest upon the applicant of negating any such fraud, neglect or wilful default);

(b) on account of costs incurred in taking or defending any legal proceedings without the consent of the Registrar, except any costs which may be awarded against the Registrar, except any costs which may be awarded against the Registrar in any proceedings in which the Registrar is a party;

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| (c) in consequence of the Registrar's not inquiring as to whether a power of attorney was in force when anything purporting to have been done under the power and falling within its scope was done; | S. 110(3)(c) inserted by No. 9421 s. 5(2)(b). |
| (d) where the Registrar, under section 22(1AC) of the Subdivision Act 1988 , has treated a consent or request made on behalf of the person whose consent to the registration of the plan is required as being the consent of that person, in consequence of that consent being given or that request being made without lawful authority. | S. 110(3)(d) inserted by No. 57/1993 s. 20(3). |
| (4) Any indemnity paid in respect of the loss of any estate or interest in land shall not exceed— | |
| (a) where the Register is not amended, the value of the estate or interest at the time when the error omission mistake or misfeasance which caused the loss was made; | S. 110(4)(a) amended by No. 18/1989 s. 12(Sch. 1 item 169). |
| (b) where the Register is amended, the value of the estate or interest immediately before the time of amendment; | S. 110(4)(b) amended by Nos 18/1989 s. 12(Sch. 1 item 169), 70/2014 s. 25(a). |
| (c) subject to paragraphs (a) and (b), in the case of a fraudulent mortgage where the mortgagee has complied with section 87A or 87B, the principal amount together with any interest, the rate of which must not exceed the Bank Accepted Bills rate (within the meaning of the Taxation (Interest on Overpayments) Act 1986). | S. 110(4)(c) inserted by No. 70/2014 s. 25(b). |
| (5) If in any action under this section judgment is given in favour of the Registrar or the plaintiff discontinues or is nonsuited the plaintiff shall be liable to pay the full costs of the Registrar in the | S. 110(5) amended by No. 80/2009 s. 61. |

action, but save as aforesaid a court may make such order as to costs as it thinks fit.

S. 110(6)
substituted by
No. 9861
s. 3(1),
amended by
No. 31/1994
s. 3(Sch. 1
item 59.1).

- (6) Any sum by way of indemnity or costs awarded against the Registrar under this section shall be paid from moneys available for the purpose.

No. 5842
s. 111.

111 Application to Registrar for indemnity without bringing action

- (1) Any person who under the last preceding section is entitled to bring an action for indemnity against the Registrar may before commencing such action apply for compensation by a claim to the Registrar in writing supported by affidavit or statutory declaration.
- (2) If the Registrar admits the claim or any part thereof and certifies accordingly and the Treasurer of Victoria signifies his approval the amount so certified shall be paid from moneys appropriated by Parliament for the purpose.

S. 111(2)
amended by
No. 9861
s. 3(1).

Division 2—Miscellaneous

No. 5842
s. 112.

112 Implied covenants and powers

- (1) Every covenant and power to be implied in any instrument by virtue of this Act shall have the same force and effect as if set out at length in such instrument but may be negated or modified by express declaration in the instrument.
- (2) Where in any instrument there are more covenantors than one, such covenants as are by this Act declared to be implied in instruments of the like nature shall be construed to bind the parties jointly and severally.

113 Service of notices

No. 5842
s. 113.

- (1) Any notice under this Act may be served or given by being sent by letter posted to the person concerned at the person's address for service shown in the Register.

S. 113(1)
amended by
No. 42/2017
s. 44(1).

* * * * *

S. 113(2)
amended by
Nos 18/1989
s. 12(Sch. 1
item 170),
80/2009
s. 62(1),
repealed by
No. 42/2017
s. 44(2).

- (3) The address appointed in a caveat as the place at which notices relating to the caveat may be served shall be the address for service of the caveator.

- (4) The Registrar may cause a copy of any notice sent by the Registrar to be retained, which is sufficient proof that the notice was duly sent.

S. 113(4)
amended by
Nos 9324
s. 13, 42/2017
s. 44(3).

- (5) The Registrar may amend an address for service of notices if the person whose address is retained provides—

S. 113(5)
amended by
No. 9976 s. 11,
substituted by
Nos 18/1989
s. 12(Sch. 1
item 171),
80/2009
s. 62(2),
amended by
No. 42/2017
s. 44(4).

- (a) a request for amendment in an appropriate approved form; and

- (b) the relevant certificate of title or administrative notice or other documentation which demonstrates to the Registrar's satisfaction that the person who is applying for the amendment is the person whose address is retained.

S. 113(5)(b)
amended by
No. 42/2017
s. 44(5).

S. 113(6)
amended by
Nos 8181
s. 2(1)(Sch.
item 185),
9976 s. 11,
42/2017
s. 44(4).

- (6) The Registrar shall on request in an appropriate approved form by a caveator amend the address appointed in the caveat at which notices may be served.

S. 113(6A)
inserted by
No. 85/1998
s. 17,
amended by
No. 42/2017
s. 44(4).

- (6A) The Registrar must on request in an appropriate approved form made by any person who lodged under section 26F(1) notice of an interest in land, amend the address appointed in the notice at which notices may be served.

S. 113(7)
substituted by
No. 42/2017
s. 44(6).

- (7) When a notice is sent to any person at the person's address for service and the notice is returned or not delivered, the Registrar may proceed with an action without giving further notice of the action.

S. 114
(Heading)
inserted by
No. 42/2017
s. 45(1).

114 Inspection of Register and record of dealings

S. 114
substituted by
No. 9324 s. 14.

S. 114(1)
amended by
Nos 18/1989
s. 12(Sch. 1
item 172),
42/2017
s. 45(2).

- (1) Any person may have access to recordings in the Register and the record of dealings at any time when the Office of Titles is open to the public.

S. 114(2)
amended by
Nos 18/1989
s. 12(Sch. 1
item 173),
42/2017
s. 45(3).

- (2) The Registrar shall furnish to any person who applies therefor a certified reproduction of any folio of the Register or registered instrument.

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|--|--|
| (3) Any such certified reproduction shall be admissible in evidence before all courts and persons acting judicially within Victoria. | S. 114(3)
amended by
Nos 18/1989
s. 12(Sch. 1
item 174),
80/2009 s. 63. |
| * * * * * | S. 114(4)
amended by
No. 18/1989
s. 12(Sch. 1
item 175),
repealed by
No. 69/2009
s. 54(Sch. Pt 1
item 58.3). |
| (5) If material purporting to reproduce the contents of any folio of the Register or registered instrument is made available in any visible form to any person having access to the Register, he shall not be entitled to have access to the original folio of the Register or registered instrument. | S. 114(5)
amended by
No. 18/1989
s. 12(Sch. 1
item
176(a)–(c)). |
| (6) Subsection (5) shall have effect in relation to material made available for access—

(a) regardless of the time when material or anything used to represent the material was prepared; and

(b) notwithstanding the fact that anything is represented in a manner different from that in which it would be represented in the original document. | S. 114(6)
amended by
No. 18/1989
s. 12(Sch. 1
item 177). |
| (7) Any material made available for access as provided by subsection (5) shall in favour of any person relying on the access to the Register be deemed to constitute the relevant portion of the Register as at the time it is made available for access. | S. 114(7)
amended by
No. 18/1989
s. 12(Sch. 1
item 178
(a)–(c)). |

S. 114A
inserted by
No. 9324 s. 14.

114A Destruction of unwanted documents

Subject to the provisions of the **Public Records Act 1973**, if in the opinion of the Registrar it is no longer necessary or desirable to retain any document in his custody, the Registrar may destroy or dispose of the document.

S. 115
amended by
Nos 18/1989
s. 12(Sch. 1
item 179),
80/2009 s. 64,
substituted by
No. 42/2017
s. 46.

115 Registrar to deal with lodging party

- (1) Subject to subsection (2), the Registrar is only required to deal with the lodging party in respect of a lodged instrument.
- (2) The Registrar is only required to deal with a person in respect of a lodged electronic instrument who is a Responsible Subscriber, defined in the participation rules (within the meaning of the Electronic Conveyancing National Law (Victoria),

No. 5842
s. 116.

116 Summoning Registrar to show cause

S. 116(1)
amended by
No. 18/1989
s. 12(Sch. 1
item 180),
substituted by
No. 80/2009
s. 65.

- (1) An applicant may require the Registrar to provide in writing the grounds for the Registrar's refusal of an application for the Registrar to do any of the following—
 - (a) bring land under the operation of this Act;
 - (b) register or record any instrument in the Register;
 - (c) create a folio of the Register;
 - (d) issue a foreclosure order;
 - (e) do or perform an act or duty which under this Act is an act or duty required to be done or performed by the Registrar.

- (1A) An applicant who has received written grounds from the Registrar under subsection (1) may summon the Registrar to appear before the Supreme Court or the County Court to substantiate and uphold the grounds of the Registrar's refusal. **S. 116(1A) inserted by No. 80/2009 s. 65.**
- (2) Any such summons shall be served upon the Registrar six clear days at least before the day appointed for hearing the matter.
- (3) Upon the hearing the Registrar or his counsel shall have the right of reply; and the Supreme Court or the County Court may, if any question of fact is involved, direct an issue to be tried to decide such fact; and thereafter the Supreme Court or the County Court shall make such order in the matter as the circumstances of the case require, and the Registrar shall obey such order. **S. 116(3) amended by No. 80/2009 s. 65(2).**
- (4) The Supreme Court or the County Court may make such order as to the costs and expenses of and attendant upon such summons or proceeding as it deems just; and all costs and expenses to be paid by the Registrar under such order shall be paid from the moneys available for the purpose. **S. 116(4) amended by Nos 9861 s. 3(1), 31/1994 s. 3(Sch. 1 item 59.2), 80/2009 s. 65(3).**
- 116A Application to Court for order requiring production of document** **S. 116A inserted by No. 9324 s. 15.**
- (1) The Registrar may apply to a court by summons or, in the case of land or any instrument or dealing with respect to land which is the subject of an order by VCAT, to VCAT, for an order directing a person to produce a certificate of title or document if— **S. 116A(1) amended by Nos 18/1989 s. 12(Sch. 1 item 181), 71/2005 s. 7(3)(a), substituted by No. 80/2009 s. 66(1).**
- (a) the Registrar has made a request under section 104(3) for the production of a certificate of title or document; and

S. 116A(1A)
inserted by
No. 80/2009
s. 66(1).

(b) the person of whom the request was made
has failed to comply with the request.

(1A) An interested person may apply to the court by
summons or, in the case of land or any instrument
or dealing with respect to land which is the subject
of an order by VCAT, to VCAT, for an order
directing another person to produce a certificate of
title or document for the reasons stated in the
application.

S. 116A(2)
amended by
Nos 71/2005
s. 7(3)(b),
80/2009
s. 66(2).

(2) The court or VCAT, as the case requires, may—

(a) if the person of whom the requisition was
made appears—examine him upon oath and
receive other evidence; or

(b) if he does not appear after being duly served
with the summons—receive evidence in his
absence.

S. 116A(3)
amended by
Nos 71/2005
s. 7(3)(b),
80/2009
s. 66(3)(a)(c).

(3) The court or VCAT, as the case requires, may—

S. 116A(3)(a)
amended by
Nos 71/2005
s. 7(3)(b),
80/2009
s. 66(3)(b).

(a) order the person to produce the document
upon such terms or conditions as the court or
VCAT, as the case requires, thinks fit;

(b) direct the Registrar to proceed with any
dealing or make any entry without requiring
the production of the document; or

S. 116A(3)(c)
substituted by
No. 18/1989
s. 12(Sch. 1
item 182),
amended by
Nos 71/2005
s. 7(3)(b),
80/2009
s. 66(3)(b).

(c) where the document is a certificate of title,
direct the Registrar to take such action
(whether by way of deleting the folio of the
Register to which the certificate relates and
creating a new folio of the Register in the
name of such person as the court or VCAT,
as the case requires, directs or otherwise) as

the court or VCAT, as the case requires,
directs—

and make such order as to the costs of the
summons and the proceedings thereon as the court
or VCAT, as the case requires, thinks fit.

117 Officers not to be liable for acts done bona fide

No. 5842
s. 117.

Neither the Registrar nor any person acting under
his authority shall be liable to any action suit or
proceeding for or in respect of any act or matter
bona fide done or omitted to be done in the
exercise or supposed exercise of powers or duties
under this Act.

**118 Compensation for lodging caveat without
reasonable cause**

No. 5842
s. 118.

Any person lodging with the Registrar without
reasonable cause any caveat under this Act shall
be liable to make to any person who sustains
damage thereby such compensation as a court
deems just and orders.

S. 118
amended by
No. 80/2009
s. 67.

119 Offences and penalties

No. 5842
s. 119.

(1) Every person who—

- (a) wilfully makes any false statement or
declaration in any application under this Act;
- (b) suppresses withholds or conceals or assists
or joins in or is privy to suppressing
withholding or concealing from the Registrar
any material document fact or matter of
information;
- (c) wilfully makes any false declaration or
statement under or for the purposes of or in
relation to any dealing with land under this
Act;

S. 119(1)
amended by
Nos 9324
s. 16(b), 9554
s. 2(2)(Sch. 2
item 347),
9576 s. 11(1),
9976 s. 8(a)(b).

S. 119(1)(d)
amended by
Nos 9324
s. 16(a),
18/1989
s. 12(Sch. 1
item 183(a)).

- (d) fraudulently procures or assists in fraudulently procuring or is privy to the fraudulent procurement of any certificate of title or instrument or of any recording in the Register;
- (e) knowingly misleads or deceives any person authorized to require explanation or information in respect of any land or the title to any land under the operation of this Act or in respect of which any dealing is proposed to be registered;

S. 119(1)(f)
inserted by
No. 9324
s. 16(b),
amended by
No. 18/1989
s. 12(Sch. 1
item 183(b)).

- (f) removes from the Office of Titles without the authority of the Registrar anything on which the Register or a part of it is recorded, or any certificate of title registered or unregistered instrument or other document in the custody of the Registrar; or

S. 119(1)(g)
inserted by
No. 9976
s. 8(b).

- (g) without being authorized under this Act to do so, makes a representation of the seal of the Office of Titles—

shall be guilty of an indictable offence and liable to a penalty of not more than 25 penalty units or to imprisonment for a term of not more than three years or to both such penalty and imprisonment.

S. 119(2)
amended by
No. 9554
s. 2(2)(Sch. 2
item 348).

- (2) Any person who contravenes or fails to comply with any provision of this Act or the regulations shall be guilty of an offence and if no penalty is otherwise provided for such offence shall be liable to a penalty of not more than 5 penalty units.

No. 5842
s. 120.
S. 120
amended by
Nos 6867
s. 2(Sch. 1),
6886 s. 3, 9554
s. 2(2)(Sch. 2
item 349),
substituted by
No. 9976 s. 9.

120 Regulations

- (1) The Governor in Council may make regulations not inconsistent with this Act prescribing anything which this Act requires or permits to be prescribed, or which may be necessary or convenient to be prescribed for the administration of this Act.

(2) Without limiting the generality of subsection (1), the Governor in Council may make regulations for or with respect to—

- (a) the fees, charges and expenses recoverable by the Registrar in the administration of this Act or in performing any function or duty under any other Act;

S. 120(2)(a)
amended by
No. 80/2009
s. 68(1).

* * * * *

S. 120(2)(aa)
inserted by
No. 13/1990
s. 43,
repealed by
No. 80/2009
s. 68(2).

- (b) the amount to be paid for lodging an instrument of transfer of land, whether fixed by reference to the consideration expressed in the transfer or otherwise and whether or not bearing relation to the cost of providing the service;
- (c) the amount to be paid for lodging any other instrument or document, for making an application or search, or for the doing of any act by the Registrar;
- (d) subject to Division 1 of Part VI, contributions to the Consolidated Fund upon bringing land under the Act, whether fixed by reference to the value of the land or otherwise and whether or not bearing relation to the cost of providing the service;
- (e) 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;

S. 120(2)(f)
substituted by
No. 18/1989
s. 12(Sch. 1
item 184).

- (f) the Register, including, but not limited to—
 - (i) the medium, form and manner in which the Register or a part of it is to be kept; and
 - (ii) varying the medium, form and manner in which the Register or a part of it is kept;

S. 120(2)(fa)
inserted by
No. 18/1989
s. 12(Sch. 1
item 184).

- (fa) recordings in the Register, including, but not limited to—
 - (i) the manner and form in which recordings are made; and
 - (ii) varying the manner and form in which recordings are made; and
 - (iii) the recordings which must or may be made; and
 - (iv) the information which must or may be contained in recordings;

S. 120(2)(fb)
inserted by
No. 18/1989
s. 12(Sch. 1
item 184).

- (fb) certificates of title, including, but not limited to—
 - (i) the manner and form in which certificates of title are produced; and
 - (ii) varying the manner and form in which certificates of title are produced; and
 - (iii) the information which must or may be contained in certificates of title;

S. 120(2)(fc)
inserted by
No. 18/1989
s. 12(Sch. 1
item 184).

- (fc) the record of dealings;

S. 120(2)(fd)
inserted by
No. 18/1989
s. 12(Sch. 1
item 184).

- (fd) the issue of Crown grants;

-
- | | |
|--|---|
| (fe) the registration of instruments for the purposes of this Act; | S. 120(2)(fe) inserted by No. 18/1989 s. 12(Sch. 1 item 184). |
| * * * * * | S. 120(2)(ff)(fg) inserted by No. 23/2004 s. 7, repealed by No. 7/2013 s. 21. |
| (g) the approval and sealing of forms for use under this Act, including fees to be paid for such approval and sealing; | |
| (h) prescribing forms for the purposes of this Act generally, or for use for specified purposes or for a specified period including prescribing forms for use where a form has not been approved by the Registrar; | |
| (i) the content, the size and quality of paper and design of approved forms; and | S. 120(2)(i) amended by No. 42/2017 s. 10(4). |
| (j) penalties not exceeding 5 penalty units for a breach of the regulations. | |
| (3) Regulations made under subsection (2)(a), (2)(aa) or (2)(c) may— | S. 120(3) inserted by No. 49/2001 s. 9. |
| (a) vary according to differences in time, place or circumstance; and | |
| (b) provide for different amounts, fees, charges and expenses for— | |
| (i) different activities or classes of activities; or | |
| (ii) different cases or classes of cases; or | |

- (iii) different modes of providing any service in respect of which those amounts, fees, charges or expenses apply.

121 Approved forms

S. 121
(Heading)
inserted by
No. 47/2007
s. 19(1).

S. 121
inserted by
No. 9976 s. 9,
substituted by
No. 10128 s. 5.

S. 121(1)
amended by
No. 80/2009
s. 69.

- (1) Subject to the regulations, the Registrar may approve forms for use under this Act or in performing any function or duty under any other Act.

S. 121(2)
amended by
No. 80/2009
s. 69.

- (2) Where the Registrar approves a form under subsection (1) for use under this Act or in performing any function or duty under any other Act—

S. 121(2)(a)
amended by
No. 47/2007
s. 19(2).

- (a) the Registrar shall cause notice of the approval to be published in such manner as the Registrar thinks fit; and

S. 121(2)(b)
substituted by
No. 47/2007
s. 19(3).

- (b) the Registrar may do either or both of the following—
- (i) supply the form free of charge or at a moderate charge;
 - (ii) make the form available electronically free of charge or at a moderate charge; and

S. 121(2)(c)
substituted by
No. 47/2007
s. 19(3).

- (c) the Registrar may license a person to do either or both of the following—
- (i) to print and sell the form;

- (ii) to make the form available electronically free of charge or at a charge; and
 - (d) any previous approval under subsection (1) of a form for the same purpose ceases to have any force or effect.
- (3) Where the Registrar approves a form under subsection (1), for use under this Act or in performing any function or duty under any other Act, the Registrar may register or grant (as the case may be) an instrument or application that is lodged within the period of 12 months after the approval and takes the form required immediately before the approval. S. 121(3)
amended by
No. 80/2009
s. 69.
- (4) Subject to the regulations, the Registrar may, on receipt of the prescribed fee—
 - (a) approve a form for use under this Act or in performing any function or duty under any other Act that has been prepared by a person with the object of selling it for use by other persons; and S. 121(4)(a)
amended by
No. 80/2009
s. 69.
 - (b) license that person to do either or both of the following—S. 121(4)(b)
substituted by
No. 47/2007
s. 19(4).
 - (i) to print and sell the form;
 - (ii) to make the form available electronically free of charge or at a charge.
- (5) Subject to subsection (10), where the Registrar approves a form under subsection (4) for use under this Act or in performing any function or duty under any other Act, any previous approval under that subsection of a form for the same purpose ceases to have any force or effect. S. 121(5)
amended by
No. 80/2009
s. 69.

S. 121(6)
amended by
No. 80/2009
s. 69.

(6) Where the Registrar approves a form under subsection (4) for use under this Act or in performing any function or duty under any other Act, the Registrar may register or grant (as the case may be) an instrument or application that is lodged within the period of 12 months after the approval and takes the form required immediately before the approval.

S. 121(7)(a)
amended by
No. 80/2009
s. 69.

(7) Subject to the regulations, the Registrar may, on receipt of the prescribed fee—

(a) approve a form for use under this Act or in performing any function or duty under any other Act by a person; and

S. 121(7)(b)
substituted by
No. 47/2007
s. 19(5).

(b) authorise that person to do either or both of the following—

(i) to print the form for use by that person;

(ii) to make the form available electronically for use by that person.

S. 121(8)
amended by
No. 80/2009
s. 69.

(8) Subject to subsection (10), where the Registrar approves a form under subsection (7) for use by a person under this Act or in performing any function or duty under any other Act, any previous approval under that subsection of a form for use by that person for the same purpose ceases to have effect.

S. 121(9)
amended by
No. 80/2009
s. 69.

(9) Where the Registrar approves a form under subsection (7) for use under this Act or in performing any function or duty under any other Act, the Registrar may register or grant (as the case may be) an instrument or application that is lodged within the period of 12 months after the approval and takes the form required immediately before the approval.

(10) Where, under subsection (1), (4) or (7), the Registrar approves a form for use under this Act, the Registrar may register or grant (as the case may be)—

- (a) an instrument or application that the Registrar is satisfied takes the form required at the time of its execution; or
- (b) an instrument or application that contains departures (otherwise than in matters of substance) from the approved form—

S. 121(10)(b)
amended by
No. 47/2007
s. 19(6).

as if it were the approved form.

(11) Notwithstanding a requirement in this Act that an approved form be used, where a form has not been approved for the purposes of the provision, it is sufficient compliance to use a form complying with the regulations.

122 Information required by other authorities

S. 122
inserted by
No. 18/1989
s. 11.

- (1) A person who, under this Act, lodges a prescribed kind of instrument or application must, in relation to the acquisition or disposition of the land to which the instrument or application relates, lodge with the instrument or application a notice in an appropriate approved form and containing the prescribed particulars.

Penalty: 5 penalty units.

- (2) A notice lodged under this section with an instrument or application may form part of a single document containing—

- (a) the notice; and
- (b) the instrument or application—

but is not part of the instrument or application.

Part VII—Transitional

Pt 7
(Heading and
ss 123–126)
inserted by
No. 85/1998
s. 18.

S. 123
inserted by
No. 85/1998
s. 18.

123 Mortgages under general law deemed to be mortgages under this Act

On the commencement of section 6 of the **Transfer of Land (Single Register) Act 1998**, any legal mortgage under the general law which is existing at that commencement and which is recorded as an encumbrance on a folio of the Register, is deemed to be a mortgage registered under section 74.

S. 124
inserted by
No. 85/1998
s. 18.

124 Limited folios and qualified folios

- (1) On the commencement of section 6 of the **Transfer of Land (Single Register) Act 1998**, each limited folio existing under Part II immediately before that commencement is deemed to be a provisional folio created under Division 3 of Part II on that commencement.
- (2) On the commencement of section 6 of the **Transfer of Land (Single Register) Act 1998**, each qualified folio existing under Part II immediately before that commencement is deemed to be a provisional folio created under Division 2 of Part II on that commencement.

S. 125
inserted by
No. 85/1998
s. 18.

125 Search of title

On and from the commencement of section 6 of the **Transfer of Land (Single Register) Act 1998**, a search of title carried out in accordance with section 26F of this Act as in force immediately before that commencement is deemed to be a search of title carried out in accordance with section 26J of this Act as

amended by the **Transfer of Land (Single Register) Act 1998**.

126 Reconstruction of references to Registrar-General

S. 126
inserted by
No. 85/1998
s. 18.

On and from the commencement of section 6 of the **Transfer of Land (Single Register) Act 1998** a provision of any Act requiring the Registrar-General to make any amendment to the records of enrolment of any Crown Grant or to any memorial relating to land (however described) is to be read and construed as a direction to the Registrar to bring the land (other than unalienated Crown land) under the operation of this Act and to make the appropriate recordings in the Register.

127 Duplicate Crown grants for Crown leases

S. 127
inserted by
No. 39/2006
s. 9.

Sections 8 and 28, as in force immediately before the commencement of sections 3 and 4 of the **Transfer of Land (Alpine Resorts) Act 2006**, continue to apply to any Crown grant by way of a perpetual lease or a lease for years issued before that commencement as if those sections had not been enacted.

128 Contracts entered into before amendment of Seventh Schedule

S. 128
inserted by
No. 75/2006
s. 192(Sch. 2
item 6.1) (as
amended by
No. 17/2007
s. 33).

- (1) The Seventh Schedule as amended by the **Conveyancers Act 2006** applies to contracts for the sale of land entered into on or after the commencement of item 6.6 of Schedule 2 to that Act.
- (2) The Seventh Schedule as in force immediately before the commencement of item 6.6 of Schedule 2 to the **Conveyancers Act 2006** continues to apply to contracts for the sale of land entered into before the commencement of that item.

S. 129
inserted by
No. 80/2009
s. 70.

129 Creation of certificate of title—transitional provision

- (1) For the purposes of this section, ***prescribed authority*** means a body prescribed under section 28(4) as in force immediately before its repeal.
- (2) Despite the repeal of section 28(3), it is not necessary to produce a certificate of title in respect of a folio or folios of land for which a prescribed authority is the registered proprietor if a certificate of title was not required to be produced under that section immediately before the commencement of section 17 of the **Land Legislation Amendment Act 2009**.

S. 130
inserted by
No. 80/2009
s. 70.

130 Contracts referring to Table A—transitional provision

On and from the commencement of section 71 of the **Land Legislation Amendment Act 2009**, any reference to Table A of the Seventh Schedule to this Act in a contract is to be taken to be a reference to Table A of that Schedule as in force immediately before its repeal.

S. 128A
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 58.4),
renumbered
as s. 131 by
No. 35/2010
s. 24(Sch. 6
item 4).

131 Transitional Provision—Statute Law Amendment (Evidence Consequential Provisions) Act 2009

Section 27D(7), as in force immediately before its amendment by the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, continues to apply to a hearing that commenced before the day that Act commences and that—

- (a) continued on or after that day; or
- (b) was adjourned until that day or a day after that day.

Transfer of Land Act 1958
No. 6399 of 1958
Schedules

Schedules

Sch. 1
repealed by
No. 42/2017
s. 7.

* * * *

Schs 2–4
repealed by
No. 9976 s. 11.

* * * *

Ss 16, 20, 28.
No. 5842.

Sch. 5
amended by
Nos 10128
s. 6(4),
128/1986 s. 10,
18/1989
s. 12(Sch. 1
item 185
(c)(d)).

Fifth Schedule

Sch. 5 Pt. 1
repealed by
No. 18/1989
s. 12(Sch. 1
item 185(a)).

* * * * *

Sch. 5 Pt. 2
substituted by
No. 18/1989
s. 12(Sch. 1
item 185(b)).

Part II

LIMITATIONS

This folio is LIMITED [AS TO DESCRIPTION OF LAND *or*
AS TO TITLE *or* AS TO BOTH DESCRIPTION OF LAND
AND TITLE (as the case may be)]

The probable or possible defects in title and outstanding estates
and interests 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 Registrar in creating an ordinary folio are set
forth in the Registrar's minutes.

Sch. 5 Pt 3
amended by
Nos 35/1996
s. 453(Sch. 1
item 83.13),
85/1998
s. 19(1).

Part III—Provisional folio

Warning as to Title

This folio is subject to the qualification(s) numbers in
the legal practitioner's certificate relating to the land No.

Part IV—Provisional folio

Warning as to Dimensions

Any dimension and connecting distance shown is based on the description of the land as contained in the General Law Title and is not based on survey information which has been investigated by the Registrar of Titles.

Sch. 5 Pt 4
amended by
No. 85/1998
s. 19(1).

Part V—Provisional folio

Warning as to subsisting interests

This title is based on General Law documents which have not been investigated by the Registrar of Titles. Subsisting interests under the General Law may affect this title.

Sch. 5 Pt 5
inserted by
No. 85/1998
s. 19(2).

Sch. 5A
inserted by
No. 128/1986
s. 11,
amended by
Nos 57/1989
s. 3(Sch.
item 201.5),
35/1996
s. 453(Sch. 1
item 83.14
(a)–(e)),
102/1997
s. 49(Sch.
item 6),
85/1998 s. 20,
18/2005
s. 18(Sch. 1
items 107.3
(a)(b),
107.4(a)–(c)),
17/2014
s. 160(Sch. 2
item 98.2).

Schedule 5A

Part I—Legal practitioner's certificate as to title

(Freehold General Law Land)

To: The Registrar of Titles

I

of (Firm's name and address)

Legal practitioner having caused a search to be made up to / / as
disclosed in the attached search of title against the land in the Schedule,
having examined the documents forming the chain of title to the land from
the Crown grant or last deed known to the Registrar of Titles or accepted by
the Registrar of Titles in a prior conversion save and except any documents
set out in clause 7 of the Schedule and having made the searches and enquires
as I consider necessary DO CERTIFY THAT:

1. The person(s) shown in clause 3 of the Schedule has/have acquired a
good safe holding and marketable title to the land including such
appurtenances, abuttal rights, etc. as are set out in Clause 2 of the
Schedule subject to the mortgages, encumbrances claims rights estates
or interests set out in clauses 4, 5, and 6 of the Schedule and the
qualifications set out in clause 7 of the Schedule.
2. The Root of Title is the following instrument:)
).
3. The land is not subject to control under the laws relating to bankruptcy
or insolvency.
4. The value of the land including all buildings and other improvements
thereon is \$ or thereabouts.
5. I hold an Australian practising certificate within the meaning of the
Legal Profession Uniform Law (Victoria).

Date

Signature

Transfer of Land Act 1958
No. 6399 of 1958
Schedule 5A

SCHEDULE

1. *Address of property:*

2. *Land:*

(Insert description sufficient to identify the land.

Note: Where the land description includes rights of appurtenancy, abuttal, etc. justified in any deed which forms part of a separate chain of title, a photocopy of the deed, certified by the legal practitioner making the certificate, must be produced. That chain of title must, also be produced, except those parts which have been accepted by the Registrar under a prior conversion.)

3. *Full name and address of owner:*

4. *Mortgages:*

(If there are none, write "NIL". Otherwise give details.)

5. *Encumbrances:*

(e.g. charges, easements, restrictive covenants, etc.) (If there are none, write "NIL". Otherwise give details.)

6. *Claims, rights, estates or interests:*

(If any person has or claims an estate or interest in the land at law or in equity, in possession or expectancy, describe them. (e.g. Rights of a purchaser under a contract of sale or person in possession or person in occupation, judgements, lis pendens, statutory rights or interests, notices of acquisition, etc.) If there are none write "NIL").

7. *Qualifications:*

(Here specify any qualifications the legal practitioner has with respect to the title. A reference to any defects in title should be included, e.g. missing deeds, or as the case may be).

Part 2—Legal practitioner's certificate as to title to general law land

(Possessory Title)

To: The Registrar of Titles

I

of (Firm's name and address)

Legal practitioner having examined the evidence of the possessory title to the land in the schedule including the documents produced herewith and set out in the schedule and the attached search notes and having made such searches and enquiries that I consider to be necessary DO CERTIFY THAT:

1. The last registered deed(s) which comprise the fee of the land is/are
Book No. whereby of is the last registered
owner subject to
2. I am satisfied that the applicant has acquired a title to the said land by
possession.^{*1}
3. Other than as stated below I am not aware of any mortgage or
encumbrance affecting the land or that any person other than the
applicant has or claims any estate or interest at law or in equity, in
possession or expectancy any prior interest having been extinguished.

(If there are none, write "NIL".)

4. The value of the land including all buildings and other improvements
thereon is \$ or thereabouts.
5. The land is not subject to control under the laws relating to bankruptcy
or insolvency.
6. I hold an Australian practising certificate within the meaning of the
Legal Profession Uniform Law (Victoria).
7. I am satisfied that no part of the land has for 30 years and upwards
been used as road nor has it been dedicated or proclaimed as a public
highway, nor has it vested in any body pursuant to any statute.

Dated

Signature

Transfer of Land Act 1958
No. 6399 of 1958
Schedule 5A

SCHEDULE

1. Address of Property:
2. *Land*: (part of—whole of) Crown Allotment ()
Section () Parish of ()
County of () being land identified
(state how)
on Plan of Survey by the Surveyor ()
dated () a copy of which is annexed hereto.
3. Full name and address of applicant:
4. Documents produced and set out: (Give details)*²
 - *1. To do this the legal practitioner must, among other things, be satisfied that a person has entered into possession adverse to the owner at a time prior to the commencement of the Statutory period (see sections 8 and 23(1)(c) of the **Limitation of Actions Act 1958**) and that there has been an unbroken chain of possession since that time.
 - *2. The evidence upon which the legal practitioner's certificate is based should, in the case of each witness, be by statutory declaration or affidavit to which there is exhibited a copy of the plan of survey. Each declaration or affidavit should be headed by reference to the matter of the **Transfer of Land Act 1958** and the matter of an Application by the Applicant (give name).

All evidence relevant to title, including any deeds of assignment of possessory rights, should be set out in item 4 of the Schedule and produced.
5. Qualifications:

(Here specify any qualifications the legal practitioner has with respect to the title. A reference to title acquired by possession for more than 15 years but less than 30 years should be included. A reference to any other defects in title should also be included e.g. missing deeds, or as the case may be.).

Transfer of Land Act 1958
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Schedule 5A

Sch. 6 repealed by No. 9976 s. 11.	*	*	*	*	*
S. 48. Nos 5842, 5934 s. 7. Sch. 7 amended by Nos 6433 s. 3 (as amended by No. 6489 s. 4), 9633 s. 10, substituted by No. 9858 s. 8, amended by Nos 9967 s. 12, 10167 s. 3(1), 18/1989 s. 12(Sch. 1 item 186(a)(b)), 57/1993 s. 21(a)–(c), 52/1994 s. 97(Sch. 3 item 32), 35/1996 s. 453(Sch. 1 item 83.15(a)(b)), 11/2001 s. 3(Sch. item 78.2), 88/2005 s. 117(Sch. 2 item 9), 75/2006 s. 192(Sch. 2 item 6.6) (as amended by No. 17/2007 s. 33), repealed by No. 80/2009 s. 71.	*	*	*	*	*
Schs 8–11 repealed by No. 9976 s. 11.	*	*	*	*	*

Twelfth Schedule—Right of carriage-way

Together with full and free right and liberty to and for the registered proprietor for the time being of the land herein described [*or hereby transferred or as the case may be*] or any part thereof and his tenants servants agents workmen and visitors to go pass and repass at all times hereafter and for all purposes and either with or without horses or other animals carts or other carriages into and out of and from the said land or any part thereof through over and along the road or way or several roads or ways delineated [*and coloured brown*] on the said map [*or plan of subdivision*].

S. 72.
No. 5842.
Sch. 12.

*	*	*	*	*	Sch. 13 repealed by No. 9976 s. 11.
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*	*	*	*	*	Sch. 14 amended by No. 6867 s. 2(Sch. 1), repealed by No. 9976 s. 11.
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S. 75.
No. 5842.
Sch. 15.

Fifteenth Schedule—Covenant in mortgage to insure

That I my executors administrators or transferees will insure and so long as any money shall remain secured by this mortgage keep insured against loss or damage by fire in the name of the mortgagee or his transferees in some public insurance office to be approved of by him or them all buildings fixtures or other improvements which shall for the time being be erected on the said land, and which shall be of a nature or kind capable of being so insured, to the amount either of the principal money hereby secured or of the full value of such buildings and will when required deposit with the mortgagee or his transferees the policy of such insurance and at least seven days before each premium is payable the receipt for such premium. And that the moneys which shall be received on account of such insurance shall at his or their option be applied either in or towards satisfaction of the moneys secured by this mortgage or in rebuilding or reinstating under the superintendence of his or their surveyor the buildings fixtures or other improvements destroyed or damaged. And that on any breach or non-observance of this covenant he or they shall be at liberty to effect such insurance and continue the same for such period as may be deemed fit and the costs and expenses paid on account thereof shall be a charge upon the said land and bear interest at the same rate as if principal money overdue.

Transfer of Land Act 1958
No. 6399 of 1958
Fifteenth Schedule—Covenant in mortgage to insure

*	*	*	*	*	Schs 15A–16 repealed. ⁹
*	*	*	*	*	S. 92. No. 5842. Sch. 17 amended by No. 18/1989 s. 12(Sch. 1 item 187 (a)–(c)), repealed by No. 80/2009 s. 72.
*	*	*	*	*	S. 93. No. 5842. Sch. 18 amended by Nos 9976 s. 11, 18/1989 s. 12(Sch. 1 item 188), repealed by No. 80/2009 s. 72.
*	*	*	*	*	Schs 19, 20 repealed. ¹⁰

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The **Transfer of Land Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 893.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Transfer of Land Act 1958** by Acts and subordinate instruments.

Contracts of Sale (Payments) Act 1958, No. 6433/1958 (as amended by No. 6489)

Assent Date: 28.10.58
Commencement Date: 2.2.59: Government Gazette 21.1.59 p. 116
Current State: All of Act in operation

Transfer of Land (Amendment) Act 1959, No. 6544/1959

Assent Date: 13.10.59
Commencement Date: 18.1.60: Government Gazette 13.1.60 p. 106
Current State: All of Act in operation

Transfer of Land (Stratum Estates) Act 1960, No. 6646/1960

Assent Date: 7.6.60
Commencement Date: 1.2.61: Government Gazette 25.1.61 p. 176
Current State: All of Act in operation

Valuation of Land Act 1960, No. 6653/1960

Assent Date: 15.6.60
Commencement Date: S. 16 on 26.9.62: Government Gazette 26.9.62 p. 3351
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Statute Law Revision Act 1962, No. 6867/1962

Assent Date: 16.4.62
Commencement Date: 16.4.62
Current State: All of Act in operation

Subordinate Legislation Act 1962, No. 6886/1962

Assent Date: 8.5.62
Commencement Date: 1.8.62: Government Gazette 4.7.62 p. 2314
Current State: All of Act in operation

Mildura Irrigation and Water Trusts (Amendment) Act 1962, No. 6972/1962

Assent Date: 18.12.62
Commencement Date: 18.12.62
Current State: All of Act in operation

Sale of Land Act 1962, No. 6975/1962

Assent Date: 18.12.62
Commencement Date: S. 27 on 1.3.63: Government Gazette 20.2.63 p. 307
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Sale of Land (Amendment) Act 1963, No. 7052/1963

Assent Date: 26.11.63
Commencement Date: 26.11.63
Current State: All of Act in operation

Transfer of Land Act 1958
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Transfer of Land (Service Agreements) Act 1964, No. 7114/1964

Assent Date: 14.4.64
Commencement Date: 14.4.64
Current State: All of Act in operation

Transfer of Land (Restrictive Covenants) Act 1964, No. 7130/1964

Assent Date: 5.5.64
Commencement Date: 5.5.64
Current State: All of Act in operation

Transfer of Land (Removal of Caveats) Act 1965, No. 7244/1965

Assent Date: 5.5.66
Commencement Date: 5.5.66
Current State: All of Act in operation

Sale of Land Act 1965, No. 7272/1965

Assent Date: 1.6.65
Commencement Date: 1.9.65: Government Gazette 21.7.65 p. 2314
Current State: All of Act in operation

Local Government (Amendment) Act 1965, No. 7286/1965

Assent Date: 9.6.65
Commencement Date: All of Act (except s. 3(3)) on 21.7.67: Government Gazette 21.7.65 p. 2314; s. 3(3) on 1.1.70: Government Gazette 19.6.68 p. 2182
Current State: All of Act in operation

Statute Law Revision Act 1965, No. 7332/1965

Assent Date: 14.12.65
Commencement Date: 14.12.65
Current State: All of Act in operation

Strata Titles Act 1967, No. 7551/1967

Assent Date: 17.3.67
Commencement Date: Pts 1–3, 5, 6 on 1.7.67: Government Gazette 24.5.67 p. 1754; Pt 4 on 1.12.67: Government Gazette 22.11.67 p. 3510
Current State: All of Act in operation

Transfer of Land (Subdivision of Allotments) Act 1969, No. 7814/1969

Assent Date: 13.5.69
Commencement Date: 1.8.69: Government Gazette 9.7.69 p. 2015
Current State: All of Act in operation

Sale of Land (Amendment) Act 1969, No. 7898/1969

Assent Date: 9.12.69
Commencement Date: 1.3.70: Government Gazette 19.12.69 p. 4134
Current State: All of Act in operation

Transfer of Land (Duplicate Certificates) Act 1971, No. 8091/1971

Assent Date: 6.4.71
Commencement Date: 6.4.71
Current State: All of Act in operation

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Statute Law Revision Act 1971, No. 8181/1971

Assent Date: 23.11.71
Commencement Date: 23.11.71
Current State: All of Act in operation

Local Government (Subdivision of Land) Act 1973, No. 8531/1973

Assent Date: 18.12.73
Commencement Date: 18.12.73
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9019/1977

Assent Date: 17.5.77
Commencement Date: 17.5.77: s. 2(2)
Current State: All of Act in operation

Age of Majority Act 1977, No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Cluster Titles (Amendment) Act 1978, No. 9128/1978

Assent Date: 23.5.78
Commencement Date: 1.7.78: Government Gazette 14.6.78 p. 1644
Current State: All of Act in operation

Surveyors Act 1978, No. 9180/1978

Assent Date: 21.11.78
Commencement Date: 1.12.80: Government Gazette 5.11.80 p. 3901
Current State: All of Act in operation

Transfer of Land (Amendment) Act 1979, No. 9324/1979

Assent Date: 18.12.79
Commencement Date: All of Act (except s. 4) on 1.6.80: Government Gazette 7.5.80 p. 1403; s. 4 on 4.6.80: Government Gazette 4.6.80 p. 1764
Current State: All of Act in operation

Instruments (Powers of Attorney) Act 1980, No. 9421/1980

Assent Date: 20.5.80
Commencement Date: 1.7.80: Government Gazette 25.6.80 p. 2123
Current State: All of Act in operation

Statute Law Revision Act 1981, No. 9549/1981

Assent Date: 19.5.81
Commencement Date: 19.5.81: s. 2(2)
Current State: All of Act in operation

Penalties and Sentences Act 1981, No. 9554/1981

Assent Date: 19.5.81
Commencement Date: S. 2(2)(Sch. 2 items 347–349) on 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

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Crimes (Classification of Offences) Act 1981, No. 9576/1981

Assent Date: 26.5.81
Commencement Date: 1.7.81: Government Gazette 3.6.81 p. 1778
Current State: All of Act in operation

Penalty Interest Rates Act 1981, No. 9633/1981

Assent Date: 8.12.81
Commencement Date: 1.4.82: Government Gazette 17.2.82 p. 456
Current State: All of Act in operation

Sale of Land (Amendment) Act 1983, No. 9858/1983

Assent Date: 5.1.83
Commencement Date: 2.5.83: Government Gazette 8.4.83 p. 753
Current State: All of Act in operation

Public Account (Trust Funds) Act 1983, No. 9861/1983

Assent Date: 5.1.83
Commencement Date: 12.1.83: Government Gazette 12.1.83 p. 81
Current State: All of Act in operation

Penalty Interest Rates Act 1983, No. 9967/1983

Assent Date: 22.11.83
Commencement Date: 1.7.83: s. 1(3)
Current State: All of Act in operation

Transfer of Land (Amendment) Act 1983, No. 9976/1983

Assent Date: 29.11.83
Commencement Date: 1.5.84: Government Gazette 11.4.84 p. 1090
Current State: All of Act in operation

Transfer of Land (Amendment) Act 1984, No. 10128/1984

Assent Date: 7.11.84
Commencement Date: S. 5 on 1.5.84: s. 2(2); rest of Act on 7.11.84
Current State: All of Act in operation

Commercial Arbitration Act 1984, No. 10167/1984

Assent Date: 20.11.84
Commencement Date: 1.4.85: Government Gazette 20.2.85 p. 372
Current State: All of Act in operation

Sale of Land (Allotments) Act 1985, No. 10216/1985

Assent Date: 3.12.85
Commencement Date: 1.1.86: Government Gazette 18.12.85 p. 4697
Current State: All of Act in operation

Transfer of Land (Share Interests) Act 1986, No. 7/1986

Assent Date: 25.3.86
Commencement Date: 25.3.86
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: S. 22 on 1.7.86: Government Gazette 25.6.86 p. 2180
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

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Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Land Acquisition and Compensation Act 1986, No. 121/1986

Assent Date: 23.12.86
Commencement Date: 29.11.87: Government Gazette 25.11.87 p. 3224
Current State: All of Act in operation

Transfer of Land (Conversion) Act 1986, No. 128/1986

Assent Date: 23.12.86
Commencement Date: 1.3.88: Government Gazette 16.12.87 p. 3392
Current State: All of Act in operation

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

Subdivision Act 1988, No. 53/1988 (as amended by No. 47/1989)

Assent Date: 31.5.88
Commencement Date: 30.10.89: Government Gazette 4.10.89 p. 2532
Current State: All of Act in operation

Transfer of Land (Computer Register) Act 1989, No. 18/1989 (as amended by No. 48/1991)

Assent Date: 16.5.89
Commencement Date: 3.2.92: Government Gazette 18.12.91 p. 3488
Current State: All of Act in operation

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Water (Consequential Amendments) Act 1989, No. 81/1989

Assent Date: 5.12.89
Commencement Date: 1.11.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

Local Government (Amendment) Act 1990, No. 13/1990

Assent Date: 8.5.90
Commencement Date: S. 43 on 8.5.90: Special Gazette (No. 20) 8.5.90 p. 1
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

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Mineral Resources Development Act 1990, No. 92/1990

Assent Date: 18.12.90
Commencement Date: S. 128(Sch. 1 item 29) on 6.11.91: Government Gazette 30.10.91 p. 2970
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991

Assent Date: 25.6.91
Commencement Date: Ss 38(2)(f)(3), 56(2)(3), 65 on 30.10.89: s. 2(2); s. 53(5) on 1.10.92: s. 2(1); ss 50, 57 on 3.2.92 same day as s. 7 of No. 18/1989: s. 2(3); rest of Act on 25.6.91: s. 2(4)
Current State: All of Act in operation

Subdivision (Amendment) Act 1993, No. 57/1993

Assent Date: 8.6.93
Commencement Date: All of Act (except s. 17(4)) on 8.6.93: s. 2(2); s. 17(4) on 30.10.89: s. 2(1)
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 items 59.1, 59.2) on 7.7.94: Government Gazette 7.7.94 p. 1878
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3), s. 27 on 7.6.94: s. 2(1); rest of Act on 1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State: All of Act in operation

Catchment and Land Protection Act 1994, No. 52/1994

Assent Date: 15.6.94
Commencement Date: S. 97(Sch. 3 item 32) on 15.12.94: s. 2(3)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Valuation of Land (Amendment) Act 1994, No. 91/1994

Assent Date: 6.12.94
Commencement Date: S. 36(10) on 1.1.95: s. 2(2)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 83.1–83.15) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

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Co-operatives Act 1996, No. 84/1996

Assent Date: 23.12.96
Commencement Date: S. 467(Sch. 6 items 13.1, 13.2) on 1.10.97: Special Gazette (No. 122) 1.10.97 p. 1
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Legal Practice (Amendment) Act 1997, No. 102/1997

Assent Date: 16.12.97
Commencement Date: S. 49(Sch. item 6) on 16.12.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: Ss 3–20 on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 127) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 78) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 113) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Transfer of Land (Amendment) Act 2001, No. 49/2001

Assent Date: 27.6.01
Commencement Date: 28.6.01: s. 2
Current State: All of Act in operation

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Auction Sales (Repeal) Act 2001, No. 84/2001

Assent Date: 11.12.01
Commencement Date: S. 14 on 1.1.03: s. 2(4)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Transfer of Land (Electronic Transactions) Act 2004, No. 23/2004

Assent Date: 18.5.04
Commencement Date: Ss 3–8 on 19.5.04: s. 2
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Courts Legislation (Funds in Court) Act 2004, No. 30/2004

Assent Date: 1.6.04
Commencement Date: S. 11 on 1.7.04: s. 2
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Surveying Act 2004, No. 47/2004

Assent Date: 16.6.04
Commencement Date: S. 71(Sch. item 6) on 1.1.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Housing (Housing Agencies) Act 2004, No. 106/2004

Assent Date: 21.12.04
Commencement Date: S. 17 on 1.1.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 207) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 3(Sch. 1 item 22) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 107) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

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Property (Co-ownership) Act 2005, No. 71/2005

Assent Date: 25.10.05
Commencement Date: S. 7 on 1.2.06; Government Gazette 19.1.06 p. 70
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Land Tax Act 2005, No. 88/2005

Assent Date: 29.11.05
Commencement Date: S. 117(Sch. 2 item 9) on 1.1.06: s. 2
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Transfer of Land (Alpine Resorts) Act 2006, No. 39/2006

Assent Date: 20.6.06
Commencement Date: Ss 3–9 on 21.6.06: s. 2
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Mineral Resources Development (Sustainable Development) Act 2006, No. 63/2006

Assent Date: 29.8.06
Commencement Date: S. 61(Sch. item 30) on 30.8.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 224(Sch. 3 item 10) on 31.12.07 : s. 2(2)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Conveyancers Act 2006, No. 75/2006 (as amended by No. 17/2007)

Assent Date: 10.10.06
Commencement Date: S. 192(Sch. 2 item 6) on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Planning and Environment Amendment Act 2007, No. 47/2007

Assent Date: 25.9.07
Commencement Date: Ss 18, 19 on 26.9.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Consumer Credit (Victoria) and Other Acts Amendment Act 2008, No. 6/2008

Assent Date: 18.3.08
Commencement Date: S. 38 on 19.3.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

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Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 58) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Land Legislation Amendment Act 2009, No. 80/2009

Assent Date: 8.12.09
Commencement Date: Ss 3–72 on 1.5.10: s. 2(2)
Current State: This information relates only to provision/s amending the **Transfer of Land Act 1958**

Parks and Crown Land Legislation (Mount Buffalo) Act 2010, No. 35/2010

Assent Date: 15.6.10
Commencement Date: S. 24(Sch. 6 item 4) on 8.7.10: Government Gazette 8.7.10 p. 1518
Current State: This information relates only to provision/s amending the **Transfer of Land Act 1958**

Climate Change and Environment Protection Amendment Act 2012, No. 78/2012

Assent Date: 18.12.12
Commencement Date: S. 27 on 13.2.13: Special Gazette (No. 44) 12.2.13 p. 1
Current State: This information relates only to provision/s amending the **Transfer of Land Act 1958**

Electronic Conveyancing (Adoption of National Law) Act 2013, No. 7/2013

Assent Date: 26.2.13
Commencement Date: Ss 11–13 on 14.3.13: Special Gazette (No. 86) 13.3.13 p. 1; ss 16–21 on 14.2.18: Special Gazette (No. 49) 13.2.18 p. 1
Current State: This information relates only to provision/s amending the **Transfer of Land Act 1958**

Co-operatives National Law Application Act 2013, No. 9/2013

Assent Date: 13.3.13
Commencement Date: S. 42(Sch. 2 item 17) on 3.3.14: Special Gazette (No. 46) 18.2.14 p. 1
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 3(Sch. 1 item 56) on 1.12.13: s. 2(1)
Current State: This information relates only to provision/s amending the **Transfer of Land Act 1958**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 98) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

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Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 36) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Transfer of Land Amendment Act 2014, No. 70/2014

Assent Date: 23.9.14
Commencement Date: Ss 3–25 on 24.9.14: s. 2
Current State: This information relates only to provision/s amending the **Transfer of Land Act 1958**

Land Legislation Amendment Act 2017, No. 42/2017

Assent Date: 19.9.17
Commencement Date: Ss 3–46 on 20.9.17: s. 2
Current State: This information relates only to the provision/s amending the **Transfer of Land Act 1958**

Transfer of Land (Fees) Order 1966, S.R. No. 236/1966

Date of Making: 23.8.66
Date of Commencement: 1.9.66: reg. 1

Transfer of Land (Fees) Order 1970, S.R. No. 221/1970

Date of Making: 29.9.70
Date of Commencement: 1.11.70: reg. 1

Transfer of Land (Fees) Order 1973, S.R. No. 200/1973

Date of Making: 21.8.73
Date of Commencement: 1.10.73: reg. 1

Metric Conversion (Transfer of Land) Regulations 1974, S.R. No. 152/1974

Date of Making: 27.5.74
Date of Commencement: 1.6.74: reg. 1

Transfer of Land (Fees) Order 1974, S.R. No. 348/1974

Date of Making: 23.7.74
Date of Commencement: 1.10.74: reg. 1

Transfer of Land (Fees) Order 1975, S.R. No. 256/1975

Date of Making: 5.8.75
Date of Commencement: 1.10.75: reg. 1

Transfer of Land (Fees) Order 1976, S.R. No. 225/1976

Date of Making: 10.8.76
Date of Commencement: 1.10.76: reg. 1

Transfer of Land (Fees) Order 1977, S.R. No. 247/1977

Date of Making: 30.8.77
Date of Commencement: 1.10.77: reg. 1

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Transfer of Land (Fees) Order 1978, S.R. No. 285/1978

Date of Making: 8.8.78

Date of Commencement: 1.9.78: reg. 1

Transfer of Land (Fees) (Amendment) Order 1978, S.R. No. 335/1978

Date of Making: 5.9.78

Date of Commencement: 5.9.78: reg. 1

Transfer of Land (Fees) Order 1979, S.R. No. 368/1979

Date of Making: 18.9.79

Date of Commencement: 1.11.79: reg. 1

Transfer of Land (Fees) Order 1980, S.R. No. 366/1980

Date of Making: 23.9.80

Date of Commencement: 1.11.80: reg. 1

Government Gazette 20 June 1956 page 3357

Government Gazette 18 January 1961 page 36

Government Gazette 16 February 1966 page 619

Government Gazette 31 August 1966 page 3196

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ S. 33(1)–33(3A):

S. 33(1) repealed by No. 18/1989 s. 12(Sch. 1 item 60).

S. 33(2) amended by No. 6544 s. 6(2)(a)(b), repealed by No. 18/1989 s. 12(Sch. 1 item 60).

S. 33(3) repealed by No. 18/1989 s. 12(Sch. 1 item 60).

S. 33(3A) inserted by No. 9324 s. 5(2), repealed by No. 18/1989 s. 12(Sch. 1 item 60).

² S. 52(1): See Part 3 of the **Property Law Act 1958**.

³ S. 62(1): See section 73.

⁴ S. 67(1)(d): See sections 141, 142 of the **Property Law Act 1958**.

⁵ S. 72(1): See section 98.

⁶ S. 79(2)(b): See section 76.

⁷ S. 88(2): See section 42(2)(f).

⁸ S. 97(2A)–97(3):

S. 97(2A) inserted by No. 6975 s. 27(d), amended by Nos 7052 s. 4(a)(b), 7130 s. 2(b), substituted by No. 7272 s. 8(2)(a), amended by Nos 7898 s. 5(a), 10216 s. 11, repealed by No. 53/1988 s. 45(Sch. 2 item 90).

S. 97(2B) inserted by No. 7551 s. 49(b), repealed by No. 53/1988 s. 45(Sch. 2 item 90).

S. 97(3) repealed by No. 53/1988 s. 45(Sch. 2 item 90).

⁹ Schs 15A–16:

Sch. 15A inserted by No. 6544 s. 6(4), amended by No. 9324 s. 4(2), repealed by No. 9976 s. 11.

Sch. 15B inserted by No. 9324 s. 5(3), repealed by No. 9976 s. 11.

Sch. 15C inserted by No. 9324 s. 6(2), repealed by No. 9976 s. 11.

Sch. 16 amended by No. 9324 s. 10(1)(c), repealed by No. 9976 s. 11.

¹⁰ Schs: 19, 20:

Sch. 19 repealed by No. 9976 s. 11.

Sch. 20 amended by G.G. 20.6.56 p. 3357, 18.1.61 p. 136, 16.2.66 p. 619, 31.8.66 p. 3196, S.R. Nos 236/1966, 221/1970, 200/1973, 152/1974, 348/1974, 256/1975, 225/1976, 247/1977, No. 9128 s. 9(2), S.R. Nos 285/1978 reg. 3, 335/1978 reg. 3, 368/1979 reg. 3, 366/1980 reg. 3, No. 9861 s. 3(1), repealed by No. 9976 s. 11.