



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 56 of 1983

An Act to amend the Real Property Act, 1886-1982.

[Assented to 16 June 1983]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Real Property Act Amendment Act, 1983".

(2) The Real Property Act, 1886-1982, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Real Property Act, 1886-1983".

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of
s. 3—
Interpretation.

3. Section 3 of the principal Act is amended by striking out the definition of "Assurance Fund" and substituting the following definition:

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

Insertion of new
s. 201.

4. The following section is inserted in Part XVIII of the principal Act after section 200:

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.

5. Section 205 of the principal Act is amended—

(a) by inserting after the passage “or cannot be found within the jurisdiction of the Court” the passage “or there is any other reason why compensation cannot be fully recovered from that person”;

and

(b) by striking out the passage “the amount of compensation and costs” and substituting the passage “the amount of the compensation or costs, or so much of that amount as cannot be recovered from the person referred to above,”.

Amendment of
s. 205—
Proceedings
against the
Registrar-General,
as nominal
defendant.

Repeal of s. 206.

6. Section 206 of the principal Act is repealed.

Amendment of s. 208—
Proceedings against the Registrar-General as nominal defendant.

7. Section 208 of the principal Act is amended by striking out the passage “but notice in writing of the intention to institute such proceedings, and of the cause thereof, shall be served upon the Attorney-General and upon the Registrar-General one month at least before the commencement of such proceedings”.

Amendment of s. 210—
Persons claiming may, before taking proceedings, apply to the Registrar-General for compensation.

8. Section 210 of the principal Act is amended by striking out the passage “the Governor may, if he shall think fit, issue a warrant to the Treasurer for payment of the amount so certified out of the Assurance Fund” and substituting the passage:

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.

Repeal of s. 216 and substitution of new section.

9. Section 216 of the principal Act is repealed and the following section is substituted:

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.

Amendment of s. 220—
Powers of Registrar-General.

10. Section 220 of the principal Act is amended by inserting in paragraph (3a) after the passage “until the requirement is complied with” the passage “and the prescribed fee, if any, is paid”.

Amendment of s. 223a—
Interpretation.

11. Section 223/a of the principal Act is amended—

(a) by inserting after the definition of “the Commission” the following definition:

“the Commonwealth Crown” means the Crown in right of the Commonwealth and includes any instrumentality or agency of that Crown;;

and

(b) by inserting in the definition of “the Crown” before the passage “includes a Minister” the passage “means the Crown in right of the State and”.

12. Section 223/d of the principal Act is amended by striking out from paragraph (b) of subsection (5) the passage "which the Crown is a party" and substituting the passage:

Amendment of
s. 223/d—
Application for
division.

which—

(i) the Crown;

or

(ii) the Commonwealth Crown,

is a party.

13. Section 232 of the principal Act is amended by striking out the passage "one hundred" and substituting the passage "five thousand".

Amendment of
s. 232—
Penalty for
certifying
incorrect
documents.

14. Section 273 of the principal Act is amended—

(a) by striking out the word "The" first occurring and substituting the passage "Subject to subsection (2), the";

Amendment of
s. 273—
Authority to
register.

and

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(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).

15. Section 274 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

Amendment of
s. 274—
Solicitors and
land brokers to be
generally entitled
to recover fees for
work done under
this Act.

(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.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor