

# REAL PROPERTY ACT, 1886

Reprint No. 1—15.11.91	
Reprint No. 2—21.5.92	
Reprint No. 3—6.7.92	[New Part XIII and Appendix]
Reprint No. 4—18.2.93	[New Part V and Appendix]
Reprint No. 5—15.1.94	[New Part XIXAB and Appendix]
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Reprint No. 10—4.11.96	[New Parts XIXAB, XXI and Appendix]
Reprint No. 11—29.7.99	[New Part XIXAB and Appendix]

[Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]



SOUTH AUSTRALIA

**REAL PROPERTY ACT, 1886**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 29 July 1999.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

## SUMMARY OF PROVISIONS

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19. Solicitor not to engage in private practice  
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26. Land on alienation from Crown to be under Act  
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28. Undivided shares and mortgaged land may not be brought under Act except upon conditions  
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32. Titles in three classes  
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  38. Action to be taken on return of notices or failure of personal service
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  42. Documents of title, if they include other property, to be returned to applicant
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- 68. Person named in certificate to be the registered proprietor
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  - VII. Wife's title to prevail
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- 82. Description of easement
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  - 86. Public rights-of-way, etc., not within this Act
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- 92. Person now holding under lease or agreement may surrender
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- 97. Transferee of land subject to mortgage or encumbrance to indemnify transferor
- 98. On registration of transfer, grant or certificate to be cancelled
- 99. Unless whole of land transferred
- 100. New certificate to purchaser and balance certificate to registered proprietor
- 102. Memorial of order for sale of land for non-payment of rates
- 103. Registration of transfer hereunder
- 104. Discharge of memorial
- 105. Sale under writ of *feri facias* or decree, warrant or order of court
- 106. Transfer not to be valid against purchaser until entry of writ
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- 108. Production of duplicate instrument not required on transfer under decree or order, writ, or warrant
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- 111. Transfer by registered proprietor to spouse, etc.
- 112. Dealings before issue of certificate
- 113. Deed-poll by promoters of undertakings under Lands Clauses Acts
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- 120. Lease may be surrendered by separate instrument
- 121. Registrar-General may enter surrender
- 122. Effect of entry of surrender
- 123. Surrender where lease subject to mortgage or under-lease
- 124. Covenants to be implied in every lease against the lessee
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- 132. Nature of mortgage and encumbrance, and procedure in case of default
- 133. Power of sale
- 134. Mortgagee's receipt to discharge purchaser
- 135. Appropriation of proceeds
- 135a. Mode of payment of encumbrance
- 136. Transfer upon sale by mortgagee or encumbrancee
- 137. Power of mortgagee to enter, take possession, distrain, let, or bring action for recovery of land
- 138. Power of mortgagee to distrain on tenant or occupier for arrears not exceeding the amount of rent due
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- 177. Particulars of application to be recorded
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- 180. Person registered in place of deceased, bankrupt, or assigning proprietor, to be proprietor of land for purpose of dealing
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- 182. Court may order transfer to person entitled
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- 184. Order of Court vesting land
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- 198. Writ of *habere facias* unnecessary where no one is in possession, or the land is surrendered voluntarily
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  - (4) To correct errors
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- 223//e. Right of allocation may be charged
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- 229. Indictable offences under this Act
- 230. Perjury
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- 247. Informal documents may be registered
- 248. Memorial to be entered
- 249. Equities not abolished
- 250. *Lis pendens* not to be registered
- 251. No title by adverse possession
- 252. Corporations and district councils to furnish Registrar-General with plans of new streets, etc.
- 253. Surveyor-General to furnish Registrar-General with particulars of orders confirming opening of new roads, etc.
- 254. Alteration of plans
- 258. Reference to Real Property Acts
- 259. General powers of Court not affected
- 260. Valuable consideration may be proved by prior instruments
- 261. General covenants to be implied in instruments
- 262. Implied powers and covenants may be modified or negated
- 263. In action for breach, party may be proceeded against as if he had covenanted in express words
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- 266. Short form for expressing exception of mines and minerals
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- 275. Forms in schedules
- 276. Service of notices
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# REAL PROPERTY ACT, 1886

being

The Real Property Act, 1886, No. 380 of 1886  
[Assented to 17 November 1886]<sup>1</sup>

as amended by

The Real Property Act Amendment Act, 1887, No. 403 of 1887 [Assented to 16 November 1887]  
The Real Property Act Amendment Act, 1893, No. 569 of 1893 [Assented to 23 December 1893]  
The Licensed Surveyors Act, 1896, No. 657 of 1896 [Assented to 19 December 1896]  
Real Property Act Amendment Act, 1919, No. 1415 of 1919 [Assented to 4 December 1919]  
Real Property Act Amendment Act, 1927, No. 1806 of 1927 [Assented to 30 November 1927]  
Town Planning Act, 1929, No. 1945 of 1929 [Assented to 15 January 1930]<sup>2</sup>  
Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December 1935]  
Statute Law Revision Act, 1936, No. 2293 of 1936 [Assented to 8 October 1936]  
Real Property Act Amendment Act, 1939, No. 36 of 1939 [Assented to 14 December 1939]<sup>3</sup>  
Real Property Act Amendment Act, 1945, No. 39 of 1945 [Assented to 17 January 1946]  
Real Property Act Amendment Act, 1960, No. 44 of 1960 [Assented to 10 November 1960]  
Real Property Act Amendment Act, 1961, No. 37 of 1961 [Assented to 9 November 1961]  
Real Property Act Amendment Act, 1963, No. 46 of 1963 [Assented to 28 November 1963]  
Real Property Act Amendment (Strata Titles) Act, 1967, No. 37 of 1967 [Assented to 14 September 1967]<sup>4</sup>  
Real Property Act Amendment Act, 1969, No. 30 of 1969 [Assented to 2 October 1969]<sup>5</sup>  
Real Property Act Amendment Act, 1972, No. 116 of 1972 [Assented to 23 November 1972]<sup>6</sup>  
Real Property Act Amendment Act (No. 2), 1972, No. 130 of 1972 [Assented to 30 November 1972]<sup>7</sup>  
Statute Law Revision Act, 1974, No. 42 of 1974 [Assented to 11 April 1974]  
Real Property Act Amendment Act, 1975, No. 12 of 1975 [Assented to 20 March 1975]<sup>8</sup>  
Real Property Act Amendment Act, 1978, No. 116 of 1978 [Assented to 7 December 1978]  
Real Property Act Amendment Act, 1979, No. 51 of 1979 [Assented to 22 March 1979]<sup>9</sup>  
Statutes Amendment (Property) Act, 1980, No. 32 of 1980 [Assented to 17 April 1980]<sup>10</sup>  
Real Property Act Amendment Act, 1980, No. 68 of 1980 [Assented to 13 November 1980]  
Real Property Act Amendment Act, 1982, No. 23 of 1982 [Assented to 18 March 1982]<sup>11</sup>  
Statutes Amendment (Planning) Act, 1982, No. 62 of 1982 [Assented to 1 July 1982]<sup>12</sup>  
Real Property Act Amendment Act, 1983, No. 56 of 1983 [Assented to 16 June 1983]<sup>13</sup>  
Real Property Act Amendment Act (No. 2), 1983, No. 96 of 1983 [Assented to 15 December 1983]<sup>14</sup>  
Real Property Act Amendment Act, 1985, No. 20 of 1985 [Assented to 14 March 1985]<sup>15</sup>  
Real Property Act Amendment Act (No. 2), 1985, No. 51 of 1985 [Assented to 30 May 1985]<sup>16</sup>  
Real Property Act Amendment Act, 1987, No. 20 of 1987 [Assented to 16 April 1987]  
Real Property Act Amendment Act (No. 2), 1987, No. 69 of 1987 [Assented to 29 October 1987]<sup>17</sup>  
Strata Titles Act, 1988, No. 13 of 1988 [Assented to 7 April 1988]<sup>18</sup>  
Real Property Act Amendment Act, 1990, No. 9 of 1990 [Assented to 12 April 1990]<sup>19</sup>  
Real Property Act Amendment Act (No. 2), 1990, No. 32 of 1990 [Assented to 26 April 1990]<sup>20</sup>  
Real Property (Transfer of Allotments) Amendment Act 1992 No. 23 of 1992 [Assented to 14 May 1992]<sup>21</sup>  
Statutes Amendment (Attorney-General's Portfolio) Act 1992 No. 26 of 1992 [Assented to 14 May 1992]<sup>22</sup>  
Real Property (Survey Act) Amendment Act 1992 No. 13 of 1992 [Assented to 16 April 1992]<sup>23</sup>  
Statutes Repeal and Amendment (Development) Act 1993 No. 54 of 1993 [Assented to 27 May 1993]<sup>24</sup>  
Real Property (Miscellaneous) Amendment Act 1994 No. 11 of 1994 [Assented to 5 May 1994]<sup>25</sup>  
Real Property (Variation and Extinguishment of Easements) Amendment Act 1994 No. 54 of 1994 [Assented to 15 September 1994]<sup>26</sup>  
Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to 27 October 1994]<sup>27</sup>  
Real Property (Witnessing and Land Grants) Amendment Act 1995 No. 11 of 1995 [Assented to 23 March 1995]<sup>28</sup>  
Statutes Amendment (Community Titles) Act 1996 No. 38 of 1996 [Assented to 9 May 1996]<sup>29</sup>  
**Electricity Corporations (Restructuring and Disposal) Regulations 1999 No. 159 of 1999 [Gaz. 29 July 1999, p. 626]<sup>30</sup>**

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

- <sup>1</sup> Came into operation 1 January 1887: s. 9.
- <sup>2</sup> Came into operation 15 January 1930: *Gaz.* 16 January 1930, p. 69.
- <sup>3</sup> Came into operation 1 February 1940: *Gaz.* 11 January 1940, p. 33. (Republished 18 January 1940, p. 70.)
- <sup>4</sup> Came into operation 22 February 1968: *Gaz.* 22 February 1968, p. 515.
- <sup>5</sup> Came into operation 29 January 1970: *Gaz.* 24 December 1969, p. 2098.
- <sup>6</sup> Came into operation (except ss. 8 and 12) 15 January 1973: *Gaz.* 21 December 1972, p. 2722; ss. 8 and 12 came into operation 24 June 1974: *Gaz.* 30 May 1974, p. 2096.
- <sup>7</sup> Came into operation 7 December 1972: *Gaz.* 7 December 1972, p. 2538.
- <sup>8</sup> Came into operation 24 April 1975: *Gaz.* 24 April 1975, p. 1626.
- <sup>9</sup> Came into operation 3 May 1979: *Gaz.* 3 May 1979, p. 1310.
- <sup>10</sup> Came into operation 22 May 1980: *Gaz.* 22 May 1980, p. 1373.
- <sup>11</sup> Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1567.
- <sup>12</sup> Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.
- <sup>13</sup> Came into operation (except ss. 3-10, 13-15) 1 July 1983: *Gaz.* 30 June 1983, p. 1760; remainder of Act came into operation 26 April 1984: *Gaz.* 15 March 1984, p. 642.
- <sup>14</sup> Came into operation 4 November 1982: s. 2.
- <sup>15</sup> Came into operation 18 November 1985: *Gaz.* 17 October 1985, p. 1126.
- <sup>16</sup> Came into operation 12 September 1985: *Gaz.* 8 August 1985, p. 334.
- <sup>17</sup> Came into operation 1 August 1988: *Gaz.* 7 July 1988, p. 197.
- <sup>18</sup> Came into operation 1 September 1988: *Gaz.* 21 July 1988, p. 420.
- <sup>19</sup> Came into operation 21 May 1990: *Gaz.* 17 May 1990, p. 1358.
- <sup>20</sup> Came into operation 2 August 1990: *Gaz.* 2 August 1990, p. 480.
- <sup>21</sup> Came into operation 21 May 1992: *Gaz.* 21 May 1992, p. 1468.
- <sup>22</sup> Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.
- <sup>23</sup> Came into operation 18 February 1993: *Gaz.* 18 February 1993, p. 600.
- <sup>24</sup> Came into operation 15 January 1994: *Gaz.* 27 October 1993, p. 1889.
- <sup>25</sup> Came into operation (except ss. 12 and 13 and clauses 2-4 of Sched. 1 as inserted by section 16) 8 September 1994: *Gaz.* 8 September 1994, p. 728; remainder of Act came into operation 1 September 1995: *Gaz.* 31 August 1995, p. 552.
- <sup>26</sup> Came into operation 15 September 1994: *Gaz.* 15 September 1994, p. 780.
- <sup>27</sup> Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.
- <sup>28</sup> Came into operation 1 July 1995: *Gaz.* 15 June 1995, p. 2841.
- <sup>29</sup> Came into operation 4 November 1996: *Gaz.* 31 October 1996, p. 1460.
- <sup>30</sup> **Came into operation 29 July 1999: reg. 2.**

N.B. The amendments effected to this Act by the *Local Government (Implementation) Act 1999* had not been brought into operation at the date of, and have not been included in, this reprint.

**Real Property Act, 1886**

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

**Preamble**

WHEREAS it is expedient to consolidate and amend the *Real Property Act of 1861*, the *Real Property Act Amendment Act of 1878*, and the *Rights-of-Way Act, 1881*: Be it therefore enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

**Short title**

1. This Act may be cited for all purposes as the *Real Property Act, 1886*.

\* \* \* \* \*

PART I

INTRODUCTORY

**Interpretation**

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

"appropriate form" means a form approved by the Registrar-General:

"the Assurance Fund" means the Real Property Act Assurance Fund constituted under this Act:

"caveatee" shall mean any person against whose application for any purpose a caveat has been lodged, and shall include the registered proprietor of any land in respect of which a caveat has been lodged:

"caveator" shall mean any person lodging a caveat:

"certificate" shall mean a certificate of title issued under any of the Real Property Acts, or any grant from the Crown issued after the passing of the *Real Property Act No. 15 of 1857-58* and before the commencement of the *Real Property (Witnessing and Land Grants) Amendment Act 1995*, and shall extend to and include all plans and entries thereon:

"Chief Secretary" shall mean the Chief Secretary of the State:

"Court" means—

(a) the Supreme Court;

and

(b) in sections 52, 64, 71, 80, 87, 105, 108, 110, 142a, 165, 166 and 167 of this Act includes any other court or tribunal constituted under the law of this State or the Commonwealth:

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

"document of title" shall mean and include every document evidencing or relating to the title of any land not under the provisions of any of the Real Property Acts:



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

"encumbrancee" shall mean the registered proprietor of an encumbrance:

"encumbrancer" shall mean the registered proprietor of land subject to an encumbrance:

"instrument" shall mean and include every document capable of registration under the provisions of any of the Real Property Acts, or in respect of which any entry is by any of the Real Property Acts directed, required, or permitted to be made in the Register Book:

"instrument of title" shall mean and include every instrument evidencing or relating to the title to any land under the provisions of any of the Real Property Acts:

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

"lessee" shall mean the registered proprietor of a lease:

"lessor" shall mean the registered proprietor of land subject to a lease:

"mentally incapacitated person" has the same meaning as in the *Guardianship and Administration Act 1993*:

"mortgagee" shall mean the registered proprietor of a mortgage:

"mortgagor" shall mean the registered proprietor of land subject to a mortgage:

"proprietor" shall mean any person seized or possessed of, or entitled to land:

"registered proprietor" shall mean any person appearing by the Register Book, or by any registered instrument of title to be the proprietor of any land:

"servient land" shall mean land subject to any easement:

"statutory assignment" shall mean any deed assigning a debtor's estate for the benefit of his creditors, executed under or in pursuance of Division VI of *The Insolvent Act, 1860*, or any other Act:

"the Real Property Acts" shall mean the *Real Property Act* (No. 15 of 1857-8), *The Real Property Law Amendment Act* (No. 16 of 1858), the *Real Property Act of 1860* (No. 11 of 1860), the *Real Property Act of 1861* (No. 22 of 1861), the *Real Property Act Amendment Act of 1878* (No. 128 of 1878), the *Rights-of-Way Act, 1881* (No. 223 of 1881), and this Act:

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

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

**Real Property Act, 1886****Repeal**

4. The following Acts or parts of Acts are hereby repealed:—

Number	Title	Extent of Repeal
22 of 1861	<i>Real Property Act of 1861.</i>	The whole.
128 of 1878	<i>Real Property Act Amendment Act of 1878.</i>	The whole.
223 of 1881	<i>Rights-of-Way Act, 1881.</i>	The whole.
225 of 1881	<i>Act to amend The Probate and Succession Duty Act, 1876.</i>	The following words at the end of section 3, subsections 2 and 3: "The estate being exempt under clause 2 of this Act."

**Savings**

5. Such repeal shall not affect any appointment, regulation, instrument, fund, act, matter, or thing lawfully made, done, executed, or in existence under the authority of the said Acts or any or either of them; nor prevent prosecution or punishment for any offence committed or act done in violation of the provisions of the said Acts or any or either of them; or interfere with the recovery of any penalty or of any forfeiture incurred under the said Acts or any or either of them; or with the enforcement, vindication, or recovery, of any estate, right, title, trust, covenant, contract, or interest preserved, acquired, accruing, existing or entered into under the provisions of the said Acts or any or either of them; nor shall such repeal affect or in any way interfere with any act or thing, prosecution or punishment, enforcement, vindication, or recovery saved or protection given by the said repealed Acts; and all applications, actions, suits, proceedings, instruments, registrations, and other acts, matters, and things made, commenced, pending, signed, entered, or done under the said repealed Acts or any or either of them before the passing of this Act, may be proceeded with, prosecuted, completed, and acted on in the same manner and shall be as valid and effectual as if this Act had not been passed.

**Laws inconsistent not to apply**

6. No law, so far as inconsistent with this Act, shall apply to land subject to the provisions of this Act, nor shall any future law, so far as inconsistent with this Act, so apply unless it shall be expressly enacted that it shall so apply "notwithstanding the provisions of *The Real Property Act, 1886*".

**Lands under previous Acts to be under this Act**

7. All lands subject to the provisions of any of the Real Property Acts shall, on and from the day upon which this Act shall come into operation, and all land hereafter brought under the provisions of any of the Real Property Acts, pursuant to any application commenced at the time of this Act coming into operation, shall, from the time of the issuing of the certificate for such land, be held subject to the provisions of this Act.

**Land not to be withdrawn**

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

**Commencement of Act**

9. This Act shall come into operation on the first of January, 1887.

PART II

OBJECTS OF THIS ACT

**Objects**

**10.** The objects of this Act are to simplify the title to land and to facilitate dealing therewith, and to secure indefeasibility of title to all registered proprietors, except in certain cases specified in this Act.

**Construction**

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

PART III

THE LANDS TITLES REGISTRATION OFFICE

**Lands Titles Registration Office to be at Adelaide**

12. The Lands Titles Registration Office shall be continued at Adelaide for the purposes of this Act.

**Officers for administration of this Act**

13. (1) There shall be a Registrar-General.

(2) The Registrar-General shall be responsible for the administration of this Act.

(3) There shall be such deputies of the Registrar-General as may be necessary or expedient for the administration of this Act.

(4) There shall be such other officers as may be necessary or expedient for the administration of this Act.

(5) The Registrar-General, every Deputy Registrar-General and the other officers referred to in this section shall be appointed, and shall hold office, subject to and in accordance with the *Public Service Act, 1967-1978*.

**Acting Registrar-General**

14. (1) The Governor may appoint any person who is an officer within the meaning of the *Public Service Act, 1967-1978*, to be the Acting Registrar-General.

(2) The Acting Registrar-General shall act in the absence of the Registrar-General from the duties of his office.

(3) The Acting Registrar-General shall have all the powers, authorities, duties and obligations of the Registrar-General.

(4) The Acting Registrar-General shall cease to occupy his position as such upon resumption by the Registrar-General of the duties of his office.

(5) If no person is appointed to be the Acting Registrar-General, the Senior Deputy Registrar-General shall be the Acting Registrar-General.

**Acting Deputy Registrar-General**

15. (1) The Governor may appoint any person who is an officer within the meaning of the *Public Service Act, 1967-1978*, to be an Acting Deputy Registrar-General.

(2) An Acting Deputy Registrar-General shall have all the powers, authorities, duties and obligations of a Deputy Registrar-General.

**Exercise of powers of Registrar-General**

16. Any power or function conferred on, or assigned to, the Registrar-General by this or any other Act may be exercised or carried out—

(a) by any Deputy Registrar-General;

or

(b) by any person to whom that power or function has been delegated by the Registrar-General.

\* \* \* \* \*

**Delegation by Registrar-General**

18a. (1) The Registrar-General may by writing under his hand delegate to any officer or clerk any of the powers or functions of the Registrar-General under this Act or any other Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matter or matters of a class specified or the place or locality defined in the instrument of delegation.

(2) A delegation under subsection (1) of this section shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function of the Registrar-General.

**Solicitor not to engage in private practice**

19. It shall not be lawful for any person whilst holding the office of solicitor under this Act to engage in private practice as a barrister, attorney, solicitor, or licensed land broker, but this prohibition shall not apply to any acting solicitor.

\* \* \* \* \*

**Seal of office to be received in evidence**

21. The Registrar-General shall have and use a seal of office bearing the impression of the Royal Arms of England, and having inscribed in the margin thereof the words "Registrar-General South Australia"; and every instrument bearing the imprint of such seal, and purporting to be issued by the Registrar-General, or by one of his deputies or by a delegate referred to in section 18a of this Act or by the Acting Registrar-General, shall be received in evidence, and shall be deemed to be issued by or under the direction of the Registrar-General, or Acting Registrar-General, without further proof, unless the contrary be shown.

**Fees, etc.**

22. (1) The Registrar-General may demand and receive such fees, in respect of the several matters provided for in this Act, as are prescribed.

(2) Until regulations under this Act are made prescribing fees in respect of the matters referred to in subsection (1) of this section the Registrar-General may demand and receive such fees as were payable in respect of those matters immediately before the commencement of the *Real Property Act Amendment Act, 1972*.

**Accounts of Registrar-General and payment of moneys**

23. (1) The Registrar-General shall keep a correct account of all sums of money received by him in accordance with the provisions of this Act, and shall pay the same to the Treasurer.

(2) All fines and fees received under the provisions of this Act shall (subject to the provisions of Part XVIII of this Act) be carried into account by the Treasurer as General Revenue.

**Payment of moneys received in trust**

23a. (1) Where the Minister has received moneys in trust or otherwise on account of a mortgagee or other person, and the Minister is satisfied that the moneys may be properly paid to any person the Minister may upon the application of that person and upon provision by that person of such an indemnity or indemnities, if any, as the Minister thinks fit, make payment of the moneys to that person.

(1a) Before making payment to any person under subsection (1) of this section the Minister may require the production of such evidence as he thinks fit to the effect that—

(a) succession duties that may be payable out of, or in respect of, the moneys have been paid;

and

(b) any other claim to which the moneys may be liable has been satisfied.

(2) Any payment made by the Treasurer before the commencement of the *Real Property Act Amendment Act, 1975*, of moneys of a kind referred to in subsection (1) of this section shall be for all purposes as lawful, valid and effectual as it would have been if—

(a) that subsection was enacted and in force at the time at which that payment was made;

and

(b) the payment of those moneys complied in all respects with the provisions of that subsection.

**Registrar-General not to be liable for acts done *bona fide***

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

**Real Property Act, 1886**

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PART IV

THE BRINGING OF LAND UNDER THE ACT

**Land in two classes**

25. For the purpose of bringing land under the provisions of this Act, it shall be regarded as divided into two classes, as follows:—

- I. land hereafter alienated in fee from the Crown:
- II. land heretofore alienated in fee from the Crown.

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

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

**Lands granted prior to the day on which this Act comes into operation may be brought into operation under this Act**

27. As to land heretofore alienated from the Crown in fee but not under the provisions of any of the Real Property Acts (whether such land shall constitute the entire or only part of the land included in any land grant), the same may be brought under the provisions of this Act in the following manner, that is to say—The Registrar-General shall receive applications in the form of the second schedule hereto, or in a form to the like effect, if made by any of the following persons, that is to say—

by any person claiming to be the person in whom the fee simple is vested either at law or in equity: Provided that wherever trustees, seized in fee simple, have no power to sell the land which they may seek to bring under the provisions of this Act, the persons claiming or appearing to be beneficially entitled to the said land shall consent to such application:

by any person having power to appoint or dispose of the fee simple, at law or in equity, in cases where the Registrar-General shall be satisfied that the application is made for the purpose of carrying such power into effect:

by any person claiming a life estate, not being a leasehold for a life or lives: Provided that all persons claiming or appearing to be beneficially entitled in reversion or remainder shall join in or consent to such application:

the father, or if the father be dead, the mother or other guardian of any infant, or the administrator or committee of the estate of a mentally incapacitated person or the guardian of such a person, may make or consent to an application in the name or on behalf of the infant or mentally incapacitated person; and any person holding a power of attorney authorizing the sale of a freehold estate in any land may make the application in respect of such land in the name or on behalf of the proprietor, unless such power shall expressly prohibit his so doing.

**Undivided shares and mortgaged land may not be brought under Act except upon conditions**

28. No such application shall be received from any person claiming to be entitled to an undivided share of any land unless the persons who shall appear to be entitled to the other undivided shares shall join in the application with a view to bringing the entirety under the provisions of this Act; nor from the mortgagor of any land unless the mortgagee shall consent to such application; nor from the mortgagee of any land except in the exercise of or for the purpose of giving effect to a sale under a power of sale contained in the mortgage deed.

**Provisions as to surrender of documents, etc.**

29. Every applicant shall, when making his application, surrender to the Registrar-General all documents of title in his possession or under his control relating to or in any way affecting the land, and shall furnish a schedule of such documents, and also, if required, an abstract of his title, and shall, in his application, state the nature of his estate or interest in the land, and of every estate or interest therein held by any other person, whether at law or in equity, in possession, reversion, remainder, or expectancy, and give full particulars of every right-of-way or other easement affecting the land of which he is aware, or has had notice, or which he knows to be claimed by any other person, and shall state whether the land be occupied or unoccupied, and if occupied, the name and description of the occupant, and the nature of his occupancy, and whether such occupancy be adverse or otherwise; and shall, when practicable, state the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect of which application is made so far as known to him, and that the schedule so furnished includes all documents of title relating to such land in his possession or under his control, and may, in his application, require the Registrar-General, at the expense of the applicant, to cause personal notice of the application to be served upon any person whose name and address shall for that purpose be therein stated, and shall give an address to which notices in respect of such application may be sent.

**Statements to be verified by declaration**

30. The statements made in the application shall be verified by the declaration of the applicant or the person acting in his name or on his behalf.

**Application, how to be dealt with**

31. Upon receipt of the application the Registrar-General shall cause the title of the applicant to be examined and reported upon by the solicitor of the department.

**Titles in three classes**

32. For the purposes of all applications, the titles of applicants shall be divided into three classes as follows:—

**When applicant is original grantee, and no transactions have been registered**

Class I. When the applicant is the original grantee from the Crown, and the land has been granted on or subsequently to the first day of March, 1842, and no transaction affecting the title has at any time been registered, and the applicant has not required notice of his application to be served personally upon any person:

**When applicant is not original grantee, or any transactions have been registered**

Class II. When, although the title does not belong to the first class, the land is held by the applicant for the estate or interest described in the application free from mortgage, encumbrance, or other beneficial interest affecting the title thereto, or if any such mortgage, encumbrance, or interest exists the parties interested therein join in or consent to the application, and the applicant has not required notice of his application to be served personally upon any person:

**When evidence of title imperfect**

Class III. When any person beneficially interested in the land otherwise than as lessee, or any person interested in any mortgage or encumbrance affecting the title, is not a party joining in or consenting to the application, or the title or evidence of title set forth by the applicant is imperfect, or the applicant has required notice of his application to be served personally upon any person.

**First class to be brought under this Act forthwith**

If it shall appear to the Registrar-General that the title of the applicant belongs to the first class he shall bring such land under the provisions of this Act forthwith.

**Procedure under second class**

33. If it shall appear to the satisfaction of the Registrar-General that the title of the applicant belongs to the second class, he shall cause notice of the application to be published in the *Government Gazette*; and shall further limit and appoint a time, not less than one month nor more than twelve months from the date of the publication in the *Government Gazette*, upon or after the expiration of which he shall, unless he shall in the interval have received a caveat forbidding him so to do, bring the land under the provisions of this Act.

**Procedure under third class**

34. If it shall appear to the satisfaction of the Registrar-General that the title of the applicant belongs to the third class, it shall be lawful for him to reject such application altogether, or in his discretion to cause notice of the application to be served upon all persons other than the applicant, who shall appear to have any interest in the land which is the subject of the application and to be published in the *Government Gazette*, and in such manner as he may direct; and to limit and appoint a time in his discretion, or as the Court may prescribe, not less than two months nor more than twelve months from the date of the first of such publications in the *Government Gazette*, upon or after the expiration of which it shall be lawful for the Registrar-General to bring the land under the provisions of this Act, unless he shall in the interval have received a caveat forbidding him so to do.

**Notice of application to be published**

35. The Registrar-General shall cause notice to be published in such manner as aforesaid, or in such other manner as may be prescribed by any order of the Court, that application has been made for bringing the land therein referred to under the provisions of this Act, and shall also cause a copy of such notice to be posted in a conspicuous place in his office, and in such other places as he may deem necessary, and shall forward, by registered or certified post, a copy of such notice addressed to each of the persons, if any, stated in the application to be in occupation of the land, or to be occupiers or proprietors of land contiguous thereto, so far as his knowledge of the addresses of such persons shall enable him, and to such other persons as he may think fit, and in case the applicant shall have required any notice to be personally served upon any person named in his application, then and in such case the Registrar-General shall cause a copy of such notice to be so served upon such person.

**Second and third classes brought under this Act**

36. If within the time limited and appointed as aforesaid by the Registrar-General, or under any order of the Court, any notice forwarded as aforesaid, shall not be returned to him by the Postmaster-General, and if within the time so limited he shall not have received a caveat, as hereinafter described, forbidding him so to do—and in any case in which personal notice may be required as aforesaid, if he shall have received proof to his satisfaction that such notice has been served, the Registrar-General shall bring the land described in the application under the provisions of this Act.

**How land to be brought under Act**

37. The Registrar-General shall bring land under the provisions of this Act by issuing a certificate for the same to the applicant, or to such person as he or the person applying in his name or on his behalf may by any writing under his hand direct.

**Action to be taken on return of notices or failure of personal service**

38. The Registrar-General, whenever he shall be made aware that any notice required by any applicant to be served personally has failed to be, or cannot be, so served, shall notify the same to such applicant, who, if he think fit, may by writing under his hand, withdraw such requirement, and the Registrar-General thereupon or in case any notice shall be returned to him by the Postmaster-General, may reject the application altogether, or bring the land therein described under the provisions of this Act forthwith, or after such further interval, notification, or advertisement as he may think fit.

**Caveat against bringing land under Act**

39. Any person having or claiming an estate or interest in any land sought to be brought under the provisions of this Act, or the attorney or agent of any such person, may, within the time by the Registrar-General or under any order of the Court for that purpose limited, lodge a caveat with the Registrar-General, in the form of the third schedule hereto, forbidding the bringing of such land under the provisions of this Act. Every such caveat shall state the nature of the estate or interest claimed by the person lodging the same and the grounds on which such claim is founded, and no caveat shall be received unless some address within South Australia shall be given therein at which notices and proceedings relating to the caveat may be served.

**If caveat be received within time limited, proceedings stayed**

40. The Registrar-General shall, upon receipt of any such caveat, within the time limited as aforesaid give notice thereof to the applicant proprietor, and shall suspend further action in the matter, and the land in respect of which such caveat shall have been lodged shall not be brought under the provisions of this Act until such caveat shall have been withdrawn or shall have lapsed from any of the causes hereinafter provided, or until a decision therein shall have been obtained from the Court having jurisdiction in the matter.

**Applicant may withdraw his application**

41. Any applicant may withdraw his application at any time prior to the issuing of the certificate, and the Registrar-General shall in such case, upon request in writing signed by the applicant, return to him, or to the person, if any, notified in the application as having a lien thereon, all documents of title deposited in support of the application.

**Documents of title, if they include other property, to be returned to applicant**

42. Upon issuing a certificate bringing land under the provisions of this Act the Registrar-General shall endorse a memorandum on every document of title deposited by the applicant in support of his application, stating that the lands described in such certificate have been brought under the Real Property Act. If any such document of title shall relate to or include any property, whether personal or real, other than the land included in the certificate, the Registrar-General shall return such document to the applicant, but otherwise shall retain the same in his office; and no person shall be entitled to the production of any document so retained, except upon the written order of the applicant or of some person claiming through or under him, or upon the order of the Court.

**Certificate to issue in name of deceased applicant proprietor or his nominee**

43. In case an applicant, or the person to whom he or the person applying in his name or on his behalf, may have directed a certificate to be issued, shall die in the interval between the date of the application and the date on which the certificate shall be issued, the certificate shall be issued in the name of the applicant, or in the name of the person to whom it shall have been so directed to be issued as the case may require, and the land shall devolve in like manner as if the certificate had been issued prior to the death of the applicant or of such person.

**Proceedings under caveat**

44. Whenever a caveat shall have been lodged with the Registrar-General forbidding land to be brought under the provisions of this Act, the like proceedings as are hereinafter provided for the removal of caveats, in the case of land already under the provisions of this Act, shall be open to the caveatee for removal of the caveat, and for the recovery of costs and damages from the caveator, in case the caveat shall have been lodged by the caveator wrongfully and without reasonable cause.

**Lapse of caveat**

45. Every such caveat shall be deemed to have lapsed after the expiration of one month from the receipt thereof by the Registrar-General, unless the person by whom or on whose behalf the same was lodged shall, within that time, have taken proceedings in the Court to establish his title to the estate or interest claimed by him, and give written notice thereof to the Registrar-General, or shall have obtained from the Court an order or injunction restraining the Registrar-General from bringing the land under the provisions of this Act. No such lapsed caveat shall, except by leave of the Court, be renewed by or on behalf of the same person in respect of the same estate or interest.

**Reversion expectant on lease not to be extinguished**

46. The reversion expectant upon a lease shall not be deemed to have been extinguished in consequence of the land comprised in such lease having been brought under the provisions of this Act, and the registered proprietor of any land which is subject to a lease granted prior to the first certificate being issued in respect of such land, shall be held in all Courts to be seized of the reversion expectant upon such lease, and to have all the powers, rights and remedies to which a reversioner is by law entitled and shall be subject to all covenants and conditions in such lease expressed or implied to be performed in the part of the lessor.



PART V

REGISTRATION OF TITLE

DIVISION I—REGISTRATION OF TITLE IN THE REGISTER BOOK

**Registration of title in the Register Book**

47. This Division applies to, and in relation to, the registration of title to land in the Register Book.

**Certificates to be in duplicate**

48. Every certificate shall be in duplicate, and the Registrar-General shall file in the Register Book one part of every certificate, hereinafter called the original, and shall deliver the other, hereinafter called the duplicate, to the registered proprietor of the land.

**Folios in Register Book**

49. Each original certificate shall constitute a separate folium of the Register Book, and the Registrar-General shall record thereon distinctly and separately all memorials affecting the land included in each certificate.

\* \* \* \* \*

**Requirements of memorial**

51. Every memorial entered in the Register Book shall be sealed with the seal of the Registrar-General, and shall state the nature of the instrument to which it relates and such other particulars as the Registrar-General directs, and shall refer by number or symbol to such instrument.

**Evidentiary**

51a. (1) Subject to this Act, an original certificate of title must be accepted in legal proceedings as conclusive evidence of title to land and to any other estate or interest in land that it records and as evidence (which may be rebutted) of any other information that it records.

(2) A document that purports to have been certified by the Registrar-General to be a correct copy of an original certificate of title may be accepted in legal proceedings as if it were the original certificate of title.

DIVISION II—REGISTRATION OF TITLE BY OTHER METHODS

**Registration of title electronically, etc.**

51b. Where the Registrar-General is required by this or any other Act or any other law to register title to land or record any other information relating to land, the Registrar-General may register the title or record the information by an electronic, electromagnetic, optical or photographic process and, in that case, the provisions of this Act (excluding Division I) and any other relevant Act will be construed so as to apply to, and in relation to, the registration of title or recording of information by that process and in particular—

- (a) the term "Register Book" will be taken to include the records maintained by the Registrar-General pursuant to this section relating to the land;
- (b) the term "certificate" or "certificate of title" will be taken to mean—
  - (i) the records maintained by the Registrar-General pursuant to this section relating to the land;
  - (ii) the certificate of title issued under the seal of the Registrar-General in respect of the land;or
  - (iii) both of those meanings,as the context requires;
- (c) the term "original certificate" or "original certificate of title" will be taken to mean the records maintained by the Registrar-General pursuant to this section relating to the land;
- (d) the term "duplicate certificate" or "duplicate certificate of title" will be taken to mean the certificate of title issued under the seal of the Registrar-General in respect of the land;
- (e) a requirement that a record relating to the land be made—
  - (i) by entry or endorsement of a memorial or memorandum in the Register Book or on the certificate or other instrument of title for the land;or

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- (ii) by any other entry or endorsement or by notation in the Register Book or on the certificate or other instrument of title for the land,

will be satisfied if the Registrar-General makes the record by an electronic, electromagnetic, optical or photographic process;

- (f) a requirement that—

- (i) a memorial or memorandum be entered or endorsed on the duplicate certificate of title;

or

- (ii) any other entry or endorsement or notation be made on the duplicate certificate of title,

will be taken to be a requirement that the Registrar-General must, if in the Registrar-General's opinion it is necessary or desirable, cancel the certificate of title currently issued in respect of the land and issue a new certificate of title including an appropriate endorsement.

**Issue of certificate of title**

**51c.** (1) Where title to land is registered under this Division, the Registrar-General must issue a certificate of title to the proprietor of the land setting out the proprietor's estate or interest in the land and the encumbrances, liens or other interests (if any) to which the estate or interest is subject.

(2) The Registrar-General may cancel the certificate of title currently issued under subsection (1) and issue a new certificate in its place—

- (a) when registering any dealing with the registered proprietor's estate or interest in the land or when registering any other dealing that affects the registered proprietor's estate or interest in the land;

or

- (b) if, in the Registrar-General's opinion, any entry, endorsement or notation, should be made on the title.

(3) Notwithstanding subsection (1) the Registrar-General may withhold the issue of a certificate of title if in his or her opinion proper reasons exist for doing so.

**Evidentiary**

**51d.** (1) Subject to this Act a statement (that has been certified by the Registrar-General) of—

- (a) title to land or to any estate or interest in land recorded by the Registrar-General under this Division must be accepted in legal proceedings as conclusive evidence of title to land or to any estate or interest in land;

and

- (b) any other information recorded by the Registrar-General under this Division must be accepted in legal proceedings as evidence (which may be rebutted) of that information.

(2) A statement referred to in subsection (1) that purports to have been certified by the Registrar-General must be taken in legal proceedings, in the absence of proof to the contrary, to have been so certified.

**DIVISION IIA—BOUNDARIES OF REGISTERED LAND****Coordinated cadastre**

**51e.** (1) Where the Surveyor-General had lodged a plan delineating the boundaries of allotments in a designated survey area with the Registrar-General under the *Survey Act 1992*, the Registrar-General must examine the plan and, if it is in order, accept it for filing in the Lands Titles Registration Office.

(2) A plan accepted for filing under subsection (1) must be accepted in legal proceedings as evidence (which may be rebutted) of the position and dimensions of the boundaries of allotments that it delineates.

(3) A court, tribunal or other body or person conducting legal proceedings must not make a finding that the position or dimensions of the boundary of an allotment varies from the position or dimensions of the boundary shown on a plan accepted for filing under subsection (1) unless the court, tribunal, body or person has first given the Surveyor-General, or a person acting on his or her behalf, the opportunity to present evidence and be heard on that question.

(4) If the Registrar-General finds an error in a plan accepted for filing under subsection (1), he or she may, with the approval of the Surveyor-General, amend the plan in order to correct the error.

(5) As soon as practicable after accepting a plan for filing under subsection (1) or amending a plan under subsection (4), the Registrar-General must correct any certificate of title that is inconsistent with a boundary delineated on the plan.

**Confused land boundaries**

**51f.** As soon as practicable after depositing a plan relating to a Confused Boundary Area in the Lands Titles Registration Office pursuant to the *Survey Act 1992*, the Registrar-General must correct all certificates of title that are inconsistent with a boundary delineated on the plan and the land included in the plan will vest in accordance with the certificates of title as corrected.

DIVISION III—GENERAL

**Endorsement of record of registration**

**52.** Upon registering an instrument the Registrar-General must endorse the date of registration on the instrument and the endorsement must be accepted in legal proceedings as conclusive evidence of the date of registration.

**Retention of records**

**53.** Once information has been recorded by the Registrar-General under this Act the Registrar-General must retain it in the form in which it was originally registered or in some other form.

**Form of instruments**

**54.** (1) Subject to this Act, the Registrar-General shall not register any instrument purporting to transfer or otherwise deal with or affect any estate or interest in land under the provisions of this Act unless the instrument complies with this Act and is in a form approved by the Registrar-General.

(2) Notwithstanding anything in subsection (1) of this section, the Registrar-General may, in his discretion, register any instrument notwithstanding any error in or omission from its memorandum or endorsement of prior encumbrances and, in such case, the error or omission shall not invalidate or otherwise affect the registration of the instrument.

(3) Notwithstanding anything in subsection (1) of this section, where an instrument contains a patent error, the Registrar-General may of his own motion correct the error by marginal notation on the instrument, and the instrument so corrected shall have the like validity and effect as if the error had not been made.

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**Instruments**

**55.** Any instrument presented for registration may be single or in duplicate, or if a lease may be in duplicate or triplicate.

**Priority of instruments**

**56.** (1) Every instrument presented for registration shall be attested by a witness, and shall be registered in the order of time in which the same is produced for that purpose; and instruments registered in respect of or affecting the same estate or interest shall, notwithstanding any express, implied, or constructive notice, be entitled to priority, the one over the other, according to the date of registration, and not according to the date of the instrument itself; and the Registrar-General, upon registration thereof, shall file such instrument (if single) in his office, and if in duplicate or triplicate, shall file one original in his office, and shall deliver the other or others to the person or persons entitled thereto.

(2) The Registrar-General may, on application in the appropriate form, vary the order of priority between two or more registered mortgages or encumbrances.

(3) An application for the variation of an order of priority in accordance with subsection (2)—

(a) must be made by every holder of a mortgage or encumbrance that is to have its order of priority varied;

(b) where a registered mortgage or encumbrance is, by virtue of the proposed variation of order of priority, to be postponed to a mortgage or encumbrance over which it has had priority—must be made with the consent of the holder of the mortgage or encumbrance that is to be so postponed;

and

(c) must be made with the consent of the mortgagor.

(4) A memorandum of the variation of an order of priority under subsection (2)—

(a) shall be endorsed on every mortgage or encumbrance affected;

and

(b) shall be endorsed on the certificate of title affected by those mortgages or encumbrances.

**Registration**

**56a.** A certificate of title will be taken to be registered upon the Registrar-General allotting a volume and folio number in respect of the certificate of title.

**Effect of registration of instruments**

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

**Where two or more instruments presented at same time**

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

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

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

**Person to whom certificate or other instrument of title has been issued in error, or who wrongfully retains such instrument, may be summoned**

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

**Arrest of person refusing to deliver up instrument for cancellation or correction**

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

**Order for delivery of instrument**

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

**Orders for cancellation of instrument and alteration of Register Book**

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

**Powers of court to direct cancellation of certificate or entry**

**64.** In any proceeding in the Court respecting any land, or any transaction, contract, or application relating thereto, or any instrument, caveat, memorial, or other entry affecting any such land, it shall be lawful for the Court to direct the Registrar-General to cancel, correct, record, substitute, issue, or make any certificate, or any memorial or entry in the Register Book, notwithstanding that the relevant duplicate certificate has not been produced to him, or otherwise to do such acts and make such entries as may be necessary to give effect to any judgment, decree, or order of such Court given or made in such proceeding, and the Registrar-General shall obey every such direction.

**Search allowed**

**65.** Any person shall have access to the Register Book, and to all instruments filed and deposited in the Lands Titles Office for the purpose of inspection during the hours and upon the days appointed for search.

**Conflict between original and duplicate certificate**

**66.** If there is a difference between an original certificate and the duplicate certificate, the original prevails.

**Lodgement of land grant**

**66A.** If a grant of Crown land is lodged in the Lands Titles Registration Office, the Registrar-General must register title to the land.

PART VI

THE TITLE OF REGISTERED PROPRIETORS

**Instruments not effectual until registration**

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

**Person named in certificate to be the registered proprietor**

68. The person named in or appearing by any certificate or other registered instrument as seized of or taking any estate or interest in land shall be the registered proprietor thereof.

**Title of registered proprietor indefeasible, except in cases of—**

69. The title of every registered proprietor of land shall, subject to such encumbrances, liens, estates, or interests as may be notified on the original certificate of such land, be absolute and indefeasible, subject only to the following qualifications:—

**Fraud**

- I. In the case of fraud, in which case any person defrauded shall have all rights and remedies that he would have had if the land were not under the provisions of this Act: Provided that nothing included in this subsection shall affect the title of a registered proprietor who has taken *bona fide* for valuable consideration, or any person *bona fide* claiming through or under him:

**Forgery or disability**

- II. In the case of a certificate or other instrument of title obtained by forgery or by means of an insufficient power of attorney or from a person under some legal disability, in which case the certificate or other instrument of title shall be void: Provided that the title a registered proprietor who has taken *bona fide* for valuable consideration shall not be affected by reason that a certificate other instrument of title was obtained by any person through whom he claims title from a person under disability, or by any of the means aforesaid:

**Erroneous inclusion of land**

- III. Where any portion of land has been erroneously included, by wrong description of parcels or boundaries, in the certificate or other instrument evidencing the title of the registered proprietor: In which case the rights of the person who but for such error would be entitled to such land shall prevail, except as against a registered proprietor taking such land *bona fide* for valuable consideration, or any person *bona fide* claiming through or under him:

**Omission of easement**

- IV. Where a right-of-way or other easement not barred or avoided by the provisions of the *Rights-of-Way Act, 1881*, or of this Act, has been omitted or mis-described in any certificate, or other instrument of title: In which case such right-of-way or other easement shall prevail, but subject to the provisions of the said *Rights-of-Way Act, 1881* and of this Act:

**Several certificates for the same land**

- V. Where two or more certificates shall be registered under any of the Real Property Acts in respect of the same land: In which case the title originally first in date of registration shall prevail but without prejudice to the effect of anything done under Part XIXA of this Act:

**Certificate to be void if any person is in possession and rightfully entitled adversely to the first registered proprietor**

- VI. Any certificate issued upon the first bringing of land under the provisions of any of the Real Property Acts, and every certificate issued in respect of the said land, or any part thereof, to any person claiming or deriving title under or through the first registered proprietor, shall be void, as against the title of any person adversely in actual occupation of, and rightfully entitled to, such land, or any part thereof at the time when such land was so brought under the provisions of the said Acts, and continuing in such occupation at the time of any subsequent certificate being issued in respect of the said land:

**Wife's title to prevail**

- VII. Where a husband shall have been wrongly registered as co-proprietor of land belonging to his wife for her separate use or as her separate property, in which case the title of the wife shall prevail except as against a registered proprietor taking such land *bona fide* for valuable consideration, or any person *bona fide* claiming through or under him:

**A lease or letting for not more than a year**

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

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**Non-payment of succession duty**

- IX. Where the succession duty payable in respect of the land has not been paid, and the certificate required by section 63 of the *Succession Duties Act, 1929*, has not been obtained: In which case any charge by law imposed on the land in respect of such duty shall remain in force.

**In other cases title of registered proprietor shall prevail**

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

**Saving of certain rights and powers, viz.:—**

71. Nothing in the two preceding sections contained shall be construed so as to affect any of the following rights or powers, that is to say—

**Sales by Sheriff**

- I. the power of the Sheriff to sell the land of a judgment debtor under a writ of execution:

**Sales under order of the Court**

- II. the power of the Court to order the sale of land:

**Transmissions on bankruptcy or assignment**

- III. the right of the Official Receiver or of any trustee to land transmitted on the bankruptcy or statutory assignment of the registered proprietor:

**Contracts**

- IV. the rights of a person with whom the registered proprietor shall have made a contract for the sale of land or for any other dealing therewith:

**Trusts**

- V. the rights of a *cestui que trust* where the registered proprietor is a trustee, whether the trust shall be express, implied, or constructive:

**Deed-poll by promoters of an undertaking**

- VI. the right of promoters of an undertaking to vest land in themselves by deed-poll pursuant to the *Compulsory Acquisition of Land Act, 1925*, or any Act amending the same:

**Protection to subsequent purchasers**

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

**Knowledge of trust not evidence of want of *bona fides***

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

PART VII

CERTIFICATES OF TITLE

**Certificate of title**

73. The registered proprietor of an estate of freehold in land, other than a leasehold for a life or lives, shall be entitled to receive a certificate for that estate in the appropriate form.

**Joint tenants and tenants in common**

74. Two or more persons registered as joint proprietors of an estate or interest in land shall be deemed to be entitled to the same as joint tenants; and in all cases where two or more persons are entitled as tenants in common to an estate of freehold in any land, such persons may receive one certificate for the entirety, or each may receive a separate certificate for his undivided share and in each case the certificate must state the shares in which they hold the land.

**Certificates for remainder and reversions**

75. The proprietor of an estate of freehold in remainder or reversion in land, for a life estate in which a certificate has already been issued, may have his estate registered on the certificate issued for the life estate, or may receive a separate certificate for his estate, which shall refer to the certificate of the particular estate.

**Mode of inheritance or succession shall be implied**

76. Every certificate, or other instrument of title issued to or made in favour of a corporation, aggregate or sole, shall be deemed to extend to and include the successors of such corporation, and every such certificate or instrument of title issued to or made in favour of any person shall be deemed to extend to and include the legal representatives of such person.

**Memorials on certificates**

77. The Registrar-General shall record on every certificate issued by him, and in such manner as to preserve their respective priorities, memorials of all subsisting mortgages, leases, and encumbrances, and of any dower or rent-charge to which the land may be subject; and if such certificate be issued to a minor or to a person otherwise under disability, he shall record thereon the age of such minor or the nature of the disability so far as known to him.

**Certificates in lieu of surrendered certificates**

78. Upon the application of any registered proprietor holding land under one or more certificates, and the delivering up of such instruments of title, it shall be lawful for the Registrar-General to issue to such proprietor one certificate for the whole of such land, or several certificates each comprising portion of such land, in accordance with such application; and upon issuing any such new certificate the Registrar-General shall cancel the duplicates delivered up, and the originals, and shall endorse thereon a memorandum, setting forth the occasion of such cancellation, and referring to the new certificate issued in lieu thereof.

**Substituted certificate, etc.**

79. (1) The Registrar-General, on application in that behalf and on proof to his satisfaction that any duplicate certificate or any tenant's copy of a Crown lease has been lost, mislaid or destroyed, may issue a substituted certificate or tenant's copy of Crown lease (as the case may be).

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(4) Upon issuing a substituted certificate or tenant's copy of Crown lease the Registrar-General shall make an endorsement thereon stating the reason for the issue thereof and shall at the same time enter in the Register Book or the Register of Crown Leases (as the case may be) notice of the issue of such substituted certificate or tenant's copy of Crown lease, and the date thereof, and the reason for the issue thereof.

(5) Every such substituted certificate or tenant's copy of Crown lease shall be available for all purposes and uses for which the certificate or tenant's copy of Crown lease so lost, mislaid or destroyed would have been available, and shall supersede the duplicate certificate or tenant's copy of Crown lease for which it is substituted.

(6) Instead of issuing a substituted certificate the Registrar-General may cancel the relevant folio of the Register Book, recording thereon that the folio was cancelled pursuant to this section, and may issue a new certificate in lieu thereof.

(7) For the purposes of this section every lease or agreement for sale of Crown lands granted or made by or on behalf of the Crown, shall be deemed a Crown lease.

(8) Before issuing a substituted certificate or a new certificate or a tenant's copy of a Crown lease the Registrar-General may, where in his opinion it is necessary or desirable, give notice of his intention to do so in the *Gazette* or in any newspaper circulating in the State.

**Issue of certificates of title**

80. Certificates of title must be issued under the seal of the Registrar-General.

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## PART VIIIA

## TITLE BY POSSESSION TO LAND UNDER THIS ACT

**Application for certificate based on possession**

**80a.** A person who would have obtained a title by possession to any land which is subject to this Act, if that land had not been subject to this Act, may apply to the Registrar-General for the issue to him of a certificate of title to that land.

**Signature attestation and operation of application**

**80b.** (1) Every such application shall—

- (a) be in writing in a form fixed by the Registrar-General;
- (b) be signed by the applicant;
- (c) contain a declaration by the person signing it, declaring that all the statements in it are true.

(2) The applicant shall, if required by the Registrar-General, furnish him with a plan of survey of the land.

**Application how dealt with**

**80c.** (1) The Registrar-General shall refer each application to the solicitor to his department, who shall examine it and report upon it to the Registrar-General.

(2) The Registrar-General may thereupon in his discretion reject the application as regards the whole or any part of the land to which it relates, or proceed as hereinafter provided.

**Requisitions**

**80d.** The Registrar-General may—

- (a) require an applicant to furnish him with any information or documents relating to his application;
- (b) notwithstanding any direction previously given by him as to the application, reject it altogether or in part if the applicant fails to comply within a reasonable time with any requisition made under this section.

**Notice of application**

**80e.** (1) If an application is not wholly rejected by the Registrar-General he shall cause a notice of the application in a form fixed by him—

- (a) to be published once at least in a newspaper circulating in the neighbourhood of the land, and, if he thinks necessary, in any other newspaper; and
- (b) to be given to any person who in the Registrar-General's opinion has or may have any estate or interest in the land; and
- (c) to be published in any other way or given to any other persons.

(2) The notice shall fix a time, not less than twenty-one days nor more than twelve months from the first publication of the notice in a newspaper under subsection (1) of this section, at or after the expiration of which the Registrar-General may, unless a caveat is lodged, grant the application altogether or in part.

**Caveats**

**80f.** (1) A person claiming an estate or interest in the land to which an application under this Part relates, may at any time before the application is granted, lodge a caveat with the Registrar-General forbidding the granting of the application.

(2) A caveat under this section—

- (a) shall state the nature of the estate or interest claimed by the person lodging it and shall give an address at which notices and proceedings relating to the caveat may be served;
- (b) need not be in any particular form but shall be accepted by the Registrar-General if it gives reasonable notice of the claim of the caveator.

(3) If the Registrar-General is satisfied that the caveator is the registered proprietor of the land to which the application relates, or has an estate or interest in that land derived under or through the registered proprietor, he shall refuse the application:

Provided that the Registrar-General shall not refuse an application solely on the ground that a person is entitled to an easement in or over the said land, but if a person is so entitled the Registrar-General may include in any certificate of title issued to the applicant a statement that the land is subject to the easement.



(4) If the Registrar-General is not satisfied that the caveator is the registered proprietor of the land or has an estate or interest therein derived under or through the registered proprietor, he shall give notice to the caveator that the caveator is required to take proceedings in the Court to establish his title to the estate or interest claimed by him, within a time specified in the notice being not less than six months after the giving thereof.

(5) If a caveator who has received such notice from the Registrar-General does not within the time mentioned in the notice bring an action in the Court to obtain a declaration that he is entitled to the estate or interest claimed by him and give written notice thereof to the Registrar-General, or obtain from the Court an order or injunction restraining the Registrar-General from issuing a certificate to the applicant under this Part, the caveat shall lapse.

(6) A lapsed caveat shall not except by leave of the Court be renewed by or on behalf of the same person in respect of the same estate or interest.

(7) In any proceedings to establish the title of the caveator the issue for the Court to decide shall be whether the caveator is the registered proprietor of the land or is entitled to an estate or interest derived under or through the registered proprietor.

#### **Power to issue certificates**

**80g.** Upon or after the expiration of the time fixed by the notice under section 80e of this Act, if the Registrar-General is satisfied that the possession on which the applicant relies would, if the land had not been subject to this Act, have conferred on the applicant a title by possession, he may issue to the applicant a certificate for an estate in fee simple or for any other estate acquired by the applicant, free from all encumbrances appearing by the Register Book to affect the existing title: Provided that where a caveat has been lodged against the granting of an application the Registrar-General shall not grant that application unless—

- (a) the caveat has lapsed; or
- (b) proceedings taken by the caveator to establish his title have been finally disposed of, and in those proceedings the caveator has failed to establish his title, or to obtain from the Court an injunction restraining the Registrar-General from issuing a certificate to the applicant.

#### **Cancellation of instruments**

**80h.** (1) Where a certificate for any land is issued under this Part the Registrar-General—

- (a) shall cancel the existing certificate for that land and any instrument, entry or memorial in the Register Book altogether or to such extent as is necessary to give effect to the certificate issued;
- (b) shall endorse on every certificate and instrument so cancelled a memorandum stating the circumstances and authority under which the cancellation is made.

(2) Upon the cancellation of a certificate, instrument, entry or memorial pursuant to this section, the estate and interest evidenced thereby shall cease and determine.

#### **Fees**

**80i.** The fees payable upon an application under this Part and in respect of the issue of a certificate under this Part shall be the same as if the application were an application to bring land under the provisions of this Act.

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## PART VIII

## EASEMENTS

**Certificates may contain statement of right-of-way or other easement**

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

**Description of easement**

82. Every such statement or entry shall fully set forth a true and accurate description of the easement, or, if the instrument creating the same be enrolled or deposited in the General Registry Office, or deposited in the Lands Titles Registration Office, shall refer to such instrument.

**Registered proprietor not to be subject to rights-of-way not mentioned in certificate**

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

**Easement not binding on registered proprietor subsequently acquiring land *bona fide* for value unless entered on certificate of title**

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

**Land to be held free of rights-of-way**

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

**Public rights-of-way, etc., not within this Act**

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

**Certificates heretofore issued conclusive evidence of right-of-way therein described**

87. Every certificate issued before the eighteenth day of November, 1881, containing therein a statement to the effect that the registered proprietor is seized of the land therein described, subject to or together with any right-of-way therein described or delineated, or together with any easement therein described, shall be deemed to operate as a grant or reservation, as the case may be, of such right-of-way or other easement, and such certificate shall, except in the case of fraud, be received in all Courts as conclusive evidence of the existence of such right-of-way or other easement:

Provided that this section shall not apply to any right-of-way or other easement, the title to which is now the subject of pending litigation in any Court of Law, or to any right-of-way or other easement, the right to which has been concluded in any Court adversely to such right-of-way or easement.

**Entry as to easement to be made on original and duplicate certificates of title**

88. Whenever any right-of-way or other easement appurtenant to land under the provisions of this Act over land also under its provisions shall hereafter be granted or created, the Registrar-General shall make such entry on the original and duplicate certificates for the dominant and servient lands as he thinks fit.

**Short form of describing right-of-way**

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

**Incorporation of long forms of easements in instruments**

89a. Where, in an instrument, a short form set out in the sixth schedule is used to grant or create an easement the instrument shall, unless the contrary intention appears, be deemed to incorporate the corresponding long form of that easement set out in the schedule.

**Deposit of plan showing rights-of-way**

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

(2) Subsection (1) shall not apply to a plan of subdivision deposited with the Registrar-General after the commencement of the *Real Property Act Amendment Act (No. 2), 1985*.

**Application of ss. 90b, 90c, 90d and 90e**

**90a.** Sections 90b, 90c, 90d and 90e apply to, and in relation to, an easement whether the easement and the dominant and servient land are registered under this Act or not and whether the easement is created by instrument or by operation of a provision of this Act or some other Act or by operation of some other law.

**Variation and extinguishment of easements**

**90b.** (1) Subject to this section, the Registrar-General may on application (in a form approved by the Registrar-General) by the proprietor of the dominant or servient land or on the Registrar-General's own initiative—

- (a) vary the position of, or extend or reduce the extent of, an easement over servient land;
  - (b) vary an easement by extending the appurtenance of the easement to other land owned by the proprietor of the dominant land;
- or
- (c) extinguish an easement.

(2) Subject to this section, the Registrar-General must not act under subsection (1) except on the application, or with the written consent, of the proprietor of the dominant land and the servient land and with the written consent of all other persons who—

- (a) in the case of land registered under this Act—appear from the Register Book to have, or to claim, an estate or interest in the dominant or servient land;
- (b) in the case of land not registered under this Act—are known to the Registrar-General (or who become known to the Registrar-General after making reasonable enquiry) to have, or to claim, an estate or interest in the dominant or servient land.

(3) The Registrar-General may dispense with the consent of the proprietor of the dominant or servient land required by subsection (2) if the Registrar-General is satisfied that—

- (a) notice complying with subsection (3e) has been given to the proprietor;
  - (b) 28 days has passed since the notice was given;
- and
- (c) the proprietor's estate or interest in the dominant or servient land will not be detrimentally affected by the proposed variation or extinguishment of the easement.

(3a) The Registrar-General may dispense with the consent of a person required by subsection (2) (other than the proprietor of the dominant or servient land) if he or she is satisfied that the person's estate or interest in the dominant or servient land will not be detrimentally affected by the proposed variation or extinguishment of the easement.

(3b) Without limiting the generality of subsection (3) or (3a), where—

- (a) the original purpose of a right-of-way was to provide access to the dominant land to which it is appurtenant;
- and
- (b) the right-of-way can no longer be exercised by the proprietor of that land for that purpose because the land has subsequently been separated from the right-of-way by the creation of intervening allotments,

the Registrar-General may extinguish the right-of-way without the consent of a person required by subsection (2) if he or she is satisfied that there is no reason to believe or suspect that the proprietor of that land, or a successor in title of the proprietor, has any reasonable prospect of using the right-of-way for access to that land in the future.

(3c) Without limiting the generality of subsection (3) or (3a), where dominant land is separated from a right-of-way appurtenant to the land by intervening land and the Registrar-General is satisfied that the continued existence of the right-of-way would not enhance the use or enjoyment of the dominant land, he or she may extinguish the right-of-way without the consent of a person required by subsection (2).

(3d) Before taking action under subsection (3b) or (3c) the Registrar-General must be satisfied that—

- (a) notice complying with subsection (3e) has been given to the proprietor of the dominant land;

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and

(b) 28 days has passed since the notice was given.

(3e) The notice referred to in subsections (3) and (3d) must—

(a) be approved by the Registrar-General;

(b) include details of the proposed variation or extinguishment of the easement;

and

(c) invite the person to whom it is given to make representations to the Registrar-General in relation to the proposal within 28 days.

(4) The Registrar-General may extinguish an easement under subsection (1) without the consent of a person required by subsection (2) if—

(a) —

(i) in the opinion of the Registrar-General it is not reasonably practicable to ascertain the identity or whereabouts of that person;

and

(ii) the Registrar-General is satisfied that the proprietor of the dominant land has ceased to exercise the rights conferred by the easement;

(b) the Registrar-General has published notice of his or her intention to act under subsection (1) in the *Gazette* and in a newspaper circulating generally throughout the State;

(c) where the person's identity is known—the Registrar-General has sent notice of his or her intention to act under subsection (1) by post addressed to the person at his or her last address known to the Registrar-General;

and

(d) at least 21 days has elapsed since—

(i) notice was published under paragraph (b);

and

(ii) where paragraph (c) applies, notice was posted under that paragraph.

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(6) Subject to subsection (7), the proprietor of dominant land cannot transfer or convey the land without the easement that is appurtenant to it.

(7) The proprietor of dominant land or of some part of it may transfer or convey part of the land without the appurtenant easement if rights under the easement continue in existence in respect of some other part of the dominant land.

(8) The easement is extinguished in respect of land transferred or conveyed under subsection (7).

(9) Where, in the opinion of the Registrar-General, the creation or continuance of an easement was, or was likely to have been, a requirement on which—

(a) the issue of a certificate by the Development Assessment Commission under section 51 of the *Development Act 1993*;

(b) the issue of a certificate by a council or the South Australian Planning Commission under Part XIXAB;

(c) the approval of an application for the deposit of a strata plan by the South Australian Planning Commission or a council;

or

(d) the consent or approval of an authority under a corresponding previous enactment,

was based—

- (e) the easement cannot be varied or extinguished under this section;
- (f) the appurtenance of the easement cannot be extended to other land under this section;
- (g) the easement cannot be merged with the servient land by transfer or conveyance of the easement to the proprietor of the servient land or the transfer or conveyance of the servient land to the proprietor of the easement;

and

- (h) part of the dominant land cannot be transferred or conveyed separately from the easement thereby extinguishing the easement in respect of that land,

without the consent of the Development Assessment Commission.

(10) Upon the variation or extinguishment of an easement under this section the Registrar-General must make such consequential entries in the Register Book or such entries in the records of the General Registry Office as he or she considers necessary.

(11) A reference in this section to dominant land includes a reference to an easement that is not appurtenant to any land.

(12) This section is subject to and does not derogate from any other Act relating to the variation or extinguishment of easements of a particular class.

#### **Easement and servient land may be vested in same person**

**90c.** (1) Subject to this section, a person may be the proprietor of an easement and the servient land that is subject to the easement and accordingly a person may grant an easement to himself or herself.

(2) Subject to this section, if an easement and the servient land are vested in the same person by transfer or conveyance the easement will not merge with the servient land unless the transfer or conveyance expresses the intention that it should do so.

(3) An easement is extinguished by the amalgamation of the dominant and servient land under Part XIXAB Division III.

(4) Where the whole or part of the land within the boundaries of an easement is amalgamated with the whole or part of the dominant land by the reconstitution of allotment boundaries upon deposit of a plan of division in the Lands Titles Registration Office, the easement is extinguished insofar as it extended over the amalgamated land.

#### **Survey of easement**

**90d.** Before registering an instrument creating or varying an easement, the Registrar-General or the Registrar-General of Deeds may require the parties to the instrument to lodge a survey prepared by a licensed surveyor that delineates the boundaries of the easement.

#### **No private right-of-way over public street or road**

**90e.** (1) A private right-of-way cannot subsist over a public street or road and accordingly—

- (a) a private right-of-way cannot be granted, reserved or otherwise created over a public street or road;
- (b) upon land becoming a public street or road all private rights-of-way over the land are extinguished;

and

- (c) all private rights-of-way existing over public streets or roads immediately before the commencement of the *Real Property (Miscellaneous) Amendment Act 1994* are extinguished.

(2) Subsection (1) extinguishes a right of way only in respect of land that is a public street or road and the right of way remains in force in respect of other land (if any) that is subject to it.

(3) In this section—

"a public street or road" means—

- (a) a public street or road within the meaning of Part XVII of the *Local Government Act 1934*;
- (b) a thoroughfare vested in a council, an authority or the Crown by section 223*lf* or by a corresponding previous enactment;

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(c) a public road referred to in section 27ca of the *Highways Act 1927*,  
that the public is entitled to use as a street, road or thoroughfare.

PART IX

CROWN LEASES

**Interpretation of Crown lease**

**91.** For the purpose of this Part of this Act, every lease or agreement for sale of Crown lands hereafter granted, or made by or on behalf of the Crown, shall be deemed a Crown lease.

**Person now holding under lease or agreement may surrender**

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

**Execution and Registration of Crown Lease**

**93.** (1) The parties to a Crown Lease must execute two copies of the lease one of which must be lodged with the Registrar-General for inclusion or recording in the Register of Crown Leases and the other of which must be delivered to the lessee.

(2) The Register of Crown Leases may take the form of the individual copies of the leases bound into a book or kept separately or of records made by an electronic, electromagnetic, optical or photographic process or both of those forms.

(3) A Crown Lease will be taken to be registered upon the Registrar-General allotting a volume and folio number in respect of the lease.

**Forfeiture, etc., of Crown Lease**

**94.** The forfeiture or determination of a Crown Lease will not take effect until the forfeiture or determination has been entered in the Register of Crown Leases by the Registrar-General.

**Not to give any greater effect than if this Act had not been passed. The Minister of Lands may make regulations**

**95.** Nothing herein contained or hereby implied shall be construed to give any greater effect or different construction to any Crown lease registered pursuant to this Part of this Act than would have been given to it if this Act had not been passed, nor shall any right or remedy, which the Crown would otherwise have possessed, be in any way prejudiced or altered. The Minister of Lands may, from time to time make any regulations which may be considered expedient for giving effect to this Part of this Act, and all such regulations, when published in the *Government Gazette*, shall have the force of law.

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PART X

TRANSFERS

**Transfers**

**96.** When any land is intended to be transferred, or any right-of-way or other easement is intended to be created or transferred, the registered proprietor shall execute a transfer in the appropriate form, which transfer shall, for the description of the land intended to be dealt with, refer to the certificate of such land, or shall give such description as may be sufficient to identify the same, and shall contain or have endorsed thereon a memorandum of all leases, mortgages, and encumbrances to which the land shall be subject, and an accurate statement of the estate or interest intended to be transferred or created.

**Acceptance of transfer**

**96a.** Every transfer shall contain a statement signed by the transferee indicating that he accepts the transfer or grant of the land, right-of-way or easement: Provided that—

- (a) the Registrar-General may accept and register a transfer without such a statement if he is satisfied that it is difficult or impossible to procure the signature of the transferee;
- (b) where the transferee is an infant or mentally incapacitated person, the transfer may be signed by his or her guardian or the administrator or committee of his or her estate; and the acceptance under this section of a transfer on behalf of an infant shall not affect any right of that infant or of any person on his behalf to avoid or disclaim the transfer.

**Transferee of land subject to mortgage or encumbrance to indemnify transferor**

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

**On registration of transfer, grant or certificate to be cancelled**

**98.** When a transfer purporting to transfer any estate of freehold is presented for registration, the duplicate certificate shall (except as herein otherwise provided) be delivered to the Registrar-General; and the Registrar-General shall, upon registering the transfer, enter on the original certificate and also on the duplicate certificate (if delivered to him) a memorandum cancelling the same, either wholly or partially, according as the transfer purports to transfer the whole or part only of the land comprised in such certificate.

**Unless whole of land transferred**

**99.** In case the whole of the land comprised in any certificate is transferred, such certificate need not be cancelled, but upon the transfer being registered and a memorial thereof entered on the duplicate certificate, the Registrar-General may deliver such duplicate to the transferee or other person entitled thereto.

**New certificate to purchaser and balance certificate to registered proprietor**

**100.** The Registrar-General shall, upon cancelling any certificate, either wholly or partially, pursuant to any transfer, issue to the transferee a certificate of the land mentioned in the transfer, and every such certificate shall refer to the transfer; and the Registrar-General shall, whenever required by the proprietor of any portion or balance of land included in a partially cancelled certificate, issue to such proprietor a certificate for the portion or balance of which he is proprietor: Provided that the Registrar-General may in his discretion at any time without being so required by the said proprietor, issue to the said proprietor a certificate or certificates for the said portion or balance or any part or parts thereof.

\* \* \* \* \*

**Memorial of order for sale of land for non-payment of rates**

**102.** Whenever the Court or a Judge under the powers conferred by the *Local Government Act, 1934*, or any Act or Acts amending the same, or any other Act, shall have made an order for the sale of any land under the provisions of this Act, the Registrar-General shall, upon being served with a copy of the order, mark thereon the time of such service, and shall enter a memorial thereof in the Register Book, which shall operate as a caveat against alienation other than in pursuance of such order while the same remains in force.

**Registration of transfer hereunder**

**103.** Upon the production to him of a transfer of the land duly executed in pursuance of any such order, the Registrar-General shall (without requiring the production of the duplicate certificate) register such transfer, and enter on the original certificate a memorandum cancelling the same either wholly or partially, as the case may require, and shall issue to the transferee a certificate of the land comprised in such transfer, free from all encumbrances, charges, exceptions, qualifications, and conditions whatsoever other than those mentioned in the transfer.



**Discharge of memorial**

104. In any such case, if only a portion of the land comprised in any certificate has been sold, and the whole of the arrears of rates, interest, and costs appear to be satisfied by the sale of the land transferred, a statement to that effect shall be appended to the transfer, signed by the Master or other officer of the Court acting in that behalf; and thereupon the Registrar-General shall make an entry on the partially cancelled certificate in the Register Book, discharging the memorial of the order entered thereon.

**Sale under writ of *feri facias* or decree, warrant or order of court**

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

**Transfer not to be valid against purchaser until entry of writ**

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

**Transfer on sale under writ, warrant, decree or order**

107. After any land so specified as aforesaid shall have been sold under any writ, warrant, decree, or order, the Registrar-General, on receiving a transfer thereof in the appropriate form, shall, subject to the provisions hereinafter contained, register such transfer by making an entry thereof in the Register Book, and on such entry being made the purchaser shall be deemed the transferee and registered proprietor of the land so sold; and every sale under any such writ, warrant, decree, or order shall take priority over and be effectual as against any other dealing affecting such land, entered into or transacted after the service of the writ, warrant, decree, or order, and the entry thereof on the original certificate.

**Production of duplicate instrument not required on transfer under decree or order, writ, or warrant**

108. The Registrar-General may register a transfer under any decree or order, or under any writ or warrant of execution of a Court, as hereinbefore mentioned, without requiring the production of the duplicate certificate, or other instrument of title.

**Satisfaction of writ, warrant, decree, or order**

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

**Lapse of writ, decree, warrant, or order**

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

**Transfer by registered proprietor to spouse, etc.**

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

**Dealings before issue of certificate**

112. Upon the production of the receipt of the Treasurer in full satisfaction of the purchase-money of any land alienated in fee from the Crown, together with a transfer, mortgage, lease, or other instrument, duly executed by the purchaser from the Crown of such land, the Registrar-General shall endorse upon such receipt such memorial as he is required to enter in the Register Book upon the registration of any dealing of a like nature with land in respect of which a certificate has been registered, and so on from time to time with respect to any other dealing before the registration of the certificate for the said land, and every such instrument shall thereupon be held to be duly registered, and the Registrar-General shall file such receipt and such instrument in his office; and, upon the registration of the certificate for such land, the Registrar-General shall enter thereon a memorial of such dealing, and shall endorse such instrument with the memorandum of registration as prescribed on the registration of instruments generally.

**Deed-poll by promoters of undertakings under Lands Clauses Acts**

113. Every deed-poll by virtue of which any land under the provisions of this Act or of any of the Real Property Acts, shall have been, or shall hereafter be, vested in the promoters of an undertaking as provided by the Lands Clauses Consolidation Act, or any amendment thereof, or the *Compulsory Acquisition of Land Act, 1925*, or any Act substituted for or amending that Act, shall have the same effect as a transfer executed by the registered proprietor of the land comprised in such deed-poll.

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**Mode of registration of such deed-poll**

**114.** The Registrar-General shall, upon any such deed-poll being lodged with him by the promoters of the undertaking, register the same upon the original certificate in like manner as transfers are registered, and shall require the registered proprietor, or any depositor, mortgagee, encumbrancee, or other person having the custody or control of the same, to deliver up the duplicate certificate for the purpose of having an entry of the deed-poll made thereon; and the Registrar-General shall, after such registration, cancel the original certificate, and when produced to him, the duplicate thereof, and shall issue a certificate of the land comprised in the deed-poll to the promoters of the undertaking, and a new certificate for the balance of the land comprised in the certificate to the proprietor thereof: Provided that all expenses of and incidental to obtaining such certificates shall be borne by the promoters of the undertaking.

**This Act not to lessen effect of deed-poll heretofore or hereafter executed**

**115.** Nothing herein contained shall lessen, or, except as expressly hereinbefore provided, alter the effect of any deed-poll heretofore or hereafter executed, and no transferee from a registered proprietor under a transfer subsequent in date to such deed-poll shall be entitled to any estate or interest in the lands mentioned in such deed-poll, nor to any priority over the promoters executing the same.

**Issue of certificate where land is vested in acquiring authority by operation of law or compulsorily acquired**

**115a.** (1) In this section—

"acquiring authority" means the Crown in right of the Commonwealth or the State, and includes a body corporate or other person in which or in whom land is vested by operation of law or which or who is empowered or authorized by or under any law of South Australia or of the Commonwealth to acquire or take land compulsorily.

(2) Notwithstanding anything in this Act or any other law, where—

(a) the Registrar-General is satisfied that by operation of law or without the execution of any transfer, conveyance or other instrument or document, any land has become vested, either for an estate in fee simple or for a lesser estate, in any acquiring authority;

and

(b) an appropriate application has been made in writing by the acquiring authority to the Registrar-General,

then,

(c) if the land is under the provisions of this Act, the acquiring authority shall, without the execution of any transfer, conveyance, or other instrument or document, or the production of any duplicate certificate or other instrument or document, be registered as the proprietor of such estate in the land by the registration and issue of a new certificate of title in the name of the acquiring authority as the registered proprietor of that estate in the land;

and

(d) if the land is not under the provisions of this Act, the land shall, without any further or other application being made or the execution of any conveyance, transfer or other instrument or document or the publication of any notice or the production or examination of any documents of title whatsoever, be brought under the provisions of this Act, and a certificate of title for such estate in the land shall be registered and issued in the name of the acquiring authority as the registered proprietor.

PART XI

LEASES AND SURRENDERS

**Lands, how leased**

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

**Contents of lease**

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

**Leases not to bind non-consenting mortgagees or encumbrancees**

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

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

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

**Standard terms and conditions of lease**

**119a.** (1) A person may deposit with the Registrar-General for filing in the Lands Titles Registration Office a document containing terms and conditions for incorporation as standard terms and conditions in leases under this section.

(2) A lease may provide that standard terms and conditions, as contained in a document deposited with the Registrar-General under subsection (1)—

(a) are incorporated in the lease;

or

(b) are incorporated in the lease subject to exclusions or amendments specified in the lease,

and, in that event, the lease has effect as if those terms and conditions were (subject to any exclusions or amendment specified in the lease) contained in the lease.

(3) Where a lease makes provision for incorporation of standard terms and conditions (either with or without exclusions or amendments), the lessor must, before execution of the lease by the lessee, provide the lessee with a copy of the standard terms and conditions.

Penalty: \$500.

(4) Non-compliance with subsection (3) does not affect the validity or effect of a lease.

**Lease may be surrendered by separate instrument**

**120.** (1) A registered lease may be surrendered by instrument in the appropriate form, signed by the lessee and lessor.

(2) Upon registration of an instrument under subsection (1) of this section, the Registrar-General shall enter a memorial recording the date of surrender in the Register Book and may, where in his opinion it is necessary or desirable to do so, endorse the date of the surrender on the lease registered in his office, the duplicate certificate and on the lessor's and lessee's copy of the lease.

**Registrar-General may enter surrender**

**121.** Where a lessee shall have delivered to the lessor, or his agent, the duplicate of the lease, accompanied by some writing signed by the lessee evidencing his intention to give up possession of the land comprised in such lease, the Registrar-General may, upon application by the lessor, and production of such evidence as he may require that the lessee has abandoned the occupation of the land comprised in the lease, make an entry in the Register Book of the surrender of such lease, and also endorse on the lease a memorandum recording the fact of such entry having been so made in the Register Book.

**Effect of entry of surrender**

**122.** Upon every entry made in the Register Book, in pursuance of either of the two preceding sections, the estate or interest of the lessee in the land shall revert in the lessor.

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

123. No lease mortgaged or encumbered, or of land mortgaged or encumbered, prior or subsequently to the registration of such lease, shall be so surrendered without the consent thereto in writing of the mortgagee or encumbrancee, and every surrender of a lease, whether by operation of law, by act of parties, or pursuant to the provisions hereinafter contained on bankruptcy or statutory assignment, shall be subject to any registered under-lease, or to any unregistered under-lease, or agreement for under-lease or under-letting for a term not exceeding one year to a tenant in actual possession thereunder.

**Covenants to be implied in every lease against the lessee**

124. In every lease there shall be implied the following covenants by the lessee with the lessor, that is to say:—

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

**Powers to be implied in lessor**

125. In every lease there shall also be implied the following powers in the lessor, that is to say:—

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

**Registrar-General to note particulars of re-entry in Register Book**

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

\* \* \* \* \*

PART XII

MORTGAGES, ENCUMBRANCES, AND DISCHARGES

**Lands, how mortgaged or encumbered**

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

**Contents of mortgage or encumbrance**

**129.** (1) Every such instrument shall, for description of the land intended to be dealt with, refer to the certificate of the land, or shall give such other description as may be necessary to identify the same, and shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and shall also contain or have endorsed thereon a memorandum of all leases, mortgages, and encumbrances (if any) affecting such land.

(2) Where, in any such mortgage or encumbrance—

- (a) the rate of interest, the manner of repayment of the principal sum and interest or any other term that, in the opinion of the Registrar-General, relates to the substance of the transaction is determined by reference to some other document; or
- (b) the mortgagor or encumbrancer is required to—
  - (i) build in accordance with any plans and specifications which are in existence at the date of the mortgage or encumbrance; or
  - (ii) do or refrain from doing any other act or thing by reference to some other document and the requirement is not, in the opinion of the Registrar-General, adequately set forth in the instrument lodged for registration,

the Registrar-General may require that a copy of the plans and specifications or the document concerned be attached to the mortgage or encumbrance or be deposited in the General Registry Office or in any other public registry in the State.

**Standard terms and conditions of mortgage**

**129a.** (1) A person may deposit with the Registrar-General for filing in his office a document containing terms and conditions for incorporation as standard terms and conditions in mortgages under this section.

(2) A mortgage may provide that standard terms and conditions, as contained in a document deposited with the Registrar-General under subsection (1)—

- (a) are incorporated in the mortgage;
- or
- (b) are incorporated in the mortgage subject to exclusions or amendments specified in the mortgage,

and, in that event, the mortgage has effect as if those terms and conditions were (subject to any exclusions or amendment specified in the mortgage) contained in the mortgage.

(3) Where a mortgage makes provision for incorporation of standard terms and conditions (either with or without exclusions or amendments), the mortgagee shall, before execution of the mortgage by the mortgagor, provide him with a copy of the standard terms and conditions.

Penalty: Five hundred dollars.

(4) Non-compliance with subsection (3) does not affect the validity or effect of a mortgage.

**Covenant to be implied in every mortgage**

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

**Implied covenant in encumbrance**

**130a.** In every encumbrance executed after the twenty-third of December, 1893, unless it is therein otherwise provided, there shall be implied a covenant by the encumbrancer with the encumbrancee that he will pay the annuity, rent-charge or other sum of money thereby secured at the times and in the manner therein mentioned.

**Real Property Act, 1886****Subsequent mortgagees or encumbrancees, may redeem prior mortgages, etc.**

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

**Nature of mortgage and encumbrance, and procedure in case of default**

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

**Power of sale**

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

**Mortgagee's receipt to discharge purchaser**

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

**Appropriation of proceeds**

135. The purchase-money to arise from the sale of any such land shall be applied: First—In payment of the expenses occasioned by such sale: Secondly—In payment of the moneys which may then be due or owing to the mortgagee or encumbrancee: Thirdly—In payment of subsequent mortgages or encumbrances, if any, in the order of priority; and the surplus, if any, shall be paid to the mortgagor or encumbrancer, as the case may be.

**Mode of payment of encumbrance**

135a. (1) All moneys which by reason of any sale by an encumbrancee or otherwise shall become applicable to the payment of an encumbrance shall be applied firstly in payment of the moneys then actually due to the encumbrancee, and if the encumbrance shall not then be satisfied the surplus shall be paid to the Public Trustee who shall invest the same upon Government securities or upon loan to the Treasurer and shall hold such surplus and the investments and income thereof upon trust to satisfy the accruing payments of the annuity, rent-charge, or other sum of money secured by the encumbrance and subject thereto for the person entitled to such moneys after payment of the encumbrance.

(2) This section shall take effect as though inserted in this Act on the passing thereof.

**Transfer upon sale by mortgagee or encumbrancee**

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

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

but—

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

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

(a) any such caveat;

and

(b) the registration of any such instrument that has effect as a caveat,  
shall be deemed to have been cancelled.

(3) This section shall be deemed to have had effect from the commencement of this Act.

**Power of mortgagee to enter, take possession, distrain, let, or bring action for recovery of land**

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

**Power of mortgagee to distrain on tenant or occupier for arrears not exceeding the amount of rent due**

138. Besides his remedy against the mortgagor or encumbrancer, every mortgagee or encumbrancee shall be entitled after the principal sum, interest, annuity, or rent-charge shall have been in arrear for twenty-one days, and after seven days shall have elapsed from the date of application for the payment thereof to the occupier or tenant, to enter upon the mortgaged or encumbered land, and distrain upon the goods and chattels of such occupier or tenant for such arrears to an amount not exceeding the rent then due from such occupier or tenant to the mortgagor or encumbrancer, and to dispose of the goods and chattels so distrained upon in like manner as landlords may do in ordinary distresses for rent, and out of the proceeds to retain the moneys distrained for, and all costs and expenses occasioned by such distress and sale; and any amount paid by the occupier or tenant to the mortgagee or encumbrancee, or realized by distress as aforesaid, shall be deemed *pro tanto* a satisfaction of the said rent.

**Duty of mortgagee of leasehold entering into possession of rent and profits to account**

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

**Application by mortgagee to Registrar-General for foreclosure**

140. When default has been made for six months in the payment of the principal or interest secured by any mortgage, the mortgagee may make application, in writing, to the Registrar-General for an order for foreclosure.

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

**Procedure on foreclosure application**

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

**Effect of order for foreclosure**

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

**Real Property Act, 1886**

**Provision for case where mortgagee or encumbrancee refuses to join in proceedings on default**

**142a.** (1) Where two or more persons are registered as mortgagees or encumbrancees under the same mortgage or encumbrance, and such default has been made in payment of any money due under the mortgage or encumbrance or in the performance of any covenant in the said mortgage or encumbrance expressed or implied as entitles the mortgagees or encumbrancees to exercise any of their rights or remedies under this Act or under the mortgage or encumbrance, and any such mortgagee or encumbrancee fails or refuses to join in giving any notice, making any application or doing any other act or thing for the purpose of enforcing any of the said rights or remedies, the Court may, on the application by originating summons of any other mortgagee or encumbrancee and on any terms and conditions which it thinks just—

- (a) appoint any one of such mortgagees or encumbrancees or any other person to exercise on behalf of the mortgagees or encumbrancees such of the said rights or remedies as the Court thinks proper;
- (b) give any directions as to the mode of exercising the said rights or remedies and as to any other matters incidental thereto.

(2) Any document executed by any person so appointed shall, for the purposes of this Act, but subject to the terms of the order, have the like effect as if executed by the mortgagees or encumbrancees.

**Discharge of mortgages and encumbrances**

**143.** (1) A mortgage or encumbrance may be wholly or partially discharged by instrument in a form approved by the Registrar-General and signed by the mortgagee or encumbrancee.

(2) Where two or more mortgagees or encumbrancees are entitled jointly, the discharge may be signed by one on behalf of all of them.

(3) The discharge of a mortgage or encumbrance must not be registered without production of the duplicate mortgage or encumbrance.

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**Entry of satisfaction of annuity**

**145.** Upon the proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any encumbrance, the annuity or sum of money thereby secured shall cease to be payable, and that all arrears of the said annuity or money have been paid, satisfied, or discharged, the Registrar-General shall make an entry in the Register Book, and on the encumbrance, noting that such annuity or sum of money is satisfied and discharged, and shall cancel the encumbrance; and upon such entry being made in the Register Book, the land comprised in the encumbrance shall cease to be subject to or liable for such annuity or sum of money; and the Registrar-General shall make a similar entry on the duplicate certificate, or other instrument of title of the encumbered land, and also on the duplicate encumbrance, when respectively produced to him for that purpose.

**Discharge of mortgage by Minister in certain cases**

**146.** (1) Where all moneys secured by a mortgage have been paid by the mortgagor and the mortgagee—

- (a) is dead;
  - (b) cannot be found;
  - (c) is incapable of executing a discharge of the mortgage;
- or
- (d) has, in the opinion of the Minister, refused to execute a discharge of the mortgage without sufficient reason,

the Minister may execute a discharge of the mortgage.

(1a) The Minister must not execute a discharge of mortgage pursuant to subsection (1)(d) unless—

- (a) the Registrar-General has sent by certified mail to the mortgagee at his or her last known address a notice stating that the Minister proposes to discharge the mortgage pursuant to subsection (1)(d) at the expiration of the prescribed period unless the mortgagee establishes to the satisfaction of the Minister that he or she is justified in refusing to execute a discharge of the mortgage;

and

- (b) the prescribed period has elapsed since the notice was sent.

(1b) The prescribed period is—

- (a) in a case where the notice is addressed to the mortgagee within Australia—one month;



(b) in any other case—two months.

(2) The Minister may receive moneys on behalf of a mortgagee, or the estate of a mortgagee, who—

(a) is dead;

(b) cannot be found;

(c) is incapable of executing a discharge of the mortgage;

or

(d) has, in the opinion of the Minister, refused to accept payment under the mortgage without sufficient reason,

and any moneys so received shall, for the purposes of this section, and the mortgage, be deemed to have been paid to the mortgagee.

(3) Any moneys received by the Minister under subsection (2) of this section shall be held by him upon trust for the mortgagee or other person entitled thereto.

(4) Subject to subsection (5) of this section, a discharge of mortgage executed under this section shall have the same effect as a discharge executed by the mortgagee.

(5) A discharge of mortgage executed under this section shall not operate as a discharge of the personal covenants of the mortgage.

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#### **Entry in Register Book where rights of mortgagee barred by Statute**

**148a.** (1) If the Registrar-General is satisfied that the mortgagor of any land is in possession thereof and that the rights of the mortgagee to bring an action for the money secured by the mortgage are barred by the *Limitation of Actions Act, 1936*, the Registrar-General, with the concurrence of the Solicitor of his Department, may make an entry in the Register Book and on the mortgage noting that the rights of the mortgagee are barred by Statute, and shall make a similar entry on the duplicate certificate or other instrument of title and on the duplicate mortgage if produced to him for any purpose.

(2) Upon the making of an entry in the Register Book pursuant to this section the mortgage shall be deemed to be discharged.

(3) If the duplicate certificate or instrument of title is not produced to the Registrar-General at or before the time when he makes an entry pursuant to this section, that certificate or instrument shall be deemed to be lost within the meaning of section 79 of this Act.

#### **Equitable mortgage may be created**

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

#### **Transfer of mortgage, lease and encumbrance**

**150.** A registered mortgage, lease or encumbrance may be transferred by execution of a transfer in the appropriate form.

#### **Effect of such transfer**

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

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

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

**Real Property Act, 1886**

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PART XIII

EXTENSIONS

**Renewal or extension of mortgage, etc.**

**153.** (1) A mortgage, encumbrance or lease may be renewed or extended by registration of an instrument in the appropriate form.

(2) An instrument renewing or extending a lease must be lodged with the Registrar-General not later than two months after the day on which the lease would, but for the renewal or extension, expire.

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PART XIV

POWERS OF ATTORNEY

**Power of attorney**

155. Any person may before, as well as after, becoming the registered proprietor of any land under the provisions of this Act, by power of attorney, authorize any person to act for him, in making applications to bring any land under the provisions of this Act, and to execute all or any instruments that may be necessary for giving effect to any dealing with any land.

**Deposit of duplicate or attested copy**

156. A duplicate or an attested copy of such power of attorney shall be deposited with the Registrar-General, who shall compare the same with original, and shall file such duplicate or attested copy in his office, and note thereon the date and hour of its deposit with him.

**Revocation of power of attorney**

157. The grantor of any such power of attorney may revoke the same by executing an instrument in the appropriate form; and the Registrar-General shall enter a note of such revocation, when produced to him, and the day and hour of its production, on the duplicate or copy of the power of attorney filed in his office; and from and after the date of such entry the Registrar-General shall not give effect to any application or other instrument executed pursuant to such power of attorney.

**Power of attorney heretofore given**

158. All powers of attorney heretofore given containing powers to make and execute any of the applications and instruments above enumerated, shall be as valid and may be acted upon and revoked in the same manner as if given under this Act.

**Entry of death of grantor**

159. The Registrar-General shall, upon proof to his satisfaction of the death of any grantor of a power of attorney, make an entry of such death upon the duplicate or copy of the power of attorney filed in his office.

**Instruments executed before entry of revocation or death to be valid**

160. All instruments executed under any power of attorney before the entry of the revocation thereof, or of the death of the grantor as hereinbefore provided, shall be valid notwithstanding such revocation or death.

**Real Property Act, 1886**

## PART XV

## TRUSTS AND TRANSMISSIONS

**Trusts contained in grant from the Crown to be inserted in certificate as in original grant**

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

**No particulars of trust to be entered in Register Book but trust instrument may be deposited**

162. The Registrar-General shall not, except as aforesaid, make any entry in the Register Book of the particulars of any trust, nor shall any instrument be registered under this Act, which declares or contains trusts relating to land under the provisions of this Act, but any such instrument, or a duplicate or attested copy thereof, may be deposited with the Registrar-General for safe custody and reference, and such instrument may be deposited in the General Registry Office pursuant to the *Registration of Deeds Act, 1935*, or any other Act relating to the deposits of deeds in the Registry Office, and may include as well land under the provisions of this Act, as land which is not under the provisions hereof: Provided that nothing herein contained shall prevent the registration of any instrument which would otherwise be valid in which a reference may be made to the instrument so deposited as aforesaid; nor shall such reference operate as notice of the particulars of the trusts declared or contained in the deposited instrument, but in the absence of caveat the registered proprietor shall, for the purpose of sale, mortgage, or contract for valuable consideration be deemed to be the absolute proprietor of such land freed from the said trusts.

**Insertion of the words "no survivorship" in instruments**

163. Upon the transfer of any estate or interest in land, to two or more persons, as joint proprietors, intended to be held by them as trustees, it shall be lawful for the transferor or transferees to insert in the transfer the words "no survivorship"; and the Registrar-General shall in such case include such words in the memorial of such instrument to be entered by him in the Register Book; and shall also enter the same words in some conspicuous place upon any certificate issued to such joint proprietors, pursuant to such transfer.

**Trustees may authorize insertion of those words**

164. Any two or more persons registered as joint proprietors of any estate or interest in land held by them as trustees, may, by writing under their hands, authorize the Registrar-General to enter the words "no survivorship" upon the original certificate, or other instrument of title, evidencing their title to such estate or interest, in the Register Book, or filed in his office, and also upon the duplicate of such instrument.

**Effect of entry**

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

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

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

**Court may protect persons interested**

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

**Survivors may nevertheless perform duties or transfer to new trustees**

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

**Disclaimers**

169. (1) Any person (in this section called "the disclaimant"), whether a trustee or not, who claims that he has been registered, without his consent, as proprietor of any estate or interest in land, may execute and lodge with the Registrar-General a deed or other instrument of disclaimer of that estate or interest.

(2) If the disclaimant has been registered as proprietor of any estate or interest, the Registrar-General shall give notice by post of the lodging of the instrument of disclaimer, to all other persons whose names appear on the Register Book, and who, in the Registrar-General's opinion, may be affected by the disclaimer.

In the notice the Registrar-General shall specify a day, not earlier than twenty-one days after the day on which the notice would be delivered to the addressee in the ordinary course of post, on or before which the person to whom it is given may lodge with the Registrar-General a notice of objection to the registration of the instrument of disclaimer.

(3) If no notice of objection is so lodged and the Registrar-General is satisfied that the disclaimant was registered without his consent, the Registrar-General shall give effect to the disclaimer by making such entries, alterations and corrections in the Register Book and on any certificate or other instrument of title as are necessary for that purpose, and by cancelling any certificate or other instrument of title which it is necessary to cancel.

(4) If no notice of objection is lodged but the Registrar-General is not satisfied that the disclaimant was registered without his consent—

- (a) the Registrar-General shall not take any steps to give effect to the instrument of disclaimer except pursuant to an order of the Supreme Court obtained as hereinafter provided:
- (b) the Registrar-General shall give notice by post to the disclaimant of the fact that he does not intend to give effect to the instrument of disclaimer except pursuant to such an order.

(5) If any notice of objection is lodged on or before the day specified by the Registrar-General—

- (a) the Registrar-General shall not take any steps to give effect to the instrument of disclaimer except pursuant to an order of the Supreme Court obtained as hereinafter provided:
- (b) the Registrar-General shall give notice by post to the disclaimant of the fact that an objection to the disclaimer has been lodged.

(6) A disclaimant who has received a notice under paragraph (b) of subsection (4) of this section, or a notice of objection under subsection (5) of this section, may apply to the Supreme Court by originating summons for an order that the Registrar-General take such action as is necessary to give effect to the instrument of disclaimer and upon such an application the Court may make any order which it deems just.

(7) Nothing done under this section shall release any person from any trust or other liability, if he has acted in the trust or by his own act incurred the liability.

#### **Transmission by bankruptcy or statutory assignment**

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

#### **Transmission to be entered in Register Book**

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

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

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

#### **Bankruptcy or assignment of lessee**

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

#### **If lease not subject to mortgage or encumbrance**

- I. If such lease be not mortgaged or encumbered under the provisions of this Act, the Registrar-General shall, upon the application in writing of the lessor accompanied by a statement in writing, signed by the Official Receiver or the trustee under such bankruptcy or assignment, certifying his refusal to accept such lease, enter in the Register Book a note of such refusal, and such entry shall operate as a surrender of such lease:

**Mortgagee or encumbrancee of the leasehold interest of a bankrupt or assignor may be entered as transferee of a lease**

- II. If such lease be mortgaged or encumbered, the Registrar-General shall, upon the application in writing of any mortgagee or encumbrancee, accompanied by a statement in writing signed by the Official Receiver, or the trustee under such bankruptcy or assignment, certifying his refusal to accept such lease, or by proof that the Official Receiver or trustee has neglected or refused to certify such refusal or to become registered as proprietor of such lease within one month after being thereunto required by notice in writing given to him by the mortgagee or encumbrancee, enter in the Register Book a note of such refusal or neglect, and such entry shall operate as a foreclosure, and the estate or interest of the bankrupt or assignor in such lease shall thereupon vest in such mortgagee or encumbrancee, free from all other charges subsequent to his mortgage or encumbrance, and such mortgagee or encumbrancee shall thereupon be deemed to be the registered proprietor of such estate or interest, and shall, while he remains such registered proprietor, be subject to and liable for the same requirements and liabilities to which he would have been subject and liable if named in the lease originally as lessee:

**Protection to subsequent mortgagees and encumbrancees**

- III. No such entry shall be made unless it be proved to the satisfaction of the Registrar-General that the applicant mortgagee, or encumbrancee, has given fourteen days' notice in writing of his intended application to every subsequent mortgagee or encumbrancee of the lease, or has obtained his written consent; and any such subsequent mortgagee or encumbrancee shall be entitled to pay to the applicant mortgagee or encumbrancee the amount due to him under his mortgage or encumbrance, with costs, at any time before foreclosure, and shall thereupon be entitled to a transfer from him of such mortgage or encumbrance:

**Where Official Receiver, trustee, and mortgagee neglect to become proprietors**

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

**Entry of surrender or foreclosure not to prejudice cause of action**

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

**Transmission of estate of deceased persons**

175. On the death of the registered proprietor of any estate or interest in land, his estate or interest shall be transmitted to his executor or administrator, or to the Public Trustee in any case where the Court shall make an order authorizing the Public Trustee to administer the estate of the deceased registered proprietor.

**Application to be made in such case**

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

**Particulars of application to be recorded**

177. The Registrar-General must record details relating to the application in the Register Book and on the duplicate certificate of title for the land.

**Effect of such entry**

178. Upon such entry being made in the Register Book, the executor, administrator, or Public Trustee, as the case may be, shall be the registered proprietor of such estate or interest, and his title shall relate back to and take effect from the date of the death of the deceased registered proprietor.

**Where two or more executors or administrators, all to concur**

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

**Person registered in place of deceased, bankrupt, or assigning proprietor, to be proprietor of land for purpose of dealing**

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

**Proceedings when executor, etc., refuse to transfer**

181. Whenever an executor, or administrator, or the Public Trustee, is registered as proprietor of any land, and shall refuse, or, after tender of a transfer, unnecessarily delay to transfer such land to the devisee, next of kin, heir-at-law, or other person entitled thereto, the person claiming to be entitled to the land may, by motion or summons before the Court, apply for an order that the executor, administrator, or Public Trustee shall transfer the said land to him.

**Court may order transfer to person entitled**

182. The Court may either refuse such application, with or without costs, to be paid by the applicant, or may make an order for the transfer, and may direct the transferor personally to pay all the costs of such application and any damages the person aggrieved may have sustained, or may order such costs to be paid out of the estate of the deceased registered proprietor, or in such other manner as the Court may think proper.

**Court may decide question of title, etc.**

183. The Court may, on any such application, decide on questions relating to the title of any person party to the application or proceeding, and generally may decide any question that it may be necessary or expedient to decide for the purpose of ordering the land to be transferred, or may direct an action to be brought or an issue to be tried in which the rights of the parties may be decided, or any question of law settled.

**Order of Court vesting land**

184. Where the registered proprietor of land holds the land on trust and the Court, by order, vests the land in another person, the Registrar-General must, on being served with an office copy of the order, enter details relating to the order in the Register Book and on the duplicate certificate of title for the land and upon such entry the land will vest in the new proprietor.

**Action may be brought by person claiming beneficial interest in name of trustee**

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

**Purchases from registered proprietor not to be affected by notice**

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

**Except in case of fraud**

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

**Registration of survivor of joint proprietors, and of remainder-man entitled to estate in possession**

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

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**Real Property Act, 1886**

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## PART XVI

## CAVEATS

**Caveats**

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

**Form of caveat**

- I. A caveat shall be in the appropriate form, and shall be under the hand and verified by the declaration of the caveator or his agent, and shall contain an address within South Australia to which notices may be sent or at which proceedings may be served:

**Registrar-General to make memorandum of receipt**

- II. Upon the receipt of a caveat the Registrar-General shall make a memorandum thereon of the date and hour of the receipt thereof, and shall enter a memorandum thereof in the Register Book, and shall forthwith send a notice of such caveat through the post office to the person against whose title such caveat shall have been lodged, directed to his address appearing in the Register Book:

**Not to register dealings contrary to caveat**

- III. So long as any caveat shall remain in force the Registrar-General shall not, contrary to the requirements thereof, register any dealing with the land in respect of which such caveat shall have been lodged: Provided that notwithstanding the receipt of a caveat the Registrar-General shall, subject to the other provisions of this Act, proceed with and complete the registration of any instrument affecting the said land, which instrument is produced for registration before the receipt of the caveat by the said Registrar-General:

**Persons interested may summon caveator**

- IV. The registered proprietor or any other person claiming estate or interest in the land may, by summons, call upon any caveator, including the Registrar-General, to attend before the Court to show cause why the caveat should not be removed; and the Court may, upon proof that the caveator has been summoned, and upon such evidence as the Court may require, make such order in the premises, either *ex parte* or otherwise, as shall seem just:

**Caveatee may apply to have caveat removed**

- V. The caveatee may, except when the caveat is lodged by a settlor, or by a beneficiary under a will or settlement, or by the Registrar-General under Part XIX of this Act, make application in writing to the Registrar-General to remove the caveat, and shall in such application give an address in South Australia to which notices or proceedings relating to the caveat may be sent, and the Registrar-General shall thereupon give twenty-one days' notice in writing to the caveator, requiring that the caveat be withdrawn:

**Mode of removing or discharging caveat**

- VI. The Registrar-General shall, after the lapse of twenty-one days from the posting of such notice to the address mentioned in the caveat, or of such extended time as may be ordered by the Court, remove the caveat from the Register Book by entering therein a memorandum that the same is discharged:

**Caveator may apply to Court for order to extend time**

- VII. The caveator may apply to the Court, by motion or summons, for an order to extend the time beyond the twenty-one days mentioned in such notice, and notice of such motion or such summons may be served at the address given in the application of the caveatee; and the Court may, upon proof of the service of such notice of motion or summons, and upon such evidence as the Court may require, make such order in the premises, either *ex parte* or otherwise, as shall seem just:

**May withdraw caveat: But Court may order payment of costs**

- VIII. Any caveator may, by notice in writing to the Registrar-General, withdraw his caveat at any time; but the Court may, notwithstanding such withdrawal, order payment by the caveator to the caveatee or other person interested of any costs incurred by the caveatee prior to the receipt by him of notice in writing of the withdrawal of the caveat:

**Entry to be made**

- IX. An entry shall be made by the Registrar-General in the Register Book of any order made by the Court relating to any caveat, or of the withdrawal, lapse, or removal of any caveat:



**Caveator, except Registrar-General, liable to make compensation**

- X. Any caveator other than the Registrar-General who shall have lodged or refused or neglected to withdraw any caveat wrongfully and without reasonable cause, shall be liable to make compensation to any person who may have sustained damage thereby, and such compensation may be recovered by action: Provided that, if proceedings shall have been taken in the Court by the caveatee or other person interested, the amount of such compensation may be assessed by the Court acting in the same proceedings; or the Court may direct an action to be brought to ascertain and recover such amount:

**Not to lodge further caveat without leave**

- XI. It shall not be lawful for any caveator other than the Registrar-General, or for anyone acting on behalf of such caveator, to lodge a further caveat relating to the same matter without the leave of the Court:

**Court may order costs if caveat by Registrar-General is removed by Court**

- XII. Where any caveat lodged by the Registrar-General shall be removed by the Court, such Court may order the costs sustained by the person at whose instance such caveat was removed to be paid out of the estate on behalf of which such caveat was entered.

**Real Property Act, 1886**

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## PART XVII

## EJECTMENT

**Summons to give up possession**

**192.** Any of the following persons (in the following sections called "the claimant") may cause any person in possession of land under the provisions of this Act to be summoned to appear before the Court to show cause why the person summoned should not give up possession to the claimant—

- I. The registered proprietor of a freehold estate in possession:
- II. Any registered mortgagee or encumbrancee where the person in possession is a mortgagor or encumbrancer in default, or a person claiming under such mortgagor or encumbrancer:
- III. Any lessor with power to re-enter where the rent is in arrear for three months, whether there be or be not sufficient distress found on the premises to countervail such rent, and whether or not any previous demand shall have been made for the rent:
- IV. Any lessor where a legal notice to quit has been given, or the lease become forfeited, or the term of the lease has expired.

**Summons to contain description of land**

**193.** The summons shall contain a description of the land, and shall require the person summoned to appear before the Court on a day not earlier than sixteen days after the service of the summons. The summons shall be served in the same manner as a writ of summons in an action for the recovery of possession of land in the Supreme Court.

**Orders on non-appearance to summons**

**194.** If, on the hearing of the summons, the person summoned do not appear, then upon proof of the service of the summons and of the claimant's title, or on the production of a consent to an order by the person summoned, the Court may order immediate possession to be given to the claimant.

**Orders on appearance to summons**

**195.** If the person summoned shall appear, the Court shall hear the summons, and may make such order thereon and impose such terms as it may think fit: Provided that in the case of a lessor against a lessee, if the lessee before or at the hearing pay or tender all rent due, and all costs incurred by the lessor, the Court may dismiss the summons.

**Dismissal of summons not to prejudice other rights**

**196.** The dismissal of any such summons shall not prejudice the right of the claimant to take any other proceedings against the person summoned to which he may be entitled.

**Effect of order for possession**

**197.** Every order for possession under this Part of this Act shall have the effect of, and may be enforced in the same manner as, a judgment in the Court for the recovery of possession of land.

**Writ of *habere facias* unnecessary where no one is in possession, or the land in surrendered voluntarily**

**198.** Any claimant having obtained an order for possession under the provisions hereof, shall be entitled to enter and take possession of the land mentioned in the order, without issuing a writ of *habere facias* if there shall be no person in actual possession of the land, or if the person in possession shall voluntarily give up possession to the claimant.

**Existing rights preserved**

**199.** Nothing hereinbefore contained shall repeal, affect, or abridge, any remedies to which a claimant is otherwise entitled.

**Local Courts Act, 1926, to apply to this Act**

**200.** Local Courts of full jurisdiction shall have jurisdiction to try actions of ejectment in respect of land under the provisions of this Act, and other actions in respect of such land in accordance with the *Local Courts Act, 1926*.

PART XVIII

THE ASSURANCE FUND

**The Assurance Fund**

- 201.** (1) There shall be a fund kept at the Treasury entitled "Real Property Act Assurance Fund".
- (2) The Assurance Fund shall have credited to it—
- (a) any moneys advanced by the Treasurer under subsection (3) (not being moneys that have been repaid to the Treasurer in accordance with the terms of the advance);
  - (b) the moneys paid by way of assurance levy by virtue of the regulations;
- and
- (c) any interest that may from time to time accrue to the Fund.
- (3) The Treasurer may advance moneys to the Assurance Fund by way of grant, or on a temporary basis.
- (4) Moneys standing to the credit of the Assurance Fund shall be applied for the purposes of this Part, but if those moneys are not immediately required for the purposes of this Part, the Treasurer may advance the whole or part of those moneys to the Consolidated Account and, in that event—
- (a) if any payment is to be made from the Fund and the Balance of the Fund is insufficient to meet that payment, the advance shall be repaid to such extent as is necessary to supply the deficiency;
- and
- (b) any amount advanced to the Consolidated Account shall bear interest at the rate of 10 per centum per annum, or such other rate as may be prescribed.
- (5) The regulations may—
- (a) prescribe an assurance levy not exceeding the amount of Two dollars per instrument to be paid in addition to the fees, or particular classes of fees, payable in relation to the registration of any, or all, of the following instruments:
    - (i) transfers on the sale of land under Part X;
    - (ii) leases and surrenders of leases under Part XI;
    - (iii) mortgages and discharges of mortgage under Part XII;
- and
- (b) exempt prescribed persons, or persons of a prescribed class, from payment of the assurance levy.
- (6) The Registrar-General shall keep a separate account of all moneys received by him by way of assurance levy.
- (7) The regulations prescribing an assurance levy under this section shall expire on the thirty-first day of December, 1988, and thereafter an assurance levy shall not be payable by virtue of this Part.

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**Party deprived of land may sue for compensation**

**203.** Any person deprived of land in consequence of fraud, or through the bringing of such land under the provisions of this Act, or of any Act hereby repealed, or by the registration of any other person as proprietor of such land, or in consequence of any error, omission, or misdescription in any certificate, or in any entry or memorial in the Register Book, may bring and prosecute an action at law for the recovery of compensation against the person upon whose application such land was brought under the provisions of this Act, or of any Act hereby repealed, or such erroneous registration was made, or who acquired title to the land through such fraud, error, omission, or misdescription.

**Exoneration of proprietor after transfer for value, except in certain cases**

**204.** Except in the case of fraud, or of error occasioned by any omission, misrepresentation, or misdescription in the application of such person to bring the land under the provisions of this Act, or of any of the Acts hereby repealed, or to be registered as proprietor of such land, or in any instrument executed by him, such person shall, upon a transfer of such land, *bona fide* for value, cease to be liable for the payment of any compensation which but for such transfer might have been recovered from him under the provisions herein contained.

**Proceedings against the Registrar-General, as nominal defendant**

205. In any such case of cesser of liability, and also in any case where the person against whom such action for compensation is permitted to be brought as aforesaid shall be dead, or shall have become bankrupt or made a statutory assignment, or cannot be found within the jurisdiction of the Court or there is any other reason why compensation cannot be fully recovered from that person, it shall be lawful to take proceedings against the Registrar-General, as nominal defendant, as hereinafter provided, for the purpose of recovering the amount of the compensation or costs, or so much of that amount as cannot be recovered from the person referred to above, from the Assurance Fund.

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**Purchasers, etc., protected**

207. Nothing in this Act contained shall leave subject to action for recovery of compensation as aforesaid, or to action for recovery of possession of land, or to deprivation of the estate or interest in respect of which he is registered as proprietor, any transferee, mortgagee, encumbrancee, or lessee, *bona fide* for valuable consideration of land on the ground that the proprietor, through or under whom he claims, or any previous proprietor has been registered as proprietor through fraud or error, whether such fraud or error shall consist in wrong description of boundaries, or parcels, or otherwise howsoever.

**Proceedings against the Registrar-General as nominal defendant**

208. Any person sustaining loss or damage through any omission, mistake, or misfeasance of the Registrar-General, or any of his officers or clerks in the execution of their respective duties under the provisions of this Act, or of any Act hereby repealed, and any person deprived of any land through the bringing of the same under the provisions of this Act, or of any Act hereby repealed, or by the registration of any other person as proprietor of such land, or by any error, omission, or misdescription in any certificate, or in any entry or memorial in the Register Book, and who by the provisions of this Act is barred from bringing an action for the recovery of such land, may, in any case in which the remedy by action for recovery of compensation as hereinbefore provided is barred, or inapplicable, institute proceedings against the Registrar-General, as nominal defendant, for recovery of compensation as hereinafter provided.

**Value of buildings to be excluded**

209. In estimating the compensation for any deprivation or loss under this Part of this Act, the value of all buildings and other improvements erected or made subsequently to such deprivation or loss, and with notice thereof, shall be excluded.

**Persons claiming may, before taking proceedings, apply to the Registrar-General for compensation**

210. Any person sustaining loss or damage in any case in which he shall be entitled to institute proceedings to recover compensation against the Registrar-General as nominal defendant, may, before commencing such proceedings, make application in writing to the Registrar-General, for compensation, and such application shall be supported by affidavit or declaration. If the Registrar-General admits the claim, or any part thereof, and certifies accordingly, the Treasurer may—

- (a) where the amount that the Registrar-General admits does not exceed twenty thousand dollars—on receipt of written authority under the hand of the Crown Solicitor;
- or
- (b) where the amount that the Registrar-General admits exceeds twenty thousand dollars—on receipt of a warrant under the hand of the Governor and countersigned by the Chief Secretary,

pay the amount out of the Assurance Fund.

**Assurance Fund not liable for breach of trust or improper exercise of power of sale**

211. The Assurance Fund shall not under any circumstances be liable for compensation for loss, damage, or deprivation occasioned by any breach by a registered proprietor of any trust, whether express, implied, or constructive, or by the improper exercise of any power of sale expressed or implied in any mortgage or encumbrance.

**Nor for misdescription of boundaries or parcels except in certain cases**

212. The Assurance Fund shall not be liable for compensation for loss, damage, or deprivation occasioned by any land being included in the same certificate with other land, through misdescription of boundaries or parcels, unless it shall appear that no person is liable or that the person liable for compensation is dead, or cannot be found within the jurisdiction of the Court or has become bankrupt, or has made a statutory assignment, or the Sheriff or bailiff shall certify that such person is unable to pay the full amount and costs awarded in any action for recovery of such compensation; and in the last-mentioned case the said fund shall be liable for such amount only as the Sheriff or bailiff shall fail to recover from such person.

**Procedure upon, and enforcement of claims against the Assurance Fund**

213. All proceedings against the Registrar-General as nominal defendant, for the purpose of obtaining compensation from the Assurance Fund, shall be instituted and carried on in the following manner:—

**Mode of application by claimant**

- I. The claimant shall apply to the Court upon affidavit for a rule or summons calling upon the Registrar-General, as nominal defendant, to show cause why compensation should not be paid out of the Assurance Fund to the claimant; and the Court may grant a rule or summons accordingly and such rule or summons shall be returnable not less than seven days after service thereof on the Registrar-General:

**Registrar-General may show cause**

- II. The Registrar-General may show cause against such rule or summons, and the Court may thereupon, or if no cause be shown, upon proof of service of the rule or summons, make absolute or discharge the same, or make such order as the circumstances shall require, with or without costs; or may, if satisfied that other persons should be represented on the rule or summons, require such persons to be served with notice thereof, and for that purpose adjourn the consideration of the rule or summons:

**Court may direct question of fact to be tried**

- III. The Court may direct any question of fact to be decided before the said Court, and for that purpose may direct an issue to be tried wherein the claimant shall be plaintiff, and the Registrar-General and such person or persons (if any) as the Court shall direct, shall be defendant or defendants, and the Court shall direct when and where the trial of such issue shall take place; and may adjourn the further consideration of the rule or summons until after the trial of the issue:

**Court may order production of papers**

- IV. The Court may also direct the parties to the proceedings or issue to produce on oath all deeds, books, papers, and writings in their custody or power, before the Court or the Master, on a day to be named by the Court, and each party shall have liberty to inspect the same, and take copies thereof, at his own expense; and such of them as either party shall give notice to have produced at the trial shall be produced accordingly:

**Form of issue**

- V. The issue (if any) may be in the following form, or in such other form as the Court shall approve:—

*In the Supreme Court.*

The            day of            in the year of Our Lord, 19 .

SOUTH AUSTRALIA) Whereas A.B. affirms, and C.D.

to wit            ) denies [*here state the questions of fact to be tried*] and it has been ordered by His Honour Mr. Justice            according to *The Real Property Act, 1886*, that the said questions shall be tried; Therefore let the same be tried accordingly.

And in case the parties differ upon the questions of fact to be tried, the Court may either settle the same or refer them to the Master:

**Court may make order after trial of issue**

- VI. After the trial of the issue the Court may, upon further consideration of the rule or summons, make such order either with or without costs, as the circumstances shall require:

**Effect of order**

- VII. Every order of the Court on such rule or summons shall have the effect of a judgment of the Court in an action:

**Treasurer to pay compensation**

- VIII. The Treasurer shall, on the production of any such order directing payment of compensation with or without costs out of the Assurance Fund, pay the same accordingly.

**Proceedings where same land is included in two or more grants from the Crown. Assurance Fund not liable in such case**

214. Any person deprived of any land in consequence of any such land having been included in two or more grants from the Crown, may commence and prosecute proceedings for the recovery of damages against such person as the Governor may appoint as nominal defendant, in manner provided for by the *Supreme Court Act, 1935*, or by any other Act for enforcing pecuniary claims against Her Majesty, Her heirs and successors, and in every such case the Assurance Fund shall not be liable for compensation.

**Limitation of actions**

215. No application to the Registrar-General nor action or proceeding for compensation for or by reason of any deprivation, loss, or damage occasioned or sustained as aforesaid, shall be made, brought, or taken, except within the period of twenty years from the time when the right to make such application or bring or take such action or proceedings first accrued.

**Court to have regard to contributory negligence**

216. Where, in an action for compensation under this Part, it appears that the plaintiff's deprivation, loss, or damage is attributable in whole or in part to his own negligence or the negligence of a person through or under whom he claims, the Court shall give judgment against the plaintiff or reduce the amount of the compensation that would, in the absence of negligence, have been awarded, by such amount as is just in view of that negligence.

**Payments out of Assurance Fund to be deemed made on account of certain persons**

217. Any amount paid out of the Assurance Fund in consequence of any person being dead, or having become bankrupt, or having made a statutory assignment, or in consequence of its not being possible to find any person within the jurisdiction of the Court, shall be deemed to have been paid on account of such person.

**Moneys paid out of the Assurance Fund may be recovered**

218. Whenever any amount has been paid out of the Assurance Fund on account of any person who shall be dead, such amount may be recovered from the estate of such person by action against his personal representatives, in the name of the Registrar-General. Whenever any such amount has been so paid on account of a person who shall have become bankrupt, or made a statutory assignment, such amount shall be considered to be a debt provable upon the estate of such bankrupt or assignor; and a certificate, signed by the Treasurer, certifying the fact of such payment out of the Assurance Fund, and delivered to the Official Receiver or trustee, shall be sufficient proof of such debt.

**Judgment may be entered by Registrar-General for amount paid on account of absent persons**

219. Whenever any amount has been paid out of the Assurance Fund on account of any person who cannot be found within the jurisdiction of the Court, the Court may, upon the application of the Registrar-General, and upon production of a certificate signed by the Treasurer certifying that the amount has been paid in satisfaction of an order on proceedings taken against the Registrar-General as nominal defendant, allow the Registrar-General to sign judgment against such person forthwith for the amount so paid out of the Assurance Fund, together with the costs of the application; and such judgment shall be final, and shall have the effect of a final judgment in an ordinary action, and execution thereon may issue immediately.

PART XIX

SPECIAL POWERS AND DUTIES OF REGISTRAR-GENERAL

**Powers of Registrar-General**

**220.** The Registrar-General may exercise the following powers, that is to say—

**To compel production of documents and examine person interested**

- (1) He may summon the proprietor or other person making application to have any land brought under the provisions of this Act, or the proprietor, or mortgagee, or any other person interested in any land in respect of which any instrument, transmission, or other dealing is about to be registered, issued, or transacted, to produce any document of title, instrument of title, or other instrument in his possession or under his control affecting such land, or the title thereto, and to appear and give any explanation or information respecting such land, and the documents and instruments of title relating thereto, and may examine any such person in respect thereof; and the Registrar-General, if the document, instrument, explanation, or information required by him be withheld, and the same appear to him material, shall not be bound to proceed with the bringing of such land under the provisions of this Act, or with the registration or issuing of such instrument, transmission, or dealing, as the case may be:

**To administer oaths**

- (2) He may administer oaths, or, in lieu of administering an oath, may require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination:

**To summon person having possession of duplicate instrument**

- (3) He shall, whenever the production of any duplicate certificate, or other instrument of title is required, for the purpose of entering or making on the same any memorial or entry by this Act directed to be entered or made thereon, or for the purpose of cancelling or correcting the same under the provisions of this Act, summon any proprietor, mortgagee, encumbrancee, or other person having the possession, custody, or control thereof to produce the same for such purpose, and such proprietor, mortgagee, encumbrancee, or other person shall thereupon produce the same on payment of a sum of two dollars: Provided that he may, at his discretion, before so summoning any person, require evidence that such person has neglected or refused to produce such duplicate instrument on being requested so to do, and on being offered a reasonable sum for his expenses of production:

**To require production of other instruments, etc.**

- (3a) If in respect of any instrument or other matter arising under this Act the Registrar-General is of opinion that—
- (a) the production of any other instrument or document;
  - (b) the giving of any information evidence or notice; or
  - (c) the doing of any act,
- is necessary or desirable, the Registrar-General may—
- I. require the person lodging the instrument or some other person concerned in the matter to produce the other instrument or document, give the information evidence or notice or do the act; and
  - II. until the requirement is complied with and the prescribed fee, if any, is paid, refuse to proceed with the registration of the first-mentioned instrument or with the other matter or to do any act or make any entry in connexion therewith:

**To reject certain instruments**

- (3b) If a requisition made under paragraph (3a) of this section is not complied with within two months, the Registrar-General may serve on the person lodging the instrument and the parties to the instrument notice that he intends to reject the instrument, and if, after the expiration of two months or such further period as the Registrar-General may allow, the requisition is not complied with, the Registrar-General may reject the instrument if, in his opinion, it cannot be registered under this Act, and any fees paid in respect of any rejected instrument shall be forfeited:

**To correct errors**

- (4) He may, upon such evidence as he considers sufficient—
- (a) correct errors, or update information recorded, in—
    - (i) the Register Book;
    - (ii) a certificate;

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- (iii) any entry in the Register Book or a certificate;
- (iv) any plan of division or other plan in the Lands Titles Registration Office;

or

- (b) make any entry or notation in or upon the Register Book, a certificate, plan of division or other plan that has been erroneously omitted:

Every certificate or entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted. In exercising his powers under this paragraph the Registrar-General may disregard any difference between the dimensions of boundaries as stated in any certificate or in the Register Book or in entries made therein respectively and the actual dimensions of such boundaries as found by admeasurement on the ground:

**To enter caveats**

- (5) He may, on behalf of His Majesty, His heirs or successors, or for the prevention of any fraud or improper dealing, or in any case in which it shall appear to him that an error has been made by misdescription or otherwise in any instrument, or for the protection of any person absent from the State, or under the disability of infancy, coverture or mental incapacity enter caveats forbidding the registration of any instrument, transmission, or dealing affecting any land:

**To withdraw caveat on payment of money**

- (6) He shall, where a caveat is entered to protect a sum of money, upon payment of such sum to him, withdraw such caveat:

**To alter forms of instruments, etc.**

- (7) He may, with the consent of the Governor, from time to time, make such alterations in the several forms of instruments prescribed in the schedules hereto as he may deem requisite; and every form of instrument so altered shall be published in the *Government Gazette*, and may thereafter be used in lieu of, and shall have the same effect as, the corresponding form prescribed by this Act, and shall be deemed an authorized form:

**To require map to be deposited**

- (8) He may require any person applying to bring land under the provisions of this Act, or any registered proprietor desiring to transfer or otherwise to deal with the land or any portion of the land comprised in his certificate, or other instrument of title, to deposit with him a map or plan of such land, verified by the declaration of a Licensed Surveyor; and if such person or proprietor shall neglect or refuse to comply with such requirement, it shall not be incumbent on the Registrar-General to proceed with the bringing of such land under the provisions of this Act, or with the registration of such transfer or dealing:

**To dispense with the duplicates of instruments in certain cases. But notice to be given before registering dealing**

- (9) He may dispense with the production of any duplicate instrument upon which any memorial of a transfer or other dealing is by this Act required or authorized to be entered or made; and upon the registration in any such case of a transfer or other dealing the Registrar-General shall notify in the memorial in the Register Book that no such entry has been made on the duplicate instrument; and such transfer or other dealing shall thereupon be as valid and effectual as if the duplicate instrument had been produced and such memorial or entry had been entered or made thereon: Provided that, before dispensing with the production of any such duplicate instrument, and before registering such transfer or other dealing, the Registrar-General shall, except in the case of a transmission, require the transferor or other party dealing to make a declaration in a form approved by the Registrar-General—

- (a) that the duplicate instrument has not been deposited as security for the repayment of money;
- (b) that the duplicate instrument is not subject to a lien (other than one appearing in the Register Book);
- (c) that he or she has caused to be published in a newspaper circulating generally throughout the State an advertisement, in a form approved by the Registrar-General, of his or her intention to lodge documents at the Lands Titles Registration Office in relation to a transfer or other dealing without production of the duplicate instrument;
- (d) that he or she believes that the duplicate instrument has been lost or destroyed;
- (e) as to such other matters as are required by the Registrar-General:



**To destroy certain documents**

- (10) He may, notwithstanding any other provision of this Act, with the approval of the Attorney-General, and subject to section 32 of the *Libraries Act 1982*, deliver to an appropriate person or destroy any record, document, instrument, plan, diagram, book or paper or any other paper writing, whether of the same kind as those before enumerated or not, that is deposited with or registered at the Lands Titles Registration Office the retention of which by the Registrar-General serves no useful purpose in his or her opinion.
- (11) The Registrar-General may destroy duplicate certificates of title that have been cancelled.

**Proprietor may summon Registrar-General to show cause, if dissatisfied**

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

**Hearing of summons**

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

**Power of Registrar-General to state case for Court**

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

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## PART XIXA

## RECTIFICATION OF CERTIFICATES

**Applications for amendment**

**223a.** (1) A registered proprietor may apply to have his certificate amended if—

- (a) the boundaries, area, or position of the land described in the certificate differ from the boundaries, area, or position of the land actually and *bona fide* occupied by him as being the land included in the certificate; or
- (b) the description of land in the certificate is erroneous or imperfect on the face of it.

(2) A registered proprietor may apply to have the certificate of any other registered proprietor amended if any of the land described in the applicant's certificate, and actually and *bona fide* occupied by him as being the land included in his certificate, is, by reason of any error in survey or any misdescription, included in the certificate of the other registered proprietor.

(3) Every application under this section shall be made in the appropriate form.

**Notices to be given**

**223b.** (1) The Registrar-General shall cause notice of any application made under the last preceding section to be given to such persons as he thinks proper and shall by the notice appoint a time not less than fourteen days from the giving of that notice or from the publication of any advertisement mentioned in paragraph (b) of subsection (2) of this section, whichever is later, after which the application may be granted unless a caveat is lodged forbidding the granting thereof.

(2) If the granting of an application to amend any certificate would affect land comprised in any other certificate, the Registrar-General shall—

- (a) in addition to any other notices mentioned in this section cause notice such as mentioned in subsection (1) of this section to be given to every person appearing by the Register Book to have any interest in the land comprised in that other certificate, and such notice shall be accompanied by a plan showing accurately the extent to which the said land will be affected if the application is granted; and
- (b) publish a notice such as mentioned in subsection (1) of this section in the *Government Gazette*.

**Power of Registrar-General to reject**

**223c.** Notwithstanding any direction given or action taken by the Registrar-General in relation to any application made under this Part the Registrar-General may reject the application if the applicant fails to comply to his satisfaction, within such time as to him seems reasonable, with any requisition which he has made in regard to such application.

**Caveats**

**223d.** (1) Any person claiming any estate or interest in any land in respect of which any application under this Part is made may, at any time before the application is granted, lodge a caveat with the Registrar-General forbidding the granting of the application.

(2) Every such caveat shall in all other respects be in the same form, shall be subject to the same provisions, and shall have the same effect with respect to the application against which it is lodged, as a caveat against bringing land under the provisions of this Act.

**Grant of application**

**223e.** If the applicant satisfies the Registrar-General that proper grounds, as set out in section 223a, exist for altering the applicant's certificate or the certificate of any other person, or both such certificates, he shall grant the application: Provided that—

- (a) where an alteration of the applicant's certificate would affect land included in the certificate of any other person, the alteration shall not be made unless that land was included in that other person's certificate by reason of error in survey or misdescription; and
- (b) where the title to the land affected by the alteration has been determined in a contested proceeding in a court of competent jurisdiction, the Registrar-General shall not make any alteration inconsistent with the determination of the court.

**Alterations of certificate in bringing land under this Act**

**223f.** On bringing any land under this Act, the Registrar-General, without any specific application for the purpose, may amend the certificate relating to any other land, if by reason of error in survey or misdescription any land is included in that certificate which the Registrar-General is satisfied should be included in the certificate issued for the land so brought under this Act.

**Amendments of title**

**223g.** (1) Every amendment made pursuant to this Part shall be made by making the requisite alterations in the original of any certificate.

(2) The Registrar-General shall also make the requisite alterations in the duplicate certificate when it is produced to him for that purpose, or when it is lodged in or brought to the Lands Titles Office for the purpose of any dealing with the land included therein, and he may detain the duplicate until the amendment thereof has been completed; and the Registrar-General may refuse to register any dealing with the land or any estate or interest therein until the duplicate has been produced for amendment.

**Notice of amendment of title**

**223h.** Upon amending the original of any certificate pursuant to this Part, the Registrar-General shall give notice in writing to the registered proprietor of, and to all persons appearing by the Register Book to have an interest in, the land included in that certificate informing him of the amendment. On the duplicate of the certificate being produced, the Registrar-General may, in his discretion, issue a new certificate with an amended description.

**Rectification by consent**

**223j.** Where in the opinion of the Registrar-General it is expedient and desirable so to do, he may, with the consent of every person appearing by the Register Book to have any interest, make any correction or amendment to any certificate of title for the purpose of reconciling the boundaries shown in the certificate with the boundaries of the land occupied.

**Saving of other powers**

**223k.** The powers conferred by this Part are in addition to, and shall not be deemed to be substituted for, any powers of correction or amendment conferred by any other provision of this Act.

**Operation of corrections**

**223l.** Any correction or amendment made under this Part shall be deemed to have been made prior to the registration of any instrument registered on any certificate so corrected or amended and extant at the time of such correction or amendment.

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## PART XIXAB

## DIVISION AND AMALGAMATION OF ALLOTMENTS

## DIVISION I—PRELIMINARY

**Interpretation**

**223/a.** (1) In this Part, unless the contrary intention appears—

"**allotment**" means—

- (a) the whole of the land comprised in a certificate except for a community or development lot or common property within the meaning of the *Community Titles Act 1996* or a unit or common property within the meaning of the *Strata Titles Act 1988*;
- (b) the whole of the land comprised in a registered conveyance of land that has not been brought under the provisions of this Act;
- (c) a separately defined piece of land that is delineated on a public map and separately identified by number or letter (not being a piece of land that is identified in a Treasury receipt, certificate or other document or instrument of title as being part only of an allotment);
- (d) two or more separately defined pieces of land that are delineated on a public map and that are identified in a Treasury receipt, certificate or other document or instrument of title as forming one allotment for the purposes of this Part;
- (e) a separately defined piece of land delineated on a plan of division for the purpose of enabling the separate ownership in fee simple of that land;
- (f) a separately defined piece of land identified as an allotment for the purposes of this Part in a plan prepared by the Registrar-General and accepted for filing in the Lands Titles Registration Office;
- (g) where a primary plan of community division has been cancelled under Part 7 Division 3 of the *Community Titles Act 1996* or a strata plan has been cancelled under Part 2 Division 7 of the *Strata Titles Act 1988*—the land comprising the former community parcel or site shown on the plan,

but does not include—

- (h) any such land or piece of land that has ceased to be an allotment by virtue of subsection (5); or
- (i) land divided by a primary plan of community division under the *Community Titles Act 1996* or a strata plan under the *Strata Titles Act 1988*;

"**amalgamation**" means the amalgamation of two or more contiguous allotments into a single allotment;

"**area**" means an area in relation to which a council is constituted;

"**the Commonwealth Crown**" means the Crown in right of the Commonwealth and includes any instrumentality or agency of that Crown;

"**council**" means a municipal or district council continued by or constituted under the *Local Government Act 1934*;

"**the Crown**" means the Crown in right of the State and includes a Minister of the Crown and any instrumentality or agency of the Crown;

"**the Development Assessment Commission**" or "**the Commission**" means the authority of that name established by the *Development Act 1993*;

"**division**" means the division of land into allotments, or the alteration of the boundaries of allotments, and includes subdivision and resubdivision but does not include amalgamation or the division of land by community plan under the *Community Titles Act 1996* or by strata plan under the *Strata Titles Act 1988*;

"**electricity entity**" means a person who holds a licence under the *Electricity Act 1996* authorising the operation of a transmission or distribution network or a person exempted from the requirement to hold such a licence;

"**the Mount Lofty Ranges**" means that part of the State delineated in General Registry Office Plan No. 180 of 1992 and described in that plan as "Mt. Lofty Ranges Area";

"**public map**" means a public map as defined in the *Crown Lands Act 1929*;

"**service easement**" means an easement in favour of—

- (a) South Australian Water Corporation (or a predecessor or successor of the Corporation) for sewerage or water supply purposes;
  - (b) a council or the Crown for drainage purposes;
- or
- (c) an electricity entity for electricity supply purposes,

pursuant to section 223/g and includes an easement pursuant to a corresponding previous enactment;

"**thoroughfare**" includes a walkway.

(2) In paragraph (e) of the definition of "**allotment**" in subsection (1)—

"**plan of division**" means a plan of division (whether described as such, or as a plan of subdivision or resubdivision)—

- (a) that was, before 1 January 1900, deposited or filed in the Lands Titles Registration Office or deposited or enrolled in the General Registry Office;
  - (b) approved pursuant to the *Planning and Development Act 1966* or a previous enactment and deposited, or accepted for filing, in the Lands Titles Registration Office or deposited or enrolled in the General Registry Office;
- or
- (c) that was deposited by the Registrar-General in the Lands Titles Registration Office in pursuance of Part XIXAB on or after 4 November 1982,

and that has not been superseded by a subsequent plan of division or been cancelled by or under this Act.

(3) For the purposes of this Part, allotments will be taken to be contiguous if they abut one another at any point or if they are separated only by—

- (a) a street, road, railway, thoroughfare or travelling stock route;
- or
- (b) a reserve or other similar open space dedicated for public purposes.

(4) For the purposes of subsection (3) allotments will be taken to be separated by intervening land if a line projected at right angles from any point on the boundary of one of the allotments with the intervening land would intersect a boundary of the other allotment with the intervening land.

(5) Where a statutorily authorised division of land was made before the commencement of this Part, or is made in pursuance of this Part, that division will be taken to have superseded any former division insofar as it affected the same land (whether or not the former division was itself statutorily authorised) and hence any allotments that may have existed by virtue of any such former division of the land will, to the extent to which it has been superseded, cease to exist.

(6) For the purposes of subsection (5) a division of land is statutorily authorised if effected in pursuance of this Part, or any previous enactment providing for the division of land.

#### **Unlawful division of land**

**223/b.** (1) A person must not grant, sell, transfer, convey, mortgage or encumber an estate or interest (except a right of way or other easement) in land (whether or not the land has been brought under the provisions of this Act) unless that land constitutes—

- (a) the whole of an allotment, or of a number of allotments;
- or
- (b) an allotment or allotments and a part allotment that is contiguous with that allotment or with one or more of those allotments and is comprised within the same certificate.

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(2) Where land is comprised in a certificate, a person must not grant, sell, transfer, convey, mortgage or encumber an estate or interest (except a right of way or other easement) in portion of the land comprised in the certificate unless—

(a) the portion of the land constitutes—

(i) the whole of an allotment or of a number of allotments;

or

(ii) an allotment or allotments and a part allotment that is contiguous with that allotment or with one or more of those allotments;

and

(b) the remainder of the land comprised in the certificate—

(i) constitutes the whole of an allotment or of a number of allotments;

or

(ii) constitutes an allotment or allotments and a part allotment or part allotments that are contiguous with that allotment or one or more of those allotments.

(3) The requirement of contiguity in subsection (2)(b)(ii) does not apply to a part allotment that was not contiguous with any allotment in the certificate before the transaction occurred.

(4) A transaction entered into in contravention of this section is void and no instrument purporting to give effect to such a transaction may be lodged for registration.

(5) This section does not affect the validity of a contract to grant, sell, transfer, convey, mortgage or encumber an estate or interest in land if—

(a) a division of land—

(i) under this Part;

or

(ii) by strata plan under the *Strata Titles Act 1988* or by community plan under the *Community Titles Act 1996*,

is contemplated by the parties to the contract;

(b) the contract could, if the land were divided as contemplated by the parties, be carried into effect in conformity with this section;

and

(c) the contract provides that the grant, transfer, conveyance, mortgage or encumbrance of estates or interests in land pursuant to the contract will not have effect until the plan of division, strata plan or community plan contemplated by the parties has been deposited in the Lands Titles Registration Office by the Registrar-General.

(6) Where—

(a) before 4 November 1982—

(i) land was laid out in a building unit scheme;

and

(ii) buildings were erected in accordance with the scheme;

and

- (b) by virtue of leases or agreements with the registered proprietor of the land, two or more persons have exclusive rights to occupy separate portions of the land,

this section does not affect the validity of an assignment of or other dealing with the rights of occupation existing under the leases or agreements referred to in paragraph (b).

(7) This section does not affect the validity of—

- (a) a transaction lawfully entered into before 4 November 1982;

or

- (b) a transaction of a class excluded by regulation from the provisions of this section.

(8) In this section—

"**allotment**" includes a community lot, a development lot and common property within the meaning of the *Community Titles Act 1996* and a unit and common property within the meaning of the *Strata Titles Act 1988*;

"**estate**" in land includes an estate of leasehold.

#### **Application of this Part**

**223/c.** This Part does not apply in respect of unalienated Crown lands or land alienated from the Crown otherwise than in fee simple.

### DIVISION II—GENERAL PROCEDURES TO BE OBSERVED IN RELATION TO DIVISION OF LAND

#### **Application for division**

**223/d.** (1) An application for the division of land may be made to the Registrar-General by the registered proprietor of the land.

(2) The application must be in a form approved by the Registrar-General and be accompanied by the prescribed fee.

(3) Subject to this section, the application must be accompanied by—

- (a) a plan of division delineating the allotments into which the applicant seeks to divide the land;

- (b) the certificate of a licensed surveyor in the prescribed form;

and

- (c) the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* in relation to the proposed division,

and the applicant must comply with the requirements of the Registrar-General in relation to the application.

(4) The Registrar-General may examine a plan of division before the application for the division is lodged under subsection (1) to determine whether the plan is in an appropriate form to be deposited in the Lands Titles Registration Office.

(5) The regulations may provide that in prescribed cases, or cases of a prescribed class, no certificate is required under subsection (3)(b) or (c) unless the Registrar-General specifically requires such a certificate, and, in any other case, the Registrar-General may, if he or she thinks fit, dispense with any such certificate.

(6) The certificate referred to in subsection (3)(c) expires at the expiration of one year after the application for the division of the land was lodged with the Registrar-General unless the Registrar-General extends the life of the certificate.

(7) The plan and the application for division will, upon being lodged with the Registrar-General, be taken for the purposes of this Act to be a single instrument presented for registration and will have priority over other instruments in accordance with section 56.

(8) Subject to subsection (9), a plan of division or the application to which it relates cannot be withdrawn or amended without the consent of all the persons who are required by this Division to certify their consent to deposit of the plan.

(9) The Registrar-General may permit an applicant, or a person who has certified his or her consent to deposit of a plan of division, to amend the application or the plan to which it relates in order to comply with this Act or with a requirement of the Registrar-General under this Act.

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(10) The provisions of this Act that apply to, or in relation to, instruments of a particular class will, subject to this Part, apply (with any necessary adaptations or modifications) to, or in relation to, a plan of division and the application for division if deposit of the plan in the Lands Titles Registration Office—

(a) would operate to vest in a person under section 223*e* the same kind of estate or interest as is vested by registration of instruments of that class;

or

(b) would discharge or otherwise extinguish an estate or interest in land under section 223*e* of the same kind as is discharged or extinguished by registration of instruments of that class.

(11) Except where the Registrar-General otherwise determines, an application for the division of land cannot be made unless the land has been brought under the provisions of this Act.

(12) Where an application for the division of land that has not been brought under the provisions of this Act is permitted by the Registrar-General, references in this Division that are appropriate to, or in relation to, land that has been brought under the provisions of this Act will, in relation to that application, be read subject to appropriate adaptations and modifications.

**Deposit of plan of division in Lands Titles Registration Office**

**223*e*.** (1) Where due application is made to the Registrar-General for the division of land, the Registrar-General may deposit the plan of division to which the application relates in the Lands Titles Registration Office if the certificate issued by the Commission in relation to the proposed division has not expired under this Division.

(2) Subject to subsection (3), where a plan of division or the application for division states that an estate or interest in land is vested in a person, deposit of the plan in the Lands Titles Registration Office operates to vest the estate or interest in that person to the extent to which it is not already vested in him or her.

(3) An estate in fee simple will vest in a person under subsection (2) only if—

(a) the person was, immediately before the plan of division was deposited in the Lands Titles Registration Office, the proprietor of an estate or interest in some part, or the whole, of the land, shown on the plan of division;

or

(b) the person is an agent or instrumentality of the Crown or the Commonwealth Crown or is entitled to acquire the land compulsorily under an Act or law of the State or the Commonwealth.

(4) Where a plan of division or the application for division states that an estate or interest in land shown on the plan of division is discharged or otherwise extinguished whether wholly or in respect of part only of that land, deposit of the plan in the Lands Titles Registration Office operates to discharge or otherwise extinguish that estate or interest wholly or in respect of that part of the land.

(5) Where the deposit of a plan of division will operate to vest an estate or interest (other than an estate in fee simple or a service easement) in a person, the terms on which the estate or interest will be held must be specified by including them in, or attaching them to, the application for the division of the land or by reference to another registered instrument.

(6) Where an easement is shown on a plan of division, the plan or the application for division must specify which land is the dominant land (if any) and which land is the servient land in respect of the easement.

(7) Upon deposit of a plan of division in the Lands Titles Registration Office, the Registrar-General must make such entries on the certificates relating to land affected by the plan as he or she considers necessary.

**Streets, roads, etc.**

**223*f*.** (1) Upon deposit of a plan of division in the Lands Titles Registration Office, all land shown on the plan as a street, road, thoroughfare, reserve or other similar open space will—

(a) vest in fee simple in the council for the area in which the land is situated;

or

(b) where the land is not within the area of a council—

(i) if provision is made by the regulations for the land to vest in a prescribed authority—vest in that authority;

or



(ii) in any other case—revert to the Crown.

(2) All land shown on a plan of division deposited in the Lands Titles Registration Office as a street, road, thoroughfare, reserve or other similar open space—

(a) must be held for the purposes indicated by the plan;

(b) is subject to such easements (excluding rights-of-way in the case of a street, road or thoroughfare) as are indicated on the plan of division;

and

(c) is free of all other estates and interests.

(3) All land shown on a plan of division deposited in the Lands Titles Registration Office as a street, road, or thoroughfare will, for all purposes, be regarded as a public street, road, or thoroughfare.

(4) Subsections (2) and (3) apply in relation to a plan of division deposited on or after 4 November 1982.

(5) Compensation is not payable in respect of the vesting or reversion of land under this section.

(6) An easement that is appurtenant to land that is shown on a plan of division as a street, road, thoroughfare, reserve or other similar open space ceases to be appurtenant to that land upon deposit of the plan in the Lands Titles Registration Office unless the plan shows that the easement will remain appurtenant to that land.

#### Service easements

**223lg.** (1) Where it appears from a plan of division deposited in the Lands Titles Registration Office that any land delineated on the plan is subject, or intended to be subject, to an easement in favour of the South Australian Water Corporation (or a predecessor or successor of the Corporation) for sewerage purposes or for water supply purposes, the land is subject to an easement in favour of the Corporation (or its successor) entitling the Corporation its agents, servants and workmen at any time to break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for sewerage or water supply purposes, as the case may be, and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

(2) Where it appears from a plan of division deposited in the Lands Titles Registration Office that any land delineated on the plan is subject, or intended to be subject, to an easement in favour of a council or the Crown for drainage purposes, the land is subject to an easement in favour of the council (or its successor) or the Crown entitling the council or the Crown through its agents, servants and workmen at any time to break the surface of, dig, open up and use the land for the purpose of constructing, laying down, fixing, taking up, repairing, re-laying or examining drains or drainage pipes for the purpose of the drainage of water, sewage or other effluents and of using and maintaining such drains and pipes, and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

(3) Where it appears from a plan of division deposited in the Lands Titles Registration Office that any land delineated on the plan is subject, or is intended to be subject, to an easement for electricity supply purposes which does not exceed ten metres in width and is in favour of an electricity entity, the land is subject to an easement in favour of the entity, entitling it, its agents, servants and workmen at any time—

(a) to enter upon and to pass either with or without motor vehicles or other vehicles along or over the land;

(b) to construct and lay—

(i) on or under the surface of the land ducts, pipes, conductors, cables, wires and other works;

and

(ii) on the surface of the land incidental or ancillary works for the transmission of electricity (including, without limiting the generality of the foregoing, manholes and cable markers);

(c) to suspend above the surface of the land conductors, cables, wires and other equipment and to construct supporting and other works incidental or ancillary to that purpose;

(d) without limiting the generality of any other right, to erect on any portion of the land designated "T/F" in the plan to a height not exceeding four metres or such other height as may be shown in the plan from the surface of the land, equipment for transforming electricity and incidental or ancillary works (including, without limiting the generality of the foregoing, such walls or other structures as the electricity entity considers necessary);

(e) from time to time to break the surface of, dig, open up and use the land for any of the purposes referred to in this subsection;

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(f) to inspect, repair, alter, remove and replace any works referred to in this subsection;

and

(g) to transmit electricity by means of any such works.

(4) No right to compensation arises—

(a) by virtue of the fact that land becomes subject to an easement under this section;

or

(b) by virtue of the exercise of rights conferred by an easement under this section.

(5) An easement in favour of an authority or entity under subsections (1), (2) or (3) vests in the authority or entity free of all estates and interests except easements indicated on the plan of division.

(6) If by virtue of this section, any land is subject to an easement, the Registrar-General must make such entries in the Register Book as are necessary to evidence the easement.

\* \* \* \* \*

**Consent to plans of division**

**223hh.** (1) Where it appears from the Register Book that—

(a) the deposit of a plan of division in the Lands Titles Registration Office will affect the estate or interest of a person in the land to be divided or in any other land;

or

(b) a person, apart from the registered proprietor or a person referred to in paragraph (a), has, or claims, an estate or interest in the land to be divided,

the application for division must be endorsed with a certificate signed by the persons referred to in paragraphs (a) and (b) certifying that they have consented to the deposit of the plan.

(2) Where the deposit of a plan of division will operate to vest an estate or interest in land in a person, the application for division must be endorsed with a certificate signed by the person in whom the estate or interest will be vested certifying that he or she has consented to the deposit of the plan.

(3) The Registrar-General may dispense with the requirement of consent under subsection (2) in relation to the vesting of an estate in fee simple in a street, road, thoroughfare, reserve or other similar open space or a service easement.

(4) A person who has applied for division of land is not required to sign a certificate under this section.

(5) The regulations may provide that in prescribed cases, or cases of a prescribed class, a certificate is not required under this section unless the Registrar-General specifically requires such a certificate.

(6) The Registrar-General may, if he or she thinks fit, dispense with a certificate required by this section.

**Assessment of stamp duty**

**223fi.** Where duty is payable under the *Stamp Duties Act 1923* in relation to two or more transactions that will be effected by deposit of a plan of division, each of the transactions will be taken to be effected by a separate instrument for the purposes of assessing the duty.

**DIVISION III—AMALGAMATION**

**Amalgamation**

**223fj.** (1) Where a person is the registered proprietor of two or more contiguous allotments, he or she may apply to the Registrar-General for amalgamation of those allotments into a single allotment.

(2) An application under this section—

(a) must be in a form approved by the Registrar-General;

(b) must be accompanied by the prescribed fee;

(c) must be accompanied by any duplicate certificates relating to the allotments to be amalgamated;

(d) must, if the Registrar-General so requires, be accompanied by a plan of the allotment to be formed by the amalgamation;

(e) must be endorsed with or accompanied by, the consent of persons required by or under subsection (3);

and

(f) must be accompanied by such other documents as may be prescribed.

(3) The consent of the following persons is required to an amalgamation of allotments under this Division:

(a) a person who appears from the Register Book to have an interest as mortgagee or encumbrancee of the land or any part of the land to be amalgamated;

(b) such other persons whose consents are required either in the opinion of the Registrar-General or by regulation.

(4) Upon receipt of an application under this section, the Registrar-General may—

(a) amalgamate the allotments to which the application relates into a single allotment;

(b) make such entries and notations in or upon the Register Book or plans of division or other plans in the Lands Titles Registration Office as are necessary to evidence the amalgamation;

and

(c) cancel certificates in respect of the amalgamated allotments and issue a new certificate in respect of the allotment formed by the amalgamation.

(5) If—

(a) an easement is appurtenant to one or more (but not all) of the allotments to be amalgamated;

and

(b) the consent of the proprietor of the servient land and of all persons who appear from the Register Book to have, or to claim, an estate or interest in the servient land is endorsed on the application for amalgamation,

the easement will, upon amalgamation of the allotments, be appurtenant to the single allotment resulting from the amalgamation.

(6) On—

(a) amalgamation of allotments into a single allotment under this section;

(b) amalgamation or merger of allotments into a single allotment under any other Act,

the allotments out of which the single allotment was formed cease to be allotments for the purposes of this Part.

\* \* \* \* \*

#### DIVISION IVA—AMALGAMATION OF ALLOTMENTS IN EXCHANGE FOR DIVISION OF LAND

##### Interpretation

**223/1a.** In this Division, unless the contrary intention appears—

"**division**" includes division of land by community plan under the *Community Titles Act 1996* (including division by strata plan under that Act) and by strata plan under the *Strata Titles Act 1988*;

"**strata plan**" means a strata plan under the *Community Titles Act 1996* or a strata plan under the *Strata Titles Act 1988*.

##### Amalgamation in exchange for division

**223/1b.** (1) The Governor may, by regulation, provide that the Registrar-General must not deposit in the Lands Titles Registration Office a plan of division, or a strata plan, in respect of division, or a specified class of division, in a specified part of the Mount Lofty Ranges unless the number of amalgamation units specified in the regulation has been allocated to the proposed division.

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(2) A regulation under subsection (1)—

(a) applies to a division of land in respect of which—

(i) in the case of division under this Part—the application for planning or development authorisation under the *Planning Act 1982* or the *Development Act 1993* was lodged with the appropriate authority on or after 29 January 1992 or such later date as is specified in the regulation;

or

(ii) in the case of division by strata plan—the application for planning or development authorisation under the *Planning Act 1982* or the *Development Act 1993* in respect of the erection of the building to be divided into strata lots or strata units by the plan was lodged with the appropriate authority on or after 29 January 1992 or such later date as is specified in the regulations;

(ab) does not apply to a division of land by strata plan if the building to be divided into strata lots or strata units by the plan was erected before 29 January 1992 or such later date as is specified in the regulation and was, immediately before that date, divided into two or more areas designed for separate occupation;

(b) may exclude land, or land of a particular class, from the operation of the regulation;

(c) binds the Crown not only in right of the State but also, so far as the legislative power of the State permits, in all its other capacities unless the regulation provides that the Crown is not bound.

(3) A regulation under subsection (1) has effect notwithstanding any Act or law to the contrary.

**Creation of amalgamation units**

**223/1c.** (1) The amalgamation of allotments pursuant to Division III on or after 29 January 1992 in a part of the Mount Lofty Ranges specified for that purpose by regulation creates a number of amalgamation units equal to the difference between the number of allotments amalgamated and the number of allotments remaining after the amalgamation.

(2) Amalgamation units are not created under subsection (1) where one or more of the allotments amalgamated is subject to a caveat unless the caveator has given his or her consent to the amalgamation.

**The right to allocate amalgamation units**

**223/1d.** (1) The right to allocate an amalgamation unit to a proposed division of land is vested initially in the person who applied for the amalgamation.

(2) Where immediately before amalgamation, the allotments amalgamated were subject to a mortgage or encumbrance that was first registered before 29 January 1992, the rights to allocate the amalgamation units created by the amalgamation are charged with payment of the amount secured from time to time by the mortgage or encumbrance.

(3) Subject to subsection (4), upon amalgamation the Registrar-General must issue to the person who applied for the amalgamation a certificate in respect of each unit certifying that the person named in the certificate has the right to allocate the unit to a proposed division of land.

(4) The Registrar-General must record a charge operating under subsection (2) on the certificates for the rights of allocation that are subject to the charge and must issue the certificates to the person entitled to the charge or, where more than one such charge is in operation, to the person entitled to the charge that is first in order of priority.

(5) Upon lodgment at the Lands Titles Registration Office of a memorandum of transfer of the right of allocation together with the certificate issued in respect of the right, the Registrar-General must register the transfer, cancel the certificate and issue a new certificate in the name of the transferee.

(6) Where a right of allocation of an amalgamation unit has passed by testamentary disposition or by operation of law to another person, that person may lodge at the Lands Titles Registration Office an application to be registered as the holder of the right.

(7) The application must be accompanied by the certificate issued in respect of the right and such other evidence that the right has passed to the applicant as the Registrar-General requires and the Registrar-General must register the applicant as the holder of the right, cancel the certificate and issue a new certificate in the name of the applicant.

(8) The Registrar-General may, on being satisfied that a certificate issued under this Division has been lost, mislaid or destroyed, issue a new certificate in its place.

**Right of allocation may be charged**

**223/le.** Upon lodgment at the Lands Titles Registration Office of a memorandum of charge of the right of allocation of an amalgamation unit together with the certificate issued in respect of the right, the Registrar-General must register the charge, cancel the certificate and issue to the person entitled to the charge a new certificate expressed to be subject to the charge.

**Allocation of an amalgamation unit**

**223/lf.** (1) Upon lodgment at the Lands Titles Registration Office of a memorandum of allocation of an amalgamation unit to a proposed division of land together with the certificate issued in respect of the right of allocation, the Registrar-General must register the allocation and cancel the certificate.

(2) A memorandum of allocation of an amalgamation unit to a proposed division must be lodged at or after the time at which the application for the division of the land or the application for deposit of the strata plan is lodged at the Lands Titles Registration Office.

(3) Where an application for the division of land or for the deposit of a strata plan is withdrawn or the Registrar-General refuses to deposit a plan of division or strata plan in the Lands Titles Registration Office, the Registrar-General must revive the right of allocation of an amalgamation unit allocated to the division by issuing a certificate to the person who allocated the unit.

**Dealings with right subject to charge**

**223/lg.** (1) Subject to subsection (2), where a right of allocation of an amalgamation unit is subject to a charge, the Registrar-General must not—

(a) register a memorandum of transfer or a memorandum of charge of the right without the written consent of the person entitled to the charge unless the transfer or charge is expressed to be subject to the existing charge;

or

(b) register a memorandum of allocation of the amalgamation unit without the written consent of the person entitled to the charge.

(2) The consent of a person entitled to a charge of lower priority is not required under subsection (1) to the registration of a memorandum of transfer by a person entitled to a charge of higher priority exercising a power of sale under section 223/lh.

**Power of sale**

**223/lh.** (1) A person who is entitled to a charge of the right of allocation of an amalgamation unit is entitled to sell the right in the circumstances in which a mortgagee or encumbrancee is entitled under this Act to sell land that is subject to the mortgage or encumbrance.

(2) Sections 132 to 136 inclusive apply to, and in relation to, a charge of a right of allocation as if the charge were a mortgage or encumbrance, the person entitled to the charge were the mortgagee or encumbrancee, the holder of the right of allocation were the mortgagor or encumbrancer and the right of allocation were the land mortgaged or encumbered.

**Discharge of charge of right of allocation**

**223/li.** (1) A charge of a right of allocation is discharged in the following circumstances:

(a) upon registration by the Registrar-General of a discharge of the charge;

(b) in the case of a charge arising under section 223/ld(2) on the creation of amalgamation units—upon the discharge of the mortgage or encumbrance giving rise to the charge under that section (but not where the discharge occurs upon registration of a transfer of the land by a mortgagee or encumbrancee exercising the power of sale conferred by this Act).

(2) Upon lodgment at the Lands Titles Registration Office of a full or partial discharge of a charge of a right of allocation together with the certificate issued in respect of the right, the Registrar-General must register the discharge, cancel the certificate and issue a new certificate in the name of the holder of the right.

(3) Where the amount secured by a charge has been paid the holder of the right of allocation is entitled to a discharge of the charge.

(4) Section 146 applies to, and in relation to, a charge of a right of allocation as if the charge were a mortgage, the person entitled to the charge were the mortgagee and the holder of the right of allocation were the mortgagor.

(5) Where two or more persons are entitled to a charge jointly a discharge of the charge may be signed by one on behalf of all of them.

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**Order of priority of charges**

**223/lj.** The order of priority of charges of a right of allocation is as follows:

- (a) charges arising under section 223/ld(2) have the same priority as the mortgage or encumbrance from which they arose;
  - (b) charges registered under section 223/le have priority in accordance with the time of registration of the memorandum of charge;
- and
- (c) charges referred to in paragraph (a) have priority over charges referred to in paragraph (b).

**Register of amalgamated units**

**223/lk.** (1) The Registrar-General must maintain a public register of amalgamation units.

(2) The register must include the following information in relation to each unit:

- (a) particulars identifying the amalgamation that created the unit;
- (b) the holder (if any) of a certificate in respect of the right to allocate the unit to a proposed division;
- (c) particulars of the charges (if any) of the right to allocate the unit and of the discharge of any of those charges;
- (d) the division (if any) to which the unit has been allocated.

**Form of transfers, etc.**

**223/ll.** (1) A memorandum of transfer, a memorandum of charge, a discharge of a charge, a memorandum of allocation of an amalgamation unit and an application to the Registrar-General under this Division must be in a form approved by the Registrar-General.

(2) A fee prescribed in relation to the administration of this Division must be paid before the Registrar-General takes the action in respect of which the fee is prescribed.

**Exemption from fees and stamp duty**

**223/lm.** (1) No fee is payable in respect of the registration of a memorandum of allocation of an amalgamation unit.

(2) Stamp duty is not payable in respect of the transfer or charging of the right of allocation of an amalgamation unit.

**DIVISION V—MISCELLANEOUS PROVISIONS**

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**Regulations**

**223/lp.** The Governor may make such regulations as are contemplated by this Part, or as are necessary or expedient for the purposes of this Part.

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PART XX

PROCEDURE AND PENALTIES

**Practice, procedure, appeals, and rules of Court**

224. In the conduct of actions and other proceedings in the Court, provided for under the Act, there shall be the same rights of appeal, and the same rules of procedure and practice shall apply as are in force or exist for the time being in respect of actions and other proceedings of a similar nature in such Court, except as the same are varied or altered by the rules and regulations contained in the twenty-first schedule hereto: Provided that the Judges of the said Court shall have power, from time to time to make other rules and orders for regulating proceedings in such Court under this Act, and, from time to time to rescind, alter, or vary such rules and orders.

**Fees of Court**

225. The Judges of the said Court shall have power from time to time to fix and regulate the fees payable upon all proceedings before the Court under this Act; and until the Judges shall otherwise order, the fees shall be according to those payable in respect of proceedings of a similar nature in the said Court.

**Forms of summons by Registrar-General**

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

**On refusal or neglect of person summoned, Registrar-General may apply to Judge**

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

**Declarations, before whom to be made**

228. Any declaration under this Act may be made before the Registrar-General, any Deputy Registrar-General, a Notary Public, Justice of the Peace, or Commissioner for taking Affidavits in the Supreme Court.

**Indictable offences under this Act**

229. If any person is guilty of the following offences, or any of them (that is to say)—

- (I) forges or procures to be forged or assists in forging or fraudulently affixes procures to be affixed or assists in affixing the seal of the Registrar-General, or an impression or part of an impression of such seal to any instrument;
- (II) forges or procures to be forged or assists in forging the name, signature, or handwriting of the Registrar-General or of any officer in any case where such officer is by this Act expressly or impliedly authorized to affix his signature;
- (III) fraudulently stamps or causes to be stamped any document with the seal of the Registrar-General or with a seal purporting to be the seal of the Registrar-General;
- (IV) forges or procures to be forged or assists in forging the name, signature, or handwriting of any person whomsoever, to any instrument which is by this Act, or in pursuance of any power contained in this Act, expressly or impliedly authorized to be signed by such person;
- (V) uses, with an intention to defraud any person whomsoever, any document upon which any impression or part of the impression of any seal of the Registrar-General has been forged, or fraudulently affixed knowing the same to be fraudulently affixed, or any document the signature to which has been forged knowing the same to have been forged;

such person shall be guilty of an indictable offence.

Penalty: Imprisonment for 14 years.

**Perjury**

230. If any person wilfully makes a false oath or declaration concerning any instrument, dealing, matter or procedure, under or in pursuance of this Act, such person shall be guilty of perjury.

Penalty: Imprisonment for 14 years.

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**Penalty for certifying incorrect documents**

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

**Other Offences**

233. A person who—

- (I) wilfully and fraudulently makes any false statement in any application to bring land under the provisions of this Act, or in any application to be registered as proprietor, whether in possession, reversion, remainder, or otherwise on a transmission, or in any other application to be registered under this Act as proprietor of any land, or any estate or interest in any land;
- (II) wilfully and fraudulently suppresses, withholds, or conceals, or assists, or joins in, or is privy to the suppressing, withholding, or concealing from the Registrar-General, the Acting Registrar-General, or any Deputy Registrar-General any material document, fact, or matter of information;
- (III) wilfully and fraudulently gives false evidence, or makes a false statement in his examination before the Registrar-General, the Acting Registrar-General, or any Deputy Registrar-General;
- (IV) without lawful authority and knowing that no such authority exists intentionally alters or causes to be altered—
  - (a) an original certificate of title filed in the Register Book or the duplicate of such a certificate;
  - (b) records made by the Registrar-General by an electronic, electromagnetic, optical or photographic process under Division II of Part V or a certificate of title issued under that Division;
  - (c) any instrument comprising part of the Register Book;
 or
  - (d) any instrument or form issued by the Registrar-General;
- (V) fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar-General;
- (VI) knowingly misleads or deceives any person hereinbefore authorized to demand explanation or information in respect of any land, or the title to any land, which is the subject of any application to bring the same under the provisions of this Act, or in respect of which any instrument or dealing is proposed to be registered or recorded;

is guilty of an indictable offence.

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

**Certificate, etc., procured by fraud to be void**

234. Any certificate, instrument, entry, erasure, or alteration procured, or made by fraud as in the last preceding section mentioned shall, whether there shall be a conviction under such section or not, be void as regards all parties or privies to such fraud.

**Penalties, how recovered**

235. All penalties for any offence against this Act, or any Act hereby repealed, not made punishable, in the first instance, by imprisonment, or in the discretion of the Court, by a fine or imprisonment, may be recovered before a Special Magistrate or two Justices of the Peace in a summary way on complaint at the instance of any person.

**Proceedings before justices**

236. All proceedings for recovery of penalties under this Act may be conducted as appointed by, and shall be regulated under, the *Justices Act, 1921*.

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**Conviction not to affect civil remedy**

240. No proceeding or conviction for any act hereby declared to be an offence shall affect any remedy which any person aggrieved or injured by such act may be entitled to against the person who has committed such act, or against his estate.



PART XXI

MISCELLANEOUS

**Plans and maps**

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

(2) A plan or map lodged with the Registrar-General must comply with his requirements as to—

(a) the dimensions of the plan or map;

(b) the scale to which it is drawn;

and

(c) the information that it includes.

(3) The Registrar-General may reject a plan or map that—

(a) does not comply with his requirements under this section;

or

(b) is inaccurate or deficient in any respect.

**Diagrams of land in certificates of title**

**242.** Every certificate of title for land brought under the provisions of this Act after the passing hereof (except a certificate for a strata lot within the meaning of the *Community Titles Act 1996* or a unit within the meaning of the *Strata Titles Act 1988*) must include a diagram (or have a diagram attached to it), showing the measurements of the land contained therein, such plan to be supplied by the Surveyor-General when practicable without involving any cost to the Government, or shall refer to a plan deposited, or accepted for filing, in the Lands Titles Office showing such measurements.

**Cases where measurements not required**

**242a.** It shall not be necessary to supply, show, or state the dimensions, measurements, or bearings of any closed road or reserve or any closed part of any road or reserve for any purpose of this Act unless those dimensions, measurements, or bearings shall be required by the Registrar-General to be supplied, shown, or stated, and the Registrar-General may in any other case dispense with the necessity for supplying, showing, or stating any dimensions, measurements, or bearings for the purposes of this Act.

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**Provision for person under disability of infancy or mental incapacity**

**244.** Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceedings under this Act, is an infant or mentally incapacitated person, the guardian or the administrator or committee of the estate of such person may make such applications, give such consent, do such acts, and be party to such proceedings as such person himself, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act.

**Court may appoint guardian**

**245.** The Court may appoint a guardian of an infant for the purposes of this Act.

**Unregistered instruments to confer claim to registration**

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

**Informal documents may be registered**

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

**Memorial to be entered**

248. On registering any such applicant, as mentioned in the two last preceding sections, the Registrar-General shall, so far as possible, enter the like memorial of every document or instrument produced by the applicant in the same manner as if such document or instrument had been presented for registration in its proper order of time, and the duplicate certificate, or other instrument of title shall be delivered up and the like memorials or other entries made thereon: Provided that no such registration shall be made if it would interfere with the right of any person claiming under any instrument previously registered under this Act.

**Equities not abolished**

249. Nothing contained in this Act shall affect the jurisdiction of the Courts of law and equity in cases of actual fraud or over contracts or agreements for the sale or other disposition of land or over equities generally.

And the intention of this Act is that, notwithstanding the provisions herein contained for preventing the particulars of any trusts being entered in the Register Book, and without prejudice to the powers of disposition or other powers conferred by this Act on proprietors of land, all contracts and other rights arising from unregistered transactions may be enforced against such proprietors in respect of their estate and interest therein, in the same manner as such contracts or rights may be enforced against proprietors in respect of land not under the provisions of this Act: Provided that no unregistered estate, interest, contract, or agreement shall prevail against the title of any *bona fide* subsequent transferee, mortgagee, lessee, or encumbrancee, for valuable consideration, duly registered under this Act.

**Lis pendens not to be registered**

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

**No title by adverse possession**

251. Except as provided in Part VIIA of this Act, no person shall acquire any right or title to land under the provisions of this Act by any length of adverse possession, nor shall the right of the registered proprietor to recover possession of any such land be barred by any length of adverse possession.

**Corporations and district councils to furnish Registrar-General with plans of new streets, etc.**

252. So often as any new street or road shall become vested in any Corporation or District Council by any means other than in pursuance of an order for opening the same the Corporation or Council affected shall immediately furnish the Registrar-General with a map or plan showing particulars of the new street or road so having become vested as aforesaid.

**Surveyor-General to furnish Registrar-General with particulars of orders confirming opening of new roads, etc.**

253. Whenever an order for opening a new road or closing an old road, or for the exchange of any water or other reserve, through or affecting land under the provisions of this Act shall have been duly confirmed, the Surveyor-General shall forthwith after such confirmation forward to the Registrar-General particulars of the date of such confirmation, and of the width, length, bearings, and measurements of such road, or of the exact dimensions and position of such reserve, and of the land taken in exchange.

**Alteration of plans**

254. The Registrar-General shall make reference to the particulars so furnished to him as aforesaid on any plan deposited in his office which is affected thereby, and shall also make an entry on the certificate in the Register Book, and alter any diagram included in, or attached to, the certificate in accordance with such survey maps, plans or particulars, and require the registered proprietor, or any mortgagee or encumbrancee, who may hold the same, to deliver up the duplicate certificate for the purpose of being cancelled or corrected as the case may require.

\* \* \* \* \*

\* \* \* \* \*

**Reference to Real Property Acts**

258. Where, in any Act now in force, reference is made to the Real Property Acts, or any of them, such reference shall be deemed to extend to this Act.

**General powers of Court not affected**

259. Any special jurisdiction by this Act given to the Court shall not prejudice or take away the ordinary jurisdiction of the Court.

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

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

**General covenants to be implied in instruments**

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

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

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

**In action for breach, party may be proceeded against as if he had covenanted in express words**

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

**Implied covenants to be joint and several**

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

**Short forms of covenants in mortgages and leases**

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

**Short form for expressing exception of mines and minerals**

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

**Witnessing of instruments**

267. (1) The execution of an instrument by or on behalf of a party to the instrument must be witnessed by a person who either knows the person executing the instrument personally or is satisfied as to his or her identity.

(2) The witness—

(a) must be aged 18 years or over; and

(b) must not be a party to the instrument.

(3) The witness must sign his or her name as witness and the full name and address of the witness and a telephone number at which he or she can ordinarily be contacted during business hours must be legibly printed under the witness' signature.

(4) The Registrar-General may, whether he or she suspects that an instrument has been improperly executed or not, require the execution of the instrument to be verified in any manner he or she thinks fit.

**Improper witnessing**

268. If a witness signs an instrument as witness but—

(a) does not know the person executing the instrument personally and has no reasonable ground on which to be satisfied as to the person's identity; or

**Real Property Act, 1886**

- (b) knows or has reasonable grounds for suspecting that the person signing the instrument—
  - (i) if signing as a party—is not a party to the instrument; or
  - (ii) if signing on behalf of a party—does not have authority to sign on behalf of the party,

the witness is guilty of an offence.

Penalty: \$2 000 or imprisonment for 6 months.

\* \* \* \* \*

**Execution of instrument by corporation**

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

\* \* \* \* \*

\* \* \* \* \*

**Authority to register**

273. (1) Subject to subsection (2), the Registrar-General shall not receive any application for bringing land under the provisions of this Act, or any instrument purporting to deal with or affect land, unless there shall be endorsed thereon a certificate that the same is correct for the purposes of this Act, signed by the applicant or party claiming under or in respect of such instrument, or by a solicitor, or licensed land broker.

(2) The Registrar-General may, in his absolute discretion, exempt instruments of classes prescribed by regulation from the requirement of certification under subsection (1).

(3) The Registrar-General may vary or revoke an exemption under subsection (2).

**Solicitors and land brokers to be generally entitled to recover fees for work done under this Act**

274. (1) Except as allowed by statute, no person other than a solicitor or licensed land broker shall be entitled to sue for or receive any fees, costs, or charges for work done in reference to applications, transfers, or other dealings relating to land, nor to any right of set-off in respect of any such fees, costs, or charges, nor to any lien or right to retain any deed, paper, or writing which shall have come into his possession in reference to any such work.

(2) Where a requisition is made by the Registrar-General in respect of an instrument under this Act on the ground that there is an error in, or omission from, the instrument, and the error or omission arose through the fault of a solicitor or licensed land broker, the solicitor or licensed land broker shall not charge or recover any fees or costs for work done in relation to complying with the requisition.

(3) Where a person considers that a solicitor or licensed land broker has, in contravention of subsection (2), charged any fees or costs for work done in relation to complying with a requisition, he may request a Master of the Supreme Court to tax the account of the solicitor or licensed land broker in order to ascertain whether such fees or costs have been charged.

**Forms in schedules**

275. Whenever a form in any schedule hereto is directed to be used, such direction shall apply equally to any form to the like effect for a similar purpose authorized in conformity with the provisions of this Act; and any variation from such forms, not being in matter of substance, shall not affect their validity or regularity; but they may be used with such alterations as the character of the parties or the circumstances of the case may render necessary.

**Service of notices**

276. Where this Act makes no provision for the manner in which a notice is to be served on or given to any person the notice may—

- (a) be served personally or by certified post;
- or
- (b) be served by publication of the notice in a manner directed by the Registrar-General.

**Regulations**

277. (1) The Governor may make such regulations as may be necessary or convenient for carrying into effect the provisions and objects of this Act, and without limiting the generality of the foregoing, may make regulations—

- (a) providing for and prescribing the fees and charges payable for or in respect of the doing of any act or thing under this Act;

and

(b) providing for and prescribing the charges recoverable by solicitors and licensed land brokers for transacting business under the provisions of this Act.

(2) Without limiting the generality of subsection (1) of this section a regulation made under this Act may amend or revoke any regulation made under the *Fees Regulation Act, 1927*.

## Real Property Act, 1886

## SCHEDULES REFERRED TO

## FIRST SCHEDULE

*Transitional Provisions*

## 1. (1) Where—

- (a) a plan of resubdivision has been deposited or accepted for filing in the Lands Titles Registration Office under a previous enactment relating to the division of land and certificates of title in respect of some or all of the allotments created by the plan have not been issued because a condition for issue has not been satisfied;
- and
- (b) the Registrar-General has served notice in writing on the proprietor of the land (and on such other persons as is required by regulation) that he or she intends cancelling the plan, or that part of the plan to which the condition relates, at the expiration of the period (being at least two months) specified in the notice,

the Registrar-General may cancel the plan, or the relevant part of it, if the condition has not been satisfied at the expiration of that period.

## (2) Where—

- (a) a plan of resubdivision has been deposited or accepted for filing in the Lands Titles Registration Office under a previous enactment relating to the division of land and certificates of title have not been issued in respect of some or all of the allotments created by the plan because a condition for issue has not been satisfied or for any other reason;
- (b) the proprietor of the land to which the plan, or the relevant part of the plan, relates has applied to the Registrar-General for cancellation of the plan, or the relevant part of it;
- and
- (c) the persons whose consents are required by regulation have consented to the application,

the Registrar-General may cancel the plan or the relevant part of it.

(3) Where a plan, or part of a plan, is cancelled under this clause, all plans of resubdivision, or parts of such plans, affecting the same land that have been deposited or accepted for filing in the Lands Titles Registration Office under a previous enactment since the division on which the currently issued certificate of title for the land is based will be taken to have been cancelled.

(4) Fees and contributions in relation to open space paid in respect of a plan, or part of a plan, of resubdivision cancelled by or under this clause are forfeited.

## (5) In this clause—

**"plan of resubdivision"** means a plan of re-subdivision or a plan of subdivision as defined in the *Planning and Development Act 1966* and includes a plan deposited or accepted for filing in the Lands Titles Registration Office before the commencement of that Act that satisfies the definition of either of those terms in that Act;

**"previous enactment"** means an Act in force before the commencement of the *Real Property Act Amendment Act 1982*.

2. (1) Subject to this schedule, the Registrar-General must deal with an application for the division of land made before the commencement of the Real Property (Miscellaneous) Amendment Act 1994 as though that amending Act had not come into operation.

(2) A certificate of approval issued under section 223lf or 223lg before the repeal of those sections by the Statutes Repeal and Amendment (Development) Act 1993 and a certificate issued by the Development Assessment Commission under section 51 of the Development Act 1993 before the commencement of the Real Property (Miscellaneous) Amendment Act 1994 will expire on the second anniversary of the commencement of that Act unless the Registrar-General extends the life of the certificate.

(3) The Registrar-General must not deposit a plan of division in the Lands Titles Registration Office pursuant to an application referred to in subclause (1) if a certificate referred to in subclause (2) on which the application depends has expired under that subclause.

(4) If the Registrar-General is unable to deposit a plan of division pursuant to an application referred to in subclause (1) because a certificate referred to in subclause (2) has expired, the Registrar-General must reject the application and all instruments and other documents that depend on the deposit of the plan of division pursuant to the application.

3. (1) Subject to subclause (2), where an easement is appurtenant to land shown on a plan of division as a street, road, thoroughfare, reserve or other similar open space and the plan—

- (a) was deposited in the Lands Titles Registration Office under Part XIXAB before the commencement of the Real Property (Miscellaneous) Amendment Act 1994;
- (b) was deposited or accepted for filing in the Lands Titles Registration Office under a corresponding previous enactment;
- or
- (c) is deposited after the commencement of the Real Property (Miscellaneous) Amendment Act 1994 but as though it had not come into operation (see clause 2(1)),

the easement ceases, or will be taken to have ceased, to be appurtenant to that land upon deposit of the plan in the Lands Titles Registration Office.

(2) Subclause (1) does not apply if it was a condition or requirement of the relevant planning authorisation or the intention at the time of deposit or acceptance for filing of the plan that the easement should remain appurtenant to the land.

4. (1) Notwithstanding the repeal of the Planning and Development Act 1966, Part VI of that Act, and the regulations relevant to that Part, continue to apply in relation to a plan of division that had been approved under that Act, or in respect of which an application had been made, before the commencement of the Real Property Act Amendment Act 1982.

(2) A plan of division referred to in subclause (1) cannot be deposited or accepted for filing by the Registrar-General if the development approval granted in relation to the plan has lapsed under section 26 of the Statutes Repeal and Amendment (Development) Act 1993.

(3) For the purposes of the continued application of Part VI of the Planning and Development Act 1966, and the regulations relevant to that Part, under subclause (1), references to the Director will be construed as references to the Presiding Member of the Development Assessment Commission.

5. In this schedule—

"**division**" includes subdivision and resubdivision.

**THE SECOND SCHEDULE**

*Application to bring Land under the provisions of the  
Real Property Act, 1886-1975*

I, A.B., of [here insert residence and description] do declare that I am [or that C.D., of (here insert residence and description) is] seized of an estate of freehold [here state the nature of the estate of freehold] in all that piece of land situated in [here state the situation] containing [here state the area] be the same a little more or less [exclusive of roads intersecting the same, if any] with [here state rights-of-way and other privileges or easements appertaining, and set forth a sufficient description to identify the land] which piece of land is of the value of \$ \_\_\_\_\_ and no more, and is [the town allotment or country section, or is part of the town allotment, or country section] originally granted to \_\_\_\_\_, by land grant under the hand and seal of \_\_\_\_\_, formerly Governor [or Resident Commissioner] of the State of South Australia, dated the \_\_\_\_\_ day of \_\_\_\_\_, numbered \_\_\_\_\_ in the plan of the [district, township, or county] of \_\_\_\_\_, as delineated on the public maps of the State, deposited in the Survey Office, Adelaide: And I do further declare that I am not aware of any mortgage, encumbrance, or claim affecting the said land, or that any person hath any claim, estate, or interest on or in the said land, at law or in equity, in possession, reversion remainder or expectancy, or that any person has, or claims any right-of-way or other easement affecting the said land other than is set forth and stated as follows, that is to say (here state particulars of mortgages, encumbrances, dower, or other interest to which the land may be subject, and of all rights-of-way and other easements which any other person is entitled to or claims): And I further declare that there is no person in possession or occupation of the said lands adversely to my estate or interest [or the estate or interest of the said C.D. therein] and [that the said land is now in the occupation of, here state names and descriptions of occupiers, or that the said land is now unoccupied], and that the names and addresses of the owners and occupiers of the lands contiguous thereto, are [here state the names and addresses of owners and occupiers of lands contiguous thereto, or to me unknown] and that there are no documents or instruments of title affecting the land above described in my possession or under my control, [or in the possession or under the control of the said C.D.] other than those enumerated in the schedule hereto, and I do hereby [or if so, on behalf of the said C.D.] apply to have the land above described brought under the provisions of the *Real Property Act, 1886-1975*, and I make this solemn declaration conscientiously believing the same to be true, and appoint [here insert address] as the address to which notices in respect of this application may be sent.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

Made and subscribed by the above-named \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the presence of \_\_\_\_\_ } [Signature]

To the Registrar-General.

I, A.B., the above declarant, hereby request you to issue the certificate of title for the land described in the above declaration in the name of \_\_\_\_\_

Witness to signature— [Signature.]

*The Schedule referred to*

*[Here set out a list of all documents and instruments of title]*



**THE THIRD SCHEDULE**

*Caveat forbidding Lands to be brought under the  
Real Property Act, 1886-1975*

To the Registrar-General.

Take notice that I, A.B., of [*here insert residence and description*] claiming [*here state the nature of the estate or interest claimed, and the ground on which such claim is founded*] in the land described as [*here state particulars of description from application*] and mentioned in notice dated the            day of            , as land in respect of which an application has been made to have the same brought under the provisions of the *Real Property Act, 1886-1975*, do hereby forbid the bringing of the said land under the provisions of the said Act; and I appoint [*here insert address within South Australia*] as the place at which notices and proceedings relating hereto may be served.

Dated this            day of            , 19    .

[*Signature.*]

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**THE FIFTH SCHEDULE**

*Right-of-Way*

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

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**THE SIXTH SCHEDULE**

Short form	Long form
an easement for water supply purposes.	the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for water supply purposes and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.
an easement for sewerage purposes.	the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for sewerage purposes and to enter the land (if necessary with vehicles and equipment) for any of those purposes.
an easement for drainage purposes.	the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining drains or drainage pipes and of using and maintaining those drains and drainage pipes for drainage purposes and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.
an easement for gas supply purposes.	the right for him, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land (described for that purpose in this instrument) for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for the purpose of supplying gas, and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.
an easement for the transmission of electricity by overhead cable.	<p>the right for him, his agents, servants and workmen at any time—</p> <p>(a) to suspend cables across the land (described for that purpose in this instrument) and construct supports for those cables;</p> <p>(b) to inspect, alter, maintain, repair and replace those cables and supports;</p> <p>(c) to use the cables for the purpose of transmitting electricity;</p> <p>(d) to break the surface of, dig, open up and use the land for any of those purposes;</p> <p>and</p> <p>(e) to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.</p>
an easement for the transmission of electricity by underground cable.	<p>the right for him, his agents, servants and workmen at any time—</p> <p>(a) to lay under the surface of the land (described for that purpose in this instrument) ducts, pipes and cables;</p> <p>(b) to inspect, alter, maintain, repair and replace those ducts, pipes and cables;</p> <p>(c) to use the cables for the purpose of transmitting electricity;</p> <p>(d) to break the surface of, dig, open up and use the land for any of those purposes;</p> <p>and</p> <p>(e) to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.</p>

an easement for the transmission of television signals by underground cable.

the right for him, his agents, servants and workmen at any time—

(a) to lay under the surface of the land (described for that purpose in this instrument) ducts, pipes and cables;

(b) to inspect, alter, maintain, repair and replace those ducts, pipes and cables;

(c) to use the cables for the purpose of transmitting television signals;

(d) to break the surface of, dig, open up and use the land for any of those purposes;

and

(e) to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

party wall rights.

the right to use the party wall (described for that purpose in this instrument) for the support of the walls, floors, ceilings, roofs or other parts of any building built or placed on the dominant land.

an easement for eaves and gutters.

the right for him, his agents, servants and workmen at any time to construct, inspect, alter, maintain, repair, replace and use eaves, gutters and downpipes over the land (described for that purpose in this instrument) and to enter the land (described for that purpose in this instrument) at any time for those purposes.

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**THE SIXTEENTH SCHEDULE***Short Forms of Covenants and their Interpretation*

Short form.	Covenant at length.
1. The mortgagor or encumbrancer will insure:	The mortgagor or encumbrancer will insure, and during the continuance of this mortgage keep insured, against loss or damage by fire, in the name of the mortgagee or encumbrancee, in some public insurance office to be approved by the mortgagee or encumbrancee, to the amount of their full value, all buildings and erections which shall for the time being be erected on the mortgaged land, and shall be of a nature or kind capable of being so insured, and will when required by the mortgagee or encumbrancee deposit with him the policy of every such insurance, and within seven days after each premium shall become payable the receipt for such premium, and if default shall be made in the observance or performance of this covenant, it shall be lawful for the mortgagee or encumbrancee, without prejudice, nevertheless to and concurrently with the power granted him by this mortgage and by the <i>Real Property Act, 1886-1975</i> , so to insure such buildings and erections, and the costs of such insurance shall be a debt from the mortgagor or encumbrancer to the mortgagee or encumbrancee, and shall be added to the principal moneys hereby secured, and shall, during the continuance of this mortgage, be a charge upon the mortgaged land, and bear interest at the same rate as the said principal moneys, and all moneys which shall be received by virtue of any such insurance as aforesaid, shall, at the option of the mortgagee or encumbrancee, be laid out in making good the loss or damage in respect of which the same shall be received or be applied by the mortgagee or encumbrancee in or towards satisfaction of the moneys hereby secured.
2. The lessee will insure:	The lessee will insure, and during the continuance of this lease keep insured, against loss or damage by fire, in the joint names of the lessor and the lessee, in some public insurance office to be approved by the lessor, to the amount of their full value, all buildings and erections which shall for the time being be erected on the land hereby leased, and shall be of a nature or kind capable of being so insured, and will, when required by the lessor, deposit with him the policy of every such insurance, and within seven days after each premium shall become due the receipt for such premium, and on any breach or non-observance of this covenant the lessor may, without prejudice to and concurrently with the other powers granted to him by the lease and the <i>Real Property Act, 1886-1975</i> , so insure such buildings and erections, and the costs of effecting such insurance shall be added to the rent hereby reserved, and shall be a charge upon the said leased land, and recoverable by action or distress in the same manner as the said rent is recoverable. All moneys which shall be received under or by virtue of any such insurance as aforesaid shall be laid out and expended in making good the loss or damage in respect of which the same shall be received.
3. The lessee will paint outside every alternate year:	The lessee will, in every alternate year during the currency of this lease, paint all the outside woodwork and ironwork belonging to the premises hereby leased, with two coats of proper oil colours, in a workmanlike manner.
4. The lessee will paint and paper inside every third year:	The lessee will, in every third year during the currency of this lease, paint the inside wood, iron, and other work belonging to the premises hereby leased, and now or usually painted, with two coats of proper oil colours, in a workmanlike manner, and also re-paper, with paper of the quality now used, such parts of the said premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now washed, stopped, whitened, or coloured respectively.
5. The lessee will fence:	The lessee will, during the continuance of this lease, erect and put up a good and substantial fence on the boundaries of the said leased land upon which no substantial fence now exists.
6. The lessee will cultivate:	The lessee will, during the continuance of this lease, cultivate, use, and manage all such parts of the land hereby leased as are or shall be broken up or converted into tillage in a proper and husbandmanlike manner, and will not impoverish or waste the same.

7. The lessee will not use the premises as a shop: The lessee will not convert, use, or occupy the premises hereby leased, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or permit or suffer the said premises, or any part thereof, to be used for any such purposes or otherwise than as a private dwelling-house, without the consent in writing of the lessor.
8. The lessee will not carry on offensive trades: The lessee will not during the continuance of this lease use, exercise, or carry on, or permit or suffer to be used, exercised, or carried on, upon the premises hereby leased, or any part thereof, any noxious, noisome, or offensive art, trade, business, occupation, or calling, or do, permit, or suffer any act, matter, or thing whatsoever upon the said premises, or any part thereof, which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of the adjoining lands and hereditaments of any of them.
9. The lessee will not without leave assign or sublet: The lessee will not assign, transfer, demise, sublet, or set over, or otherwise by any act or deed procure the leased land, or any part thereof, to be assigned, transferred, demised, sublet, or set over unto any person whomsoever, without the consent in writing of the lessor first had and obtained.
10. The lessee will not cut timber: The lessee will not cut down, fell, injure, or destroy any growing or living timber or timber-like trees standing or being upon the leased land, without the consent in writing of the lessor.
11. The lessee will carry on the business of a publican, and conduct the same in an orderly manner; will apply for renewal for licence, and will facilitate transfer of licence: The lessee will at all times, during the continuance of this lease, use, exercise and carry on in and upon the leased premises the trade or business of a licensed victualler or publican, and retailer of spirits, wines, ales, beer, and porter, and keep open and use the messuage, tenement, or inn, and buildings upon the leased land as and for an inn, or public-house for the reception, accommodation, and entertainment of travellers, guests, and other persons resorting thereto or frequenting the same, and manage and conduct such trade or business in a quiet and orderly manner, and will not do, or commit, or permit, or suffer to be done or committed, any act, matter, or thing whatsoever whereby or by means whereof any licence shall or may be forfeited or become void or liable to be taken away, suppressed, or suspended in any manner howsoever; and also will from time to time during the continuance of this lease, at the proper times for that purpose, apply for and endeavour to obtain, at his own expense, all such licences as are or may be necessary for carrying on the said trade or business of a licensed victualler or publican in and upon the said leased premises and keeping the said messuage, tenement, or inn open as and for an inn or public-house as aforesaid; and also will at, or if necessary before, the expiration or other sooner determination of this lease, sign and give such notice or notices for renewal or transfer of any licence as may be requisite or as may be desired by the lessor, and allow such notice or notices for renewal or transfer of any licence as may be required by law to be affixed to the said messuage, tenement, or inn, to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf, and generally will do all such further acts, matters, and things as shall be necessary to enable the lessor, or any person authorized by him, to obtain the renewal of any licence, or any new licence, or the transfer of any licence then existing and in force.

**THE SEVENTEENTH SCHEDULE**

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

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## THE TWENTY-FIRST SCHEDULE

### *Rules and Regulations for procedure in the matter of Caveats*

#### **Person entering caveat may establish his claim. Proceedings to be had thereon.**

1. The caveator may bring an action for the purpose of establishing his claim, or may for such purpose take proceedings by way of petition to the Supreme Court. Such petition shall be filed, and shall contain, as concisely as may be, a statement of the material facts on which the petitioner relies, such statement to be divided into paragraphs, numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct allegation, and shall state specifically what estate, interest or charge the petitioner claims; and the Master of the said Court shall, upon the receipt of such petition, appoint a time for hearing the same.

#### **Copy of petition to be served upon claimant**

2. The petitioner shall cause a copy of such petition, with notice of the time appointed for hearing, to be served seven days at least before the time appointed for the hearing of the said petition, on the caveatee, or at the address given in his application.

#### **Showing cause on petition**

3. On the day of hearing, the caveatee is personally, or by counsel, to show cause, and if necessary by affidavit, why the prayer of such petition should not be granted.

#### **Hearing petition on non-attendance of claimant**

4. If the caveatee shall not appear on the day appointed for hearing, the Court may, upon due proof of the service of such petition, make such order, in the absence of the caveatee, either for the establishment of the rights of the caveator, or as the nature and circumstances of the case may require, as to such Court may seem meet.

#### **Hearing of petition**

5. On the hearing of the petition, and upon reading the affidavits, if any, filed in support thereof, and any documents produced to the Court, and hearing what may be alleged on behalf of the caveatee and caveator, the Court may, if it shall think fit, make an order establishing the right of the caveator, or directing any inquiries to be made or other proceedings taken for the purpose of ascertaining the rights of the parties, and for that purpose may adjourn the hearing and order the petition to be served on any other persons the Court may consider necessary, and every person so served shall attend at the adjourned hearing of the petition; or the Court may dismiss the petition.

#### **Question of fact may be referred to a jury. Parties to procedure fees, etc.**

6. The court may, if it shall think fit, direct any question of fact brought before it to be decided before a Judge thereof; and for that purpose may direct an issue to be tried, wherein the caveator shall be plaintiff and the caveatee shall be defendant; and the said Court shall direct when and where the trial of such issue shall take place; and the Court may also direct the parties to produce all deeds, books, papers, and writings in their custody or power, on oath before the Master, on a day to be named by the Court, and each party shall have liberty to inspect the same, and take copies thereof, at his own expense; and such of them as either party shall give notice to have produced at the trial, shall be produced accordingly, and the issue may be in the form following viz:

#### **Form of issue**

*In the Supreme Court.*

The            day of            in the year of our Lord, 19   .

SOUTH AUSTRALIA <i>to wit</i>	}	Whereas A.B. affirms and C.D. denies [ <i>here state the questions of fact to be tried</i> ] and it has been ordered by His Honour, Mr. Justice that the said questions shall be tried by a jury; therefor let the same be tried accordingly.
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And in case the parties differ upon the questions to be tried, the Court may either settle the same or refer them to the Master.

#### **Proceedings where petitioner establishes his claim**

7. If the Court shall find that the caveator is entitled to all or some of the relief claimed by him, the order of the Court shall declare what is the estate, interest, lien, or claim to which the caveator is entitled, and the Court may make such order as the circumstances may require, and shall have power to afford the caveator the same relief as in an ordinary action.

**Effect of order**

8. Every order of the Court made under these Rules shall have the same effect as a judgment or order of the Court given or made in an action; and the Registrar-General shall make such entries in the Register Book and do such things as may be necessary to give effect to the order of the Court.

**Court may require action to be brought**

9. If, at the hearing of such petition, it shall appear to the Court that, for the purposes of justice, it is necessary or expedient that an action should be brought, the Court may order such action to be brought accordingly, subject to such terms as to costs or otherwise as may be thought proper.

**Order for costs**

10. In all proceedings in the Court, either by the caveator or caveatee, the Court may make such order as to the costs of proceedings in the Court and incidental to filing the caveat, as to the said Court shall seem fit.

**Injunction by Supreme Court**

11. The Court or a Judge may, without prejudice to the exercise of any other power of the Court, upon the application of any person interested in any land, make an order restraining for a time, or until the occurrence of an event to be named in such order, or generally until further order, the execution or registration of any dealing with land, and may impose any terms and conditions upon making such order.

**Court may make order**

12. The Court may discharge any such order, with or without costs, and generally act in the premises in such manner as the justice of the case requires; and the Registrar-General, without being made a party to the proceedings, upon being served with any order, or a copy thereof, shall obey the same.





**Real Property Act, 1886****APPENDIX****LEGISLATIVE HISTORY**

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 9 of The Public General Acts of South Australia 1837-1975 at page 190.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:
 

Section 2:	amended by 23, 1982, s. 3; repealed by 13, 1988, Sched. 1
Section 3:	definition of "appropriate form" inserted by 51, 1979, s. 3(a); substituted by 9, 1990, s. 3 definition of "the Assurance Fund" substituted by 56, 1983, s. 3 definition of "certificate" amended by 11, 1995, s. 3 definition of "Court" substituted by 51, 1979, s. 3(b) definition of "lunatic" repealed and definition of "mentally incapacitated person" inserted in its place by 11, 1994, s. 3(a) definition of "person of unsound mind" repealed by 11, 1994, s. 3(b)
Section 10:	amended by 13, 1988, Sched. 1
Sections 13 - 16:	substituted by 51, 1979, s. 4
Sections 17 and 18:	repealed by 51, 1979, s. 4
Section 21:	amended by 9, 1990, s. 4
Section 23a(1):	amended by 51, 1979, s. 5(a); 20, 1987, s. 2
Section 23(1a):	inserted by 51, 1979, s. 5(b); amended by 20, 1987, s. 2
Section 27:	amended by 11, 1994, s. 4
Section 29:	amended by 9, 1990, s. 5
Section 33:	amended by 11, 1994, s. 5
Section 35:	amended by 51, 1979, s. 6
Section 36:	amended by 51, 1979, s. 7
Part heading preceding section 47:	substituted by 9, 1990, s. 6
Division heading preceding section 47:	inserted by 9, 1990, s. 6
Section 47:	substituted by 9, 1990, s. 7
Section 50:	repealed by 9, 1990, s. 8
Section 51:	amended by 9, 1990, s. 9
Section 51a:	inserted by 9, 1990, s. 10
Division heading preceding section 52:	inserted by 9, 1990, s. 12
Section 52:	substituted by 9, 1990, s. 13
Section 53:	substituted by 9, 1990, s. 14
Section 54(1):	substituted by 51, 1979, s. 8; amended by 9, 1990, s. 15
Section 54a:	inserted by 51, 1979, s. 9; repealed by 9, 1990, s. 16
Section 56:	redesignated as s. 56(1) by 20, 1985, s. 3
Section 56(2) - (4):	inserted by 20, 1985, s. 3
Section 56a:	inserted by 9, 1990, s. 17
Section 66:	substituted by 9, 1990, s. 18
Section 66A:	inserted by 11, 1995, s. 4
Section 71:	amended by 51, 1979, s. 10
Section 73:	substituted by 51, 1979, s. 11
Section 74:	amended by 9, 1990, s. 19
Section 79(2):	repealed by 51, 1979, s. 12(a)
Section 79(3):	repealed by 9, 1990, s. 20
Section 79(6):	amended by 51, 1979, s. 12(b)

Section 79(8):	inserted by 51, 1979, s. 12(c)
Section 80:	substituted by 9, 1990, s. 21
Section 82:	amended by 9, 1990, s. 22
Section 88:	amended by 51, 1985, s. 3
Section 89:	amended by 11, 1994, s. 6
Section 89a:	inserted by 51, 1985, s. 4
Section 90:	redesignated as s. 90(1) by 51, 1985, s. 5
Section 90(2):	inserted by 51, 1985, s. 5
Section 90a:	inserted by 32, 1980, s. 8; substituted by 11, 1994, s. 7
Section 90b:	inserted by 11, 1994, s. 7
Section 90b(3):	substituted by 54, 1994, s. 3(a)
Section 90b(3a) - (3e):	inserted by 54, 1994, s. 3(a)
Section 90b(5):	repealed by 54, 1994, s. 3(b)
Sections 90c - 90e:	inserted by 11, 1994, s. 7
Section 93:	amended by 32, 1980, s. 9; substituted by 9, 1990, s. 23
Section 94:	substituted by 9, 1990, s. 23
Section 96:	amended by 51, 1979, s. 13
Section 96a:	amended by 11, 1994, s. 8
Section 100:	amended by 11, 1994, s. 9
Section 101:	repealed by 23, 1982, s. 4
Section 105:	amended by 51, 1979, s. 14
Section 107:	amended by 51, 1979, s. 15
Section 111:	amended by 9, 1990, s. 24
Section 112:	amended by 9, 1990, s. 25; 11, 1995, s. 5
Section 116:	amended by 51, 1979, s. 16
Section 119a:	inserted by 69, 1987, s. 3
Section 120:	substituted by 51, 1979, s. 17
Section 122:	amended by 51, 1979, s. 18
Section 128:	amended by 51, 1979, s. 19
Section 129(2):	amended by 51, 1979, s. 20
Section 129a:	inserted by 20, 1985, s. 4
Section 136:	substituted by 68, 1980, s. 2
Section 141:	amended by 11, 1994, s. 10
Section 143:	amended by 51, 1979, s. 21; substituted by 9, 1990, s. 26
Section 144:	repealed by 51, 1979, s. 22
Section 146:	substituted by 116, 1978, s. 2
Section 146(1):	substituted by 20, 1987, s. 3(a)
Section 146(1a) and (1b):	inserted by 20, 1987, s. 3(a)
Section 146(2):	amended by 20, 1987, s. 3(b), (c)
Section 146(3):	amended by 20, 1987, s. 3(b)
Sections 147 and 148:	repealed by 116, 1978, s. 2
Section 150:	substituted by 51, 1979, s. 23
Section 153:	substituted by 51, 1979, s. 24
Section 153(2):	amended by 26, 1992, s. 9
Section 154:	repealed by 51, 1979, s. 24
Section 155:	amended by 51, 1979, s. 25
Section 156:	amended by 9, 1990, s. 27
Section 157:	amended by 51, 1979, s. 26
Section 165:	amended by 9, 1990, s. 28
Section 177:	substituted by 9, 1990, s. 29
Section 184:	substituted by 9, 1990, s. 30
Section 189:	substituted by 51, 1979, s. 27; repealed by 9, 1990, s. 31
Section 190:	repealed by 51, 1979, s. 28
Section 191:	amended by 51, 1979, s. 29
Section 192:	amended by 32, 1980, s. 10; 68, 1980, s. 3
Section 193:	amended by 32, 1980, s. 11
Section 194:	amended by 32, 1980, s. 12
Section 195:	amended by 32, 1980, s. 13
Section 201:	inserted by 56, 1983, s. 4
Section 205:	amended by 56, 1983, s. 5
Section 206:	repealed by 56, 1983, s. 6
Section 208:	amended by 56, 1983, s. 7
Section 210:	amended by 56, 1983, s. 8
Section 216:	substituted by 56, 1983, s. 9

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**Real Property Act, 1886**


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- Section 220(3a): amended by 56, 1983, s. 10  
 Section 220(3b): substituted by 51, 1979, s. 30  
 Section 220(4): amended by 23, 1982, s. 5; 9, 1990, s. 32(a)-(c)  
 Section 220(5): amended by 11, 1994, s. 11(a)  
 Section 220(9): amended by 11, 1994, s. 11(b)  
 Section 220(10): amended by 11, 1994, s. 11(c), (d)  
 Section 220(11): inserted by 9, 1990, s. 32(d)  
 Section 223a(3): substituted by 51, 1979, s. 31
- Part XIXAB comprising ss. 223/a - 223/p and headings inserted by 23, 1982, s. 6
- Division I of Part XIXAB comprising ss. 223/a - 223/c and heading amended by 56, 1983, s. 11; 51, 1985, ss. 6, 7; 13, 1988, Sched 1; 32, 1990, s. 3; 23, 1992, s. 3; 54, 1993, s. 12(a)-(f); repealed and ss. 223/a - 223/c and heading inserted in its place by 11, 1994, s. 12
- Section 223/a(1):** definition of "allotment" amended by 38, 1996, s. 24(a)-(c)  
 definition of "division" amended by 38, 1996, s. 24(d)  
**definition of "electricity entity" inserted by Regulation No. 159 of 1999, reg. 4(a) (Sched. 1 cl. 2)**  
**definition of "service easement" amended by 38, 1996, s. 24(e); Regulation No. 159 of 1999, reg. 4(a) (Sched. 1 cl. 2)**
- Section 223/b(5): amended by 38, 1996, s. 25(a), (b)  
 Section 223/b(8): definition of "allotment" inserted by 38, 1996, s. 25(c)
- Division II of Part XIXAB comprising ss. 223/d, 223/e and heading amended by 56, 1983, s. 12; 51, 1985, ss. 8, 9; 9, 1990, s. 33; 54, 1993, s. 12(g), (h); repealed and ss. 223/d - 223/i and heading inserted in its place by 11, 1994, s. 12
- Division III of Part XIXAB comprising ss. 223/f - 223/k and heading amended by 51, 1985, ss. 10-14; 32, 1990, s. 4; 23, 1992, s. 4; repealed by 54, 1993, s. 12(i); Division III comprising s. 223/lj and heading inserted by 11, 1994, s. 12
- Section 223/lg(1): substituted by 38, 1996, s. 26(a)  
**Section 223/lg(3) and (5): amended by Regulation No. 159 of 1999, reg. 4(a) (Sched. 1 cl. 2)**  
**Section 223/lg(7): amended by 38, 1996, s. 26(b); repealed by Regulation No. 159 of 1999, reg. 4(a) (Sched. 1 cl. 2)**
- Division IV of Part XIXAB comprising s. 223/ll and heading amended by 51, 1985, s. 15; 9, 1990, s. 34; 23, 1992, s. 5; repealed by 11, 1994, s. 12
- Division IVA of Part XIXAB comprising ss. 223/lla - 223/lm and heading inserted by 23, 1992, s. 6
- Section 223/lla: definition of "division" substituted by 38, 1996, s. 27  
 definition of "strata plan" inserted by 38, 1996, s. 27
- Section 223/lb(2): amended by 54, 1993, s. 12(j); 38, 1996, s. 28  
 Section 223/lc(1): amended by 38, 1996, s. 29  
 Section 223/lm: amended by 54, 1993, s. 12(k); repealed by 11, 1994, s. 13  
 Section 223/ln: amended by 51, 1985, s. 16; repealed by 11, 1994, s. 13  
 Section 223/lo: amended by 51, 1985, s. 17; 13, 1988, Sched. 1; 9, 1990, s. 35; 54, 1993, s. 12(l), (m); repealed by 11, 1994, s. 13
- Part XIXB comprising ss. 223/m - 223/nr and heading amended by 68, 1980, ss. 4, 5; 23, 1982, ss. 7, 8 (Sched.); 62, 1982, s. 3(10) (Sched. Pt. X); 96, 1983, ss. 3, 4; 51, 1985, ss. 18, 19; repealed by 13, 1988, Sched. 1
- Section 229: amended by 9, 1990, s. 36; 59, 1994, Sched. 2  
 Section 230: amended by 59, 1994, Sched. 2  
 Section 231: repealed by 59, 1994, Sched. 2

Section 232:	amended by 56, 1983, s. 13
Section 233:	amended by 9, 1990, s. 37
Section 240:	amended by 59, 1994, Sched. 2
Section 241:	amended by 62, 1982, s. 3(10) (Sched. Pt. X); substituted by 51, 1985, s. 20
Section 242:	amended by 51, 1985, s. 21; 13, 1988, Sched. 1; 9, 1990, s. 38; 38, 1996, s. 30
Section 244:	amended by 11, 1994, s. 14
Section 245:	substituted by 11, 1994, s. 15
Section 254:	amended by 9, 1990, s. 39
Section 257:	repealed by 9, 1990, s. 40
Sections 267 and 268:	substituted by 11, 1995, s. 6
Section 269:	repealed by 11, 1995, s. 6
Section 273(2):	amended and redesignated as s. 273(1) by 56, 1983, s. 14
Section 273(2) and (3):	inserted by 56, 1983, s. 14(b)
Section 274:	amended by 51, 1979, s. 32; redesignated as s. 274(1) by 56, 1983, s. 15
Section 274(2) and (3):	inserted by 56, 1983, s. 15
Section 276:	substituted by 51, 1979, s. 33
First schedule:	inserted by 11, 1994, s. 16
Second schedule:	amended by 9, 1990, s. 41
Fourth schedule:	repealed by 51, 1979, s. 34
Fifth schedule:	amended by 11, 1994, s. 17
Sixth Schedule:	repealed by 51, 1979, s. 35; inserted by 51, 1985, s. 22
Seventh to Fourteenth schedules:	repealed by 51, 1979, s. 35
Eighteenth and Nineteenth schedules:	repealed by 11, 1995, s. 7
Twenty-third schedule:	repealed by 51, 1979, s. 36
Twenty-fourth schedule:	repealed by 51, 1979, s. 37
Twenty-fifth schedule:	substituted by 51, 1979, s. 38; repealed by 13, 1988, Sched. 1
Twenty-sixth schedule:	amended by 68, 1980, s. 6; repealed by 13, 1988, Sched. 1